CASE ANALYSIS OF

**BHOORA SINGH V. STATE**

By: -

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**Case Name:**Bhoora Singh vs State
**Citation:**MANU/UP/0257/1992
**Decision Date:** 25th March 1992
**Bench:**P Basu, B Yadav, J Dubey

**SUMMARY OF FACTS**

Smt. Urmila, a youthful wife of 20 years of appellant Raju, residing with her parents in village Bhadwa, P. S. Malwan, dist. Fatehpur, married in 1983, was brought to the district hospital Fatehpur on 11-10-1986 at about 3-05 p.m. by Raju's cousin Vijai Bahadur Singh with extensive burn injuries. She was admitted and medically examined by Dr. Harish Chandra (P.W. 5) wherein she died at 5-35 p.m. Her mother Smt. Sankatha Devi (P.W. 3) had reached the hospital soon after her hospitalization but her father Yadunath Singh had reached the hospital after her death, having come from Allahabad where he was posted as Station Officer, P.S. Mohabbatpur, Pansa. The doctor had sent to police Station Kotwali, Fatehpur, a memorandum of Ex. Ka-6 about admission of Smt. Urmila in a seriously burnt condition. After her death, another memo (Ex. Ka-8) was sent intimating her death. An inquest (Panchnama) was done on the dead body of Urmila by Sub-Inspector Sivali Misra (P.W; 10). Thereafter post-mortem examination was conducted by Dr. B. N. Deo at 2-30 p.m. in the presence of another Medical Officer while the body had reached the mortuary at 11-30 a.m. on 12-10-1986. The FIR lodged at P. S. Kotwali by P.W. 1 Yadunath Singh was forwarded to P.S. Malwan where S.C. Dube, head moharrir (P.W. 9) made necessary entries where after Vijai Kumar Sharma, S.O., P.S. Malwan (P.W. 11) had begun investigation and writing the case diary but the investigations were taken over by the Circle Officer D.S. Yadav, Dy. S.P. (P.W. 6). On 14-10-1986 he had gone to the site and got the site plan prepared. He found pieces of Sarhi and one empty glass of kerosene oil and ashes in the oven. He had recorded the statements of Smt. Sukhia and Chanda Devi. In her statement Smt. Sukhiya had told him that she was cleaning her own house when she heard Smt. Urmila "Bachao, Bachao" and she had come up to the door in a burnt condition. In the charge-sheet submitted by D.S. Yadav, all the accused were shown as absconded, as proceedings under Section 82/83, Cr. P.C. had begun against them and the I.O. had shown Raju alias Raghuvendra, husband of Smt. Urmila, Smt. Gulhari Devi alias Champa Devi, mother of Raju, Bhoora Singh, father of Raju and co-accused Km. Aruna Devi, sister of Raju as being prosecuted Under Sections 302, 304B, 498A, IPC and Section 4 of the Dowry Prohibition Act.

**ISSUES**

1. Would Section 304B I.P.C. apply in the present case?
2. Can a charge under Section 302, IPC co-exist with the charge under Section 304B, IPC?
3. Can Section 113B of the Indian Evidence Act be attracted to the facts of the present case even if it is held that Section 304B, IPC. would not be attracted?

**RULES**

*Section 304(B) I.P.C.*

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.

(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.

*Section 302, IPC*

Punishment for murder. —Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

*Section 113B of Indian Evidence Act*

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.

**ANALYSIS**

1. That the FIR was lodged by informant Yadunath Singhat 00.55 of 12-10-1986 or that the case was, in fact, transferred from P.S. Kotwali to P.S. Malwan around 4 a.m. on 12-10-1986.

2. That the deceased Smt. Urmila had made any oral dying declaration to her mother implicating the appellants and the acquitted accused or that she could have been in a position to make any statement whatsoever.

3. That the appellants had ever demanded any dowry from the informant or any other relative.

4. That the deceased had written any letter to her father, the informant on 22-9-1986 and it was not in the handwriting of the deceased.

5. Some other controversies have arisen during the arguments and will be taken up and dealt with at relevant places in the following paragraphs. Suffice it to say at this stage that the marriage between Raju and Smt. Urmila in the year 1983 has not been doubted. Receiving of burn injuries by Smt. Urmila before 3-15 p.m. on 11-10-1986 in her in-law's house has not been doubted -- but what has been suggested is that it may have been an 'accidental-fire'. Smt. Urmila was admitted to the hospital where she was examined by Dr. Harish Chandra. It has also not been denied that Dr. Harish Chandra had written a letter to the magistrate concerned for coming immediately to the hospital to record the dying declaration of the deceased. It has not been doubted that on receiving information that the S.D.M. was not able to come because of absence of motor vehicle, Dr. Harish Chandra had sent a communication to the District Magistrate telling him about the urgency of the matter, and further that the executive magistrate had refused to come to the hospital for recording the dying declaration has not been disputed.

6. From the evidence it is proved that the appellant Raju was married to the deceased Smt. Urmila in December, 1983 and her death under unnatural circumstances had occurred on 11-10-1986. This will be within about three years of the date of marriage.

7. The new offence 'dowry death' created under Section 304B, IPC is punishable with a minimum sentence of 7 years which may extend to imprisonment for life. Therefore, this section is creating a substantive offence and is not merely a provision effecting a change in the procedure for trial of a pre-existing substantive offence. Therefore, on the facts of the present case it must be held that Section 304B, IPC is not attracted in terms and consequently the conviction of the two appellants, namely Raju and Smt. Gulhari Devi is illegal and has to be set aside.

8. As noted above, the applicability of the said Section 113B is limited to cases 'when the question is whether a person has committed dowry death of a woman.... ' That too requires proof of two further facts. Firstly, it is shown that soon before her death such a woman had been subjected by such person to 'cruelty' or 'harassment' and, secondly, that the cruelty of her husband was 'for or in connection with any demand for dowry'. If these two facts are established by evidence the presumption under Section 113B as to the commission of the offence under Section 304B, IPC. would be attracted straightway. In view of these reasons as also in view of the very nature of things, the presumption under Section 113B, Indian Evidence Act, cannot be read or drawn or inferable where the charge is confined to Section 302, IPC.

9. legislature has by introducing Sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married woman is subjected to cruelty or harassment by her husband or his family members Section 498A, IPC would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under Section 304B, IPC.

10. The father of Smt. Urmila has stated that he had married his daughter Urmila to Raju in 1983. When he had gone to take Urmila to his house about 6 or 7 months prior to the date of incident, all the three accused and the fourth acquitted accused made repeated demands about the several articles and the additional dowry. They demanded double-bed, bullet motor cycle and further said that if Urmila would die, a second marriage can be performed wherefrom Rs. 80,000/- were promised to be paid. With great difficulty the daughter was permitted to go with her father. On coming to the residence, she complained to the father; mother and brothers that all the four accused were not giving her adequate food, were torturing her, abusing her and constantly threatened her with death. After about 6 or 7 months, he had sent the daughter back to the in-law's family. On 11-10-1986 he got an information by wireless at 7 p.m. that his daughter Smt. Urmila has been admitted to the district hospital, Fatehpur, in a seriously burnt condition where he reached at 10 p.m. and found his daughter had already died.

11. Smt. Sankatha, mother of Smt. Urmila deceased. She says that she was at her residence in Ashok Nagar locality when Raj Kumar of village Bhadwan came and told her that her daughter Urmila has been admitted in the hospital in a burnt condition. On getting this information, she, along with her sons Dinesh, Indrabhan and nephew Jagroop went to the hospital and found Urmila to be in a badly burnt condition. On asking what has happened, Urmila started crying bitterly and said that neither she had set fire to herself nor did she catch it accidentally. On enquiring as to who were there in the house Urmila disclosed that her mother-in-law, husband, Nanand (husband's sister) and father-in-law were present in the house and the mother-in-law asked her to cook 'hodge-podge' (Khichri). After cooking it she said "mother Khichri has been cooked" and the mother-in-law then said "Khichri alone does not fill the belly prepare Pratha". At this she mixed flour for preparing Pratha and got busy in firing the oven. The mother-in-law then said 'close down the door. She further said that then she went and closed the door and when she was firing the oven in a bent position her husband caught hold of the hand and threw her on the ground. The mother-in-law poured kerosene oil from a glass and set fire by picking a burning wood from the oven. She further said that when she started burning badly all the four accused ran away from the back door. She further said that she went out of the house while shouting and thereafter she did not know what had happened.

12. P.W. 6 is D. S. Yadav who was posted as C.O. (City), Fatehpur, in 1986. He has said that the case was initially registered under Section 302, I.P.C. at P.S. Kotwali and subsequently it was forwarded to P.S. Malwan for investigation as offence under Sections 498A and 302, I.P.C. were allegedly made out to which the case was altered. He took up investigation on 13-10-1986 from Vijai Kumar Sharma (P. W. 11). On 14-10-1986 he reached the spot and got the door or Bhoora Singh's house opened and inspected the spot, got the site plan prepared by the head-muharrir at his dictation. He recorded the statement of Smt. Sukhia and Smt. Chandi Devi. The three-memorandum prepared by the earlier Investigating Officer relating to pieces of Sarhi, glass of kerosene oil and ash from the oven etc. were taken over. Thereafter he came to Fatehpur and recorded the statements of Sankatha Devi, Indrabhan Singh, Dinesh Singh, Jagroop Singh and Yadunath Singh. He took into possession a letter written by the deceased handed over to him by Yadunath Singh. He received the post mortem examination report on the dead body of Smt. Urmila on 15-10-1986. He recorded the statement of Bachraj Singh and Dr. Harish Chandra. Although he had continued the search of the accused for which he had deputed informants. On 25-10-83 he took steps under Section 82/83 against all the accused which were finalised on 26-10-1986. He came to know on 17-11-1986 that accused Bhoora Singh and accused Raghuvendra Pratap Singh alias Raji had surrendered in the Court on 6-11-1986.

13. In view of the aforesaid discussion it becomes extremely doubtful that the first information report was, in fact, lodged at 0.55 a.m. at Police Station Kotwali even if it may be believed that it was sent by the Police of P. S. Kotwali to the Police of Malwan in the early hours of 12-10-1986 for being registered there as an offence. A word may be stated here relating to the letter allegedly written by Smt. Urmila and carried through P.W. 2 Raj Kishore Singh to her parents. From the statement of P.W. 1 Yadunath Singh and also of P.W. 3 Smt. Sankatha Devi it is abundantly proved that the executant of the letter was Smt. Urmila. The statement of Chandrapal Singh, a relation of both sides i.e., the appellants as well as the informant, shows that he (Chandrapal Singh) was posted at the relevant post office wherein the bank account in the name of Smt. Urmila was opened by Smt. Sankatha Devi. He has proved the signature of Smt. Urmila. The registers were brought in the Court and the copies of the signatures were filed in the Court. The prosecution case is that signature on the said record brought from the post office and the letter brought by Raj Kishore Singh were that of Smt. Urmila stands fully established. It may be remembered that the appellants had tried to bring forth some contradiction or negative evidence regarding availability or otherwise of other signatures of Smt. Urmila at the head post office but those records were not available. Consequently, there is no evidence coming from the other side indicating anything adverse to the prosecution version that the letter was written by Smt. Urmila to her parents.

14.A criticism about this "letter" was that this letter should not have used two words. It is said that firstly the words "Deegar Samachar' should not have come from Smt. Urmila while writing to her parents. The argument is that the word 'Deegar' is generally used in police papers, for example 'Deegar Samachar', 'Deegar Mulziman' etc. It may be noted that Smt. Urmila was the daughter of a Police Inspector and was educated and, therefore, if she had used a word which she may have heard at her parents' house no adverse inference whatsoever can be drawn front the use of the word "Deegar'. By the way, this word only means 'other'. It is quite often seen what while writing letters persons convey information regarding welfare in a few lines first and then while referring to other information’s the word 'Deegar' is used. Therefore, the use of the word 'Deegar' is on the very face of it does not indicate any foul play. It was argued that in the end of the letter Smt. Urmila should not have said that she was despatching this letter through her uncle's son Raj Kishore Singh. It was argued that when the letter was being carried by Raj Kishore Singh himself what was the fun in writing it out in the letter. This argument is an emphasis on a totally unnecessary detail. There may have been another Raj Kishore Singh in some of the close relations and, therefore, Smt. Urmila may well have said that this letter was being carried by her uncle's son. Therefore, genuineness of the letter is fully proved and the testimony of Yadunath Singh fully supported by Smt. Sankatha Devi indicates that the marriage of Smt. Urmila with Raju alias Raghuvendra Pratap Singh had been solemnised in December 1983 when enough cash and valuables were handed over to the appellants but they were constantly torturing Smt. Urmila and also demanding further cash and things as dowry.

**CONCLUSION**

One would have been so happy if the presumption under Section 113B of the Indian Evidence Act could be brought in aid to a charge under Section 302, I.P.C. but one would have been still happier if on the facts of this case the appellants could have been convicted under Section 304B, I.P.C. But, alas, there will be no gainsaying in recording a finding that all the three appellants Bhoora Singh, Raju alias Raghuvendra Pratap and Smt. Gulhari are guilty under Section 304B, I.P.C. because neither can they be convicted nor sentenced thereunder as the said section was brought into the statute book on 19-11-1986 whereas the tragic extinction of life of the youthful lady Smt. Urmila under unnatural circumstances happened on 11-10-19861 The appellants, therefore, go scot-free regarding the charge under Section 304B, I.P.C. by as insignificant a margin as skin of the teeth.

The conclusion, therefore, is that Criminal Appeal No. 2854 of 1988 filed by Bhoora Singh is dismissed. His conviction under Section 498A, I.P.C. and the sentence of three years' R.I. and a fine of Rs. 500/- is upheld. His conviction under Section 4 of the Dowry Prohibition Act and the sentence of six months' R.I. and a fine of Rs. 500/- is also upheld.

The conviction of Raju alias Raghuvendra Pratap Singh and Smt. Gulhari alias Champa Devi under Section 302, I.P.C. and the sentence of death awarded to them thereunder are set aside. They are acquitted of the charges punishable Under Section 304B, I.P.C. Their conviction under Section 498A, I.P.C. and the sentence of three years' R.I. and a fine of Rs. 500/- each are upheld. Their conviction under Section 4 of the Dowry Prohibition Act and the sentence of six months' R.I. and a fine of Rs. 500/- thereunder are also upheld.

**REFERENCES**

* Gurbachan Singh v. Satpal Singh
* Soni Devrabhai Babubhai v. State of Gujarat
* State of Punjab v. Iqbal Singh