

2024:PHHC:077672-DB



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

CRM-A-405-2024 (O&M)

Reserved on 20.05.2024

Pronounced on: 30.5.2024

ANKIT

...Appellant

Versus

STATE OF HARYANA & ORS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present:- Mr. Saurabh Dalal, Advocate for applicant-appellant.

SUDHIR SINGH, J.

The present application seeking leave to appeal is directed against the judgment dated 20.11.2023 passed by learned Additional District and Sessions Judge, Fast Track Court, Sonipat, whereby respondents No.2 and 3 have been acquitted of the charges framed against them, by extending them benefit of doubt.

2. As per the prosecution case, on 24.07.2021, the police party upon receiving a telephonic message, went to Sethi Hospital, Kharkoda, where the complainant-Ankit (cousin of deceased-Ekta) gave a complaint to the police stating therein that Ekta, his elder uncle's daughter, was married to Deepak son of Joginder, resident of Pipli District Sonipat on 15.01.2021. It was further alleged that after a few days of marriage, her husband started harassing her for bringing insufficient dowry and he used to give her beatings and that when on the occasion of Holi, he went to the house of his cousin sister, Ekta, she had

narrated him the entire incident. It was further alleged that he had assured in-laws of his cousin sister that he would fulfill their demand after receiving payment of wheat crops, but despite that her in-laws continued torturing her. It was further alleged that parents of Ekta had also tried to console her in-laws, but later on they came to know that Ekta had committed suicide due to mental and physical harassment caused by her in-laws.

On receipt of the said complaint, a formal FIR was registered; proceedings under Section 174 Cr.P.C. were initiated; post mortem of the deceased was got conducted; samples of Viscera etc. were obtained and after that the dead body was handed over to her relatives.

3. During investigation, respondents No.2 and 3 were arrested and they had suffered their disclosure statements. However, during investigation accused Diksha and Joginder were found innocent and proceeding against them were dropped.

4. On the basis of report under Section 173 Cr.P.C., charges were framed against the accused under Section 304-B IPC. The accused were charge-sheeted vide order dated 05.01.2022 to which they pleaded not guilty and claimed trial.

4. During trial, the prosecution examined as many as 15 witnesses i.e. PW-ASI Inderpal Draftsman, PW-2-Dr. Arindam Chatterjee, Medical Officer, PW-3-Ankit, PW-4-Ashish, PW-5-Krishan Kumar, PW-6-Lady Head Constable Reena, PW-7-Dr. Gaurav Kumar, Medical Officer, PW-8-Head Constable Pardeep, PW-9-Sub Inspector Daljeet Singh, PW-10-SI Shri Niwas, PW-11-Raju, PW-12-SI Vijaypal, PW-13-EHC Anand, PW-14-Ram Niwas and PW-15-Head Constable Sandeep Kumar. All the incriminating circumstances were put to the accused, who in his statements under Section 313 Cr.P.C. pleaded false

implication, but no evidence in defence, was led by them. After conclusion of the trial, the learned trial Court, acquitted the accused, as noticed above.

5. The grounds considered by the trial Court for acquittal of the accused are as follows:-

“1. The case of the prosecution suffers from several infirmities and there are huge contradictions in the statements of the prosecution witnesses on the material points.

2. On the basis of deposition of PW-2- Dr. Arindam Chatterjee, the cause of death was ante-mortem hanging, which indicated that it was an unnatural death. But, the prosecution has failed to establish that it was a dowry death, though the death had taken place within seven years of the marriage.

3. PW-3-Ankit, the complainant though stated that his cousin sister (deceased) was being harassed on account of bringing insufficient dowry yet no time, dates or instances, were mentioned by him and his testimony was also not corroborated by other evidence.

4. The presumption under Section 113-B was there against the accused, but the prosecution failed to spell out the ingredients of the offence.

5. The prosecution has failed to bring home the guilt on the part of the accused that they had subjected the deceased to cruelty before her death on the pretext of demand of dowry.

6. The deceased was seven months pregnant at the time of her death, but her marriage took place only six months prior to the alleged incident. Thus, in the face of the marriage being six months old, the pregnancy of seven month could not be explained by the prosecution. Moreover, no suicide note was left by the deceased.”

6. Being aggrieved against the impugned judgment of acquittal, the complainant has filed the present application seeking leave to appeal against the accused-respondents.

7. Learned counsel for the applicant has vehemently contended that admittedly the death of the deceased took place within seven years of her marriage and the complainant had specifically mentioned in the FIR that his cousin sister (deceased) was being subjected to cruelty and harassment on account of bringing insufficient dowry. He, thus, submits that this being the position, the presumption under Section 113-B of the Evidence Act, was against the accused-respondent and as they did not lead any evidence, the said presumption has never been rebutted. It is, thus, argued by learned counsel for the applicant that the entire approach of the learned trial Court in ignoring the said material aspect of the case, is untenable in the eyes of law.

8. It is further argued by learned counsel for the applicant that as per the testimony of PW-2-Dr. Arindam Chatterjee, the cause of the death was found by strangulation and it was found to be unnatural death and therefore, it was the defence which was to explain as to how and why such death had taken place at the matrimonial home of the deceased. Still further it is argued that the finding of learned trial Court regarding the deceased having possible extra-marital affairs, is totally unwarranted. It is further argued that the testimony of the witnesses, particularly PW-3-complainant-Ankit and PW-14- Ram Niwas (father of the deceased) if read together, clearly establishes the commission of the offence by the accused-respondents. Accordingly, a prayer for grant of leave to appeal has been made.

9. We have heard the learned counsel for the complainant and have also gone through the records of the case.

10. We find that the following issue arises for determination in the present application seeking leave to appeal:-

“Whether the prosecution was able to prove that the death of the deceased occurred due to her non-fulfilling the demand of dowry raised by the accused-respondents?”

11. From a careful perusal of evidence on record, it is clear that the learned trial Court has found that the death of the deceased took place within seven years of her marriage and that it was an unnatural death. However, it was found that basic ingredients of Section 113-B of the Evidence Act, could not be spelled out by the prosecution and hence, the prosecution has failed to prove that it was a dowry death.

12. There is no dilation regarding the presumption under Section 113-B of the Evidence Act and once, the twin conditions i.e. the death of the deceased took place within seven years of the marriage and that it was an unnatural death, are satisfied, a presumption is to be raised against the accused and then, onus shifts on the accused to rebut such presumption. However, in the instant case, if the entire evidence on record is scrutinized, it comes to the fore that there are only two material witnesses i.e. PW3-Ankit, complainant and PW14-Ram Niwas, father of the deceased. In his cross-examination, the complainant stated that there had been no demand of dowry from the side of the accused, at the time of marriage. He also deposed that no complaint was ever given to the police regarding the alleged demand of dowry. The relevant part of his cross-examination, in this regard, is reproduced as under:-

“.....At the time of marriage of Ekta and Deepak, there was no demand of dowry from the site of the accused. I do not know about the date of conceiving the child after her marriage. I went to the matrimonial house of Ekta to bring

her back after 10-12 days of her marriage. At that time, Ekta did not disclose any fact to me pertaining to demand of dowry by the accused. I cannot tell the exact date on which I went to the matrimonial house of Ekta thereafter.

I cannot recollect the date, month and the year of last meeting with Ekta prior to her death. Again stated that Ekta came at her parental house about one and a half month (June, 2021) prior to her death in village Chhara. No complaint was ever given by me or my family members against accused Deepak and his family members on that day also. ...”

Somewhat similar is the position with regard to the deposition of PW14-Ram Niwas. He in his testimony deposed regarding the demand of dowry, but no date, time or month, has been mentioned.

13. Still further, it was found that there was no medico legal report or prescription to corroborate the allegations of the complaint regarding the accused-respondents’ giving beatings to the deceased on account of demand of dowry and that no previous FIR with regard to cruelty or beatings was ever got registered either by the deceased or by the complainant or his family members. Thus, it was found that the prosecution has failed to substantiate the allegations of demand of dowry and the deceased being subjected to cruelty on this ground. It has also come in the testimony of the complainant that he had gone to the matrimonial house of the deceased 10/12 days after her marriage, but the deceased did not disclose anything to him regarding the demand of dowry. Rather, in his cross-examination, the complainant admitted that no complaint was given by him or his family members to the police regarding the aforesaid alleged demand of dowry. It was further found that no Panchayat was ever convened between the marriage and death of the deceased as regards the alleged

harassment. On the basis of testimony of PW-14-Ram Niwas, it was found that the allegations regarding dowry demand were general and vague in nature.

15. It was further found by the learned trial Court that there is a circumstance of possible connection between the death of the deceased and her seven months’ pregnancy. It was found that her marriage took place on 15.01.2021 and she died on 24.07.2021. The total period of the marriage, thus, came to be six months and nine days. But the victim was found to be seven months pregnant at the time of her post mortem. Thus, the learned trial Court has drawn a possible conclusion that because of these reason, she might have taken the extreme step of killing herself.

16. We find that the findings recorded by the trial Court are based on evidence on record. The allegations regarding dowry demand, having been found to be general and vague in nature, there arose no question of shifting the onus upon the accused-respondent to rebut the presumption under Section 113-B of the Evidence Act. Thus, the finding of the trial Court that the prosecution has failed to prove the guilt on the part of the accused-respondent beyond the reasonable doubt cannot be found fault with. Accordingly the issue for consideration by this Court is answered in negative.

17. In view of the above, finding no merit in the present application the same is dismissed and leave to appeal is declined.

18. All pending applications (if any), shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

30.05.2024
Himanshu

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