Toppersnotes
Unleash the topper in you

HARYANA

Judicial Services Exam

CIVIL JUDGE (Junior Division)

Haryana Public Service Commission (HPSC)

Judgement

Volume - 1

SIERRA INNOVATIONS

HARYANA JUDICIAL SERVICES

CONTENTS

Indian Penal Code, 1860			
S.No.	Case Name	Facts	Date
1.	Mahesh kumar Versus State of Haryana	[Section 304 B Indian Penal Code 1860; Section 113B Of Indian Evidence Act, 1872] A case of death in lieu of demand of dowry can only be made out when it is proved that soon before her death the victim was subjected to cruelty harassment.	7 August, 2019
2.	Pramod Suryabhan Pawar Versus The State of Maharashtra &Anr.	When 'Consent Will Be Vitiated By 'Misconception Of Fact' Arising Out Of Promise To Marry?	August 21, 2019

3.	Gargi Versus State of Haryana	[Section 302 r/w Section 120-B of Indian Penal code, 1860 hereinafter referred as 'IPC'] [Section 106 of Indian Evidence Act, 1872 hereinafter referred as 'IEA']	19 September, 2019
4.	Kalu alias Laxmi Narayan Versus State of MP	Section 302 IPC The interplay Of circumstantial evidence, last seen theory and section 114,101 read with Section 106 of the, Indian evidence act,	7 November, 2019
5.	Awadhesh Kumar Versus State of u.p and Another	Matter will fall under section 302 IPC OR 304 part 1 (300 exception 4 IPC)	8 November, 2019

6.	State of Madhya Pradesh Versus Killu and others	Principle of vicarious liability under section 149 IPC.	19 November 20, 2019
7.	Chaitu Lal Versus State of Uttarakhand	Offence off Attempt To Rape Can Be Attracted Even If Accused Had Not Undressed Himself -Section 376 @ read with 51 Indian Penal Code, 1860	28 November, 2019
8.	Jai prakash Versus State of Utta Pradesh	Self-Imposed Resctive Constitutional power of Hon'ble Supreme court under article 136	28 November, 2019
9.	Suraj Jagannath Jadhav Versus The State of Maharashtra	NA	December 13, 2019
10.	Harinder singh Alias Hira Versus State of punjab	Section 302	17 December, 2019

[Section 304 B Indian Penal Code 1860; section 113B of Indian Evidence Act, 1872]

A case of death in lieu of demand of dowry can only be made out when it is proved that soon before her death the victim was subjected to cruelty or harassment.

Mahesh Kumar

Versus

State of haryana

Division bench of hon'ble supreme court

Hon'ble l. Nawenwimui mind and Hemant Goplans

Dated: 7 august, 2019

Author: Hemant Gupta J.

Law point

1. In section 304B IPC, the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of cruelty or harassment related to the demand for dowry.
2. "soon before her death" can be defer to a period either immediately before her death or within a few days or even a few weeks before it but the proximity to her death is the pivot indicated by that expression.
3. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned.
4. It is not sufficient to prove that the deceased was treated with cruelty relating to demand of dowry soon before her death in the absence of independent evidence though available but not examined.

Brief facts

The case of the prosecution was as follows:

The Complainant Sohan Lal (PW3), father of deceased, stated that Mahesh Kumar got married to the deceased Omwati on 26.05.1991. Soon after the marriage, she was illtreated byher husband Mahesh Kumar (Appellant),

Father-in-law Rajpal (A2), Mother- in-law Smt. Savitri (A3) and Sister-in-law Kamlesh (A3), as they demanded dowry.

Complainant further claims that he gave dowry more than his capacity but they were not satisfied and continue with the ill-treatment and also started beating her. The deceased sent a letter to the complainant informing him about the same, after which, the complainant went to the village where his daughter was residing, met her and her in- laws and informed them that he was unable to satisfy their demand of dowry as it was beyond his capacity and that his daughter should not be harassed for bringing insufficient dowry.

The complainant states that the deceased's in-laws had tendered an apology at that time and father-in-law of the deceased executed the same in writing. They promised to send deceased to her parental home on Raksha Bandhan. Subsequently, after the festival she went back to her matrimonial house with the Appellant and at that time the complainant had given them a sum of Rs. 1,000/- in cash. After about ten months, the Appellant left the deceased at her brother Rajbir's house and demanded Rs:5,000/-, It is further claimed that, on 03.02.1994, the Complainant paid Rs 2:000/ to the Appellant when he came to take the deceased back with him and promised to pay the remaining amount soon, after arranging the same. At that time, the deceased had apparently expressed apprehension that her in-laws would not allow her to live, lest the demands were not fulfilled. It was on 08.02.1994, that the complainant received information that his daughter, had expired in Civil Hospital, Gurgaon, and alleges that the same was caused by the administration of poison by the accused. An FIR was thus lodged on 09.02. 1994, against the Appellant, A2, A3 and A4.

The investigation was conducted by Investigating Officer Assim Khan PW9 and all the four accused were arrested. After completing investigation, a report was filed in the Court of Judicial Magistrate First Class, Gurgaon who committed the case to the Trial Court. The charge was framed against all the four accused under section 304- B IPC.

Decision of the Trial Court

The Trial Court held that the letters written by the deceased with oral evidence in the form of statements of "Complainant PW3 and PW4 are sufficient to establish that deceased was continuously harassed and met with cruelty on account of dowry and as such it is a case of dowry death.

Further, concluded that the prosecution has proved its case only against Appellant husband and A3 whereas in respect of A2 and A4, the Trial Court held that no specific role is assigned to them and, therefore, they were given benefit of doubt and were acquitted.

Aggrieved by the order of Trial Court, Appellant husband and A3 filed appeal before the High Court of Punjab and Haryana.

Decision of the High Court

The High Court, while granting benefit of doubt to accused A3, allowed her appeal and acquitted her of the charges. Further, affirmed the conviction of the Appellant passed by Trial Court for the offence punishable under section 304-B IPC but reduced fact that the Appellant had suffered a protracted trial of more than 15 years.

Aggrieved by the judgment of the High Court, Appellant husband preferred appeal before the Hon'ble Supreme Court.

Contention of the appellant

Ld. Counsel appearing To the Appellant contends that:

The essential ingredients of section 304-B IPC have not been proved by the prosecution. The letters produced by the prosecution do not relate to demand of dowry, and any demand for a gold chain was made two years before the death, and therefore, it cannot be said to be soon before the death of the deceased There is no evidence that there was any demand for dowry on the part of the family of the Appellant soon before the death. Thus, offence under section 304-B is not made out against the appellant.

Contention of the state

Ld. Counsel appearing for the State contends that:

There is no dispute about the fact that the deceased died within 7 years of marriage and met with an unnatural death due to organo phosphorus pesticide. It is pointed out that the evidence on record is sufficient establish beyond doubt that she was met with cruelty continuously after marriage on account of dowry.

Point of Determination

Whether there is a proximate nexus between the death of the deceased with the cruelty or harassment inflicted upon her in respect of the demand of dowry.

Observation of the Hon'ble supreme court

In light of the given facts and circumstance of the case, the Hon'ble Supreme Court observed that:

1. In Satvir Singh & Ors. v. State of Punjab & Anr. (2001) 8 SCC 633, the Hon'ble Supreme Court examined the significance and implication of the use of the words 'soon before her death' in section 304-B and held that:
    * Prosecution, in a case of offence under section 304 - B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused "soon before her death".
    * The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it but the proximity to her death is the pivot indicated by that expression.
    * 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 perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her.
    * If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge

that in all probabilities the harassment or cruelty would not have been the immediate cause of her death.

2. In Hira Lal & Ors. v. State (Gout. of NOT), Delhi (2003) 8 SCC 80 , Apex Court held 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 circumstance.
   * 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. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned.

3. In Major Singh and Anr. v. State of Punjab (2015) 5 SCC 201, the Apex Court disbelieved the prosecution's story for the reason that no independent witnesses were examined, even though, the witnesses deposed that the Members of Panchayats were aformed about the harassment.

Observation as to present case

1. The prosecution relies upon the statement of PW3 Sohan Lal - father and PW4 Rajbir - brother of the deceased which has been made basis of conviction by courts below. However, it is not sufficient to prove that the deceased was treated with cruelty relating to demand of dowry soon before her death in the absence of independent evidence though available but not examined.
2. The letters written by the deceased to her father, her brother in law and additional letters relied upon by prosecution doesn't support the story of the prosecution.
3. The date of sending such letter was also not proved by the prosecution, therefore, it cannot be said that such letter was written soon before her death.

4. In any of three letters, there was no inference of any demand of dowry as well as no other documentary prove was given to support the prosecution story.

Decision of the Hon'ble Supreme Court

Considering the above observation, the Hon'ble Supreme Court held that:

1. The prosecution has failed to prove either the demand of dowry or that any such demand was raised soon before her death.
2. Therefore, the essential ingredients of offence under section 304-B of IPC are not proved by the prosecution.
3. The prosecution has even failed to prove the initial presumption under section 113-B of the Evidence Act.

Consequently, appeal was allowed and the conviction of the Appellant was set aside.

[Section 375 of the Indian Penal Code, 1860]

Pramod Suryabhan Pawar
Versus
The State of Maharashtra & Anr.

Division bench of Hon'ble Supreme Court

Hon'ble Dr. Dhananjaya Y Chandrachud and Indira Banerjee, JJ.

Dated: August 21, 2019

Delivered by: Dr Dhananjaya Y Chandrachud, J.

Law Point

The "consent" of a woman under section 375 is vitiated on the ground of a "misconception of fact" and not on the ground of "breach of promise"."

Brief Facts

The allegations in the FIR were that the Complainant (C) and Appellant (A) were known to each other since 1998. They were in regular touch through phone and meetings. In 2008 A proposed C for marriage and assured her that their belonging to different castes would not be a hindrance. A allegedly promised to marry the C after the marriage of his elder sister. On 23 January 2009, A allegedly re-iterated his promise to marry C at the Patnadevi Temple in Chalisgaon. An affair between A and C started. Since 2009 till 2016, A and C multiple time visited each other and get indulged in sexual intercourse on the promise of marriage. A's elder sister get married on 5 February 2012. On 23 December 2012, A again visited C and forced her to engage in sexual intercourse. Afterwards for the first time A raised concerns about marrying her on the ground that they belongs to different castes and it would create a hindrance in A's younger sister's marriage.

In January 2014 A raised concerns about marrying C on the ground of her caste again. This led to heated arguments. However, A used to regularly visit her house at Panvel until March 2015, each time engaging in sexual intercourse with her. On 9 March 2016 A engaged in sexual intercourse with C against her will.

Subsequently, O was apprised of the fact that A was engaged to another woman. A informed'@ that the woman he was engaged to was demanding Rs. two lakhs to break of the engagement. On 28 March 2016 A re-iterated his promise to marry C and arranged for her to speak to the woman he had been engaged to assure C that A was no longer in a relationship with her. Subsequently C became aware that A had married on 1 May 2016. On 17 May 2016 she filed the FIR.

Point of determination

When Consent will be vitiated by the misconception of fact arising out of promise to marry?

Decision of the Hon'ble Supreme Court

There is a distinction between the mere breach of a promise and not fulfilling a false promise. In Yedia Srinivasa Rao v. State of Andhra Pradesh[32] the court observed the intention of the accused was not honest right from the beginning still he kept on promising that he will marry her, till she became pregnant. This kind of consent taken by the accused with clear intention not to fulfill the promise and persuading the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception cannot be treated as consent.

To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act.

In Deepak Gulati versus State of Haryana (2013 SC) the Hon'ble Supreme Court observed that there is a difference between the mere breach of a promise and not fulfilling a false promise. While dealing with a question of consent in misconception the court must examine whether the promise was made at the at an early stage, with an intention to a false promise of marriage by the accused or whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence.

There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused or where an accused on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her, despite having every intention to do so. It is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances.

The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact, In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance".

In Uday v State of Karnataka[33] the Hon'ble Supreme Court observed that in these circumstances the accused's promise to marry the Cwas not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors.

Two conditions must be fulfilled for the application of Section 90 IPC:

Firstly, it must be shown that the consent was given under a misconception of fact.

Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception.

The "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established:

* Promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given.

* The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

In the instant case, the alegations in the FIR do not on their face indicate that the promise by A was false or that the C engaged in sexual relations on the basis of this promise. There was no allegation as to A's bad faith or the promise to marry was done with the mitention to deceive her. The allegations in the FIR indicate that C was aware of existed obstacles to marrying A since 2008. Still she continued her sexual relations with The allegations in the FIR belie the case that she was deceived by A's promise of marriage. Therefore, even if the facts set out in C's statements were accepted in totality, no offence under Section 375 of the IPC has occurred.

Therefore, the appeal was allowed and the judgment of the High Court was set aside.

[Section 302 r/w Section 120-B of Indian Penal Code, 1860 hereinafter referred as "IPC"]

[Section 106 of Indian Evidence Act, 1872 hereinafter referred as "TEA]

Gargi (Appellant)

Versus

State of Haryana (Respondent)

Coram: (2 judges bench)

* Hon'ble Mr. Justice A.M. Khanwiulkar
* Hon'ble Mr. Justice Dinesh Maheshwari

Judgment delivered by: hon'ble mr. Justice dinesh maheshwari
Judgement delivered on: 19 September, 2019

Law Points

When the inmate of the house has died suspiciously then accused will only be held liable only if s/ he fails to explain as to what caused the death of the deceased and in case of circumstantial evidence there should be no scope of an outsider to interfere in the premises and cause the death of the deceased. If there is a scope of any outsider to enter the premises then benefit of doubt should be given to the accused especially when prosecution has failed to prove the motive of the case.

Brief Facts

On 01.05.1997, crived an information that a man has committed suicide when police reached on spot at 11:30pm they found out that, deceased Tirlok Nath, (H) husband of the appellant was, hanging by the Neck and his feet were touching the floor; blood was collected near the body and the foul smell was coming in the second floor of the house, The appellant and her children were on the first floor. Brother of the deceased reached with his wife, mother, sister's husband and sister (PW8). Statement was given by B (brother of the deceased) that relationship between the appellant and the deceased was strained and were residing in separate rooms in the same house and H was ill-