

GURMEET SINGH

A

v.

STATE OF PUNJAB

(Criminal Appeal No. 1731 of 2010)

B

MAY 28, 2021

**[N. V. RAMANA, CJI, SURYA KANT AND
ANIRUDDHA BOSE, JJ.]**

Penal Code, 1860 – s.304-B – Death of married woman after she consumed poison in her matrimonial home – Conviction of appellant-husband by Courts below – Challenge to – Held: On facts, not acceptable – Death was caused within seven years of marriage in “otherwise than under normal circumstances” – Consistent and confidence inspiring testimony of deceased’s father (PW4) about continuing harassment meted out to deceased on account of dowry – Prosecution having satisfied the necessary ingredients u/s.304B IPC, the presumption u/s.113-B, Evidence Act took full effect, which was not rebutted by the appellant – Courts below did not err in convicting appellant u/s.304-B, IPC as appellant failed to discharge the burden u.s.113-B, Evidence Act – Evidence Act, 1872 – s.113B.

C

Penal Code, 1860 – ss. 304B and 498A – Plea that conviction u/s.304B cannot be sustained without any charges u/s. 498A – Held: Is not tenable – Offences u/s.498A and s.304B, IPC are distinct in nature – Although cruelty is a common thread existing in both the offences, however the ingredients of each offence are distinct and must be proved separately by the prosecution – If a case is made out, there can be a conviction under both the sections.

D

E

F

Penal Code, 1860 – s.304-B – Conviction under – Necessary ingredients –Ingredient as to existence of dowry demand “soon before her death” – Interpretation of – Held: The expression “soon before” cannot be interpreted to mean “immediately before”, rather the prosecution has to show that there existed a “proximate and live link” between the cruelty and the consequential death of the victim – Words and Phrases – Expressions “soon before”, “immediately before” and “proximate and live link”.

G

H

- A *Penal Code, 1860 – s.304-B – Guidelines issued by Supreme Court in Satbir Singh case relating to trial u/s.304B – Re-iterated.*
Evidence Act, 1872 – s.113B – Presumption of causation – Held: Once the necessary ingredients u/s.304-B, IPC stand satisfied, a presumption of causation arises against the accused u/s.113-B,
B *Evidence Act and the accused has to rebut this statutory presumption – Penal Code, 1860 – s.304B.*

Dismissing the appeal, the Court

- HELD : 1.1.** Section 304-B(1), IPC defines ‘dowry death’ of a woman. It provides that ‘dowry death’ is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of 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, in connection with demand for dowry. Further, Section 304-B(2), IPC provides punishment for the aforesaid offence. [Para 9][159-D-F]
- 1.2.** In the present case, admittedly, the marriage between the deceased and the accused-appellant took place on 23.11.2004, and the death of the deceased occurred in 2008 after she consumed poison in her matrimonial home. Therefore, the first two ingredients as to death under otherwise than ‘normal circumstances’ within seven years of marriage stand satisfied. [Para 10][160-C-D]
- 1.3.** The next important ingredient which needs to be established is the existence of dowry demand “soon before her death”. This court in catena of judgments have held that, “soon before” cannot be interpreted to mean “immediately before”, rather the prosecution has to show that there existed a “proximate and live link” between the cruelty and the consequential death of the victim. [Para 11][160-D-E]
- G** 1.4. PW4 (Complainant), the father of the deceased, has clearly stated that after the marriage the deceased had telephonically informed him about the consistent demand of a car or equivalent cash by the accused. In 2007, when the complainant
- H

visited India, the deceased had also expressed her unhappiness due to constant harassment. Moreover, when he returned to the country in July, 2008, the deceased had reiterated the factum of demands before him. The complainant also stated as to how the families attempted to mediate the dispute themselves and on multiple occasions he gave certain gifts to the appellant and his family to ameliorate the situation. Another important circumstance is that the mother of the deceased had informed the father 15-20 days prior to the incident about the continuing harassment of the deceased on account of dowry. [Para 12][160-F-H]

A

1.5. Both the Trial Court and the High Court found the evidence of P.W.4 to be reliable and consistent despite a thorough cross-examination. No evidence was produced by the appellant to disregard the aforesaid testimony. The testimony of PW4 is found to be consistent and inspiring confidence by this Court as well. Taking into account the evidence on record, particularly the testimony of PW4, it is clear that the prosecution has proved the necessary ingredients under s.304-B, IPC against the accused-appellant. [Para 13][161-A-C]

C

2. Now, that necessary ingredients under s.304-B, IPC stands satisfied, a presumption of causation arises against the accused under s.113-B, Evidence Act and the accused has to rebut this statutory presumption. [Para 14][161-C-D]

E

3. The defence of the accused that his family and family of the deceased shared a cordial relationship, and in fact, the appellant had helped the mother of deceased in getting treatment of cancer, merits rejection as being untenable. The Trial Court concluded that the accused-appellant, who was working as a technician in a hospital, has forged the hospital records to prove the existence of cordial relationship between the families of the deceased and the accused. The conclusion reached by the Trial Court is based on a detailed analysis of the evidence on record, and does not warrant any interference. The appellant has not brought to attention any material to suggest that the above finding of the Trial Court was perverse or without any basis. [Paras 15, 16][161-D-E, 162-D]

F

G

H

- A 4. The next submission of the appellant was that the deceased was suffering from depression owing to the health of her mother. However, no evidence has been produced on record by the appellant to indicate that the deceased was depressed due to the alleged poor health condition of her mother. In fact, no evidence was produced to even show that her mother's health was deteriorating. [Para 17][162-E-F]
- B 5. The prosecution having satisfied the necessary ingredients under Section 304B of IPC, the presumption under Section 113-B, Evidence Act takes full effect in this particular case, which has not been rebutted by the accused-appellant. The appellant has failed to make out a case for interference with the concurrent opinions of the Courts below, convicting the accused-appellant under Section 304-B, IPC. [Para 18][162-F-G]
- C 6. The plea that without any charges under s. 498A, IPC a conviction under s. 304-B, IPC cannot be sustained, is not tenable, as the offences under s. 498-A and s. 304-B, IPC are distinct in nature. Although cruelty is a common thread existing in both the offences, however the ingredients of each offence are distinct and must be proved separately by the prosecution. If a case is made out, there can be a conviction under both the sections. [Paras 19, 20][162-G-H; 163-D-E]
- D 7. After perusing the relevant material and the evidence available, it is found that the High Court and trial court have not committed any error in convicting the appellant under s. 304-B, IPC as the appellant failed to discharge the burden under s. 113-B, Evidence Act. [Para 22][164-H; 165-A]
- E *Satbir Singh v. State of Haryana* 2021 AIR 2627;
Kamesh Panjiyar v. State of Bihar [2005] 1 SCR 903;
Kans Raj v. State of Punjab, [2000] 3 SCR 662; *Rajinder Singh v. State of Punjab*, [2015] 2 SCR 835 – relied
- F on.

Case Law Reference

2021 AIR 2627	relied on	Para 9
[2000] 3 SCR 662	relied on	Para 11

[2015] 2 SCR 835 relied on

Para 11

A

[2005] 1 SCR 903 relied on

Para 19

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.
1731 of 2010

From the Judgment and Order dated 15.03.2010 of the High Court
of Punjab & Haryana at Chandigarh in Crl. Appeal No. 2298-SB of
2009.

B

Rishi Malhotra, Adv. for the Appellant.

Ms. Jaspreet Gogia, Karanvir Gogia, Ms. Shivangi Singhal, Advs.
for the Respondent.

C

The Judgment of the Court was delivered by

N. V. RAMANA, CJI

1. The present appeal arises out of the impugned judgment dated
15.03.2010 passed by the High Court of Punjab and Haryana at
Chandigarh in Criminal Appeal No. 2298-SB of 2009, wherein the High
Court dismissed the appeal preferred by the appellant herein and upheld
the order of the Trial Court convicting him under Section 304-B, IPC and
sentencing him to undergo rigorous imprisonment for seven years and a
fine of Rs.5000/-.

D

2. The facts as per the prosecution are as follows: the deceased,
daughter of the complainant was engaged to the appellant in 2004.
Subsequent to the engagement, the complainant left for Abu Dhabi in
April, 2004 and in his absence the marriage between the appellant and
the deceased was solemnized on 23.11.2004. In 2006, a child was born
out of the wedlock. When the complainant returned from abroad in 2007,
the deceased informed him that the mother-in-law, father-in-law and the
appellant-husband used to physically assault her pursuant to the demand
of dowry. Allegedly, the complainant gave a gold chain to the accused
persons. The complainant thereafter went abroad and returned to India
on 21.07.2008. The deceased further disclosed that her in-laws were
demanding money for the purchase of a car. However, this time, the
complainant failed to fulfill the demand.

E

F

3. On 08.08.2008, the father-in-law of the deceased informed the
complainant that the deceased has consumed poison and lost her
consciousness and was being taken to the hospital. Upon reaching the

G

H

- A hospital, the complainant found his daughter to be unconscious. Later that day she died.
4. The Trial Court, vide order dated 03.09.2009 convicted the appellant-husband, father-in-law and mother-in-law for the offence under Section 304-B and sentenced them to undergo rigorous imprisonment for seven years each and a fine of Rs.5000/- each. In default of payment of fine, the accused persons were directed to undergo rigorous imprisonment for one year each.
5. Aggrieved, the accused persons approached the High Court in appeal. Vide impugned judgment dated 15.03.2010, the High Court acquitted the father-in-law and the mother-in-law, but upheld the order of conviction and sentence passed against the accused-appellant. Challenging the aforesaid judgment of the High Court, the accused-appellant has approached this Court.
6. The counsel appearing on behalf of the accused-appellant argued that the Courts below have, as a matter of routine, applied the presumption u/s 113B of Evidence Act in the instant case wherein even the basic and essential ingredient of Section 304-B, IPC are not satisfied. It was submitted that just because the death of the deceased occurred within seven years of marriage, by no stretch of imagination can it be said that the deceased soon before her death was subjected to cruelty in connection with the demand of dowry. The fact that the deceased was happy with the appellant is clearly evident as she lived with him and bore his child, and never mentioned any harassment or cruelty being meted out by the appellant. Furthermore, the gifts received by the appellant-husband were voluntarily given by the complainant and his family. Lastly, without any charges under Section 498A, IPC a conviction under Section 304-B, IPC cannot be sustained.
7. On the contrary, the counsel on behalf of the State argued that it was undeniable that the death in the present case has occurred within four years of marriage, under suspicious circumstances i.e., due to poisoning. Moreover, fifteen days before the incident, the deceased had specifically told her father about the latest demand of money for the purchase of a car. Lastly, it was established before the Courts below that the accused had forged the medical records of his mother-in-law to show cordial relationship between the two families. Therefore, owing to all the aforesaid circumstances, the presumption under Section 113B, Evidence Act operates against the accused-husband, which has not been rebutted.

8. Heard the counsel appearing for both sides. Section 304-B, IPC, which defines and provides the punishment for dowry death, 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.

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.”

9. Section 304-B(1), IPC defines ‘dowry death’ of a woman. It provides that ‘dowry death’ is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of 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, in connection with demand for dowry. Further, Section 304-B(2), IPC provides punishment for the aforesaid offence. This Court, in the recent judgment of **Satbir Singh v. State of Haryana**, Criminal Appeal Nos. 1735-1736 of 2010 summarised the law under Section 304-B, IPC and Section 113B, Evidence Act as under:

“i. Section 304-B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

ii. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B, IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B, Evidence Act operates against the accused.

A

B

C

D

E

F

G

H

- A iii. The phrase “soon before” as appearing in Section 304-B, IPC cannot be construed to mean ‘immediately before’. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.
- B iv. Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.”
- C 10. In the present case, admittedly, the marriage between the deceased and the accused-appellant took place on 23.11.2004, and the death of the deceased occurred in 2008 after she consumed poison in her matrimonial home. Therefore, the first two ingredients as to death under otherwise than ‘normal circumstances’ within seven years of marriage stand satisfied.
- D 11. The next important ingredient which needs to be established is the existence of dowry demand “soon before her death”. This Court in catena of judgments have held that, “soon before” cannot be interpreted to mean “immediately before”, rather the prosecution has to show that there existed a “proximate and live link” between the cruelty and the consequential death of the victim.[*See Satbir Singh v. State of Haryana* (supra); *Kans Raj v. State of Punjab*, (2000) 5 SCC 207; *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477].
- E 12. Here, the evidence of the father of the deceased (P.W.4)- Sarwan Singh, assumes great importance. He has clearly stated that after the marriage the deceased had telephonically informed him about the consistent demand of a car or of equivalent cash by the accused. In 2007, when this witness visited India, the deceased had also expressed her unhappiness due to the constant harassment. Moreover, when he returned to the country in July, 2008, the deceased had reiterated the factum of demands before him. The witness also stated as to how the families attempted to mediate the dispute themselves and on multiple occasions the father of deceased gave certain gifts to the accused and his family to ameliorate the situation. Another important circumstance which comes to our attention is that the mother of the deceased had informed the father 15-20 days prior to the incident about the continuing harassment of the deceased on account of dowry. Finally, on 08.08.2008,

the father-in-law of the deceased informed this witness about the A consumption of poison by the deceased.

13. It is necessary to highlight that both the Trial Court and the High Court found the above evidence of P.W.4- the father of the deceased to be reliable and consistent despite a thorough cross-examination. No evidence was produced by the appellant to disregard the aforesaid testimony. On perusing the testimony of PW4, we are also of the considered opinion that the same is consistent and inspires confidence. Taking into account the evidence on record, particularly the testimony of the father of the deceased, we are of the opinion that the prosecution has proved the necessary ingredients under Section 304-B, IPC against the accused-appellant. B C

14. Now, that necessary ingredients under Section 304-B, IPC stands satisfied, a presumption of causation arises against the accused under Section 113-B, Evidence Act and the accused has to rebut this statutory presumption. D

15. The defence of the accused is that his family and family of the deceased shared a cordial relationship, and in fact, the appellant had helped the mother of deceased in getting treatment of cancer. The Trial Court, after a thorough examination of the evidences- both oral and documentary, concluded that the accused-appellant, who was working as a technician in a hospital, has forged the hospital records to prove the existence of cordial relationship between the families of the deceased and the accused. The relevant observations of the Trial Court on this point are as follows:

“Gurmeet Singh accused was working as O.T. Technician. Gurmit Singh brought Baksho Devi to the hospital and he examined her and given Chemotherapy. He has further stated that photo copy of the entries in the file are Ex.D1 and she was treated upto 17.8.2008. This witness in his cross-examination has admitted that it is correct that in the entries in the file it is not recorded as to who brought the patient. He has also admitted that remarks column of Ex.D1 is blank and it does not bear his signatures anywhere. He also stated that what treatment was to be given is mentioned in the treatment file. He also stated that patient was also treated by other doctors. So this witness has stated that the patient was treated upto 17.8.08. Ex.D1 is dated 18.8.08. Admittedly Rama Devi has F G H

- A expired on 8.8.08. The case against accused Gurmit Singh was registered on 9.8.08. As per the statement of PW-11 SI Dharam Pal, accused Gurmit Singh was arrested in this case on 10.8.08. The personal search memo of the accused is Ex.P- 26, grounds of arrest memo is Ex.P-27 and ground of information memo is Ex.P-28 which was prepared by him and signed by accused and ASI Sukhdev Singh. So, if the accused was in custody since 10.8.08 till date, then how he could take her mother-in-law for treatment before Dr. K.K. Nayak DW-2 or got her treated from there. So, the defence evidence appears to have been crated and the same has been manipulated by the accused that he had been getting treatment of his mother-in-law to show that his relations were cordial with the family of the victim or with the victim falls to the ground.”
- C

(emphasis supplied)

- D 16. The aforesaid conclusion reached by the Trial Court is based on a detailed analysis of the evidence on record, and does not warrant any interference. The appellant has not brought to our attention any material to suggest that the above finding of the Trial Court was perverse or without any basis. Hence, this defence of the appellant merits rejection as being untenable.

- E 17. The next submission of the appellant was that the deceased was suffering from depression owing to the health of her mother. However, no evidence has been produced on record by the appellant to indicate that the deceased was depressed due to the alleged poor health condition of her mother. In fact, no evidence was produced to even show that her mother's health was deteriorating.

- F 18. Therefore, the prosecution having satisfied the necessary ingredients under Section 304B of IPC, the presumption under Section 113-B, Evidence Act takes full effect in this particular case, which has not been rebutted by the accused-appellant herein. The appellant has failed to make out a case for us to interfere in the concurrent opinions of G the Courts below, convicting the accused-appellant under Section 304-B, IPC.

- H 19. Lastly, the counsel on behalf of the appellant argued that without any charges under Section 498A, IPC a conviction under Section 304-B, IPC cannot be sustained. On this aspect this Court in the case of **Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388** held as under:

“12.It is to be noted that Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of “cruelty”. In Section 304-B there is no such explanation about the meaning of “cruelty”. But having regard to the common background to these offences it has to be taken that the meaning of “cruelty” or “harassment” is the same as prescribed in the Explanation to Section 498-A under which “cruelty” by itself amounts to an offence. Under Section 304-B it is “dowry death” that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. If the case is established, there can be a conviction under both the sections.”

A

B

C

D

E

20. Therefore, the argument raised by the counsel on behalf of the appellant cannot be accepted as the offences under Section 498-A and Section 304-B, IPC are distinct in nature. Although cruelty is a common thread existing in both the offences, however the ingredients of each offence are distinct and must be proved separately by the prosecution. If a case is made out, there can be a conviction under both the sections.

21. Before parting with this matter, we are of the opinion that it would be beneficial to reiterate the guidelines issued by this Court in *Satbir Singh v. State of Haryana* (supra) relating to trial under Section 304-B, IPC:

“v. Due to the precarious nature of Section 304-B, IPC read with 113-B, Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.

F

vi. It is a matter of grave concern that, often, Trial Courts record the statement under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “*audi alteram partem*” as it enables the accused to offer

G

H

- A an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.
 - vii. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the Trial with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act.
- B
 - viii. Section 232, CrPC provides that, "*If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal*". Such discretion must be utilized by the Trial Courts as an obligation of best efforts.
- C
 - ix. Once the Trial Court decides that the accused is not eligible to be acquitted as per the provisions of Section 232, CrPC, it must move on and fix hearings specifically for 'defence evidence', calling upon the accused to present his defense as per the procedure provided under Section 233, CrPC, which is also an invaluable right provided to the accused.
- D
 - x. In the same breath, Trial Courts need to balance other important considerations such as the right to a speedy trial. In this regard, we may caution that the above provisions should not be allowed to be misused as delay tactics.
- E
 - xi. Apart from the above, the presiding Judge should follow the guidelines laid down by this Court while sentencing and imposing appropriate punishment.
- F
 - xii. Undoubtedly, as discussed above, the menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of the husband are roped in, even though they have no active role in commission of the offence and are residing at distant places. In these cases, the Court need to be cautious in its approach."
- G
 - 22. In light of the above findings, after perusing the relevant material and the evidence available, we find that the High Court and Trial Court
- H

have not committed any error in convicting the appellant under Section 304-B, IPC as the appellant failed to discharge the burden under Section 113-B, Evidence Act. The appellant has not brought any material on record which merits the interference of this Court in the impugned judgment.

23. Appeal dismissed. Pending applications, if any, are disposed of accordingly.

A

B

Bibhuti Bhushan Bose

Appeal dismissed.