

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRM-A-180-2021 (O&M)
Date of Decision: 12.10.2022

State of Haryana

..... Appellant

Versus

Ravi and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Ms. Palika Monga, DAG, Haryana.

JAGMOHAN BANSAL, J.

1. The instant appeal filed by the State is directed against the judgment dated 04.02.2020 of learned Additional Sessions Judge (Exclusive Court), Jhajjar (for short 'trial Court') whereby the trial Court has acquitted the respondents who were arrayed as accused in FIR No.1152 dated 03.11.2018 registered at Police Station Jhajjar under Sections 302/304-B/34 IPC.

2. The facts emerging from record which are necessary for the adjudication of present appeal are that on 03.11.2018, police officials present in Police Station City Jhajjar received an information regarding death of Jyoti, resident of Neem Wali Gali. The father of Jyoti (deceased) was present at the spot and he moved complaint alleging that in-laws' of her daughter used to beat her and demanded dowry. He alleged that Ravi

(husband), Kavita (mother-in-law), Poonam and Sushila (maternal aunts of Ravi), Kirti (sister-in-law) and maternal uncle used to demand dowry and tortured his daughter. He received information about death of his daughter in the morning from maternal uncle of accused Ravi and when he reached at spot, he found that his daughter was lying dead and she was having marks of rope on her neck and injuries on her body.

3. On the basis of complainant of Jai Parkash-father of deceased Jyoti, an FIR under Sections 302/304-B/34 IPC was registered against Ravi (husband), Kavita (mother-in-law), Poonam and Sushila (maternal aunts of Ravi), Kirti (sister-in-law) and maternal uncle. The police after completing investigation, filed its report under Section 173 Cr.P.C. against Ravi (husband) and Kavita (mother-in-law). Learned Magistrate committed the case to the Court of Sessions and matter was assigned to Exclusive Court which has passed impugned judgment.

4. The prosecution examined 12 witnesses marked as PW1 to PW12. The prosecution apart from witnesses relied upon various documents. Though, prosecution examined 12 witnesses, however, Jai Parkash (PW3), Rakesh (PW4) and Dr. Sunil Narwal (PW 11) are material and relevant witnesses. The trial Court after considering depositions of witnesses and documents on record came to a conclusion that prosecution has failed to bring home guilt of accused beyond reasonable doubt for commission of offences under Sections 302/304-B/34 IPC. The Court found that deceased had committed suicide within seven months from the date of marriage. However, there being no evidence substantiating oral testimony of

complainant to prove that deceased was maltreated and subjected to cruelty soon before her death for non-fulfilment of demand of dowry the benefit of acquittal was granted. The trial Court further found that statutory presumption under Section 113-B of the Evidence Act, 1872 can come into play if ingredients of offence under Section 304-B IPC are proved.

5. The State has preferred present appeal seeking setting aside of judgment dated 04.02.2020 whereby respondents have been acquitted. The appeal is accompanied with an application under Section 378(3) Cr.P.C. seeking leave against impugned judgment of acquittal.

6. Learned State counsel vehemently contended that the trial Court has totally ignored testimony of Rakesh (PW4), who was a co-brother of Ravi (husband of deceased). Rakesh (PW4) has categorically stated that in July' 2018, accused took a sum of Rs.15,000/- from him. The accused collected 2-3 times money from his wife for paying installments of his vehicle and house loan. The accused was demanding Rs.2 lakhs which he denied. The trial Court has founded its findings on the perception that there is no evidence of demand of dowry whereas statement of co-brother of accused is pointing out that there was demand of dowry.

There is presumption that deceased died on account of demand of dowry and she was tortured because she had committed suicide in her matrimonial home and death took place within less than 9 months from the date of marriage. Thus burden was upon accused to prove that there was no demand of dowry and deceased had not committed suicide because of being tortured and subjected to demand of dowry.

7. We have perused the record and heard arguments of learned State counsel.

8. The prosecution has examined 12 witnesses, however, in our opinion, three are material and relevant witnesses, whose depositions are scrutinised as below :-

(i) Jai Parkash (PW3) who was complainant deposed that marriage of his daughter was solemnised on 19.02.2018 and he had given sufficient dowry in the marriage. The accused and his family members started torturing his daughter soon after the marriage and in the morning of 03.11.2018, he received an information that his daughter has committed suicide. Then he stated that the accused had killed his daughter.

(ii) Rakesh (PW4) deposed that accused Ravi was his co-brother and he used to come to his house to take money from him and his wife. In July' 2018, accused collected Rs.15,000/- from them for the payment of installment of his vehicle and house rent. The accused took money two-three times from his wife for vehicle installment and house rent. The accused demanded Rs.2 lakhs from him to which he denied. He received telephonic call on 03.11.2018 from his co-brother and came to know that Jyoti has expired.

(iii) Dr. Sunil Narwal (PW11) deposed that he conducted postmortem on the body of deceased. He tendered his affidavit and opined that cause of death was asphyxia/hanging which was ante-mortem in nature.

8.1 In the cross-examination, PW3 *inter alia* disclosed that her daughter was B.com whereas accused Ravi was 10+2. Ravi was having his

own vehicle which was of Ola and Uber. He had verified that there was no demand of dowry on the part of accused at the time of marriage. Her daughter took admission in college after her marriage. However, he had paid fee of Rs.35,000/-for her admission in the college but he did not pay fee for 2nd semester. He did not know whether Jyoti and Kirti used to go in the same college from the house in the morning and used to come in the evening together. The step mother of accused used to reside in her matrimonial house and he cannot tell about her residential address. The house for the study of Jyoti was taken on rent at the cost of Rs.6500/-. He did not get medico-legally examined Jyoti at any time. He did not tell anyone that his daughter was beaten on such and such date. He could not tell on which date he conveyed Panchayat at the house of Ravi. The police did not collect any evidence from the neighbourhood in his presence that Jyoti was never tortured, harassed or beaten or killed. He cannot tell on which date the car was taken on finance by accused Ravi. Father of Ravi-Wazir Singh was serving in J&K at Sri Nagar. He did not know whether his daughter was found doing chatting from her whatsapp with Amit, resident of Panipat and on this Ravi asked her to tell this fact by calling her parents and due to this reason, Jyoti went in a separate room after other family members had slept and she committed suicide.

He further admitted that his daughter Aarti is residing at Bahadurgarh and she is married in village Kherka Gujjar. His wife used to talk on telephone with his daughter and his wife used to tell him regarding the calls from their daughter. It was wrong to suggest that he had given

sufficient dowry as stated in examination-in-chief. It was wrong to suggest that his daughter attempted to commit suicide twice or thrice prior to her marriage. It was wrong to suggest that this fact was in his knowledge that Jyoti committed suicide after Ravi called her sister and her husband after he caught her red handed while chatting with other boys. It is wrong to suggest that police called the boy during investigation with whom she was chatting.

Rakesh (PW4) in his cross-examination deposed that he was married with younger sister of Jyoti i.e. Aarti on 19.02.2018. He did not take dowry from his in-laws' and Ravi was also married on the same day with Jyoti. His wife completed B.com in April' 2018. His wife never went to the house of accused Ravi for any type of interference. Ravi contacted him on telephone, however, he could not tell mobile number from which he received call from accused Ravi. He could not tell the day, month and mobile number of accused Ravi from which he received telephonic call. Similarly, he could not tell the department in which Wazir Singh was employed. Jyoti was not living in village Sundana after her marriage and he had no conversation regarding the qualification of Jyoti till marriage and after the marriage. After marriage Jyoti was studying in Aggarsain College and doing M.Com and this fact was told by his wife. He did not know the date on which Ravi got financed the vehicle for plying as Ola taxi. He had no detail as to how much installments Ravi used to pay monthly. He did not give any fee to Jyoti for studying in Aggarsain College. He did not tell the police about the date or amount given to Ravi. He had not disclosed to police about the fact that money was given in the month of July' 2018. He had no knowledge on

which route Ravi used to ply his vehicle on hire basis. He did not know registration number of vehicle and he could not tell the age of Ravi. Wazir Singh used to bear college fee of Jyoti and Kirti and he did not pay even single pie. Wazir Singh was having a rented house at Jhajjar. Once he visited house of Wazir Singh but he cannot tell the date and time when he visited along with his wife. He visited house of Wazir Singh after 1½ month of marriage of deceased. He had not disclosed this fact to the police in his statement under Section 161 Cr.P.C.. In July' 2018, Wazir Singh's wife and Ravi came to his house in their car and took Rs.15,000/- from him. In his presence, no demand of dowry was made by accused Ravi and his parents from father of Jyoti. It was admitted that Ravi talked on telephone to Aarti in the evening of 02.11.2018 and told that Jyoti was chatting with some other boy. In his cross-examination conducted on 25.09.2019, Rakesh (PW4) further disclosed that his father-in-law has spent Rs.80,000/- for purchasing bike and other articles and nothing more was spent in his marriage. He did not know whether his father-in-law had given amount or not.

9. From the perusal of the evidence of the complainant-father of deceased, it does not come out whether at any point of time there was demand of dowry on the part of accused or his family members. The complainant lodged a complaint against husband of deceased, mother-in-law of deceased as well as other extended relatives but the police did not file challan against relatives including father-in-law of the deceased. The complainant did not challenge non-filing of challan against other family members of respondent-Ravi. It thus indicates that the complainant lodged a

false complaint against the extended family members of husband of deceased. The complainant thus intended to implicate maternal uncles and aunts of respondent-Ravi. As per deposition of complainant and Rakesh (PW4), the marriage of both the daughters took place on the same day and Rakesh had further stated that a sum of Rs.80,000/- was spent by his father-in-law at the time of marriage. He has deposed that he did not take dowry from his in-laws'. The marriage of Jyoti and his sister Aarti took place on the same day and as per statement of Rakesh (PW4), he had not taken any dowry. Thus, it seems to be unbelievable that two daughters got married on the same day and dowry articles were given to one daughter and not to another. In his cross-examination held on 04.09.2019, PW4 is stating that he did not take any dowry articles whereas in his cross-examination dated 25.09.2014, he has deposed that his father-in-law spent Rs.80,000/- for purchasing bike and other articles. He has also accepted that he does not know about Ravi whether he was given any amount or not.

10. From the opinion of doctor (PW11), it transpires that cause of death was hanging and there was no strangulation. The complainant and family members of deceased had not disputed this fact. Thus, there is no second opinion about the cause of death except suicide by hanging. It is to be noticed that the accused were also charged under Section 302 IPC in the alternate by the Trial Court on 24.04.2019 along with the charge under Section 304-B IPC. It has also come on record in the statement of PW-5, Sombir that there were rope marks on the neck of the deceased and her body was lying on the bed when he had reached at the rented house . In the

cross-examination of PW-7, Neetu it has also come that there were no external marks of injury except ligature on the deceased which is also supported by the medical evidence of Dr.Sunil Narwal who has also stated in the same manner regarding the presence of the ligature marks of width 2-3 cms present over the neck. In cross-examination, it has further come that there was no external marks of injury except the same which has also been validly noticed by the Trial Court, while also keeping in mind the FSL report which has been received as Ex. PA which would go on to show that the cause of death was asphyxia/hanging. Also Ex.PW-7/A the crime scene visit report which would also go on to show that the wooden entrance door had been broken open by the residents of the house and the light pink coloured chunni was hanging on the wing of the ceiling fan which were knotted with each other and the said affected wing of the ceiling fan was observed slightly bent.

11. Learned State counsel has contended that instances of demand of dowry disclosed by Rakesh (PW4) are specific, thus, findings returned by trial Court are contrary to record and deposition of witnesses.

12. Rakesh who was co-brother of Ravi-respondent was not aware about the job of father of Ravi. He was not aware about the route which Ravi was plying his taxi. He had visited once the house of parents of Ravi. He was not aware about dowry articles given to Jyoti at the time of marriage even though marriage took place on the same day. Initially he deposed that he did not take dowry from his in-laws whereas in his second cross-examination, he disclosed that his father-in-law purchased bike and other

articles worth Rs.80,000/-. He did not pay fee of Jyoti for studying in Aggarsain College for pursuing her masters degree in Commerce and he did not disclose fact of payment of money to police. He disclosed that Wazir Singh-father of Ravi used to bear college fee of Jyoti and Kirti (sister of Ravi). He was not aware about the day and month in which he received call from Ravi as well as his mobile number. As per Rakesh, the respondents did not demand dowry from parents of deceased and it is surprising that he is claiming that he paid Rs.15,000/- in July' 2018 and his wife paid some amount on 2-3 occasions and further, there was demand of Rs.2 lakhs which he denied. Rakesh got married on the same day i.e. 19.02.2018 and he was not known to or a relative of Ravi. Thus, it appears very surprising and strange that Ravi demanded money from his co-brother who was also recently married and there was no demand from parents of Jyoti-deceased. There is nothing on record to show that Rakesh was having a flourishing business and it was very convenient for him to spare Rs.15,000/- on one occasion and further make payment towards installments and rent of Ravi. We find no reason to believe deposition of Rakesh and it appears that he has attempted to support allegations of his father-in-law.

13. Matter needs to be examined from another angle. The father of deceased in his cross-examination accepted that no dowry was given at the time of marriage. Rakesh (PW4) accepted that no dowry was demanded from father-in-law. He further accepted that he did not know whether money was given to Ravi, at the time of marriage. He has deposed that he and his wife paid some amount to Ravi and his mother. Rakesh was co-brother of Ravi.

The expression 'dowry' used in different Sections of IPC and Evidence Act has been defined under Section 2 of the Dowry Prohibition Act, 1961.

Section 2 of the Dowry Prohibition Act reads as under :-

Section 2 in the Dowry Prohibition Act, 1961

2 Definition of 'dowry'. —In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

- (a) by one party to a marriage to the other party to the marriage; or*
- (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,*

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

*Explanation I [***]*

Explanation II.— The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

14. From the conspectus of above quoted Section, it can be gleaned that demand of money or actual payment by co-brother post marriage does not fall within definition of 'dowry'. Thus, even if it is accepted that Rakesh had paid some amount to Ravi, it cannot be held that it comes within the definition of 'dowry' and that there was demand or actual payment of dowry.

15. The contention of learned State counsel that presumption postulated under Section 113-A, 113 B of Indian Evidence Act, 1972 read

with Section 304-B IPC is absolute and Courts are bound to presume that death was on account of demand of dowry where death takes place within 7 years from the date of marriage, is sheer fallacy, heap of imagination and contrary to the mandate of law. It would be travesty of justice if a family is convicted simply on the ground that a lady has committed suicide in her matrimonial home within a period of 7 years from the date of her marriage. If contention of learned State counsel is accepted, there would be no need of judicial scrutiny and a man would be put in dungeon as soon as there is death of his wife or daughter-in-law. The contention of learned State counsel is misplaced and indubitably founded upon assumptions and presumptions. For the ready reference, Sections 113A, 113B of Evidence Act and Section 304 B of IPC are reproduced as below :-

Section 113A in The Indian Evidence Act, 1872

Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of

1860).]

Section 113B of the Evidence Act

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 Indian Penal Code (45 of 1860).

Section 304B IPC

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)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.

16. From the perusal of above quoted Sections, it is quite evident that Court may presume, having regard to all other circumstances of the case, that suicide had been abetted by husband if suicide is committed within a period of 7 years from the date of marriage. If it is shown that soon before death, a woman has been subjected by family members of husband to cruelty or harassment for or in connection with demand of dowry, the Court shall presume that such person had caused dowry death. The expression 'dowry death' has been defined under Section 304B IPC and it provides that where death takes place by reason of burns or bodily injuries or otherwise than normal circumstances within 7 years of marriage and it is shown that before death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with demand of dowry, such death shall be called "dowry death". The common thread running through all the Sections i.e. 113A, 113B of Evidence Act and 304-B of IPC is that it should be shown that soon before death, lady was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with demand of dowry. In the absence of demand of dowry, rigour of these provisions shifting burden upon husband and his family members does not come into play.

17. In the case in hand, except a bald statement of co-brother of Ravi-respondent, there is no evidence much less concrete and believable to conclude that there was demand of dowry on the part of husband of the deceased or any other relatives of the deceased. The facts are otherwise.

Prime witnesses i.e. PW3 and PW4 did not appear in compliance of

summons and trial Court was forced to issueailable warrants more than once to ensure their presence. The deceased completed her graduation in commerce after marriage and she was further permitted to pursue her masters degree in Commerce though her husband had only done his 10+2. She was a regular student of Aggarsain College and her father was not even aware of name of college though he was well educated person. There is nothing on record to show that father of the deceased or co-brother of Ravi had paid college fee of the deceased. The father (PW3) in his cross-examination has attempted to say that he paid Rs.35,000/- for her admission in the college whereas Rakesh (PW4) has stated that it was Wazir Singh who used to bear college fee of Jyoti and Kirti. Father of deceased had accepted that he did not pay fee of second semester. He in his cross-examination has stated that it is wrong to suggest that he had given sufficient dowry as stated in examination-in-chief. As per Rakesh (PW4), a sum of Rs.80,000/- was spent on his marriage. The father (PW3) in his cross-examination has further deposed that he conducted verification regarding the fact that there is no demand of dowry on the part of Ravi and his family members at the time of marriage. Therefore, the evidence indicates that no dowry even at the time of marriage was offered. The marriage of both the sisters was solemnised on the same day even though boys were not relative or belonging to same family which shows that marriage was solemnised in a way which minimised cost of marriage.

18. In view of above facts and findings, we find that trial Court has rightly concluded that there was no specific instance of demand of dowry

and maltreatment or harassment to deceased soon before she committed suicide. In the absence of harassment or maltreatment for dowry, presumptions of culpability cannot be presumed.

19. We do not find any infirmity in the impugned judgement. We further do not find any ground to form an opinion which is contrary to findings recorded by trial Court.

20. The Hon'ble Supreme Court has repeatedly held that the benefit of doubt has to ensue to the accused and if two views are possible, the benefit of doubt must be granted to accused. It has been further held that if two views are possible, the order of acquittal should not be set aside by High Court because there is double presumption of innocence. The Hon'ble Supreme Court in **para 39 in Dhanapal v. State By Public Prosecutor, Madras, (2009) 10 SCC 401** while dealing with scope of interference at appellate stage has held:

“39. The following principles emerge from the cases above:

1. 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 acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and

consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court acquittal if it has “very substantial and compelling reasons” for doing so.

5. If two reasonable or possible views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.”

21. As noted above, there is always presumption of innocence and in case of acquittal, there is double presumption. The burden lies upon prosecution to prove the guilt beyond reasonable doubt. The learned trial Court has passed a detailed, reasoned and speaking order and we find no infirmity in the said order. There is no manifest error, illegality or non-application of mind or non-appreciation of evidence which could compel us to form an opinion different from the opinion formed by the learned Trial Court. Finding no merit in the present appeal, we are of the considered opinion that leave to appeal deserves to be declined and accordingly application seeking leave to appeal as well as appeal is dismissed.

22. Before parting with this judgment, we deem it appropriate to examine another facet of the case. The respondents were arrested on

03.11.2018 and thereafter remained in custody till the conclusion of trial. It is well known fact that arrest causes mental agony as well as harassment. Arrest of a family member not only affects person detained but also entire family as well relatives. It tarnishes reputation which sometimes is not gained for next couple of years or generations to come.

23. In the case in hand, we find that during the cross-examination, it has come out that deceased was caught chatting with a boy and police has recorded statement of the said boy. The deceased was caught while chatting on 02.11.2018 and this fact was brought in the knowledge of Aarti (sister of the deceased) on the same day i.e. 02.11.2018. The deceased committed suicide in the night of 02.11.2018. Ravi was 10+2 pass and deceased was pursuing her masters degree in Commerce. The difference in qualification is stark and its effects in Indian society are well known. As per cross-examination, it appears that the boy with whom deceased was chatting was examined by police, however, there is nothing in impugned judgment as well record to indicate whether police had made thorough investigation with respect to chatting of deceased with a boy, informing of this fact by Ravi to his sister-in-law Aarti. During cross-examination of witnesses, it has also come on record that mother-in-law of the deceased was step-mother of Ravi (respondent) and she was staying in a village. Father of the respondent (Ravi) was working in CRPF and he was posted in J & K. There were no allegation against father-in-law and mother-in-law who was step-mother and staying in a separate house was arrested. There was no demand of dowry at the time of marriage. There is an allegation, in the form of cross-

examination, that deceased prior to her marriage, 2-3 times attempted to commit suicide which indicated her attitude towards life and temptation to commit suicide. These facts needed to be examined by the investigator because the actual truth was not brought on record. Though respondents are acquitted, yet it would be injustice with them who have suffered without any fault. If life of a woman as daughter-in-law is important, it cannot be forgotten that mother-in-law is also a woman and she cannot be punished just because she is mother of an unfortunate son whose wife has committed suicide. Justice should not be only done but it must be seen to be done. Punishment in the form of incarceration for more than year without fault and due to lack of proper investigation has amounted to violations of fundamental rights guaranteed by Article 14, 19 and 21 of the Constitution of India.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

12.10.2022

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>