

In the High Court of Punjab and Haryana at Chandigarh

Crl. Appeal No. S-456-SB of 2003 (O&M)

Date of Decision: 21.1.2015

Balkar Singh and another

.....Appellants

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K.Trikha, Advocate
for the appellants.

Mr. K.S.Aulakh, AAG, Punjab.

SABINA, J.

Appellants had faced the trial qua commission of offence punishable under Section 304-B of the Indian Penal Code, 1860 ('IPC' for short) in FIR No. 106 dated 2.8.2001, registered at Police Station Mukerian.

Prosecution story, in brief, is that Veena, sister of the complainant, had got married to appellant No. 1-Balkar Singh on 4.11.1999 and out of the said wedlock, a son was born. On 1.8.2001, appellant Balkar Singh along with someone, came to the house of the complainant at 5.00 P.M. under the influence of liquor. Appellant Balkar Singh raised a demand of motor cycle and said that if the demand was not fulfilled, anything could happen. On the same day, at about 11.00 P.M., complainant received a message that his sister as well as appellant Balkar Singh, were admitted in the hospital in serious condition. Complainant along

with his parents and other respectables of the village reached village Singhowal. Complainant came to know that appellant Balkar Singh as well as his sister Veena had consumed some poison and they were admitted in the Civil Hospital. Veena, however, died on 2.8.2001 at about 7.00/7.30 A.M. Veena had been harassed on account of demand of motorcycle by appellants and since she had been unable to fulfill the said demand, she had consumed poison.

After completion of investigation and necessary formalities, challan was presented against the appellants.

Charge was framed against the appellants under Section 304-B IPC vide order dated 21.3.2002.

In order to prove its case, prosecution examined eight witnesses during trial.

Appellant Balkar Singh when examined under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), after the close of prosecution evidence, prayed as under:-

"I am innocent. I had no strained relations with my wife. Rather, it was arranged marriage with the consent of the deceased and myself. The marriage was arranged by Surjit Singh cousin brother of the deceased, but the complainant was not ready for the marriage. His parents consented for the marriage, but even after the marriage, the complainant was not on talking terms with me and my wife and consequently my wife stopped visiting the complainant. There was no demand from our side. We were living happily. My wife was insisting to accompany me to live at my place of posting. I got permission for keeping her with me, but when I came on leave to take her

with me, my sister came to our house in the village to deliver her first child and as per the custom, she was to deliver the first child at our house. I requested my wife to wait for 15 days and then I would be coming back after the delivery of my sister and would take her along to my place of posting, but she did not agree and there was exchange of hot words between me and my wife which resulted into a minor scuffle with each other. Then my wife and myself consumed poisonous tablets because of which myself and my wife became unconscious and ultimately I survived with the help of the doctors whereas she died. There is no fault of anybody in this episode. There was no torture, no harassment and no demand of any kind. The police in connivance with the complainant falsely implicated me and my mother.”

Appellants examined two witnesses in their defence.

Trial Court vide judgment/order dated 21.2.2003 ordered the conviction and sentence of the appellants under Section 304-B IPC. Hence, the present appeal by the appellants.

During the pendency of the appeal, appellant Krishna Dervi died and appeal qua her was disposed of as having abated.

Learned counsel for the appellants has submitted that no offence under Section 304-B IPC could be said to be made out in the present case. In fact, deceased wanted to accompany her husband to the place of his posting. Appellant Balkar Singh requested the deceased to wait for 15 days as his sister was to deliver a baby and had come to her parental house in this regard.

Appellant Balkar Singh had assured the deceased that he would

take her with him to the place of his posting after 15 days. Due to this reason, hot words were exchanged between appellant Balkar Singh and his wife. Both of them consumed poison. Appellant Balkar Singh was saved whereas his wife died on account of poison consumed by her. The story put-forth by the complainant party that there had been a demand of a motorcycle was an afterthought. Appellant Balkar Singh was posted in the Army and had every intention to take his wife with him to the place of his posting.

Learned State counsel, on the other hand, has opposed the appeal and has submitted that from the statements of the prosecution witnesses, it was evident that Veena had been harassed by the accused on account of demand of a motorcycle and due to this reason, she had consumed poison.

Section 304-B IPC reads as under:-

“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.”

Section 113-B of the Indian Evidence Act, 1872 reads as under:-

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 304-B of the Indian Penal Code, (45 of 1860).”*

Thus, in order to constitute an offence under Section 304-B IPC, a death of a woman must have been caused otherwise than under normal circumstances and should have occurred within seven years of her marriage. Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relative of her husband and such cruelty must be for or in connection with demand of dowry.

Let us examine the evidence led by the prosecution in the present case to come to a conclusion as to whether the present case can be termed as a dowry death.

There is no dispute that deceased had died on account of consumption of poison. The fact that requires consideration is as to whether she had consumed poison on account of harassment meted out to her on account of demand of dowry or for some other

reason.

Complainant Rakesh Kumar while appearing in the witness box as PW-3 has deposed as per the contents of the FIR.

Although, complainant and PW-4 have deposed that appellants were harassing the deceased on account of demand of a motorcycle but the said version of the complainant fails to inspire confidence.

In the present case, the version put-forth by appellant Balkar Singh, when examined under Section 313 Cr.P.C., appears to be plausible. It is evident from the statement of PW-1 Dr. Malkiat Ram that appellant Balkar Singh was also admitted in the hospital with the history that he had consumed poison along with the deceased. To the similar effect is the statement of PW-2 Dr. Surinderpal Singh that appellant Balkar Singh was also admitted in the hospital on 1.08.2001 with alleged history of poisoning. It appears that appellant Balkar Singh and his wife had some altercation and as a result of this, both of them consumed poison. It is unfortunate that wife of appellant Balkar Singh died on account of the poisonous substance consumed by her. However, appellant Balkar Singh managed to survive. It appears that on account of death of Veena, relations between the accused and her family members became strained and her death has been given the colour of dowry death. In the facts and circumstances of the present case, the prosecution story is rendered doubtful.

It is a settled preposition of law that prosecution is required to prove its case beyond the shadow of reasonable doubt. Whenever there is a doubt in the prosecution case, the benefit of the same is liable to be extended to the accused. In the present case, appellant Balkar Singh is liable to be acquitted of the charge

framed against him by giving him benefit of doubt.

Accordingly, the appeal is allowed. Appellant Balkar Singh is ordered to be acquitted of the charge framed against him. Consequently, judgment/order of his conviction and sentence dated 21.2.2003, are set aside.

**(SABINA)
JUDGE**

January 21, 2015

Gurpreet