

MAJOR SINGH & ANR.

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v.

STATE OF PUNJAB

(Criminal Appeal No. 1145 of 2012)

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APRIL 8, 2015

**[T. S. THAKUR AND R. BANUMATHI AND
AMITAVA ROY, JJ.]**

Penal Code, 1860 – s. 304B – Dowry death – Prosecution u/ss. 304B and 498A – Of husband, mother-in-law, father-in-law and sister-in-law of the deceased – Trial court acquitted sister-in-law of all the charges and convicted the other accused only u/s. 304B – High Court confirmed conviction of father and mother-in-laws while appeal of the husband abated due to his death – On appeal, held: Prosecution failed to prove demand of dowry or cruelty and that the deceased was subjected to dowry harassment 'soon before her death' – Offence u/s. 304B not made out against the appellants-accused, hence acquitted.

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Allowing the appeal, the Court

HELD: 1. To attract conviction under Section 304B IPC, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. [Para 15] [785-G-H]

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2. In the present case, there is no evidence as to the demand of dowry or cruelty and that deceased was subjected to dowry harassment "soon before her

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A death". Prosecution has not examined any independent witness or the Panchayatdars to prove that there was demand of dowry and that the deceased was subjected to ill-treatment, especially when PW3 has specifically stated that the demand of dowry by the accused was informed to the Panchayatdars. The alleged ill-treatment or cruelty of the deceased by her husband or relatives could have been proved by examination of the Panchayatdars. Except the demand of scooter, there is nothing on record to substantiate the allegation of dowry demand. Assuming that there was demand of dowry, it can only be attributed to the husband, who in all probability could have demanded the same for his use. In the absence of any evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry "soon before her death" by the appellants, the conviction of the appellants under Section 304B IPC cannot be sustained. The trial court and the High Court have not analyzed the evidence in the light of the essential ingredients of Section 304B IPC and the conviction of the appellants under Section 304B IPC is liable to be set aside. [Paras 13 and 17] [784-F-H; 787-G-H; 788-A-B]

F *Hira Lal & Ors. vs. State(Govt. of NCT) Delhi* (2003) 8 SCC 80; 2003 (1) Suppl. SCR 734; *State of A.P. vs. Raj Gopal Asawa & Anr.* (2004) 4 SCC 470; 2004 (3) SCR 32; *Balwant Singh & Anr. vs. State of Punjab* (2004) 7 SCC 724; *Kaliyaperumal & Anr. vs. State of Tamil Nadu* (2004) 9 SCC 157; 2003 (3) Suppl. SCR 1; *Kamesh Panjiyar @ Kamlesh Panjiyar vs. State of Bihar* (2005) 2 SCC 388; 2005 (1) SCR 903; *Harjit Singh vs. State of Punjab* (2006) 1 SCC 463; 2005 (5) Suppl. SCR 629; *Biswajit Halder @ Babu Halder & Ors. vs. State of West Bengal* (2008) 1 SCC 202; 2007 H (4) SCR 120; *Narayanamurthy vs. State of Kamataka & Anr.*

(2008) 16 SCC 512:2008 (8) SCR 403 – relied on. A

Case Law Reference

2003 (1) Suppl. SCR 734	relied on.	Para 15	
2004 (3) SCR 32	relied on.	Para 16	B
(2004) 7 SCC 724	relied on.	Para 16	
2003 (3) Suppl. SCR 1	relied on.	Para 16	
2005 (1) SCR 903	relied on.	Para 16	C
2005 (5) Suppl. SCR 629	relied on.	Para 16	
2007 (4) SCR 120	relied on.	Para 16	
2008 (8) SCR 403	relied on.	Para 16	D

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1145 of 2012.

From the Judgment and Order dated 20.08.2010 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. S-1029-SB of 1998. E

Harikesh Singh, Chander Shekhar Ashri for the Appellants. F

Ajay Bansal, AAG, Kuldip Singh for the Respondent.

The judgment of the Court was delivered by

R. BANUMATHI, J. 1. This criminal appeal has been preferred against the judgment dated 20.8.2010 passed by the High Court of Punjab and Haryana in Criminal Appeal No.S-1029-SB of 1998 whereby the High Court confirmed the conviction of the appellants under Section 304B IPC and the sentence of imprisonment of seven years imposed on each of them. G H

A 2. Brief facts which led to the filing of this appeal are as
under: PW1-Sukhdev Singh's daughter Karamjit Kaur was
married to accused Jagsir Singh son of Major Singh Jatt
appellant No.1, resident of Badiala about 21/2 years back.
Case of the prosecution is that Karamjit Kaur's husband and
B her in-laws harassed his daughter in connection with demand
of dowry. Deceased Karamjit Kaur informed PW1-Sukhdev
Singh several times about the ill-treatment and harassment
meted out to her and the demand of scooter raised by the
C accused. PW1-Sukhdev Singh reported that on 10.8.1996 at
about 10.00 a.m., he went to village Badiala to enquire about
the well-being of his daughter and when he reached there he
witnessed that Jagsir Singh, his father-Major Singh, his
D mother-Mohinder Kaur and his sister-Golo @ Jaspal Kaur all
were dragging his daughter Karamjit Kaur towards the 'subat'
while she was struggling to breathe. On seeing PW1-
Sukhdev Singh and his son PW3-Manga Singh, the accused
E persons ran away and Karamjit Kaur breathed her last. PW1
informed Panchayat that accused persons gave poison to his
daughter in greed of getting more dowry. Complainant left
PW3-Manga Singh to guard the dead body of his daughter
and went back to his village Balianwali and gave information
about the unnatural death of his daughter to his family and
F Panchayat. He gave his statement to Kirpal Singh Sub
Inspector of Police -PW6. On the basis of statement of PW1-
Sukhdev Singh, F.I.R No.81 dated 14.8.1996 was registered
under Section 304B and 498A IPC against the accused
G persons. PW6 had taken up the investigation and conducted
inquest and recorded statement of witnesses. He sent the
body of deceased-Karamjit Kaur for autopsy. After
investigation, the accused persons were charge-sheeted for
offences punishable under Section 304B and 498A IPC to
H which the accused persons pleaded not guilty and claimed
trial.

3. To bring home the guilt of the accused in the trial court, A
prosecution has examined nine witnesses and three defence
witnesses. The accused were questioned under Section 313
Cr.P.C. about the incriminating circumstances and the
evidence and the accused denied all of them. In his statement,
appellant-Major Singh stated that none of them knew how to B
drive a scooter and therefore question of demand of the
scooter did not arise. He further stated that PW1-Sukhdev
Singh owned only 2 acres of land and having a large family
of eight members, he was not in a position to give anything
and therefore there was no question of demand of dowry. C

4. The trial court vide judgment dated 27.11.1998
convicted and sentenced the accused Jagsir Singh (husband),
Major Singh (father-in-law), Mohinder Kaur (mother-in-law)
under Section 304B IPC and sentenced each of them to D
undergo seven years rigorous imprisonment with a fine of
Rs.500/- each with default clause. The trial court, however,
gave benefit of doubt to accused Golo @ Jaspal Kaur (sister
of Jagsir Singh) and acquitted her and also acquitted all the
accused under Section 498A IPC. E

5. Aggrieved by their conviction, appellants approached
the High Court. During the pendency of the appeal before the
High Court, Jagsir Singh (husband of the deceased) died and
appeal against Jagsir Singh abated and appeal survived qua F
the appellants viz., father-in-law and mother-in-law. High Court
vide impugned judgment dated 20.8.2010 confirmed the
conviction of the appellants under Section 304B IPC and
sentence of imprisonment imposed on each of them. G
Aggrieved by the same, appellants who are father-in-law and
mother-in-law are before this Court assailing the correctness
of the impugned judgment.

6. Learned counsel for the appellants contended that the H

A evidence of PWs 1 and 3 father and brother of the deceased cannot be relied upon as both are interested witnesses. It was submitted that absolutely there is no evidence to establish that the deceased was subjected to harassment or cruelty in connection with demand of dowry and in the absence of proof
B of essential ingredients of Section 304B IPC, courts below erred in convicting the appellants. It was further submitted that the daughter of the deceased who is now 18 years of age is under the care and protection of the appellants and that they
C are the only persons to take care of the daughter of the deceased.

7. Per contra, learned counsel for the respondent-State contended that deceased-Karamjit Kaur died in connection with demand of dowry within 21/2 years of marriage. It was
D contended that even though PWs 1 and 3 are father and brother of the deceased, their evidence is consistent and credible and amply establishes that she was subjected to harassment and cruelty in connection with demand of dowry and based on their evidence, courts below rightly convicted
E the appellants under Section 304B IPC and the concurrent findings cannot be interfered with.

8. We have carefully considered the rival contentions and perused the evidence on record and the impugned judgment.
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9. To sustain the conviction under Section 304B IPC, the following essential ingredients are to be established:-

- G (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance'
- (ii) such a death should have occurred within seven years of her marriage;
- H (iii) she must have been subjected to cruelty or harassment

by her husband or any relative of her husband;

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(iv) such cruelty or harassment should be for or in connection with demand of dowry and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

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10. If any death is caused in connection with dowry demand, Section 113B of the Evidence Act also comes into play. Both these Sections 304B IPC and Section 113B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B reads as follows:-

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“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.

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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).”

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It is imperative to note that both these sections set out a common point of reference for establishing guilt of the accused person under Section 304B, which is “the woman must have been ‘soon before her death’ subjected to cruelty or harassment ‘for or in connection with the demand of dowry’”.

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11. It is not disputed that Karamjit Kaur died on 14.8.1996. Further fact that she died due to organo

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A phosphorus poisoning is also not disputed. Now looking into the evidence on record, we have to see whether death of Karamjit Kaur occurring within seven years of marriage is due to cruelty or harassment in connection with demand of dowry and whether there is a reasonable nexus between the alleged harassment and death.

12. PW1-Sukhdev Singh, father of the deceased, has stated that after marriage his daughter Karamjit Kaur was being ill-treated and subjected to cruelty in connection with demand of dowry and that the accused were demanding scooter and that his daughter used to complain about the ill-treatment by the accused. PW1-Sukhdev Singh further stated that he informed the conduct of the accused demanding dowry to the village Panchayat and that he took Panchayat to village Badiala and thereafter he left his daughter at the house of the accused about one week prior to the occurrence. PW3-Manga Singh, brother of the deceased, had also spoken about the demand of dowry and that the accused had been ill-treating his sister in connection with demand of dowry and that they were demanding a scooter.

13. Prosecution has not examined any independent witness or the Panchayatdars to prove that there was demand of dowry and that the deceased was subjected to ill-treatment. Ordinarily, offences against married woman are being committed within the four corners of a house and normally direct evidence regarding cruelty or harassment on the woman by her husband or relatives of the husband is not available. But when PW3 has specifically stated that the demand of dowry by the accused was informed to the Panchayatdars and that Panchayat was taken to the village Badiala, the alleged ill-treatment or cruelty of Karamjit Kaur by her husband or relatives could have been proved by examination of the Panchayatdars. The fact that deceased

was subjected to harassment or cruelty in connection with demand of dowry is not proved by the prosecution. It is also pertinent to note that both the courts below have acquitted all the accused for the offence punishable under Section 498A IPC.

14. Insofar as the occurrence on 14.08.1996, PWs 1 and 3 have stated that they saw the accused dragging Karamjit Kaur towards a room inside the house and that Karamjit Kaur was trembling and on seeing PWs 1 and 3, all the four accused persons ran away and after taking last breath Karamjit Kaur expired. Subsequent conduct of PWs 1 and 3 raises serious doubts about their presence in the house of the accused at the time of occurrence and witnessing accused dragging deceased-Karamjit Kaur. That PWs 1 and 3 have not raised any alarm nor tried to chase the accused and that PW1 did not inform anyone in the village of the accused looks quite unnatural. The subsequent conduct of PWs 1 and 3 raises doubt about their presence at the time of occurrence and the prosecution version. But the fact remains that deceased-Karamjit Kaur died within 21/2 years of marriage otherwise under normal circumstances. As pointed out earlier, in the cases of dowry death prosecution is obliged to show that "soon before the occurrence" deceased was subjected to cruelty or harassment. In the absence of proof that deceased was subjected to cruelty and harassment "soon before her death", the conviction of the appellants cannot be sustained.

15. To attract conviction under Section 304B IPC, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. In the case of Hira Lal & Ors. vs.

A State(Govt. of NCT) Delhi, (2003) 8 SCC 80, in paragraph (9) it was observed as under:-

B “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 C 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 D 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. E 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” F used in the substantive Section 304-B IPC and Section 113- B of the Evidence [pic]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 G 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 H knowing them to be stolen, unless he can account for

their possession". The determination of the period which can come within the 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."

16. Same principle was also expressed in State of A.P. vs. Raj Gopal Asawa & Anr., (2004) 4 SCC 470; Balwant Singh & Anr. vs. State of Punjab, (2004) 7 SCC 724, Kaliyaperumal & Anr. vs. State of Tamil Nadu, (2004) 9 SCC 157; Kamesh Panjiyar @ Kamlesh Panjiyar vs. State of Bihar, (2005) 2 SCC 388; Harjit Singh vs. State of Punjab, (2006) 1 SCC 463; Biswajit Halder @ Babu Halder & Ors. vs. State of West Bengal, (2008) 1 SCC 202 and Narayanamurthy vs. State of Karnataka & Anr, (2008) 16 SCC 512.

17. Applying these principles to the instant case, we find that there is no evidence as to the demand of dowry or cruelty and that deceased Karamjit Kaur was subjected to dowry harassment "soon before her death". Except the demand of scooter, there is nothing on record to substantiate the allegation of dowry demand. Assuming that there was demand of dowry, in our view, it can only be attributed to the husband-Jagsir Singh who in all probability could have demanded the same for his use. In the absence of any evidence that the deceased was treated with cruelty or

- A harassment in connection with the demand of dowry “soon before her death” by the appellants, the conviction of the appellants under Section 304B IPC cannot be sustained. The trial court and the High Court have not analyzed the evidence in the light of the essential ingredients of Section 304B IPC and the conviction of the appellants under Section 304B IPC is liable to be set aside.

18. In the result, conviction of the appellants under Section 304B IPC is set aside and this appeal is allowed. Appellant C No.2-Mohinder Kaur is on bail and her bail bonds stands discharged. Appellant No.1-Major Singh who is in custody is ordered to be set at liberty forthwith.

D Kalpana K. Tripathy

Appeal allowed.