

HEM CHAND
v.
STATE OF HARYANA

OCTOBER 6, 1994

[P.B. SAWANT, G.N. RAY AND K. JAYACHANDRA REDDY, JJ.]

Indian Penal Code, 1860 : Sections 304-B and 498-A.

Dowry Death—Cruelty—Wife's unnatural death by strangulation within seven years of marriage—Conviction—Sentence—Held extreme sentence of life imprisonment should be awarded in rare cases—Life imprisonment reduced to 10 years rigorous imprisonment by Supreme Court.

Indian Evidence Act, 1872 : Section 113-B.

Presumption as to Dowry Death—Applicability of.

The appellant, a police employee, was prosecuted under Section 304-B and 498-A of the Indian Penal Code, 1860. The prosecution case was that the appellant was married to one S on 24.5.82. After the marriage he had demanded dowry in kind and cash on many occasions. On 16.6.87, S died of strangulation i.e. to say that she died otherwise than in normal circumstances within seven years of her marriage. The medical report also opined that the death was due to strangulation. the accused pleaded that it was a case of suicide by stating that on the date of occurrence when he returned from office in the evening and entered his room, he found the deceased hanging from the hook in the ceiling and thereafter he took the body to his village and that he also informed the police.

The trial court noted two sets of medical evidence, the first indicating no injury on the highly decomposed dead body while the second opinion noted some injury at the time of re- post-mortem examination. However, having examined the evidence of the material witnesses it convicted the appellant under sections 304-B and 498-A and awarded the extreme sentence i.e. imprisonment for life under section 304-B.

On appeal the High Court confirmed the extreme punishment for life under section 304-B. The appellant preferred appeal in this Court.

A Dismissing the appeal but reducing the sentence only in respect of conviction under Section 304-B, this Court

B HELD : 1. The plea set up by the accused that he found the dead body hanging, thereby suggesting that it could be a case of suicide committed by the deceased for unknown reasons is, under the circumstance, wholly unacceptable. Though the case rests on circumstantial evidence, the presumption under Section 113-B of the Evidence Act has rightly been drawn and the appellant is convicted under section 304-IPC. [298-G]

C 2. A reading of Section 304-B I.P.C. would show that when a question arises whether a person has committed the offence of dowry death of a woman, what all that is necessary is, it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. [299-B, C, D]

E 3. In the instant case no doubt the prosecution has proved that the deceased died an unnatural death namely due to strangulation, but there is no direct evidence connecting the accused. There is no charge under Section 302 I.P.C. The trial court also noted two sets of medical evidence. This has certainly to be taken into consideration in balancing the sentence to be awarded to the accused. Therefore, a sentence of 10 years' rigorous imprisonment would meet the ends of justice. [299-F, 300-A, D]

F 4. Section 304-B of the I.P.C. only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore, awarding extreme punishment of imprisonment for life should be in rare cases and not in every case. [300-D]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 690 of 1994.

From the Judgment and Order dated 5.12.90 of the Punjab & Haryana High Court in Crl. A. No. 580-D.B. of 1988.

H B.K. Mehta, and Prem Malhotra for the Appellant.

The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. Leave granted.

S.L.P. (Crl.) No. 2846/91 was filed by the sole accused in the case against the judgment of High Court of Punjab & Haryana confirming the conviction of the appellant under Section 304-B and 498-A I.P.C. and the sentence of imprisonment for life and two years respectively awarded thereunder by the trial court. The S.L.P. was dismissed by this Court at the notice stage on 16.9.91 As against the same Review Petition (Crl.) No. 452/92 was filed. This Court issued notice and the Review Petition was listed for hearing on 18.3.94 but by mistake it was dismissed without hearing either party. Therefore Cr. M.P. No. 1753/94 has been filed to recall the order dismissing the Review Petition. Accordingly the order dated 8.3.94 dismissing the Review Petition is recalled and it is taken on file. After hearing the respective counsel we allowed the Review Petition and restored the S.L.P.

The appellant Hem Chand married the deceased Saroj Bala on 24.5.1982. She stayed for two months in the matrimonial home and returned to her parents' house and told them that the accused was wanting more dowry in the form of a television and a fridge. Her father gave Rs. 6000 and sent her back to her matrimonial home. The accused again demanded another sum of Rs. 25,000 for purchasing a plot. On 13.11.1984 the accused took his wife and left her in her parents' house thereby making them understand that the deceased could get back to the matrimonial home at Hissar with Rs. 25,000 and not otherwise. The appellant after undergoing one year's course in connection with his service took his wife back. On 20.5.1987 the deceased, however, went to her father and told him that her husband was wanting Rs. 25,000. She came back to her husband with Rs. 15,000 with a promise that the balance would be remitted by her father soon. On 16.6.1987 at about 11.15 A.M. the deceased died of strangulation that is to say that she died otherwise than in normal circumstances within seven years of her marriage. The father, after coming to know that the dead body of the deceased had been brought to Village Lakhan Majra, reached there. Thereafter he lodged a complaint with the police that his daughter was murdered by the accused because of dowry. The police registered the crime, held the inquest over the dead body and sent the same for post-mortem. As the dead body was highly decomposed, the Doctors referred

A the same to the Head of the Department of Forensic Medicine, Medical College, Rohtak. Dr. Dalbir Singh, Demonstrator, Department of Forensic Medicine examined the body and found a ligature mark around the neck and on dissection of the ligature mark he found that ecchy mosis were present, trachea was congested and was containing bloody froth. He also
B found a contusion over the chin. The Doctor also found several other contusions on the hands, axilla and other parts of the body. He opined that the death was due to strangulation. After completion of the investigation, the charge- sheet was laid.

C The plea of the accused was one of denial and he stated that when he returned from his office in the evening and entered the room, he found the deceased hanging from the hook in the ceiling. He got confused and with the help of the people he took the dead body to his native Village Lakhan Majara and that he also informed the police.

D The trial court having examined the evidence of the material witnesses held that this is a case of strangulation and therefore the death was unnatural and that there was demand for dowry and there was cruelty on the part of the accused and accordingly convicted him under Sections 304-B and 498-A I.P.C. However, the trial court awarded sentence of imprisonment for life for the offence punishable under Section 304-B I.P.C.
E On appeal the High Court having examined the evidence agreed with the conclusions reached by the trial court and dismissed the appeal and the extreme punishment of imprisonment for life under Section 304-B I.P.C. was confirmed.

F In this appeal, the same contentions have been put forward. We find only from the second set of medical evidence that it is a case of strangulation. However, for the purpose of this case, it should be accepted that it was an unnatural death. The plea set up by the accused that he found the dead body hanging thereby suggesting that it could be a case of suicide committed by the deceased for unknown reasons is, under the circumstance, wholly unacceptable. Though the case rests on circumstantial
G evidence, the presumption under Section 113-B of the Evidence Act has rightly been drawn and the appellant is convicted under Section 304-B I.P.C. Having given our careful consideration we agree with the findings of the courts below.

H Now coming to the question of sentence, it can be seen that Section

304-B I.P.C. lays down that "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." The point for consideration is whether the extreme punishment of imprisonment for life is warranted in the instant case. A reading of Section 304-B I.P.C. would show that when a question arises whether a person has committed the offence of dowry death of a woman that all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death shall presume to have caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in Section 304-B I.P.C. also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied. In the instant case no doubt the prosecution has proved that the deceased died an unnatural death namely due to strangulation, but there is no direct evidence connecting the accused. It is also important to note in this context that there is no charge under Section 302 I.P.C. The trial court also noted that there were two sets of medical evidence on the file in respect of the death of the deceased. Dr. Usha Rani, P.W. 6 and Dr. Indu Lalit, P.W. 7 gave one opinion. According to them no injury was found on the dead body and that the same was highly decomposed. On the other hand, Dr. Dalbir Singh, P.W. 13 who also examined the dead body and gave his opinion, deposed that he noticed some injuries at the time of re-post mortem examination. Therefore at the most it can be said that the prosecution proved that it was an unnatural death in which

A case also Section 304-B I.P.C. would be attracted. But this aspect has certainly to be taken into consideration in balancing the sentence to be awarded to the accused. As a matter of fact, the trial court only found that the death was unnatural and the aspect of cruelty has been established and therefore the offences punishable under Sections 304-B and 201 I.P.C. have been established. The High Court in a very short judgment concluded that it was fully proved that the death of the deceased in her matrimonial home was a dowry death otherwise than in normal circumstances as a result of cruelty meted out to her and therefore an offence under Section 304-B I.P.C. was made out. Coming to the sentence the High Court pointed out that the accused-appellant was a police employee and instead of checking the crime he himself indulged therein and precipitated in it and that bride killing cases are on the increase and therefore a serious view has to be taken. As mentioned above Section 304-B I.P.C. only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case.

Hence, we are of the view that a sentence of 10 years' R.I. would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B I.P.C., reduce the sentence of imprisonment for life to 10 years' R.I. The other conviction and sentence passed against the appellant are, however, confirmed. In the result, the appeal is dismissed subject to the above modification of sentence.

T.N.A.

Appeal dismissed.