

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRA-S No. 560-SB of 1996(O&M)

Date of Decision: May 15 , 2015.

Chint Kaur and another

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Pawan Girdhar, Advocate
for the appellants.

Mr. Ashish Sanghi, Addl.AG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been preferred by the accused Chint Kaur wife of Sher Singh and Harbans Singh son of Sher Singh who have been convicted for offences punishable under Sections 304B and 498A IPC by learned Additional Sessions Judge, Fatehgarh Sahib vide impugned judgment and order dated 05.08.1996. They have been sentenced to undergo rigorous imprisonment for seven years, besides, pay a fine of ₹2,000/- and in default thereof, to further undergo rigorous imprisonment for six months for offence punishable under Section 304B IPC and to undergo rigorous imprisonment for two years, besides,

pay a fine of ₹1,000/- and in default thereof, to further undergo rigorous imprisonment for three months for offence punishable under Section 498A IPC. Both the sentences were ordered to run concurrently.

This Court vide judgment dated 08.05.2007 had disposed of this appeal while reducing the sentence imposed upon appellant No.1 – Chint Kaur to that of having already undergone keeping in view the fact that she was 76 years of age at that time and her being in evening of life, no useful purpose would be served to send her in custody to undergo rest of the imprisonment. Appeal qua appellant No.2 – Harbans Singh had been dismissed. Harbans Singh approached Hon'ble Supreme Court by way of Crl. Appeal No.820 of 2008 challenging his conviction and sentence. Hon'ble Supreme Court on 27.11.2013 set aside the impugned judgment and order dated 08.05.2007 of this Court qua appellant – Harbans Singh and remanded the matter while observing as under:-

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We have been taken through the impugned judgments. The High Court has not dealt with nor made any reference to any evidence of any prosecution witness while affirming the conviction and sentence awarded by the trial Court.

The passing remark has been made that there is ample evidence on record on the basis of which the conviction of the appellant can be upheld.

We are of the opinion that the appeal might have been dealt with considering all the facts involved in the case and the evidence for or against the appellant as led by the prosecution as well as by the defence also, if any.

In such a fact situation, we set aside the impugned judgment

and order of the High Court and remand the case qua the appellant only.”

Thus, it is only qua appellant No.2 – Harbans Singh that this appeal survives.

Prosecution in this case was set in motion on the statement, Ex.PG recorded by complainant – Harinder Singh son of Gurbachan Singh before ASI Rajinder Pal on 27.06.1988 to the effect that he was a Supervisor working with the Telephone Exchange, Sector 17, Chandigarh having three daughters and a son. All his children were married. Marriage of his younger daughter Manjit Kaur (deceased) was solemnized with appellant-accused Harbans Singh son of Sher Singh about two months prior to the occurrence. After about 15 days of the marriage, Harbans Singh, accused left his daughter Manjit Kaur at his house i.e., her parental home where she remained for about 14/15 days. His daughter Manjit Kaur revealed that her husband Harbans Singh and brother-in-law (Jeth) Balbir Singh ill-treated her and demanded dowry. Her mother-in-law Chint Kaur and sister-in-law (Jethani) Devinder Kaur taunted her for bringing less dowry and she would not go to her in-laws' house because of this ill-treatment. However after making everyone understand, he sent Manjit Kaur back to her matrimonial home. About 10-12 days prior to the occurrence, Harbans Singh accused again brought back his daughter on the pretext that she was ill and there was no qualified doctor in their village to treat her. His daughter revealed that she was not suffering from any illness and it was only an excuse for demanding more dowry. About 3/4 days earlier to the occurrence, he sent back

his daughter with accused Harbans Singh while giving ₹4,000/- at that time. On 27.06.1988 Balbir Singh, brother-in-law of the deceased informed the complainant that his daughter Manjit Kaur had died. On receiving this news, he alongwith his family members and others came to village Rupal Heri where Manjit Kaur was lying dead. He alleged that his daughter had ingested some poisonous substance due to ill-treatment meted out to her by her husband Harbans Singh (appellant), mother-in-law Chint Kaur, brother-in-law (Jeth) Balbir Singh and sister-in-law (Jethani) Devinder Kaur. On the basis of this statement, FIR No.23 dated 27.06.1988 (Ex.PG/2) was recorded by SI Karnail Singh. ASI Rajinder Pal alongwith other police officials and the complainant proceeded to the spot. Site plan (Ex.PK/1) was prepared. Inquest report (Ex.PD) was also prepared. Dead-body of Manjit Kaur was sent to Civil Hospital, Bassi Pathana for conducting post-mortem examination. As per post-mortem report (Ex.PA) cause of death was to be ascertained after receipt of the chemical examiner's report. As per Chemical Examiner's report (Ex.PB) aluminium phosphide was detected in the viscera of deceased. It was opined by PW1 Dr. S.P. Garg, Senior Medical Officer, Civil Hospital, Bassi Pathana that cause of death was poisoning due to aluminium phosphide (Ex.PB/1).

Prosecution examined as many as fourteen (14) witnesses to prove its case.

Accused while denying the incriminating material and evidence put to them under Section 313 Cr.P.C. pleaded false implication. Appellant Harbans Singh, however, pleaded that he had been implicated in this case for extortion. Deceased was allegedly having an affair with one Bhola Singh even prior to the

marriage. She did not wish to live with him. She was sick and suffering from gynaecology problems. Brother of the deceased Kulwant Singh had written a letter to him admitting their innocence and lamenting that his father had falsely implicated them. Accused further explained that he was initially reluctant to marry Manjit Kaur (deceased) as an astrologer told him that in case of marriage with Manjit Kaur then either one of them would die within three years of the marriage. But he was compelled to marry her by the complainant party.

Learned trial court on appreciation of the evidence on record, facts and circumstances found the accused Balbir Singh, Devinder Kaur and Harmeet Singh to be innocent thereby acquitted them of the charges against them. Appellant Harbans Singh and his mother Chint Kaur were convicted and sentenced as mentioned above while concluding that the prosecution has proved its case beyond reasonable doubt qua the said accused.

Present appeal had been preferred by Chint Kaur and Harbans Singh impugning their conviction and sentence. It is reiterated that this appeal survives only qua Harbans Singh at this point of time. Conviction of Chint Kaur has been upheld whereas, the sentence imposed upon her has been reduced to that of having already undergone by this Court by decision dated 08.05.2007. No appeal had been preferred in respect of Chint Kaur by the State nor she has challenged her conviction.

Learned counsel for the appellant argues that there is, in fact, no evidence on record to prove the demand of dowry. While referring to the statement of complainant Harinder Singh it is submitted that only allegation is that an amount of ₹4,000/- was given to the deceased a few days prior to her

death when she was sent back to her matrimonial home by the complainant. This amount does not in any manner show that there is a demand of dowry by the present appellant. While referring to the testimony of Harinder Singh complainant, learned counsel vehemently argues that in the initial statement (Ex.PG) Harinder Singh had stated that ₹4,000/- had been given to Manjit Kaur and she went away with Harbans Singh whereas, in his testimony before the court he states that ₹4,000/- were given to Harbans Singh so that his daughter was not harassed further.

It is further submitted that prosecution evidence has been disbelieved while acquitting the other accused who are similarly placed. Therefore, on the basis of this evidence present appellant-accused cannot be convicted.

It is also contended that positive evidence has been led by the defence to prove false implication of the appellant. Reference is made to criminal complaint under Sections 182/506 IPC (Ex.DE) allegedly filed by Kulwant Singh brother of the deceased, against the complainant Harinder Singh and Ranjit Kaur i.e., parents of the deceased as well as of Kulwant Singh. It is submitted that Kulwant Singh himself had alleged that the accused had been falsely implicated by the parents of the deceased. Reference is also made to the testimony of DW5 Navdeep Gupta, the handwriting expert to state that a letter (Ex.PH) allegedly written by the deceased to her father, is not genuine. Therefore, reliance on this letter wherein the deceased is stated to have given a graphic detail of the complicity of the accused cannot be relied upon.

Reference is also made to a complaint (Ex.DA) filed by Harinder

Singh (complainant) which was dismissed vide decision dated 20.12.1994 (Ex.DX/4). It is submitted that complaint under Sections 406/34 IPC read with Section 4 and 6 of the Dowry Prohibition Act, 1961 filed by Harinder Singh against appellant Harbans Singh and others was dismissed, therefore, there is no evidence to show that demand of dowry was ever raised by the accused. In this view of the matter, it is urged that accused Harbans Singh is liable to be acquitted of the charges against him.

Per contra, learned counsel for the State submits that there is sufficient and overwhelming evidence on record to show the complicity of the appellant-accused in this case. He prays for upholding the judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Fatehgarh Sahib.

I have heard learned counsel for the parties and gone through the record.

A perusal of the record reveals that Manjit Kaur daughter of complainant was married to appellant – Harbans Singh on 24.04.1988. She died about two months of the marriage on 26.06.1988. As per the medical evidence on record cause of death was poisoning due to consumption of aluminium phosphide.

For proving the commission of offence punishable under Section 304B IPC, it is necessary on the part of the prosecution to prove the necessary ingredients of Section 304B IPC, which reads as under:-

“304B. 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 purposes 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."

There is no doubt that Manjit Kaur died an unnatural death within about two months of her marriage. The moot point is whether demand for dowry soon before her death is made out from the evidence on record. In this respect, it is necessary to refer to certain events which admittedly took place prior to the marriage.

It is a matter of record that complaint (Ex.PJ) was moved by the deceased to the Senior Superintendent of Police, Chandigarh in October, 1987. Genuineness of this document is not in question. Defence has not raised any objection nor questioned its authenticity. It is revealed that engagement of the deceased had been formalized on 15.03.1986 with appellant Harbans Singh, who used to work at a petrol pump at Sector 10, Chandigarh on the intervention of accused Harmeet Singh, who was known to her father being a police employee. Thereafter, accused Harmeet Singh, a go-between of their marriage, told her father that in case date of marriage is to be fixed, dowry will have to be

given to Harbans Singh and others. *Milni* with twelve relatives will have to be done. Her parents were insulted by Harbans Singh and others when they went to make them understand for finalization the marriage. She has revealed in this letter the role played by Harmeet Singh. It is revealed in this complaint that Harmeet Singh had called Manjit Kaur to his house in Sector 23, Chandigarh and induced her for developing physical relation with Harbans Singh. Thereafter, Harbans Singh and his parents started expressing reluctance for the marriage on one count or the other. There are two endorsements, one, Ex.PJ/1 by the Senior Superintendent of Police, Chandigarh asking for discussion in this case. Another, Ex.PJ/2 is an endorsement dated 28.10.1987 by the DSP Chandigarh that Harbans Singh has given in writing that he would marry the complainant's daughter Manjit Kaur. She was satisfied with that. It is thereafter that the marriage between Harbans Singh and Manjit Kaur was solemnized.

Complainant Harinder Singh has clearly stated that on the demand of dowry being raised by the accused, ₹4,000/- was handed over about 2/3 days before her death when she had been sent back to her matrimonial home alongwith accused Harbans Singh. Whether this amount was handed over to Manjit Kaur or Harbans Singh is irrelevant keeping in view the fact that it was given on the asking of Harbans Singh. Withdrawal of ₹1,500/- on 20.06.1988 from the complainant's account and withdrawal of ₹2,000/- from the account of deceased is duly proved on record. ₹500/- had been added to this amount when ₹4,000/- was given on the demand raised by Harbans Singh. It must be kept in mind that in the year 1988 a sum of ₹4,000/- was a substantial amount for a Supervisor working in a Telephone Exchange.

Complainant Harinder Singh has also stated that four days prior to the marriage, Harmeet Singh had conveyed a demand for colour TV, a cooler and a refrigerator by in-laws of Manjit Kaur. Complainant had expressed his inability to give the same. This demand had been raised after the marriage as well. Acquittal of Harmeet Singh (or others) is irrelevant and immaterial in the facts and circumstances of this case, as discussed in detail later.

PW4 Amarjit Kaur, elder sister of the deceased, has duly supported the prosecution version. She has stated that Manjit Kaur had revealed the demand of dowry by the accused. Demand for television and refrigerator was raised by the accused after marriage as well. Ill-treatment was meted out by the in-laws family of Manjit Kaur due to incitement by Harmeet Singh constable, who was the go-between in the marriage. It has clearly been stated by this witness in her initial statement (Ex.DE) as well that the accused used to demand dowry specially refrigerator and a television. PW5 Ranjit Kaur, mother of the deceased has also supported the prosecution version. She has also specifically stated about the demand of television and a refrigerator by the accused.

An effort has been made to suggest that the deceased was a part of a dysfunctional family. In this respect, testimony of PW5 Ranjit Kaur, mother of the deceased is referred to where she has stated in her cross-examination that she was living separately from her husband for the past three or four years as she had not been pulling on well with her husband after the death of her son Kulwant Singh who had otherwise been disowned and disinherited by them. However, it is noticed that at the time of alleged incident in 1988, Ranjit Kaur (PW5) was residing with her husband Harinder Singh i.e., the complainant. Her

cross-examination was conducted on 25.08.1994. She had separated from her husband prior to three years. Date of the incident is 27.06.1988. This fact cannot impinge on the credibility of the prosecution case. In fact, she has honestly stated the facts and has faithfully narrated the conduct of her husband as well as her son.

Similarly, it cannot be said that any material improvements have been made by PW4 Amarjit Kaur or PW3 Harinder Singh (complainant).

Reference to complaint (Ex.DE) by Kulwant Singh is of no avail to the appellant-accused. The deceased in her complaint (Ex.PJ) which was submitted even prior to their marriage, has mentioned that her brother Kulwant Singh had been disowned/disinherited by her father. Therefore, intention of Kulwant Singh in filing the said complaint against his own parents is clearly suspect. Furthermore, this complaint was admittedly dismissed for non-prosecution.

Reference to the complaint (Ex.DA) filed by complainant Harinder Singh under Sections 406/34 IPC as well as Sections 4 and 6 of the Dowry Prohibition Act, 1961 cannot affect the prosecution case in the peculiar facts and circumstances of the case. On perusal of decision dated 20.12.1994 (Ex.DX/4) in the said complaint, it emerges that entrustment of dowry articles at the time of marriage of Manjit Kaur could not be proved. However, the fact that the entrustment of dowry articles was not proved does not mean that demand for dowry was not raised. The ingredients essential for the present case are entirely different. Dismissal of the said complaint case does not affect the present case.

Furthermore, defence taken by the accused is reflective of their

conduct. An attempt has been made to suggest that the deceased was having relations with one Bhola Singh even prior to her marriage. She was not happy with her marriage with Harbans Singh and it is due to this reason that she consumed poison. This plea is extremely fallacious and untenable especially in the light of the evidence on record in the shape of Ex.PJ, a complaint which was admittedly filed by the deceased prior to her marriage.

SI Mastan Singh, Police Station Sector 31, Chandigarh (also marked as PW5) has proved the writing given by accused Harbans Singh on 16.10.1987 wherein the accused agreed to marry Manjit Kaur. SI Mastan Singh had been entrusted with the complaint Ex.PJ. He has specifically stated that during the inquiry conducted by him, there is no allegation of deceased Manjit Kaur having an affair with Bhola Singh. Letter (Ex.PH) had been written by the deceased to her parents giving the details of harassment being meted out to her on account of bringing less dowry. Defence has relied on the report of DW5 Navdeep Gupta, the handwriting expert to suggest that this letter was never written by the deceased. Be that as it may, even if this letter is ignored there is ample evidence on record to show the complicity of the accused in this case.

Contention of the learned counsel that appellant Harbans Singh cannot be convicted on the basis of the evidence which was found insufficient to convict the other accused is untenable.

It has been authoritatively held by Hon'ble Supreme Court in **Israr v. State of U.P., 2005(2) RCR(Criminal) 40** that maxim "falsus in uno falsus in omnibus" has no applicability in India. Even if evidence has been found to be deficient to prove the guilt of other persons in case but the residue is found

sufficient to prove the guilt of an accused notwithstanding the fact of acquittal of number of other co-accused, his conviction can be maintained. It was observed that even where evidence of some of the witnesses is found to be deficient to prove the guilt of some accused, it is open to the court to convict co-accused on the same evidence. Evidence on record is found trustworthy and reliable and clearly points to no other hypothesis but the guilt of appellant – Harbans Singh.

Conviction of accused Chint Kaur has been upheld by this Court though the sentence imposed upon her has been reduced keeping in view her being at the advance age. No appeal against this decision has been filed either by Chint Kaur or the State.

Section 304B IPC postulates that in case of a woman dying an unnatural death within seven years of her marriage and shown to have been subjected to cruelty or harassment by her husband or any relative of her husband/in-laws in connection with any demand for dowry soon before her death, such husband/relative shall be deemed to have caused her death. Accused has failed to rebut this presumption drawn against him under Section 304B IPC as well as 113B of the Evidence Act.

Keeping in view the discussion above, I find that the prosecution has indeed proved its case beyond reasonable doubt qua accused Harbans Singh. He has rightly been convicted and sentenced by the learned Additional Sessions Judge, Fatehgarh Sahib. There is no ground to interfere in the conviction and the sentence imposed upon him.

At this stage, learned counsel for the appellant raised an alternate

plea that at best the appellant can be held guilty for the offence punishable under Section 306 IPC and sentence imposed upon him be reduced to that of already undergone. He relies on the judgment of Hon'ble Supreme Court in **Gurnaib Singh v. State of Punjab, 2013 (7) SCC 108** and a Division Bench judgment of this Court in **Krishan Kumar and others v. State of Haryana, 2006(3) RCR (CrL) 7.**

Keeping in view the fact that demand of dowry is duly proved on record, I do not find any merit in the contention raised by the learned counsel for appellant. Appellant has been rightly convicted under Sections 304B/498A IPC. No benefit can be derived from the judgments cited above as the demand of dowry was not established in the said cases. A perusal of affidavit dated 12.01.20015 by the Superintendent, Maximum Security Jail, Nabha reveals that the appellant has undergone actual imprisonment of one year, seven months and nine days. Minimum punishment provided for the offence punishable under Section 304B IPC is seven years which has been imposed upon the appellant which cannot be further reduced.

Consequently, this appeal is dismissed.

May 15 , 2015.
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(LISA GILL)
JUDGE