
(2016) 06 SHI CK 0044
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No 466 of 2009

State of Himachal Pradesh

APPELLANT

Vs

Shyam Lal

RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B

Citation : (2016) ILRHP 1818

Hon'ble Judges : Mr. Sanjay Karol and Mr. Ajay Mohan Goel, JJ.

Bench : Division Bench

Advocate : Mr.V.S. Chauhan, Addl. Advocate General with Mr. Vikram Thakur, Dy. Advocate General, for the Appellant; Mr. P.P. Chauhan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Ajay Mohan Goel, J.—This appeal has been filed against the judgment passed by learned Sessions Judge, Solan in Session Trial No. 13-NL/7 of 2007 dated 9.4.2009, vide which the learned Trial Court has acquitted the accused for offence punishable under Section 304-B of Indian Penal Code (in short "IPC").

2. The case of the prosecution in brief was that accused was married to Surindera, (hereinafter to be referred as "deceased"), daughter of Romesh Chand and Vidya Devi of village Duglu on 31.1.2005. The parents gave dowry to their daughter according to their capacity but accused was dissatisfied with dowry and started harassing her with a view to raise demand to her parents for Fridge, Colour TV and other items. The deceased on her visits to her parents used to tell them about the said behaviour and demands of the accused. On 6.5.2007, accused visited his in-laws at village Duglu, where his father-in-law told him that he was not in a position to meet his demands, but as and when he would be in a position he would meet his demands and he should not harass his daughter. Thereafter, accused returned to his house along with his wife. On the intervening night of 20-21st May, 2007 at about 3:00 a.m. Jaswinder, brother of accused

informed father of deceased that his daughter was seriously ill and requested him to come to his house. On this, Romesh Chand, father of deceased telephonically inquired from the neighbourhood of accused about the welfare of his daughter, who informed him that deceased was no more. When Romesh Chand came to know about the death of his daughter, he collected his village fellows and went to the house of accused and reached there in the morning on 21.5.2007. They found the deceased lying in a room in the house of accused. They inquired from accused as to what had happened. The accused initially kept quiet but later on informed that deceased had consumed poison. Romesh Chand asked accused to return all dowry articles, which were returned by him. Thereafter, one Kuldip who had accompanied Romesh Chand, telephonically informed the police about the manner of death of the deceased and police after making entry of the information so received, in the daily diary register, reached the house of accused. The police party was headed by Som Nath, SHO, who after inspecting the dead body, recorded statement of Romesh Chand under Section 154 Cr.P.C. and on the basis of the same, a case was registered under Section 304-B IPC. Inquest report was prepared and photographs of the spot were also taken. Thereafter, Dy. Superintendent of Police, Nalagarh visited the spot and took over the investigation of the case. After complying all the formalities, challan under Section 304-B IPC was prepared and presented in the Court of learned JMJC, Nalagarh, who committed the case to the Court of learned Sessions Judge, Solan for trial.

3. The accused pleaded not guilty and claimed to be tried.

4. In order to substantiate its case, prosecution, in all, has examined 14 witnesses.

5. PW1-Romesh Chand father of deceased has deposed that he had one daughter and two sons and deceased was the eldest and married to accused on 31.1.2005. He further stated that he gave dowry to his daughter according to his capacity. His daughter used to visit off and on. Deceased also told his wife (deceased's mother) that accused was harassing her on account of dowry and demanding Fridge, Colour TV and Toknia, a vessel used for keeping water. His wife told him about these facts. On 6.5.2007, his daughter along with accused had come to their village to attend marriage. He advised accused and told him that as and when he was in a position to give these articles, he would certainly give and requested him not to harass his daughter. On the intervening night of 20/21-5-2007 at about 3:00 a.m., he received a phone call from Jasbinder "Dever" of his daughter, that his daughter was seriously ill. Then, he telephoned a lady in the neighbourhood of his daughter to inquire about the deceased, who informed him that his daughter had expired. Thereafter, he went around his village and told Kuldip, Prem Lal and other persons about the same. Then, 20-25 persons, ladies and gents, from his village gathered and they all came to the village of his daughter. On reaching there, they found that deceased was lying in the room of the accused and he asked his son-in-law, as to what has happened.

The accused initially remained quiet and later on told him that deceased has consumed poison. He further deposed that deceased has committed suicide by consuming poison on account of harassment being meted out to her by the accused on account of demand of dowry. He has also deposed that he told accused that his daughter is no more, therefore, he would take back the dowry articles and collected the same and kept these in a nearby field, in the meanwhile police came. In his cross-examination, he has admitted that it was correct that after marriage deceased and accused used to visit them. He has also admitted that relationship between his daughter and accused were cordial. He also stated that his daughter did not tell him about her being harassed by accused. He has also stated that he had not told the factum of his daughter being harassed to the police, nor he had made any complaint in this regard to the Panchayat etc. but he has qualified this by saying that this was a family affair. He has denied the fact that his daughter was getting medical treatment, as she was issueless.

6. PW2-Vidya Devi is the mother of deceased who has also narrated the events leading to the death of her daughter and substantiated the case of the prosecution. She has deposed that about one month before her death, deceased came to their house and told her that accused harassed her and was demanding Fridge, TV and Toknia and this fact was told by her to her husband. In her cross-examination, she has stated that she did not tell about the harassment of her daughter to the Panchayat or police.

7. PW3-Kuldeep Singh has deposed that he knew Romesh Chand, PW1, and deceased daughter of Romesh Chand. On 21.5.2007, at about 3:30 a.m., Romesh Chand came to his house and requested him to accompany him to village Katli, to the house of in-laws of deceased, as his daughter has expired. 20-25 persons accompanied him to village Katli. He has also deposed that he inquired from Romesh Chand as to how deceased had died and he (Romesh Chand) told him that he was not aware and actual position will be known after reaching village Katli. Romesh Chand told him that accused used to harass deceased on account of demand of dowry. He has further stated that when they reached the village of deceased, they saw deceased was lying in the room and when Romesh Chand inquired about the death of his daughter from accused, he initially remained quiet and later on said that she had consumed poison, as a result of which, she expired. In his cross-examination, he has stated that he had attended the marriage of deceased and he denied the suggestion that he had deposed falsely that when they were on their way from village Duglu to Katli, Romesh Chand told him regarding the harassment being meted out to deceased by accused on account of dowry. PW4-Prakash Chand is signatory to the recovery memo vide which "dupatta" was taken into possession and he has also admitted that photographs were also taken on the spot. PW6-Dr. Bhag Singh Dhiman had conducted the post-mortem of the dead body of deceased-Surindera and he has stated that, in his opinion, deceased died due to consumption of poison. PW7-Nirmal Singh had taken photographs, Ext. P3 to Ext.P8 at the spot.

8. These are some of the relevant witnesses whose scrutiny/testimonies are relevant for the purpose of adjudication of the present case.

9. On the basis of material produced on record, the learned Trial Court came to the conclusion that the prosecution had failed to bring home the guilt of accused under Section 304-B IPC and as such the accused deserves to be acquitted. Feeling aggrieved by the said judgment, the present appeal has been filed by the State.

10. Mr. V.S. Chauhan, learned Addl. Advocate General has submitted that judgment passed by the learned Trial Court is not sustainable in the eyes of law because the Trial Court has erred in acquitting the accused despite the fact that the prosecution had proved beyond reasonable doubt that accused was guilty of the charges levelled against him. As per him, the prosecution witnesses had corroborated the case of prosecution and the testimonies of said witnesses inspired confidence and their credibility was not impinged by the defence. In these circumstances, according to him, the findings returned by the learned Trial Court are not only perverse but they are also contrary to the material produced on record by the prosecution. According to him, there remained no iota of doubt that the deceased has ended her life on account of the harassment meted out to her by accused, thus he submitted that the judgment passed by the learned Trial Court, was required to be set aside and the accused ought to be convicted for the offence levelled against him.

11. On the other hand, Mr. P.P. Chauhan, learned defence counsel has submitted that there was no merit in the appeal filed by the State, as the judgment of the learned Trial Court was based on correct appreciation of evidence on record and did not warrant any interference. Mr. Chauhan has further argued that none of the ingredients of Section 304-B IPC were proved beyond any reasonable record against the accused by the prosecution. He has argued that the onus was on the prosecution to have proved by way of placing material on record that deceased before her death was subjected to cruelty or harassment by her husband or relatives in connection with the demand of dowry, as a result of which, the deceased committed suicide. Accordingly, he submitted that the judgment passed by the learned Trial Court was a reasoned judgment and the findings returned in the same were based on record available before it, and the same warranted no interference.

12. We have heard learned counsel for the parties and gone through the records of the case.

13. Before proceeding any further, it is relevant to take note of the fact that here is a case which admittedly is of unnatural death and the death has taken place within 7 years of the marriage of the deceased.

14. Section 113-B of the Evidence Act, 1872 reads as under:-

"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 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.

15. Section 304-B of the IPC reads as under:-

"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."

16. The Hon"ble Supreme Court in *Surinder Singh v. State of Haryana*, (2014) 4 Supreme Court Cases 129, has held as under:-

"17. Thus, the words "soon before" appear in Section 113B of the Indian Evidence Act, 1872 and also in Section 304B of the IPC. For the presumptions contemplated under these Sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

18. In this connection we may refer to judgment of this Court in *Kans Raj v. State of Punjab*, where this Court considered the term "soon before". The relevant observations are as under: (SCC pp. 222-23, para 15)

"15. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of

proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough." Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

17. Thus, it is evident that for the purposes contemplated in Section 113-B of the Evidence Act 1872 and Section 304-B I.P.C., to spring into action, it is necessary to demonstrate that cruelty or harassment was caused soon before the death. Therefore, the interpretation of the words "soon before" assumes great significance and importance and these words have to be interpreted keeping in view the facts and circumstances of each case. The question obviously will be how "soon before" her death such woman was subjected by the accused to cruelty or harassment for or in connection with demand for dowry. The cruelty or harassment will differ from case to case and it will obviously be relating to the mindset of people which will also vary from person to person. Besides cruelty being both mental and/or physical it can also be verbal or emotional.

18. In the context of the present case, it is not disputed that PW-1 and PW-2 are very closely related to the deceased. In these circumstances, their statements have to be minutely scrutinised in order to ascertain their trustworthiness and truthfulness. Because the death has taken place within 7 years from the date of the marriage of the accused, this does not mean that the presumption as contemplated in Section 304-B I.P.C. will not have to be substantiated by the prosecution by placing on record cogent and reliable material.

19. To sustain the conviction under Section 304B IPC, the following essential ingredients are to be established:-

- (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 and
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

20. Thus, to attract conviction under Section 304B IPC, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. In the case of *Hira Lal & Ors. v. State (Govt. of NCT) Delhi*, (2003) 8 SCC 80, it was observed as under:-

"9. A conjoint reading of Section 113-B of the Evidence Act and Section 304- B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The 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 the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket 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 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113- B 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. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There

must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

21. The Hon"ble Supreme Court in V.K. Mishra and another v. State of Uttarakhand and another, (2015) 9 Supreme Court Cases 588 has again reiterated that in order to attract application of Section 304B IPC, the essential ingredients are as follows:-

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

2. Such a death should have occurred within seven years of her marriage.

3. She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

4. Such cruelty or harassment should be for or in connection with demand of dowry.

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

On proof of the essential ingredients mentioned above, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. "Soon before" is a relative term and it would depend upon circumstance of each case and no strait-jacket formula can be laid down as to what would constitute a period "soon before the occurrence". There must be in-existence a proximate live link between the facts of cruelty in connection with the demand of dowry and the death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned it would be of no consequence."

22. In the present case, a perusal of statement of PW1 makes it clear that at no stage the deceased had, in fact, told him that accused was harassing deceased on account of dowry. In his cross-examination, he has admitted the suggestion that relation between deceased and accused were cordial. He has further mentioned in his statement that when he reached in the village of accused, they demanded back the dowry, which he (Ramesh Chand) had given to his daughter and the same was returned back. He has also mentioned in his cross-examination that the factum of alleged harassment of his daughter was neither told to Panchayat nor police. Besides this, in his statement there is no specific incidence or instance of cruelty indicated from which it can be presumed that the said act was a catalyst resulting in the deceased consuming the poison. If we see his initial statement under Section 154 Cr.P.C., there also general assertions, are made that accused used to harass his daughter on account of dowry but there

are no specific instances of cruelty alleged against the accused. Similarly, PW2, who is the mother of deceased, has also stated in her cross-examination that she has also made general allegations of demand of dowry against the accused. She has stated in her cross-examination that the alleged acts of harassment of her daughter was neither reported to the Panchayat nor to the police. PW-6, Dr. Bhag Singh, who has conducted the post-mortem of deceased, has stated that the cause of death was consumption of poison. A perusal of the post-mortem report i.e. Ext.PW6/A will demonstrate that it is mentioned therein that there was no sign of external injury on the body of the deceased. This also belies the fact that deceased was subject to any physical harassment/cruelty by the accused. In case the deceased was being harassed by accused on account of dowry demand then the prosecution has not been able to demonstrate as to why the parents of the deceased did not take up the matter of the deceased being persistently harassed by accused with appropriate authority. As already mentioned above, the statement of the father made under Section 154 Cr.P.C. also does not disclose that the deceased was physically harassed by accused. Thus, it is evident that there are vital contradictions and inconsistencies in the statements of PW1 and PW2. These witnesses are closely related to the deceased. On the basis of material which has been placed on record by the prosecution at the most the conduct of the accused person creates suspicion that alleged acts might have resulted in the deceased taking extreme steps of committing suicide. However, it cannot be said that his alleged guilt has been proved beyond reasonable doubt.

23. Accordingly, we hold that the view which has been taken by the learned Trial Court after appreciating the material placed by prosecution on record is one of the reasonable and plausible views which could have been arrived at, in the facts and circumstances of the case. Therefore, we do not find any perversity in the judgment passed by the learned Trial Court. The judgment has been passed by appreciating all the material placed on record and the same cannot be said to be either cryptic or perverse and the conclusions arrived at are borne out from the material placed on record by the prosecution. Therefore, we do not find any merit in the appeal and the same is dismissed.