



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

CRR-1676-2008

Reserved on: 08.05.2024

Pronounced on: 13.05.2024

Sham Sunder

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Vanika Johar, Advocate
for Mr. Pritam Singh Saini, Advocate
for the petitioner.

Mr. Abhaysher Singh, Legal Aid Counsel
for respondents No. 2 to 4

Mr. Vikas Bharadwaj, AAG Haryana

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against the impugned judgment of acquittal dated 08.03.2008 passed by the learned Additional Sessions Judge, Paipat in FIR No. 68 dated 18.08.2006 registered under Sections 304-B, 34 IPC at Police Station Bapoli.

2. Briefly, the facts of the case are that the marriage between the deceased Baby alias Babita and respondent no.2 was solemnised on 16.03.2004. On 16.08.3006, the deceased died by suicide by hanging, at her matrimonial home. The family of the deceased was already present at the spot when ASI Krishan Kumar reached there. The father of the deceased namely Jai Parkash, informed the police that the deceased was suffering from depression. However, on 18.08.2006, the petitioner- maternal uncle of the deceased presented an



application before the SHO, Police Station Bapoli claiming that the deceased was harassed on account of dowry by respondent No.2- husband, respondent No.3- father-in-law and respondent No.4- mother-in-law along with her sisters-in-law and brothers-in-law. The respondents were demanding Rs. 1,00,000/- and a motorcycle from the parents of the deceased.

3. Learned counsel for the petitioner inter alia contends that the learned Court below has failed to appreciate that PW1-petitioner/complainant has categorically stated that on 15.08.2006, the deceased was given beatings by the respondents-accused. The narrative of the petitioner was corroborated by PW2- Vidya Devi, aunt (bua) of the deceased, as well as PW3-Ram Piary, mother of the deceased. The report of the investigating officer, who appeared as PW7, reflects that the deceased was under a lot of pressure on account of not having a child. Moreover, PW9- Dr. Rekha Verma, who conducted the post mortem on the deceased categorically stated that the deceased was carrying a nine month old baby. As such, the deceased died due to harassment meted out to her on account of dowry.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that the deceased was under mental stress for not having a child as well as the fact that respondent No.2- husband remained ill and was unemployed. The family of the respondents-accused was in a difficult financial position and struggled to make ends meet, which also added to the stress of the deceased. Further, the report submitted by PW7-investigating officer indicates that the deceased died of suicide due to the mental stress faced by her and the accused had no role to play in the said incident. Statements of the parents and relatives of the deceased as well as



other villagers was also recorded wherein they have stated that the respondents-accused were not involved in the suicide of the deceased. Admittedly, the dead body of the deceased was also cremated in the presence of her parents and other relatives.

5. As far as the allegations of demand of dowry are concerned, PW1-petitioner/complainant stated that the respondents-accused started harassing the deceased after 1-2 months of marriage, while PW2-Vidya Devi stated that the harassment began about one year from the incident. As such, there is no coherence in the prosecution case regarding unlawful demands of dowry that could inspire confidence of the Court.

6. 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).]

7. A two Judge bench of the Hon'ble Supreme Court in ***Bajinath 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.

8. 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 offence under 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."

9. Moreover, the power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanor, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others vs. State of Karnataka,**



Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415). A Division bench of this Court in the judgment passed in **State of Haryana vs. Ankit** and others CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

10. In view of the above discussion, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned Court below which warrants any interference. As such, there is no merit in the present petition and accordingly, the same stands dismissed.

11. Accordingly, the present petition is dismissed being bereft of any merit.

12. Pending miscellaneous applications, if any, stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

13.05.2024
Neha

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