

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.799 OF 2011

RAJINDER KUMAR

... APPELLANT

VERSUS

STATE OF HARYANA

... RESPONDENT

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J

This appeal is directed against the judgment dated 1st September, 2010 passed by the High Court of Punjab & Haryana, Chandigarh in Criminal Appeal No.238-SB of 2002 alongwith another case. By the impugned judgment, the High Court dismissed the appeal preferred by the accused-appellant and affirmed the order of conviction and sentence passed by the Trial Court u/s 304B of Indian Penal Code ('IPC' for short).

2. The case of the prosecution as noticed by the Trial Court is as follows:

Raj Rani, youngest sister of complainant Ganpat Rai was married with accused Rajinder Kumar on 10th May, 1996 as per Hindu rites. At the time of marriage, the complainant had given handsome dowry and spent a sum of Rs.2,25,000/-. When

Raj Rani went to her in-laws second time, her husband-Rajinder, mother-in-law Darshna Devi, sisters-in-law Murti and Chirya and brother-in-law Binder started taunting and harassing her. On getting information, complainant Ganpat Rai alongwith his brothers Ghansham and Hari Chand came to village Dharsul and advised the accused not to harass Raj Rani. On this, accused persons stated that they will behave in this very manner and if they want to take away Raj Rani, they should get divorce. After that also, they continued to harass Raj Rani in the same manner. Again complainant Ganpat Rai along with Balak Ram went to the in-laws of Raj Rani and on 21st October, 1996 on the festival of Dushera Raj Rani was brought to complainant's house. At that time, accused-Rajinder and his family members asked Raj Rani that she should bring Rs.20,000/- while coming back, otherwise it will not be good. On 28th October, 1996 Chanan Ram uncle of Rajinder and Binder came to village Chatha Nanhera at the house of the complainant along with customary gifts on the festival of Karwa Chauth. He stayed there for two days. On 30th October, 1996 i.e. one day before the occurrence, Raj Rani was brought back to her matrimonial house at Dharsul. Hari Chand brother of the complainant and Gurmel Singh also came along with her. Raj Rani told Hari Chand that her husband and in-laws had demanded Rs.20,000/- and since the same has not been paid, they (accused) will kill her once Hari Chand and Gurmel Singh leave the place. On this Hari Chand assured her that they

will come back after 2/3 days and pay the money and returned to the village of the complainant alongwith Gurmel Singh. On 31st October, 1996 at about 6.00 AM, Tek Chand son of Krishan, resident of village Kulan came to the house of the complainant and told that Raj Rani has been murdered on the night intervening 30/31st October, 1996 by Rajinder, Binder her mother-in-law Darshna and sisters-in-law Murti and Chirya on account of bringing less dowry. On this information, complainant, his brother Hari Chand and Sukhpal Bansal reached village Dharsul Kalan and saw the dead body of Raj Rani was lying on a cot in Chubara.

On the statement of complainant Ganpat Rai FIR (Ex.PA/1) was registered and investigation was started by Chander Singh, Sub Inspector. Dr. P.L. Verma (PW-6) conducted the post mortem. After receiving report of the Chemical Examiner the cause of death was shown to be poisoning due to consumption of aluminium phosphide.

The appellant was charge-sheeted alongwith his mother and sisters for the offence u/s 498A and 304B IPC to which they pleaded not guilty and claimed trial. The prosecution produced 14 witnesses including Ganpat Rai (PW-7) complainant and Harichand (PW-13). Other witnesses are Ishwar Singh-ASI(PW-1), Mahipal-Constable (PW-2), Girish Kumar-Draftsman(PW-3), Wazir Singh-SI(PW-4), Jai Prakash-Constable(PW-5), Dr. P.L. Verma-Medical Officer(PW-6), PW-8 to 9 and 11-Constables; Rajender Kumar-Photographer(PW-10), Jai Chand Shastri who performed

marriage ceremonies of deceased with accused-appellant (PW-12) and Chander Singh-SI(PW-14). On behalf of the defence three witnesses i.e. Dr. Jasbeer Singh-(DW-1), Santosh-(DW-2) and Chajju Ram-(DW-3) were produced.

The Trial Court by its judgment dated 22nd January, 2002 convicted the appellant u/s 498A and 304B IPC and acquitted other accused. For the offence u/s 304B IPC the appellant was sentenced to undergo rigorous imprisonment for seven years and for the offence u/s 498A he was sentenced to undergo rigorous imprisonment for two years along with a fine of Rs.5,000/-. Both the sentences awarded were ordered to run concurrently.

3. On appeal the High Court by impugned judgment partly allowed the same and the conviction and sentence of the appellant u/s 498A IPC was set aside while upholding conviction and sentence u/s 304B IPC.

4. The main argument of the appellant is that the death of deceased-Raj Rani is a natural death and that the entire evidence on record believes the version of death by Aluminium Phosphide (AIP) Poisoning. To support his case it was pointed out that Dr. P.L. Verma (PW-6) who conducted post mortem stated in his testimony that if the report of the Forensic Science Laboratory regarding the presence of poison would have been negative then the Board would have concluded it to be a case of natural death. It was submitted that in normal circumstances in a dead body there is always a possibility of

presence of poisonous substance like aluminium phosphide and therefore no definite conclusion can be derived at that the deceased-Raj Rani died as a result of poisoning due to consumption of aluminium phosphide.

5. Further, according to the learned counsel for the appellant-accused, evidence of Ganpat Rai (PW-7), complainant and Harichand (PW-13) who were the brothers of the deceased are unreliable as they are interested witnesses. All other independent witnesses from village have deposed in favour of the appellant, stating that the deceased was never treated in cruel manner nor any demand of dowry was made. An application had also been written and signed by more than 20 villagers stating about the innocence of the appellant and his family.

6. In normal circumstances, in the Indian Society demand for dowry or harassment for the same takes place within four corners of the house. Even the parents or relatives of the girl will not be aware of these, unless they are informed either by the girl herself or demand is made directly to them. The Police Officials or others cannot depose anything about the harassment in connection with demand of dowry in the absence of any complaint or statement made by witness u/s 161 Cr.P.C. Seldom, the villagers-neighbours may come to know of the same. In this background, statement of family members of the deceased-lady cannot be discarded on the ground that they are relatives and are interested witnesses, till a

contradiction is shown in their deposition or cross-examination.

7. The complainant-Ganpat Rai (PW-7) brother of the deceased-Raj Rani stated that the accused harassed the deceased since her marriage and he always taunted her for bring less number of sarees and inadequate money. The accused also had demanded Rs.20,000/- from the deceased. On knowing this, complainant (PW-7) along with his brother went to the house of the appellant-accused and tried to persuade the appellant to stop harassing their sister. However, the appellant and his family members asked them to take away their sister with them. On 21st October, 1996, complainant (PW-7) took Raj Rani to his house at Chattha Nanhera. On 28th October, 1996, Chanan Ram, the elder brother of the father of appellant-Rajinder came to the complainant's house with the customary gifts of Karwa Choth for Raj Rani and stayed there for two days. On 30th October, 1996, Hari Chand (PW-13) younger brother of the complainant (PW-7) and Gurmel Singh left Raj Rani in her matrimonial home. While Hari Chand (PW-13) and Gurmel Singh were leaving the house they were told by Raj Rani that since they had not paid Rs.20,000/- to the accused, he would kill her. Hari Chand told Raj Rani that they would make the payment within two or three days. On 31st October, 1996, the complainant (PW-7) received information that his sister had died on previous night. When the complainant (PW-7) went to the house of the appellant, he found his sister dead lying on the Chobara. There was froth

coming out of the mouth of the deceased and a piece of brick was lying there. The police found some broken bangles lying near the death body. After leaving Hari Chand and Sukhpal Bansal near the dead body he reported the matter to the Police.

8. Hari Chand (PW-13) has corroborated the statement made by the complainant (PW-7). No inconsistency is found in their statements. Defence also could not make out anything to disprove the same during their cross-examinations. From the statements of the complainant (PW-7) and Hari Chand (PW-13), we find that the deceased-Raj Rani had been harassed on account of demand of dowry soon before her death.

9. Dr. P.L. Verma (PW-6) has conducted the post mortem on the dead body of deceased Raj Rani. He deposed that the eyes and mouth of the deceased were semi open. After receiving the report of the Chemical Examiner, he stated that the cause of death of deceased Raj Rani was a result of poisoning due to consumption of aluminium phosphide. Dr. P.L. Verma(PW-6) and the Chemical Examiner who are experts in the field have not stated that the death was in the normal course or aluminium phosphide can be automatically generated in the dead body.

10. Section 304-B of IPC relates to dowry death. For the purpose of the said Section, a presumption as to dowry death can be raised only on proof of the following essentials.

- (a) the death of woman has been caused by burns or bodily injury or has occurred otherwise than under normal circumstances.
- (b) The said death has occurred within seven years of her marriage
- (c) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (d) Such cruelty or harassment was for, or in connection with, any demand for dowry and
- (e) She was meted out with such cruelty or harassment soon before her death.

In this connection, we may refer to this Court decision in ***Kaliaperumal vs. State of Tamil Nadu (2004) 9 SCC 157.***

11. In the case of ***Hira Lal & Others Vs. State (Govt. of NCT), Delhi, (2003) 8 SCC 80***, this Court analyzed Section 304B IPC and Section 113-B of the Indian Evidence Act and made the following observations:

"8. Section 304-B IPC which deals with 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 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."

The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract 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.

Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

"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 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 304-B of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the

essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of the woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

12. In the present case the death of Raj Rani occurred within seven years of her marriage. It is not disputed that her death is not under normal circumstances. Statements of the complainant (PW-7) and Hari Chand (PW-13) are specific about the harassment of the deceased-Raj Rani by the accused in connection with the demand of dowry. It is also evident from the evidence on record that she was meted out with such harassment soon before her death.

13. In view of the evidence on record, as discussed above, we hold that the prosecution was successful in proving the ingredients of Section 304-B IPC. The Trial Court rightly presumed that the accused has caused the dowry death of the victim and the High Court rightly upheld the conviction and sentence.

14. We find no merit in this appeal and the same is accordingly dismissed. The appellant is directed to be taken into custody forthwith to serve remainder period of sentence.

..... J.
(SUDHANSU JYOTI MUKHOPADHAYA)

..... J.
(N.V. RAMANA)

NEW DELHI;
JANUARY 14, 2015.



JUDGMENT