

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-655-2020

Decided on: 05.05.2022

Anuj Kumar

.....Applicant-Appellant

versus

State of Punjab and others

.....Respondents

CORAM HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.APS Chaudhary, Advocate
 for the applicant-appellant.

SANDEEP MOUDGIL, J

The applicant-appellant seeks Special Leave to Appeal by way of instant application under Section 378(4) Cr.P.C, against the order of acquittal dated 10.01.2020, passed by the learned Judge, Special Court, SAS Nagar, Mohali.

Learned counsel for the applicant-appellant contends that the accused - respondents no.2 and 3 have been acquitted by the trial Court granting them the benefit of doubt by the trial Court below ignoring the cogent evidence on record with regard to demand of dowry and mental cruelty on account thereof. It is further submitted on behalf of the applicant-appellant that during the trial the direct evidence by way of statements of PW1 (Anuj Kumar-complainant), PW2 (Shiv Parshad - father of the deceased), PW3 (Shiv Kumar), PW4 (Ram Singh) and PW6 (Santosh -

mother of the deceased), it has been proved beyond any doubt that the deceased was murdered by the accused persons on account of insufficient dowry by giving beatings but the same has been ignored and the trial Court committed material illegality putting reliance on a torn piece of paper from an old diary treating it to be a suicide note allegedly written by the deceased while acquitting the accused and respondents no.2 and 3.

Learned counsel for the applicant-appellant further argues that the questioned signatures of deceased on the alleged suicide note Ex.P 5/3 were got matched with the standard signatures as is apparent from the FSL report Ex.P 7/7 but the contents of alleged suicide note in the form of handwriting were not compared which ought to have been examined with the standard handwriting of the deceased.

It has been also contended on behalf of the applicant-applicant that the trial Court committed grave illegality while granting benefit of doubt to the accused ignoring the settled principles in criminal law for a dowry death case where presumption is to be drawn against the accused if, a woman dies unnatural death within 7 years of marriage, it amounts to dowry death.

Lastly, learned counsel for the applicant-appellant submitted that the trial Court did not appreciate the prosecution evidence and passed an erroneous judgment of acquittal which is not just and is also against the facts and circumstances on record, therefore, deserves to be set aside and the accused be sentenced in accordance with law.

Heard.

The factum of marriage with the accused Vinay is admitted whereas certain bank receipts have been brought on record as Exs.P 1/2 to Ex.P 1/15, which are undated receipts against the amount of

Rs.25,000/- to bring the case within the ambit of dowry by way of such alleged payments and made an attempt to prove that an amount of Rs.40,000/- in cash was paid to accused Vinay when he visited for the first time after marriage to the maternal house of deceased. The witnesses PW1 to PW4 and PW6 namely Anuj Kumar - complainant - brother, Shiv Parshad - father, Shiv Kumar, Ram Singh – both uncle and Saroj – mother of the deceased respectively, have made a valiant attempt to corroborate with each other to prove that Renu Bala – deceased had committed suicide by hanging herself on account of harassment and mental cruelty.

In the witness box PW5 - ASI Pal Chand, has proved search memo Ex.P 5/5 and Ex.P 5/7 while further putting on record the parcel of viscera articles and envelop containing the relevant papers consisting a suicide note recovered vide memo Ex.P 5/3, which were deposited at the office of Chemical Examiner, Kharar who also issued a receipt and the same was handed over to the MHC in the Police Station. He also deposed to the effect that the case property was intact during the time it remained with him and was not tampered with till the time it was deposited with the Chemical Examiner.

PW7 Inspector Harbinder Kumar, proved the rough site plan Ex.P 7/5, had taken into possession one *dupatta* of the deceased vide recovery memo Ex.P 5/2 and also corroborated with regard to the recovery of suicide note Ex.P 5/3. He went further in deposing to prove the report of Chemical Examiner Ex.P 7/6 for the viscera of the deceased and report of FSL regarding handwriting of the deceased as Ex.P 7/7, apart from original of the suicide note as Ex.P 7/8. According to the FSL report, the signature of the deceased on the suicide note were testified to be of the deceased Renu Bala after these were compared with the standard signatures drawn from her bank record.

We have also considered and perused the record pertaining to the bank account as produced by PW9 William Masih, the bank official bearing account no.10413644171 which is in the name of Ramdin (father-in-law of deceased) reflecting credit of amount of Rs.25,000/- varying during the period 15.04.2013 to 25.11.2014 i.e more than one year and seven months. The time duration for credit of such meagre amount of Rs.25,000/- cannot be termed simplifier to be on account of dowry demand in the light of no other corroborating direct evidence for the same. Infact, there is no clinching evidence on record to prove the fact of mal-treatment or harassment to connect with the alleged demand of dowry in any manner and, therefore, no credibility could be given to the bald and vague statement made by PW1 to PW4 and PW6 namely Anuj Kumar - complainant - brother, Shiv Parshad - father, Shiv Kumar, Ram Singh – both uncle and Saroj – mother of the deceased, respectively.

A further perusal of suicide note Ex.P 7/8, makes it crystal clear that the deceased had held nobody responsible for her such step. On the contrary, the photographs Ex.D 1 to D 35 produced in defence by the accused demonstrate that the deceased – Renu Bala was happily enjoying company of her husband – accused Vinay. These photographs showing the bond in the relationship between the accused Vinay and deceased Renu Bala were put in cross examination to the complainant and father of the deceased who admitted those merry moments including the photographs from Ex.D 12 to Ex.D 14 pertaining to the celebration of birthday of deceased Renu Bala.

To establish the offence of dowry death, as envisaged under Section 304-B IPC, the commission of offence needs to be proved by reliable and cogent evidence against the husband or his relatives. It would be appetite to have a glance to the provision of Section 304-B IPC while

testing the judgment of acquittal which reads as under:-

Section 304B in The Indian Penal Code

1[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 purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*
- 2. [\(2\)](#) 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.]*

We are also sanguine of the fact that to consider the allegations under Section 304-B IPC, the provision of Section 113-B of the Indian Evidence Act, 1872 would be just to read along which is as under:-

Section 113B in The Indian Evidence Act, 1872

1[113B. 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 has 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 304B, of the Indian Penal Code, (45 of 1860).]”

A composite reading of both the provisions essentially lays down the rule to the effect that if a married woman dies under other than natural circumstances, at her matrimonial home, within seven years of her marriage and there are allegations of cruelty or harassment or in connection with demand of dowry caused by the husband or any relative of the husband, the case would squarely come under dowry death and there shall be a presumption against the husband and or his relatives.

The most importantly as envisaged vide Section 304-B IPC, to bring home the offence essential ingredient is “soon before her death”, the woman was subjected to cruelty or harassment “for or in connection with demand of dowry”.

Meaning thereby, the gap or the intervening time should not be much between the alleged cruelty or harassment and the death in question and there must be existence of proximate link between the two.

Coming to the case in hand, there is no doubt that the death had taken place within seven years of marriage, however the question arises for examination is whether it falls within the ambit of Section 304-B IPC.

In this regard, testimony of PW10 - Dr.Tarsem Singh, is of paramount consideration who conducted the postmortem of deceased

Renu Bala. He proved the postmortem report Ex.P 10/1 and that of Chemical Examiner as Ex.PW 7/5, according to which, no poison was found in the viscera of the deceased and the cause of death recorded is asphyxia, which is anti-mortem and sufficient to cause death in the ordinary course of nature.

Though the death has taken place within seven years of marriage and as per the medical evidence, it has occurred “otherwise than under normal circumstances”, the foremost issue to reach a conclusion remains as to whether the third ingredient of harassment / mal-treatment in connection with demand of dowry has taken place at all and soon before her death as well. Though, the prosecution has examined PW1, PW2 and PW6 to corroborate the payment of Rs.3,00,000/- deposited in the account of accused Ramdin and Vinay on various occasions apart from certain receipts as Exs.P 1/2 to Ex.P 1/15, however, the said demand allegedly made for construction of house prior to the marriage and another amount of Rs.40,000/- paid on the first visit after marriage for purchase of laptop could not be proved in the absence of any exact date or proof of such payment. Apart from this, no other allegation of specific demand for dowry or mal-treatment / harassment has been brought on record during the period i.e 03.12.2014, the date of marriage till 19.07.2016 (the date of death).

Further, the suicide note Ex.P 7/8 which has been duly proved bearing signatures of the deceased as per report Ex.P 7/7 bears the contents subscribed as “*mein apni maut ki zimedaar khud hi hu iss mein kisi ka koi hath nahi na to mere pati ka na to mere saas, sasur, nanad ka ya phir maa baap ka koi haath nahi hai.*” Importantly, none of the witnesses from the family of deceased i.e PW1 (brother), PW2 (father), PW6 (mother) raised any objection to the genuinenity or trustworthiness of

said suicide note, which clearly absolve all the accused in clear terms. It is ample clear from the medical evidence that no physical injury on the body of deceased except the ligature marks were found to show any beatings or strangulation at the hands of accused - respondents.

Further the allegations of any mal-treatment / harassment could not be testified especially in the light of evidence by way of photographs Ex.D 1 to Ex.D 35 including that of birthday celebrations and visits to various places along with the family of the deceased duly admitted in the testimony of PW2 (Shiv Parshad – father) of the deceased. These photographs since have been admitted demonstrate the affectionate bond between the deceased and her accused husband Vinay to rule out any discord in the matrimonial relationship.

We are, therefore, fully convinced with the cumulative effect of aforesaid discussion and the material on record that there is no direct or cogent evidence to establish the guilt of the accused beyond reasonable doubt and the judgment of acquittal dated 10.01.2020, passed by the trial Court does not suffer from any illegality or infirmity. As such, no interference is called for by this Court.

Hence, the application under Section 378(4) Cr.P.C is dismissed and in the eventuality main appeal is also dismissed, being devoid of merit.

Ordered accordingly.

SANDEEP MOUDGIL

AUGUSTINE GEORGE MASIH

JUDGE

JUDGE

05.05.2022

mamta	Whether speaking / reasoned	Yes
	Whether reportable	Yes