



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1519-SB-2011 (O&M)
Reserved on: 25.09.2024
Pronounced on: 04.10.2024

Vinod Kumar

... Appellant

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aman Pal, Advocate
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.

1. Present appeal has been preferred against the judgment of conviction dated 16.04.2011 and the order of sentence of even date passed by learned Additional Sessions Judge, Panipat, whereby the appellant was convicted in FIR No.293 dated 02.06.2010 under Section 304-B of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Chandni Bagh, District Panipat and was sentenced to undergo rigorous imprisonment for a period of 07 years under Section 304-B of IPC and to pay a fine of Rs.5,000/- along with default mechanism.



2. Briefly, the facts, as alleged by the prosecution, are that the complainant namely Ram Narayan received a call at about 11.00 p.m. on 01.06.2010 from his brother-in-law Mangli that his daughter Kusum had fallen from the roof in her matrimonial home and died. The appellant i.e. husband of the deceased, used to beat the deceased for dowry. He was counselled many times by the complainant as well as other family members, but he remained adamant on his demands. The complainant, his wife Maya and his elder brother Bechain Singh arrived at the spot on the next day and found the dead body of Kusum (wife of the appellant) lying in front of Room No.3 at Gangapuri, the residence of the appellant, with injuries on her head.

3. The appellant was charged with offences under Sections 304-B of IPC, to which he pleaded not guilty and claimed trial. In order to establish its case, the prosecution examined as many as 10 witnesses. The statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 351 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] was recorded, wherein he pleaded false implication and examined 02 witnesses in his defence. After assessing all the material available on record, learned trial Court passed a guilty verdict against the appellant and sentenced him in the abovementioned terms. Aggrieved by the same, the present appeal was preferred by the appellant.

4. Learned counsel for the appellant submits that learned Court below has erred in rendering the impugned judgment of conviction, as the



prosecution has failed to prove the demand for dowry, so as to breach the threshold of Section 304-B of IPC. There is no evidence on record as to when the demands for Rs.50,000/- and motorcycle were raised. It is clearly a case of accidental death, as the deceased died by slipping from the roof of the building. The site plan (Ex.PL) clearly reveals that there is a water tap on the roof.

5. Further, the conviction is solely based on the testimonies of interested witnesses. Some persons, whose names had appeared in the inquest proceedings, were not examined by the prosecution during the trial. Moreover, the prosecution has failed to establish any motive on the part of the appellant-accused. A perusal of the testimony of DW-2, namely, Ramesh shows that he never saw the appellant and the deceased quarrelling with each other. Lastly, since the alleged cruelty or harassment meted out to the deceased was, in no manner, soon before her death, the ingredients of Section 304-B of IPC are not made out against the appellant.

6. *Per contra*, learned State counsel submits that the harassment meted out by the appellant has resulted in the death of Kusum, daughter of the complainant and as such, he does not deserve any leniency. The impugned judgment is based on correct appreciation of the facts of the case and does not suffer from any perversity.

7. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the



marriage between the appellant and deceased-Kusum was solemnized a year prior to the alleged incident, which took place on 01.06.2010. Therefore, the death of the deceased has occurred within 07 years of her marriage.

8. A perusal of the judgment passed by learned trial Court shows that the appellant has been convicted under Section 304-B of IPC only on the basis of the testimonies of complainant-PW3 Ram Narayan, who is father of the deceased and PW4 Bechain Singh, who is uncle of the deceased. While there is no doubt that the success of the prosecution rests on the quality of evidence and not necessarily its quantity, however, in the present case, the depositions of both these witnesses cannot be said to be of an unimpeachable character and of sterling quality. As per the cross-examination of father of the deceased, he regularly visited the matrimonial house of the deceased, however, no specific date or time has been mentioned as to when the demand for Rs.50,000/- and motorcycle were raised. As per the version of the prosecution, the appellant repeatedly demanded that the complainant fulfill his dowry demands, which he refused to accede to, yet not one such particular incident has been brought on record by him. Pertinently, no complaint was ever moved before the police during the subsistence of marriage, which is particularly surprising, given that the deceased was frequently harassed and the complainant was confronted with the demand for dowry multiple times.

9. The relevant provisions are reproduced below:



“Section 304B of IPC

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 purposes 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 113B of the Indian Evidence Act

Presumption as to dowry death- *When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.*

Explanation. For the purposes of this section, dowry death shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).]

10. A two Judge bench of the Hon’ble Supreme Court in ***Bajjnath and others Vs. State of Madhya Pradesh, (2017) 1 SCC 101*** laid down the ingredients for attracting the offence under Section 304-B of IPC. Speaking through Justice Amitava Roy, the following was held:

“28. Whereas in the offence of dowry death defined by Section 304B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or



bodily injury or by any cause other than in normal circumstances and

(ii) is within seven years of her marriage and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

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29. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

11. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Charan Singh @ Charanjit Singh Vs. State of Uttrakhand, 2023 AIR SC 2095***, has held that to attract the presumption under Section 113-B of the Indian Evidence Act, it is necessary to prove a case of cruelty and harassment with regard to dowry against the husband or his family. Further, merely because the alleged incident has occurred within seven years of marriage, the provision of Section 304-B of IPC is automatically attracted. Speaking through Justice Rajesh Bindal, the following was observed:

"13. A conjoint reading of Section 304B IPC and section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:-

*"32. This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304B as in ***Shindo v. State of Punjab [Shindo v. State of Punjab, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394]*** and echoed in ***Rajeev Kumar v. State of Haryana [Rajeev Kumar v. State of****



Haryana, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346] .
*In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113B of the Act. It referred to with approval, the earlier decision of this Court in **K. Prema S. Rao v. Yadla Srinivasa Rao** [**K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217 : 2003 SCC (Cri) 271**] to the effect that to attract the provision of Section 304B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".*

14. With reference to the legal position as referred to above, the matter is now required to be examined as to whether the case in hand falls in the category where the presumption can be raised against the appellant relieving the prosecution from proving its case and putting the onus on the accused/appellant."

12. Learned trial Court has inferred that because the complainant is a rickshaw puller, which made it impossible for him to satisfy the persistent demands of dowry raised by the appellant, the deceased must have been continuously tortured and harassed, resulting in her death. This interpretation of learned trial Court cannot be the basis of convicting the appellant especially in the absence of any other evidence to corroborate the factum of dowry harassment. The financial constraints of the complainant may have made it difficult to satisfy dowry demand, if there were any, but to say that



the deceased suffered because of this is far-fetched and forced. Also, as per the testimony of DW-2 Ramesh, he never saw the appellant and the deceased quarrelling with each other or the appellant ever tormenting the deceased on the pretext of dowry. Learned trial Court has not afforded sufficient reasons to discard this testimony since there is nothing to suggest that the said witness had an ulterior motive or that the testimony was riddled with inconsistencies and contradictions.

13. Lastly, one of the preconditions to conclusively establish the guilt of the accused under Section 304-B of IPC is to satisfy that soon before her death, she was subjected to cruelty and harassment in connection with the demand for dowry. Since the allegations of harassment lack specificity and no date and time has been mentioned with respect to the alleged occurrences of dowry harassment by the prosecution witnesses, the prosecution has miserably failed to breach the threshold of Section 304-B of IPC. Thus, the ingredients to attract the offence under Section 304-B of IPC are not made out against the appellant-accused.

14. In view of the above discussion, this Court finds that learned counsel for the appellant has been successful in establishing his case. Hence, the present appeal is allowed and consequently, the impugned judgment of conviction dated 16.04.2011 and the order of sentence of even date passed by learned Additional Sessions Judge, Panipat, are hereby set aside.

15. The appellant stands acquitted of the charges framed against



him in the present case and his bail/surety bonds, if any, shall be discharged.

16. All the pending miscellaneous application(s), if any, shall stand disposed of.

04.10.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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