

CASE NO.:
Appeal (crl.) 289-290 of 2004

PETITIONER:
Arun Garg

RESPONDENT:
State of Punjab & Anr.

DATE OF JUDGMENT: 29/09/2004

BENCH:
K.G. Balakrishnan & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

These appeals are directed against the impugned judgment and order dated 30.05.2003 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 161-SB of 2001. The High Court dismissed the said appeal of the appellant and confirmed the sentence of ten years rigorous imprisonment awarded by the Sessions Judge, Ludhiana but enhanced the fine from Rs.2000/- to Rs.2,00,000/- in Criminal Revision No. 1251 of 2001 filed by the complainant against the appellant.

Briefly stated, the case of the prosecution is as follows:

The marriage between Seema, daughter of Ramesh Chander Bansal, PW-1 and the appellant-accused, Arun Garg took place on 25.02.1996. According to the prosecution, she died under very tragic circumstances on 30.03.1999, that is, within three years of her marriage with the appellant. The appellant was alleged to have administered aluminium phosphide causing unnatural death of the daughter of the respondent and thus the appellant was liable for the offence under Section 304B of the Indian Penal Code. At the time of marriage, household articles, clothes, gold etc. and cash amount of Rs.2,00,000/- was also given in dowry. However, few days after the marriage, Seema started complaining that her husband, Arun Garg, father-in-law, Sham Lal Garg and mother-in-law, Shimla Garg were not satisfied with the dowry given to her at the time of her marriage and all of them often used to taunt her on the ground that she had not brought sufficient dowry at the time of her marriage. It was further submitted that on 10.04.1996, Seema telephoned the respondent herein that her father-in-law and mother-in-law were making a demand for Rs.40,000/- and thereupon the respondent accompanied by Parkash Chand and Sohan Lal who had arranged the marriage of Seema with Arun Garg went to the house of Arun Garg. Thereupon, on the insistence of Parkash Chand and Sohan Lal, the respondent purchased household articles worth Rs.20,000/- and supplied the same to the family of Arun Garg. It is the case of the prosecution that since February 1997, the appellant and his parents did not allow Seema to see her parents and had not allowed her to visit their house. When the parents went to see Seema at the house of her in-laws on the eve of Teej festival, Seema told them that her husband, father-in-law, mother-in-law and sister-in-law Neena used to ill-treat her and often made a demand for more cash. There are other instances on 22.02.1999 and on 26.03.1999 of demanding dowry. On 26.03.1999, Seema telephoned the respondent herein that her husband, father-in-law, mother-in-law and sister-in-law were planning to kill her. The respondent, who is a government servant, could not, however, obtain leave from the office and go to see Seema at the house of her in-laws.

On 28.03.1999, at about 6.00 p.m., the respondent received information that her daughter Seema had been administered some poisonous substance by her husband and in-laws and sister-in-law Neena and that she had been admitted in the Dayanand Medical College, Ludhiana. The respondent accompanied by his wife immediately rushed to the hospital and found that Seema was unconscious and her

condition was found to be serious. The respondent thereafter went to the police station and lodged an FIR on the same day which was registered as FIR No. 139 of 1999 under Section 307 read with Section 34 of the Indian Penal Code, against Arun Garg, his father, Sham Lal Garg, mother Shimla Garg and sister Neena. On the same day, i.e., 28.03.1999, police made an application for recording the statement of Seema, which was declined as she was declared medically unfit to make the statement. Police again made an application for recording the statement of Seema on 29.03.1999 which was also declined as Seema was not medically fit to make the statement. Unfortunately, Seema died in the hospital on 30.03.1999.

On the death of Seema, the case was converted into one under Section 304B of the Indian Penal Code and all the three accused, namely, Arun Garg, Sham Lal Garg and Shimla Garg were arrested in the case on 31.03.1999. After the death of Seema, the dead body was sent for post mortem examination. The findings of the Medical Board are as under:

"Eyes and mouth were closed. Post Mortem staining was present on the left, lateral side of body. Cyanosis of nails, lips and tongue was present. Face was congested. Multiple needle prick marks were present on the body. Larynx, trachea and both lungs were congested. The right side of the heart contained blood and blood sample was sealed in jar No.4. Both the ends of the stomach were ligated and were sent to the Chemical Examiner in Jar No.1. Small and large intestines were congested and a portion of each was sent to the Chemical Examiner in Jar No.2. Liver, Spleen and Kidney were congested and portion of each was sent to the Chemical Examiner in Jar No.3. Urinary bladder was healthy and empty. The genitalia was healthy and uterus contained Copper T."

On receipt of the report of the Chemical Examiner, the pesticide aluminium phosphide was detected in the stomach and large and small intestines. While phosphide, a constituent of aluminium phosphate was detected in liver, spleen, kidney and blood. Thereafter, the doctors opined that death of Seema had caused due to intake of aluminium phosphide poisoning which was sufficient to cause death in the ordinary course of nature. The challan was presented by the police in the Court of Sessions Judge, Ludhiana against the appellant, his father and mother. The Sessions Judge, by his judgment dated 22.01.2001, acquitted Sham Lal Garg and Shimla Garg giving them benefit of doubt and convicted the appellant, Arun Garg, under Section 304B IPC in connection with the death of his wife Seema Garg and sentenced him to undergo R.I. for a period of ten years and to pay a fine of Rs.2000/- or in default of payment of fine to undergo further R.I. for a period of two months.

Aggrieved by the said judgment, the appellant filed Criminal Appeal No. 161-SB of 2001 before the High Court along with the application for bail. The State of Punjab also filed Criminal Appeal No.489-DBA of 2001. The respondent herein filed two separate revision petitions being Revision Petition No.1245 of 2001 challenging the acquittal of Sham Lal Garg and Shimla Garg and Revision Petition No. 1251 of 2001 seeking enhancement of the sentence imposed upon the appellant.

The High Court, by its order dated 14.02.2001, admitted the appeal filed by the appellant and stayed the recovery of fine, however, declined the prayer for bail.

The High Court, by a common order dated 30.05.2003, while upholding the conviction made by the trial Court, dismissed Criminal Appeal No.161-SB filed by the appellant herein and partly allowed the Revision Petition No.1251 of 2001 filed by the respondent herein. The High Court, by the impugned judgment, enhanced the fine from Rs.2,000/- to Rs.2,00,000/-. By the said order, the High Court also dismissed Criminal Appeal No.489-DBA of 2001 filed by the State of Punjab and Criminal Revision No.1245 of 2001 filed by the respondent herein.

Against the said order, the appellant has approached this Court by way of special leave petition. Leave was granted by this Court on 23.02.2004.

We heard Mr. K.G. Bhagat, learned counsel appearing for the appellant and Mr. Arun K. Sinha, learned counsel appearing for the contesting respondent and Mr.

Sudhir Walia, learned counsel appearing for the State of Punjab.

Learned counsel appearing for the appellant took us through the judgments of both the Courts and documents filed in the Court. He made the following submissions:

- 1) that in the FIR dated 28.3.1999, there was no imputation by the complainant that 'soon before death' the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, and in connection with any demand of dowry. In this regard, he invited our attention to the relevant portions of the FIR.
- 2) That no independent witness came in the witness box to corroborate the interested version of PW-3 and PW-4, the parents of the deceased. Elaborating the submission, learned counsel for the appellant submitted that the complainant had emphatically alleged that he had gone to the house of the appellant along with middleman Parkash Chand and Sohan Lal but they were never associated during the investigation nor were they produced in the Court, which fact itself is sufficient to disbelieve the witness of the complainant.
- 3) The ingredients of demand of dowry soon before the death of the deceased and the harassment thereon under Section 304B has not been proved beyond reasonable doubt.
- 4) The complainant has nowhere proved the payment of Rs.2,00,000/- to the appellant at the time of marriage or proved spending Rs.20,000/- worth of items given to the appellant. No withdrawal from any Bank is shown, no loan is taken, no receipt of any sort is produced.
- 5) The appellant has proved withdrawal of large sums of monies from their different bank accounts to prove that they had advanced Rs.2,00,000/- to the complainant to help him to settle his son and when the same was demanded back by the appellant, the complainant felt offended and had that grudge in his mind.
- 6) Had the appellant been responsible of administering aluminium phosphide to the deceased, he would not have taken the deceased to a most reputed hospital of Dayanand Medical College of Ludhiana to save her.
- 7) The demand of dowry or harassment of the deceased is not proved by any independent evidence except the bald statement of parents of the deceased as PW-1 and PW-3, and though the appellant had led sufficient independent evidence especially of the neighbours and others as DW-1 to DW-11 especially DW-4, DW-10 and DW-11 who sufficiently elaborated that nothing happened at the house of the appellant and in fact, everybody including Seema was happy and on 27.03.1999, she attended Jagrata in the neighbourhood and attended Kanjak ceremony in the morning on 28.3.1999 at the same house along with her daughter and thereafter she went to the house of her mother.
- 8) There is hardly any evidence to prove the offence under Section 304B and 498A IPC against the accused. Even from the evidence on record, no offence is made out under Section 304B of IPC. There is no material on record to support the conclusion of cruelty or harassment.
- 9) The enhancement of fine from Rs.2000/- to Rs.2,00,000/- in revisional jurisdiction is all the more uncalled for and unwarranted and not permissible under law.

Learned counsel appearing for the State of Punjab submitted that the investigation revealed that the accused was responsible for causing the death of the deceased, Seema and also subjected her to cruelty for and in connection with the demand of dowry articles. He would further submit that due to harassment, as proved in the evidence, which was caused by the appellant to his wife apparently due to demand of more dowry, a precious human life was lost. Such type of social crime should be viewed seriously and suitable punishment is called for so as to serve as deterrent to others and that the appellant is guilty of forcibly administering poison to his wife, Seema, and is responsible for causing her unnatural death within seven years of her marriage and thus such person cannot be allowed to remain at

liberty in the society.

Concluding his submission, it was submitted that keeping in view the facts and circumstances of the case and the gravity of the offence committed by the appellant, the present appeals deserve to be dismissed.

Learned counsel appearing for the contesting respondent (father of the deceased) submitted that the contents of various grounds are not correct. It was submitted by the appellant that it is nowhere proved that payment of Rs.2,00,000/- was made to the appellant and that no withdrawal from any Bank is shown, no loan is taken and no receipt of any sort is produced. In regard to this, it was submitted by the learned counsel for the respondent that the respondent had withdrawn Rs.1,23,000/- from his GPF account and his wife Pushpa Rani, who is also a government servant had withdrawn Rs.94,000/- from her GPF account. It was further submitted that no documentary evidence has been put forth by the appellant regarding advancement of any money by the parents of the appellant to the respondent herein.

Before considering the rival contentions, it will be appropriate to note the relevant provisions of Section 304B of the Indian Penal Code. Section 304B reads thus:

"304B- 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 subject 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 \026 For the purpose 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." (emphasis supplied)

The ingredients necessary for the application of Section 304B I.P.C. are:

- i) that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances;
- ii) within seven years of her marriage;
- iii) it must be shown that before the death she was subject to cruelty or harassment by her husband or any relative of the husband or in connection with the demand of dowry.

In the light of these ingredients, the evidence of the prosecution is to be scanned.

The appellant was married with the deceased in the year 1996. The deceased died on 30.03.1999. So she died within seven years of the marriage. It is also not disputed that the deceased had not died a natural death. The only controversy between the parties is with regard to the third ingredient as to whether soon before the death the deceased was harassed and was subjected to cruelty on account of demand of dowry.

In the instant case, the prosecution had examined the complainant, PW-1, Ramesh Chander Bansal, Dr. Dhiraj Bhatia, PW-2, Pushpa Bansal, PW-3, Dr. U.S. Sooch, PW-4, Harinder Singh, PW-5, Inspector Gurinderjit Singh, PW-6, HC Kuldip Singh, PW-7, ASI Amrik Singh, PW-8, Constable Prithi Pal Singh, PW-9, Dr. N. Siridhar Rao, PW-10, Constable Gursharanvir Singh, PW-11 and constable Kamaljit Singh, PW-12. Since Parkash Chand and Pt. Sohan Lal died on 19.6.1999 and 9.5.2000 respectively, they could not be examined.

The Courts below have carefully gone through the facts of the case and the evidence on record and have found that the appellant is liable for the offence under Section 304B IPC. The courts below, after appreciation of the facts and evidence recorded have reached the conclusion that Seema Garg died an unnatural death at the house of her in laws within a period of seven years of her marriage with the appellant due to intake of poisonous substance.

It was argued on behalf of the appellant that there are contradictions in the statements of PW-6, Gurinderjit Singh and the complainant, respondent herein. In fact, two site plans of the place of occurrence were prepared one being Ex.PL prepared on 29.3.1999 by the Investigating Officer, PW-6, and the other being Ex. PG prepared on 22.6.1999 by Harminder Singh, Draftsman, PW-5. This site plan was prepared at the instance of the respondent herein.

It was argued on behalf of the appellant that in the FIR, there was no imputation by the complainant that 'soon before death' the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for and in connection with, any demand of dowry. We have perused the FIR in this connection. PW-1 deposed that on 26.3.1999 Seema informed him on telephone that her father-in-law, mother-in-law, sister-in-law and her husband had been conspiring to kill her and this fact had mentioned in his first information statement. The High Court had dealt with this in detail and reached the conclusion that the most vital circumstances of an offence under Section 304B IPC that the demand for dowry had been made soon before the death had been proved beyond doubt. According to PW-1, the appellant had been demanding more dowry after the marriage and that he had accepted further dowry of Rs.20,000/- on 10.4.1996 when they, in fact, had demanded Rs.40,000/-. PW-1 further deposed that in July, 1998, at the time of Teej, they had demanded more dowry but they were made to understand not to harm Seema. This demand of more dowry remain unfulfilled because of which the appellant and his family members continued to harass Seema and ultimately they killed Seema by administering poison on 28.3.1999.

In reply to the argument advanced by the counsel for the appellant, it was submitted that Seema made a telephone call on 10.4.1996 to the respondent herein saying that the appellant had demanded more dowry. Thereafter, the respondent along with Parkash Chand and Sohan Lal went to the house of the appellant on 21.4.1996 and gave them articles worth Rs.20,000/- to the appellant. It is pertinent to mention here that the trial Court had rightly observed that even if the accused be away, there is no reason why the telephonic call could not be made from outside.

It was further reiterated by the respondent that the deceased made a telephone call to the respondent herein on 26.3.1999 alleging that her husband and parents-in-law were conspiring to kill her. It has come in cross-examination of the respondent herein/complainant that as Vidhan Sabha Sessions was going on, therefore, leave could not be granted to him for 27.3.1999, although it was a Saturday but he was put on duty due to Session of Vidhan Sabha. As already stated, Parkash Chand died on 19.6.1999 and Sohan Lal died on 9.5.2000. It is pertinent to note here that examination for PW-1, the respondent herein, was made on 22.5.2000. As both the above said persons died before the said date, they could not be examined as witnesses.

There is no substance in the argument of the learned counsel appearing the appellant that the interested evidence of the parents of the deceased has not been supported by independent evidence or witness of the locality while the stand of the defence has been that the deceased Seema was never harassed or tortured by the appellant or by any of his family members for demand of dowry. Likewise, there is no substance in the submission of the learned counsel appearing for the appellant that there is no demand of dowry by the appellant or by any of his family members soon before the death of Seema. The evidence discussed, as in paragraphs supra, would clearly go to show that this submission has no force.

Section 304B was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combating the increasing menace of dowry death. By the same Amendment Act, Section 113B has been added in the Evidence Act, 1872 for raising a presumption. It reads thus:

"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 purpose of this section "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code."

Once the three essentials under Section 304B as referred to in paragraphs supra (page 10) are satisfied the presumption under Section 113-B would follow. This rule of evidence is added in the Statute by amendment to obviate the difficulty of the prosecution to prove as to who caused the death of the victim. Of course, this is a rebuttable presumption and the accused by satisfactory evidence can rebut the presumption. In the instant case, the appellant could not rebut the presumption, and the prosecution, even without the aid of this presumption under Section 113-B proved that the appellant was responsible for the death of the deceased Seema. Hence, the conviction of the appellant for the offence under Section 304B I.P.C. is only to be confirmed.

Our attention was also drawn to Section 498A. In our view, Sections 304B and 498A are not mutually exclusive. They deal with different and distinct offences. In both the sections, 'cruelty' is a common element. Under Section 498A, however, cruelty by itself amounts to an offence and is punishable. Under Section 304B, it is the dowry death that is punishable and such death must have occurred within seven years of the marriage. No such period is mentioned in Section 498A. Moreover, a person charged and acquitted under Section 304B can be convicted under Section 498A without a specific charge being there, if such a case is made out.

In the instant case, the Trial Court convicted the appellant for the offence punishable under Section 304 B and sentenced him to undergo imprisonment for a period of 10 years and to pay a fine of Rs. 2,000/- or in default to undergo further rigorous imprisonment for a period of three months. But unfortunately, the Sessions Judge who imposed a fine of Rs. 2,000 to the appellant did not take notice that for the offence under Section 304B, the Court is not empowered to impose fine as a punishment. The punitive clause of Section 304 B Dowry Death has already been extracted in paragraph supra.

Section 304 B is one of the few sections in the Indian Penal Code where imposition of fine is not prescribed as a punishment. The Division Bench of the High Court which confirmed the conviction of the appellant under Section 304B instead of setting aside the fine, which is not warranted by law, enhanced a sum to Rs. 2 lakhs and also directed that the fine, if recovered, shall be paid to the complainant. The appellant could have been sentenced only to a punishment which is prescribed under the law. As no fine could be imposed as punishment for offence under Section 304B, the direction to the appellant to pay a fine of Rs. 2 lakhs was wholly illegal.

The learned Counsel for the respondent contended that no fine could be imposed as part of the punishment, the direction to pay a fine of Rs. 2 lakhs is in accordance with the Section 357(c) of the Cr. P.C. Section 357 is an enabling provision by which the Court can give direction to the effect that when passing judgment, sentence imposed for payment of fine can be recovered and applied either for defraying the expenses properly incurred in the prosecution or in payment to any person as compensation for any loss or injury caused by the offence, when compensation can be recoverable by such person in a Civil Court. Section 357(1) is applicable in cases where fine forms the part of the sentence whereas under Section 357(3), the Court can direct the convicted person to pay compensation even in cases where the fine does not form part of the sentence. Section 357(3) reads as follows:-

" When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who

has suffered any loss or injury by reason of the act for which the accused person has been so sentenced."

The learned Counsel for the respondent contended that even if the Court is not competent to impose fine as a punishment, the Court can still order compensation under Section 357(3) of the Cr. P.C. and the direction of the High Court to pay Rs. 2 lakhs to the complainant is to be treated as the direction given under Section 357(3). The contention of the respondent's learned Counsel cannot be accepted. Hear the Trial Court had imposed a sentence of fine of Rs. 2,000/- as fine and the High Court enhanced the quantum of fine without there being any further discussion on the matter. Therefore, the direction to the appellant to pay a fine of Rs. 2 lakhs could only be treated as enhancement of fine already imposed by the Sessions Judge. Moreover, Section 357(3) contemplates a situation where the complainant has suffered any loss or injury and for which the accused person has been found prima facie responsible. There is no such finding or observation by the High Court. Of course, the daughter of the complainant passed away but the direction of the High Court to pay Rs. 2 lakhs was on the assumption that the complainant had paid Rs. 2 lakhs as part of the dowry to the appellant. There is no evidence to show that such an amount was given to the appellant. On the other hand, the appellant's learned Counsel contended that it was a love marriage between the appellant and the deceased and no dowry passed between the parties. It is also pertinent to note that Section 357(5) of the Cr.P.C. says that at the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section. The direction to pay compensation under Section 357(3) is on the assumption of basic civil liability on the part of person who committed the offence to redress the victim or his dependents by payment of compensation. The complainant could not have filed a civil suit for recovery of the dowry amount, if any, as the payment itself was illegal and prohibited under law. In any view of the matter, the direction of the High Court to pay a sum of Rs. 2 lakhs as fine was not warranted by law and we set aside the same and also further direction that the appellant to undergo default sentence.

In the result, the appeals are partly allowed confirming the sentence of imprisonment for a period of 10 years. The direction to pay a fine of Rs. 2 lakhs is set aside.