
(15) As a result, the writ petition is allowed. The levy and deduction of sales tax are set aside. The respondents are directed to refund the sales tax already deducted or collected from the petitioner on account of the supply of labour. The impugned orders are quashed to that extent. The petitioner shall be entitled to his costs which are quantified at Rs. 2000.

R.N.R.

Before T.H.B. Chalapathi, J.

RAJINDER,—Appellant

versus

STATE OF HARYANA,— Respondent

Crl. Appeals No. 1046/SB of 1998 & No. 134/SB/1999

23rd, December, 1999

Indian Penal Code, 1860—Ss. 201 & 304-B—Evidence Act, 1872—S. 113-B—Death of wife after 4 years of marriage under suspicious circumstances—Court of Sessions convicting husband and his brother for the offence under sections 304-B & 201IPC—Demand for dowry—Lapse of two years between the demand & the death—No demand made 'soon before the death'—Presumption under section 113-B cannot be drawn that the death was dowry death—Appellants acquitted.

Held that, when a woman dies within three years of marriage, a presumption under section 113-B of the Evidence Act can be drawn that the death was dowry death. If it is shown that soon before her death such woman had been subjected to cruelty or harassment for or in connection with any demand for dowry. Therefore, it is clear that it is necessary for the prosecution to prove in order to invoke the presumption under section 113-B that the woman was subjected to cruelty soon before her death and if the harassment or cruelty is made long before the death, the presumption will not be available to the prosecution.

(Para 10)

Further held that, father of the deceased categorically stated that the second demand was made after two years of the first demand. Therefore the demand must have been made some time in 1994, but the deceased died in 1996. Therefore, it cannot be said that there was any demand soon before the death. When there is lapse of two

years between the demand and the death, therefore, the presumption under section 113-B of the Act cannot be raised.

(Para 19)

Ashit Malik, Advocate, *for the Appellants in both the appeals.*

Yash Pal, A.A.G., Haryana *for the State.*

JUDGMENT

T.H.B. Chalapathi, J.

(1) These appeals have been filed against the conviction and sentence imposed on the accused-appellants by the learned Additional Sessions Judge, Panipat in Sessions Case No. 53 of 1996 (Sessions Trial No. 16 of 1998) dated 9th November, 1998.

(2) Accused No. 2 Rajinder is appellant in Criminal Appeal No. 1046-SB of 1998 while accused No. 1 Subhash is appellant in Criminal Appeal No. 134-SB of 1999. The other accused 3 and 4 have been acquitted by the learned Additional Sessions Judge even before their examination under Section 313 Cr. P.C. on the ground that there was no incriminating evidence against them to justify their examination Under the said Section. The accused-appellants have been convicted for the offence under Section 304-B and 201 I.P.C and were sentenced to undergo rigorous imprisonment for a period of 10 years and pay a fine for Rs. 5,000 each for the offence under Section 304-B I.P.C. and to further undergo rigorous imprisonment for a period of three years each for the offence under Section 201 I.P.C. and the amount of fine was directed to be paid to the parents of the deceased as compensation.

(3) The case of the prosecution is that the deceased Raj Bala was married to the 1st accused Subhash (appellant in Criminal Appeal No. 134-SB of 1999) and the 2nd accused is brother of the 1st accused and both of them were harassing and beating her for bringing insufficient dowry. According to the complainant, Deep Chand, father of the deceased, about two years back prior to the death of the deceased, the accused Subhash alongwith the deceased came to him and asked for a sum of Rs. 7,000 to open a shop and Sudhash threatened that in case his demand is not met, he would not keep Raj Bala with him. On that, the complainant gave the amount to Subhash to meet his demand. Thereafter his daughter again came back and told him that both the accused used to harass her and wanted another amount of Rs. 5,000 as they had to marry their younger brother Krishan. As he could not meet that demand, he kept his daughter Raj Bala with him. Some time

thereafter the mother-in-law of the deceased came to Raj Bala on account of the marriage of her son Krishan which was to take place on 16th of June, 1996. So he sent Raj Bala with her. On 28th of June, 1996, the 2nd accused Rajinder told him that his daughter died and had been cremated. Then he went to village Bandh alongwith Mange Ram son of Parbhu, Dajja son of Ratiya and others where they came to know that the accused burnt Raj Bala alive in their house on 27th of June, 1996 at about 2.30 P.M. and cremated her body with an intention to cause disappearance of the evidence. On the basis of the complaint of Deep Chand, the FIR was registered and the investigation was taken up. After completion of the investigation, a charge-sheet has been filed against all the accused for the offence under Section 304-B and 201 I.P.C. and alternatively for the offence under Section 302 I.P.C.

(4) After committal of the case to the Court of Sessions, the learned Additional Sessions Judge framed the charges against all the accused for the offences under Section 304 and 201 I.P.C. on the basis of the material placed before him. Alternatively charges under Section 302 and 201 I.P.C. have been framed. All the accused pleaded not guilty and claimed to be tried.

(5) In order to prove the guilt of the accused, the prosecution examined six witnesses and marked documents. After closure of the evidence for the prosecution, as already stated, accused No. 3 and 4 have been acquitted as there was no incriminating evidence against them. Accused No. 1 and 2, who are appellants herein, have been examined under Section 313 Cr. P.C. They pleaded their innocence and claimed that the deceased Raj Bala died of natural death due to illness. In defence, the accused did not adduce any witness.

(6) On a consideration of the evidence on record, the learned Additional Sessions Judge convicted the appellants for the offence under Sections 304-B and 201 I.P.C. and sentenced them as stated above. Hence these appeals.

(7) It is to be seen whether the deceased Raj Bala died under suspicious circumstances and whether her death is dowry death.

(8) There is no dispute of the fact that the 1st accused Subhash married the deceased about six years prior to her death. There is also no dispute that the deceased died on 28th of June, 1996 and her body was also cremated. Thus it can straightway be said that there is no evidence that the accused have caused the death of Raj Bala. Therefore the learned Additional Sessions Judge is rightly not convicted the

accused for the offence under Section 302 I.P.C. Therefore, the question that arises for consideration is whether the death of the deceased amounts to dowry death so as to convict the accused for the offence under Section 304-B I.P.C. Section 304-B reads as follows :—

Section 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.

(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) To attract this Section, four ingredients have to be established.—

(1) The death of woman should be caused by burns or bodily injury or otherwise than under normal circumstances (2) Such death should occur within seven years of her marriage (3) The woman must have been subjected to cruelty or harassment by her husband or relatives of her husband (4) The cruelty or harassment should be for or in connection with demand of dowry. Therefore it is to be seen whether the death of the deceased was caused otherwise than under normal circumstances and whether she has been subjected to cruelty or harassment by her husband or relatives of her husband and that the cruelty or harassment should be for or in connection with demand of dowry.

(10) It is also no doubt true that when a woman dies within three years of marriage, a presumption under section 113-B of the Evidence Act can be drawn that the death was dowry death. If it is shown that soon before her death such woman had been subjected to cruelty or harassment for or in connection with any demand for dowry.” It has been held by the Apex Court in *State of Punjab vs. Iqbal Singh* (1) that where in a case of dowry death if it is proved that the woman was subjected to cruelty immediately before her death, the presumption that the person who had so subjected her to such cruelty had caused her death. Therefore, it is clear that it is necessary for the prosecution

(1) A.I.R. 1991 S.C. 1532

to prove in order to invoke the presumption under section 113-B of the Evidence Act that the woman was subjected to cruelty soon before her death and if the harassment or cruelty is made long before the death, the presumption will not be available to the prosecution. It is significant to note the words used in Section 113-B namely "soon before her death" so as to invoke the presumption under section 113-B of the Evidence Act. It is also to be borne in mind that the presumption under the provisions of this Act can be raised in the case of this nature where a conviction has to be based on presumption. It is absolutely necessary for the Court to examine the evidence with due care and caution.

(11) Bearing in mind the above principles, the evidence in this case has to be scrutinised whether the accused are guilty of the offence of dowry death.

(12) PW-1 is only a formal witness. He deposed that he arrested Radhey Sham, accused No. 4 on 15th July, 1996. PW-2 is the paternal uncle of the deceased. According to him, accused Subhash and his brother Rajinder kept the deceased Raj Bala properly for about five months after her marriage. Thereafter Raj Bala (deceased) came to the village and asked her father Deep Chand for an amount of Rs. 7,000 as demanded by her husband for establishing a shop and Deep Chand was obliged to pay her a sum of Rs. 7,000 after arranging from others. He further stated that he was not present at that time. Therefore, his evidence as to the demand of Rs. 7,000 is only a hearsay. He further deposed that after some time A-1 and A-2 again started harassing the deceased and asked her to bring more money and they demanded a sum of Rs. 5,000 as required for the marriage of their younger brother. It is also in his evidence that this demand was raised about two years after the first demand. He further stated that he was told this fact by the deceased by herself when she went to the house of Deep Chand where she had come. He also deposed that the deceased told in his presence that the accused Subhash and Rajinder threatened to kill her in case their demand is not met and the accused were not satisfied with the dowry given at the time of her marriage with Subhash. He further deposed that the mother-in-law of the deceased came to the deceased about 20 days prior to her death and on her assurance that the deceased will be kept properly. Raj Bala accompanied her and about 20/25 days thereafter the 2nd accused Rajinder informed Deep Chand, the father of the deceased that his daughter died. Then he alongwith Deep Chand and Dhajja Ram went to the house of the deceased and they did not find the accused there and thereafter they went to the Police Station to report the incident and the police visited the spot and recovered from the house of

deceased the matchbox, burnt clothes and steel container with some kerosene oil there in which were seized by the police. In the cross-examination he stated that he does not know that there was any dispute between the accused Subhash, his brother Rajinder and Ram Kishan. It is also in his evidence that the daughter of his sister is married to the son of Ram Kishan. To a question by the Court, PW-2 stated that the demand of Rs. 5,000 was made about two years after the first demand of Rs. 7,000. From the evidence of PW-2 the following facts will emerge :—

1. The deceased and her husband Subhash went to Deep Chand five months after their marriage and asked him to give a sum of Rs. 7,000 for opening a shop ; and
2. two years after the first demand, a sum of Rs. 5,000 was demanded for performing the marriage of the younger brother of the accused.

(13) In my view, this witness was not a direct witness and he only came to know of this fact from others. Therefore it is hear-say.

(14) PW-3 is the father of the deceased. It is clear from his evidence that the marriage of his daughter took place six years back and two daughters and son were born to her. He further deposed that his daughter was kept properly for six months after her marriage, but thereafter both the accused started harassing her for want of sufficient dowry. His daughter alongwith the Ist accused Subhash came to him about six months after their marriage and the accused Subhash told him that he had to start a shop. So he needed a sum of Rs. 7,000 failing which he would not keep his daughter with him as he had no source of income. Therefore he arranged money and handed over the same to Subhash in order to settle his daughter. He further stated that his daughter told him at that time that both A-1 and A-2 were torturing her. He further deposed that about two years after the first demand, the deceased came to him and asked him that a sum of Rs. 5,000 as required by her husband and his brother Rajinder for the marriage of their younger brother Krishan and she further told that in between this period they misbehaved and harassed her for no reason. As he was not able to meet their demand, so he kept his daughter with him. He also stated that after 7/8 days before the marriage of his son Krishan, the mother-in-law of the deceased came to him and on her undertaking that the deceased will be kept properly, he sent Raj Bala alongwith her and the marriage of Krishan took place a month prior to the death of his daughter and thereafter the accused Rajinder came to him to inform about the death on the next day of her death. Then he alongwith PW-

2 and Dhajja Singh went to his daughter's house where none of the accused was present. Then they went to cremation ground where the last rites of her daughter were being performed. Then he reported the matter to the Police.

(15) From the evidence of PW-3, who is the father of the deceased, the following facts will emerge :—

- (i) The deceased and her husband went to PW-3 six months after their marriage and demanded a sum of Rs. 7,000 from him and
- (ii) Within two years thereafter again there was a demand of Rs. 5,000 for performing the marriage of younger brother of his son-in-law.
- (iii) As he was not able to meet the demad of Rs. 5,000 he kept his daughter with him.
- (iv) About 20 days prior to the death of the deceased, her mother-in-law came to the house of PW-3 and took the deceased with her and 20 days thereafter he was informed that his daughter died.
- (v) The deceased had given birth to two daughters and one son.

(16) Before scrutinising this evidence, I will refer to the other evidence on record. PW-4 deposed that Raj Bala was married to accused Subhash on 8th March, 1992 and he made Kanyadan entries in a copy. He further prepared the dowry list and Deep Chand (PW-3) handed over the photostat of the said list to the police alongwith other documents on 14th September, 1996 which were taken into possession by the Police under the recovery memo Exhibit PE which was attested by him. Exhibit P-F is the entry of Kanyadaan. From his evidence, it can safely be concluded that the marriage between Subhash and the deceased took place on 8th March, 1992.

(17) PW-5 is the Head Constable who partly investigated this matter and took into possession photostat copies Exhibits P-G and P-H and also the documents which are marked as Mark X and Mark A, produced by Deep Chand under recovery memo Exhibit P-E and thereafter the investigation was taken up by PW-6. According to PW-6, he visited the house of the deceased and prepared site plan Exhibit P-F and took into possession one steel container with some kerosene oil therein, broken match-box and burnt clothes of the deceased under recovery memo Exhibit P-B.

(18) From the evidence adduced by the prosecution, the following conclusions can safely be arrived at :—

- (i) The marriage of the Ist accused with the deceased took place on 8th March, 1992.
- (ii) The deceased gave birth to three children (two daughters and one son)
- (iii) She died on 27th of June 1996 and
- (iv) She was cremated on the early morning even before the arrival of the parents of the deceased.

(19) Therefore, one can conclude that the death of the deceased was under suspicious circumstances or otherwise than under normal circumstances, but the above conclusions are not sufficient to convict the accused for the offence under Section 304-B I.P.C. It is further required to be proved whether soon before her death the deceased was subjected to cruelty or harassment and whether the evidence of PW-2 and PW-3 can be believed. In order to prove that there was a demand for dowry, there is evidence of PW-2 and PW-3 on the record. But their evidence does not show that the demand of dowry was soon before the death of the deceased. According to PW-2 and PW-3, six months after the marriage, the deceased, and her husband Subhash came to PW-3 and asked him to pay a sum of Rs. 7,000 in order to open a shop by the accused. The marriage of Raj Bala (deceased) took place on 8th March, 1992. So the demand must be before the end of the year 1993 whereas she died in 1996. Therefore, the demand of Rs. 7,000 cannot be said to be 'soon before the death' of the deceased. Even according to PW-2 and PW-3, the demand of Rs. 5,000 for performing the marriage of the brother of the accused was made after two years of the first demand. Even PW-2 stated in reply to the Court question that the second demand for Rs. 5,000 was made two years after the first demand. Even PW-3 the father of the deceased categorically stated that the second demand was made after two years of the first demand. Therefore the demand must have been made some time in 1994, but the deceased died in 1996. Therefore, it cannot be said that there was any demand soon before the death of Raj Bala. When there is lapse of two years between the demand for Rs. 5,000 and the death, therefore, the presumption under Section 113-B of the Evidence Act cannot be raised in this case.

(20) Further I am not able to place any reliance on the evidence of PW-3. According to PW-3, When the second demand for Rs. 5,000 was made two years after the first demand, he kept his daughter with

him and did not send her back to the matrimonial home and it was only about 20 days prior to the death of the deceased, the mother-in-law of the deceased came and took her to attend the marriage of her younger son. It is also in the evidence of PW-3 that the deceased gave birth to three children. If really there was a demand for Rs. 5,000 within 2-1/2 or 3 years after the marriage and if the deceased stayed with PW-3 from the date of the second demand, there is no possibility of her giving birth to 3rd child. Therefore, I am not able to place any reliance on the evidence of PW-3, the father of the deceased when admittedly the deceased gave birth to three children after the marriage in 1992.

(21) There is no other evidence except the evidence of PW-3 to show that there was a demand for dowry. It is not supported by any other independent evidence. There is also no evidence to show that the deceased was staying with her father (PW-3) after the second demand till 20 days prior to her death. The evidence of PW-2 can straightway be rejected being hear-say. He has not explained how he is related to PW-3. In regard to his relationship with PW-3, he only stated that he is the brother of Deep Chand by relation. It is evident that PW-2 is not the real brother of the father of the deceased.

(22) Even in regard to the recovery of the kerosene tin, match-box and burnt clothes, no evidence has been adduced except that of the Investigating Officer. That too, the so-called recovery has been made long after the death of the deceased. The investigation was taken up firstly by PW-5 and not by PW-6. PW-5 would have visited the spot immediately after registering the case and seized those items. But curiously PW-5 who is the Investigating Officer never visited the spot and it is only when PW-6 who took up the investigation after lapse of time, visited the spot and showed the recovery. I am, therefore, unable to place any reliance on the so-called recovery.

(23) After careful consideration of the entire evidence on record, I am of the view that both the accused (who are appellants in these two appeals) are entitled to be acquitted of the charges framed against them.

(24) Accordingly, I allow both the appeals and set aside the conviction and sentences imposed on the accused-appellants by the learned Additional Sessions Judge. Both the accused have been in jail for more than 6-1/2 years. Since their appeals are allowed, they are directed to be released forthwith if not required to be detained in any other case.

S.C.K.