

CRA-AD-148-2022
Date of Decision: August 26, 2022

Versus

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Brief facts necessary for adjudication of the matter are that FIR No. 83 dated 18.06.2017 under Sections 304B, 498A read with Section 34 IPC was registered at Police Station Samalsar, District Moga on the statement of complainant – Raj Kumar (PW3), who stated that he was running a Karyana shop. It is stated that complainant had three daughters and one son, all of whom were married. Complainant's daughter Rajni Bala (deceased) was married with accused Pardeep Kumar alias Deepu on 28.11.2010 as per Hindu rites and rituals.

Sufficient dowry as per his capacity is stated to have been given at the time of marriage but in-laws of complainant's daughter were stated to be unhappy with the dowry given and kept taunting complainant's daughter. Motorcycle is stated to have been given at the time of marriage. Same was returned after two months and further demand of money in cash was raised, upon which, Rs.50,000/- in cash is stated to have been paid by the complainant. Mother-in-law of the deceased i.e. accused - Suhagwanti is alleged to have asked the deceased to bring a big refrigerator from her parents. Sister-in-law of the deceased namely Neetu (though named as an accused was found innocent during investigation and not proceeded against) is stated to have been given gold earrings (tops) but she was unhappy that she was not given a gold set at the time of marriage. Complainant's daughter is stated to have been told the complainant that accused - Pardeep Kumar was raising a demand of Swift Dzire car. Complainant stated that on 18.06.2017, he received a telephonic call from accused Pardeep Kumar at about 12.30 noon that he was coming to pick up the complainant. Said accused also requested the complainant not to disclose this fact to anyone. At about 1.30 p.m., accused Pardeep Kumar alongwith his son Ridam (grandson of the complainant) reached at Sultanpur Phatak, Lohian Khas in Swift car. Complainant also reached there and proceeded to Kot Ise Khan. Complainant is stated to have proceeded to the house of his other son-in-law Shakul Sikri after reaching Kot Ise Khan at 2.30 p.m., from where he alongwith Shakul Sikhri, Madan Lal alias Budhu (uncle of Shakul Sikri) proceeded to the house of Pardeep Kumar where they saw the complainant's daughter hanging with the ceiling fan of a room with a dupatta tied around her neck. Complainant's son-in-law Shakul Sikri cut the dupatta with knife and put the complainant's daughter on bed and found that she had died. It is alleged that complainant's daughter committed suicide due to demand of dowry

and harassment by accused Pardeep Kumar, Suhagwanti, Jagir Lal and Neetu i.e. husband, mother-in-law, father-in-law and sister-in-law respectively, of the deceased. Complainant informed the matter to the police and on the basis of his statement, FIR (Ex.PW7/B) was registered. Rough site plan (Ex.PW7/F) was prepared. Post mortem was conducted and viscera sent for forensic examination. Statements of concerned witnesses were also recorded. After completion of investigation, final report under Section 173 Cr.P.C. was presented against three accused. Case was committed to the Court of Sessions on 13.09.2017. Charges under Section 304B, 498A IPC were framed against accused Pardeep Kumar, Suhagwanti and Jagir Lal.

The prosecution examined eight (8) witnesses to substantiate its case. Incriminating evidence and circumstances were put to the accused, who denied all the allegations and pleaded innocence. Statements under Section 313 Cr.P.C. were recorded.

Accused Pardeep Kumar (husband of the deceased) denied all allegations of demand of dowry, harassment or maltreatment. He pleaded that he was living happily with his wife and they had good marital ties. In fact, it is the in-laws family of the accused residing in the first floor of the shop, the ownership of which was with Wakf Board, who were troubling the deceased inasmuch as they were demanding cash from him for purchase of new house and when he expressed his inability to advance huge amount of Rs. 20 lakhs, which was being demanded, his in-laws started taunting his wife (deceased) due to which she reduced the frequency of her visits to her parental home. Ten (10) days prior to the occurrence, it is stated, deceased alongwith her son had gone to her parental home to stay for ten days as the child had summer vacations but on the very third

day, she telephoned the accused husband and asked him to take her back to her matrimonial home. The accused stated that his wife was very silent after coming back, feeling depressed and ashamed of her parental family, due to which she committed suicide.

Accused - Jagir Lal and Suhagwanti (respondents No. 1 and 2) while pleading innocence stated that they had nothing to do with the matrimonial life of Pardeep Kumar and deceased. It is stated that they were living separately, having separate ration card and gas connection. All allegations of demand of dowry, maltreatment or harassment of the deceased were denied. It is stated that they were implicated falsely only due to relationship with the deceased. As many as eight witnesses were examined in defence.

Learned trial Court after examining the evidence on record, facts and circumstances of the case concluded that prosecution had failed to prove its case against parents-in-law of the deceased, who were accordingly acquitted of the charges framed against them. Accused – Pardeep Kumar (husband of the deceased) was, however, held guilty and was convicted for the offences punishable under Sections 304B and 498A IPC and sentenced accordingly.

Aggrieved from acquittal of parents-in-law of the deceased, present appeal has been filed by the complainant.

Learned counsel for the appellant vehemently argues that life of the complainant's daughter was snuffed out within seven years of her marriage. There is a sufficient evidence on record to indicate that she was subjected to harassment, maltreatment, torture and demand of dowry at the hands of respondents No. 1 and 2. Specific allegations, it is stated, have been leveled against the said respondents. Learned counsel further argues that having a separate residence by the parents-in-

law in the present case is of no avail for the simple reason that it is only little distance away from the residence of the deceased and her husband. Therefore, there is clear cut evidence of interference in the matrimonial life of the deceased and harassment being meted out to her on account of less dowry. It is further contended that in terms of Section 113B of the Indian Evidence Act, there is no evidence on record as led by the defence to merit acquittal of respondents No. 1 and 2. It is, thus, prayed that this appeal be allowed and acquittal of respondents No. 1 and 2 i.e. parents-in-law of the deceased be set aside and they be held guilty of the charges under Sections 304B, 498A IPC and sentenced accordingly.

Heard learned counsel for the appellant and have gone through the file as well as photocopy of the evidence which was produced by him in Court today.

At the outset, it is useful to refer to the provisions of Section 304B IPC and Section 113B of the Indian Evidence Act which reads and under:-

“Section 304B. Dowry death.--

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

“ **Section 113-B.** Presumption as to dowry death.—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 for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304-B, of the Indian Penal Code.”

In **Kans Raj versus State of Punjab (2000) 5 SCC 207**, it is held that for presumption of dowry death to be drawn, it is incumbent upon the prosecution to first establish the following:-

- (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) such death should have occurred within 7 years of her marriage;
- (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) such cruelty or harassment should be for or in connection with the demand of dowry; and
- (e) to such cruelty or harassment the deceased should have been subjected to soon before her death.

It is, thus, clear that presumption under Section 113B of the Indian Evidence Act, which is a presumption of law can be drawn once the prosecution first establishes the ingredients as above.

The Hon’ble Supreme Court in **Bhola Ram versus State of Punjab (2013) 16 SCC 421** has held that dowry death will itself not *ipso facto* suck all the relatives alongwith the husband in the net of Section 304B IPC in the absence of specific allegation and that in the absence of prosecution proving ingredients of

Section 304B IPC, necessary burden cast upon it not having been discharged, presumption under Section 113B of the Evidence Act cannot be attracted.

The Hon'ble Supreme Court in **Naresh Kumar versus State of Haryana and others 2015 (1) SCC (Cri.) 797** has held that requirement of allegation of demand of dowry against relatives to the husband may have to be more specific and the Courts may be more cautious in dealing with such allegations. It is in this backdrop that the matter has to be examined.

Death of complainant's daughter admittedly took place within seven years of marriage as she died on 18.06.2017 with marriage having been solemnized on 28.11.2010. PW5 Dr. Inderveer Singh deposed that he was working as Medical Officer, Civil Hospital, Moga. Medical Board on 19.06.2017 was constituted alongwith Dr. Suraj Bansal for conducting Post Mortem Report of Rajni Bala. It is observed that trachea was found congested and edematous, blood mixed with forth was present. Cyanosis was present over lips and nails. Conjunctival hemorrhage was present in bilateral eyes. Compression band on further examination was found present in the anterior of the neck, continuous except on the nape of neck, running obliquely backwards 1cm diameter with 3 cm in diameter over the right mastoid process above the level of thyroid cartilage with hyoid bone intact. Cause of death after going through the report of the Chemical Examiner (Ex.PX) is stated to be asphyxia as a result of compression of neck and trachea. It is apparent that complainant's daughter died an unnatural death within a period of seven years of her marriage. Question to be determined is whether prosecution was able to prove that the parents-in-law had subjected the deceased to cruelty or harassment for and in connection with demand of dowry soon before her death.

Learned counsel for the appellant is unable to deny that allegations leveled against the parents-in-law are general and vague in nature. Demand of big refrigerator is stated to have been made by respondent No. 2, Suhagwanti (mother-in-law) and in the statement before the learned trial Court, complainant deposing as PW3, stated that father-in-law of the deceased demanded gold kara (bangle). It is admitted by the complainant (PW3) that parents-in-law are living separately from the deceased and her husband. Accused - Pardeep Kumar had constructed his house in the year 2014 and was living there alongwith his wife (the deceased) and child since then. It has also been proved on record that parents-in-law had separate ration card while Pardeep Kumar, his wife and his child had a separate one. There is no evidence on record to show that deceased had ever complained of ill-treatment, harassment and demand of dowry by respondents No. 1 and 2 since her marriage on 28.11.2010 till her unfortunate demise on 18.06.2017. Furthermore, it is borne out from the record that sum of Rs.4,70,000/- was deposited by respondent No. 1 - Jagir Lal in favour of the deceased Rajni Bala in the shape of FDR (Ex.DW1/D) in the year 2014 and that FDR was extended till 2019. It is also a matter of record that no recovery whatsoever was effected from respondents No. 1 and 2.

We have perused the statements of complainant (PW3), his wife Neelam Rani (PW8) and Shukal Sikri (PW6) but learned counsel for the appellant is unable to pinpoint any definite evidence regarding ill-treatment or harassment meted out to the deceased by respondents No. 1 and 2 for or in connection with demand of dowry soon before her death. Prosecution has indeed failed to prove its case beyond reasonable doubt against respondents No. 1 and 2. It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible

cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in **Arulvelu v. State represented by the Public Prosecutor 2009 (10) SCC 206** held that :-

“ Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.”

Reference in this regard can also be made to judgment of Hon'ble Supreme Court in **Criminal Appeal No. 2119 of 2010 (State of Rajasthan versus Kistoora Ram)** decided on 28.07.2022, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that view taken by Court is impossible or perverse.

Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to interfere in judgment dated 13.03.2020 passed by the learned Special Judge, Moga for setting aside acquittal of respondents No. 1 and 2. However, it is clarified that observations in this decision are not an expression of opinion in any manner on the merits of the matter regarding accused

Pardeep Kumar whose criminal appeal i.e. CRA-S-1450-SB-2020 shall be decided on its own merits in accordance with law.

Present appeal is, accordingly, dismissed.

(LISA GILL)
JUDGE

August 26, 2022
Rts

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No