

Neutral Citation:2023:PHHC:119037-DB

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

CRA-AD No.20 of 2021

Date of Decision: 5.9.2023

Reserved on: 02.08.2023

Bansi Lal

... Appellant

Versus

State of Haryana and another

... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Mr. Raj Kapoor Malik, Advocate,
for the appellant.

Mr. R.K.S. Brar, Additional Advocate General, Haryana.

MANISHA BATRA, J.

1. The present appeal has been preferred against the judgment dated 15.01.2020 passed in Sessions Case No.52 of 2017 titled as *State v. Ajay Kundu* passed by the Court of learned Additional Sessions Judge, Gurugram arising out of FIR No.91 dated 07.07.2017 registered under Section 304-B read with Section 34 of IPC at Police Station, Sector 9-A, Gurugram whereby the respondent-accused Ajay Kundu was acquitted of the charges framed as against him.

2. Brief facts relevant for the purpose of disposal of this appeal are that on 06.07.2017, on receipt of an information regarding the unnatural death of a female by hanging, a police party headed by ASI Mukesh Kumar had reached at the spot wherein Sh. Bansi Lal, father of the victim Anuradha submitted a written complaint alleging therein that the victim was married with the accused Ajay Kundu on 01.02.2013.

Neutral Citation:2023:PHHC:119037-DB

Shortly after the marriage, accused Ajay Kundu, his parents, sister and sister's husband started taunting and harassing Anuradha on account of bringing insufficient dowry though the complainant had given dowry as per his status to them. They used to taunt her for not bringing car in the dowry. She was thrown out of her matrimonial house just two months after her marriage with the threat of either bringing a car or fixed deposit of a sum of Rs.3 lacs or not to come back. The Biradiri Panchayat meetings were convened by the complainant and only then the victim was taken back to her nuptial home. She had subsequently given birth to a male child and thereafter also her mother-in-law and sister-in-law raised demand of gold jewellery. Again, the matter was intervened by the Panchayat and then Ajay Kundu and his father had assured not to raise any demand in future. The victim had been living with her husband in Gurugram where the parents of accused Ajay Kundu kept on visiting. His sister also lived there and all of them kept on taunting the victim on account of non-fulfillment of their demand of car or gold jewellery. He alleged that even three months back, he had given a sum of rupees forty thousand to the accused Ajay to bring motor cycle but the behaviour of the in-laws of her daughter remained the same. He further alleged that on 01.07.2017, the accused Ajay Kundu had sent Anuradha to him with a demand of Rs.7 lacs for visiting abroad and for a car and had otherwise threatened to kill her. The wife of the complainant had telephonically requested Ajay Kundu that they could not fulfill such a big demand and the accused had told to send Anuradha back to Gurugram. He further alleged that in the morning of 06.07.2017, Anuradha had a telephonic conversation with her maternal uncle Gurbachan and had informed him that the accused Ajay Kundu along with her family members

Neutral Citation:2023:PHHC:119037-DB

was fighting with her since morning and was pressurising her to fulfill their demand for a sum of Rs.7 lacs, gold jewellery and car and otherwise were threatening to kill her. He alleged that on the same evening, he had received telephonic call from Ajay Kundu that Anuradha had died. While alleging that the accused had killed her daughter, he prayed for taking penal action against the culprits.

3. On the basis of his complaint, a case under Section 304-B read with Section 34 of IPC was registered. Investigation proceedings were initiated. Inquest proceedings and post mortem examination of the dead body of the victim was conducted. As per the post mortem report, the cause of death was asphyxia due to ante mortem hanging. During investigation, the accused Ajay Kundu was arrested. He was interrogated and suffered disclosure statement admitting his involvement in the subject crime. The other persons named in the FIR were found to be innocent and were not arrested and challaned. Their names were kept in column No.2 of the challan report. After completion of necessary investigation, challan under Section 173 Cr.P.C. were presented in the Court for trial of accused Ajay Kundu.

4. Copies of challan were supplied to the accused. The case was committed to the Court of Sessions. On finding a prima facie case for offence punishable under Section 304-B and alternatively under Section 302 of IPC, the accused had been charge-sheeted accordingly. He pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution besides relying upon documentary evidence, examined 15 witnesses namely, **PW-1** complainant Bansi Lal, **PW-2** Gurbachan, **PW-3** Prem Singh, **PW-4** LHC Suman, **PW-5**

Neutral Citation:2023:PHHC:119037-DB

HC Mahesh, **PW-6** ASI Girish Kumar, **PW-7** ASI Dharambir, **PW-8** Kamal Kumar, **PW-9** Vedpal, **PW-10** HC Yudhveer, **PW-11** ASI Mahabir, **PW-12** Inspector Bijender Singh, **PW-13** ASI Mukesh Kumar, **PW-14** Dr. Deepak Mathur and **PW-15** Amit Sharma.

6. The accused was examined under Section 313 of Criminal Procedure Code wherein he pleaded innocence and stated that the victim had committed suicide as she was a patient of depression. She was hyper sensitive to trivial matters. She was never tortured or harassed and no demand of dowry was raised. He examined six witnesses namely, **DW-1** Manoj Sharma, Clerk of Kirti Hospital, Park Road, Pehowa Chowk, Kaithal, **DW-2** Pardeep Saini, Clerk Shah Hospital, **DW-3** Garima Nandwani, **DW-4** Dr. Vipul Rastogi, Medanta Hospital, **DW-5** Jogender Bishnoi, Sales Manager, Malik Auto Mobile and **DW-6** Gaganpreet Gill.

7. The learned trial Court after considering the evidence produced on record and hearing the prosecution and the accused, acquitted him of the charges as framed against him by holding that the prosecution had failed to bring home the guilt of the accused by producing evidence which could be acted and relied upon beyond doubt.

8. Feeling aggrieved, the present appeal has been filed by the complainant i.e. father of the victim.

9. It is submitted in the grounds of appeal and it was argued by learned counsel for the appellant that the impugned judgment of acquittal dated 15.01.2020 was liable to be set aside as the findings as given by learned trial Court were based on conjectures and surmises. The learned trial Court did not apply its judicious mind and did not appreciate the evidence produced on record in a proper manner. There was overwhelming

Neutral Citation:2023:PHHC:119037-DB

evidence on record in the form of testimonies of PW-1 to PW-3 and PW-9 to prove that the victim had been subjected to cruelty and harassment on account of demand of cash amount of Rs.7 lacs, car and gold jewellery by the respondent-accused and his family members and her suicidal death was direct result of the same. The learned trial Court committed a grave error in holding that the presumption under Section 113B of Indian Evidence Act, 1872 (For short “Evidence Act”) stood rebutted. With these broad submissions, it was urged that the appeal deserved to be allowed, the impugned judgment was liable to be set aside and further that the respondent No.2-accused was liable to be held guilty and convicted.

10. We have heard the arguments advanced by learned counsel for the appellant which have been supported by learned State counsel also. The trial Court record and the material available on the same has also been carefully perused and taken into consideration. Before advertng to the merits of the case and the contentions raised by the appellant, it would be appropriate to review the approach to be adopted while deciding the appeal against acquittal by the trial Court. In **Chandrappa and others v. State of Karnataka**, (2007) 4 SCC 415, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a double presumption in favour of the accused. **Firstly**, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. **Secondly**, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. The Hon'ble Apex Court further culled out the following general

Neutral Citation:2023:PHHC:119037-DB

principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

- i) An Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
- iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
- iv) If two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

11. Reference in this context can be made to **Atley v. State of U.P.**, AIR 1955 SC 807; **Aher Raja Khima v. State of Saurashtra**, AIR 1956 SC 217; **Ramesh Babulal Doshi v. State of Gujarat**, 1996 SCC (CrI.) 972; **Sadhu Saran Singh v. State of U.P. and others**, 2016 (2) RCR (Criminal) 319 & **State of Maharashtra v. Fazal Rehman Abdul**, 2014 (7) SCC (Criminal) 1, wherein similar proposition of law had been laid down by Hon'ble Supreme Court and it was observed that while entertaining appeal against judgment of acquittal, the Appellate Court was required to seek an answer to the question whether the findings of the trial Court were culpably wrong, manifestly erroneous and demonstrably unsustainable. It was held that the Appellate Court should not ordinarily set aside the judgment of acquittal in a case where two views are possible, though the view of the

Neutral Citation:2023:PHHC:119037-DB

Appellate Court may be the more probable one and further that in an appeal against acquittal, the Appellate Court would interfere only when there exists perversity of facts and law.

12. Applying the proposition of law as discussed above to the peculiar facts and circumstances of the present case and on careful appraisal of the evidence produced on record, we are of the considered opinion that the appeal does not deserve to be allowed. The respondent-accused had been charge-sheeted for commission of offence punishable under Section 304-B and alternatively under Section 302 of IPC. So far as, the question as to whether the death of the victim Anuradha was homicidal or suicidal in nature, is concerned, the learned trial Court had observed that the same was proved to be suicidal in nature. PW-14 Dr. Deepak Mathur had conducted postmortem examination on the dead body of the victim Anuradha and proved his opinion Ex.P-19 as per which it was a case of suicidal hanging. In his sworn deposition, he categorically stated that it was not a case of strangulation. His testimony has remained unshattered and unrebutted and the same coupled with the postmortem examination report Ex.P-18 proves that the cause of death of the victim was asphyxia due to hanging and hence, it is proved to be a case of suicidal death. Therefore, there was no question of charge under Section 302 of IPC having been proved as against the respondent No.2-accused.

13. Now coming to the charge under Section 304-B of IPC. It has been well settled by various judicial pronouncements of Hon'ble Supreme Court that for convicting an accused under the aforementioned section, the prosecution is required to establish the following:-

- (i) The death of a woman must have been caused by any

Neutral Citation:2023:PHHC:119037-DB

burns or bodily injury or otherwise than under normal circumstances;

(ii) Such death must have occurred within seven years of her marriage;

(iii) Soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(iv) Such cruelty or harassment must be shown to have been meted out to her before her death.

It has also been held in a catena of judgments of Hon'ble Supreme Court that the presumption under Section 113B of the Evidence Act will operate when the prosecution is able to establish the circumstances as set out in Section 304-B of IPC and not otherwise. Now it is to be seen as to whether the evidence produced on record was sufficient to prove the ingredients of Section 304-B of IPC or not? So far as the fact that deceased Anuradha was married with the respondent-accused Ajay Kundu on 01.02.2013 and she died on 06.07.2017 i.e. within a period of 4 years, 5 months and 6 days of her marriage is concerned, the same had not been disputed by the respondent No.2-accused. Therefore, it stands proved that the victim had died within a period of seven years of her marriage with the respondent. Then, since as per the discussion made above, she is proved to have died a suicidal death, therefore, her death is also proved to have occurred otherwise than in normal circumstances.

14. To prove the charge under Section 304-B of IPC, it was for the prosecution to bring cogent, convincing and satisfactory evidence on record to prove that the deceased had been subjected to cruelty or harassment by

Neutral Citation:2023:PHHC:119037-DB

the respondent soon before her death on account of demand of dowry. So far as the expression 'soon before her death' as appearing in Section 304-B is concerned, it is well settled that same is an elastic term. It can refer to a period either immediately before the death of the deceased or within a few days or few weeks before death. There can be no fixed period or time in this regard and whether or not cruelty or harassment meted out to the victim for or in connection with demand of dowry was soon before death and proximate cause of her death under abnormal circumstances would depend upon the facts of each case. However, the demand and harassment must be proximately close for the purpose of drawing inference against the accused. 'Soon before death' would mean the recent past and not immediately before the death of the victim. There must be some proximity and live link between the fact of cruelty based on demand and concerned death. Keeping in view this position of law, it is to be seen as to whether the prosecution had proved beyond doubt that the respondent No.2-accused had subjected the deceased Anuradha to cruelty or harassment on account of any demand of dowry soon before her death. The allegations of the prosecution qua demand of dowry and subjecting the deceased to cruelty are based upon the statements of PW-1 Bansi Lal i.e. the appellant-complainant who was father of the deceased, PW-2 Gurbachan and PW-3 Prem Singh both maternal uncles of the deceased and PW-9 Vedpal, paternal uncle of the deceased. So far as PW-2 Gurbachan and PW-3 Prem Singh, on perusal of their statements, we are of the confirmed opinion that the same did not help the prosecution at all in proving that the deceased was subjected to cruelty or harassment by the respondent on account of any demand of dowry. PW-2 Gurbachan stated that six months after the marriage of the deceased with the respondent Ajay

Neutral Citation:2023:PHHC:119037-DB

Kundu, the deceased was started being ill-treated by her husband and other in-laws on account of bringing less dowry and was taunted that no dowry was given in her marriage. He did not utter even a single word to the effect that any demand of dowry was raised by the respondent or his family members. PW-3 stated that five months after marriage of the deceased, he had been informed by the complainant that she had been shunted out of her matrimonial house by her in-laws. He did not say that it was on account of some demand of dowry that she was thrown out of her matrimonial house. Though he further stated that after delivery of a child by the deceased, her in-laws had started pressurizing her to bring dowry. However, it was not stated by him that whether any demand of dowry was raised in his presence or as to what particular demand had been raised and about the exact date, month and year of such demand. The statements of PW-2 and PW-3 are hearsay in nature and in our opinion, did not help the prosecution in proving that the deceased was subjected to cruelty or harassment by the respondent or in connection with any demand of dowry.

15. Then coming to the testimony of PW-9 Vedpal. He stated that two months after the marriage of the deceased with the respondent, the respondent No.2 and his family had started ill-treating the victim. He stated that the respondent and his family members kept on harassing the petitioner and demanding dowry from her but as to what demand was raised and on which particular date, month and year, had not been disclosed by him. He also did not say that any such demand was raised by the respondent or his family members in his presence. It was also not his version that the respondent had raised any demand soon before the death of the victim. As such, it emerges that the testimony of PW-9 also did not inspire any

Neutral Citation:2023:PHHC:119037-DB

confidence for proving that the victim had been subjected to cruelty or harassment at the hands of the respondent soon before her death on account of demand of any dowry.

16. Further referring to the sworn deposition of PW-1 Bansi Lal i.e. the present appellant. He deposed that two months after the marriage of the deceased, her husband, father-in-law, mother-in-law, sister-in-law and husband of sister-in-law had started ill-treating the deceased. She was given taunts that no proper dowry was given in her marriage. He stated that the victim had conveyed to him about the demands as raised by the respondent and his family members to her on telephone and thereafter he had convened a panchayat wherein the respondent No.2 and his family members had tendered an apology and had promised to not to make any demand in future but stated that they had again started demanding cash and jewellery. He further deposed that after his daughter had delivered a male child on 27.04.2014, the mother-in-law and sister-in-law of the his daughter had raised demand of cash amount of Rs.7 lacs and two gold neck ornaments but he had conveyed to them that he was not in a financial position to fulfill that demand. He stated that the in-laws of her daughter had kept on raising demands of dowry and in April 2017, he had given a sum of Rs.40,000/- to the accused for purchasing a motorcycle. He further deposed that on 01.07.2017, his daughter had visited his house and informed him that her in-laws were demanding cash amount of Rs.7 lacs as all of them wanted to go to abroad and had also demanded a car. He deposed that he had conveyed to the accused that he could not fulfill these demands. He also deposed that in the morning of 06.07.2017, PW-2 Gurbachan had called him on phone and had told him that he had received a telephonic call from the deceased in the

Neutral Citation:2023:PHHC:119037-DB

same morning who had told him that all the five members of her in-laws family were present in her house and were raising demand of Rs.7 lacs or car or otherwise to kill her. He stated that PW-2 Gurbachan also informed him that the victim had requested him to save her. As per this witness, the victim had also called her mother (i.e. wife of the appellant) at about 11 AM on the same day and had shared the same information with her and he too talked with her. He stated that he had assured to visit her in the next morning but on the same night, he had received a call from the respondent that the victim had died.

It will be relevant to mention her that the mother of the victim had neither been cited nor examined as a witness. PW-2 Gurbachan though deposed that on 06.07.2017, he had received a call from the victim informing him that her entire family members were present in the house and would kill her but did not utter even a single word to the effect that the victim had given any information that her in-laws were raising any demand of money and car. He did not even say that he had disclosed about this fact to PW-1. Therefore, the version of PW-1 that his daughter had telephonically informed PW-2 that the respondent and his family members were raising demand of money and car, stood falsified. No call detail record of the mobile phone used by PW-2 Gurbachan as well as mobile phone used by the deceased and of the mobile phone of wife of PW-1 had been collected by the Investigating Officer to show that infact on that day, the victim had called PW-2 and wife of PW-1 on 06.07.2017, and had conversation with them. On overall assessment of testimony of PW-1, it emerges that the main allegations levelled by him were that at the time when the deceased had delivered a male child on 27.04.2014, her mother-in-

Neutral Citation:2023:PHHC:119037-DB

law and sister-in-law had raised demand of a sum of Rs.7 lacs and two gold neck ornaments and it was not his version that it was the present respondent who had raised such demand.

17. Then with regard to the demand of the amount of Rs.7 lacs and a car alleged to have been raised, PW-1 stated that on 01.07.2017, his daughter had apprised him of this demand by her in-laws when she visited her parental house and also stated that when the deceased had made a telephonic call on the mobile phone of his wife at about 11 AM on 06.07.2017, she had informed his wife and himself that all her in-laws were present in her matrimonial house and were demanding dowry and were threatening to kill her. During cross-examination, it was admitted by this witness that Rajesh, brother-in-law of the deceased was away to Jaipur three days prior to 06.07.2017 and was not present in her house when the incident had taken place. His admission to this effect falsifies his claim that his daughter had informed that Rajesh along with other members of her in-laws family was present in the house and was raising demand of money and car. It is also relevant to mention here that except the present respondent, all other members of the in-laws family of the deceased who were named as persons who were involved in the act of subjecting the victim to cruelty just, before her death also were found to be innocent during investigation and they were not arrested and challaned and their names were kept in Column No.2 of the challan report. The trial Court record reveals that an application under Section 319 Cr.P.C. had been filed during trial by the appellant for summoning them as additional accused but the same was dismissed. No appeal/revision is shown to have been filed by the prosecution/complainant against the order of dismissal of the application under Section 319 of

Neutral Citation:2023:PHHC:119037-DB

Cr.P.C. It is well settled proposition of law that in such like cases, only the husband cannot be convicted on the basis of very same evidence which right from the beginning was directed towards other persons of his family as well in equal proportion without any overt act at the instance of the husband. Reliance in this regard can be placed upon **Onkar v. State of Punjab**, 2016 (2) R.C.R. (Criminal) 372, wherein the Hon'ble Supreme Court was dealing with an appeal filed by the husband of the deceased who was convicted of offence under Section 304-B of IPC. It was observed that the evidence of the brother of the deceased who was the complainant was right from the very beginning directed towards all the accused in equal proportion without any specific overt act at the instance of appellant-husband. It was held that when the trial Court had exonerated family members/relatives of the appellant-husband based on the said evidence and High Court had acquitted his parents, then on the basis of same evidence, the appellant-husband alone could not be isolated and convicted. In view of the fact that the other members of family of respondent No.2 were exonerated, in our opinion, the respondent No.2 could not be convicted on similar allegations.

18. Further, the testimony of PW-1 that on 06.07.2017 the victim had telephonically informed that her in-laws were raising demand of Rs.7 lacs and car has not been corroborated by any other evidence and even his wife to whom the victim had allegedly called had not been examined to prove this fact. His statement that his daughter had telephonically informed him that her in-laws were demanding dowry and threatening to kill her is also not reliable in view of the fact that in his complaint, he had not mentioned that his daughter had talked to him on 06.07.2017 and rather it was alleged that she had talked to her mother. The act and conduct of this

Neutral Citation:2023:PHHC:119037-DB

witness also appears to be quite unnatural because if actually in the morning of 06.07.2017, the victim had talked to her maternal uncle i.e. PW-2 Gurbachan and with her mother and informed them that respondent No.2 and his family members were harassing her on account of demand of car and Rs.7 lacs and threatening or planning to kill her, then he would certainly have rushed to save his daughter then and there only and would not have waited till night for something to happen. All this creates a doubt over the veracity of the version of this witness with regard to the allegation that the victim had called PW-2 or her mother and had expressed fear that she would be killed. It was for the prosecution to prove that there was some proximity and live link between the act of cruelty based upon the demand of dowry and the date of death for the purpose of drawing inference against the accused. However, merely on the basis of testimony of PW-1 which could not be relied upon beyond doubt, no such inference could be drawn.

19. It is also important to mention that the victim in this case was proved to have died a suicidal death. As such, the question that naturally arises is as to whether there was any abetment by the accused to the deceased to commit suicide on account of cruelty extended to her because of non-fulfillment of dowry demand. The well settled position of law in this regard is that simple allegation of harassment of deceased or cruel behaviour by the accused towards the deceased, itself cannot be a ground to say that it amounts to abetment. It was for the prosecution to prove that the accused committed any such wilful conduct which drove the deceased to commit suicide and he abetted the act of suicide by the victim. Section 113A of the Evidence Act comes into operation in such cases as per which it is for the prosecution to establish first that the woman committed suicide

Neutral Citation:2023:PHHC:119037-DB

within a period of seven years of her marriage and that her husband or his relative subjected her to cruelty. Section 113A gives a discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, which mean that where the allegation is of cruelty, it must consider the nature of cruelty to which the woman was subjected having regard to the meaning of word 'cruelty' in Section 498-A of IPC. The mere fact that the woman committed suicide within seven years of her marriage and that she has been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband and the Court has to consider as to whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health and that it was in connection with demand of dowry. No abetment can be proved mere on the allegations of harassment. In this regard, reliance can be placed upon **Hans Raj v. State of Haryana**, 2004 (2) Cri.CC 351 (SC). In the present case, the prosecution, however, failed to bring any proof of direct or indirect acts of incitement by means of provocation or persuasion or intentional aid on the part of the respondent No.2-accused towards the deceased to commit suicide. In such circumstances, when there was nothing on record to believe that the respondent-accused abetted the deceased by way of instigation, goading or aiding her in committing the suicide on account of any act of omission or commission on his part, we are of the opinion that any abetment on his part against the victim to commit suicide could not be presumed even otherwise.

20. In view of the discussion as made above, we are inclined to hold that the learned trial Court had not committed any error in acquitting

Neutral Citation:2023:PHHC:119037-DB

the respondent No.2-accused of the charge under Section 304-B of IPC as well as alternative charge under Section 302 of IPC and there is no perversity in the order as passed by learned trial Court. On the other other hand, the findings given by learned trial Court are well reasoned and warrant no interference. Accordingly, finding no reason to allow the present appeal, the same is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

05.9.2023
manju

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