

# **SUPREME COURT OF INDIA**

Kashmir Kaur

Vs.

State of Punjab

Crl.A.Nos.915-916 of 2008

(Dr.B.S. Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

12.12.2012

## **JUDGMENT**

### **FAKKIR MOHAMED IBRAHIM KALIFULLA, J.**

1. The appellants are aggrieved of the judgment of the Single Judge of the High Court of Punjab and Haryana dated 06.04.2005. At the very outset it is relevant to mention that the second appellant, namely, Lakha Singh also known as Lakhiwinder Singh s/o Gian Singh stated to have died on 03.12.2005 as per the death certificate enclosed along with the special leave petition papers and the application filed on 25.07.2006 in this Court. Therefore, the special leave petition itself, which was stated to have been filed on 25.07.2006 on behalf of Lakha Singh alias Lakhiwinder Singh, has become infructuous. However, in the criminal miscellaneous petition for substitution application, also filed on 25.07.2006, the first appellant has made a prayer to substitute her as the legal representative of the deceased Lakha Singh and pursue his appeal as well in order to enable her to get the monitory benefits from the employer of the deceased Lakha Singh who was stated to have been employed in the Punjab State Electricity Board. In the above-stated background we heard learned counsel for the appellant as well as counsel for the State in these appeals.

2. The brief facts which are required to be stated are that the deceased Darshana alias Darshan Kaur d/o Joginder Singh - PW.2 was married to one Ravail Singh about 11 months prior to the date of occurrence. According to PW.2 at the time of marriage he gave sufficient dowry but Jagir Kaur, the mother-in-law of the deceased, and the accused were not satisfied with the amount of dowry given in marriage. According to the prosecution, there was a demand for cash amount of

Rs.30,000/- apart from a stereo set and scooter by way of dowry which the deceased Darshana was compelled to ask and get from her parental house.

3. Three days prior to the occurrence, the deceased was stated to have gone to her parental house, met PW.2 and requested him to arrange for the cash amount of Rs.30,000/- in order to fulfill the demand, when she stated to have also told PW.2 that she was being repeatedly tortured at the instance of the accused in her matrimonial home. PW.2 stated to have promised his daughter that he would arrange for the money in three to four days time after harvesting the crops and that she can return back to her matrimonial home.

4. On 03.11.1987, PW.3 Jagir Singh stated to have witnessed the torture meted out to the deceased Darshana at the hands of the accused in the morning and in the evening he came to know about the death of the deceased whose body was lying in the Civil Hospital at Taran Taran. PW.3 stated to have met Joginder Singh (PW.2) at his village called Nandpur and informed him about the torture meted out to his daughter in the morning and the subsequent death in the evening. Thereafter, PW.2 went to the hospital along with PW.3 and after identifying the body of his daughter he lodged a complaint with the Police Station Jhabal which came to be registered as FIR No.246/87 Exhibit PE/2 for offences under Section 304B read with 34 IPC as well as under Section 498A IPC.

5. The complaint was registered as against the appellant, her husband Lakha Singh s/o of Gian Singh as well as Jagir Kaur alias Jagire, mother-in-law of the deceased, who in the meantime passed away. PW.1 was the doctor who conducted the postmortem issued Exhibit 'PA' the postmortem certificate under Exhibit PA/1 PW.1 stated to have prepared a pictorial diagram showing the seat of injuries. He also stated that stomach and its contents along with a portion of small intestine with its contents, a portion of large intestine with its contents, a portion of liver, spleen and kidney were handed over to police along with letter dated 04.11.1987 addressed to Chemical Examiner, Patiala in five Jars sealed with the seal bearing impression 'KS' for its report. The Chemical Examiner Reports were marked as Exhibit 'PF' to Exhibit 'PG'.

6. PW.5, the Sub-Inspector of Police stated to have recovered a letter from the brassier of the deceased which was marked as Exhibit 'PH'. There were other letters produced by PW.2 said to have been written by the deceased addressed to him which were marked as Exhibit 'PH' to 'PK'.

7. The trial Court after detailed consideration of the evidence placed before it, both oral as well as documentary, found the appellant as well as her husband Lakha Singh guilty of the offences falling under Section 304B read along with 34 IPC as well as under Section 498A IPC. The trial Court after reaching the said finding convicted them for the abovesaid offences and imposed the sentence of seven years rigorous imprisonment each for the offence under Section 304B IPC and two years rigorous imprisonment for the offence under Section 498A IPC apart from a fine of Rs.1000/- each and in default to undergo further rigorous imprisonment for three months. The sentences were directed to run concurrently.

8. On the appeal preferred by the appellant as well as her husband having been rejected and the conviction and sentence having been confirmed, the present appeals have been preferred before us.

9. We heard Mr. R.K. Kapoor, learned counsel for the appellant and Mr. Kuldip Singh, learned counsel for the respondent-State. We also perused the judgment of the trial Court, as well as, the High Court and the material records placed before us. Before dealing with the facts involved in these appeals, we feel it appropriate to state the requirement of law in regard to offences falling under Sections 304B and 498A of IPC while convicting the accused for the said offences. In this respect, it will be worthwhile to deal with some of the earlier decisions of this Court where the legal principles in regard to the abovesaid provisions have been dealt with and the principles of law laid down therein. As we are concerned with Sections 304B and 498A IPC, the said provisions along with Section 113B of the Evidence Act are relevant. The same are extracted hereinunder:

“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.

498A. 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 purpose of this section, “cruelty” means-

a) any willful conduct which is of such a nature as is likely to derive 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 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.

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).”

10. As regards the principles concerning the above referred to provisions we wish to refer to the decisions reported in K. Prema S. Rao and another V. Yadla Srinivasa Rao and others - (2003) 1 SCC 217, Kaliyaperumal and another V. State of Tamil Nadu – (2004) 9 SCC 157, Devilal V. State of Rajasthan – (2007) 14 SCC 176, and Ashok Kumar V. State of Haryana – (2010) 12 SCC 350.

11. In K. Prema S. Rao (supra) it has been held as under in paragraph 16:

“.....To attract the provisions of Section 304-B IPC, 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”.”.....

12. In Kaliyaperumal (supra) paragraph 5 is relevant for our purpose which reads as under:

5. 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 the “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 in 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 who has received the goods knowing them to be stolen, unless he can account for his 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 life 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.”

13. In *Devilal* (supra) the ingredients of the provisions of Section 304B as laid down in *Harjit Singh V. State of Punjab – (2006) 1 SCC 463* and *Ram Badan Sharma V. State of Bihar – (2006) 10 SCC 115* have been clearly set out in paragraph 20 which reads as under: “The question, as to what are the ingredients of the provisions of Section 304-B of the Penal Code is no longer *res integra*. They are: (1) that the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal; (2) such death occurs within 7 years from the date of her marriage; (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) such cruelty or harassment should be for or in connection with the demand of dowry; and (5) it is established that such cruelty and harassment was made soon before her death. (See *Harjit Singh v. State of Punjab* and *Ram Badan Sharma v. State of Bihar*).”

14. In *Ashok Kumar*, to which one of us was a party (Hon’ble Dr. Justice B.S. Chauhan), paragraphs 19, 20, 21 and 23 are relevant for our purpose which read as under:

“19. We have already referred to the provisions of Section 304-B of the Code and the most significant expression used in the section is “soon before her death”. In our view, the expression “soon before her death” cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.

20. We are of the considered view that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. This Court in *Tarsem Singh v. State of Punjab*, held that the legislative object in providing such a radius of time by employing the words “soon before her death” is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other

words, there should be a reasonable, if not direct, nexus between her death and the dowry-related cruelty or harassment inflicted on her.

21. Similar view was expressed by this Court in *Yashoda v. State of M.P.*, where this Court stated that determination of the period would depend on the facts and circumstances of a given case. However, the expression would normally imply that there has to be reasonable time gap between the cruelty inflicted and the death in question. If this is so, the legislature in its wisdom would have specified any period which would attract the provisions of this section. However, there must be existence of proximate link between the acts of cruelty along with the demand of dowry and the death of the victim. For want of any specific period, the concept of reasonable period would be applicable. Thus, the cruelty, harassment and demand of dowry should not be so ancient, whereafter, the couple and the family members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case.

23. The Court cannot ignore one of the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution of India as well as has a presumption of innocence in his favour. In other words, the rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Where other ingredients of Section 304-B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under Section 304-B of the Code.

15. The decision in *Ashok Kumar (supra)* was subsequently followed in *Pathan Hussain Basha V. State of A.P.* - JT 2012 (7) SC 432, to which again one of us was a party (Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla).

16. From the above decisions the following principles can be culled out:

- a) To attract the provisions of Section 304B IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry.
- b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.
- c) Such death occurs within seven years from the date of her marriage.
- d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.
- e) Such cruelty or harassment should be for or in connection with demand of dowry.
- f) It should be established that such cruelty and harassment was made soon before her death.
- g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence.
- h) 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 113B of the Evidence Act.
- i) Therefore, the expression “soon before” would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.

j) However, the expression “soon before” should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

k) Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304B.

l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304B were not satisfied.

m) The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence.

17. Keeping the above principles in mind, when we examine the case on hand, we find the following uncontroverted facts:

i) The death of the deceased occurred 11 months after her marriage thereby the main condition prescribed under Section 304B, namely, within seven years of the marriage was fulfilled.

ii) The death of the deceased was not normal as evidenced by the version of PW.1 postmortem doctor, the postmortem certificate and also Exhibit ‘PG’, the report of Chemical Examiner.

iii) The evidence of PWs.2 and 3 read along with Exhibit ‘PH’ to ‘PK’ disclose that there was a demand for payment of cash of Rs.30,000/- apart from a stereo set and a scooter.

iv) According to PW.2, father of the deceased 3 to 4 days prior to the unfortunate death of the deceased his daughter came to his house and

expressed her dire need for payment of Rs.30,000/- as demanded by her in-laws and that she was being harassed on that score.

v) The evidence of PW.3 was to the effect that on the date of the death of the deceased, namely, 03.11.1987 he happened to witness the torture meted out to the deceased at the hands of her in-laws.

vi) Though on behalf of the appellant and other accused certain witnesses were examined by way of defence, both the trial Court as well as the Appellate Court have noted that nothing concrete was brought out to show that the evidence led on the side by the prosecution through PWs.1 to 3 were in any way contradicted.

18. On behalf of the appellant, it was contended that Exhibit 'PK' which was stated to have been recovered by PW.5, Sub-Inspector of Police, from the brassier of the deceased was not proved to the satisfaction of the Court. For the sake of argument even if such a contention can be accepted and the said Exhibit 'PK' is eschewed from consideration there were other exhibits such as Exhibits 'PH' to 'PK' which were all letters written by the deceased addressed to PW.2 her father which were written prior to her death and were sent by post. It is not in dispute and as noted by the trial Court, those exhibits bore the postal stamp impressions with relevant dates mentioned therein. Though DW.3 a document expert was examined to show that there was a variation in the hand-writing of the deceased as between the admitted one and those found in Exhibits 'PH', 'PK' and 'PJ', he himself admitted in the cross-examination that some variation in the hand-writing can occur with the passage of time after the learning stage and also at the old age or due to clinical or any disease or accident which affect the muscular control of the person while writing a letter. To yet another question, he also admitted that it was correct that the portion of the disputed signatures 'Q1' to 'Q3' which may read as Darshana is similar to the corresponding words of standard signature 'A1'. Therefore, it will be highly unsafe to rely upon the evidence of DW.3 in order to exclude the letters said to have been written by the deceased to her father.

19. The trial Court having examined Exhibits 'PH' to 'PJ' found that the alleged harassment at the hands of the in-laws of the deceased immediately before her death was true. Before us nothing was pointed out to hold that the said conclusion was perverse or was there any illegality or irregularity. The evidence of PW.1 doctor, who conducted the postmortem, has stated in his evidence that as per his report Exhibit 'PA' the following antemortem injuries and other abnormalities were found on the body of the deceased:

“Six abrasions varying from 0.5 cm to 1 cm were present on the left side of the cheek, 2 cm away from the angle of the mouth. Larynx and trachea showed congestion and blood stained froth was present. Right and left lungs were congested and frothy material was coming out of lung after squeezing. Blood from the heart was sent for chemical examination. Mouth pharynx and esophagus did not show any abnormality. But blood stained froth was present. Stomach and its contents were sent to the C/Examiner for the Chemical Examination”

20. In the cross-examination, PW.3 stated that the mouth of the deceased girl was swollen and there were other injuries on other parts of her body. Along with Exhibit ‘PF’ the Chemical Examiner covering letter Exhibit ‘PG’ made it clear that although no poison was found in the viscera, there were causes or reasons for non-detection of poison such as the poison having been excreted from the body, detoxicated, metabolised by the system or the poison being such as test for the same do not exist in view of countless number of poisons. He also opined “the circumstantial evidence goes a long way to prove the facts of the case regardless of the report indicating that the no poison was found”. “From postmortem findings and police history it appears that death has occurred due to some poison”.

21. In Exhibits ‘PH’ and ‘PJ’ it was clearly mentioned that the deceased was harassed from last night, namely, 02.11.1987 and her miserable condition was created at the instance of her mother-in-law, wife of her husband’s brother, the appellant herein and the brother himself, namely, second accused, who is no more. In Exhibit ‘PJ’ she while referring to such harassment meted out to her by her mother-in-law, brother-in-law and his wife also mentioned about the demands made by them, namely, cash, scooter and other articles.

22. All the above factors clearly established the legal requirements for an offence falling under Sections 304B and 498A IPC with the aid of Section 113B were conclusively proved and the conviction and sentence imposed, therefore, do not call for interference.

23. The appellant Kashmir Kaur is on bail. The bail bond stands cancelled and she shall be taken into custody forthwith to serve out the remaining part of sentence, if any. The appeal so far as appellant No.1 is concerned stands dismissed.

24. The appeal so far as appellant No.2 i.e. accused Lakha Singh @ Lakhiwinder Singh is concerned, as held by us in the opening part of this judgment stands

dismissed as having become infructuous even at the time it came to be filed. Accordingly, the application for substitution also stands dismissed.