

BALJINDER KAUR

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v.

STATE OF PUNJAB

(Criminal Appeal No. 1142 of 2011)

NOVEMBER 19, 2014

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[T. S. THAKUR AND R. BANUMATHI, JJ.]

Penal Code, 1860: s. 304-B – Dowry death – Death by poisoning – Demand of gold bangle two months after marriage – Except one stray demand of gold bangle, there was no other evidence to show that the victim-deceased was subjected to cruelty in connection with demand of dowry by the appellant-sister-in-law soon before her death – Conviction u/s.304-B is therefore not maintainable however evidence on record made out offence u/s.498-A, IPC.

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Investigation: Role of investigating officer – Held: Any omission and commission by the investigating officer may result in miscarriage of justice – Investigating officer must be trained to adopt proper techniques of investigation and scientific temper must be inculcated in them and investigation must be conducted in unbiased manner.

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Partly allowing the appeal, the Court

HELD: 1. In his evidence, even though PW-4 (father of the deceased) had stated about the 'dying declaration' alleging that accused have beaten her and administered poison, FIR was registered only under Section 304B IPC. Investigation was not focused in the direction of the alleged 'dying declaration'. The investigating officer had not investigated whether in the house of accused there was aluminium phosphide poison which is stated to be 'pesticide' and whether the accused could have administered poison to the victim-deceased. The investigation lacked credibility as the same was not

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A focused in the light of the contents of the complaint.
[Para 9][990-G-H; 991-A-B]

B 2. The criminal investigation plays an important and
special role in the administration of criminal justice. Any
omission and commission by the investigating officer
may result in miscarriage of justice. Being the foundation
stone of the prosecution, the investigating officer must
be trained to adopt proper techniques of investigation
and scientific temper must be inculcated in them. The
C investigation must be conducted in an unbiased manner
and investigation must be with objectivity and
dispassionate approach to men and matters and the
investigating officer must make a truthful presentation
of the materials collected. [Para 10][991-B; E-F]

D 3. In cases related to dowry death, the
circumstances showing the cruelty or harassment are
not restricted to a particular instance, but normally refer
to a course of conduct. Such conduct of cruelty or dowry
harassment must be “soon before death”. The testimony
E of the father of the deceased PW-4 showed that the
appellant demanded gold *karra* two months after the
solemnization of marriage of the deceased and the
demand was not “soon before her death”. Excepting
one stray instance of demand of dowry, there was no
F material on record to connect the appellant with the
persistent demand for dowry. Admittedly, the appellant
was married about six years prior to the solemnization
of marriage of deceased with her brother. The appellant
has got three children and she lives in her in-law’s house.
G There was no evidence showing any persistent dowry
demand or the conduct of the appellant subjecting the
deceased to cruelty or harassment for or in connection
with dowry. About twenty days prior to the occurrence,
when the deceased went to her father’s house, she only

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generally stated about the dowry demand. She had not specifically stated about the demand of dowry by the appellatant. The alleged demand of gold *karra* about two months after the marriage cannot be said to constitute a proximate live link with the death of deceased and the conviction of the appellatant under Section 304B IPC cannot be sustained. Even though there was no evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry “soon before her death” by the appellatant, evidence on record makes out an offence under Section 498A IPC. [Paras 20 to 22][996-E-H; 997-A; C-D]

Hira Lal v. State (Govt. of NCT) Delhi 2003 (1) Suppl. SCR 734 : 2003 (8) SCC 80; *Kamesh Panjiyar alias Kamlesh Panjiyar v. State of Bihar* 2005 (1) SCR 903 : (2005) 2 SCC 388; *Thakkan Jha & Ors. v. State of Bihar* (2004) 13 SCC 348; *Baldev Singh v. State of Punjab* 2008 (11) SCR 828 : (2008) 13 SCC 233 – relied on.

Case Law Reference:

2003 (1) Suppl. SCR 734	relied on	Para 14
2005 (1) SCR 903	relied on	Para 15
(2004) 13 SCC 348	relied on	Para 15
2008 (11) SCR 828	relied on	Para 15

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1142 of 2011.

From the Judgment and Order dated 11-08-2010 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 703-SB of 1999.

Dinesh Kumar Garg, Ritu Puri, Advs. for the Appellant.

Sanchar Anand, Kuldip Singh, Advs. for the Respondent.

A The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. This appeal arises out of judgment dated 11.08.2010 passed by Punjab and Haryana High Court in Criminal Appeal No.703-SB of 1999, in and by which, the High Court confirmed the conviction of the appellants under Section 304B IPC and sentence of seven years rigorous imprisonment imposed on the appellant- Baljinder Kaur (sister-in-law) and second accused-Pritam Singh (husband) while acquitting father-in-law and mother-in-law.

C 2. Briefly stated case of the prosecution is as follows: Marriage of Sharanjit Kaur (deceased) was solemnized with second accused-Pritam Singh in the month of January 1997. Although PW-4 - Joginder Singh (father of the deceased) gave sufficient dowry at the time of his daughter's marriage, after two months of her marriage, the deceased told her father and Harbans Singh-the mediator of marriage that the second accused-Pritam Singh and his family members were demanding dowry and harassing her. About two months after the marriage, the appellant-Baljinder Kaur (sister-in-law) demanded for a gold *karra* as dowry. PW-4, the father of the deceased could not meet the demand of dowry, so he brought his daughter back to his house. After one month, at the request of her in-law's, Sharanjit Kaur was sent back to her husband's house; but again after one month, she returned to her maternal house with the same demand of *karra*. Two days prior to her death i.e. on 24.08.1997, second accused-Pritam Singh took her back to the matrimonial house. On 25.08.1997 at about 6.00 P.M., first accused-Sohan Singh came to the house of PW-4 and informed him about deceased's illness. Immediately, PW-4 along with Darshan Singh (PW-5) and Harbans Singh rushed to the house of the accused and found Sharanjit Kaur vomiting and in a critical condition. The deceased stated that the accused had beaten her and administered some poisonous substance to her. PW-4 and others took the deceased to the hospital at Raikot, but she died on the way to the hospital.

3. PW-4 set the law in motion by lodging complaint on the next day i.e. 26.08.1997 at 11.00 A.M. with sub-inspector of police (PW-8) at Raikot. On the basis of the complaint, FIR No. 86 was registered on 26.08.1997 under Section 304B IPC. Board of Doctors consisting of PW-1-Dr. Varinder Singh, Medical Officer and two other doctors conducted autopsy on the body of deceased-Sharanjit Kaur, and opined that the cause of death of the deceased was poisoning. On completion of the investigation, charge sheet was filed against first accused, Sohan Singh (father-in-law), accused No.2 - Pritam Singh (Husband), accused No.3-Surjit Kaur (mother-in-law) and accused No.4-Baljinder Kaur (sister-in-law) under Section 304B IPC.

4. To bring home the guilt of the accused, prosecution has examined nine witnesses and exhibited documents and material objects. To substantiate their defence the accused examined two defence witnesses. The accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and materials and the accused denied all of them. Upon consideration of evidence, trial court found the accused guilty and convicted all the four accused under Section 304B IPC and sentenced each of them to undergo rigorous imprisonment for seven years. Aggrieved, the accused filed appeal before the High Court. Criminal Revision was also filed by PW-4, Joginder Singh, father of the deceased for enhancement of sentence. The appeal and the revision were disposed of by an order dated 11.08.2010 whereby the High Court dismissed the criminal revision and confirmed the conviction of the appellant and Pritam Singh while acquitting father-in-law and mother-in-law. This appeal assails the legality and correctness of the judgment of the High Court affirming appellant's conviction and the sentence of imprisonment imposed on her.

5. Pritam Singh, husband of the deceased, had undergone the entire sentence of imprisonment imposed on

A him and the appeal preferred by him was dismissed as infructuous by separate order dated 5.11.2014.

B 6. Learned counsel for the appellant Mr. Dinesh Kumar Garg contended that the evidence of PWs 4 and 5 ought to have been considered with care and caution and their evidence cannot form the basis for conviction. It was then contended that the appellant was already married about six years ago prior to the occurrence and was having three children and she was residing with her in-laws in village Diwana at a distance of twenty kilometres away from her parental house and while so she could not have subjected the deceased to cruelty by demanding gold *karra* as dowry and the courts below erred in convicting the appellant under Section 304B IPC.

D 7. Per contra, learned counsel for the respondent-State, Mr. Sanchar Anand contended that from the evidence of PWs 4 and 5, prosecution has established the demand of gold *karra* by the appellant and the courts below rightly convicted the appellant under Section 304B IPC and the concurrent findings recorded by the courts below warrant no interference.

E 8. Before advertng to the merits of the contentions advanced, it is necessary to refer to the alleged 'dying declaration' of deceased Sharanjit Kaur as it emerges from the version of PWs 4 and 5 and lapse of investigation in this regard. In their evidence, PWs 4 and 5 stated that on 25.8.1997 when they reached the house of the accused, Sharanjit Kaur was in a semi-conscious condition and she told PWs 4 and 5 that she was beaten by the accused and the accused administered poison to her. PW-4 had mentioned about the alleged 'dying declaration' in his complaint also.

G 9. In his evidence, even though PW-4 had stated about the 'dying declaration' of Sharanjit Kaur alleging that accused have beaten her and administered poison, FIR was registered only under Section 304B IPC. Investigation was not focussed in the direction of the alleged 'dying declaration'. The

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investigating officer had not investigated whether in the house of accused there was aluminium phosphide poison which is stated to be 'pesticide' and whether the accused could have administered poison to Sharanjit Kaur. In our view, the investigation lacks credibility as the same was not focussed in the light of the contents of the complaint.

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10. The criminal investigation plays an important and special role in the administration of criminal justice. The investigating officer plays a pivotal role in the dispensation of criminal justice and the maintenance of law and order. Police investigation is therefore the foundation stone on which the entire edifice of the criminal law rests. It is by the action of the investigating officer that the criminal law becomes an actual positive force. Proper investigation is necessary for obtaining a complete picture of all the relevant issues because it will provide the information necessary to conduct a comprehensive investigation. Any omission and commission by the investigating officer may result in miscarriage of justice and prosecution results in acquittal. Being the foundation stone of the prosecution, the investigating officer must be trained to adopt proper techniques of investigation and scientific temper must be inculcated in them. The investigation must be conducted in an unbiased manner and investigation must be with objectivity and dispassionate approach to men and matters and the investigating officer must make a truthful presentation of the materials collected. As noticed earlier, investigation of the case at hand lacks credibility. Since occurrence was of the year 1997, we are not inclined to go into the details of the lapses in the investigation and issue any further direction.

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11. Be that as it may, let us consider the case of the prosecution and the evidence as projected. Section 304B IPC defines 'dowry death'. To convict an accused under Section 304B IPC, the prosecution has to establish the following ingredients:-

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- A (i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) Such a death must have occurred within seven years of her marriage;
- B (iii) Soon before death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) Such cruelty or harassment must be for or in connection with demand of dowry;
- C (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

D 12. Section 113B of the Evidence Act is also relevant for the case in hand. Section 113B of the Evidence Act reads as under:-

E **“113B. Presumption as to dowry death-** When the question is whether a person has committed the dowry death of a women 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.”

F 13. As per the definition of ‘dowry death’ in Section 304B IPC and the wording in Section 113B of the Evidence Act, it is necessary to show that ‘soon before death’ the woman concerned had been subjected to cruelty or harassment “for or in connection with the demand of dowry”. On proof of the essentials mentioned therein, under Section 113B of the Evidence Act, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death.

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H 14. The expression “soon before death” in Section 304B IPC and Section 113B of the Evidence Act was considered by

this Court in *Hira Lal vs. State (Govt. of NCT) Delhi*; 2003 A
(8) SCC 80 and this Court in paragraph (9) observed as under:-

“9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods “soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession”. The determination of the period which can come within the

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A term “soon before” is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.”

15. In *Kamesh Panjiyar alias Kamlesh Panjiyar vs. State of Bihar*, (2005) 2 SCC 388, this Court considered the expression “soon before death” and held as under:-

D “.....The expression ‘soon before’ is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. ‘Soon before’ is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression ‘soon before her death’ used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test.....”

The same view was expressed in *Thakkan Jha & Ors. vs. State of Bihar*, (2004) 13 SCC 348 and *Baldev Singh vs. State of Punjab*, (2008) 13 SCC 233.

16. The above decisions of this Court laid down the proximity test i.e. there must be material to show that “soon before her death” the woman was subjected to cruelty or harassment “for or in connection with dowry”. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim. “Soon before death” is a relative term and no strait-jacket formula can be laid down fixing any time-limit. The determination of the period which can come within the term “soon before death” is left to be determined by the Courts depending upon the facts and circumstances of each case.

17. In the light of the above principles, let us consider the evidence adduced by the prosecution and examine whether the courts below were right in convicting the appellant under Section 304B IPC. PW-4 father of the deceased has deposed that after the marriage, Sharanjit Kaur lived happily for about two months and thereafter the appellant-Baljinder Kaur asked PW-4 to give gold *karra* as additional dowry and the same was intended for the husband of the appellant. PW-4 could not give gold *karra* and had taken back his daughter to his house. After about one month, at the request of the in-laws, Sharanjit Kaur was again sent back to the matrimonial house and after about one month Sharanjit Kaur again came back with the same demand of gold *karra*. On 24.8.1997, accused Pritam Singh came and took back Sharanjit Kaur to the matrimonial house and the next day i.e. on 25.8.1997, Sharanjit Kaur died of poisoning. PW-5 Darshan Singh had also spoken about the demand of dowry by the appellant after two months of the marriage. On 25.8.1997, PWs 4 and 5 went to the house of the accused and Sharanjit Kaur was found in a critical condition and she told them she was beaten by the accused.

18. From the evidence of PWs 4 and 5, it emerges that about two months after the marriage there was demand of gold *karra* by the appellant and other in-laws. Learned counsel for the appellant submitted that excepting this stray demand for

A gold *karra*, there is no other evidence to show that the deceased Sharanjit Kaur was subjected to cruelty in connection with demand of dowry by the appellant. It was submitted that an isolated instance of demand of dowry about four months prior to death cannot be said to constitute proximate live link to the death to sustain the conviction of the appellant under Section 304B IPC.

19. In our view, there is force in the submission of the learned counsel for the appellant. In cases related to dowry death, the circumstances showing the cruelty or harassment are not restricted to a particular instance, but normally refer to a course of conduct. Such conduct of cruelty or dowry harassment must be “soon before death”. There should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her.

20. From the testimony of PW-4, it is evident that the appellant demanded gold *karra* two months after the solemnization of marriage of the deceased and the demand was not “soon before her death”. Excepting one stray instance of demand of dowry, there is no material on record to connect the appellant with the persistent demand for dowry. Admittedly, the appellant was married to Jugraj Singh of village Diwana about six years prior to the solemnization of marriage of Sharanjit Kaur with Pritam Singh. The appellant has got three children and she lives in her in-law’s house in village Diwana. DW-2 Nirmal Singh, a resident of village Diwana and neighbour of the appellant had stated that the appellant resides in her in-law’s house at village Diwana and denied that appellant Baljinder Kaur often lives in village Burj Naklian in her father’s house.

21. There is no evidence showing any persistent dowry demand or the conduct of the appellant subjecting Sharanjit Kaur to cruelty or harassment for or in connection with dowry. About twenty days prior to the occurrence, when Sharanjit Kaur went to her father’s house, she only generally stated about the

dowry demand. She had not specifically stated about the demand of dowry by the appellant. In their evidence PWs 4 and 5 have stated that on 25.8.1997, they went to the house of Pritam Singh in village Burj Naklian, all the accused except appellant-Baljinder Kaur were in the house. After the alleged demand of gold *karra* two months after the marriage, Sharanjit Kaur went to her house, again came back to the marital house and again went to her father's house and again came back to the marital house. In our considered view, the alleged demand of gold *karra* about two months after the marriage cannot be said to constitute a proximate live link with the death of deceased Sharanjit Kaur and the conviction of the appellant under Section 304B IPC cannot be sustained.

22. Even though there is no evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry "soon before her death" by the appellant, in our view, evidence on record makes out an offence under Section 498A IPC. So far as the sentence, the occurrence was of the year 1997. The appellant is having three grown up children. The appellant has already undergone sentence for a period of about fifteen months. In the facts and circumstances of the case, for the conviction under Section 498A, she is sentenced to undergo imprisonment already undergone.

23. In the result, conviction of the appellant under Section 304B IPC is set aside. The appellant is convicted under Section 498A IPC and sentenced to undergo the period already undergone by her. The appeal is partly allowed to the extent indicated above. The appellant is on bail. The bail bond shall stand discharged.