

[REPORTABLE]

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. 447 of 2012

Charan Singh @ Charanjit Singh

...Appellant

Versus

The State of Uttarakhand

...Respondent

J U D G M E N T

Rajesh Bindal, J.

1. The appellant, who was husband of the deceased, has filed the present appeal challenging his conviction and sentence under sections 304B, 498A and 201 of Indian Penal Code, 1860 (for short, 'IPC'). The Trial Court had sentenced the appellant to undergo rigorous imprisonment for 10 years under Section 304B, 2 years under Section 498A and 2 years under Section 201 IPC. However, the High Court of Uttarakhand at Nainital had reduced the sentence of the appellant under Section 304B IPC from ten years to seven years.

2. The appellant and deceased Chhilo Kaur got married in the year 1993. The deceased was residing in her matrimonial home. On 24.6.1995 at 6.15 p.m. father of the deceased, Pratap Singh (PW-1) filed complaint with the P.S. Jaspur stating that his daughter Chhilo Kaur was married to the appellant about two years ago. In the marriage, he had given sufficient dowry as per his status. Two months after the marriage, his daughter came to her parental home and told the complainant (PW-1) that her in-laws are asking her to bring a motorcycle as the same was not given in dowry. The complainant pacified his daughter stating that at present he is not capable of giving motorcycle, however, whenever he is in a position to do so, he will certainly give and sent his daughter back to her matrimonial home. Thereafter, whenever his daughter came to the parental home, she used to talk about the demand of motorcycle and subsequently after about one year of marriage, the demand for land was also made. Every time he used to pacify his daughter and sent her back. On the previous day i.e. on 23.6.1995, one Jagir Singh of village Bhogpur Dam, where his daughter lived after marriage with the appellant came to complainant and told him that his daughter,

Chhilo Kaur has been murdered by her in-laws. On getting the information, the complainant along with his wife came to village Bhogpur Dam on 24.6.1995 and were shocked to know that on 22.6.1995 in the morning at about 8.00 a.m., his daughter was beaten up and strangled to death by her husband Charan Singh, (the appellant herein), brother-in-law, Gurmeet Singh (accused no.2) and mother-in-law Santo Kaur (accused no.3). They had cremated the dead body without even informing the complainant. She was killed on account of non-fulfilment of demand of motorbike and land in dowry. The matter was investigated and chargesheet was filed against Charan Singh, Gurmeet Singh and Santo Kaur.

3. The prosecution examined six witnesses and defence examined one witness. The Trial Court, after evaluating the evidence, convicted Charan Singh (appellant), Gurmeet Singh and Santo Kaur under Sections 304B, 498A and 201 IPC and sentenced them to undergo rigorous imprisonment for ten years u/s 304B IPC, rigorous imprisonment for two years u/s 498A IPC and rigorous imprisonment for two years u/s 201 IPC. In appeal filed by the convicts before the High Court, the conviction and sentence of Gurmeet Singh (brother-in-law) and

Santo Kaur (mother-in-law) under Section 304B, 498A and 201 IPC were set aside and they were acquitted of the charges, whereas the conviction of the appellant was upheld. However, the sentence of rigorous imprisonment of ten years under Section 304B IPC, awarded to the appellant was reduced to seven years. It is the aforesaid judgment of the High Court which is under challenge in the present appeal.

4. Mr. Shubhranshu Padhi, learned counsel who was requested to assist the Court as an amicus curiae on account of absence of the counsel who filed the appeal, submitted that the conviction and sentence of the appellant cannot be legally sustained either under Sections 304B or 498A IPC. The pre-requisites for raising presumption under Section 304B IPC is that soon before the death, the deceased had been subjected to cruelty or harassment for or in connection with any demand of dowry. The presumption in regard to dowry death can be raised in terms of Section 113B of the Indian Evidence Act, 1872 (for short, 'IEA') only if it is shown that soon before death, such woman had been subjected to cruelty or harassment for, or in connection with the demand of dowry.

5. If the evidence led by the prosecution is examined, no case for conviction under Section 304B or 498A IPC can possibly be made out as none of the witnesses have stated that there was any harassment or cruelty to the deceased or demand of dowry immediately before her death. The marriage took place in the year 1993, the deceased died on 22.6.1995. None of the family members of the deceased including her father, maternal grandmother or the maternal uncle have stated anything about the harassment of the deceased immediately before her death in connection with demand of dowry. In fact, the maternal grandmother and two maternal uncles who were living at distance of about one farlang from the village of the deceased were even present at the time of her cremation. They did not raise any issue either by lodging a complaint to the police or otherwise. In fact, it was admitted by the maternal grandmother and the uncles of the deceased that after the cremation, with the intervention of the panchayat, they had collected all the dowry articles. It was further submitted that intimation was also given to the father of the deceased who in fact was living at a distance of about 290 kms.

However, the cremation could not be delayed on account of waiting for the arrival of the father of the deceased.

6. It was further argued that one material witness, Jagir Singh, who was named by the complainant in the FIR, has not been produced by the prosecution in evidence. He is the person who according to the complainant is a resident of village Bhogpur Dam, where the deceased used to live in her matrimonial home. He had informed the complainant about the death of his daughter. Why this material witness was withheld by the prosecution? As per the statement of the I.O. Babban Singh, who appeared as PW-6, during investigation the statement of Jagir Singh was recorded. Once the ingredients of Sections 304B, 498A IPC and Section 113B of IEA are not made out, no presumption of dowry death can be raised. In support of the arguments, reliance was placed on ***Baijnath v. State of M.P.***¹. It was further argued that the allegations against the appellant, his brother and mother were same. However, against acquittal of his brother and mother, no appeal has been preferred by the State and death of the wife of the appellant was not unnatural as she was suffering from fits. In her cross-

¹ (2017) 1 SCC 101

examination, the maternal grandmother admitted that the deceased had fits.

7. On the other hand, learned counsel for the State submitted that it is a case in which a young woman was killed by her in-laws in lust for dowry. The marriage was merely two years old and the death was unnatural. The deceased was cremated without even informing her parents. The maternal grandmother and the two uncles who were present at the time of cremation had seen injury marks on the body of the deceased and also the broken tooth. They could not lodge the complaint as they were threatened. The death occurred in the matrimonial home, hence onus lies heavily on the appellant to dislodge the presumption. There is sufficient material on record in the form of statements of witnesses produced by the prosecution that there was repeated demand for dowry by the appellant. There is no error in the judgment of the High Court. Sufficient indulgence has already been shown by the High Court by reducing the sentence of the appellant from ten years to minimum seven years as provided under Section 304B of the IPC.

8. Heard learned counsel for the parties and perused the relevant record.

9. The marriage of the appellant with the deceased was solemnised in the year 1993. She died on 22.6.1995. FIR was registered on the complaint of the father of the deceased on 24.6.1995 against Charan Singh, the appellant herein, brother-in-law, Gurmeet Singh and mother-in-law Santo Kaur. However, in appeal filed by the convicts before the High Court, brother-in-law, Gurmeet Singh and mother-in-law, Santo Kaur were acquitted whereas the conviction of the appellant was upheld. The sentence awarded to the appellant under Section 304B IPC was reduced from ten years rigorous imprisonment to seven years rigorous imprisonment. The sentence of two years rigorous imprisonment each awarded under Section 498A and Section 201 IPC was affirmed.

10. The conviction of the appellant is under Sections 304B and 498A IPC raising presumption regarding dowry death within seven years of marriage. To appreciate the arguments raised by the learned counsel for the parties, a perusal of Section 304B and 498A IPC and Section 113B of the Indian

Evidence Act would be required. The same are extracted hereinbelow:-

“304B. Dowry death .— (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) 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.

498-A. Husband or relative of husband of a woman subjecting her to cruelty — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means —

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful

demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

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 had 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.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)”.

11. The interpretation of Sections 304B and 498A IPC came up for consideration in ***Baijnath’s*** case (supra). The opinion was summed up in paras 25 to 27 thereof, which are extracted below:-

“25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis "cruelty" as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

12. As the aforesaid case was also pertaining to dowry death, presumption under Section 113B of the Indian Evidence

Act was also discussed in detail in paras 29 to 31 of the aforesaid judgment. The same are extracted below:-

“29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be

overeased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty”.

13. A conjoint reading of Section 304B IPC and Section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:-

“32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in *Shindo v. State of Punjab* [*Shindo v. State of Punjab*, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in *Rajeev Kumar v. State of Haryana* [*Rajeev Kumar v. State of Haryana*, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346] . In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao v. Yadla Srinivasa Rao* [*K. Prema S. Rao v. Yadla Srinivasa Rao*, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was

subjected to cruelty and harassment “in connection with the demand for dowry”.

14. With reference to the legal position as referred to above, the matter is now required to be examined as to whether the case in hand falls in the category where the presumption can be raised against the appellant relieving the prosecution from proving its case and putting the onus on the accused/appellant.

15. The date of death of the deceased is 22.6.1995. She was cremated on the same day. The stand taken by the appellant was that the parents of the deceased were informed who were living about 290 kms. away. However, they could not reach on time. It was further submitted that the maternal grandmother and two maternal uncles who were living at a distance of about one furlong from the matrimonial residence of the deceased when she died were present at the time of cremation. They neither raised any issue nor did they inform the police. Rather on the intervention of the panchayat, they had taken all the dowry articles.

16. The cruelty or harassment has to be soon before the death. In his evidence, Pratap Singh (PW-1), father of the deceased stated that two months after the marriage his daughter came to the parental home stating that the appellant was demanding motorcycle, however, she was sent back. Thereafter, she again came and apprised him that the demand of motorcycle was being pressed by the appellant. Besides motorcycle, land was also demanded. There is nothing in the statement that any such demand was raised immediately before the death as the incidents sought to be referred to are quite old. He admitted in his cross examination that at the time of funeral, his mother-in-law and two brothers-in-law were present. However, they were threatened not to lodge the complaint. Balbir Singh (PW-2), maternal uncle of the deceased, merely stated that at the time of marriage sufficient dowry was given by the father of the deceased. However, later he heard that the appellant had demanded the motorcycle. In his cross-examination, he admitted that he was living at the distance of about one furlong from the house of the appellant.

No dowry was demanded at the time of marriage of the deceased. He did not state that the deceased ever shared with him about the demand of dowry or any harassment on account of non-fulfilment thereof though he was living close to the matrimonial house of the deceased.

17. Beero Bai (PW-3), the maternal grandmother of the deceased, stated that her house is located at a distance of about one mile from the house of the appellant. She used to go to the house of the deceased. The deceased was being treated badly. She was not allowed to go to her parental house. The deceased informed her that the appellant used to ask her to bring motorcycle from her maternal grandmother. After the death of her husband in February 1995, the appellant asked the deceased to get land from her maternal grandmother. On a demand made to her, she replied in negative. However, in her cross-examination, she stated that the land was not demanded from her. Even in her statement, there is nothing to suggest that soon before the death, any cruelty or harassment was made to the deceased, either by the appellant or his family members. All what is stated is regarding the demand. There are no details of any cruelty or harassment, though this witness

was living about a kilometre from the house of the deceased and is her maternal grandmother.

18. Joginder Singh (PW-4) is another witness produced by the prosecution, who is maternal uncle of the deceased. He was declared hostile.

19. Rajindra Singh (PW-5), Sub Inspector was a formal witness who had only registered the FIR and arrested the accused.

20. Babban Singh (PW-6), Circle Officer, Faridpur was the Investigating Officer. In his examination-in-chief, he admitted that he recorded the statement of Jagir Singh. He is the person who, as per the complaint made to the police, had informed the father of the deceased about the death of his daughter. However, he was not produced in evidence.

21. In the aforesaid evidence led by the prosecution, none of the witnesses stated about the cruelty or harassment to the deceased by the appellant or any of his family members on account of demand of dowry soon before the death or otherwise. Rather harassment has not been narrated by anyone. It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident.

The aforesaid evidence led by the prosecution does not fulfil the pre-requisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act. Even the ingredients of Section 498A IPC are not made out for the same reason as there is no evidence of cruelty and harassment to the deceased soon before her death.

22. Defence had produced Gurmej Singh as DW-1, who was head of the village at the time of incident. He stated that the information about the death was given to the parents of the deceased and other family members. He stated that belongings of the deceased were handed over to her maternal grandmother and uncle after cremation. His statement is in line with the admission made by Biro Bai (PW-3), maternal grandmother, Balbir Singh (PW-2). Meaning thereby that there was no suspicion regarding the death of the deceased.

23. On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the pre-requisites to raise presumption under Section 304B IPC and Section 113B of the Indian Evidence Act having not been fulfilled, the conviction of the appellant cannot be justified. Mere death of the deceased being unnatural in the matrimonial

home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A IPC. The cause of death as such is not known.

24. For the reasons mentioned above, in our opinion, the conviction and sentence of the appellant under Section 304B, 498A and 201 IPC cannot be legally sustained. The appeal is accordingly allowed. The impugned judgment of the High Court is set aside. The bail bonds stand cancelled.

_____, J.
(Abhay S. Oka)

_____, J.
(Rajesh Bindal)

New Delhi
April 20, 2023

// NR, PM //