

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRA-S-273-SB-2004 (O&M)

Reserved on: September 14, 2022

Date of Decision: September 29, 2022

Ajit Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Karan Pathak, Advocate and
Mr. Gautam Dutt, Advocate,
for the appellant.

Mr. Karan Garg, AAG, Haryana.

Mr. H.S. Randhawa, Advocate, Amicus Curiae.

Vivek Puri, J.

Present appeal has been preferred against the judgment of conviction dated 12.01.2004 passed by the Court of learned Additional Sessions Judge, Fast Track Court, Gurgaon, vide which the appellant has been convicted for having committed the offence punishable under Sections 498-A and 304-B of the Indian Penal Code (for short 'IPC') and the order of sentence dated 13.01.2004 vide which he has been sentenced to undergo rigorous imprisonment for a period of 2-1/2 years with fine of Rs. 500/- under Section 498-A IPC in default whereof to further

undergo rigorous imprisonment for three months. The appellant has been further sentenced to undergo rigorous imprisonment for a period of seven years with fine of Rs. 1000/- under Section 304-B IPC, in default whereof, to further undergo rigorous imprisonment for six months. Both the sentences have been directed to run concurrently.

The facts as put forth by the prosecution are to the effect that the marriage of Usha deceased was solemnized with Ajit Singh, appellant on 15.02.1997. After the solemnization of marriage, the appellant and his relatives had been teasing and taunting the deceased for bringing less dowry. Whenever the deceased used to visit her parental house, she had been asking for a sum of Rs. 5,000/- by stating that the said amount has been demanded by the appellant. About 14-15 days prior to the occurrence, the deceased came to her parental house and again informed that the appellant has demanded money and a sum of Rs. 2,000/- was given by stating that the balance amount will be sent soon. On 13.07.2001 at about 2.45 p.m., Balbir Singh, complainant, who is the father of the deceased, received a telephonic message with regard to hanging of the deceased. On the receipt of the information, the complainant along with others came to the house of the appellant and came to know that the deceased had died due

to hanging at about 2 p.m. The matter was reported to the police and accordingly, the FIR was registered.

On completion of the investigation, the challan was presented and as the offence under Section 304-B IPC was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions by the learned Additional Chief Judicial Magistrate, Gurgaon in terms of order dated 24.10.2001.

Initially, the FIR was registered against the appellant along with his parents, namely, Sohan Lal and Sumitra alias Safedi. However, the parents of the appellant were found innocent during the course of investigation, but both of them have been summoned under Section 319 Cr.P.C.

The charge under Sections 498-A read with Section 34 IPC and 304-B read with Section 34 IPC was accordingly framed against the appellant and the parents of the appellants. The contents thereof were read over and explained to them to which they pleaded not guilty and claimed trial.

In support of its allegations, the prosecution has examined 10 witnesses. Sarwan Kumar, PW-1, is working as a draftsman and has prepared scaled site plan (Ex.PA). HC Ramphal, PW-2 and Constable Ram Mehar, PW-5 are the witnesses to the recovery of two pieces of saree and a pair of

scissor effected at the spot, which were taken into possession vide recovery memo Ex.PB. Dr. Suman Sabharwal, PW-3, has testified with regard to the treatment being given to the deceased. Dinesh Kumar, PW-4, had taken the photographs (Ex.P12 to Ex.P19). Sanjay Ahlawat, PW-6, was posted as SHO, Police Station Sadar Gurgaon and on completion of the investigation, the challan has been presented by him. The investigation of the case has been conducted by ASI Suman Singh, PW-7. Dr. R.K. Sachdev, PW-8 was a member of the Medical Board which had conducted the post mortem examination on the dead body of the deceased. As per the opinion, the cause of death was asphyxia caused by hanging. Balbir Singh, PW-9, is the father of the deceased and on the basis of his statement (Ex.PC), the FIR has been registered. Manoj Kumar, PW-10, is the elder brother of the deceased.

In his statement recorded under Section 313 Cr.P.C., the appellant has denied the correctness of the incriminating evidence appearing against him.

The defence version put forth by him is to the effect that the deceased was residing with him and separate from his parents. The deceased could not conceive and bear child after the marriage. She used remained upset and under tension on that score and consequently, she had committed suicide. The deceased was also being provided

treatment by the appellant at his own expenses by the doctor for conception so that she may deliver the child.

The appellant has examined Dhapa Devi, DW-1, who was the mediator in the marriage. Harpyari, DW-2, Jangbahadur, DW-3 and Babu Ram, DW-4, the neighbourers and they have testified to the effect that the deceased was living happily with her husband. It is also emerging in the statement that the deceased used to remain disturbed and upset, as she could not bear the child. Sandeep Gupta, DW-5 has testified to the effect that Sohan Lal, accused, was in a Government job and had raised advances and withdrawn the money from his GPF account. Santosh Mishra, DW-6, has testified to the effect that the appellant was working in his hotel and his wife i.e. the deceased, was nominee in the employees provident fund account. Jeet Singh, DW-7, has proved the ration card, copy whereof is Ex.PW7/1.

In terms of the judgment dated 12.01.2004, the learned trial Court has extended the benefit of doubt to Sohan Lal and Sumitra, accused. However, the appellant has been held guilty and convicted under Sections 498-A and 304-B IPC. Consequently, the appellant has been sentenced as aforesaid in terms of order of sentence dated 13.01.2004.

Aggrieved by the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

I have heard learned counsel for the parties and perused the record.

While assailing the judgment of the learned trial Court, it has been argued by the learned counsel for the appellant that the deceased could not bear any child despite a lapse of more than 4 years of the marriage. She was depressed and used to remain disturbed on that score. Consequently, she had committed suicide by hanging. The allegations with regard to demand of money are false and have been put forth as a concocted version after the death of the deceased. The deceased was never subjected to harassment or cruelty by the appellant, much less, for demand of dowry.

The learned Amicus Curiae has also adopted the arguments as put forth by the learned counsel for the appellant and has submitted that there is sufficient and ample material on record to indicate that the deceased was having cordial relations with her husband. She could not bear the child despite treatment. There is lack of sufficient and reliable material to indicate that she was ever maltreated or subjected to the cruelty on account of demand of dowry by the appellant.

On the contrary, while supporting the judgment of the learned trial Court, it has been argued by the learned State counsel that the cause of death in the instant case was asphyxia due to hanging. The death had occurred within a period of less than seven years from the date of marriage. There is categorical version of the father and brother of the deceased to indicate that the periodical demand of cash was raised by the appellant, which was narrated to them, when the deceased had been visiting the parental house. The deceased was being subjected to cruelty on that score and her death has occurred otherwise than under normal circumstances on account of cruelty and maltreatment meted out to her by the appellant.

During the course of arguments, the relationship between the appellant and the deceased has not been disputed. It has not been disputed that the marriage of the deceased was solemnized with the appellant on 15.02.1997. The cause of death is stated to be asphyxia due to hanging.

The question which arises for consideration is as to whether the case under Section 304-B IPC is made out against the appellant or not.

Section 304-B IPC provides as following:-

“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 subsection, “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.”

As per the provisions of Section 304-B IPC, in the event of proof of the fact that soon before death, the deceased was subjected to cruelty or harassment by her husband or any of the relative for or in connection with any demand of dowry and the death has occurred otherwise than under normal circumstances, within a period of seven years of marriage, such death shall be called “dowry death”.

At this stage, it will be appropriate to mention here that presumption has to be raised with regard to the dowry death as per the provisions of Section 113-B of the Indian Evidence Act, which provides as under:-

“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 (45 of 1860)”

On a conjoint reading of Section 304-B IPC and Section 113-B of the Indian Evidence Act, the essential ingredients pertaining to the offence are enumerated here-in-below:

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstances,
- (ii) Such death should have occurred within seven years of her marriage,
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death,
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.

On adverting to the merits of the present case, it may be mentioned here that the marriage of the deceased was solemnized with the appellant on 15.02.1997, but she

could not bear any child. Although, Balbir Singh, PW-9 and Manoj Kumar, PW-10 have deposed to the effect that the deceased was being mal-treated by the appellant on account of demand of money, but both of them have admitted that the deceased could not bear any child. Balbir Singh, PW-9 has also testified to the effect that his daughter could not conceive after marriage and was not having any child at the time of death. He has not categorically denied the suggestion that the deceased was being treated for not bearing the child from Lady Harding Hospital and Vijay Laxmi Hospital by the appellant. Even he has expressed his ignorance as to whether the deceased was the nominee of the appellant in his provident fund account.

It may be mentioned here that the father of the deceased has sought to rely upon a letter (Ex.PX) alleged to have been written by the deceased. Significantly, the said letter was not handed over to the Investigating Officer. Even the contents of the letter are vague and do not specifically indicate as to the allegations leveled therein pertain to which person. Even no opinion of the hand writing expert has been procured to indicate that the said letter was, in fact, written by the deceased. Besides, the father of the deceased has not categorically stated that he is acquainted with the hand writing of the deceased and consequently, identified the same to be in her hand writing. Furthermore, the letter

does not indicate with regard to any demand alleged to have been raised by the appellant.

Dr. Suman Sabharwal, PW-3, has testified to the effect that on 30.10.1998, the appellant along with the deceased had visited the hospital. She remained admitted for a day and was discharged in the evening. It is also emerging in her statement that as per her opinion the patient could have conceive after treatment. In such circumstances, it is quite evident that the deceased was getting treatment as she could not conceive and the said treatment was being provided to her by her husband i.e. the appellant. The material on record is also indicative of the fact that the appellant was having cordial relations with the deceased. The allegations with regard to the demand of cash on periodical occasion are liable to be disbelieved as the appellant had even appointed the deceased as his nominee in his provident fund account as emerging in the deposition of Santosh Mishra, DW-6.

At this stage, it will be appropriate to reproduce the cross-examination of ASI Sujan Singh, PW-7:-

“It is correct that it came into the statements of PWs Har Piari, Ram Chander, Dhapa Devi, Chiranji, Jang Bahadur and Babu Lal that there was no dispute regarding dowry and the dispute was that the deceased was not bearing any child and was under tension. It came in my

investigation that there was no demand of dowry from the side of anyone including Ajit Singh in the present case. It is also correct that the names of parents did not figure in my investigation qua demand of dowry from their side. It did not come in my investigation that there was any cruelty on account of demand of dowry from the side of Ajit Singh, Sohan Lal and Sumitra.

I recorded the statements of Balbir Singh, Naresh and Manoj and in their statements allegations of dowry death were leveled (volunteered). It is correct that Ajit Singh was getting Smt. Usha deceased medically examined and treated from various hospitals before her death. It is correct that it came in my investigation that Ajit Singh was residing separately with Usha from his parents at Gurgaon for the last so many years. It did not come in my investigation that Smt. Usha was a nominee in the PPF accounts or bank accounts of Ajit. I visited the house of the parents of Usha in Delhi. I sat only in a room and did not see any other room in the house. It is correct that Balbir Singh was not doing any work at the time I investigated the matter. He was earlier doing contractor ship. I do not know the place of business of Balbir. Balbir father of Usha, Naresh and Manoj brothers of Usha in their statements before me named only Ajit Singh.”

The perusal of the cross-examination of the Investigating Officer is indicative of the fact that there was

lack of material to indicate mal-treatment on account of demand of dowry and furthermore, the deceased used to remain disturbed and under tension as she could not bear any child. Even the appellant had been providing treatment to the deceased from various hospitals during her life time. The Investigating Officer had recorded the statements some of the witnesses, who supported the defence version as put forth by the appellant. It shall not be out of place to mention here that Dhapa Devi, DW-1, Harpyari, DW-2, Jangbahadur Singh, DW-3 and Babu Lal, DW-4 have been examined during the course of defence evidence. Dhapa Devi, DW-1 was the mediator in the marriage. Harpyari, DW-2 had attended the marriage of the appellant and the deceased. Jangbahadur Singh, DW-3 and Babu Lal, DW-4 are the neighbourers. As per their deposition, the appellant was having cordial relations with the deceased. There was no demand of dowry or harassment and the deceased used to remain upset as she could not bear the child. It cannot be said that the aforesaid defence witnesses have been examined as a result of afterthought, particularly because they were also joined during the course of investigation and as per the cross-examination of the Investigating Officer, the statements of the said witnesses were also recorded during the course of investigation.

Lastly, it may be mentioned here that the allegations with regard to demand of money on different occasions as sought to be put forth by the appellant appear to be vague and not specific. There is lack of material to indicate as to when the appellant had allegedly raised any demand of cash and when the same was honoured. Rather, the material on record is indicative of the fact that the appellant was having cordial relations with the deceased. She was also appointed as nominee in the provident fund account. The deceased was also being provided treatment as she could not conceive. The defence witnesses, who have supported the defence version, cannot be termed to have been introduced at a subsequent stage, particularly because they have been joined during the course of investigation. Their deposition is also consistent with the material as emerging on record.

On the perusal of the material on record, it is evident that there is lack of sufficient material to indicate that the deceased was subjected to cruelty or harassment by the appellant and that too in connection with demand of dowry. The deceased could not bear the child and consequently, as per the defence version, she had committed suicide being disturbed and under tension. The probability of the defence version cannot be ruled out in the peculiar circumstances emerging in the case. The factors emerging in

the instant case tends to raise a doubt in the genuineness of the version of the prosecution. The prosecution was required to prove and establish that the deceased was subjected to cruelty and harassment by the appellant soon before her death with regard to demand of dowry. In the event of proof of the essential ingredients, the presumption under Section 113-B of the Indian Evidence Act has to be raised against the appellant. In the instant case, there is lack of reliable and sufficient evidence to indicate that the appellant had subjected the deceased to cruelty or harassment in connection with any demand of dowry soon before her death. As such, the presumption under Section 113-B of the Indian Evidence Act cannot be raised in the instant case. In these set of circumstances, the case of the prosecution cannot be termed to be free from reasonable doubt and the appellant is held entitled to benefit of doubt.

For the aforesaid reasons finding sufficient merit in the appeal, the same is accepted. The impugned judgment of conviction dated 12.01.2004 and the order of sentence dated 13.01.2004 are set aside and the appellant is acquitted of the charges leveled against him.

Appeal is allowed, accordingly.

September 29, 2022

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(Vivek Puri)
Judge

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes