

CRA-S-1767-SB-2003 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1767-SB-2003 (O&M)

Reserved on: 27.05.2024

Date of Decision:- 21.08.2024

VINOD KUMAR AND OTHERS

.....APPELLANTS

Vs.

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Nikhil Ghai, Advocate
for the appellants.

Ms. Himani Arora, A.A.G., Punjab.

HARPREET KAUR JEEWAN, J.

1. The present Criminal Appeal has been filed assailing the judgment of conviction and order of sentence dated 02.09.2003, passed by the learned Additional Sessions Judge, Barnala, whereby, the appellants have been convicted and sentenced under Section 304-B of the Indian Penal Code, 1860 (for short '*the IPC*') in case FIR No. 74, dated 22.09.2000, registered under Sections 302 and 304-B IPC, at Police Station Bahadur, District Barnala.
2. The appellants have been sentenced to undergo rigorous imprisonment for 07 years and to pay a fine of Rs. 5,000/- each and in default thereof to further undergo rigorous imprisonment for 03 months each.

3. It has been informed that appellant No.2-had already died during the pendency of the appeal on 06.09.2020.

4. As per the facts, on 21.09.2000 the young victim aged about 24 years died due to burn injuries within a period of two years of her marriage. Appellant No.1-Vinod Kumar-husband, appellant No.2-Ramesh Kumar-father-in-law and appellant No.3-Savitry Devi-mother-in-law of the victim have been held guilty of commission of dowry death of the victim.

5. The case was registered at the instance of the father of the victim-Ved Parkash with the allegations that the marriage of his daughter was solemnized in December, 1998. After one month of marriage, the appellants started harassing the victim-deceased on the pretext of dowry. The victim was being pressurized to bring more dowry from her parents and the appellants used to say that victim did not bring sufficient dowry at the time of marriage. A sum of Rs. 11,000/- and clothes were given to the victim-deceased, when she had gone to the house of her in-laws, however, after sometime when she returned back to her parents house, she reported that appellants-accused had raised a demand of a scooter. The complainant was unable to fulfill the said demand and despite that he gave a sum of Rs.20,000/- to his daughter, who handed over the same to appellant No.1-Vinod Kumar. After that in December, 1999, a son was born out of the wedlock and the complainant had borne all the hospital expenses apart from giving a sum of Rs.11,000/- as *shagan* and clothes as a gift. Despite that the husband and his relatives had been harassing the victim saying that she had brought less gifts at the time of birth of her son. Thereafter, a demand of a

maruti car and a sum of Rs.11,000/- for each relative was made by the appellants and the victim was being continuously harassed due to the said demands. The victim used to inform her parents about the said demands. The victim was sent to her parents house. Thereafter, the complainant and his relatives again requested the appellants that they are unable to fulfill more demands and also requested that the victim should be rehabilitated in her matrimonial house. The victim was sent back to her matrimonial home, however, she used to inform her parents that the appellants had been harassing her at the instigation of the Mediator-Kastoori Lal of the marriage. The victim requested her father-the complainant that she should be brought back to Barnala (her parental home), otherwise the appellants will kill her as they were continuously harassing and maltreating her.

5.1 It is alleged that on 20.09.2000, when the complainant along with his wife-Saroj and brother-Kishan Chand was going to village Bhadaur to bring back his daughter, he received a telephonic information that the victim had sustained burn injuries and she had been taken to a hospital in Barnala. On reaching the said hospital, the complainant came to know that the victim had been taken to DMC, Ludhiana. The complainant along with his wife and brother reached DMC, Ludhiana and saw his daughter, who was completely burnt and she succumbed to her injuries after some time. The complainant alleged that Vinod Kumar (appellant No.1), Ramesh Kumar (appellant No.2), Savitry Devi (appellant No.3), Satish Kumar, Seema, Reena, Anubala and Pradeep Kumar have killed the victim by sprinkling kerosene oil and setting her on fire.

5.2 ASI Gurdit Singh on receiving telephonic information about the death of the victim reached the hospital, where he recorded the statement of the complainant (Exhibit PA) upon which, the formal FIR was registered. The inquest report was prepared. The dead body was taken to Civil hospital Ludhiana, where post-mortem examination was conducted. Thereafter, the dead body was handed over to the relatives of the deceased for cremation.

5.3. Remaining investigation was conducted by SI Satwant Singh. He along with ASI Gurdit Singh and other police official visited the house of the accused and found a *Can* (container) containing Kerosene oil and a matchbox, which were found lying at the spot and the same were taken into possession by preparing a memo. A female's pair of *chappals*(slippers) lifted from the spot was also taken into possession. On completion of investigation, final report ('*challan*') under Section 173 of the Code of Criminal Procedure, 1973, was presented before the trial Court. The case was then committed to the Sessions Court for trial on 25.11.2000.

5.4. The trial Court finding a *prima facie* case punishable under Section 302 IPC read with Section 34 IPC thereof, accordingly framed charges against the appellants-accused on 24.01.2001, alternate charges under Section 304-B IPC were also framed. The appellants-accused pleaded not guilty and claimed trial. The trial Court summoned the additional accused under Section 319 Cr.P.C. vide order dated 07.11.2001. The said order was challenged in this Court and the proceedings against the additional accused were stayed by this Court vide order dated 28.11.2001.

However amended charge-sheet was issued to the appellants on 27.07.2002 as some details were missing in the charge-sheet dated 24.01.2001.

6. The prosecution in order to substantiate its case, examined as many as 11 prosecution witnesses.

6.1 **PW-1-the complainant-Ved Parkash**, deposed as per the version given in the statement (Exhibit PA), upon which FIR was registered.

6.2 **PW-3-Saroj Rani, mother of the victim-deceased** also stated as per the deposition of Ved Parkash PW-1. She stated that her daughter was married to Vinod Kumar-appellant on 04.12.1998 and sufficient dowry was given at the time of the marriage. Even thereafter, the accused kept on taunting her daughter for bringing less dowry and started harassing her. Thereafter, on 21.09.2000, her husband and elder brother of her husband received a telephonic message that she has been set ablaze and is lying burnt at the hospital. At about 6 pm, they reached DMC hospital and found that her daughter was badly burnt and immediately thereafter she died.

6.3 **PW-2-Ruldu Ram**, who is resident of Ludhiana and a cousin of the complainant, deposed that on 21.09.2000 at 04:15 p.m. he received a phone call from his brother Ved Parkesh-complainant and he told him that his daughter-victim has been set ablaze. As per his version, he along with Saurp Chand, son of Girdhari Lal (PW6) was present near the emergency gate of DMC, Ludhiana. At about 4:45 pm, the victim was brought in a white Maruti car and she was in burnt condition. He enquired from her about her well being and she told that Kastoori Lal, Ramesh Kumar, Savitry Devi and other accused had set her ablaze for not bringing dowry. While

talking to him, she became unconscious and they took her to emergency ward of DMC, hospital where she succumbed to her injuries at about 6:45 pm.

6.4 PW-6, Roop Chand, who is also a resident of Ludhiana deposed that on 21.09.2000, Ruldu Ram (PW-2), came to his house and they both went to DMC, Hospital, Ludhiana. He has corroborated the statement of PW-2-Ruldu Ram regarding the disclosure made by the victim about her cause of death before she became unconscious.

6.5 PW-9-Dr. U.S. Sooch, Medical Officer, Civil Hospital, Ludhiana, deposed that on 22.09.2000, he conducted the postmortem examination of the dead body of the deceased, aged 24 years. The cause of death was shock due to extensive flame burns which were sufficient to cause death in ordinary course of nature. He has also stated that the smell of kerosene oil was present in the scalp of the hair. He found the following injuries on the dead body:

1. Superficial to deep burns were present all over the body, except on the antero lateral aspect of the right leg right foot, and sole of the both feet were spared.
2. The scalp hair were partially singed.
3. Waist line was also spared.
4. Facial hair and body hair were also signed.
5. A few blister formation was present and black soot was present in the respiratory track.

In the cross-examination, he stated that at the time of receipt of fire, the victim may be in a sitting or standing position. The possibility of receipt of injuries by the victim on account of accidental fire, while working on a gas

burner or stove could not be ruled out. He also stated that there was no sooty blackening on the dead body. However, he denied the suggestion that in case of kerosene oil burning, sooty blackening is always there on the body.

6.6 PW-11, Doctor Mandeep Singh Bhango, Resident Surgery Department, DMC, Ludhiana, deposed that on 21.09.2000 at about 05:11 p.m., the victim was brought to the hospital and she was admitted to the said hospital. The victim was brought by her father-in-law-Ramesh Kumar. The alleged history of victim having sustained flame burns at Village bhadaur and victim having complaints of excessive thrust and respiratory distress was given.

On examination, the patient was found to have approximately 85-90% third degree burns. The respiratory distress was due to burns. The witness also proved the medico legal report and the bed head ticket of the victim (Exhibit PM). He further deposed that as per the admission history and on examination the following observations were made:

1. right lateral aspect of leg with foot was spared.
2. Scalp with hair spared.
3. Genital area spared and from this my clinical impression was that the patient was having 85 to 90% third degree burns.

He deposed that the patient had sudden cardio respiratory thrust and could not revive. The patient was declared dead on 21.09.2000 at 6:55 P.M., as per the death note.

In the cross examination, he stated that the patient was having history of psychiatric disorder. The kerosene oil burning caused sooty blackening. There was no kerosene oil smell on the body of the patient.

Genital areas and head were spared with burns. According to the history, the patient was receiving treatment in the form of Tablet Mazetol and Capsule Fludac. He also gave opinion that the said medicine is administered to the patient having epileptic disorder. Such like patient if having epileptic stroke while suffering or sitting near stove can suffer injuries accidentally like in this case. The patient was not conscious.

6.7 **PW-4, Swaran Singh, Head Constable, Police Station Dhanaula**, is a formal witness and has submitted his affidavit Exhibit PB. He deposed that the case property was received back with objections and that the seals on the parcels were in broken condition, therefore, the same were kept by him in the '*Malkhana*' and the investigating officer removed the objections.

6.8 **PW-5, Dev Raj, Draftsman**, deposed that a scaled map (Ex. PC) was prepared by him at the instance of Madan Lal. The measurements were conducted at the spot and a site plan was prepared.

6.9 **PW-8 Gurdit Singh, ASI, Police Station Mehal Kalan**, deposed that on 22.09.2000, he received a phone call and was asked to conduct proceedings at DMC, Ludhiana, in respect of the deceased who was burnt. As per the statements of the complainant Ved Parkesh, his wife Saroj and Kishan Chand, an FIR (Ex. PA/2) was recorded and thereafter, the dead body was identified by Kishan Chand and Madan Lal and inquest report of the dead body (Ex. PF) was prepared by him and it was handed over to Ranjit Singh, Head Constable for taking the same to Civil Hospital, Ludhiana, for conducting postmortem examination.

6.10 PW-7, **Inspector Satwant Singh, In-charge Anti Fraud Staff, Mansa**, deposed that on 22.09.2000 the site was inspected by him at the instance of Ashok Kumar and a site plan Ex. D was prepared. One *Can* (container) containing 2 liters kerosene oil, one matchbox containing sticks, some burnt clothes, a pair of lady '*Chapals*' were lifted from the spot. They were converted into separate parcels and were sealed which were taken into possession vide Ex. PE. On 23.09.2000, the accused were searched but were not found. Thereafter, on 25.09.2000, one Mela Ram produced the appellant-accused before him, who were then arrested. On 28.10.2000 again statements of Ruldu Ram and Roop Chand were recorded.

6.11 PW-10, **Constable Tara Singh, Police Station Kot, Barnala**, was a formal witness who has tendered his affidavit (Ex. PJ) as part of his statement.

6.12 As per the Forensic Science Laboratory Report (Ex P10), the liquid in the iron *Can* is kerosene and the matchsticks in the matchbox contained in parcel 3 are flammable (ignitable).

7. On completion of evidence of the prosecution, statements of the accused as required under the provisions of Sections 313 Cr.P.C. were recorded, wherein they denied allegations against them and pleaded their false implication. The accused filed written statement of defence.

7.1 The appellant No.1-Vinod Kumar took a defence that the victim got accidental burn injuries while working on gas stove under the fit of epilepsy. She was shifted to hospital by him along with his relatives and intimation was given to the parents of the victim. The complainant party

demanded a sum of Rs.3 lakhs after the death of the victim, which they were unable to pay, as such with due deliberations, the FIR was got registered.

7.2 The appellant No.2-Savitry Devi took a defence that the appellant No.1-Vinod Kumar and the victim were residing separately after their marriage. She was admitted in the hospital from 20.09.2000 to 23.09.2000.

8. The accused-appellants also examined 08 defence witnesses to support the case in their favour.

8.1 **Dr. Tarzan Kumar, Medical Officer, Dental, Barnala, (DW-1)** deposed that on 21.09.2000, i.e. the date of occurrence, the accused Ramesh Kumar came to the hospital as OPD patient and he prescribed medicines to him as per prescription slip (Ex. BB). The OPD register was brought by him in Court.

8.2. **Jarnail Kaur, Clerk, Civil Hospital, Barnala (DW-2)**, brought the record regarding the deposit of Rs. 2,500/- for D-pharmacy of appellant No.1-Vinod Kumar.

8.3 **Sheetal Kumar (DW-3)**, deposed that a LPG connection/Consumer No. BG-9830 is there in the name of the appellant No.1-Vinod Kumar, as per the passbook (Ex. DE). A consumer pass-book in favour of the appellant No.1-Vinod Kumar has also been issued as per his deposition.

8.4. **Sandeep Garg, Prop. Garg Hospital, Main Bazar, (DW-4)**, identified the accused-Savitry Devi (appellant No. 3) in the Court. As per his statement, she remained admitted in his hospital from 20.09.2000 to 23.09.2000 on account of heart disease. He proved the prescription slip Ex.

DF and also brought the indoor record of Savitry Devi.

8.5 **Dr. Sandeep Kumar, Mano Disha Hospital, Barnala (DW-5)**, deposed that Neha Garg (victim) was brought to his hospital on 01.03.2000. As per the brief history of the victim-deceased noted in the OPD file maintained by him, there was a provisional diagnosis that she was a patient of epilepsy. He further deposed that he prescribed medicines for the victim for epilepsy as per the OPD record (Ex. DG) and made entry in the prescription register (Ex DG/1). In the cross-examination, he stated that neither before 01.04.2000 nor thereafter, the victim ever came to his hospital. As per his opinion, the deceased was a patient of epileptic fits.

8.6. **Dr. OP Arora, Managing Director, Arora Neuro Centre, The Mall, Civil Lines, Ludhiana (DW-7)** stated that he is a senior consultant neurologist. As per the statement, on 26.08.2000, Neha (victim) came to the said centre as an OPD patient being referred by Dr. Raj Kumar. He stated that the prescription slip (Mark A) is under his signature and photocopy bears his signature too. The medicine prescribed by him are of epilepsy and to care depression. In the examination-in-chief, he explained that G.T.C. (Generalised Tonicclonic seizure), which is one of the variety of epilepsy. In the cross-examination he stated that OPD record is handed over to the patient.

8.7 **Dr. TN Shatnangi, Satluj Hosptial Ludhiana (DW-8)**, stated that he is a neuro surgeon. On 26.08.2000, he examined Neha (victim) as she was suffering from epilepsy and he prescribed medicines as per the prescription slip (Mark B). In the cross-examination, he stated that the

original prescription slip was handed over to the patient.

8.8. **Rattan Chand, Ex. Municipal Councillor of M.C. Bhadur (DW-6)**, deposed that he is the neighbourer of the appellant. As per his statement, after the marriage of the deceased with appellant No. 1, their relations were cordial. They had also gone to Hilly place. He stated that as per his knowledge, the deceased was suffering from the disease epileptic fits. Appellant No. 1 (husband of the deceased) used to get her treated from Barnala and Ludhiana.

9. The trial Court convicted the appellants under Section 304 IPC and sentenced accordingly as aforesaid however it was observed that the alternate charge to Section 302 IPC is not proved.

9.1 While discarding the contentions on behalf of the defence with regard to delay, the trial Court observed that the delay stands explained. The victim had sustained burn injuries on 21.09.2000 at about 2/3:00 pm. As per the version of the complainant, he received telephonic message that her daughter was being shifted to Civil hospital, Barnala due to burn injuries received by her. The complainant along with his brother and other relatives had gone to Civil hospital, Barnala but as per their version, the victim was not brought to the said hospital and she was shifted to DMC, Ludhiana. Thereafter, the complainant along with other relatives had gone to DMC, Ludhiana and they were present there at 6:00 pm. At about 7:00 pm, the victim had expired. As per the version of the complainant-Ved Parkash, he had telephonically informed the police and on 22.09.2000 in the morning, the police had come to DMC Ludhiana, where statement of Ved Parkash

was recorded at 10:20 am. The trial Court disbelieved the defence version that delay occurred on account of the fact that the complainant party was demanding Rs.3 lakhs and the FIR was got registered since the said demand was not fulfilled. The trial Court observed that the accused could have brought the matter to the notice of the police if the actual cause of death was accidental catching of fire from the stove.

9.2 The appellants were not held guilty under Section 302 IPC on the ground that the prosecution evidence is not believable that victim made dying declaration before PW-2-Ruldu Ram and PW-6-Roop Chand. The trial Court observed that testimony of PW 2-Ruldu Ram is not believable that the victim became unconscious after making dying declaration as there is no report of the doctor that victim was in a position to make dying declaration since there were 85-90 % burn injuries. It was also observed that there was no plausible explanation as to why before 28.09.2000, PW-2-Ruldu Ram and PW-6-Roop Chand did not disclose about the dying declaration having been made by the victim.

9.3 The trial Court while holding the appellants guilty under Section 304 IPC believed the testimony of PW-1-Ved Parkash, the father of the victim and PW-3-Saroj Rani, the mother of the victim with regard to harassment of the victim on account of bringing dowry. The trial Court also observed that the victim was married in December 1998. Immediately, after the marriage the victim died unnatural death that too in the house of her in-laws. The trial Court also took note of the fact that a *Can* containing kerosene oil was recovered from the spot. The victim was hail and hearty

and she was not suffering from any disease, as such there was no other reason to commit suicide except on account of harassment in connection with demand of dowry.

9.4 The trial Court disbelieved the defence version that the victim caught accidental fire while working on a stove being a patient of epilepsy on the ground that the defence version is not plausible. The record produced by Dr. Tarzan Kumar, DW-1 regarding medical condition of the patient was disbelieved on the ground that the original record was not produced and there was incomplete address of the patient in the said record. It was also observed that there are no identification marks of the patient noted in the said record. The trial Court was also of the view that in case the victim was actually suffering from epilepsy then there should have been a regular treatment which is missing. It was also observed that as per the said record, the patient did not visit the Doctor after 01.04.2000. Another objection was raised that there were no reports of laboratory tests having been done.

9.5 The trial Court also disbelieved the defence version that appellant No.3-Savitry Devi was admitted in a private hospital w.e.f. 20.09.2000 to 23.09.2000. It was observed that the said documents were manipulated to avoid punishment.

10. Assailing the aforesaid findings and the order of sentence, the present appeal has been filed by the appellants.

11. Learned counsel for the appellants contends that there are no specific allegations against the appellant No.3-Savitry Devi, who is mother-

in-law of the victim. PW-1-Ved Parkash and PW-3-Saroj Rani, parents of the deceased have not levelled any specific allegations against appellant No.3-Savitry Devi with regard to the demand of dowry or with regard to any other allegations. There are only general allegations levelled against the appellant No.3-Savitry Devi, as such merely on the ground of general allegations the testimony of the said witnesses is not maintainable against appellant No.3-Savitry Devi. The conviction recorded by the trial Court convicting appellant No.3-Savitry Devi is not sustainable merely on conjecture. It is contended that she has been falsely implicated merely being a relative of the husband of the deceased. It is alleged that she was not even present at the spot as she was hospitalized.

12. Learned counsel for the appellants further contends that the prosecution has failed to establish the existence of proximate and live link between the death and the alleged cruelty of harassment for dowry demand, as such the ingredients of Section 304 IPC are not proved. As per the testimonies of the prosecution witnesses, there were no demands of dowry or harassment after May, 2000 and there is a gap of almost 5 months after which, the fire incident took place and the victim had died. Hence, it cannot be presumed that the death was on account of harassment on demand of dowry. Even in such circumstances, the presumption under Section 113-B of the Indian Evidence Act, 1872 cannot be raised, since the basic ingredients of Section 304 IPC are not proved. Learned counsel for the appellants further contends that neither there is a dying declaration made by the victim nor she has laid any suicide note. Reliance was also placed upon

the decision of Hon'ble Apex Court in *Hira Lal and others vs. State (Govt. of NCT), Delhi* in *Criminal Appeal No.825 of 2002* decided on 25.07.2003 and *Bhola Ram vs. State of Punjab* in *Criminal Appeal No.1022 of 2008* decided on 11.11.2013.

13. Learned counsel for the appellants further submits that the deceased died an accidental death when she was working with a stove in the kitchen. The deceased was a patient of epilepsy and she used to get fits. By raising the said contentions, learned counsel for the appellants made reference to deposition of PW-11-Doctor Mandeep Singh Bhango, who has stated that victim was brought by Ramesh (father-in-law of the victim) in the hospital and the patient was alive. Learned counsel for the appellants further submits that in the cross-examination, the doctor (PW-11) has stated that patient was having history of psychiatric disorder. Doctor (PW-11) has further testified that kerosene oil cause sooty blackening but in the present case there was no sooty blackening. The witness has further testified that according to the history of the victim, the patient was receiving treatment in the form of tablet Mazetol and capsule Fludac. He has further testified that this medicine is administered to patient having epileptic disorder and such like patient having epileptic strokes while working or sitting near the stove *Can* suffer injuries like burns. Reference to testimony of DW-5, Dr. Sandeep Kumar has also been made who has stated that the victim was the patient of epileptic fits.

14. On the other hand, learned State counsel contends that conviction and sentence to the appellants has been rightly recorded by the

trial Court and there are no grounds of setting aside the order of conviction.

15. Learned State counsel further contends that the victim made an oral dying declaration before her father-Ved Parkash (PW-1) and the said dying declaration is in the nature of declaration made to a private person, soon before her death. Learned State counsel further contends that there is no medical record of the victim having any history of epilepsy. There is no authentic medical record to prove that the victim was suffering from epilepsy or that she was on long treatment for the said reason. Learned State counsel submits that even a kerosene box-*Can* was recovered from the spot by the Investigating Agency.

16. Mr. H.S. Randhawa, Amicus curiae appearing on behalf of the complainant, contends that the conviction recorded by the trial Court is justified in view of the evidence on record. He further contends that the reduction in the sentence of the appellants to what has been awarded by the trial Court would not justify in view of the facts and circumstances of the case, as the death of the victim took place within 2 years of her marriage and that too in her matrimonial home. He has made reliance upon the judgments of Hon'ble Apex Court in ***Raj Bala vs. State of Haryana and others*** in ***Criminal Appeal Nos.1049-50 of 2015*** decided on 18.08.2015 and ***State of A.P. vs. Kuna Satyanarayana*** in ***SLP (Cr.) 1365/1998*** decided on 14.09.1998.

17. I have considered the aforesaid contentions and perused the paper-book.

18. The first set of evidence has been led by the prosecution by

way of examining PW-2-Ruldu Ram and PW-6 Roop Chand, in order to establish that the victim had made a dying declaration before the said witnesses soon before her death and thereafter she became unconscious. On the basis of the testimony of the said witnesses, the prosecution made an attempt to prove the charge under Section 302 IPC.

19. I have gone through the reasons recorded by the trial Court, while discarding the aforesaid evidence. The reasons recorded by the trial Court are based on the facts and circumstances of the case. Moreover, it is highly improbable that the car would stop on the gate of the hospital and the victim would make a statement in the shape of a dying declaration before the said witnesses when the victim was having about 90% burn injuries and was taken to hospital in a car. All endeavors are usually made by the relatives to ensure that the injured in such a state reaches to the medical facilities immediately and it is highly improbable that the car carrying the victim could have been stopped at the gate of the hospital. Moreover, the said witnesses never reported about any such dying declaration having been made by the victim for more than one month, when their statements under Section 161 Cr.P.C. were recorded on 28.10.2000. In view of the reasons recorded by the trial Court and on the basis on the evidence on record, the first theory propounded by the prosecution that a dying declaration was made by the victim before the said witnesses has been rightly discarded by the trial Court.

20. No doubt the burden is on the prosecution to prove its case beyond shadows of doubt, however I have also examined the defence

version. A categorical defence has been taken on behalf of all the appellants that the deceased was working on a stove in the kitchen. She was a patient of epilepsy and she used to get fits and she died an accidental death while working with the stove in the kitchen.

21. I have considered the said version. Though there is an indication on record that the deceased was taking some medical treatment, the deceased victim was hospitalized with 85-90% third degree burns and she was brought to the hospital by her father-in-law. PW-1-Ved Parkash had testified that history of psychiatric disorder had been recorded in the hospital notes. The defence has also relied upon the testimony of DW-5 Dr. Sandeep Kumar, who has stated that there was provisional diagnosis that the victim was a patient of epilepsy. The testimony of DW6-Rattan Chand, Ex. Municipal Councillor of M.C. and the testimony of DW-7-Dr. O.P Arora has been relied upon to prove that the victim was a patient of epilepsy.

21.1 Despite the said evidence on record, I am of the considered opinion that defence version is highly improbable that the death was on account of an accident while working in the kitchen on a stove. Firstly, no stove was recovered from the spot. No suggestion had been given to the Investigating officer PW-8 Gurdit Singh, ASI that the place of occurrence was the kitchen or that any stove had not been intentionally recovered from the spot by him. Secondly, it has also been noticed that a rough site plan (Exhibit PD) was prepared by the Investigating Officer in which Mark 'A' has been shown the place from where the burnt clothes were collected;

Mark 'B' is the place from where a *Can* containing about 2 liters of

kerosene oil was recovered; Mark 'C' is place from where a matchbox containing a stick was recovered and Mark 'D' is place from where a pair of slippers was recovered by the Investigating Agency.

22.2 Exhibit PC is scaled site plan prepared by PW-5, Dev Raj, Draftsman. The said site plan clarifies the position. The portion shown as Marks 'A', 'B', 'C' and 'D' in the rough site plan (Exhibit PD) are also shown in the said scaled site plan (Exhibit PC). As per the scaled site plan, there is ground floor in the house, which is having a hall room, courtyard, a room, a passage and apart from this, a washroom and a kitchen, however the place of occurrence has been shown on the first floor, which is having a *kachha* terrace, a room, a bathroom and a toilet (flush). There is no kitchen shown in the said site plan on the first floor. As per the site plan (Exhibit PC), no occurrence took place on the ground floor where there is kitchen. The place of occurrence is first floor. The victim was residing on the first floor and even no recovery of any stove, Gas or kitchen articles or cooked or uncooked food is effected from the first floor of the house.

22.3 In view of the attending circumstances on record and the aforesaid discussion, I am of the considered opinion that the trial Court has rightly discarded the defence evidence that the death of the victim was on account of accidental fire while working in the kitchen on the stove.

22.4 Though there is an indication on the basis of the defence evidence that the victim at some point of time had taken the treatment for epilepsy but there are no attending circumstances on record that it was an accidental fire and the victim fell on the stove due to epileptic attack. As per

the testimony of PW-9-Dr. U.S. Sooch, there were superficial deep burns present all over the body, except on the antero lateral aspect of the right leg, right foot, and sole of each of the foot, which were spared. As per the testimony of PW-11, Doctor Mandeep Singh Bhango, who was the first doctor to treat the victim, the scalp of hair were spared.

22.5 From the circumstances on record, no inference can be drawn that the victim had a fall on the gas stove accidentally as her scalp of hair were even spared as per medical evidence.

23. It is also observed that there is neither any direct evidence nor any circumstantial evidence to conclude that the victim was killed by setting her on fire. As such, the findings recorded by the trial Court acquitting the appellants under Section 302 IPC is factually and legally correct and requires no interference.

24. From the facts and circumstances and evidence on record, it transpires that it was a suicide. The victim was not working in the kitchen. The death occurred on the first floor of the house. The PW1-Ved Parkash, the father of the victim has admitted this fact that the bed (room) of Vinod Kumar (appellant no.1) and his daughter (victim) used to be on the first floor (chaubara). Even as per the statement of the Investigating Officer, the incriminating material i.e. match box and the *Can* containing kerosene was recovered from the first floor. A pair of slippers (*chappal*) and burnt clothes were also recovered from the first floor of the house.

25. The attending circumstances on record indicate that the husband (appellant No.1)-Vinod Kumar and mother-in-law Savitry Devi

(appellant No.3) were not present in the house at the time of occurrence. Trial Court has committed an error while disbelieving the testimony of PW1 Dr. Tarzan Kumar, Medical Officer, Civil Hospital, Barnala. The testimony of the said Doctor, that appellant No.1 Vinod Kumar was attending the call of a dentist on 21.09.2000 is believable in view of the fact that it is further corroborated by a documentary evidence. There is an entry in the OPD register which was maintained by the said Govt. Hospital and has been proved as Ex. DC. Apart from this, there is a deposit of Rs.2500/- by appellant No.1 Vinod Kumar for the said treatment in the pharmacy which has been proved by the testimony of DW-2 Jarnail Kaur, Clerk of the said Hospital. The said entries could not have been manipulated as they are being maintained by a Govt. Hospital in routine course of their working.

26. Similarly, the testimony of DW-4 Dr. Sandeep Garg, Prop. Garg Hospital has been wrongly disbelieved by the trial Court. The said witness has proved that the mother-in-law of the victim namely Savitry Devi (appellant No.3) was hospitalized a day prior to the alleged occurrence.

27. The non-presence of the husband and mother-in-law of the victim is corroborated by the fact that the victim was taken to the hospital by her father-in-law Ramesh Kumar (since deceased) and this fact has been further corroborated by PW-11-Doctor Mandeep Singh Bhango and by the entry in the bed head ticket/hospital records as Ex.PM. PW-11-Doctor Mandeep Singh Bhango has categorically stated that the victim was admitted in the hospital at 5:11 p.m. under his supervision in casualty Deptt.

DMC Hospital, Ludhiana and the victim was brought by Ramesh Kumar, her father-in-law. On the aforesaid evidence on record, it transpires that the victim was alone in the house. The husband had gone to the hospital for his dental treatment. The mother-in-law was admitted in the hospital a day prior to the incident. There is an indication that the victim was having history of a medical issue and also took treatment for epilepsy at some point of time. In such circumstances, the following questions arise for determination:-

1) As to whether the victim had committed suicide on being harassed for demand of dowry and it was a dowry death?

2) As to whether the victim had committed suicide having been abetted by her husband and his family members?

28. I have scanned the evidence as well as the findings arrived at by the trial Court.

29. With regard to Section 304 IPC for determination which deals with the dowry death, reads as follows:-

"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 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."

30. The provisions of Section 113-B of the Evidence Act is also relevant which 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 purposes of this section 'dowry death' shall have the same meaning as in [Section 304-B](#) of the Indian Penal Code (45 of 1860)."*

31. No doubt the provisions of Section 304-B IPC are attracted in such cases where death of a woman occurs by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage but in order to attract the application of Section 304-B IPC, the essential ingredients are as follows:-

"(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.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death”

32. The Hon’ble Apex Court in **Hira Lal Vs. State (Govt. of NCT)**, Supra while dealing with the provisions of Section 304-B IPC and Section 113-B of the Evidence Act has held that there must be material to show that soon before her death the victim was subjected to cruelty or harassment, the Hon’ble Apex Court held as under:-

“A conjoint reading of [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or

harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under [Section 113-B](#) of the Evidence Act. The expression 'soon before her death' used in the substantive [Section 304-B](#) IPC and [Section 113-B](#) of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in [Section 114](#). Illustration (a) of the [Evidence Act](#) is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or

harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.”

33. In the ratio of the aforesaid decision, I have examined the evidence on record. Though, PW-1 Ved Parkash, the father of the victim has stated that there was demand of dowry after the marriage but it has been noticed that he has not given any specific instances when the said demand was made. As per his deposition, sufficient dowry was given at the time of marriage. However, he has not given details of the said dowry articles. He has alleged that one month later, the harassment started and a sum of Rs.11,000/- was paid along with some clothes. Thereafter, there was a demand of scooter and he paid a sum of Rs. 20,000/-. He further stated that in December 1999, a male child was born. He paid a sum of Rs.11,000/- and gave some clothes but still there was demand of a Maruti car.

34. There is nothing on record to suggest that at any point of time any relative did assemble to discuss the issue of said demands or any panchayat was convened. PW-3-Saroj Rani, mother of the victim has stated in the cross-examination that her daughter was never deserted by the accused. They never took panchayats to the house of in-laws of her daughter. PW-1 Ved Parkash, the father of the victim has stated that during the course of investigation, no dowry articles were recovered. He has also

testified that after the marriage, appellant No.1-Vinod Kumar and his daughter came to their house 8 to 10 times together. Sometimes they used to stay for night but usually they used to return back in the evening. They have also visited the house of the accused twice or thrice. He has also admitted that after the birth of the child, appellant No.1-Vinod Kumar had taken his daughter to his house. The aforesaid circumstances indicate that the parents were visiting the house of the victim and even the victim and appellant No.1-Vinod Kumar were visiting the house of the complainant. There is no prior instance of any discord inter se the husband and wife.

35. Both the parents of the victim are material witnesses. They have not pointed out any incident soon before the alleged occurrence which could have triggered the victim to commit suicide. Neither any demand of dowry is alleged to have been made soon before the occurrence nor any other such act or omission has been pointed out from which a conclusion can be drawn that the victim was being harassed or driven to such circumstances whereby she had to take such a drastic step of committing suicide.

Therefore, the basic requirement of cruelty or harassment soon before the death to bring the case within the ambit of Section 304-B IPC is absent.

36. I have also considered the question as to whether a case under Section 408-A IPC has been made out. Section 408-A IPC reads as under:-

"498-A: Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be

punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation – For the purpose of this section 'cruelty' means –

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

37. The oral testimony of the parents of the victim that the victim was being harassed for demand of dowry is not believable in view of the attending circumstances. The 'Cruelty' of such a grave nature driving a woman to commit suicide has not been proved. The victim used to visit her parental home along with the husband. The victim gave birth to a male child. She was taken back to her matrimonial home. No panchayats were ever convened. No relatives were assembled. The victim used to reside separately on the first floor of the house with the husband, though the kitchen used to be common on the ground floor as per the site plan. In the absence of a strong evidence, reflecting that the victim was subjected to cruelty which drove her to commit suicide is not proved on record.

38. I have also considered the question as to whether the appellants

have abetted the commission of suicide by the victim.

39. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for 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 that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.

40. Section 306 IPC deals with the abetment to suicide, which provides that if any person commits suicide, whosoever 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.

41. The Hon'ble Apex Court, while dealing with the legal position as regards Section 306 IPC, in the case of **"Amalendu Pal @ Jhantu versus State of West Bengal"** ; 2010(1) SCC 707, held that in order to bring a case within the purview of Section 306 of the Indian Penal Code, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must play an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. The observations by the Hon'ble Apex Court read as under:-

"xxx xxx xxx xxx"

12. At the outset, we intend to address the issue regarding the applicability of Section 306 Indian Penal Code in the facts of the

present case. Section 306 deals with abetment of suicide and Section 107 deals with abetment of a thing. They read as follows :

"306. 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.

107. 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 for 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 that 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. The legal position as regards Sections 306 Indian Penal Code which is long settled was recently reiterated by this Court in the case of Randhir Singh v. State of Punjab, 2004(4) RCR (Criminal) 740: 2004(3) Apex Criminal 683 : (2004) 13 SCC 129 as follows in paras 12 and 13 :

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 Indian Penal Code.

13. In State of W.B. v. Orilal Jaiswal this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences

were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

14. Further in the case of Kishori Lal v. State of M.P., 2007(3) RCR (Criminal) 385 : 2007(3) RAJ 613 : (2007)10 SCC 797, this Court gave a clear exposition of Section 107 Indian Penal Code when it observed as follows in para 6:

"6. Section 107 Indian Penal Code defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in Indian Penal Code. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished

with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

[See also Kishangiri Mangalgiri Swami v. State of Gujarat, 2009(1) RCR (Criminal) 947 : 2009(1) RAJ 675 : (2009)4 SCC 52]

15. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 Indian Penal Code, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 Indian Penal Code is not sustainable.

16. In order to bring a case within the purview of Section 306 of Indian Penal Code there must be a case of suicide and in the commission of the said offence, the person who is said to have

abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 Indian Penal Code.

17, The expression 'abetment' has been defined under Section 107 Indian Penal Code which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 Indian Penal Code. Section 109 Indian Penal Code provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence.

xxx xxx xxx xxx”

42. The Hon'ble Apex Court in **“Naresh Kumar vs. State of Haryana” ; 2024 (2) R.C.R. (Criminal) 286**, observed that if there has been any clinching offence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. It was further observed that a person intends a consequence when he (i) foresees that it will happen if the given series of acts or omissions continue, and (ii) desires it to happen.

43. Considering the evidence on record that the husband-Vinod Kumar was not present at home at the time of alleged occurrence. Even the mother-in-law of the victim was hospitalized. The material witnesses PW-1-Ved Parkash, the father of the victim and PW-3-Saroj Rani, the mother of the victim have not stated anything that the appellants had done any act or illegal omission intentionally which aided the commission of suicide by the victim or that the appellants have instigated the victim to commit suicide. As such, even the essential ingredients of Section 306 IPC are not proved.

44. It is well-settled that prosecution has to prove the case against the accused beyond the shadow of doubt. In the present case, there is an indication that the victim was taking some medication for treatment as per medical evidence. Appellant No.2-Ramesh Kumar, father-in-law of the victim had informed immediately on reaching the hospital that the victim was receiving the treatment in the form of Tablet Mazetol and Capsule Fludac. This fact has been proved by the testimony of PW-11, Doctor Mandeep Singh Bhango, DMC, Ludhiana, who has also stated that the patient was having a history of psychiatric disorder and this fact is recorded in the history of the patient that she was receiving treatment in the form of tablets. Apart from this, defence witnesses Dr. Sandeep Kumar (DW-5), Dr. OP Arora, (DW-7) and Dr. TN Shatnangi, (DW-8) have proved that the victim was suffering from epilepsy and she had been treated by them at some point of time for the said disease. Dr. OP Arora, (DW-7) has categorically stated that the medicines prescribed by him are of epilepsy and to cure depression.

45. The entire evidence on record indicates that the victim was alone in the house, she was suffering from epilepsy and depression. There is nothing on record that she was on regular treatment though she had been taking treatment at some point of time. There is nothing on record to suggest that her depression was treated properly, so the circumstances tilt towards the commission of suicide by the victim being under depression. There is a substantial dent to the prosecution story and the testimony of the parents of the victim does not inspire confidence that there were any dowry demands or that the victim was abetted by the appellants to commit suicide. As such, the findings arrived at by the trial Court are liable to be set aside. There is no evidence on record to prove beyond the shadow of doubt the guilt of the appellants-accused under Section 304-B IPC. As such, the findings arrived at by the trial Court convicting and sentencing the appellants accordingly are liable to be set aside.

46. In view of the above, the present criminal appeal is allowed and judgment of the trial Court convicting and the order of sentence awarding the sentence under Section 304-B IPC are set aside.

21.08.2024

Janki

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking : Yes/No

Whether Reportable : Yes/No