

2023:PHHC:088715-DB

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

**CRA-D-1083-DB-2017 (O&M)**

**Date of Decision: 04.07.2023**

**RAM SINGH @ RAMU**

..... Appellant(s)

**Versus**

**STATE OF PUNJAB**

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL  
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Ms. Gagan Mohini, Advocate  
for the appellant.

Mr. M.S. Tiwana, AAG, Punjab.

\*\*\*\*\*

**LISA GILL, J.**

1. This appeal has been filed challenging judgment dated 13.12.2016, passed by learned Additional Sessions Judge, Fazilka, whereby the appellant has been convicted for the offence punishable under Section 304-B of IPC and order of even date, whereby the appellant has been sentenced to undergo imprisonment till the remaining period of his life and to pay fine of ₹10,000/- and in default of making payment of fine, to further undergo rigorous imprisonment for a period of one year.

2. Brief facts necessary for adjudication of the matter are that FIR No.65 dated 29.06.2015 was registered on the basis of statement of Baldev Singh (PW1), brother of the deceased. Baldev Singh, aged about 24 years, stated that they were three siblings, the complainant being eldest of all and Gurdev Kaur @ Gurmit Kaur (deceased) younger to him and another sister, namely Kailash Kaur younger to all of them. He stated that four months ago

marriage of his younger sister Gurdev Kaur was solemnized with Ram Singh (appellant). After marriage, appellant Ram Singh used to beat and harass his sister on the pretext of bringing less dowry. He further stated that on 28.06.2015 at about 5:00 P.M., Gurdev Kaur @ Gurmit Kaur, his sister, called him on his mobile bearing no.76908-41871 from her phone no.84270-86482. She disclosed that her husband Ram Singh was beating her for not bringing sufficient dowry and that he may kill her. Upon hearing this, complainant alongwith his uncle Kuldeep Singh son of Labh Singh, after about 15 minutes proceeded on his motorcycle to his sister's home. When they reached outside the main gate, they heard some noise and saw that Ram Singh was strangulating the complainant's sister Gurdev Kaur by putting a *Dupatta* around her neck. They immediately called him out as to what he was doing. Ram Singh on seeing the complainant and his uncle is alleged to have fled from the spot. Complainant found that his sister was dead. The time was stated to be about 7:00/7:30 P.M. Complainant called his parents and other relatives telephonically and narrated the entire incident. He was advised to stay at his sister's place. Parents and other relatives of complainant came to the matrimonial home of the deceased in the morning and after leaving them on the spot, complainant alongwith his uncle Kuldeep Singh proceeded to inform the police. Motive behind the occurrence is stated to be demand of dowry by Ram Singh with his sister being physically abused for not bringing a motorcycle in dowry. It is stated that they had pacified Ram Singh earlier also but Ram Singh had ultimately killed their sister by strangulating her on 28.06.2015. Legal action was sought.

3. Formal FIR Ex.P4/B was registered under Section 304-B IPC on the basis of statement of Baldev Singh. Investigation was initiated. Inquest report Ex.P4/C was prepared. Rough site plan Ex.P4/E was prepared. Statements of witnesses recorded. Postmortem of the deceased was conducted. Postmortem report is on record as Ex.P5. Appellant was arrested on 01.07.2015. After completion of investigation final report under Section 173 Cr.P.C./challan was presented and the case was committed to the Court of Sessions vide order dated 09.10.2015. Charge under Section 304-B IPC was framed against the appellant, who pleaded innocence and claimed trial.

4. Prosecution in order to prove its case examined as many as seven witnesses. Statement of the accused under Section 313 Cr.P.C. was recorded wherein he denied all the incriminating evidence against him and pleaded false implication. One witness namely Ramesh son of Harbans Singh was examined as DW1 in defence by the accused/appellant.

5. Learned trial Court on considering the evidence on record, facts and circumstances concluded that prosecution had successfully proved its case against the appellant beyond reasonable doubt. Appellant was, accordingly, convicted for the offence punishable under Section 304B IPC and sentenced as detailed in the foregoing paras, vide impugned judgment and order dated 13.12.2016. Aggrieved therefrom the appellant has filed this appeal.

6. Learned counsel for the appellant vehemently argued that learned trial Court has grossly erred in law and on facts in convicting the appellant for the offence punishable under Section 304-B IPC and sentencing him to imprisonment for life. It was argued that there was inexplicable delay

in filing of FIR, therefore, possibility of embellishment is very much present. Incident in question is stated to have occurred at about 7:00/7:30 P.M. on 28.06.2015 whereas FIR was registered on 29.06.2015 at about 10:00 A.M. Furthermore, presence of alleged eyewitnesses, it is submitted, is highly doubtful inasmuch as if they had in fact been present on the spot, it would not have been possible for the appellant to have fled from the spot. Moreover, once they did see the appellant trying to strangle the deceased, it is opposed to all probabilities that they would not have intervened to try and save her.

7. Learned counsel for the appellant also argued that ocular evidence is inconsistent with the medical evidence on record. As per the postmortem report, there are no such injuries which would corroborate the prosecution version that complainant's sister was physically abused by the appellant. Furthermore, complainant stated that his sister was dead at about 7:00/7:30 P.M. On 28.06.2015, postmortem in this case was conducted on 29.06.2015 at 3:00 P.M. but as per postmortem report Ex.P5, the time between death and postmortem is stated to be 16 hours, therefore, time of death would be 11:00 P.M. and not 7/7:30 P.M. as stated by the complainant.

8. It was also contended that there is no evidence worth the name on record to indicate that soon before her death, the deceased was subjected to cruelty in relation to demand of dowry, therefore, there being no demand, there was no motive for the murder of the complainant's sister. Conviction under Section 304B IPC, thus, was urged to be unjustified. Evidence on record, it was contended, did not in any manner point out to harassment of the deceased by the appellant. Oral evidence of the interested witnesses, it is

submitted is not sufficient evidence to prove the prosecution version. Moreover, allegations have been levelled only against the husband and not qua any other family member, which proves that the allegations are incorrect. Furthermore, no evidence, it was contended, that call detail records of the complainant were not placed on record, which would reflect as to whether the deceased had indeed called the complainant and the time when parents and relatives had been called by the complainant after the death of his sister. It is thus prayed that this appeal be allowed. Judgment and order of sentence dated 13.12.2016 passed by learned Additional Sessions Judge, Fazilka be set aside and the appellant be acquitted of the charge framed against him.

9. Learned counsel for the State, to the contrary had argued that the impugned judgment and order dated 13.12.2016 is a well reasoned one based on proper and sound appreciation of the evidence on record. All ingredients of Section 304-B IPC have been proved on the basis of evidence on record. It is, thus, prayed that this appeal being devoid of any merit be dismissed.

10. We heard learned counsel for the parties and perused the record with their able assistance.

11. At the outset, it is gainful to refer to the provisions of Section 304-B IPC, which reads as under:-

“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) 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.”

12. It is further pertinent to refer to Section 113-B of the Indian Evidence Act, 1872 which read as under:-

“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).”

13. Hon'ble Supreme Court in ***Kalia Perumal Vs. State of Tamilnadu, 2003 SC 3828*** and ***Kashmir Kaur Vs. State of Punjab, AIR 2013 SC 1039*** and a number of other cases has held that the presumption against the accused shall be raised only on proof of the following essential ingredients being present:-

- (i) that the woman has met an unnatural death,
- (ii) within seven years of her marriage,
- (iii) that she was subjected to cruelty or harassment by her husband or any relative of her husband,
- (iv) in connection with any demand of dowry soon before her death and
- (v) that cruelty and harassment meted out to her continued to have a causal connection or live link with the demand of dowry.

14. In the present case, it is evident from the postmortem report that complainant's sister died an unnatural death. PW7 Dr. Sudhir Pathak, Medical Officer, Civil Hospital, Abohar, who alongwith Dr. Aman Nagpal and Dr. Yudhishter Chaudhary conducted the postmortem, stated that the following injuries were present:-

“Neck, a) Ligature mark present on the front and left side of neck, 18 cm in length and 1¾ cm in breadth absent at the back and right side. No mark of knot seen. Larynx and trachea contused, submucosal hemorrhage present and petichiae was present, brow to red colour on the front of neck and side and clavicular region.

On dissection of neck underlying tissue contused, bleeding present under neck.

Neck muscle contused,

Hyoid bone fractured,

Fracture of tracheal ring present.”

15. It is opined that complainant's sister died an unnatural death due to asphyxia caused by strangulation with sufficient force to result in instant death in ordinary circumstances. It is further stated that probable time between injury and death was instantaneous and probable time between death and postmortem examination was 16 hours. Therefore, it is established that the complainant's sister died an unnatural death.

16. It is specifically stated by PW1 Baldev Singh that marriage of his younger sister (deceased) was solemnized with the appellant Ram Singh about four months prior to the incident. There is no denial of the same and this in fact is admitted. Death of the complainant's sister admittedly took place in the matrimonial home. PW1 Baldev Singh has categorically stated that deceased was subjected to physical abuse and harassment at the hands of the appellant in connection with demand of dowry. The appellant is stated to have harassed the deceased for not having brought any dowry and

he was demanding a motorcycle. This has been so stated by the complainant as well as PW2 Kuldeep Singh, uncle (*Chacha*) of the complainant and the deceased. He too categorically stated that the appellant after marriage started demanding motorcycle from Gurdev Kaur and also harassed her on account of dowry.

17. The argument that PW1 and PW2 are interested witnesses, therefore, their testimony cannot be relied upon, is an argument devoid of merit. Learned counsel for the appellant was unable to point out any evidence on record to impeach the credibility of said witnesses, who are the most natural witnesses in the given circumstances. Reference by learned counsel for the appellant to the statement of Baldev Singh (his cross-examination) that they had not yet given dowry to the deceased but were supposed to give it yet, cannot be of any avail to the appellant. PW1 has truthfully stated that at the time of marriage, dowry was not given with the understanding that they would give an almirah, television, bed, sewing machine, iron box (*Peti*) and other household articles later. This in fact cements the prosecution version that the appellant after marriage actually started harassing the deceased for dowry, while also raising the demand for a motorcycle.

18. Similarly no benefit can be derived by the appellant from the statement of PW1 to the extent that they had not convened any Panchayat being a family affair, for the simple reason that it was only four months since marriage of the deceased with the appellant. Therefore, it is immensely probable and possible that at this nascent stage the family was trying to resolve the matter on its own without involving third persons. Thus, it is succinctly proved from the evidence on record that deceased was subjected to demand of dowry immediately/soon before her death.

19. Once the foundational facts have been proved by the prosecution, the burden indeed shifts upon the accused as in the preset case, keeping in view the specific provisions of law in respect to dowry death. Hon'ble Supreme Court in ***Bansi Lal Vs. State of Haryana 2011(11) SCC 359***, reiterated that presumption under Section 113-B of Evidence Act has to be mandatorily applied once ingredients of Section 304-B IPC are established. It was held that

“19. It may be mentioned herein that the legislature in its wisdom has used the word "shall" thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304- B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression soon before her death has not been defined in either of the statutes. Therefore, in each case, the Court has to analyze the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death.”

20. This position was again reiterated by the Hon'ble Supreme Court in Satbir Singh and another Vs. State of Haryana in Criminal Appeals No. 1735-36 of 2010, decided on 28.05.2021. Thus, it was incumbent upon the deceased to rebut the presumption of causality. Unnatural death of the complainant's sister admittedly took place in the matrimonial home within four months of marriage. There is no evidence worth the name to rebut the presumption against the appellant. At this stage we take note of the defence set up by the appellant. In his statement under Section 313 Cr.P.C., appellant stated that on 28.06.2015 parents of the deceased visited his house when he was out of station and murdered his wife and it is in connivance with the local police that he was falsely implicated in the case. He further stated that there was a dispute between the deceased, her brother and parents. The deceased, it is stated, used to seek her share in the family property and even used to proclaim that in case her father and brother did not give her share in the property, she would take up the matter with the Panchayat of the village and at the police station. Father and brother of the deceased were claimed to be afraid of being insulted in the *Panchayat* and therefore, had strained relations with her.

21. This defence is not worthy of any credence for the simple reason that PW1 in his cross-examination stated that he worked as a mason for marble work and his father was a labourer and that they did not own any land/property whatsoever. PW2, Kuldeep Singh, uncle (*Chacha*) of the complainant and deceased also stated that he was a labourer. No evidence has been led by the defence to indicate that brother and parents of the deceased were owners of any property, which could be shared between them and the deceased. Therefore, the appellant has failed to discharge the burden placed upon him.

22. The so called delay in lodging of FIR is not fatal in the given circumstances. Incident is stated to have occurred at about 7:00/7:30 P.M. on 28.06.2015. It is succinctly explained by the complainant that he informed his parents and other relatives immediately about the death of Gurdev Kaur. Parents and other relatives reached the matrimonial home at about 1:00 A.M. at night and it is thereafter, that the FIR was lodged on 29.06.2015 at 10:00 A.M. PW1 in his cross-examination has categorically stated that he had not called any person from the adjoining villages or *Dhanis* on 28.06.2015 because he did not know any person from the said villages or *Dhanis*. Delay, if at all is succinctly explained by the complainant and is not fatal to the prosecution case in any manner. Argument raised on behalf of the appellant that one *Dupatta* is alleged to have been recovered from the possession of the accused whereas *Dupatta* of the deceased was found on the body at the time of conducting postmortem need not detain this Court, for the reason that it is not essential and neither is it the case of the prosecution that deceased was being strangled with the very *Dupatta*, which she was wearing. Similarly, the fact that allegation was raised only qua the appellant and not against any other member of his family points to the truthfulness of the prosecution version and not otherwise.

23. Argument raised by learned counsel for the appellant that ocular version is not corroborated by the medical evidence, is also devoid of any merit. Much stress has been laid upon the opinion regarding time of death of Gurdev Kaur inasmuch as it is stated that in case the death had indeed taken place at 7:30 P.M. on 28.06.2015, there was no occasion for the Board of doctors to opine that time between death and postmortem was 16 hours and furthermore allegation that deceased was being beaten, is not borne out from

the postmortem report, which shows no other injuries except around the neck. In our considered opinion the 'probable time' of death given in the postmortem report or absence of other injuries by itself is not sufficient to rebut the prosecution against the appellant. It is correctly observed by the learned trial Court that physical abuse can also be by way of slapping a person or such like acts, which may not leave any marks of injury on the body. Furthermore the argument that even in case of strangulation, some marks of struggle should be present, is devoid of any merit. In Modi's Textbook of Medical Jurisprudence and Toxicology, there is nothing to suggest that as a rule in cases of 'strangulation or 'throttling', signs of struggle should be present. In Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology (Eighth Edition), it is opined at page no.194 as under:-

'In an adult, signs of struggle are usually present, but if the throat is seized and firmly compressed, the victim cannot struggle.'

24. Thus, in view of clear, cogent and convincing testimonies of the witnesses and evidence on record, the above said does not create a dent in the prosecution version.

25. Keeping in view the clear and cogent evidence on record culpability of the appellant in the heartless commission of the offence under Section 304-B IPC, is clearly borne out from the evidence on record. Complainant's sister was done to death by strangulating her with a *Dupatta* merely within about four months of her marriage on account of dowry.

26. Learned counsel for the appellant is unable to point out any evidence on record which indicates that the impugned judgment dated 13.12.2016, passed by learned Additional Sessions Judge, Fazilka, is perverse or suffers from any infirmity or illegality, which calls for any

interference by this Court in conviction of the appellant under Section 304-B IPC.

27. At this stage, we take note of the alternate prayer addressed by learned counsel for the appellant in respect to quantum of punishment to the extent that sentence should be reduced from that of imprisonment for entire remaining period of appellant's life. It was submitted that appellant was only twenty seven years of age at the time of the incident and that he is not involved in any other case. The present is not such an extraordinary matter wherein offence was committed in a diabolic manner to invite such sentence.

28. It is relevant to refer to the judgment of the Hon'ble Supreme Court in **Hem Chand Versus State of Haryana (94) 6 SCC 427**, wherein the Hon'ble Supreme Court while noting that minimum sentence of seven years is provided for the offence punishable under Section 304B which may extend to imprisonment for life, the latter should be awarded in rare cases and not in every case. Gainful reference in this regard can also be made to the judgment of the Hon'ble Supreme Court in **Sunil Dutt Sharma versus State (Government of NCT of Delhi) 2014(4) SCC(Crl.) 788**, wherein while discussing the principles of sentencing in the case of convictions under Section 302 IPC, it was held that such principles as evolved over the years are applicable to all lesser sentences, provided the sentencing judge is vested with discretion to award a lesser or higher sentence. Applicability to those found guilty under Section 304-B IPC, was also determined. It was held that:-

“To revert to the main stream of the case, we see no reason as to why the principles of sentencing evolved by this Court over

the years through largely in the context of the death penalty will not be applicable to all lesser sentences so long as the sentencing judge is vested with the discretion to award a lesser or a higher sentence resembling the swing of the pendulum from the minimum to the maximum. In fact, we are reminded of the age old infallible logic that what is good to one situation would hold to be equally good to another like situation. Beside paragraph 163 (underlined portion) of Bachan Singh (supra), reproduced earlier, bears testimony to the above fact.

Would the above principles apply to sentencing of an accused found guilty of the offence under [Section 304-B](#) inasmuch as the said offence is held to be proved against the accused on basis of a legal presumption? This is the next question that has to be dealt with. So long there is credible evidence of cruelty occasioned by demand(s) for dowry, any unnatural death of a woman within seven years of her marriage makes the husband or a relative of the husband of such woman liable for the offence of “dowry death” under [Section 304-B](#) though there may not be any direct involvement of the husband or such relative with the death in question. In a situation where commission of an offence is held to be proved by means of a legal presumption the circumstances surrounding the crime to determine the presence of aggravating circumstances (crime test) may not be readily forthcoming unlike a case where there is evidence of overt criminal acts establishing the direct involvement of the accused with the crime to enable the Court to come to specific conclusions with regard to the barbarous or depraved nature of the crime committed. The necessity to combat the menace of demand for dowry or to prevent atrocities on women and like social evils as well as the necessity to maintain the purity of social conscience cannot be determinative of the quantum of sentence inasmuch as the said parameters would be common to all offences

under [Section 304-B](#) of the Penal Code. The above, therefore, cannot be elevated to the status of acceptable jurisprudential principles to act as a rational basis for awarding varying degrees of punishment on a case to case basis. The search for principles to satisfy the crime test in an offence under [Section 304-B](#) of the Penal Code must, therefore, lie elsewhere. Perhaps, the time spent between marriage and the death of the woman; the attitude and conduct of the accused towards the victim before her death; the extent to which the demand for dowry was persisted with and the manner and circumstances of commission of the cruelty would be a surer basis for determination of the crime test. Coupled with the above, the fact whether the accused was also charged with the offence under [Section 302](#) of the Penal Code and the basis of his acquittal of the said charge would be another very relevant circumstance. As against this the extenuating/mitigating circumstances which would determine the “criminal test” must be allowed to have a full play. The aforesaid two sets of circumstances being mutually irreconcilable cannot be arranged in the form of a balance sheet as observed in *Sangeet* (supra) but it is the cumulative effect of the two sets of different circumstances that has to be kept in mind while rendering the sentencing decision. This, according to us, would be the correct approach while dealing with the question of sentence so far as the offence under [Section 304-B](#) of the Penal Code is concerned.”

29. In *Sunil Dutt Sharma's* case (supra), sentence of life imprisonment for the offence punishable under Section 304-B IPC was converted to one for ten years' rigorous imprisonment keeping in view the age of the convict (21 years) having no criminal antecedents with no extraordinary perverse act on his part.

30. In the present case, death of complainant's sister took place within about four months of her marriage with the appellant who was about twenty seven years of age at that time. Appellant, as per the custody certificate furnished before us is not involved in any other criminal case. No extraordinary perverse or diabolic act on the part of the appellant is apparent on record. Keeping in view the facts and circumstances of the matter, while not finding any ground to reduce the sentence to ten (10) years, in our considered opinion, the ends of justice shall be met in case the sentence imposed upon the appellant is reduced from imprisonment for entire remaining period of his life to rigorous imprisonment for twenty years. The sentence of fine is maintained. Appellant, who is in custody, to undergo rest of the imprisonment in terms of this decision.

31. No other argument has been raised.

32. Present appeal with abovesaid modification in sentence is accordingly, dismissed.

**(LISA GILL)**  
**JUDGE**

**(RITU TAGORE)**  
**JUDGE**

**04.07.2023**

Sunil

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