

Before K.C. Puri, J.

YADWINDER SINGH—Petitioner

versus

STATE OF U.T., CHANDIGARH—Respondent

CRA No. S-2187-SB of 2010

May 10, 2013

Indian Penal Code, 1860 - Ss 34, 304-B, 498A - Dowry Death, Cruelty - Wife of appellant committed suicide - Appellant tried for offences u/Ss 304-B and 498A - Trial court convicted him and acquitted other accused - In appeal held that demand of dowry was not proved from evidence - Appellant acquitted by giving benefit of doubt.

Held, that in view of the above discussion, the appeal stands accepted. The judgment and order of the trial court stands set aside. The accused stands acquitted by giving him benefit of doubt from the charges leveled against him.

(Para 31)

Rajiv Anand, Advocate, *for the appellant*.

Rakesh Nagpal, Advocate for the respondent UT Chandigarh.

K.C. PURI, J.

(1) Appellant Yadwinder Singh has directed the present appeal against the judgment dated 12.7.2010 and order dated 14.7.2010 passed by Shri Lalit Batra, learned Additional Sessions Judge, Chandigarh vide which the accused/appellant has been convicted in a case FIR No.256 dated 16.6.2009 registered under Sections 304-B and 498-A read with Section 34 of the Indian Penal Code (in short - the IPC) at Police Station Sector 39, Chandigarh and sentenced to undergo rigorous imprisonment for a period of ten years under Section 304-B of the IPC and to further undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- under Section 498-A of the IPC and in default of payment of fine to further undergo rigorous imprisonment for a period of three months. Both the sentences were, however, ordered to run concurrently. Co-accused namely Jaspinder Singh, Paramjit Singh and Manjit Kaur were acquitted from the charges levelled against them.

(2) The prosecution story in brief is that on 16.6.2009 a wireless message was received at police post Maloya regarding consumption of poison by someone in House No.207 Village Maloya Chandigarh. SI Ram Rattan along with police officials reached the spot and met Amandeep Singh, Balbir Singh, Daljeet Singh, Yadwinder Singh, Jaspinder Singh and Manjeet Kaur all residents of House No.207 Village Maloya, Chandigarh. On the first floor in the room a dead body of female was lying on the bed and it was identified to be that of Jagdeep Kaur wife of Yadwinder Singh. Senior police officials as well as Ms. Prema Puri, Sub Divisional Magistrate (South) had arrived on the spot. Place of occurrence was photographed and then statement of Amandeep Singh was recorded to the effect that his sister Jagdeep Kaur was earlier married about four years back and after sometime

Jagdeep Kaur was divorced. On 29.11.2008 Jagdeep Kaur since deceased re-married to Yadwinder Singh accused according to sikh rites and ceremonies, who was also divorcee. At the time of marriage with Yadwinder Singh, parents of Jagdeep Kaur had given sufficient dowry as per their status but after few months of marriage Yadwinder Singh, his father Jaspinder Singh, mother Manjeet Kaur, brother Paramjeet Singh and sister Harpreet Kaur started subjecting Jagdeep Kaur to cruelty on account of bringing less dowry. Jagdeep Kaur was subjected to torture mentally as well as physically by her in-laws. Jagdeep Kaur used to narrate her sufferings to her parents telephonically and as and when she used to visit her parental home. Even though Amandeep Singh (complainant) along with relations had gone to matrimonial home of Jagdeep Kaur to reconcile the matter but to no avail. Jagdeep Kaur used to convey on telephone to her parents as well as brother that she would be killed by her in-laws.

(3) It has been further stated that on 16.6.2009 at about 4.30p.m. Amandeep Singh had received a telephonic message from Yadwinder Singh to come immediately at the matrimonial home of his sister and even though complainant had inquired about the cause but nothing was conveyed to him by Yadwinder Singh. Thereafter, Amandeep Singh with his mother and cousin Daljit Singh had reached at the matrimonial home of Jagdeep Kaur and on reaching there they were informed by Yadwinder Singh that Jagdeep Kaur had committed suicide by hanging herself. He alleged that he had seen the body of Jagdeep Kaur lying on the bed and had also detected strangulation marks on her neck. On the basis of aforesaid statement of the complainant, FIR was registered and investigation commenced. After completion of investigation, challan was filed before the learned Illaqa Magistrate where requirement of Section 208 Cr.P.C. were complied with and the learned Illaqa Magistrate committed the case to the learned Court of Sessions Judge, Chandigarh.

(4) The trial Court framed charges under Sections 304-B and 498-A of Indian Penal Code against the accused to which the accused pleaded not guilty and claimed trial.

(5) In order to substantiate its case, prosecution examined Ms. Purna Puri PW1, Constable Harjinder Singh PW2, Balbir Singh PW-3, Amandeep Singh complainant PW4, Constable Ajmer Singh PW5,

Dr. Nirlep Kaur PW6, Constable Yash Pal PW7, SI Ram Rattan PW-8 investigating officer, Dr. Krishnadutt H. Chavali (PW-9), Constable Tejinder Singh PW-10, SI Baldev Kumar as PW-11 and thereafter, the prosecution has closed their evidence.

(6) After closure of the prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded. All the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and claimed themselves to be innocent. The accused examined Dr. A.K. Gupta (DW-1), G.S. Saini, Advocate as DW-2, Randhir Kaur DW-3, Kesar Kaur DW-4 and Balbir Singh DW-5 and closed their defence evidence.

(7) The trial Court after hearing the learned counsel for the parties, vide judgment dated 12.7.2010 and order dated 14.7.2010, convicted and sentenced the accused, as aforesaid.

(8) Feeling dissatisfied with the aforesaid judgment dated 12.7.2010 and order dated 14.7.2010, the present appeal has been directed by the accused.

(9) I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

(10) Learned counsel for the appellant has submitted that in order to prove the offence under Section 304-B of the IPC, the prosecution is required to prove the following ingredients :-

- (i) Death of a woman is caused by burns or bodily injury or otherwise than under a normal circumstances.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand of dowry.

(11) It is submitted that 3rd ingredient of offence is not proved as there is not an iota of evidence on the file, to prove that deceased was subjected to cruelty in connection with demand of dowry articles. It is

submitted that, in fact, Jagdeep Kaur deceased was earlier married and on account of the fact that she could not conceive a child, there was matrimonial discord with the earlier husband. The said dispute was settled with the earlier husband and her erstwhile husband paid a sum of Rs.2,00,000/- as compensation to her. The said amount of Rs.2,00,000/- was deposited in the name of the complainant of the present case. Deceased Jagdeep Kaur was demanding the said amount of Rs.2,00,000/- from her brother but her brother failed to pay the said amount. Jagdeep Kaur along with her friends went to Mata Veshno Devi temple to pay obeisance and remained there from 11.6.2009 to 14.6.2009 i.e., two days prior to her death. The colleagues of deceased i.e. Randhir Kaur DW-3 and Kesar Kaur DW-4 have categorically stated that deceased made a phone call from Mata Veshno Devi temple demanding Rs.2,00,000/- from the complainant. The complainant had refused to pay the amount. The deceased was perturbed on account of refusal of the complainant to pay back the amount. The complainant has utilized the amount of Rs.2,00,000/- for purchasing a new car. Jagdeep Kaur deceased was also perturbed on account of the fact that she could not conceive. Jagdeep Kaur committed suicide by hanging on that account and not on account of demand of dowry articles. It is contended that the prosecution story itself belies the demand of dowry articles.

(12) According to the cross-examination of the complainant various articles such as television, fridge, double bed all other necessary articles were purchased by the appellant for the facilities of Jagdeep Kaur. Not even a single penny was contributed or was demanded by the appellant for purchasing the said articles.

(13) It has been further submitted that separate arrangement for the residence of Jagdeep Kaur and the appellant was made at first floor of the house. Jagdeep kaur was interested in setting up computer center and the appellant provided her internet connection at the first floor. She was allowed to go along with her friends to pay obeisance at the temple of Mata Veshno Devi where she remained with her friends for number of days immediately prior to the occurrence. She had enjoyed the trip to Mata Veshno Devi temple and photographs in this regard have been placed on the file. The vague allegations of demand of dowry articles are not substantiated on the file.

(14) It is further submitted that appellant has made nominee to the deceased in his insurance policy. Complainant has further admitted that deceased had joined English speaking course and computer course and the appellant was providing fee for both these courses. So, it cannot be said that there was a demand of any dowry article. The grievance of deceased was against the complainant and not against appellant. Deceased Jagdeep Kaur was in service and at the instance of complainant, she left the job in favour of her sister-in-law i.e. wife of the complainant. Mother of the deceased has not come forward to support the case of the prosecution. So, it is contended that offence under Section 304-B, IPC is not made out.

(15) It is further contended that other co-accused against whom there are similar allegations have been acquitted by the trial Court. So, in view of the authority *Appasaheb and another versus State of Maharashtra (1)*, appellant also entitles for acquittal.

(16) Learned counsel for the appellant has also relied upon authorities *Sunil Bajaj versus State of M.P. (2)*; *Balkar Singh vs. State of Haryana (3)* and *Amit Mehra vs. State of U.T. Chandigarh Criminal Appeal No. S. 1216 SB of 2011 (O&M) decided on 5.2.2013* by this Court in support of his contention.

(17) Learned counsel for the appellant has further submitted that in case this Court is not inclined to accept the prayer of acquittal under Section 304-B, of the IPC, in that case at the most offence under Section 306 of the IPC is made out. As per custody certificate, the appellant is in custody and has undergone incarceration for a period of three years seven months and twenty one days as on 21.2.2013. So, in these circumstances, the sentence may be reduced by converting into offence under Section 306 of the IPC.

(18) In reply to the above noted submissions, learned State counsel has supported the judgment and order of the trial Court. It is submitted that there are allegations of demand of dowry articles. Death has taken place

(1) 2007 (1) RCR (Cr.) 747

(2) 2001 (4) RCR (Cr.) 401

(3) 1998 (4) RCR (Cr.) 730

within few months of the marriage. The death is in an unnatural manner i.e. by hanging. There is demand of dowry articles. So, the trial Court has rightly convicted and sentenced the accused.

(19) I have given my thoughtful consideration to the rival submissions made by both the sides and have gone through the records of the case with their able assistance.

(20) It is settled law that Appellate Court is the only forum where the evidence should be re-appraised.

(21) The first two ingredients of offence under Section 304-B of the IPC, as detailed in previous part of the judgment are concerned that are complete and no argument in this regard has been advanced. The death has taken place in an unnatural manner and within seven years of the marriage.

(22) Now the question arises whether the evidence on the file is sufficient to convict the accused in respect of offence under Section 304-B of the IPC i.e. whether the prosecution has been able to prove that appellant has subjected the deceased Jagdeep Kaur to cruelty in connection with demand of dowry articles. In this regard the testimony of PW-3 Balbir Singh and PW-4 Amandeep Singh is relevant. Amandeep Singh happened to be brother of deceased Jagdeep Kaur. This witness has stated that at the time of marriage sufficient dowry articles were given. The parties to the marriage got divorced from their earlier marriages. After marriage, the accused started harassing Jagdeep Kaur for bringing insufficient dowry and demand of cash was made. Jagdeep Kaur was affectionate with him and disclosed everything to him in respect of bringing insufficient dowry. Jagdeep Kaur disclosed the aforesaid fact to him on telephone as well as whenever she visited their house. Efforts were made to reconcile the matter but without any success. His uncle Balbir Singh visited at their village on 14.6.2009 and aforesaid fact was disclosed to him. He could not visit as death has taken place on 16.6.2009. Yadvinder Singh made a call to him on 16.6.2009 at 4.30p.m. to come to matrimonial house and there he found the dead body of Jagdeep Kaur. Balbir Singh PW-3 has stated that Amandeep Singh has disclosed him regarding cruelty to deceased Jagdeep Kaur on 14.6.2009 but he could not visit the matrimonial house on account of death of Jagdeep

Kaur on 16.6.2009. His statement was objected to being hearsay evidence and it was observed that this objection would be appreciated at the time of arguments. So, this witness denied the knowledge of cruelty by appellant towards deceased. Balbir Singh was confronted with his previous statement regarding the fact that on 14.6.2009 Amandeep Singh narrated him the factum of demand of dowry by the appellants and other coaccused but that fact was not mentioned in his previous statement.

(23) So, the statement of Amandeep Singh (PW-4) has to be scrutinized carefully.

(24) During the cross-examination, this witness has stated that Jagdeep Kaur was previously married for one year and the said marriage was dissolved by mutual consent and she received compensation of Rs.2,00,000/-, which was deposited in his account and he has not returned that amount. He has further stated that no issue was born from the first marriage from Jagdeep Kaur and Jagdeep Kaur was undergoing treatment at Kharar for her problem of not conceiving and that was the reason for divorce. This witness has further admitted that he persuaded deceased to resign from the job and thereafter his wife Harjinder Kaur was given that job. He has further admitted that fee for examination of UGC examination, books etc. were paid by the appellant. He has further stated that he has not given any list of dowry articles or jewellery to the police at any time. He has further admitted that his sister wanted to open Computer Centre at village Maloya and the expenditure were incurred by Yadwinder Singh. He has further admitted that his sister was pursuing English speaking course and that fee for the said course was being paid by Yadwinder Singhappellant. He has admitted that after marriage new furniture was purchased by the appellant and instalment was paid by him through bank. He has shown ignorance regarding purchase of new washing machine and jewellery by the accused after marriage with Jagdeep Kaur. He has admitted that accused and deceased were residing on first floor of the house and there were two cable connection on the house one on the ground-floor and the other on the first floor. He has further admitted that new television was purchased by the accused. He has also admitted regarding purchase of new double bed, almirah, furniture by the appellant and his family members. He has also admitted that deceased appeared in bank examination and fee of the same was paid by Yadvinder Singh-appellant. He has also admitted in the cross-examination that in the month of February Yadvinder Singh and Jagdeep

Kaur visited for problem in stomach and accused took her to Mahesh Hospital, Sirhind. This witness has admitted that accused has taken Jagdeep Kaur to Chandigarh and this witness could not accompany Jagdeep Kaur in connection with her treatment being on job. He admitted the treatment of Jagdeep Kaur by accused from Doctor Sandhu Laboratory. He admitted the factum of all the expenditure incurred by Yadwinder Singh for treatment and appellant had not demanded any money from them. He has admitted the fact that Jagdeep Kaur had gone to temple of Mata Veshno Devi on 9.6.2009 with her friends and remained there upto 14.6.2009 and photographs in this regard have been produced on the file. In the cross examination this witness has further stated that he cannot tell any date, month when Jagdeep Kaur disclosed him that Paramjit Kaur had come and troubled the deceased and maltreated her. This witness has also admitted that Yadvinder Singh-appellant disclosed him regarding opening of a computer center for deceased. This witness has further admitted that Jagdeep Kaur was the nominee in insurance policy which are in the name of Yadvinder Singh-appellant. He has also admitted that there were separate internet connection on the first floor for Jagdeep Kaur and accused Yadvinder Singh has incurred all the expenditure. This witness has further admitted that they have not provided any item of furniture, dinning table, television and washing machine after marriage. This witness has stated that only demand of money was made but he cannot tell the specific amount. He has denied the suggestion that deceased was depressed on account of not conceiving. This witness has further admitted that it is correct that no amount of cash and dowry or anything else was made by any of the accused at the time of marriage.

(25) So, from the close scrutiny of the statement of this witness Amandeep Singh, no specific date time of making demand is made out. This witness has stated that only demand of cash was made but no amount could be narrated by this witness. The suggestion of the appellant is that he was having the amount of Rs.2,00,000/- belonging to deceased received by him in respect of compensation of previous marriage and she was demanding but this witness has refused to part with that money.

(26) From the statement of Amandeep Singh it is revealed that appellant has provided the deceased a separate residence and has provided all facilities of life including bed, television, fridge, internet connection and separate television connection. From his testimony it is also revealed that

all the expenses of Computer Course, English speaking course and expenses on books were borne by the appellant. The appellant also allowed the deceased to visit with her friends from 9.6.2009 to 14.6.2009 to Mata Veshno Devi. The learned trial Court has drawn wrong inference against the appellant of his not accompanying deceased to Veshno Devi. Admittedly, appellant is dealing with insurance business and a professional person cannot afford so much days to visit for pilgrimage. Mother of the deceased has not come to the witness box to support the case of the prosecution. The evidence of Amandeep Singh falls short of proving 3rd ingredient of offence under Section 304-B of the IPC that Jagdeep Kaur was subjected to cruelty in connection with demand of dowry articles at the hands of appellant. The other co-accused against whom there were similar allegations have been acquitted by the trial Court by giving them benefit of doubt.

(27) In authority **Appasaheb and another's case (supra)** Hon'ble Apex Court has held that benefit of acquittal of other co-accused should be given to the other accused.

(28) In authority **Sunil Bajaj 's case (supra)** the accused were acquitted under Section 304-B, IPC where there was no evidence of immediate demand of dowry and statement of the witnesses regarding demand of dowry was found inconsistent.

(29) In authority **Balkar Singh's case (supra)** the weight was given where the father of the deceased was given information and there was no complaint or letter written by the deceased to her father or any other relative about misconduct by the accused.

(30) Authority **Amit Mehra's case (supra)** relates to acquittal under Section 304-B, IPC where the demand of money or dowry articles was not proved.

(31) So, in view of the above discussion, the appeal stands accepted. The judgment and order of the trial Court stands set aside. The accused stands acquitted by giving him benefit of doubt from the charges levelled against him. Fine, if any, be refunded to accused/appellant as per rules.

(32) A copy of this judgment be sent to the trial Court for strict compliance.