

*Before Jitendra Chauhan, J.*

**PREM SINGH—Appellant**

*versus*

**STATE OF HARYANA—Respondent**

**CRA<sup>S</sup> No.2463 SB of 2010**

November 11, 2012

*Indian Penal Code, 1860 - S.304B - Appellant tried u/s 304B - Convicted by trial Court - Appeal filed - Demand of money was for purchase of plot - No demand prior to incident - Cause of death hanging induced asphyxia - No record that marriage was solemnized within last seven years - Ingredients of dowry death nor proved - Appellant acquitted.*

*Held*, that the accused Prem in his statement under Section 313 Cr.P.C., deposed that the deceased has asked to accompany her father Gulab, and had taken polythene bag containing Rs.10,000/- for taking the

same to her parents home, out of residential room. The occurrence was witnessed by the neighbours. She felt ashamed and remained inside the room during the day. DW1 Parsa has corroborated the testimony of the accused. From the perusal of the record, the marriage within seven years is also not proved. There is no record that the marriage was solemnized within last seven years of the occurrence.

(Para 15)

*Further held*, that in the present case also, just prior to the death of Khamosh, there was no allegation of harassment or torture of the deceased on account of demand of dowry. There is no complaint prior to the death about the conduct of the accused, but after the death of Khamosh, the complainant, who is the father of the deceased has levelled the allegation of demand of dowry by the accused, which is unbelievable. The complainant himself has deposed that the accused was demanding a sum of Rs. one lac for the construction of house, which does not fall under the definition of "dowry". Therefore, the unnatural death of the deceased in the facts and circumstances of this case cannot be said to be a dowry death. The prosecution has miserably failed to prove all the ingredients of "dowry death" against the accused-appellant beyond reasonable doubt. The suicidal death in this case cannot be due to any illegal act or illegal omission or instigation, by anybody else. It may be the deceased's own act, as she being of hyper sensitive nature, for which, the in-laws cannot be held guilty.

(Para 17)

*Further held*, that resultantly, the present appeal is allowed and the judgment and order passed by the learned trial Court convicting and sentencing the accused-appellant, are set aside. The appellant is acquitted of the charged offence.

(Para 18)

R.N. Lohan, Advocate, *for the appellant.*

Mr. Rudraneel Bhardwaj, AAG, Haryana

**JITENDRA CHAUHAN, J. (ORAL)**

(1) The present appeal has been filed against the judgment/order dated 17-8-2010, passed by the learned Additional Sessions Judge, Jind, whereby Moji Ram and Sardio Devi were acquitted and appellant Prem Singh was convicted for the offence punishable under Section 304-B of the Indian Penal Code and sentenced to undergo RI for a period of ten years and to pay a fine of Rs. 5000/- or in default of payment of fine to further undergo simple imprisonment for a period of three months.

(2) The facts necessary for adjudication of the matter as narrated in para no. 2 of the impugned judgement are as under :-

“Gulab Singh complainant had three daughters and two sons. He had married one of his daughter namely Smt. Khamosh with accused Prem Singh son of Moji Ram, r/o Shital Puri Colony, Narwana Road, Jind about 5 years back in accordance with Hindu rites and ceremonies after which one son namely Jatin was born out of the wedlock. Prem Singh husband, Moji Ram, father-in-law and Smt. Sardio Devi, mother-in-law of Smt. Khamosh started taunting her on account of insufficient dowry given to her at the time of her marriage and, therefore, they also started beating her quite frequently on account of dowry demands. Smt. Khamosh also disclosed on her parents that her husband, mother-in-law and father-in-law are also taunting her daily for construction of their house by way of saying to her that she come from a very poor family as her parents had not given anything in dowry and, therefore, now she should bring a sum of Rs. One lac from her parents for construction of the house otherwise they will not allow her to remain in the matrimonial home upon which Gulab Singh complainant, his son Shamsher and brother Raj Kumar went to the house of her in laws and told them they belong to a very poor family and they had already given sufficient dowry articles at the time of the marriage and, therefore, they should keep their daughter in a comfortable manner upon which her in laws kept Smt. Khamosh comfortably for sometime but on 21st April, 2009 Smt. Khamosh informed her parents that her husband, mother in law and father in law are again harassing her for bringing a sum of Rs. One lac and, therefore, she also asked her father that he should fulfil dowry demand

of Rs. One lac, otherwise either she will be killed or she will be committed suicide on account of harassment caused by her in laws and, therefore, on 22nd April, 2009, Gulab Singh complainant alongwith his son Shamsher and brother Raj Kumar went to the house of the in laws of her daughter Smt. Khamosh at Shivpuri Colony, Narwana Road, Jind and told them that he is a poor man but inspite of it he would give the demanded sum of Rs. One lac to them after one month and, therefore, they should keep his daughter in a proper manner after which the complainant alongwith his son and brother came back in their house. On the same day at about 9.00/9.30 a.m. Gulab Singh complainant received a telephonic message from some neighbour of her in-laws family that his daughter Khamosh has ended herself after which the complainant alongwith his other members of the brotherhood came at the house of the in-laws of the daughter where many persons alongwith police officials were present but no member of the family of the in-laws of his daughter was present there. Gulab Singh complainant in the presence of the police and other neighbourers saw that one door of the house was lying bolted from the inside which, however, opened easily after which he saw that his daughter Khamosh was lying hanging by way of tying her chuni from the guarder of the roof and the dead body thereafter was removed by way of cutting the chuni from some distance from the neck. It is alleged that the husband, mother-in-law and father in law of Khamosh have caused the death of Khamosh after which she was hanged from the guarder of the room and therefore, report Ex.PD was lodged by Gulab Singh complainant with the police on the basis of which FIR Ex.PD/1 was registered against the accused. The police prepared site plan Ex.PI and obtained scaled site plan Ex.PJ. Post mortem examination was conducted upon the dead body of Khamosh, - *vide* post mortem report Ex.PK/2 on the basis of application Ex.PK/1 moved by the police. The police took into possession some of the dowry articles from the possession of accused Sardio Devi;- *vide* recovery memo Ex.PG. The police took into possession writing regarding Nyota Vivah Ex.PH in respect of Smt. Khamosh. The police also took into possession photographs Ex.PE and PF, P1 to P19. Police recorded the statements of the witnesses and after usual investigation into the case,

challan was presented in the court of Shri Sundeep Singh, Chief Judicial Magistrate, Jind who vide his order dated 18th July, 2009 committed the case to the court of Session, who vide his order dated 8th August, 2009 entrusted the case to this Court for disposal in accordance with law.”

(3) The accused were charged under Sections 304-B read with Section 34 of IPC, to which they did not plead guilty and claimed trial.

(4) In order to substantiate the charge, the prosecution has examined as many as twelve witnesses, which are as under :-

PW1 Constable Sandeep Singh, proved the recovery memo Ex.PA pertaining to the parcels containing belongings of the deceased.

PW2 HC Krishan Kumar, provided the recovery memo Ex.PB, pertaining to two photographs Marks ‘A’ and ‘B’, photocopy of Bahi page Mark ‘C’ photocopy of disability certificate Mark ‘D’.

PW3 ASI Dhir Chand has proved recovery memos Ex.PC pertaining to three pieces of bangles and one mobile, Ex.PA signed by him.

PW4 Gulab Singh, complainant, father of deceased Khamosh, who lodged the FIR.

PW5 HC Dilbag Singh, draftsman, who proved Ex.PJ scaled site plan.

PW6 Narsi Ram, who accompanied Gulab Singh complainant to the house of the in laws of Khamosh.

PW7 Dr. R.S. Tanwar, who proved PMR Ex.PK/2 of deceased Khamosh.

PW8 HC Deva Nand, who kept scaled parcels alongwith seal impression.

PW9 Inspector Kulwant Singh, who prepared the final report under Section 173 Cr. P.C.

PW10 Smt. Santra, mother of the deceased.

PW11 ASI Raj Kumar, who registered FIR Ex.PD/1.

PW12ASI Ram Chander, Investigating Officer, who conducted the investigation in the case. He visited the spot and recorded the statements of the witnesses.

(5) When examined under Section 313 of the Code of Criminal Procedure, the accused-appellant denied all the incriminating circumstances appearing in the prosecution evidence against them and pleaded false implication. In defence, they examined DW1 Dharam Pal Clerk, DW2 Parsa and by tendering Ex.D3, they closed their evidence.

(6) Before the learned trial Court, the main argument raised by the defence counsel was that it was a suicidal death.

(7) The learned trial Court acquitted Moji Ram and Smt. Sordio by giving them the benefit of doubt. However, accused-appellant Prem Singh was convicted for the commission of the offence under Section 304-B read with Section 34 of IPC, and sentenced as stated above.

(8) Aggrieved against the judgment and order, accused-appellant Prem Singh, preferred this appeal, which was admitted on 13th October, 2010.

(9) Learned counsel for the appellant contends that the learned trial Court failed to consider the evidence on record meticulously and in proper prospective, thus has committed a manifest error in recording the finding of the guilt of the appellant. There are material discrepancies in the statements of the prosecution witness. He further submits that the demand of Rs. one lac is for the purchase of plot/house and the demand of dowry was never made. He further submits that before the incident there was no complainant or any other material on record, showing the demand of dowry, harassment or cruelty to the deceased. He further submits that as per the postmortem report, no internal or external injury was noticed. Therefore, presumption under Section 113-B of the Evidence Act is not applicable. He relies upon *Hari Singh versus State of Punjab (1)* and *Saro Rana and others versus State of Jharkhand (2)*.

(10) Per contra, the learned State counsel has contended that the prosecution case is fully proved and therefore, the learned trial Court has rightly convicted and sentenced the appellant.

---

(1) 2002(3) RCR (Cr.) 541

(2) 2005(1) RCR (Cr.) 648

(11) I have heard the learned counsel for the parties and perused the record carefully.

(12) PW7 Dr. R.S. Tanwar, conducted the postmortem examination on the dead body of deceased Khamosh vide Ex.PK and opined that cause of death in the case is hanging induced asphyxia, which is ante mortem in nature and sufficient to cause death in ordinary course.

**(13) 113A. Presumption as to abetment of suicide by a married woman.**

113A. Presumption as to abetment of suicide by a married woman. 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).]

**(14) 113B. Presumption as to dowry death.**

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 harassment for, or in connection with, any demand for dowry, the court shall presume that such 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 304B. of the Indian Penal Code (45 of 1860).]

(15) It is admitted position that Khamosh was the lawful wedded wife of the appellant. The deceased was disabled. Her in laws had been residing separately. In FIR, itself, the complainant, the father of the deceased, has admitted that the demand was for raising the construction of their

house. As per the deposition of PW3 ASI Dhir Chand, the house was bolted from inside. They peeped through the holes of the door and saw that one lady was hanging on the girder with Chunni (Veil) around her neck. The accused Prem in his statement under Section 313 Cr.P.C., deposed that the deceased has asked to accompany her father Gulab, and had taken polythene bag containing Rs. 10,000/- for taking the same to her parents home, out of residential room. The occurrence was witnessed by the neighbours. She felt ashamed and remained inside the room during the day. DW1 Parsa has corroborated the testimony of the accused. From the perusal of the record, the marriage within seven years is also not proved. There is no record that the marriage was solemnised within last seven years of the occurrence.

(16) In **Saro Rana and others' case (supra)**, the Division Bench of Jharkhand High Court has observed as under:

"12. When this evidence is considered meticulously, I come to the conclusion that just prior to her death, Renu Devi was not harassed or tortured. There is no evidence, oral or documentary, to support this allegation of torture, just prior to the death, rather the evidence conclusively leads my mind to come to conclusion that Renu Devi was living in her matrimonial house with appellant no. 2 happily. But accidentally, while she had gone to the well alongwith PW6 Kunti Kumari for taking bath and to fetch water from the well she fell down and died. Sarpanch of Govindpur was also there. The dead body was brought out by the villagers, who had assembled on hearing alarm raised by PW6 Kunti Kumari. They brought the dead body out of the well. Information was sent to the parents of the deceased to village Mohandih, but when no one arrived in time, the dead body was disposed of. The learned 1st Additional Sessions Judge, Deoghar was misled by emotion that a young lady died in her in-laws' house just within seven years of marriage. He failed to consider the evidence of the witnesses who have deposed that there was cordial relationship and the deceased was leading happy marital life alongwith appellant No. 2 her husband Shyam Sundar Rana. There is no demand of dowry rather demand was only for construction of house. Moreover, there is no evidence that just prior to death of Renu Devi, she was being harassed or tortured by her in-laws for non-fulfilment of dowry.



The ingredients to attraction Section 304B IPC are wanting in the facts and circumstances of the case. Hence, the order of conviction and sentence passed by learned 1st Additional Sessions Judge cannot be sustained in the eye of law.”

(17) In the present case also, just prior to the death of Khamosh, there was no allegation of harassment or torture of the deceased on account of demand of dowry. There is no complaint prior to the death about the conduct of the accused, but after the death of Khamosh, the complainant, who is the father of the deceased has levelled the allegation of demand of dowry by the accused, which is unbelievable. The complainant himself has deposed that the accused was demanding a sum of Rs. one lac for the construction of house, which does not fall under the definition of “dowry”. Therefore, the unnatural death of the deceased in the facts and circumstances of this case cannot be said to be a dowry death. The prosecution has miserably failed to prove all the ingredients of “dowry death” against the accused-appellant beyond reasonable doubt. The suicidal death in this case cannot be due to any illegal act or illegal omission or instigation, by anybody else. It may be the deceased’s own act, as she being of hyper sensitive nature, for which, the in-laws cannot be held guilty.

(18) Resultantly, the present appeal is allowed and the judgment and order passed by the learned trial Court convicting and sentencing the accused-appellant, are set aside. The appellant is acquitted of the charged offence.

---

*J.S.M.*