

**(1997) 04 P&H CK 0018**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 380-DB of 1994

Ramesh

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** April 3, 1997

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 113B
- Penal Code, 1860 (IPC) - Section 304B, 306, 498A

**Citation:** (1998) CriLJ 165 : (1997) 3 RCR(Criminal) 19

**Hon'ble Judges:** Sat Pal, J; N.C. Khichi, J

**Bench:** Division Bench

**Advocate:** T.S. Sangha, for the Appellant; Varinder Singh, D.A.G., for the Respondent

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**Judgement**

Sat Pal, J.

This appeal is directed against the judgment dated 21-9-1994 passed by the Additional Sessions Judge, Faridabad in Sessions Case No. 110 of 31-8-1993. By this judgment the learned Additional Sessions Judge convicted the appellant u/s 304-B, I.P.C. and sentenced him to undergo imprisonment for life.

2. A case u/s 304-B, I.P.C. was registered against the appellant at Police Station NIT, Faridabad, on 16-5-1993 at 2.35 p.m. on the basis of statement of Jaggan Nath (P.W. 3) who is the father of the deceased Suman. Jaggan Nath in his statement stated that about 78 years ago, he had married his third daughter Baby to appellant Ramesh and his said daughter died due to illness about one year ago. After the death of Baby, he married his younger daughter Suman alias Gabri to the appellant according to Hindu rites about 10/ 11 months back and had given dowry according to his status. He further submitted that appellant Ramesh was addicted to liquor and did not earn anything and for this reason his family separated Ramesh and thereafter he along with his wife Suman started living separately. Ramesh used to

beat Suman and asked her to bring dowry from her parents and since he was poor man he could not fulfil his demand. He then stated that on the morning of 16-5-1993, he came to know at his home that his daughter Suman was admitted in BK Hospital, Faridabad in a burnt condition at night and she had expired during the night. He also stated that on enquiry, it was revealed that Ramesh had burnt his daughter Suman last evening out of greed for dowry. As stated earlier the FIR was registered on 16-5-1993 at 2.35 p.m. and special report was delivered at the residence of Illaqa Magistrate on 17-5-1993 at 7.30 a.m. After registration of the case, Dharam Singh SI (P.W.-6) visited the spot and prepared Rough Site Plan Ex. PG with marginal notes. He also took into possession burnt pieces of clothes, stove vide memo Ex. PH.

3. Dr. A. K. Gupta (P.W.-1) examined Suman on 15-5-1993 and found the following injuries:-

Superficial and deep burn all over the body except head neck end. Both hands and both legs and both foot. Fluid filled blisters were present. At other places there was peeling of skin with underlying pinkish area. Singeing of her singeing of hair present. There were 65% burns on the body.

4. Dr. P. S. Yadav (P.W.8) conducted post mortem examination on the dead body of Suman on 16-5-1993 at 4.30 p.m. He found that the total percentage of burns all over the body of Suman was 68%. Besides burns the injection marks on both the wrists were also found. Most of the other internal organs were found to be healthy, congested with no blood in the chambers and charred mouth. The cause of death was given as multiple burns resulting into shock and haemorrhage and all the injuries were antemortem in nature and were sufficient to have caused death in ordinary course. The appellant was arrested by SI Dharam Singh (P.W.-6) on 17-5-1993. After the completion of investigation, appellant was challaned.

5. To sustain its case, the prosecution examined eight witnesses. P. W.1 Dr. A. K. Gupta examined deceased Suman on 15-5-1993 when she was brought to B. K. Hospital, Faridabad and proved MLR Ex. PA. P.W.-2 Rajinder Kumar proved photographs of the spot Exs. P-1 to P-3 and their negatives Exs. P-4 to P-5. P.W.-3 Jaggan Nath is the complainant. P.W. 4 Sona Devi is the mother of the deceased. P. W.-5 Mam Chand is a neighbour of the complainant but he did not support the case of the prosecution. P.W.-6 Dharam Singh SI is the Investigating Officer. P.W.-7 ASI Ram Dutt had recorded the statement Ex. PE of the complainant Jaggan Nath and sent the ruqqa to Police Station NIT, Faridabad, on the basis of which FIR Ex. PE/2 was recorded by Shiv Charan SI. He also proved the inquest report Ex. PO. P.W.-8 Dr. PS Yadav had conducted post-mortem examination on the dead body of deceased Suman.

6. In his statement recorded u/s 313, Cr.P.C the appellant submitted that it was a false case and Suman had died accidentally with stove while cooking meal in the

kitchen. In defence two witnesses were examined. DW-1 Banwari Lal, who is a neighbour of the appellant has proved that the appellant Ramesh had gone to bring Ration from a shop when deceased Suman caught fire. DW-2 Sh. C. S. Bhardwaj Advocate has proved the affidavit Ex. DA. Relying on the prosecution evidence the learned Additional Sessions Judge, convicted and sentenced the accused as stated earlier.

7. Mr. Sangha, the learned counsel appearing on behalf of the appellant submitted that both P.W.-3 father of the deceased and P.W.-4 mother of the deceased were not truthful. He submitted that their statements were full of contradictions. P.W.-3 Jaggan Nath in his examination-in-Chief had stated that on 16-5-1993 Suman was burnt by her husband during the night time by sprinkling kerosene oil on her clothes and appellant Ramesh did not send any intimation before her death. He further stated that Suman died in B. K. Hospital and her dead body was cremated without intimating him or any of his relatives. However, in his cross-examination he stated that they had received the information with regard to burning of Suman at 2.00 a.m. on 16-5-1993 and they went to the hospital at 8.00 a.m. and by that time Suman had expired and the dead body was lying in the dead house. He further admitted that he was present at the cremation ceremony and many other relatives were also present at the time of cremation. The learned counsel further submitted that in his cross-examination this witness has also admitted that there were burns on left leg and hand and not on chest, face etc. and on these facts they presumed that Suman was burnt forcibly. He, therefore, contended that this conclusion was based on conjectures and surmises. He also submitted that even P.W.-4 in the cross-examination has admitted that she had received the information from a relative of accused Ramesh that Suman had caught fire and there after she sent her son to B. K. Hospital who informed her that Suman had died and then she went to the hospital. The learned counsel, therefore, contended that the statements of both P.W.-3 and P.W.-4 were not truthful.

8. The learned counsel further submitted that demand of dowry has not been proved by the prosecution. He submitted that the complainant P.W.-3 in his statement has admitted that when his elder daughter Baby remained married with the appellant, there was no demand of dowry. He submitted that this shows that the complainant and his wife were fully satisfied with the behaviour of the appellant-Ramesh and it was in these circumstances that they married their younger daughter Suman to Ramesh after their elder daughter Baby expired. He further submitted that P.W.-3 Jaggan Nath complainant in his cross-examination has admitted that the appellant never demanded any money in his presence. He further submitted that even the statement of P.W.-4 Somma Devi is also vague with regard to the alleged demand of dowry by the appellant. He also referred to the statement of D.W.-1 Banwari Lal and submitted that he being a neighbour of the appellant has clearly proved that the appellant did not raise any demand of dowry from his wife.

9. The learned counsel also submitted that there was unexplained delay in recording of the FIR and also in delivering the special report at the residence of the Illaqa Magistrate. Admittedly Suman had died at 2.45 a.m. on 16-5-1993. He submitted that P.W.-3 complainant in his cross-examination has stated that he had reached the hospital at 8.00 a.m. but his statement was recorded at 2.15 p.m. after the lapse of more than six hours. He further submitted that the special report was delivered at the residence of the Illaqa Magistrate at 7.30 a.m. on 17-5-1993, though the FIR was recorded at 2.35 p.m. He, therefore contended that no explanation has been given for this delay in recording the FIR as well as in delivering the special report at the residence of the Illaqa Magistrate.

10. The learned counsel then submitted that there was no positive evidence to the effect that the burning of Suman was not accidental. He submitted that on the other hand D.W.-1 Banwar Lal has given a positive evidence that the burning of the deceased Suman was accidental

11. In the alternative, the learned counsel submitted that even if conviction of the appellant is held to be legal, the sentence awarded to him was disproportionate. In this connection he placed reliance on two judgments of the Supreme Court reported in [Salamat Ali and another Vs. State of Bihar](#), [Hem Chand Vs. State of Haryana](#), .

12. Mr. Varinder Singh learned DAG appearing on behalf of the state submitted that P.W. 3 and P.W.-4, the parents of the deceased have fully supported the prosecution case. He submitted that both these witnesses are truthful and that is why they have admitted that accused Ramesh did not demand any dowry when their elder daughter Baby remained married with him. He submitted that in the present case, it was not disputed that the marriage between the appellant and the deceased was solemnized within a period of seven years prior to the date of death. The death is by burning that is unnatural and the demand of dowry has been clearly proved by parents of the deceased P.W.-3 and P.W.-4. He further submitted that statement of D.W.-1 Banwari Lal could not be relied upon as in his statement u/s 313, Cr.P.C. the appellant-accused did not make any reference to this witness. In support of his submission, the learned counsel placed reliance on a judgment of this Court in [Subedar Tewari Vs. State of U.P. and Others](#), . On the quantum of sentence, he however, did not address any argument.

13. The learned counsel further submitted that even assuming that the demand of dowry was not proved, the cruelty on the part of the assailant towards deceased-Suman was clearly proved by P.W.-3 and P.W.-4. It has been proved that appellant after taking liquor used to beat deceased and it was in these circumstances that deceased Suman could have been compelled to commit suicide. He submitted that in that case a case u/s 306, I.P.C. was also proved against the appellant and the appellant should be convicted and sentenced under that section. In support of this submission the learned counsel placed reliance on a judgment of the Supreme Court reported in Lakhjit Singh v. State of Pb. 1994 SCC 235 : AIR 1993

14. With regard to the delay in the delivery of the special report, the learned DAG submitted that as per statement of Dr. PS Yadav (P. W.-8) he had conducted the post-mortem on the dead body of the deceased at 4.30 p.m. on 16-5-1993 and in his cross-examination he has admitted that before conducting the post-mortem, inquest report containing 20 pages which is Ex. PO was duly signed by him. He submitted that this inquest report contained all the facts mentioned in the FIR/Special report. Since Dr. Yadav had signed the same at 4.30 p.m., there was no possibility for changing the facts by the police.

15. Lastly the learned counsel submitted that statement of D.W.1 to the effect that appellant Ramesh was not at home when/deceased-Suman caught fire cannot be believed as appellant in his statement u/s 313, Cr.P.C. has nowhere stated that he was not present at his house when Suman caught fire.

16. The learned Additional Sessions Judge after appreciating the evidence on record has held that admittedly deceased-Suman was married to accused Ramesh within 7 years of the occurrence. He has further held that the demand of dowry by the accused has been proved by P.W. 3 Jagan Nath, father of the deceased and P. W. 4 Soma Devi, mother of the deceased. He has also given the finding that since death of Suman was by burning, the death was unnatural. He, therefore, came to the conclusion that case u/s 304-B, Indian Penal Code, was clearly proved against the accused.

17. We have given our thoughtful consideration of the submissions made by the learned counsel for the parties and have perused the record. The primary requirements for finding the appellant guilty of the offence u/s 304-B, I.P.C. are that the death of the deceased was unnatural it was within 7 years of her marriage and that soon before her death, she was subjected to cruelty or harassment by the appellant for or in connection with the demand for dowry.

18. It has not been disputed by the learned counsel for the appellant that the death of the deceased was within 7 years of her marriage. It is also not disputed that the death was caused by burns. The learned counsel for the appellant, however, submitted that the death though caused by burns was accidental. From the evidence on record, we, however, do not find any infirmity in the finding of the learned trial Court that the death in the present case was not accidental. Though the appellant examined one defence witness D.W. I Banwari Lal in support of his assertion that the death was accidental but his evidence does not inspire confidence as even according to his own version he was not present when Suman caught fire and in fact he entered the house after Suman came out crying "Bachao, Bachao" (Save, Save).

19. We, however, find that the prosecution has failed to establish the third ingredient that soon before her death, Suman was subjected to cruelty or

harassment for or in connection with the demand of dowry. Though P.W. 3 Jagan Nath and P.W. 4 Soma Devi (father and mother of the deceased) had stated that the appellant used to demand money and other dowry articles through Suman and he used to give her beating on the demand of dowry articles but there is nothing on the record to show that she was treated with cruelty or harassment on the demand for dowry soon before her death. P.W.-4 in her statement, had stated that the appellant demanded money and other dowry articles through Suman from the next day of marriage but she did not state any fact that soon before the death of Suman the appellant had demanded any dowry. P.W. 3, in his cross-examination, admitted that the appellant did not demand money in his presence and he used to demand money through Suman who used to tell about it to her mother. In the absence of any such evidence, it will not be valid to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act.

20. In view of the aforesaid findings, the appellant cannot be convicted of the offence u/s 304-B, I.P.C. but from the facts mentioned here in above, a clear case is made out against the appellant u/s 498-A, I.P.C. for which there is enough evidence on the record. PW 3 Jagan Nath, who is the father of the deceased, has clearly proved that the appellant was not satisfied with the dowry articles and he was in the habit of taking liquor etc. Similarly, PW 4 Soma Devi, mother of the deceased has also proved that the appellant used to demand money and other dowry articles through Suman and she used to tell her about those demands. The learned trial Court has also found this evidence reliable. We, therefore, hold that the prosecution has succeeded in proving the offence u/s 498-A, I.P.C. The view we have taken finds full support from a recent judgment of the Supreme Court in [Sham Lal Vs. State of Haryana](#).

21. For the reasons recorded here in above we set aside the conviction and sentence passed on the appellant u/s 304-B, I.P.C. but we find him guilty of the offence u/s 498-A, I.P.C. and convict him under that offence and sentence him to undergo rigorous imprisonment for three years. Needless to say that in case the appellant has already completed aforesaid period of three years in connection with this case, he will be released from jail.

22. In the above terms, the appeal stands disposed of.