

MANISHA
2024.05.07 17:00
I attest to the accuracy and
authenticity of this
order/judgment

Hoshiarpur, whereby, the appellants were convicted in FIR No.3 dated 31.01.2010 registered under Sections 304-B, 34 of the IPC at Police Station Hajipur, District Hoshiarpur, and each of the appellant was sentenced as under:

Offence under	Sentence
Section 304-B IPC	Rigorous Imprisonment for 7 years

FACTUAL BACKGROUND

3. Briefly, the facts are that Sandhya Jyoti-deceased was married to appellant No.1-Raj Kumar on 15.11.2004 and two daughters were born out of this wedlock. On 31.01.2010, daughter of deceased namely, Kanika, disclosed to the complainant (father of deceased), on mobile call, that appellant No.1 had mercilessly beaten her and the deceased. The deceased disclosed to him that about five days ago, Karam Chand- father-in-law, appellant No.3- mother-in-law and appellant No.2-brother-in-law had reached her residence and appellant No.1-husband had given beatings to the deceased at their instance. Later that day, the deceased contacted her brother namely Chander Kant and informed him that she had consumed some poisonous substance (Sulphas) and even fed the same to her daughters due to harassment faced by her, at the hands of her husband. She also disclosed that she had written a suicide note and placed it in the cup of the ceiling fan. On arriving at the residence of the deceased, the complainant found dead bodies of his daughter-Sandhya Jyoti and grand-daughters- Kanika and Manyata lying there.

CONTENTIONS

4. Learned counsel for the appellant/petitioner(s) submits that the 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 the IPC. Moreover, allegations of harassment are not enough to invoke the said provision. Learned counsel further contends that the suicide note is clearly manipulated as it neither bears a date nor the signatures of the deceased. Also, no injury has been proved on the person of the deceased. Furthermore, there are material improvements in the statement of PW1-complainant, father of the deceased as well as PW2-Chander Kant, brother of the deceased that further weakens the case of the prosecution.

5. Further, the marriage between appellant No.1 and the deceased was a love marriage and as such, the question of demanding dowry does not arise. In fact, appellant No.1 and the deceased were living separately from the rest of the family and appellant No.2-brother-in-law and appellant No.3-mother-in-law have been roped in the FIR(supra) merely out of vindictiveness and personal spite, as proved by DW1-Asha Devi, Sarpanch.

6. *Per contra* learned State counsel submits that the harassment meted out by the appellants, has resulted in the death of Sandhya Jyoti and her two minor daughters and as such, they do 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.

OBSERVATIONS AND ANALYSIS

7. Having heard the learned counsel for the appellant/petitioner(s) and perused the record with his able assistance, it transpires that the marriage between appellant No.1 and the deceased- Sandhya Jyoti was solemnised on 15.11.2004 and the alleged incident dates back to 31.01.2010. Therefore, the death of the deceased has occurred within 7 years of her marriage.

8. A perusal of the suicide note (Ex. PB) mentions that the same was written on the 31st and logic dictates that the same pertains to the month of January, when the incident occurred. She has categorically mentioned her husband, mother-in-law and brother-in-law as the culprits. She specifically mentions that the appellants coerced her to ask her father to bring Rs.2,50,000/- for expansion of their business or buy them a vehicle. It further states that she does not want to further trouble her father and, unable to tolerate the behaviour of the appellants, is therefore, ending her life. The suicide note (Ex. PB) was handwritten by the deceased and the same was proved by FSL Report dated 26.02.2010 (Ex. PW9/AA) tendered by Assistant Director, after comparing it with her handwriting on a love letter, she had previously written to her husband. Furthermore, the Chemical Examiner report dated 09.03.2010 (Ex.PW9/BB) states that 'Aluminium Phosphide' insecticide was detected in the viscera of the deceased, which further corroborates the case of the prosecution.

9. The relevant provisions are reproduced below:

Section 304B of the 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 ***Bajnath and others vs. State of Madhya Pradesh(2017) 1 SCC 101*** laid down the ingredients for attracting the offence under Section 304-B of the 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.

xxx xxx xxx

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.

Recently, a two Judge Bench of the Hon’ble Supreme Court in ***Charan Singh @ Charanjit Singh vs. State of Uttarakhand 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

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Section 304-B of the IPC is not 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.”

11. The complainant-Bihari Lal, father of the deceased appeared as PW1 and categorically admitted that the marriage between the deceased and appellant No.1 was a love marriage. The demand of Rs.2,50,000/- was made by appellant No.1, much after the solemnisation of

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their marriage, for the sake of expanding his business. While the harassment caused to the deceased for the same cannot be condoned, the same cannot be reasonably considered a demand for dowry. PW1-Bihari Lal has further confessed that appellant Nos.2 and 3 were residing separately in their ancestral village Dhallan, while the deceased and appellant No.1 lived in rented quarters in PSEB Colony, Hajipur. As a matter of fact, PW1-Bihari Lal has deposed that at his instance, appellant No.3-mother-in-law and her husband had shunned appellant No.1 from the family and broken all relations with him and the deceased. As such, it is evident that appellant Nos.2 and 3 had no involvement in the matrimonial life of the deceased and appellant No.1, owing to their strained relations. Thus, the ingredients to attract the offence under Section 304-B IPC are not made out against the appellants-accused. The relevant part of his testimony reads as under:

“...After marriage, they were residing in the village. Thereafter they started living in the quarters of PSEB colony at Hajipur. Family members i.e. father, mother and brother of my son in law Raj Kumar, turned Raj Kumar out from their house and that is why they started living in said quarters as my son in law was not doing any job.... The accused Krishana Devi, Devinder Kumar was residing however in their ancestral village namely Dhallan.....It is correct that at my instance, the accused Raj Kumar was shunted out from the family. It is correct that on the said account, accused Kurshana and her husband Davinder Kumar had broken their relations with the accused Raj Kumar and Sandhya Jyoti.”

12. However, considering the facts and circumstance of the case, this Court is of the considered opinion that appellant No.1 had abetted the suicide of the deceased. Section 306 and 107 of the IPC read as follows:

Section 306 of the IPC

Abetment of suicide. - *If any person commits suicide, whoever abets the commission of such suicide, shall be punished with*

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 107 of the IPC

Abetment of a thing. - A person abets the doing of a thing, who -
First. - Instigates any person to do that thing; or *Secondly.* - Engages with one or more other person or persons in any conspiracy or the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of the thing; or *Thirdly.* - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. *Explanation 2.* - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

13. Further scrutiny of the statement rendered by PW1-Bihari Lal reflects that on 31.01.2010, he received a telephone call from the deceased but she handed over the phone to her daughter Kanika, who informed PW1-Bihari Lal that appellant No.1 had given beatings to the deceased. Thereafter, the deceased spoke to PW1-Bihari Lal and informed him that appellant No.1 had dragged her from her hair and gave beatings to her. On the same day, at about 5:00 PM, the deceased spoke to PW2-Chander Kant, her brother and informed him that her daughters were dead and she had also consumed some poisonous substance that led to her death. Therefore, it is manifest that the harassment and abuse meted out by appellant No.1, which is in close proximity to the date of said incident, had incited the deceased to die by suicide.

14. A two Judge Bench of the Hon'ble Supreme Court in ***Gangula Mohan Reddy vs. State of Andhra Pradesh 2010(1) SCC 750***, speaking through Justice Dalveer Bhandari, held as follows:

"19. This court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), 2009(4) RCR (Criminal) 196 : 2009(5) RAJ 278 : 2009(11) SCALE 24 had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306 Indian Penal Code there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide"

15. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Mohit Singhal and Another v. State of Uttarakhand and others (2024)1 SCC 417***, speaking through Justice Abhay S. Oka, made the following observations:

"9...Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

10. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before

the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide.”

16. Apparently, charge qua Section 306 IPC was not framed against appellant No.1. However, while dealing with a similar matter, a two Judge bench of the Hon’ble Supreme Court in ***Paranagouda and Another vs. State of Karnataka and another 2024(1) R.C.R(Criminal) 604***, speaking through Justice Aravind Kumar, made the following observations:

“27. Omission to frame charge does not disable the court from convicting the accused for the offence which is found to have been proved on the evidence on record. The code has ample provisions to meet a situation like the one before us. From the statement of charge framed under Section 304B and in the alternative Section 306, it is clear that all the facts and ingredients for framing the charge for offence under Section 306 existed. The mere omission on the part of the trial judge to mention Section 306 IPC with 498A would not preclude this Court from convicting the accused for the said offence when found proved. In the charge framed under Section 304B of IPC, it has been clearly mentioned that the accused has subjected the deceased to such cruelty and harassment as to drive her to commit suicide by self-immolation and as such non-framing of the specific charge would not be fatal in the instant case as no injustice is being caused to the accused.”

CONCLUSION

18. In view of the discussion above, the appeal is partly allowed to the extent that appellant Nos. 2 and 3 are acquitted of the charges framed against them. However, in the interest of justice, the conviction of appellant No.1 is modified and he is held guilty for commission of offence under Section 306 IPC. Accordingly, appellant No.1 is sentenced to rigorous imprisonment of 07 years and fine of Rs.10,000/-, in default of which, he shall further undergo rigorous imprisonment of 06 months.

19. The revision petition bearing no. CRR-3458-2012 is also disposed of in the aforementioned terms.
20. Pending miscellaneous application(s), if any, shall also stand disposed of.

01.05.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>