

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

CRA-S-102-SB-2004 (O&M)
Date of Decision: March 31, 2018

Rakesh Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sanjeev Sharma, Advocate
for the appellant.

Ms. Gaganpreet Kaur, AAG Haryana.

JAISHREE THAKUR, J. (Oral)

1. The instant criminal appeal has been filed against the judgment dated 02.09.2003/03.09.2003 passed by the Sessions Judge, Karnal, whereby the appellant herein has been convicted and sentenced to undergo rigorous imprisonment for a period of ten years under Section 304-B of Indian Penal Code in case FIR No.225 dated 20.07.2002, under Section 304-B, 498-A of Indian Penal Code, registered at Police Station Sadar Karnal.

2. In short, the facts of the case are that, Sunder Lal, the complainant, solemnized a marriage of his daughter Sunita (deceased) with the accused on 05.05.2002 as per Hindu rites and ceremonies and had given sufficient articles in dowry. However, after the marriage, when his daughter

Sunita visited his house 2-3 times, she complained that her husband (the accused) used to harass her for bringing inadequate dowry and that he used to give her beatings and also used to say that she should bring motorcycle from her father and that she should also bring money of *Kanyadan*. On the asking of his daughter, he got prepared a pair of earrings weighing half tola of gold in lieu of *Kanyadan* money and gave to her and also promised to give motorcycle. However, despite that, the accused continued to harass her daughter and also continued to give her beatings. The complainant has stated in his statement that on 19.07.2002 at about 11 or 12 noon, his daughter had consumed poison as she was fed up with the ill treatment given to her by her husband. She was first taken to a private hospital without informing him by the accused and thereafter, she was got admitted in govt. hospital and when he received information, he reached at the hospital at about 12 in the intervening night of 19/20.7.2002. The accused and his family members did not disclose true facts before him and had been saying that his daughter was ill. According to him, his daughter had committed suicide by consuming poison due to the fact that she used to be harassed on account of bringing inadequate dowry.

3. On the basis of above-said statement, the instant FIR came to be registered and during investigation, inquest report was prepared, postmortem examination was got conducted, rough site plan of the spot of occurrence was prepared and sealed parcel containing viscera was sent for chemical examination. After completing the investigation, final report was prepared and filed against the accused in the court.

4. Offence under Section 304-B of Indian Penal Code being

exclusively triable by the court of Sessions, the case was accordingly committed by the Addl. Chief Judicial Magistrate, Karnal to the court of Sessions. Thereafter, on finding a prima facie under Section 304-B of Indian Penal Code, the accused was charge-sheeted accordingly, to which he did not plead guilty and claimed trial.

5. In order to prove its case, the prosecution has examined eleven witnesses in all. Dr. Sanjiv Grover, Medical Officer, Civil Hospital, Karnal was examined as PW1, Dr. S.L. Chanana, Medical Officer, General Hospital Karnal was examined as PW2, Prem Singh Draftsman was examined as PW3, Head Constable Hukam Chand was examined as PW4, ASI Mohinder Singh was examined as PW5, Constable Amar Nath was examined as PW6, complainant-Sunder Lal was examined as PW7, Constable Umed Singh was examined as PW8, ASI Hargian Singh was examined as PW9, Smt. Sheelo wife of Sunder Lal was examined as PW10 and Avinash Bansal, Jeweller was examined as PW11. Thereafter, statement of the accused was recorded under Section 313 Cr.P.C. in which he denied all the incriminating circumstances come against him during the course of prosecution evidence and pleaded false implication and examined Mohinder Singh son of Mange Ram as DW1 in his defence.

6. After hearing the arguments of both the sides, the learned trial court by its judgment dated 02.09.2003/03.09.2003, convicted and sentenced the accused under Section 304-B of Indian Penal Code, as detailed above. The said judgment is under challenge in the instant appeal.

7. Learned counsel appearing on behalf of the appellant argues that the appellant has been falsely implicated in the present case, as there

has been no demand of dowry and on the basis of hearsay evidence of parents of the deceased, the appellant has been convicted. It is submitted that both the father and mother of the deceased tried to improve their version on material point that the deceased before dying had told them that she had consumed poison because she was beaten regarding demand of dowry, however, when they confronted with their statements, this fact was not found mentioned there and in fact, the deceased was unconscious in the hospital and she was not fit to make any statement. It is also argued that the complainant had accepted ₹ 70,000/- from the appellant as costs of dowry articles, but the trial court has not taken into account this fact and convicted the appellant.

8. Learned counsel appearing on behalf of the respondent-State argues that the judgment passed by the trial court is well reasoned and there is no illegality or infirmity in the same. It is submitted that the prosecution has been able to prove the guilt of the accused beyond reasonable doubt and the defence version was found to be false. It is contended that this is a case where a girl died just after two months of the marriage due to the harassment and beatings caused by the appellant, as such, the appellant is not liable to any leniency.

9. I have heard learned counsel for both the sides, apart from perusing the record of the case.

10. This court has thoroughly gone through the judgment passed by the trial court and notices that the arguments so raised before this court, were also raised before the trial court and the same were dealt with in detail by the trial court, which this court would like to discuss one by one.

11. The trial court in para 32 of the judgment, has observed that the marriage between the parties has been admitted by the accused in his statement under Section 313 Cr.P.C., apart from the fact that Smt. Sunita died an unnatural death in the house of her in-laws. Further, from the deposition of PW1 Dr. Sanjiv Grover, Medical Officer, Karnal it is proved that when the deceased was brought in the hospital, her husband i.e. the appellant herein, has given history that she had taken sulphur tablets at about 2.00 p.m. on the same day. Dr. S.L. Chanana, Medical Officer (PW2) who along with Dr. J.K. Gulati conducted the postmortem on the dead body of deceased, has deposed that cause of death in this case was due to consumption of aluminium phosphide and in the report of Chemical Examiner Ex.PC/2, it is shown that stomach, small and large intestine of deceased gave positive test of aluminium phosphide. Lungs, liver, spleen, kidney gave positive test of aluminium phosphide. Blood from heart also gave positive test from phosphine whereas preservative used gave positive test for saline only. Hence, from all these facts it is clear that the deceased committed suicide by consuming aluminium phosphide and hence her death was caused just after two months of marriage in the house of her in-laws otherwise than normal circumstances.

12. Regarding the question of causing harassment and maltreatment to the deceased, in para 33 of the judgment, the trial court has observed that deposition of PW7-Sunder Lal (complainant) has been fully corroborated by mother of deceased PW10-Sheelo. Both are illiterate and belong to lower strata of society as they belong to labour class, however, deposition of both of them is consistent on all material points. There is nothing as to why they

should depose falsely against the accused. They did not name any other member of the family of the accused to falsely implicate them in this case. They deposed that demand of motorcycle and Kanyadan was made by none else than the accused himself i.e. husband of the deceased and the said demand started just after few days of the marriage. Promise was also made by parents of the deceased that they would fulfill the demand of motorcycle. They also met demand for return of Kanyadan in the shape of earrings weighing about half tola of gold, however, despite that the accused was not satisfied.

13. In para 34 of the judgment, the trial court has considered the argument of accused that Sundal Lal father of deceased did not mention in his statement Ex.PD that he was also told by his daughter that she consumed poisonous substance as she used to be harassed by her husband for not bringing motorcycle. In this regard, the trial court has observed that in the supplementary statement of Sunder Lal recorded by the police on 23.07.2002, the said fact is mentioned therein. Moreover, statement of his wife Smt. Sheelo was recorded on the same day by the Investigating Officer and Smt. Sheelo in her statement Ex.DA has mentioned the fact that deceased had told her that she consumed poisonous substance as she used to be harassed by her husband for not bringing motorcycle.

14. In para 35 of the judgment, the trial court has considered the argument of learned counsel for the accused that Sunita was not in a position to tell anything to her parents as she was unconscious. In this regard, the trial court has observed that Dr. Sanjiv Grover, PW1 has deposed that the patient was semi conscious and that her BP was 80/60 MM

of HG and her pulse was 90 per minute regular and pupils of both eyes were of normal size and reacting normally. Opinion of the doctor was sought by the police at 1.15 a.m. and at that time, he opined that she was unfit for making statement. However, parents of deceased admittedly reached the hospital at about 11 or 12 in the night when she was semi conscious. Hence, it cannot be said that she was not in a position to tell anything to her parents. Further in para 36, the trial court has observed that as per the history given by the accused before Dr. Sanjiv Grover, Medical Officer, General Hospital, Karnal, she consumed sulfas at about 2.00 p.m. on 19.07.2002, however, she was brought to the General Hospital at 10.45 p.m. The trial court has also observed that there is no explanation given by the accused as to why the telephonic message was not given during day time immediately after she consumed poison. Further, there is no explanation as to why intimation was not given to the police immediately after she was taken to private hospital. More so, intimation was given to the police by Medical Officer Civil Hospital only after she was brought in the Civil Hospital at 10.45 p.m. and hence there was no sufficient time with the police for getting her statement recorded before a Magistrate.

15. In para 37 of the judgment, the trial court has observed that the deceased died just after two months of her marriage in the house of her in-laws by consuming poison, as such, it was for her husband i.e. the accused to explain as to why she put an end to her life just after two months of her marriage and the explanation given by the accused is very vague one and not convincing. The accused stated that she consumed poison as she wanted to marry some other boy. However, he had not given the name or address

of said boy. He also did not adduce any evidence in order to prove the assertion that his wife wanted to marry some other boy. The fact that differences arose between the accused and deceased has also been admitted by the witness of accused Mohinder Singh (DW1) who deposed that Sunita died just after two months of marriage and there were differences between Sunita and accused from the very beginning. However, he nowhere deposed that as to what was the cause of said differences. In para 38, the trial court observed that dowry articles in this case were taken into possession by the police and the same were returned by complainant to father of accused after receiving ₹ 70,000/- in lieu of cost of dowry articles due to intervention of Panchayat. This fact has also been proved from the deposition of Mohinder Singh DW1. This fact also goes to prove that though complainant belongs to lower strata of society and however, he had given sufficient articles in dowry in the marriage of his daughter and despite that, accused was not satisfied as he wanted a motorcycle as well.

16. This court has duly considered the argument of learned counsel for the appellant, however, on going through the judgment so passed as well as through the record of the trial court minutely, this court finds that the arguments so raised by learned counsel for the appellant are not sustainable. Section 113B of the Indian Evidence Act, creates a presumption in favour of the prosecution in the case of dowry death, which read as under;-

*“113B. 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).J "

So, this provision makes it clear that where a question arises whether a person has committed the dowry death of a woman and it is shown that soon before her death, she was subject to cruelty or harassment, concerning the demand of dowry, then the court shall presume that such person had caused the dowry death. In the case in hand, both the material witnesses of the prosecution i.e. the complainant and his wife (parents of the deceased) have successfully stood the acid test of cross-examination, however, nothing favourable to the appellant could be yielded from the same. The prosecution has been able to prove that soon before her death, the deceased was subjected to cruelty by her husband (the appellant herein) concerning the demand of dowry, so by invoking this provision, presumption can be drawn against the accused that he caused the dowry death of the deceased. Further, the appellant has been miserably proved to rebut this presumption, which lies against him.

17. In view of the foregoing discussion, this court does not find any illegality or infirmity in the impugned judgment so passed by the trial court. Accordingly, the appeal in hand is hereby dismissed. Intimation be sent to the concerned court in this regard forthwith with the direction to proceed against the appellant herein to serve the remaining sentence imposed upon him.

(JAISHREE THAKUR)
JUDGE

March 31, 2018

vijay saini

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No