



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. A. No. D-76-DBA-2004
Reserved on 14.08.2024
Pronounced on: September 18, 2024

State of HaryanaAppellant

vs.

Mehfuj Ali and Ors.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pardeep Parkash Chahar, Sr. D.A.G. Haryana
for the appellant.

Mr. R.S. Mamli, Advocate
For the complainant

Mr. Vikram Singh Dhakla, Advocate and
Mr. Ishnoor Singh, Advocate
for respondent No.1.

SUDEEPTI SHARMA J.

The present appeal is preferred by the State of Haryana against the judgment dated 18.04.2003 passed by learned Additional Sessions Judge (Adhoc), Karnal, whereby all the nine accused in FIR No. 8, dated 07.06.2000, registered under Sections 304-B/120-B of the Indian Penal Code, 1860 (for short, 'IPC') at Police Station Kunjpura, were acquitted. However, the State of Haryana has preferred the present appeal only against three accused/respondents namely Mahfuj Ali, Momta Khan and Shakeela.

**BRIEF FACTS OF THE CASE**

2. F.I.R. was recorded on the statement of complainant-Sultan Ahmad (brother of the deceased) son of Shri Mangat Ali on 7.6.2000 that the marriage of his sister Gulshan (since deceased) took place with accused Mehfuj Ali about 3 ½ years prior to the present occurrence. Sufficient dowry including scooter, fridge, T.V., cooler, gold ornaments of 10 'tolas' and silver ornaments weighing about one kilogram were given in the marriage. His sister could not conceive. Her husband Mehfuj Ali, her husband's sisters Kafia and Mafia and her husband's sisters' husbands (Nandoies) Idu Hassan and Kheru Din, her father-in-law Momta Khan and mother-in-law Smt. Shakeela @ Kala, her husband's elder brother Yamin and his wife Sajida used to harass her i.e. Gulshan (since deceased). She told about the same several times whenever she used to come to her parental home. So Mangat Ali (father) and maternal-grand father Abdul Ghani, Sultan Ahmad-complainant went to the matrimonial house of Gulshan (since deceased) in village Jadoli to persuade her in-laws not to harass the deceased by telling them that they have already given too much dowry in her marriage. But still, the said persons from the side of her matrimonial home continued harassing and torturing her physically and mentally by raising demand of more dowry. The deceased's husband's sisters (NANADS') and her husband's elder brother's wife ('JETHANI') continued demanding gold bangles, while her husband's elder brother ('JETH') and her husband's sisters' husbands kept demanding gold rings for them. About three and a half months before the incident, the deceased's husband left her at her parental home, stating that he would only take her back when they gave him a Hero Honda motorcycle. The complainant's maternal-grand father and father once again took 'PANCHAYAT'



to village Jadoli and they tried to convince the accused and on their (complainant's father etc.) making promise, obviously to give motor-cycle, about two and a half months prior to the occurrence deceased's husband's elder brother Yamin and her husband's sister's husband Idu Hassan's, elder brother Yamin took the deceased to her matrimonial home. But the complainant's family had not fulfilled the said demand of the accused. About 15-16 days prior to the occurrence complainant's maternal-grand-father Abdul Ghani went to village Jadoli to attend the marriage of Mafia sister of Mehfuj Ali accused. There, the said accused- persons told him that he should take Gulshan (since deceased) by terming her as barren lady ('BHANJH SANDNI) and they do not need her as she has not given birth to any child, nor their demand has been fulfilled and thus they insulted complainant's maternal grandfather as well as the deceased. (The complainant's maternal grandfather informed the complainant and his family about the situation, and they were still discussing the matter. On June 6, 2000, at around 4:00 p.m., Idu Hassan sent a message via telephone to the complainant's neighbor, stating that Gulshan's condition was critical and requesting that the neighbor inform the complainant's father to take her to their home. So PW6- Sultan Ahmad-complainant and his family members thought about the matter and after arranging for a vehicle, he, his parents, his brother alongwith some other persons went to village Jadoli. On reaching there, they saw the dead body of Gulshan (since deceased) and found her throat swollen and also found 'LATERINE' and urine in her 'SALVAR'. At that time, Mehfuj Ali's sisters Mafia and Kafia and said Idu Hassan were also present there. It was evident that all the accused conspired together and, in furtherance of their plan, killed the complainant's sister due to the unmet dowry demands and because the deceased had not conceived, and was not having any issue.



3. Rough site-plan of the place of occurrence was prepared. Inquest report of the dead-body of Gulshan was prepared. Post-mortem of the dead body of Gulshan was also got conducted. Sample of Viscera was also taken. Statements of witnesses were recorded. Accused were arrested. On completion of investigation, challan against the accused Mehfuji Ali, Momta Khan, Yamin and his wife Sajida was prepared and put up in Court for their trial.

COMMITTAL PROCEEDINGS

4. Since the offence punishable under Section 304-B of Indian Penal Code 1860 is triable exclusively by the Court of Session, therefore, the case was committed to the Court of Session for trial and the accused persons were directed to appear before the Court of learned Sessions Judge.

5. After the case was committed, a prima facie case under Section 304-B of the Indian Penal Code, 1860 was found against the said four accused. They were subsequently charged under this section, to which they pleaded not guilty and claimed trial.

6. After Sultan Ahmad (complainant) appeared in the witness box on 11.12.2000 and deposed about the matter, the remaining 5 accused were ordered to be summoned on the application of the prosecution under section 319 Criminal Procedure Code, 1973, by the then Addl. Sessions Judge Karnal vide order dated 31.1.2001.

7. On the basis of documents on record a prima-facie case punishable under section 304-B and 120-B IPC having been found against all the 9 accused, they were charged there-under on 16.12.2002, to which they pleaded not guilty and claimed trial.

**TRIAL PROCEEDINGS**

8. The prosecution in support of its allegations examined PW1 Bir Singh Head Constable, PW2 Ram Asare Constable, PW3 Ram Kumar H.C., PW4 Dr. Rakesh Girdhan, PW5 Satish Kumar Constable PW6 Sultan Ahmad complainant, PW7 Abdul Gani, PW8 Mafia wife of Mangat Ali, PW9 Gurdip Singh Sub Inspector, PW10 Prem Kumar Draftsman and PW11 Karta Ram S.I.-S.H.O.

9. The statements of all the accused under Section 313 Code of Criminal Procedure, 1973 were recorded whereby the accused have denied the prosecution allegations and have pleaded their innocence. Further they have stated that Smt. Gulshan was never harassed and ill-treated by them nor dowry was ever demanded from her father. It has also been added that immediately after marriage Mehfuji Ali and Gulshan (deceased) got themselves separated from his parents and brother and brother's wife. They asserted that the accused Kheru Din, Idu Hassan, Mafia and Kafia had no involvement in the matrimonial life of Gulshan and her husband. Lastly, the accused stated that since Gulshan had not conceived during her lifetime, her husband (Mehfuj Ali) wanted to perform second marriage which was allowed by his religion. This, they claimed, led Gulshan to feel depressed, and she subsequently committed suicide.

10. After hearing both the parties and taking into consideration the evidence on record, the learned Sessions Court acquitted all the accused of the charges framed against them.

11. Hence the present appeal.

**SUBMISSIONS OF THE COUNSELS FOR THE PARTIES**

12. Learned State counsel submits as under:-

- i. That the prosecution has proved its case beyond shadow of reasonable doubt against all the three accused namely Mahfuj Ali, Momta Khan and Shakeela.
- ii That the death of Smt. Gulshan (since deceased) was due to unnatural circumstances, which was a result of mental harassment and on account of demand of dowry specifically raised and proved on record 3 ½ months prior to death with respect to demand of motor cycle.
- iii That Smt. Gulshan (since deceased) died within seven years of marriage and under unnatural circumstances, therefore, presumption under section 113-B of The Evidence Act, 1872 is against the accused persons and in order to rebut the presumption, the accused did not examine any defence witness nor any material contradiction came in the cross examination of PW6 Sultan Ahmad complainant, PW7 Abdul Gani, PW8 Mafia wife of Mangat Ali.
- iv That in the present case, the evidence led by the prosecution is fully credible and believable.
- v. That there was evidence on record for demand of dowry and 15 days prior to the death of Gulshan (since deceased). It was specifically proved on record wherein the accused taunted Gulshan in front of her maternal grandfather, that she is barren lady and she did not carry child and asked Abdul Gani to take her from their house.
- vi. That as per the statement of complainant Sultan Ahmed, the accused were present at home at the time of the incident, but there is nothing on record to show that the accused made any effort in order to save the life of Gulshan (since deceased) since they were present in the house.



vii. That Smt. Gulshan (since deceased) died at her matrimonial home, so presumption under section 113-B of The Evidence Act, 1872 has to be drawn against the accused

viii. That the accused did not lead any evidence to prove their case as they did not rebut the presumption either by cross examination of prosecution witnesses or by leading defence evidence. Therefore, he contends that all the ingredients of Section 304-B of the Indian Penal Code, 1860 and Section 113-B of the Evidence Act, 1872 are fulfilled in the present case. He prays that the present appeal be allowed.

13. Per contra, learned counsel appearing for the respondents/accused argues on the lines of the judgment and contends that the evidence led by the prosecution has rightly been appreciated by the learned trial Court while acquitting the accused, therefore, he prays that the present appeal be dismissed.

14. We have heard learned counsel for the parties and perused the whole record of the case.

15. The learned trial Court acquitted all the accused, vide impugned judgment and the relevant portion of the judgment reads as under:-

“25.I find force in the aforementioned plea of learned defence counsel mentioned in paragraph No. 23. above as far as the demand of dowry by the accused persons in the shape of gold bangles for the lady accused and gold rings for the husbands of the 'NANADS' of the deceased and her husband's elder brother i.e. JETH is concerned, that in the aforementioned circumstances of the case it does not fall within the ambit of dowry demand and the alleged harassment of the deceased by the accused-persons on that account soon before death of deceased. The testimony of PW6 Sultan Ahmad when he has interalia stated that the



accused had been making the said demands of gold bangles for the said lady accused and gold rings for the deceased's 'NANDOIES' Idu Hassan and Kheru Din and on that accused as well as for non-bearing of a child by the deceased accused used to harass and taunt her and so his father and maternal grand father Abdul Gani has visited the house of the accused Mehfuj Ali etc. in village Jadoli and advised that the accused should not harass Gulshan on account of dowry and instead of that they did not mend their ways and had been demanding dowry articles from her sister does not appear to be credible, especially because in his cross-examination he admits that he never accompanied any such 'PUNCHAYAT' and as per the own testimony of PW8 Mafia she never participated in any such 'PUNCHAYAT' and PW7 Abdul Gani nowhere says a word about holding of any 'PUNCHAYAT' at the house of the accused even by him and Mangat Ali father of the deceased, much less by more persons in the form of 'PUNCHAYAT'. If there would have actually been a demand of dowry in the form of gold bangles and gold rings for the members of the accused as mentioned above and has there have infact been harassment, torturing and beatings to the deceased by the accused on that account as stated by PW6 Sultan Ahmad, PW7 Abdul Gani and PW8 Mafia naturally in that event the deceased's father, brother and relatives only or they alongwith the other respectables in the form of 'PUNCHAYAT' would have gone to the house of deceased's in-laws situated in village Jadoli and still the prosecution has not led any evidence to that effect and that too despite the complainant having specifically so stated in his statement Ex.PA on the basis of which F.I.R.

Ex.PA/1 was lodged that his father and maternal-uncle had taken



'PUNCHAYAT' in the matrimonial house of the deceased to persuade them not to harass the deceased for the said demand of gold bangles and gold rings. The testimony of PW7 Abdul Gani and PW8 Mafia is no better, more so when the testimony of the said 3 witnesses contains material contradictions qua this demand even. For example PW6 Sultan Ahmad does not name deceased's 'JETH', PW7 Abdul Gani does not name deceased's 'JETHANI' and PW8 Mafia does not name 'JETH', 'JETHANI', mother in-law and father-in-law in her examination-in-chief regarding these two demands of gold bangles and gold rings. Further none of the accused has stated that the deceased and her husband Mehfuji Ali accused were living jointly with even her father-in-law and mother-in-law, much less with 'JETH' and 'JETHANI' and obviously there could be no question of the deceased and her husband living with her husband's sisters and their husbands.

26. So I find no merit in the reply to the said argument of learned Public Prosecutor assisted by Shri B.S.Rathore, learned counsel for complainant, when they have argued that the said demand of gold bangles and gold rings for the accused persons continued upto the last end and so also the harassment on that account to the deceased continued and so these things are covered within the ambit of soon before death, this reply/argument being contrary to the own prosecution version described in details in paragraph No.2 above even contrary to the evidence led by the prosecution. For example even according to the own testimony of PW6 Sultan Ahmad when accused Mehfuji Ali came and left the deceased at their house about 3 and a half months prior to the occurrence he told them that he will not take her back to his house unless



and until a motorcycle is given to him, but in that context this witness nowhere says that at that time this accused or any other accused persisted with their three years old demand of dowry of gold bangles and gold rings on the part of the accused so as to bring that demand and the alleged harassment on that account within the ambit of soon before death of deceased. Even in the testimony of the other 2 witnesses PW7 Abdul Gani and PW8 Mafia there is no evidence worth reliance to justify the said reply/argument of the learned Public Prosecutor, especially because even PW7 Abdul Gani who has stated that Mehfuji Ali accused left Gulshan at her parental home once a year prior to the occurrence and lastly ten days prior to her death and he (Mehfuji Ali) had raised demand of 'HERO HONDA when he last time came to leave Gulshan at her parental home but he does not say that this accused (Mehfuji Ali) or any other accused raised any demand of gold bangles and gold rings at the said last occasion when he came to his in laws' house 10-15 days prior to the occurrence or during last one year. Nor he has stated that during last one year of death of the deceased any other accused raised the said demand of gold bangles and gold rings. In his further testimony as PW7 he has stated that few days prior to the death of Gulshan he had gone to attend the marriage of the sister of Mehfuji Ali in village Jadoli, on that date also, all the accused told him to take away Gulshan as she was barren and as their demand had not been met, but he does not specify that their demand made at that occasion included the original demand of gold bangles and gold rings and so his testimony and that of the other two witnesses on this point is vague more so when date, month or year or period after marriage when this demand was made and



alleged harassment was made to deceased and by whom and in what manner, to what extent and by which specific accused. Even her father an important witness who could reveal the truth has not been examined by the prosecution and so adverse inference needs to be drawn against it. So the demand by any of the accused of gold bangles and gold rings and harassment to Smt. Gulshan on that account is not established.

27. As regards the demand of dowry by way of motorcycle by the accused side as per the prosecution version itself as contained in the F.I.R. copy Ex.PA/1 as well as according to the deposition of complainant Sultan Ahmad as PW6 this demand was made for the first time by accused Mehfuj Ali only and that too when he lastly took his wife Gulshan (since deceased) to her parents house about three and a half months prior to the occurrence and her resultant death therein. There is no specific evidence in the testimony of either of the three witnesses namely PW6 Sultan Ahmad, PW7 Abdul Gani and PWS Mafia that the accused persons other than accused Mehfuj Ali had also specifically demanded motorcycle to be given by the parents of the deceased. The half-hearted attempt regarding the demand of motorcycle by way of dowry on the part of remaining eight accused is only in the testimony of PW7 Abdul Gani when after stating that all the accused started demanding more dowry articles i.e. gold bangles for husband's sister of the deceased and gold rings for male accused i.e. Idu Hassan and Kherudin husband of sisters of Mehfuj Ali accused and for Yamin elder brother of her husband; and that the fact regarding demand of dowry was disclosed to him by Gulshan deceased, this witness has volunteered that their demand included motorcycle which was made by Mehfuj Ali



for himself, is also far from sufficient to prove the demand of motorcycle by way of dowry having been made by any accused other than Mehfuj Ali, especially because this witness as PW7 nowhere states that this demand was made 3 and a half months prior to the occurrence when he left his wife i.e deceased at her parent's house. On the contrary he i.e. this witness as PW7 has stated that Mehfuj Ali left the deceased at her parents house once a year back and lastly 10-15 days prior to the occurrence. So no reliance can be placed on the vague attempt made by this witness as PW7 to implicate 8 accused other than accused Mehfuj Ali in this demand of motorcycle.

28 In the view I have taken above the prosecution has failed to establish that the 8 accused other than accused Mehfuj Ali ever made the demand of motorcycle from the deceased or her parents and, therefore they cannot be said to be connected with any harassment to the deceased on that account.

29. The only question which remains to be considered is as to whether accused Mehfuj Ali made this demand of motorcycle from the deceased or her parents and he caused harassment to the deceased for non-fulfillment of that demand. In this connection, the testimony of PW8 Mafia is that when her daughter Gulshan came from her matrimonial house to their house 6 months after her marriage she told about the demand of dowry by the accused including that of motorcycle by her husband, meaning thereby that according to her testimony the demand of motorcycle was also made soon after the marriage of the deceased which is contrary to the testimony of PW6 Sultan Ahmad and PW7 Abdul Gani that the demand of motorcycle was made for the first time when accused



Mehfuj Ali left the deceased at her parent's house last time i.e. about three and a half months prior to the occurrence as per the deposition of the former and 10-15 days prior to the occurrence as per the testimony of the latter. Thus the contradictory deposited regarding the demand of motorcycle 'HERO HONDA' in the testimony of these 3 witnesses as afore-mentioned makes the prosecution version of demand of motorcycle highly doubtful. This doubt gets further confirmed from the fact that as per the testimony of all these 3 witnesses dowry articles given by the parents of the deceased at the time of her marriage with accused Mehfuj Ali included scooter and it has been further deposed by PW6 Sultan Ahmad in his cross-examination that when this accused raised demand of motorcycle he asked the accused as to why he was demanding motorcycle when scooter had already been given in the marriage as dowry and the accused replied that motorcycle is a better vehicle. It seems improbable that when scooter has already been given by way of dowry in the marriage itself the husband will demand an item of the same category i.e motorcycle. It could be understandable if he would have demanded some item for this use of some other category, especially when PW8 Mafia has stated that the scooter given by them in her daughter's marriage remained with the accused and was never returned. So there is no force in the plea of learned defence counsel that the demand of motorcycle inspite of scooter having been given is quite probable.

30 *In the aforementioned circumstances the demand of motorcycle as dowry even by accused Mehfuj Ali is also not proved.*



31. *In any case the remaining a accused are not connected with the demand of dowry or the alleged harassment made in connection therewith because deceased's husband's sisters are married and they alongwith their husbands are undisputably living at distant village, and as mentioned in paragraph No, above deceased alongwith her husband Mehfuj Ali accused was living separately from her other members of her in laws family and so the accused other than Mehfuj Ali could not be interested with any demand of dowry or alleged harassment on that account. Further as discussed above the demand of motorcycle by any of the accused as dowry is also not proved.*

32. *Thus from the prosecution evidence demand of any dowry by the accused.*

33. *The last aspect of the matter to be discussed is as to whether harassment was made by the accused if so on what account.*

34. *In the view I have taken above that the prosecution has failed to establish the demand of dowry of the gold bangles, gold rings and motorcycle, the alleged cruelty caused to the deceased by the accused cannot be taken to be in connection with demand of dowry, much less soon before death. No reliance can therefore be placed on the testimony of PW6 Sultan Ahmad, PW7 Abdul Gani and PW8 Mafia when they have stated that whenever the deceased used to come to her parents house she used to tell that the accused demanded dowry i.e. gold bangles for the lady accused namely Mafia and Kafia 'NANADS' and Sazida 'JETHANI' and gold rings for 'NANDOIS' of the deceased namely Idu Hassan and kherudin and deceased's 'JETH' Yamin accused and motorcycle for*



accused Mehfuj Ali the husband of the deceased, especially because had the accused demanded gold bangles and gold rings soon after the marriage as per the testimony of PW6 Sultan Ahmad and PW7 Abdul Gani the deceased would have naturally written letter to her parents she being middle-pass, as stated by her brother PW6 Sultan Ahmad, but no such letter is stated to have been written by her, much less producing the same in the prosecution evidence during the long period of about 3 years when the alleged demand of gold bangles and gold rings as per the vague and contrary testimony of these said 3 witnesses continued and also because no reliance can be placed on the further testimony of PW7 Abdul Gani when he has inter alia stated that when he visited the house of accused in Jodoli at the time of marriage of accused Mehfuj Ali's sister the accused asked him to take the deceased she being barren and their demand having not been fulfilled for two reasons. One, when as per the own testimony of PWS Mafia no member of the family of the parents of the deceased was invited nor attended the marriage of sister of accused Mehfuj Ali it is difficult to believe that deceased's maternal-grand-father would have been invited and he would attend that marriage in the aforementioned circumstances more so when neither that invitation card purportedly received by the deceased's maternal-grand-father PW7 Abdul Gani was handed over to the Investigating Officer nor the same has been produced in his evidence as PW7 when there is nothing in his evidence that he i.e. PW7 had any relation with the accused except because of his maternal-grand-daughter Gulshan having been married to Mehfuj Ali accused. Two, In any case as per his own testimony as well as that of PW6 Sultan Ahmad and PW8 Mafia,



deceased's maternal-grand-father i.e. PW7 Abdul Gani told about his having attended the marriage of accused Mehfuj Ali's sister 10-15 days prior to the occurrence and he also told that the deceased told him about the accused harassing her on account of her being barren and dowry demand having not been fulfilled 4-5 days after he attended the marriage. Had such a position been actually told by deceased to him, a very serious matter, in that event he would have immediately rushed to the house of the parents of the deceased and told and so the testimony of the these 3 persons in this regard of the deceased having told him (Abdul Gani) about her harassment being meted-out by the accused on the said account 10-15 days prior to the occurrence is not worth reliance, phithere being no merit in the plea of the learned Public Prosecutor to the contrary. It is also ration ov not out of place to mention here that the testimony of the said 3 witnesses when they have stated that on receipt of telephone from Jadoli on the date of occurrence they the reached there in the house of accused and they found the neck of the deceased swollen is belied from the fact that no injury on her dead-body was found in her P.M.R. vide report becopy Ex.PB and this position i.e. absence of any injury including swelling of throat of the deceased at the time of P.M.R is found to be correct because as per the report of FSLcopy Ex. the death of Gulshan has been found to be due to consumption of insecticide i.e.carbamate compound group of insecticides, a poison which could be swallowed by thedeceased for committing suicide and which could not be administered by the accused, more so when there is no evidence led by the prosecution that the said poison was forcibly administered by the accused to the deceased.



35. Thus the probability of the deceased having committed suicide by herself consuming the said poison as argued by the defence counsel are high in the case in hand and the prosecution has failed to establish the present to be a case of homicide i.e. the accused having killed the deceased, less due to harassment in connection with demand of dowry soon before her death or even on account of the deceased having not given birth to any child.

36. So in view of the above position testimony of PW6 Sultan Ahmad, PW7 Abdul Gani and PW8 Mafia when they have stated that the accused have killed the deceased as she was barren and their demand of dowry having not been fulfilled is not found to be trustworthy. Rather the stand of the accused that Gulshan could not give birth to any child and so her husband wanted to contract his second marriage which is permitted under the Muslim law to which the parties belong and which obviously governs them which provides for fixation of mehar to be given by the husband and therefore she remained depressed and on that account she has committed suicide, is probable, because as mentioned above as per the report of FSL it is a case of death due to consumption of poison i.e. carbamate compound group of insecticides which as per the testimony of PW4 Dr. Rakesh Girdhar includes baygon insecticide chemically named propoxur. The probability of the above stand of the accused finds corroboration from the medical evidence on record in the form of testimony of the said doctor PW4 Rakesh Girdhar who has categorically stated that a lady who does not conceive it is a cause of depression for the lady in our society and a person can commit suicide because of



depression and the possibility of the deceased Gulshan having committed suicide in the mid-day of 6.6.2000 by consuming baygon is not ruled-out.

37. Such being the situation mere presence of 'NANADS' i.e. deceased's husband's sisters and husband's sisters' husbands i.e. 'NANDOIS' in the house of the accused where dead-body was found lying by the said 3 witnesses PW6 Sultan Ahmad, PW7 Abdul Gani and PW8 Mafia when they reached the house of the accused on 6.6.2000 does not mean that they were among the accused persons who killed her (Gulshan) or harassed her because 'NANADS' and 'NANDOIS' would naturally be present immediately on hearing about the tragedy at the house of the accused i.e. their close relatives at such an occasion of sorrow & grief in the house of the accused i.e. house of the parents of the 'NANADS' for condolence.

38. For the reasons given above, on the one hand, the defence version of the deceased having committed suicide by consuming poisonous insecticides on account of depression due to her having not conceived is found to be probable, whereas the prosecution on whom the onus lies heavily to prove its case beyond reasonable doubt has not been able to prove its version beyond reasonable doubt.

39. No other point was urged before me.

40. So the points of controversy No. 3 to 6 mentioned in paragraph No.11 above are answered accordingly.

41. For the fore-going reasons it is held that the prosecution has failed to successfully bring home the guilt to any of the accused for offence punishable under Section 304-B read with Section 120-B beyond reasonable doubt. The accused are entitled to get the benefit of doubt in



the circumstances of the case discussed above. Consequently all the accused are hereby acquitted of the above-mentioned offence charged-with.”

ANALYSIS OF THE RECORD

16. Dr. Rakesh Girdhan, Medical Officer, Government Hospital, Karnal while appearing as PW4 in his deposition stated that on 07.06.2000, he along with Dr. Rakesh Mittal conducted post-mortem examination on the dead body of Smt. Gulshan (since deceased) wife of Mehfuj Ali resident of Tadali Kalan i.e deceased, vide copy of Post Mortem Report (Ex PB). Rigor mortis was present in all the four limbs. Post mortem staining was present on the back and right side of face. Froth was coming out of the nose, stool was passed in salwar. There was no ligature around the neck. No external mark of injury was seen on the body.

17. In his cross examination, he stated that it is correct that bagon insecticides chemical name is propoxur, and the same falls in the carbamate compound insecticides. It is correct that possibility of the deceased Gulshan having committed suicide at 12 noon on 6.6.2000 by consuming bagon is not ruled out. It is correct that a person can commit suicide because of depression. In case if a lady does not conceive, then it is a cause of depression in our society.

18. The statement of the doctor with respect to cause of death is very clear that it is due to consumption of poison i.e carbamate compound group of insecticides.

19. Ex PC is the copy of Chemical Examiner report and as per this report as well, it gave positive test of Carbamate compound group of insecticides.

20. Ex PD is the copy of inquest report, wherein against the column of ‘Injuries or mark of violence on the dead body’, it has been written as “Blueish

**CrI.A. No. D-76-DBA-2004**

mark on the left side of the forehead”. Further against the column of “In what manner or by what weapon or instrument such marks of injuries or of violence appear to have been inflicted”, it has been written as “ Possibility due to strangulation of neck”. Against the column of “Apparent cause of death”, it has been mentioned as “ Possibility due to strangulation of neck”. Against the column of “any sign of death having been caused by violence or poison or any rumours of such being the cause”, it has been written as “ Possibility due to strangulation of neck”

21. Ex PF is the copy of Rough site plan and as per this rough site plan, Mark “B” is that place, where in varanda of house of Momta Khan, on the cot of jute, dead body of Gulshan daughter of Mangat Ali wife of Mahfuj Ali, is lying.

22. Ex PE is another copy of inquest report and in this report, against the column of “Injuries of marks of violence on the dead body may have received wounds or bruises show the position length and breadth. Note:- Given depth. Be careful not to prick wound with anything. If the Civil Surgeon or other Medical Officer is expected to attend to examine the dead body this information should be filed in after he was completed examination”, it has been written as “Mark of Injury with clotted blood on left side of forehead”. Against the column of “Apparent cause of death”, it has been mentioned as “ Possibility due to strangulation of neck”.

23. Ex PB is the copy of Post Mortem Report and as per this report, against the column of “Information furnished by Police”, it has been mentioned as “Gala Ghotne se Sar Mareya”.

24. The complainant-Sultan Ahmad while appearing as PW6 in his deposition has stated on oath that his sister was married to Mehfuj Ali about 3 ½ years ago. They had given sufficient dowry articles in the marriage. No child was

**CrI.A. No. D-76-DBA-2004**

born from their wedlock. Her in-laws family members used to harass and taunt her on account of demand of dowry as well as for her not bearing child. The accused had been demanding the gold bangles for Mafia and Kafia as well as for Sajida and Shakila. They had been making demands of golden rings for Nandoi's. He stated that his father and maternal grand-father had visited the house of the accused in the village, as part of panchayat, and advised them not to harass Gulshan (since deceased) for the demand of dowry). About 3 months prior to death of Gulshan (since deceased), his brother in law Mehfuj Ali left his sister at their house after beating her. He further told us that he would not take her back unless and until he is given Hero Honda Motor Cycle in the dowry. Thereafter, after a period of fifteen days, his father and maternal grand-father went to the house of accused and told not to unnecessarily harassed her. But the accused repeated their demand of Hero Honda Motorcycle and then his father and great grand-father and maternal grand-father assured that they would meet their demand in due course. After 2 ½ months prior to death of Gulshan (since deceased), the accused brother of Mehfuj Ali and one more Yamin visited their house and took her back to their matrimonial home and while leaving our house, they told that they had not fulfilled their demand. His maternal grand father had gone to village Jadoli in order to attend the marriage of Kafia, real sister of Mehfuj Ali accused and there also accused persons asked him to take his sister to their house since she is a barren lady and also they have not met their demand. He further stated that on receiving information, they went to house of accused and, there they saw that his sister-Gulshan (since deceased) was lying dead on a cot and her throat was swollen besides, stool and urine was found in her salwar. At that time, Mehfuj Ali, Mafia, Kafia and Idu Hassan were there at the spot and remaining accused were also there.



21. PW-7 (Abdul Gani) while appearing in a witness box deposed that Gulshan was married to Mehfuj Ali 3 ½ years ago. Sufficient dowry articles were given in the marriage. No child was born from the wedlock of Mehfuj Ali. All the accused started demand of dowry articles i.e Gold bangles for the husband's sisters and gold rings for their husbands namely Idu Hassan and Khar Ali. Similarly gold rings were also demanded for Yamin. Mehfuj Ali also raised demand of Hero Honda Motorcycle when he last time came to leave Gulshan (since deceased) at her parental home. Few days prior to death of Gulshan (since deceased), he had gone to attend the marriage of the sister of Mehfuj Ali in village Jadoli. On that day also all the accused persons told him to take away Gulshan (since deceased), as she is barren and as their demand for dowry had not been met. They found Gulshan (since deceased) lying dead at the house of the accused persons. Her neck was swollen. The accused persons have collectively killed Gulshan in connection with demand of dowry.

22. In cross-examination, on a specific question by the defence, he stated that in the morning on the very next date of marriage of the sister of the accused-Mehfuj Ali, all the accused persons asked him to take Gulshan (since deceased) with him because she was childless i.e barren and that motor cycle had not been given to them. They also demanded gold bangles and goldenrings for deceased's husband elder brothers and their wives.

23. PW-8 (*Mafia*) while appearing in a witness box stated that the marriage of Gulshan (since deceased) was solemnized 3½ years ago. Sufficient dowry articles have been given. No child was born out of the wedlock. After the marriage all the accused persons demanded gold bangles and golden rings from them. About 3 ½ months prior to death of Gulshan (since deceased), Mehfuj Ali left her at their house after beating her. He further told us that he would not take



her back unless and until he is given Hero Honda Motor Cycle in the dowry. Thereafter, after a period of fifteen days, her husband and her father went to house of accused and told not to unnecessarily harass her. After 2 months prior to death of Gulshan (since deceased), accused brother of Mehfuji Ali and one more Yamin visited their house and took her back to their matrimonial house and while leaving their house, they told that they should fulfill their demand. About 15 days prior to death of Gulshan (since deceased), his father had gone to village Jadoli in order to attend the marriage of Kafia, real sister of Mehfuji Ali accused and there also accused persons asked us to take Gulshan (since deceased) to our house since she is a barren lady and also we have not met their demand. He further stated that on receiving information, they went to house of accused and, there they saw that his sister was lying dead on a cot and her neck was swollen.

24. PW-9 SI Gurdip Singh (Initial IO) while appearing in a witness box stated that after recording the statement of Sultan Ahmed-complainant, he went to the place of occurrence. The dead body was lying in the house of accused in the verandah on cot. Rough site plan was prepared. He inspected the place and prepared inquest report (Ex. PE). He got the post mortem conducted.

CONCLUSION

25. Since a perusal of the record shows that Gulshan (since deceased) and her husband-Mahfuji Ali were staying separately from the parents of the accused-Mahfuji Ali, therefore, we are of the considered opinion that Section 120-B of the Indian Penal Code, 1860 is not applicable in the present case. Since the present appeal is filed against the acquittal of three respondent namely Mahfuji Ali, Momta Khan and Shakeela of the charge under Sections 304-B of the Indian Penal Code, 1860, it would be relevant to reproduce the relevant provisions of



Indian Penal Code, 1860 and The Evidence Act, 1872 for proper adjudication of the present case.

SECTION 304-B OF THE INDIAN PENAL CODE, 1860

“304-B. 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."

SECTION 113-B OF INDIAN EVIDENCE ACT :-

113-B. 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 purpose of this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)].*

26. Therefore, now it is to be determined by this Court, that whether the ingredients of Section 304-B of the Indian Penal Code, 1860, are fulfilled in the present case as per the evidence adduced.

27. To sustain the conviction under Section 304-B of the Indian Penal Code, 1860, the following essential ingredients are to be established:-

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance;

(ii) such a 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;

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death";

28. In a recent judgment of **SATBIR SINGH AND ANOTHER VS. STATE OF HARYANA, (2021) 6 SCC 1**, the Hon'ble Supreme Court has dealt with dowry death case. The relevant portion of the same are reproduced as under:-

"9. The first contentious part that exists in the interpretation of Section 304-B, IPC relates to the phrase " soon before " used in the Section. Being a criminal statute, generally it is to be interpreted strictly. However, where strict interpretation leads to



absurdity or goes against the spirit of legislation, the courts may in appropriate cases place reliance upon the genuine import of the words, taken in their usual sense to resolve such ambiguities. [refer Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company, (2018) 9 SCC 1, State of Gujarat v. MansukhbhaiKanjibhai Shah, 2020 SCC OnLine SC 412]. At this juncture, it is therefore necessary to undertake a study of the legislative history of this Section, in order to determine the intention of the legislature behind the inclusion of Section 304-B, IPC.

10. Section 304-B, IPC is one among many legislative initiatives undertaken by Parliament to remedy a longstanding social evil. The pestiferous nature of dowry harassment, wherein married women are being subjected to cruelty because of covetous demands by husband and his relatives has not gone unnoticed. The Parliament enacted the Dowry Prohibition Act, 1961 as a first step to eradicate this social evil. Further, as the measures were found to be insufficient, the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) was passed wherein Chapter XXA was introduced in the IPC, containing Section 498-A.

11. However, despite the above measures, the issue of dowry harassment was still prevalent. Additionally, there was a growing trend of deaths of young brides in suspicious circumstances following demands of dowry. The need for a stringent law to curb dowry deaths was suo motu taken up by the Law Commission in its 91st Law Commission Report. The Law Commission recognized that the IPC, as it existed at that relevant time, was insufficient to tackle



the issue of dowry deaths due to the nature and modus of the crime.

They observed as under:

“1.3 if, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. In practice, however, two main impediments arise

- (i) either the facts do not fully fit into the pigeonhole of any known offence; or*
- (ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult*
"

12. Taking into consideration the aforesaid Law Commission Report, and the continuing issues relating to dowry related offences, the Parliament introduced amendments to the Dowry Prohibition Act, as well as the IPC by enacting Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). By way of this amendment, Section 304-B, IPC was specifically introduced in the IPC, as a stringent provision to curb the menace of dowry death in India.

*13. **Shrimati Margaret Alva**, who presented the Amendment Bill before Rajya Sabha observed as follows:*

This is a social evil and social legislation, as I said cannot correct everything. We are trying to see how and where we can make it a little more difficult and therefore we have increased the punishment. We have



also provided for certain presumptions because upto now one of our main problem has been the question of evidence. Because the bride is generally burnt or the wife is burnt behind closed doors in her in-laws home. You have never really heard of a girl being burnt while cooking in her mother's house or her husband's house. It is always in the mother-in-law's house that she catches fire and is burnt in the kitchen. Therefore, getting evidence immediately becomes a great bit problem. Therefore, we have brought in a couple of amendments which give certain presumptions where the burden of proof shifts to the husband and to his people to show that it was not a dowry death or that it was not deliberately done"

14. There is no denying that such social evil is persisting even today. A study titled " Global study on Homicide: Gender-related killing of women and girls " published by the United Nations Office on Drugs and Crime, highlighted that in 2018 female dowry deaths account for 40 to 50 percent of all female homicides recorded annually in India. The dismal truth is that from the period 1999 to 2016, these figures have remained constant. In fact, the latest data furnished by the National Crime Records Bureau indicates that in 2019 itself, 7115 cases were registered under Section 304-B, IPC alone.

15. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted.



Therefore, it is safe to deduce that when the legislature used the words, “soon before” they did not mean “immediately before”. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase “soon before” entails.

16. *The aforesaid position was emphasized by this Court, in the case of Kans Raj v. State of Punjab, (2000) 5 SCC 207, wherein the three-Judge Bench held that:*

15.....Soon before” is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. .. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. ... Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough”



A similar view was taken by this Court in Rajinder Singh v. State of Punjab, (2015) 6 SCC 477.

17. *Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term “soon before”. What is pivotal to the above determination, is the establishment of a “proximate and live link” between the cruelty and the consequential death of the victim.*

18. *When the prosecution shows 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’ a presumption of causation arises against the accused under Section 113-B of the Evidence Act. Thereafter, the accused has to rebut this statutory presumption. Section 113B, Evidence Act reads as under:*

“ 113-B. 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 purpose of this section, “dowry death”; shall have the same meaning as in section 304- B of the Indian Penal Code (45 of 1860”;

19. *This Court, in the case of Bansi Lal v. State of Haryana, (2011) 11 SCC 359, emphasized the mandatory application of the*



presumption under Section 113-B of the Evidence Act once the ingredients of Section 304B of IPC stood proved:

“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. .. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relating to section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused.

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.”

20. Therefore, once all the essential ingredients are established by the prosecution, the presumption under Section 113-B, Evidence Act mandatorily operates against the accused. This presumption of causality that arises can be rebutted by the accused.

21. The usage of rebuttable presumption of causality, under Section 113-B, Evidence Act, creates a greater responsibility on Judges, defense and prosecution. They need to be extra careful during conducting criminal trials relating to Section 304-B, IPC. In order to address this precarious situation, procedural law has some safeguards, which merits mentioning herein.

22. It is a matter of grave concern that, often, Trial Courts record the statement of an accused under section 313, CrPC 1973 in a very



casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused section 313, CrPC, 1973 cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This provision incorporates the valuable principle of natural “audi alteram partem”, as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the part of the Court to question the accused fairly, with care and caution. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense, since the inception of the trial, with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act.

x x x x x x

24. The second contentious part relating to Section 304-B IPC is that it does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental, as was done earlier. The reason for such non categorization is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental. However, the Section 304-B, IPC endeavors to also address those situations wherein murders or suicide are masqueraded as accidents.

25. Therefore, if all the other ingredients of Section 304-B IPC are fulfilled, any death whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per



the legislative mandate, be called a “dowry death” and the woman’s husband or his relative “shall be deemed to have caused her death”; unless proved otherwise. The section clearly specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death. [refer Maya Devi v. State of Haryana, (2015) 17 SCC 405, Shanti v. State of Haryana, (1991) 1 SCC 371]

** * * * **

38. At the cost of repetition, the law under Section 304-B, IPC read with Section 113-B, Evidence Act can be summarized below:

38.1. Section 304-B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

38.2. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B, IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113B, Evidence Act operates against the accused.

38.3. The phrase :soon before” as appearing in Section 304-B, IPC cannot be construed to mean `immediately before”. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death



occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.

38.5. Due to the precarious nature of Section 304-B, IPC read with 113-B, Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.

38.6. It is a matter of grave concern that, often, Trial Courts record the statement under section 313, CrPC, 1973 in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under section 313, CrPC, 1973 cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “audi alteram partem”; as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

38.7. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the Trial with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act.”

29. The undisputed facts in the present case are that Gulshan (since deceased) was married to Mahfuj Ali about 3 ½ years before the date of the incident. The cause of death is due to poisoning, meaning thereby it is a case of unnatural death. As per Post Mortem Report Ex.PB examination by Dr. Rakesh

Girdhan, Inquest Report Ex.PD, FSL Report Ex. PC, the cause of death is due to



consumption of poison i.e carbamate compound group of insecticides. There was swelling on the dead body of the deceased which indicate the possibility of death due to strangulation. Further Blueish mark was found on the left side of the forehead of the deceased. This indicate that the deceased was forcibly administered the poison. The statements of PW6 Sultan Ahmad complainant, PW7 Abdul Gani, PW8 Mafia wife of Mangat Ali who are brother, father and bhabhi of the deceased revealed that there was demand of dowry and there is no discrepancy in the cross examination of all the above three witnesses. Thus the demand of dowry is proved in the present case. Further Gulshan (since deceased) died within 7 years of marriage i.e within 3 ½ years due to administration of poison.

FINDINGS

30. A perusal of the whole record and evidence, i.e documentary as well as oral show that the prosecution has been able to prove its case beyond reasonable doubt against the husband of the deceased namely Mahfuj Ali only.

31. Accordingly, the verdict of acquittal qua respondent No. 1-Mahfuj Ali is *quashed and set aside*. However, the verdict of acquittal qua respondent Nos. 2 and 3 namely Momta Khan and Shakeela is *upheld*. In consequence, accused/respondent No. 1-Mahfuj Ali is held guilty for committing the offence punishable under Section 304-B of the Indian Penal Code, 1860 and is convicted accordingly.

32. In view of the above, this Court finds merit in the present appeal and the same is partly allowed.

33. The accused/respondent No. 1-Mahfuj Ali is directed to be produced in custody before this Court on 30.09.2024 for hearing on the quantum of sentence.

34. All the pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 18, 2024
G Arora

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