
(2015) 03 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : CRA-S-1537-SB of 2012

Mahesh Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 113B, 113-B
Penal Code, 1860 (IPC) — Section 302, 304B, 304-B

Citation : (2015) 03 P&H CK 0055

Hon'ble Judges : Raj Rahul Garg, J.

Bench : Single Bench

Advocate : Aditi Girdhar and amicus curiae, for the Appellant; Meenakshi Goyal, AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Raj Rahul Garg, J.—Appellant Mahesh @ Sonu assailed the judgment of conviction dated 9.3.2012 rendered by Sh. Dilbagh Singh Johal, Additional Sessions Judge, Bathinda, whereby, out of the three accused, only appellant Mahesh was convicted for committing offence punishable under Section 304-B IPC. Vide order of sentence of the even date, he was sentenced to undergo RI for 10 years.

2. The other two accused; Tara Chand and Shanti Devi, wife of Tara Chand i.e. father-in-law and mother-in-law of deceased, were acquitted after holding that the prosecution has miserably failed to prove the charge under Section 304-B IPC against them.

3. Brief facts of the prosecution case are like this; that complainant Dheeraj-brother of the deceased-Madhu Bala, lodged report with the police on 30.8.2008 at about 10.00 A.M. As per complainant, he is working as Photographer. His father Babu Ram had died 8 years ago whereas his mother is alive. He has 8 sisters.

4. Madhu deceased was married to Mahesh @ Sonu son of Tara Chand, resident of Bathinda, about 5 years ago. Out of this wedlock, a female child, Tina was born. She was of the age of 5 years. Madhu was carrying 7-8 months pregnancy. As per complainant, sometimes after the marriage, Mahesh started harassing Madhu. He had been saying that he was going to be married to a girl of good family but he has come in contract with poor people who have not given anything in dowry. As per complainant, dowry was given to Madhu as per status of the parties, however, motor cycle was not given in the dowry. On account of this reason, members of her in-laws family used to beat her. Due to harassment at their hands, Madhu used to go to Dabwali and reside there for sometime. After compromise, she again used to go to her in-laws house. In the year 2005 in Panchayat, a written compromise was effected by the in-laws family of Madhu and she was brought back to her matrimonial house. On 16.8.2008, on the day of Raksha Bandhan, complainant had gone to Bathinda to meet his sister and to get tied Rakhi from her. There, Madhu told him that her husband, father-in-law and mother-in-law were demanding motor cycle from her. At this, complainant gave assurance to her to arrange for motor cycle. After getting Rakhi tied from Madhu, complainant came back home and told about the aforesaid demand of the accused to his elder brother-in-law Richhpal Singh and his mother. They also stated that they will make arrangement of motor cycle but due to their poor financial condition, they could not fulfill the demand of motor cycle and as such, members of the in-laws family of his sister started taunting her. Complainant further stated that in the morning, he received phone call from his nephew Sanjay to the effect that Madhu had been run over by a train and thus, died. As Madhu was well aware of the financial condition of her parents, as such, on account of harassment at the hands of her in-laws and non fulfilment of their demand of motor cycle, she brought her life to an end. On this statement Ex.PE, ASI Gurjant Singh made his endorsement Ex.PE/1 and sent the same to police station through C.Rajesh Kumar for registration of FIR, whereupon, formal FIR Ex.PE was recorded under Section 304-B IPC. ASI Gurjant Singh visited the spot and prepared rough site plan as Ex.PF. Blood stained stones were lifted from the spot, converted into parcel and sealed with the seal impression of "GS" and then were taken into police possession vide recovery memo Ex.PG. Inquest report Ex.PD was prepared and post mortem examination on the dead body was got conducted by sending the dead body through HC Dhanna Ram. Post mortem report is Ex.PB. After post mortem, dead body was handed over to the heirs of the deceased. Sealed parcel containing clothes of the deceased produced by HC Dhanna Singh was taken into police possession vide memo Ex.PN. On 8.9.2008 accused Shanti Devi was arrested. Her personal search memo was prepared. Accused Tara Chand and Mahesh Kumar @ Sonu surrendered in the Court. They were arrested on 2.9.2008. Parcel of the blood stained stones were sent to FSL, Chandigarh for test. Statements of witnesses were recorded. After completion of investigation, challan was put in the Court.

5. Finding a prima facie case against the accused for committing offence

punishable under Section 304-B IPC, they were charge sheeted accordingly, however, vide order dated 8.3.2011, alternative charge under Section 302 IPC was also framed against the accused, to which they did not plead guilty but claimed trial.

6. After taking entire prosecution evidence; statements of accused under Section 313 Cr.P.C were recorded putting each incriminating circumstance appearing against the accused to them to which they denied each prosecution allegation and pleaded their innocence. It was also pleaded that the case is false against them. Demand of dowry was never raised. Madhu had died on account of railway accident. Railway line is nearby their house. Under the pressure of the complainant party, the case was registered against them. There is, in fact, no direct evidence or sufficient proof against them for offence punishable under Section 304-B IPC. In defence, accused examined DW 1 Nand Kishore.

7. After hearing both the sides and appraising the entire evidence and material coming on record, the learned trial Court recorded the judgment of conviction dated 9.3.2012 and passed the order of sentence of even date, whereby accused Mahesh @ Sonu was sentenced and his parents Tara Chand and Shanti Devi were acquitted as mentioned in earlier part of this judgment.

8. I have heard learned counsel for the parties and appraised the entire material available on record.

9. Madhu married to appellant Mahesh in August 2003. The date of occurrence is 29.8.2008. As such, undisputedly, Madhu had died within 7 years of her marriage under unnatural circumstances. The life of Madhu ended as she came under a running train. There is no dispute about this fact as well. Dhiraj Kumar (PW7) brother of Madhu, who is also complainant of this case, categorically stated during the course of his examination in chief itself that Madhu committed suicide by laying herself before a running train.

10. For making Section 304-B IPC applicable, prosecution has to prove the essential ingredients of Section 304B IPC, which are as follows :-

i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

In the present case it is established on the file that the death of Madhu was caused otherwise than under a normal circumstance i.e. by a running train.

ii) Such a death should be occurred within 7 years of her marriage. This ingredient of Section 304-B IPC also stands proved on the file.

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 the demand of dowry.

v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

11. Presumption as to dowry death is also there as per Section 113-B of the Indian Evidence Act, 1872, which is as follows:

"Section 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 has 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 IPC."

12. This presumption under Section 113-B of the Indian Evidence Act, 1872 shall be raised only on proof of the following essentials :-

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

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

iii) Such cruelty or harassment was for, or in connection with the, any demand for dowry.

iv) Such cruelty or harassment was soon before her death.

13. Thus, as per the presumptive Section 113-B of the Evidence Act, one of the essential ingredients "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113-B of the Evidence Act 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.

14. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that :

"A conjoint reading of Section 113B of the Evidence Act and Section 304B of IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon circumstances of each

case and no strait jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined." 15. The necessity for insertion of two provisions have been amply analysed by the Law Commission of India :-

"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 impediments in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". 16. On the point of demand of dowry, in fact, there is no evidence on the file. Dhiraj Kumar (PW7) complainant and brother of deceased Madhu, during the course of his cross examination, stated that, at the time of marriage, accused did not demand the dowry. He further stated that accused did not demand the dowry from them before marriage. Before marriage accused Mahesh never visited their house. He also deposed that accused used to give beatings to his sister. In the year 2005, a Panchayat was held. That was also regarding giving of beatings and at that time as well, accused did not demand the dowry articles. He further deposed that the demand of motor cycle was not made in his presence. Thus, the statement made by this very witness in his examination in chief, that when, on the day of Raksha Bandhan, he had gone to his sisters" house, she told him that her husband and in-laws were not treating her properly and further, that they demanded more dowry articles including motor cycle, stands disproved. Even in examination in chief, he deposed that after marriage his sister was living happily with her in-laws upto about one year. After one year, accused and his parents started maltreating her and then he gave the incident of Raksha Bandhan. Before Raksha Bandhan no instance of maltreatment finds mention. There is also no specific instance as to when and under what circumstances she was harassed or being beaten up on account of non-fulfilment of demand of dowry.

17. Ex.PA is the compromise, taken place between the deceased and the accused party in the year 2005, when deceased came to her parents" house. PW7 deposed that at that time, the dispute was regarding giving of beatings by Mahesh to the deceased and the dispute was not regarding demand of dowry. Even there is no mention in this document regarding demand of dowry. Parveen

Kumar son of Bharat Bhushan (PW4), who is the nephew of Dhiraj Kumar (PW7) and is also one of the signatories of Ex.PA, categorically stated that after 2-3 years of the marriage, Mahesh and Madhu started quarreling with each other but the matter was not clear. He further deposed that quarrel was due to family dispute. Sometimes Madhu had come to Dabwali after quarrel. When Mahesh used to come to take Madhu, he (Parveen) was usually called to get understand him, not to quarrel with Madhu, by the parents of Madhu. Once or twice, Mahesh was orally asked to understand, however, in the year 2005, there was big dispute but it was not clear due to what reason, the dispute took place. Madhu disclosed that her husband and in-laws used to maltreat her for not doing the household works and Madhu did not obey them of which quarrel used to take place. From this statement, it appears that matter in dispute between the parties was something else than the demand of dowry. Had there been any harassment of Madhu on account of demand of dowry that must have been reflected in compromise Ex.PA. Any other dispute between the parties which does not amount to cruelty or harassment in connection with the demand for dowry, cannot attract the application of Section 304-B IPC. In the year 2005, Madhu came back to her parental house at Dabwali. Thereafter, Mahesh along with his father and 3-4 Panchayat members, came to Dabwali, at the parental house of Madhu. Mahesh felt sorry and said that he would not beat Madhu and also not quarrel with her in future. Thus, Ex.PA shows that there was only verbal duel between the parties and the matter was settled. Thus, this verbal duel as mentioned in Ex.PA, cannot be termed as dispute between the parties on account of harassment of Madhu for non fulfilment of demand of dowry. Asha Balmiki, Ex-President of Municipal Committee, Dabwali, one Madan Lal, and two other persons from Dabwali, were present at the time of Panchayat. Mahesh also gave undertaking in writing "not to beat Madhu", which was also signed by his father Tara Chand, Jyoti Lal from Bathinda, and this compromise was also signed by him. He identified his signatures on this compromise. Copy of the same is also Ex.MO7. Thereafter, Madhu was sent with the accused to her matrimonial home. He further went on stating that no talk regarding demand of dowry was discussed in the Panchayat. He further deposed during the course of his cross examination that Madhu never told him that accused used to demand motor cycle whenever he went to make understand her and her husband. Accused party never demanded dowry in his presence.

18. Asha Balmiki, Ex-President of Municipal Committee, Mandi Dabwali was also examined as PW14. She also did not state anything regarding demand of dowry by Mahesh. She deposed that Mahesh Kumar used to take intoxicant and Madhu came to her parents house at Mandi Dabwali. She effected a compromise with Madhu and Mahesh. She also identified her signatures on Ex.PW 14/A. This compromise is the same which is Ex.PA and MO 7. Thus, the statement of Asha (PW14), who was Ex-President of Municipal Committee, Dabwali, also establishes the fact that there was, in fact, no demand of dowry raised by Mahesh. The fact that earlier allegations regarding demand of dowry and harassment of deceased

on account of non fulfilment of their demand of dowry was raised against father-in-law Tara Chand and mother-in-law Shanti Devi, who have been acquitted by the learned trial Court, also becomes relevant, in view of the above discussion.

19. Richhpal Singh (PW3) is the husband of Baby, sister of the deceased. Though this witness deposed during the examination in chief that after the marriage, there used to remain quarrel with Madhu for bringing less dowry. Husband of Madhu demanding motor cycle and Madhu used to weep in this regard in her parental house and was also telling to her husband; that her parents were not having capacity to give motor cycle as they were having insufficient income. Her husband used to maltreat Madhu and Madhu used to narrate entire episode to her parents. After 3 years of marriage, a Panchayat was assembled in which he was also one of the member. Sonu, Tara Chand and panchayat from Bathinda was also present at that time, which assembled at Police Station Dabwali. Sonu felt sorry for his act and conduct and also give affidavit in this regard. Madhu was sent back to her in-laws house. But there is no mention in affidavit Ex.PA that Sonu felt sorry for demanding dowry from Madhu or for harassing her on account of non fulfilment of demand for dowry. He simply mention in affidavit Ex.PA that there was verbal dual between the parties and the matter was got settled by Panchayat and the sorry was felt only on that account. However, during course of his cross examination, he deposed that he never seen husband of Madhu, quarreling with her. Her husband never demanded dowry from Madhu in his presence. So, he has no personal knowledge about the harassment of Madhu on account of dowry, if at all it was there. Family members of his in-law were telling him about the maltreatment of Madhu at the hands of accused. No specific instance has been mentioned as to when and under what circumstances the parents of Madhu had told him about her harassment by Mahesh on account of dowry. He does not remember the date, time, month or year when compromise took place in the Police station. Compromise Ex.PA does not show that it was arrived at between the parties in the police station. Even Dhiraj Kumar (PW7) did not state that the compromise Ex.PA was taken place in the police station. This witness also deposed that he did not sign the compromise Ex.PA. Richhpal Singh is the family member of the parents" side of Madhu. If he was so important in whom confidence had been reposed by the family members of Madhu, while telling him about the harassment of Madhu at the hands of Mahesh, and if he had been present at the time of compromise, he would have signed the same as well. His non signing the compromise further shows that he is an introduced witness. He further deposed that he was not present at the time of marriage of Madhu. This witness is the near relative of deceased. It is not believable that if he was on good terms with the parents of Madhu, he would not attend the marriage of Madhu. For this reason as well, the statement of this witness cannot be relied upon. Even at the time of engagement of Madhu, he was not present. He does not know what dowry was given at the time of marriage, as he was not present. He does not even remember the date of death of Madhu. Thus, being relation, he was interested in the success of the case and

as such, deposed in favour of the prosecution, however, he had no personal knowledge about the demand of dowry or harassment of deceased by the accused on that account.

20. Even Parveen Kumar (PW4) deposed that the compromise was executed at the parental house of Madhu. Thus, the statement of Richhpal Singh (PW3) that the compromise was executed in the police station, is also not consistent with the statements of star witnesses of the prosecution. ASI Gurjant Singh, Investigating Officer of the case, who appeared as PW2, also categorically stated that he recorded the statements of Gita Rani, Sunita Rani, sisters of deceased, Sumitra Devi, mother, Asha Balmiki, Ex- President, MC and Sanjay Kumar, Dabwali. He also enquired the matter from the neighbourhood. It did not come to his notice regarding demand of dowry, but a writing regarding the dispute was produced before him, as such, even in the investigation of the police officer also, it did not appear that the accused raised demand of motor cycle from the deceased or that he had harassed her in any manner for non fulfilment of his demand of dowry in the shape of motor cycle.

21. Of course, Dr. Ashok Monga as PW1 gave his opinion Ex.PW1/A1, according to which he opined that the possibility of cause of death in this case (Madhu wife of Mahesh) was by railway track accident, cannot be ruled out. Ex.PC affidavit of Dr. V. Chawla, Dr. Ashok Monga and Dr. Monika Gupta, who conducted the post mortem on the dead body of Madhu, by way of Medical Board, constituted on the orders of SMO, Incharge, Civil Hospital, Bathinda and gave opinion regarding cause of death of deceased as haemorrhage and shock due to above mentioned injuries which were ante mortem in nature and sufficient to cause death in ordinary course of nature also corroborates the statement of PW1. They also made a mention that injuries on the person of deceased are given in detail in Ex.PC. In fact, it is established on the file that Madhu had died as she was being run over by a train. However, in the absence of any evidence on the file that she ended her life on account of her harassment by Mahesh for non fulfilment of demand of dowry, therefore, no case is made out against appellant Mahesh.

22. As such, in view of the above discussion, I conclude to hold that prosecution has failed to prove the fact that appellant Mahesh raised demand of motor cycle or dowry from the deceased or harassed her in connection with the non fulfilment of demand of dowry. As such, since prosecution has failed to prove the factum of demand of dowry as well the causing of cruelty or harassment of the deceased on account of demand of dowry, the presumption as to dowry death as per Section 113B of the Evidence Act cannot be raised. The necessity for insertion of two provisions i.e. Section 304B IPC and 113B of Evidence Act has been amply analysed by the Law Commission of India in its 21st report dated 10.8.1988 on "Dowry Deaths and Law Reforms". Keeping in view the impediments in the pre existing law in securing evidence to prove dowry related deaths, Legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background, presumptive Section 113B of

Evidence Act has been inserted. As per definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of Evidence Act, one of the essential ingredients amongst others, in both the provisions is that the concerned woman must have been "soon before her death, subjected to cruelty or harassment" "for or in connection with the demand of dowry".

23. In the case in hand, prosecution has failed to establish beyond reasonable doubt that there was any demand of dowry at the instance of appellant Mahesh. As such, the question of harassment of the deceased on account of non fulfilment of demand of dowry is also not there.

24. For the reasons recorded above, finding merit in this appeal, the same is allowed. Judgment of conviction dated 9.3.2012 and order of sentence of even date are set aside. Appellant Mahesh is ordered to be acquitted of the charge for which he faced trial. He be released from custody forthwith if not required in any other case. Amount of fine deposited, if any, be refunded to him.