

MAHESH KUMAR

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v.

STATE OF HARYANA

(Criminal Appeal No. 1042 of 2012)

AUGUST 07, 2019

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[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Penal Code, 1860 – s.304-B – Dowry death – When not – PW-3-father of the deceased stated that the appellant got married to his daughter on 26.05.91 – Soon after the marriage, she was illtreated by the appellant, father-in-law, mother-in-law and sister-in-law, as they demanded dowry – As per PW-3, on 08.02.94, he received information that his daughter expired in the Hospital and alleges that the same was caused by the administration of poison by the accused persons – Trial court concluded that the prosecution proved its case only against the appellant and the mother-in-law of the deceased whereas in respect of accused father-in-law and sister-in-law, no specific role was assigned and therefore, they were acquitted – High Court, while granting benefit of doubt to the mother-in-law, allowed her appeal and acquitted her; whereas sentence of the appellant was reduced to seven years – On appeal, held: Prosecution relied upon the statement of PW3 and PW4-brother of the deceased, which was made basis of conviction by courts below – However, such statements are not sufficient to prove that the deceased was treated with cruelty relating to demand of dowry soon before her death, in the absence of independent evidence though available but not examined – Further, the documentary evidence in the shape of letters written by the deceased does not support the story of the prosecution – Prosecution failed to prove either the demand of dowry or that any such demand was raised soon before her death – Essential ingredients of offence u/s.304-B, IPC not proved – Prosecution has even failed to prove the initial presumption u/s.113-B of the Evidence Act – Thus, the prosecution has failed to prove the allegations levelled against the appellant beyond reasonable doubt – Conviction of the appellant, set aside – Evidence Act, 1872 – s.113-B.

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A Allowing the appeal, the Court

- HELD:** 1.1 In the present case, the prosecution relies upon the statement of PW3-father and PW4-brother of the deceased which has been made basis of conviction by courts below. However, such statements are not sufficient to prove that the deceased was treated with cruelty relating to demand of dowry soon before her death in the absence of independent evidence though available but not examined. A memorandum Ex.PE/1 dt. 25.01.1992 was relied upon and said to be executed by the in-laws of the deceased in the presence of members of Panchayat. But none of the Panchayat Members have been examined to prove the settlement arrived at. Therefore, the oral statements cannot be relied upon in view of the letters produced by the prosecution. The prosecution also relies upon letter Ex. PF/1 written by the deceased to her father. The letter is to the effect that her in-laws have started hating and suspecting the deceased's father, therefore, he should not give them the gold chain but only cash. Such letter does not show that anything was demanded by the appellant. The date of sending such letter has not been proved by the prosecution, therefore, it cannot be said that such letter was written soon before her death. Similarly, another letter produced by the prosecution is Ex. PK/1 which is a letter of the deceased to her brother-in-law(sisters-husband) stating that she has no problem with her mother-in-law and sister-in-law but her husband beats her daily. The date of this letter has not been proved nor does such letter lead to any inference for the demand of dowry by the husband of the deceased. Further, an additional letter relied upon by the prosecution is Ex. PG/1 dated 25.05.1992, wherein the deceased has written that she is unhappy and harassed by her in-laws in as much as her mother-in-law does not like the food she cooks. Again, there is no inference of any demand of dowry in such letter as well. Therefore, the documentary evidence in the shape of letters does not support the story of the prosecution. [Paras 14, 15] [595-E-G; 596-A-C]

1.2 The prosecution has failed to prove either the demand of dowry or that any such demand was raised soon before her

death. Therefore, the essential ingredients of offence under Section 304-B of IPC are not proved by the prosecution. The prosecution has even failed to prove the initial presumption under Section 113-B of the Evidence Act, 1872. Prosecution has failed to prove the allegations levelled against the appellant beyond reasonable doubt. Consequently, the conviction of the appellant is set aside and he is set at liberty as long as he is not involved in any other case. [Paras 16, 17] [596 D-F]

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Satvir Singh & Ors. v. State of Punjab & Anr. (2001) 8 SCC 633 : [2001] 3 Suppl. SCR 353 ; Hira Lal & Ors. v. State (Govt. of NCT), Delhi (2003) 8 SCC 80 : [2003] 1 Suppl. SCR 734 ; Sakatar Singh & Ors. v. State of Haryana (2004) 11 SCC 291 ; Major Singh and Anr. v. State of Punjab (2015) 5 SCC 201 : [2015] 5 SCR 777 – relied on.

Case Law Reference

[2001] 3 Suppl. SCR 353	relied on	Para 10
[2003] 1 Suppl. SCR 734	relied on	Para 11
(2004) 11 SCC 291	relied on	Para 12
[2015] 5 SCR 777	relied on	Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1042 of 2012

From the Judgment and Order dated 21.01.2009 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 128-SB of 1996.

D. N. Goburdhan, Adv. for the Appellant.

Shekhar Raj Sharma, Vishwa Pal Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. This appeal has been preferred against the judgment dated 21.01.2009, passed by the High Court of Punjab and Haryana at Chandigarh, by which the High Court has allowed the appeal of Savitri

- A Devi, mother of the appellant and affirmed the conviction of the appellant passed by trial court on 12.12.1995 for the offence punishable under Section 304-B IPC. However, the High Court has reduced the sentence of the appellant from ten years to seven years looking to the fact that the appellant had suffered a protracted trial of more than 15 years.
- B 2. The prosecution was set in motion on the statement of PW3 Sohan Lal/Complainant - father of the deceased as recorded by the Investigating Officer Assim Khan PW9. The Complainant stated that Mahesh Kumar got married to the deceased Omwati on 26.05.1991. But soon after the marriage, she was illtreated by her husband Mahesh Kumar, father-in-law Rajpal, mother-in-law Smt. Savitri and sister-in-law Kamlesh, as they demanded dowry. Complainant further claims that he gave dowry more than his capacity, even gave the accused a gold chain after one year of marriage, but they were still not satisfied and therefore they would beat the deceased. The deceased sent a letter to the complainant informing him about the same, after which, the complainant went to the village where his daughter was residing, met her and her in-laws and informed them that he was unable to satisfy their demand of dowry as it was beyond his capacity and that his daughter should not be harassed for bringing insufficient dowry. The complainant states that the deceased's in-laws had tendered an apology at that time and her father-in-law executed the same in writing and promised to send her to her parental home on Raksha Bandhan. Subsequently, after the festival, she was sent back to her matrimonial house with the appellant, and at that time the complainant had given them a sum of Rs.1,000/- in cash. After about ten months, the appellant left the deceased at her brother Rajbir's house and demanded Rs.5,000/. It is further claimed that, on 03.02.1994, the Complainant paid Rs.2,000/- to the appellant when he came to take the deceased back with him and promised to pay the remaining amount soon, after arranging the same. At that time, the deceased had apparently expressed apprehension that her in-laws would not allow her to live, lest the demands are met. It was on 08.02.1994, that the complainant received information that his daughter, had expired in Civil Hospital, Gurgaon, and alleges that the same was caused by the administration of poison by the accused. An FIR was thus lodged on 09.02.1994, against the appellant, the deceased's father-in-law Rajpal, mother-in-law Smt. Savitri and sister-in-law Kamlesh.

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3. The investigation was conducted by Investigating Officer Assim Khan PW9 and all the four accused were arrested. After completing investigation, a report was filed in the Court of Judicial Magistrate First Class, Gurgaon who committed the case to the trial court. The charge was framed against all the four accused under Section 304-B IPC. All the accused pleaded not guilty and claimed trial. The prosecution examined ten witnesses in all.

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4. The trial court held that the letters written by the deceased with oral evidence in the form of statements of Complainant PW3 – Sohan Lal and PW4- Rajbir, brother of the deceased, are sufficient to establish that deceased was continuously harassed and met with cruelty on account of dowry and as such it is a case of dowry death. The trial court had come to the conclusion that the prosecution has proved its case only against Appellant/Mahesh Kumar, husband of the deceased and Savitri Devi, mother-in-law of the deceased whereas in respect of accused Rajpal and Kamlesh, the trial court held that no specific role is assigned to them and, therefore, they were given benefit of doubt and were acquitted.

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5. Aggrieved against the order of trial court, accused Mahesh Kumar and Savitri Devi filed an appeal before the High Court of Punjab and Haryana. The High Court, while granting benefit of doubt to accused Savitri Devi, allowed her appeal and acquitted her of the charges whereas sentence of appellant Mahesh Kumar was reduced to seven years.

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6. Aggrieved by the judgment of the High Court, appellant Mahesh Kumar is in appeal before this Court.

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7. Learned counsel appearing for the appellant contends that the essential ingredients of Section 304-B IPC have not been proved by the prosecution. The letters produced by the prosecution do not relate to demand of dowry, and any demand for a gold chain was made two years before the death, and therefore, it cannot be said to be soon before the death of the deceased. There is no evidence that there was any demand for dowry on the part of the family of the appellant soon before the death. Thus, offence under Section 304-B is not made out against the appellant.

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8. The learned counsel appearing for the State contends that there is no dispute about the fact that the deceased died within 7 years of marriage and met with an unnatural death due to *organo phosphorus*

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A *pesticide*. It is pointed out that the evidence on record is sufficient to establish beyond doubt that she was met with cruelty continuously after marriage on account of dowry.

B 9. The first and foremost question that arises in this case, and in respect of the necessary ingredients of Section 304-B IPC, is whether there is a proximate nexus between the death of the deceased with the cruelty or harassment inflicted upon her in respect of the demand of dowry. Section 304-B reads as under:

C “**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.

D *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).

E (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.”

F 10) This Court in *Satvir Singh & Ors. v. State of Punjab & Anr.*¹ examining the significance and implication of the use of the words ‘soon before her death’ in Section 304-B, has held as under:

G “20. Prosecution, in a case of offence under Section 304-B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused “soon before her death”. The word “dowry” in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. That definition reads thus:

H “2. In this Act, ‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; A
or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies.”

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22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened “soon before her death”. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words “soon before her death” is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept “soon before her death.”

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11. In ***Hira Lal & Ors. v. State (Govt. of NCT), Delhi***², this court held 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. It was held as under:

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² (2003) 8 SCC 80

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- A “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.”
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12. In *Sakatar Singh & Ors. v. State of Haryana*³, the Court A was examining as to whether, letter written by the deceased discloses an offence under Section 304 B of the IPC. It was held that:

“11. In the above background, we will now consider the evidence led by the prosecution to establish the charge levelled against the appellants. In this process, we will first examine the letter written by the deceased to her mother. Though this letter does not mention the date, there is no dispute that the same was posted on 20-5-1986 which is evident from the postal seal found on the envelope which would be a date prior to the incident leading to the death of Devinder Kaur and the children. The contents of the letter indicate what transpired during her mother’s visit to her in-laws’ house and does not anywhere even remotely indicate any demand made by her in-laws. It only reflects the attitude of the deceased towards her in-laws and that she entertained a feeling that her mother was not properly treated by her mother-in-law during her last visit.....”

13. In *Major Singh and Anr. v. State of Punjab*⁴, the Court D disbelieved the prosecution’s story for the reason that no independent witnesses were examined, even though, the witnesses deposed that the Members of Panchayats were informed about the harassment.

14. In the present case, the prosecution relies upon the statement E of PW3 Sohan Lal - father and PW4 Rajbir - brother of the deceased which has been made basis of conviction by courts below. However, we find that such statements are not sufficient to prove that the deceased was treated with cruelty relating to demand of dowry soon before her death in the absence of independent evidence though available but not examined. A memorandum Ex.PE/1 dt. 25.01.1992 was relied upon and said to be executed by the in-laws of the deceased in the presence of members of Panchayat. But none of the Panchayat Members have been examined to prove the settlement arrived at. Therefore, the oral statements cannot be relied upon in view of the letters produced by the prosecution.

15. The prosecution also relies upon letter Ex. PF/1 written by the F deceased to her father. The letter is to the effect that her in-laws have started hating and suspecting the deceased’s father, therefore, he should

³ (2004) 11 SCC 291

⁴ (2015) 5 SCC 201

- A not give them the gold chain but only cash. Such letter does not show that anything was demanded by the appellant. The date of sending such letter has not been proved by the prosecution, therefore, it cannot be said that such letter was written soon before her death. Similarly, another letter produced by the prosecution is Ex. PK/1 which is a letter of the deceased to her brother-in-law(sisters-husband) stating that she has no problem with her mother-in-law and sister-in-law but her husband beats her daily. The date of this letter has not been proved nor does such letter lead to any inference for the demand of dowry by the husband of the deceased. Further, an additional letter relied upon by the prosecution is Ex. PG/1 dated 25.05.1992, wherein the deceased has written that she is unhappy and harassed by her in-laws in as much as her mother-in-law does not like the food she cooks. Again, there is no inference of any demand of dowry in such letter as well. Therefore, the documentary evidence in the shape of letters does not support the story of the prosecution.
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- D 16. In view of the judgments referred to above, the prosecution has failed to prove either the demand of dowry or that any such demand was raised soon before her death. Therefore, the essential ingredients of offence under Section 304-B of IPC are not proved by the prosecution. The prosecution has even failed to prove the initial presumption under Section 113-B of the Evidence Act.
- E 17. We find that the prosecution has failed to prove the allegations levelled against the appellant beyond reasonable doubt. Consequently, we allow the present appeal and set aside the conviction of the appellant and set him at liberty as long as he is not involved in any other case. Bail bonds shall stand discharged.
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Divya Pandey

Appeal allowed.