

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. A-769-MA of 2016
Date of decision : 27.04.2022**

Ram Singh

....Applicant/Appellant

versus

Vijender Singh and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. B.S. Saroha, Advocate
for the applicant-appellant

Mr. Sandeep Goyal, Advocate
for respondent No. 1.

Application qua acquittal of respondent Nos. 2 to 5
already stands dismissed.

Mr. Ankur Mittal, Addl.A.G, Haryana with
Mr. Saurabh Mago, AAG, Haryana

RITU BAHRI, J.

The present application has been filed by the applicant against the judgment dated 09.02.2016 passed by learned Addl. Sessions Judge cum Special Court for Heinous Crime against Women, Hisar, vide which the private respondents i.e respondent Nos. 1 to 5 were acquitted of the charges framed against them in F.I.R No. 404 dated 20.12.2014 under Sections 147/149/304-B IPC, registered at P.S. Adampur.

Brief facts of the case as noticed by the Court below reads as under:-

On 20th December 2014, a V.T message about Poonam

Rani wife of Vijender brought dead in Agroha Medical College, was

received. Thereafter, Sub Inspector Dharampal along with police

party reached there and father of deceased Shri Ram Singh then got

recorded his statement to him inter alia detailing about the circumstances how his daughter died in circumstances other than natural death within fourteen days of her marriage. He detailed that he got married his daughter Poonam aged 24 years to Vijender son of Sarjeet on 06.12.2014 and has given dowry beyond his capacity in the marriage. When his daughter returned back from her nuptial home, she told that her in-laws were not happy with dowry given in the marriage and they were taunting her by saying that her father has not given a Swift car in the marriage and has lowered down their reputation and had also asked her to bring a car when she would return back from her parental home. He further informed that on 16.12.2014, Sarjeet father-in-law of Poonam, her mother-in-law and her husband Vijender all came to their house to take her back and they also asked her that they have not given car in the dowry and in case they would not give the car, they would not permit her to settle in her nuptial home. Thereafter, they had taken her to her nuptial home at Daroli. He also detailed that on 20.12.2014 at around 06:30 am, Sarjeet father-in law of Poonam gave him a telephonic call by telling that she is not well and asked them to come immediately. Thereafter, he along with his brother Hanuman and son Rakesh and ten-fifteen persons reached village Daroli where they found that his daughter Poonam was lying dead on a cot. He immediately shifted her to Agroha Medical College to give medical aid, but doctor declared her as brought dead. He further informed that in fact his daughter was murdered by her husband, father in-law, mother-in-law, brother-in-law and sister-in-law for bringing less dowry.

A case for commission of offences punishable under Sections 147, 149, 304-B of Indian Penal Code was lodged. Investigation was carried out by Sub Inspector Dharampal, who conducted inquest proceedings and delivered dead-body to Government Hospital authorities for postmortem examination. He visited the place of occurrence on 21.12.2014 and at that time a suicide note and one plastic bottle of ventoranz-DX was recovered. Both were converted into sealed parcel and were taken into police possession. During investigation, accused Vijender was arrested on 22.12.2014. Viscera and the bottle recovered from the spot were sent to chemical examiner, Karnal and some samples were also sent to Pathology department, Medical College Agroha.

Further investigation was carried out by Assistant Sub Inspector Amrit Lal, who sent suicide note of deceased to Director SCRB, Madhuban for comparison. Other named accused were tried to join in investigation, but could not be joined. Therefore, initially only accused Vijender was challaned. During further investigation, the injuries given in postmortem report were shown to the doctor and opinion from board of doctors was obtained on 30.05.2015. Further investigation was carried out by Inspector/Station House Officer Jai Bhagwan and Deputy Superintendent of Police Paramjeet Samota and on 15.08.2015, accused Sarjeet and Anoop Kumar were arrested. On 09.09.2015 accused Vidhya Devi wife of Sarjeet and Saroj wife of Anoop were also. arrested. On completion of investigation, these remaining four accused were also challaned to face trial for the alleged crime.

As the offence punishable under Section 304-B of the

Indian Penal Code is triable exclusively by the Court of Sessions, the case was committed to the Court of Sessions. It was opined by the Court below that there were grounds to presume that the accused Vijender had committed the offences punishable under Sections 498-A/304-B of the Indian Penal Code or in the alternative Section 302 of the Indian Penal Code. The accused Vijender was accordingly charge sheeted for the commission of offence of aforesaid alleged offences, vide order dated 16.04.2015, to which he pleaded not guilty and claimed trial.

After perusing the supplementary challan and hearing both sides, the Court was of the opinion that there were grounds to presume that the accused Sarjeet, Anoop Kumar, Vidhya Devi and Saroj had committed the offences punishable under Sections 498-A/304-B of the Indian Penal Code or in the alternative Section 302 of the Indian Penal Code. The accused were accordingly charge sheeted for the commission of aforesaid alleged offences, vide order dated 17.10.2015, to which they pleaded not guilty and claimed trial.

During the course of trial, prosecution has examined complainant Ram Singh (PW1), Shri Rakesh son of Sh.Ram Singh, Shri Mahesh Sharma (PW3), Dr.Rajiv Chauhan (PW4), Mohrar Head Constable, Naseeb Khan (PW5), Mohrar Head Constable Rohtash (PW6), Head Constable Mahender Singh (PW7), Constable Naseeb Kumar (PW8), Sub Inspector Dhrampal (PW9), Assistant Sub Inspector Amrit Lal (PW10) and Inspector Jai Bhagwan (PW11). The prosecution evidence was closed in terms of statement dated 22.01.2016 made by learned Public Prosecutor in this regard.

Statements of accused under section 313 (1) (b) of the Code of Criminal Procedure were recorded on 27.01.2016, to which, they pleaded false implication and claimed innocence. All the accused claimed that they neither demanded dowry from deceased nor maltreated her for any such demand or in any other manner. The deceased committed suicide on account of tension as she was not interested in marrying accused Vijender and her parents forced this marriage upon her. Out of the tension, she took poison to commit suicide. The accused closed their defence without leading any evidence, vide statement dated 08.02.2016.

The Lower Court after going through the entire evidence acquitted the accused of the charges framed against them. It has been observed that it shall be relevant to mention that to establish the case of dowry death under Section 304-B of the Indian Penal Code, the following ingredients are to be proved by the prosecution:

- (a) Death of woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;*
- (b) Such death must have occurred within seven years of her marriage*
- (c) Soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband;*
- (d) Such cruelty or harassment must be in connection with the demand for dowry.*

For the purpose of 304-B of Indian Penal Code, dowry has same meaning as in Section 2 of Dowry Prohibition Act, 1961.

Reference has further been made to Section 113-B of Evidence Act, 1872 which provides that when the question is whether a person has

committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand of dowry, the Court shall presume that such person had caused the dowry death.

The learned Court below has observed that it is established on record that Smt. Poonam wife of Vijender died in circumstances other than normal and there is no dispute qua the fact that she had died of consumption of phosphorous poison (an insecticide compound) as is evident from the report of chemical examiner Ex.PC. It is also established that her death took place within 7 years of marriage i.e within only short span of fourteen days of her marriage. Therefore, ingredients & the offence of dowry death narrated above are established on record. As far as remaining two ingredients are concerned whether before her death deceased Poonam was subjected to cruelty or harassment by accused or whether such cruelty or harassment was in connection with demand of dowry, the prosecution case rests upon testimony of father and brother of the deceased. It can safely be concluded from the evidence of prosecution witnesses Shri Ram Singh (PW1) father of the deceased Poonam and Rakesh (PW2) brother of the deceased, that the allegation of demand of dowry and cruelty upon deceased are proved. First Information Report lodged on the basis of statement of father of deceased Shri Ram Singh Ex.PE. In his statement, he revealed that his daughter Poonam got married to accused Vijender on 06.12.2014 and she came to join marriage of her sister on 07.12.2014, then she disclosed that her in-laws are not happy with the dowry given at the time of the marriage and they were demanding a Swift car. On 16.12.2014, when her husband and parents in-law came to his house to take her back, they have also asked him that he has not given car in the dowry and he has assured to give car in the dowry. Thereafter, they returned back with

Poonam and finally he received information qua her death on 20.12.2014. However, Shri Ram Singh when appeared into witness box as PW1, he made improvements in his version as in his testimony for the first time, he has come up with a new plea that on 16.12.2014, he had assured to Sarjeet, Vidhya Devi and Vijender husband of deceased to fulfill their demands of dowry in near future. This witness was also confronted on several material points as in his testimony as PW1, he has stated for the first time that he received two telephonic messages, first message was about his daughter was hospitalized and after fifteen minutes of the first phone, he received a telephonic message that she has expired. But this fact was not mentioned by him in his statement Ex.PE. He has also come up with an improved version that when they reached at the house of applicant, they were doing their household chores and dead-body of his daughter was lying on a cot, which fact was not given in Ex.PE. He has also come up with a version for the first time that he has told to the police that they have seen the injuries on the neck and eyes of his daughter and bleeding from her mouth, but it was not mentioned in Ex.PE.

These improvements coupled with the fact that the demand of dowry as that of car raised by this witness is allegedly made on the next day of the marriage i.e. on 07.12.2014, whereas Shri Rakesh (PW2) brother of deceased has deposed that on 16.12.2014 his sister apprised them for the first time that applicant is demanding a car in the dowry, goes to raise doubt about truthfulness of both PW1 and PW2. Moreover, this fact was not given by him in his statement Ex.DA made to the police during investigation of the case. Shri Rakesh (PW2) was also confronted on several other material particulars as in Ex.DA he has not mentioned about injuries on her sister and has also not mentioned that medical officer has told them that it was a case of murder.

It has come from the evidence of both these witnesses that there

was no demand of dowry raised at the time of marriage. There was also no demand at the time of Tikka and God Bharai ceremonies, which were performed fifteen days prior to the marriage. Shri Ishwar Singh, uncle of husband of Pooja, other daughter of complainant, was mediator of the marriage and he has already apprised him about the expenditure to be made in this marriage. If on 16.12.2014, complainant Shri Ram Singh (PW1) father of deceased had assured to fulfill the demand of applicant and they have taken Poonam back along with them on this assurance, it is highly improbable that on the third day of such an assurance, applicant would kill the girl or would force her to take poison for their alleged demand of dowry. Such an instance is quite improbable specially when there was no demand made at the time of marriage and the marriage was only fourteen days old.

Reference has then been made to cross-examination of Sub Inspector Dharampal (PW9) the investigating officer, who stated that the deceased Poonam was having some love affair with a boy prior to her marriage. From testimony of PW1 and PW2 both father and brother of the deceased, it has also come on record that prior to this marriage with Vijender, there were talk of her relationship of marriage with one Ashok son of Satyawar, resident of village Juglan, but this relationship was broken after three-four months. These situations coupled with deceased has committed suicide within fourteen days of her marriage with applicant, clearly goes to show that it was something else which made her tense that she brought an end to the chapter of her life by committing suicide.

Further reference has been made to report of chemical examiner Ex PD which shows that the viscera of deceased was sent to laboratory and gave positive test for organo phosphorus compound group of insecticide. The medical officer gave his opinion Ex.PM that cause of death in this case is

organo phosphorus compound group of insecticide, which is sufficient to cause death in ordinary course of nature.

Reference has been then made to statement of Medical officer Dr.Rajiv (PW4) who was one of the member of the Board who conducted postmortem examination on the dead-body, in his cross-examination, he has clarified that injuries on the person of deceased were anti-mortem in nature. He has admitted that all these injuries were on outer surface of skin i.e. epidermis only. He has also admitted that all these five injuries are of the width of a plain thread used in Mangalsutra etc. He has not denied of receiving these injuries in case a dying fellow uses his or her one hand on the neck in such like situation of irritation after poisoning, but has contended that a normal person would use both hands and not one hand.

After hearing learned counsel for the parties at length and after going through the detailed judgment dated 09.02.2016, the present application deserved to be dismissed on following grounds.

(1) There were improvements in the statement of the father and brother of the deceased, as when Ram Singh P.W.1 appeared into the witness box came up with the plea first time that he received two telephonic messages, first message was about his daughter was hospitalised and after minutes of the first phone, he received telephonic message that she had expired. This fact was not mentioned by him in his statement Ex PE. Further he stated for the first time, when they reached at the house of the accused, they were doing their household chores and dead-body of his daughter was lying on a cot, which fact was not given in Ex PE. He has also come up with a version for the first time that he told to the police that they have seen the

injuries on the neck and eyes of his daughter and eyes of his daughter and bleeding from her mouth, but this fact was not given in Ex PE.

(2) As per cross examination of Sub Inspector Dharampal (PW9) the investigating officer, it was clear that the deceased Poonam was having some love affair with a boy prior to her marriage. The brother and father of the deceased also admitted this fact that prior to this marriage with Vijender, there were talk of her marriage with one Ashok son of Satyawan, resident of village Juglan, but this relationship was broken after three-four months. Thus, this made the deceased so tense that she brought an end to her life.

(3) In the suicide note of the deceased (ExPU), which has been fully proved on record, as the suicide note was got compared from the handwriting of the deceased obtained from her college record. After comparison of the same, FSL report (Ex PB) goes to show that handwriting of suicide note is of the deceased. In this suicide note, she has stated that it is her personal matter and nobody should be accused of her death. She has also mentioned that her in-laws are very good and nobody should feel sad from her death as her life was only this little.

(4) It is not believable that the applicant in short span of fourteen days of the marriage, would harass deceased to such an extent that she would commit suicide or would be forcefully given poison, specially when there was no demand of dowry raised at the time of marriage or at any other ceremonies of Tikka and God Bharai. Even if for the sake of arguments,

testimony of P.W.1 and P.W.2 is believed that on 16.12.2014, applicant Vijender and his parents have raised demand of a car, it is complainant who assured to fulfill the same. They would have waited for some time to get their demand fulfilled and would not have forced the deceased to commit suicide only on 4th day i.e 20.12.2014. Thus, the accused have not treated the deceased with cruelty on account of demand of dowry, as alleged by P.W.1 and P.W.2.

Further as per Section 106 of Evidence Act, a person is bound to explain certain circumstances which are in his special knowledge. In this case, admittedly deceased was found dead in the matrimonial home, however, her husband accused Vijender has come up with a specific plea in his statement under Section 313 of Code of Criminal Procedure that she committed suicide by consuming poison as she was under some depression and tension since her marriage. She was not interested in marrying him, since she was liking some other boy and her parents forced this marriage upon her. He has specifically detailed that he never demanded any dowry or car from deceased or her family members and never maltreated or taunted her.

In the present case, there was no material to show that soon before the death of Poonam, she was subjected to cruelty or harassment. No evidence has been led by the prosecution in this regard. Mere fact that Smt. Poonam has died within only fourteen days of her marriage that itself would not raise a presumption that she was treated with cruelty for demand of dowry. In her suicide note Ex PU, the deceased has clearly mentioned that her in-laws are very good and it is her personal matter and nobody should be accused of her death. It seems that she was not interested in marrying accused, as she was having love affair with one Ashok son of Satyawan.

Apex court in *Pancha Nand Mandal and another versus State of Jharkhand*, 2013(4) RCR (Criminal) 591 has held that in case of dowry death, prosecution can not escape the burden of proof that the harassment or cruelty was relating to demand of dowry and same was caused within seven years of marriage. In that case, mother of deceased deposed that there was demand of dowry by the accused person but there was no evidence to suggest that demand of dowry and harassment was made just before her death. Conviction of the accused in that case where death of a bride was by way of burning, was set aside as it was held that evidence of cruelty and harassment in general is not sufficient to attract the provisions of Section 304-B of Indian Penal Code.

In case *Baljinder Kaur Vs. State of Punjab* (2015) 2 SCC 629 (SC), it was held by Apex Court that stray instance of demand of dowry, without any persistent demand, would not constitute a proximate live link with death of deceased.

In case *Anil Kumar Gupta Vs. State of Uttar Pradesh* (2011) 3 SCC (Criminal) 94 (SC), before Apex Court, there was unnatural death of a bride, trial court acquitted accused also and co-accused by holding that evidence of witnesses was unreliable and dowry demand was not proved. Trial court also gave a finding that suicide note was written by the deceased. However, High Court convicted the appellant solely on the ground of his proximity with the victim on the fateful night. It was held that this singular circumstance is not enough to conclude that appellant forcibly administered poison to victim, wherein medical evidence does not support such conclusion.

Apex court in case *Amar Singh vs State of Rajasthan*-2010(4) RCR (Criminal) 53 has failed to believe the allegations of dowry demand against husband and his family members and there was no evidence as to what was the exact act and conduct of the accused by which deceased felt tortured. It

was further held by apex court of the land that there was no evidence to establish that she was harassed for demand of dowry.

In the absence of any intent on the part of the accused to derive the deceased to commit suicide, they have rightly been acquitted by the Court below.

Accordingly, the application stands dismissed

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

27.04.2022
G Arora