

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**Criminal Appeal No. S-2033-SB of 2003  
Date of decision: 09.12.2015**

Hardip Singh

..Appellant

Versus

State of Punjab

..Respondent

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

**Present:** Mr. P.S. Ahluwalia, Advocate  
for the appellant.

Mr. Rupam Aggarwal, DAG, Punjab  
for the respondent – State.

**Daya Chaudhary, J.**

The present appeal has been filed to challenge the judgment of conviction and order of sentence dated 13.10.2003 passed by learned Sessions Judge, Gurdaspur, whereby, the accused-appellant has been convicted for offence punishable under Section 498-A of Indian Penal Code (for short 'IPC') and sentenced to undergo RI for a period of three years and to pay fine of ₹2000/- with default clause.

Briefly, the facts of the prosecution version are that on the basis of statement made by complainant-Roshan Singh, who is father

of deceased-Lakhwinder Kaur, FIR No.237 dated 31.12.2000 was registered under Section 304-B IPC at Police Station City Division No.1, Pathankot. As per allegations in the FIR, complainant gave adequate dowry at the time of marriage of his daughter as per his financial capacity but her daughter was maltreated by her husband-Hardip Singh, mother-in-law Paramjit Kaur and father-in-law Surinder Singh. She was given beatings for compelling her to bring more dowry articles and was even turned out from her matrimonial home. On 29.12.2000, his daughter informed telephonically that she was subjected to beatings and compelled to bring ₹50,000/-. Thereafter, on 30.12.2000, she was admitted in civil hospital in unconscious condition. An intimation was also sent to the complainant regarding admission of his daughter in the hospital and ultimately, she died on the same day. A complaint was made to the Police on 31.12.2000 against husband, father-in-law and mother-in-law. Challan was presented under Section 304-B IPC and charges were also framed against accused persons, to which they pleaded not guilty and claimed trial. Copies of the documents as envisaged under Section 2-7 Cr.P.C. were supplied to the accused persons.

The prosecution examined complainant as PW1, Smt. Bimla Dogra, President Akhil Bhartiya Mahila Parishad, Pathankot as PW2, Janak Singh Draftsman as PW3, Sukhjot Singh as PW4, Tirath Singh as PW5, Hazara Singh Sarpanch as PW6, HC Kulwinder Singh as PW7, C.Ashok Kumar as PW8, ASI Avtar Singh, Investigating

Officer as PW9, Dr. Dharam Vir Pathania as PW10 and HC Dilbagh Singh No.321 as PW11 to prove its case.

Thereafter, statements of accused under Section 313 Cr.P.C. was recorded wherein they denied the allegations and pleaded false implication.

In defence, the accused examined Dr. Ashok Kumar as DW1, Lady Dr. Indu Mahajan as DW2, Lady Dr. Jasbir Kaur as DW3 and D.R. Verma as DW4.

On appraisal of evidence available on record and after hearing arguments of both the parties, the trial Court acquitted all the accused for offence punishable under Section 304-B IPC but convicted the accused-husband for offence punishable under Section 498-A IPC and sentenced him to undergo RI for a period of three years and to pay fine of ₹2000/- with default clause vide its judgment dated 13.10.2003, which is subject matter of challenge before this Court.

Learned counsel for the appellant submits that the judgment of trial Court convicting the accused-appellant for offence punishable under Section 498-A IPC is contrary to evidence and law as allegations made against accused persons under Section 304-B IPC could not be proved by the prosecution and all the accused were acquitted of the charge for aforesaid offence. The appellant was convicted for offence punishable under Section 498-A IPC by recording a finding, which is contrary to evidence as even no question

was put to the accused in the statements recorded under Section 313 Cr.P.C. Learned counsel also submits that not only contradictions and discrepancies are there in the statements of the prosecution witnesses but there is an improvement in the statements of PW1-Roshan Singh, PW5-Tirath Singh and PW6-Hazara Singh. Even the trial Court has held the version of the prosecution untruthful and a categorical finding was recorded that no offence was made out under Section 304-B IPC as there was even no allegation of demand of dowry and harassment in lieu thereof. It has specifically been mentioned in the finding of the trial Court that there was not even a single credible instance after execution of Ex.D1 to show that the deceased-Lakhwinder Kaur, was subjected to harassment by her in-laws or by her husband for demand of dowry. Learned trial Court has held that belligerent conduct of appellant aggravated plight of deceased-Lakhwinder Kaur, which was further compounded by the in-laws for her inability to give birth to a child. Only the presumption is there that the deceased was maltreated on account of inability to bear a child whereas there was no allegation in the complaint or in the FIR or even no question was put to the accused under Section 313 Cr.P.C. At the end, learned counsel for the appellant submits that the appellant is facing the agony of trial since lodging of FIR i.e., 31.12.2000 and has undergone approximately 3 months of actual sentence against total sentence of 3 years and by relying upon judgments of Hon'ble the Supreme Court in **Abdul Jabbar vs. State**

of Haryana, 2015(1) RCR (Criminal) 91, Satish Kumar Batra and others vs. State of Haryana, 2009(2) RCR (Criminal) 699, B.T. Jayaram vs. State of Karnataka, 2006(2) Crimes (SC) 57 as well as judgment of the Division Bench of this Court in State of Haryana vs. Budh Singh, 1992(2) RCR (Criminal) 449, he prays for reducing the sentence to the period already undergone.

Learned State counsel submits that the specific allegations are there for demand of dowry and harassment in lieu thereof, which has resulted into the death of deceased-Lakhwinder Kaur, daughter of the complainant. On the basis of statements of prosecution witnesses, the offence under Section 498-A IPC has been proved beyond the reasonable doubt and no interference is required.

Heard arguments of learned counsel for the appellant as well as learned State counsel and have also perused the record of the lower Court including statements of the prosecution witnesses as well as the defence witnesses and other documents available on the file.

The facts regarding marriage, lodging of FIR and allegations in the FIR are not disputed. Admittedly, the daughter of the complainant, namely, Lakhwinder Kaur was married with accused-Hardip Singh on 31.01.1999. As per allegations in the FIR, deceased-Lakhwinder Kaur was harassed and victimized for demand of dowry. On 30.12.2000, an intimation was sent to the complainant that her daughter was admitted in the Hospital in an unconscious condition and ultimately, she died on the same day while in the Hospital. A

complaint was made by the father of the deceased, which was recorded by PW9-ASI Avtar Singh. Challan was presented against three accused i.e., husband, mother-in-law and father-in-law and they faced trial for offence punishable under Section 304-B IPC. All the accused were acquitted of the charge by the trial Court but the accused-husband-Hardip Singh, who is appellant before this Court, was convicted for offence punishable under Section 498-A IPC. The trial Court has held that no credibility of demand of dowry, harassment or even cruelty on the part of the accused-husband and in-laws could be established as it could not be proved on the basis of evidence that the death occurred because of harassment in connection with demand of dowry soon before her death but there appears to be reasonable nexus between cruelty and harassment committed by accused-husband-Hardip Singh on account of her inability to bear child and that too without bearing the expenses of her medical treatment for a long time and in turn subjecting her to maltreatment and harassment, which has resulted into her finally committing suicide which falls under Section 498-A IPC.

The judgment of conviction and order of sentence has been challenged on the ground that it could not be proved by the prosecution that demand of dowry was made soon before the death of the deceased as prosecution has failed to prove that the death occurred due to harassment for demand of dowry. It is also the argument of learned counsel for the appellant that no question was

put to the accused under Section 313 Cr.P.C. with regard to cruelty and accused cannot be convicted for offence punishable under Section 498-A IPC when no question of cruelty was put to him. It is not disputed that the recording of statement under Section 313 Cr.P.C. is not an empty formality but when incriminating materials have not been put to the accused under Section 313 Cr.P.C., the accused cannot be convicted, as the same tantamounts to serious lapse on the part of the trial Court as has been held in various judgments i.e., **Sukhjit Singh vs. State of Punjab, 2014 (11) SCALE 414, Tara Singh vs. The State, AIR 1951 SC 441, Hate Singh Bhagat Singh vs. State of Madhaya Bharat, AIR 1953 SC 468 and Ajay Singh vs. State of Maharashtra, 2007(3) RCR (Criminal) 348.**

Section 498-A IPC and Section 113 of the Evidence Act include in their amplitude past events of cruelty. The period of operation of Section 113-B of the Evidence Act is seven years and presumption arises when a woman commits suicide within a period of seven years from the date of marriage.

Section 498-A IPC reads as under: -

***"498-A. 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 purposes of this section,*

*`cruelty' means--*

*(a) any wilful conduct which is of such a nature as is likely to drive 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."*

Section 113-B of the Evidence Act is reads as under: -

***"113-B. 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 had 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 purpose of this section,*

*'dowry death' shall have the same meaning as in Section 304-B of Indian Penal Code, 1860."*

The basic difference between Section 306 and Section 498-A IPC is that of intention. In case, any cruelty has been committed by the husband or his relations, it drags the woman concerned to commit suicide and in case of Section 306 IPC, the woman is abetted to commit suicide.

In the present case, specific allegations are there regarding demand of dowry on various occasions and death occurred within the period of seven years of the marriage. The trial Court acquitted all the accused for offence punishable under Section 304-B IPC but convicted the husband for offence punishable under Section 498-A IPC. Learned Sessions Judge, Gurdaspur has recorded a finding that it was a case of harassment for not bearing the child by the deceased-wife. It is also not disputed that no question was put to the accused while recording his statement under Section 313 Cr.P.C..

The same issue was there before the Division Bench of this Court in **Budh Singh's case (supra)**, as in that case also, the wife committed suicide as she was not able to bear a child. She went to house of her parents and remained there for a period of two years but no efforts were made by her husband to bring her back. It was held that it would not amount to any willful conduct or harassment in terms of Section 498-A IPC.

In **Abdul Jabbar's case (supra)**, Hon'ble the Supreme

Court has held that the accused could not be convicted under Section 498-A IPC when no question of cruelty was put to him under Section 313 Cr.P.C.

In the present case, undisputedly no question was put to the accused under Section 313 Cr.P.C. and it appears that the trial Court has substituted its opinion by inferring that the death occurred due to inability of the deceased-wife to bear a child. Neither it was the allegation in the FIR nor any such question was put to the accused. In view of the finding of the trial Court, the Appeal should have been filed by the State but no such appeal was filed to challenge the judgment of conviction under Section 498-A IPC and acquittal under Section 304-B IPC. Moreover, this appeal is of the year 2003 and the accused is facing the trial since lodging of the FIR i.e., 30.12.2000. The appellant is on bail after suspension of his sentence and he has undergone actual custody of three months against total sentence of three years.

Under similar circumstances, sentence was reduced to the period already undergone by Hon'ble the Supreme Court in **Satish Kumar Batra's case (supra)** and **B.T. Jayaram's case (supra)**.

Accordingly, keeping in view the facts as mentioned above and by considering the submissions made by learned counsel for the appellant that he is facing the agony of trial for the last 15 years, the request of learned counsel for the appellant is accepted. However, the conviction is upheld and the sentence awarded to the appellant is reduced to the period already undergone by him. The appellant is on

bail as his sentence was suspended during pendency of the appeal.

The appeal is disposed of with the modification in sentence by upholding the judgment of conviction.

09.12.2015  
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**(DAYA CHAUDHARY)**  
**JUDGE**