

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRM-A-77-2021

Date of Decision: 31.08.2022

State of Haryana

...Applicant/Appellant

Versus

Devender

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. Anmol Malik, DAG, Haryana.

N.S.Shekhawat, J.

1. State of Haryana has preferred the instant application seeking leave to appeal against the judgement dated 01.11.2019 passed by the Learned Additional Sessions Judge, (Exclusive Court), Jhajjar, whereby, the respondent has been acquitted of the charge under Section 304-B/302 IPC.

2. The FIR in the instant case was got registered by Sri Om (PW-1), father of Rekha (since deceased). It was alleged in the FIR/complaint (Ex.PW1/A) that the marriage of Rekha (since deceased) was solemnized on 09.03.2018 with Devender, according to Hindu rites and ceremonies. He further alleged that he had spent the huge amount in her marriage, however, after the marriage, his daughter was being harrassed for bringing insufficient dowry by her father-in-law Ram Babu, mother-in-law

Champa, sister-in-law (Jethani) Neena, brothers-in-law namely, Sonu and Rahul and the respondent-Devender. It was further alleged that at about 12.00 O' clock on 01.11.2018, Ram Babu disclosed to his brother that Rekha had hanged herself and had died. When the complainant reached Village Raiya, he found his daughter dead and her dead body was lying on the floor in the room. Consequently, the FIR (Ex.PW-14/A) was registered against her in-laws, namely, Ram Babu, Champa, Neena, Sonu, Rahul and the respondent-Devender. The police conducted the investigation and the finally the final report under Section 173 of Code of Criminal Cr.P.C., was presented before the Court for trial against the respondent only.

3. During the course of trial, the prosecution examined PW-1, Sri Om (father of deceased/complainant), PW- 2 Krishna (mother of deceased), PW-3 Vinod Kumar (Paternal Uncle of deceased), PW-4 Yogesh (cousin brother of deceased), PW-5 Balwan (uncle of deceased) and 9 other official witnesses to prove the charge against the respondent-Devender.

4. Complainant-Sri Om was examined as PW-1 and has submitted before the trial Court that he had solemnized marriage of his daughter Rekha (since deceased) with Devender (respondent) on 09.03.2018. He submitted that after the marriage, his daughter was living happily in her matrimonial home with her husband and her in-laws. He further stated that she was never harassed nor taunted by her husband and other family members for bringing insufficient dowry. On 01.11.2018, he came to know that his daughter had hanged herself and committed suicide at her matrimonial home, as she was suffering from mental depression. He recognized the accused present in the Court and stated that none of the accused had ever tortured or harassed his daughter in connection with

demand of dowry. The said witness was declared hostile by the learned Public Prosecutor and in cross-examination by the learned Public Prosecution, he denied that he had moved a complaint (Ex.PW1/A) to the police. He stated that the police had obtained his signatures on blank papers on the pretext of some paper work. He specifically denied the fact that after the marriage, she was taunted and abused on account of demand of dowry. He also denied the suggestion that the above-stated persons had murdered his daughter after hatching a conspiracy.

5. The prosecution also examined Krishna (mother of deceased-PW-2), who also deposed on similar lines. Similarly, the prosecution examined Vinod Kumar (Paternal uncle of deceased) as PW-3, who had identified the dead body of his niece Rekha. Even he stated that Rekha was never tortured or harassed in connection with demand of dowry and was declared hostile on the request of the learned Public Prosecutor. Even, when he was cross-examined, he denied of making any statements (Ex.PW3/A & Ex. PW3/B) to the police. Still further, the prosecution examined Yogesh (cousin brother of Rekha- since deceased) as PW-4 and Balwan (uncle of Rekha-since deceased) as PW-5. Both these witnesses had also not supported the case of the prosecution and they were declared hostile by the Public Prosecutor.

6. Apart from that, nine other official witnesses were examined by the prosecution to prove the charge against the respondent-Devender. The prosecution examined SI Murari Lal as PW-12, who had conducted an initial proceedings and had called FSL team for inspection. The prosecution also examined PW-8, Dr. Sunil Narwal, who along with Dr. Bhupesh and Dr. Nisha, being the members of the Board, got conducted the postmortem

on the dead body of Rekha (since deceased), vide postmortem report (Ex.PW8/A) and he also tendered his affidavit in support of the case of the prosecution. However, he also opined that cause of death in the instant case was antemortem hanging, which was sufficient to cause death in ordinary course of nature. The said witness also identified the signatures of the other members of the Board as he had worked with them.

7. The trial Court, vide the impugned judgement, held that the prosecution had failed to bring home the guilty of the respondent/accused beyond all reasonable doubt for commission of offence under Sections 304-B/302 IPC and the respondent was acquitted of the charge levelled against him by giving him benefit of doubt.

8. We have heard learned counsel for the appellant at length and perused the record carefully.

9. Learned counsel for the appellant vehemently argued that the marriage between the parties was solemnized on 09.03.2018 and Rekha (since deceased) was found hanging in her matrimonial home on 01.11.2018. There were specific allegations against the respondent that she was humiliated and harassed on account of insufficient dowry. Consequently, she was tortured and harassed in connection with demand of dowry and died within seven months of the marriage. He further submitted that the prosecution had fully proved the case against the respondent. Still further, the ingredients of the offence under Section 304-B IPC were complete in the instant case and on the basis of statutory presumption under Section 113-B of the Indian Evidence Act, 1872, it can be safely concluded that the respondent had committed dowry death. Still further, no evidence was led by the defence and he had not pleaded false implication.

10. Consequently, the learned State counsel prayed for reversal of the impugned judgment and pleaded that the respondent/accused is liable to be convicted by this Court.

11. The offence of "dowry death" was incorporated in the Indian Penal Code and corresponding amendment made in the Evidence Act by way of insertion of Section 113B vide Act No.43 of 1986. In fact the Dowry Prohibition Act, 1961 being Act No.28 of 1961 was enacted on 20th May, 1961 with an object to prohibit to giving or taking the dowry. The insertion of Section 304B of the Indian Penal Code and Section 113B in the Evidence Act besides other circumstances was also referable to the 91st Report dated 10th August, 1983 of the Law Commission. In the Statement of Objects and Reasons to Act No.28 of 1961 it was stated:

"The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time enures that any dowry, if given does enure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament, Hence, the present Bill."

12. Realising the ever increasing and disturbing proportions of the evil of dowry system, the Act was again amended by Act No.63 of 1984 taking note of the observations of the Committee on Status of Women in India and with a view to making of thorough and compulsory investigations

into cases of dowry deaths and stepping up anti-dowry publicity, the Government referred the whole matter for consideration by a Joint Committee of both the Houses of Parliament. The Committee went into the whole matter in great depth in its proceedings and after noting the observations of Pt. Jawaharlal Nehru, recommended to examine the working of Act No.28 of 1961 and after considering the comments received on the Report from the State Governments, Union Territories, Administrations and different administrative Ministries of the Union concerned with the matter, decided to modify the original definition of "dowry" with consequential amendment in the Act. Again finding that the Dowry Prohibition Act, 1961 has not been so deterrent, as it was expected to be, the Parliament made amendments in the Act vide Act No.43 of 1986. In the Statement of Objects and Reasons of the said Act it was stated:

"The Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act 1984 to give effect to certain recommendations of the Joint Committee of the House of Parliament to examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organisations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. The salient features of the Bill are:

- (a) The minimum punishment for taking or abetting the taking of dowry under section 3 of the Act has been raised to five years and a fine of rupees fifteen thousand.

(b) The burden of proving that there was no demand for dowry will be on the person who takes or abets the taking of dowry.

(c) The statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.

(d) Any advertisement in any newspaper, periodical journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine up to fifteen thousand rupees.

(e) Offences under the Act are proposed to be made non-bailable.

(f) Provisions has also been made for appointment of Dowry Prohibition Officers by the State Governments for the effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Boards consisting of not more than five social welfare workers (out of whom at least two shall be women).

(g) A new offence of "dowry death" is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973 and in the Indian Evidence Act, 1872 have also been proposed.

3. The Bill seeks to achieve the aforesaid objects."

13. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such

death shall be punishable under Section 304B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

- (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.”

14. In the instant case, the law was set a motion by Sri Om, father of the deceased. However, from a perusal of his testimony, it is apparent that he was declared hostile and did not support the case of the prosecution. Rather, he deposed that his daughter had hanged herself and had committed suicide at her matrimonial home, as she had been suffering from mental depression. He further added that the accused neither tortured nor harassed his daughter in connection with demand of dowry. Krishna, mother of deceased / PW-2; Vinod Kumar, paternal uncle of deceased/PW-3; Yogesh, cousin brother of deceased/PW-4; Balwan, uncle of deceased/PW-5 had also deposed on similar lines and had not supported the case of prosecution. Consequently, in the instant case, the prosecution had failed to prove the cruelty or harassment for or in connection with demand of dowry. The prosecution has utterly failed to prove any kind of demand of dowry by the accused or his family members. Consequently, the ingredients of the offence under Section 304-B IPC are also completely missing in the instant case.

15. Learned State counsel has further argued that in alternative, charge under Section 302 of IPC was also framed. But again, as a matter of fact, none of the material prosecution witness had supported the case of prosecution in material particulars with respect to time, place, identity and manner in which the offence was committed by the accused and his motive behind killing the victim for bringing insufficient dowry. Consequently, in such circumstances, the statutory presumption under Section 106 of the Indian Evidence Act cannot be invoked and the prosecution had miserably failed to prove the charge under Section 302 IPC also.

16. In view of the above, there are no reasons to interfere with the impugned judgment passed by learned Additional Sessions Judge (Exclusive Court), Jhajjar, and the leave is declined and accordingly, the application seeking leave to appeal is ordered to be dismissed.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

31.08.2022
hemlata

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