

Before Ajay Tewari, J.

SURENDER AND OTHERS — Appellants

versus

STATE OF HARYANA — Respondent

CRA-No.1305-SB of 2003

February 5, 2015

Indian Penal Code, 1860 - Ss. 304B, 306, 498A—Indian Evidence Act, 1872—Ss. 113A, 113B—Dowry death— Complainant's daughter was married to appellant-1 for 3 years—Complainant complained that appellant-1 along with his brothers appellant Nos. 2 and 3 killed his daughter for dowry—One R who informed complainant about murder, turned hostile—Trial Court convicted all 3 appellants for dowry death—Held, that there was no mention that deceased was subjected to any demand of dowry soon before her death except for bald statement of complainant's wife that appellants used to harass their deceased daughter on account of demand of dowry—Further, there was no time mentioned as to when this harassment took place—Thus, there was no dowry death—Husband's conviction was to be altered to conviction under section 306 IPC and thus, punishment was to be reduced to 5 years rigorous imprisonment with a fine of ₹1000—In such cases, generally attempt is made to rope in all members of family of husband—In view of this, brothers of husband were acquitted.

Held, that there is no mention that the deceased was subjected to any demand of dowry soon before her death. As a matter of fact, except for the bald statement of PW3 that his daughter was killed for dowry and the bald statement of PW2 that the appellants used to harass the deceased on account of demand of dowry, there is no time mention as to when this harassment took place.

(Para 5)

Further held, that learned Additional Advocate General has also not been able to point out any evidence that the deceased was subjected to demand of dowry 'soon before her death'.

(Para 6)

Further held, that in the circumstances, it is hard to resist the conclusion that the present case is covered by the facts of the cited case.

(Para 7)

Further held, that as regards the appellant Nos. 1 and 3, the allegations against them are completely vague and it seems to be an attempt to rope in all members of the family of appellant No.2-husband. In the circumstances, the appeal is allowed qua appellants Nos. 1 and 3 and they are acquitted of the charge. They be released forthwith if not wanted in any other case.

(Para 8)

Further held, that as regards the appellant No. 2, the appeal is partly allowed and his conviction is altered to that under Section 306 IPC as in the case of *Girdhari Lal (supra)* and his sentence is also reduced to 5 years with a fine of ₹1000/- and in default of payment of fine the defaulter shall further undergo rigorous imprisonment for 6 months.

(Para 9)

Deepinder Singh, Advocate *for the appellants*.

Ashish Yadav, Addl. A.G., Haryana.

AJAY TEWARI, J. (Oral)

(1) This appeal has been filed against the judgment and order dated 08.04.2003 whereby the appellants have been convicted under Section 304-B IPC and have been sentenced to undergo rigorous imprisonment of seven years.

(2) The allegations levelled in the FIR by the complainant-PW3 were that his daughter Sadhna was married to the appellant No.2-Rakesh and he used to beat her and not give her any money. After about 3 years of the marriage, he was informed by one Ratnesh that the appellant No.2 along with his two elder brothers-appellants No.1 and 3 had murdered his daughter. When the complainant went to the house of the appellants he saw the burnt dead body of his daughter lying over there and the match box and a can of kerosene was also there. In his statement, the complainant stated that the appellants had killed her daughter because of dowry. Similar was the statement of his wife PW2. The testimony of other witnesses need not be discussed. However, it is necessary to be mentioned here that witness Ratnesh (who had informed the complainant) turned hostile. The trial Court convicted all the three appellants under Section 304-B as mentioned above. Hence, the present appeal.

(3) The precise argument raised by the learned counsel for the appellants is that the prosecution led no evidence to the effect that soon before her death the deceased was subjected to demand of dowry. He has relied upon the judgment in the case of *State of Rajasthan versus Girdhari Lal*¹, wherein the Hon'ble Supreme Court held as follows:-

“10. So far as the harassment and cruelty are concerned, Rajender Prasad (PW.8) stated that Girdhari Lal used to beat her for dowry. Jugal Kishore(PW.1) has also supported the fact that she was being subjected to cruelty in connection with dowry demand by stating that Girdhari Lal used to beat and harass Babita for dowry after her marriage. Once he was asked not to do so but he did not mend his ways. He also stated that Girdhari Lal earlier tried to burn her alive by pouring kerosene by confining her in a room and when he came to know about this incident, he went to her in-laws house along with Shyam Lal, Phool Chand, Rajender, Jagdish, Neki Ram and Man Roop where Girdhari Lal and his father begged their pardon for their act of burning her alive and assured that they will not repeat the incident. Bimla Devi (PW.7), mother of the deceased stated in her statement that the accused Girdhari Lal and Babita came to their village Chhavsari one month prior to the incident and stayed there for one hour. Jugal Kishore was not present at the house at that time and Babita told her mother to send her father to her in-laws because Girdhari Lal used to harass her. This statement clearly indicates that Babita was being subjected to cruelty and harassment soon before the death.

11. Now, the question arises as to whether Babita was subjected to such cruelty and harassment by her husband soon before her death for, or in connection with the demand of dowry. The period which can come within the term "soon before" cannot be put within the four corners of time frame. It is left to the Court for its determination depending upon the facts and circumstances of each case.

In the present case, Jugal Kishore (PW.1) and Bimla Devi (PW.7) has made ominous statements regarding demand of dowry that after the marriage demand of dowry

¹ 2013(4) R.C.R. (Criminal) 692

was made by the in-laws. It is not made specific as to whether Girdhari Lal demanded dowry.

12. Section 113B of the Indian Evidence Act, 1872 which deals with the presumption as to dowry death reads as follows :

Section 113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304-B of the Indian Penal Code(45 of 1860).

In the present case there is no evidence on record to come to the definite conclusion that soon before her death, Babita was subjected to cruelty or harassment by her husband, Girdhari Lal for, or in connection with any, demand of dowry. In absence of such ingredient the presumption that Girdhari Lal had caused the dowry death cannot be drawn. The prosecution thereby cannot take advantage of Section 113B of the Indian Evidence Act, 1872.

13. Section 113A of the Indian Evidence Act, 1872 relates to presumption as to abetment of suicide by a married woman which reads as follows:

113A. Presumption as to abetment of suicide by a married women.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation- For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

In the instant case, it is established from the ocular and documentary evidence that Babita was subjected to cruelty and harassment. As a result of such treatment of cruelty and harassment she was driven to meet the suicidal death. She had committed suicide within a period of 7 years from her marriage and that her husband had subjected her to cruelty. Therefore, the Appellate Court rightly presumed, having regard to all other circumstances of the case, that such suicidal had been abetted by her husband Girdhari Lal and convicted him for the offence under Section 306 Indian Penal Code. Hence, no interference is called for."

(4) As per the learned counsel for the appellants, the present case is similarly situated to the cited case.

(5) With the assistance of learned counsel, I have gone through the testimony of PW2 and PW3 and I find that there is no mention that the deceased was subjected to any demand of dowry soon before her death. As a matter of fact, except for the bald statement of PW3 that his daughter was killed for dowry and the bald statement of PW2 that the appellants used to harass the deceased on account of demand of dowry, there is no time mention as to when this harassment took place.

(6) Learned Additional Advocate General has also not been able to point out any evidence that the deceased was subjected to demand of dowry 'soon before her death'.

(7) In the circumstances, it is hard to resist the conclusion that the present case is covered by the facts of the cited case.

(8) As regards the appellant Nos.1 and 3, the allegations against them are completely vague and it seems to be an attempt to rope in all members of the family of appellant No.2-husband. In the circumstances, the appeal is allowed qua appellants No.1 and 3 and they are acquitted of the charge. They be released forthwith if not wanted in any other case.

(9) As regards the appellant No.2, the appeal is partly allowed and his conviction is altered to that under Section 306 IPC as in the case of Girdhari Lal (*supra*) and his sentence is also reduced to 5 years

with a fine of ₹1000/- and in default of payment of fine the defaulter shall further undergo rigorous imprisonment for 6 months.

(10) Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

Arihant Jain

Before Tejinder Singh Dhindsa, J.

PAWAN KUMAR — *Petitioner*

versus

STATE OF HARYANA AND OTHERS — *Respondents*

CWP No. 4568 of 2013

April 8, 2015

Constitution of India, 1950—Art. 226 —Indian Penal Code, 1860—Ss.34, 201, 302 & 364—Appointment—Acquittal from criminal charge—Petitioner applied for post of General Duty Constables—His name figured in list of provisionally selected candidates —After submission of an application by petitioner for said post, FIR was registered under Sections 364/302/201/34 of IPC against him—On trial, petitioner was acquitted—Instruction dated 2-7-2007 and 13-11-2007 issued by Director General of Police provided that such candidates who have faced charges for offences involving moral turpitude but got acquitted on technical ground or on account of giving benefit of doubt may not be considered for appointment as Constable—Offer of appointment was declined—Held, that since trial acquitted petitioner on account of lack of evidence, it could not be said that acquittal was on some technical ground—Acquittal in a criminal case for want of evidence is an acquittal on merit—Instructions in question could not operate to deny him his right of appointment to post as a duly selected candidate.

Held, that instructions further provide that such candidates who have faced charges for offences involving moral turpitude but got acquitted on technical ground or on account of giving benefit of doubt may not be considered for appointment as Constable. In the later part of instructions, it has been provided that cases of acquittal in charges of moral turpitude should be minutely examined after careful appraisal of the judgments and such candidates who have been acquitted may be