

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

**CRA-S-1447-SB-2002 (O&M)
Date of Decision: 09.09.2015**

Gurdev Kaur etc.

...Appellant(s)

Versus

State of Punjab etc.

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Present: Mr. Chandan Singh Rana, Advocate
for the appellants.

Mr. Deep Singh, AAG, Punjab,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

Gurdev Kaur and her son Jaspal Singh @ Mintu were convicted and sentenced in FIR No.5 dated 08.01.2001, registered under Section 304-B IPC, Police Station Sahnewal, District Ludhiana. Jaspal Singh was sentenced to undergo rigorous imprisonment for a period of 10 years along with a fine of Rs.5000/-. In default of payment of fine, he was to undergo further rigorous imprisonment for a period of two years.

Gurdev Kaur was sentenced to undergo rigorous imprisonment for a period of 7 years along with a fine of Rs.3000/- and in default of payment of fine, she was to

undergo further rigorous imprisonment for a period of one year. It was also ordered that out of the fine that would be recovered, Rs.6,000/- shall be paid to the complainant Balwinder Singh and Amar Kaur.

The factual matrix needs to be explicated. In an unfortunate incident that occurred on 07.01.2001, Kulwant Kaur suffered burn injuries which proved fatal. Kulwant Kaur was married to Jaspal Singh on 10.03.1996. Two children were born out of this wedlock, a son and a daughter. The allegations levelled by Balwinder Singh, brother of the deceased were that there were demands of dowry. A scooter and a gold bangle had been demanded one and a half year after the marriage. Thereafter, Rs.20,000/- was demanded to enable the husband to go abroad and lastly a demand of Rs.60,000/- was made, two months prior to the incident. The last demand was raised for purchasing a vehicle.

Balwinder Singh along with his mother Amar Kaur had gone to see Kulwant Kaur and were abused by all the accused except Jaspal. The complainant and his mother went to Jaspal's factory and narrated the incident. The next day, they received information that Kulwant Kaur had died. The complainant reached the house of the in-laws and found the body lying in the courtyard. Immediately, thereafter, the matter was reported to the police and the police arrested the husband, his parents, his sister and Maya, the mother-in-law's sister. Surjit Singh, father of Jaspal died 20 days later, while in custody.

Challan was presented against four accused. The prosecution examined seven witnesses.

The accused abjured the trial and pleaded false implication. They examined one witness namely Jaspreet Singh to prove that Jaspal was on his duty at the time of the incident.

The trial Court accepted the statement of the prosecution witnesses so far as the present appellants are concerned and rejected the evidence so far as the remaining two namely Maya, Jaspal's mother's sister and Jaswinder Kaur, sister of Jaspal Singh. Both of them were married and were residing at different places. They were given the benefit of doubt. The appellants were convicted and sentenced to the imprisonment mentioned here-in-before.

I have heard learned counsel for both the parties.

The submission made on behalf of the appellants was that there were suicidal tendencies running in the family and the brother of the complainant, Bhupinder Singh had committed suicide and came under the train and the father of the complainant strangled himself to death and the deceased had a hot temper. It was urged that no complaint had earlier been made and the family of the accused had a better financial condition. It was urged that it was Jaspal appellant who had helped the complainant to get a job in the factory and the complainant was a labourer and was earning Rs.2000 - 2300/- per month whereas Jaspal was getting a higher salary than him. It was urged that vague allegations

have been made and the complainant side did not have the capacity to pay and the statement given by the witnesses is here-say as Manjit Singh had admitted that facts were told by his father-in-law and mother-in-law. It was urged that Amar Kaur had stated that her daughter used to write letters but she did not write anything concerning her harassment which appears to be strange. It was urged that since the complainant's family was not financially well, they did not have the capacity to pay and Amar Kaur had deposed that she had borrowed the amount to pay to Jaspal, there is a contradiction. It was urged that in the initial statement made to the police, there was no reference to any beating given to the deceased and the witnesses have made improvement at the trial. Summing up his submissions, it was urged that there was no complaint earlier and no Panchayat had been held and Jaspal had helped the complainant to get employment. It was urged that there was no demand at the time of the marriage and all the witnesses are related and there is no evidence that any cruelty in connection with demand of dowry was made soon before the death and the offence under Section 304-B IPC had not been proved. Reliance was placed upon ***Sham Lal Vs. State of Haryana 1997(3) RCR (Criminal) 85, Sher Singh @ Partapa Vs. State of Haryana 2015(2) SCC (Criminal) 422, Harjit Singh Vs. State of Punjab 2006(1) RCR (Criminal) 133, Baljinder Kaur Vs. State of Punjab 2014 RCR (SC) 1257, Surinder Kaur and another Vs. State of Haryana***

2004(2) RCR (Criminal) 140, Nachhatar Singh and others Vs. State of Punjab 2004(4) RCR (Criminal) 580, Dalip Kumar Vs. State of Haryana 2004(4) RCR (Criminal) 607 and a judgment of this Court in Banwari Lal and others Vs. State of Haryana in CRA-S-953-SB-2003, decided on August, 11, 2014.

The submission on the other hand was that the prosecution witnesses have spoken about the dowry demand and the harassment faced by the deceased. It was urged that the family would be having information as to why the deceased had taken such an extreme step leaving behind two small children and there is no delay in the FIR.

It would be relevant to first notice the relevant provisions. Section 304-B of the Indian Penal Code reads as under:-

"304-B. 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."

A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. The Parliament has also inserted Section 113 B of the Indian Evidence Act by Act No.43 of 1986 with effect from 1.5.1986 which 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 purposes of this section, "dowry death", shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)."

From a conjoint reading of Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Indian Penal Code.

The ingredients of the aforementioned provisions are :

(1) That the death of the woman caused by any burns or bodily injury or in some circumstances which is not normal; (2) Such death occurs within 7 years from the date of her marriage (3) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) Such cruelty or harassment should be for or in connection with demand of dowry; and (5) it is established that such cruelty and harassment was made soon before her death.

Having examined the legal propositions, at this juncture, we may now notice the deposition of the prosecution witnesses.

Balwinder Singh PW1, the complainant deposed that they had spent about Rs.2 lacs on the marriage and the harassment started after some time and there was a demand of scooter & gold bangle and his sister was beaten up and sent home and she used to complain about the harassment. He deposed that they used to console and send her back in the hope that all would be well. He stated that a child was born to his sister and she was with them and they sent her back to the matrimonial home after about one and a half month and they taunted her for getting insufficient gifts. He stated that Jaspal, husband of his sister was to go to Dubai and they demanded Rs.20,000/- and they paid the amount and he went to Dubai. He stated that while Jaspal was away, the mother in law gave a hard time to his sister and some times he used to get her home. He stated that Jaspal returned after one year and two months and the harassment continued. He stated that a daughter was born to the couple and the family was not happy with the gifts. He stated that Jaspal failed to get employment and used to work for two months and then stay idle. He deposed that a demand of Rs.60,000/- was made for purchasing a second hand vehicle. He deposed that on 7th January, 2001, he along with his mother had gone to the house of the accused where they were abused. He stated that after being humiliated, they left

the house and he went to meet Jaspal who was at the factory and apprised of the treatment but he also did not talk properly and they returned home and the matter was discussed in the family and they had decided that they would go and speak to the accused to persuade them but on 08.01.2001 at about 2:00 PM some residents of village Neeche Mangli came to their house and told them about the serious condition of his sister and they immediately left for the house of the accused and found her body lying in the courtyard and she had burn injuries. He stated that they left for the police station to lodge the FIR.

Manjit Singh PW2, brother of deceased made a similar statement as made by Balwinder Singh but in the cross-examination, he stated that all these facts had been told by his in-laws after the death of his sister and nothing was revealed prior to the death. He stated that he was in the Indian Army and had retired in 1998.

Amar Kaur PW3, mother of the deceased spoke about the harassment her daughter was facing. She stated that taunts were thrown at her daughter since they could not fulfil the demand. She stated that a sum of Rs.20,000/- was demanded when Jaspal was to go abroad and the amount was borrowed and paid to them. She stated that Jaspal returned after a year and the harassment continued. She stated that she and her son and her daughter had gone to meet their daughter and her daughter had pleaded that they should take her along as she apprehend that she would be

done to death. She stated that the accused also mis-behaved with them and they assured that they would take her. She stated that she alongwith her son went to the Jaspal's factory and had conveyed the harassment they had faced but Jaspal did not give any reply and they returned home and on the next day, they got a message around noon that condition of her daughter was not good and they went to matrimonial home and found her body in the courtyard.

Ajaib Singh PW5 stated that Balwinder Singh had come to him in June, 1997 and was asking for a loan of Rs.20,000/- and he had lent Rs.15,000/- and remaining sum of Rs.5000/- after 4 – 5 days. He stated that Balwinder Singh was the son of his real sister.

Dr. S.K. Sharma, Medical Officer PW6 had conducted the postmortem examination. He had found burn injuries all over the body except the front part of the feet.

The accused abjured the trial and pleaded false implication. It was stated that it was a case of accident and Kulwant Kaur had died while preparing tea and the case had been registered to take revenge.

Jaspreet Singh DW1 brought the attendance register as well as the visitors register for the month of July, 2000 to March, 2001. He stated that he had not brought the visitors register for the month of January, 2001 as it was misplaced. He brought the attendance register for January, 2001 and deposed that Jaspal was on night duty in the factory on 08.01.2001 from 8:00 PM to 5:00 AM. He stated that

attendance register was maintained by the office and he did not know Jaspal personally and had never seen him earlier.

As per the postmortem report, the cause of death was asphyxia and shock, as a result of extensive burns which were ante mortem in nature. The sketch prepared by the Medical Officer appended along with the postmortem report shows that the whole body was burnt the area spared was under the feet. As per the report under Section 174 Cr.P.C., the date and hour of death is recorded as 7:30 AM on 08.01.2001. The family had received the information regarding the incident in the afternoon on 08.01.2001. The time and date of recording the formal FIR (Ex.PA/2) is recorded as 8:55 PM on 08.01.2001.

It is not disputed that the incident had taken place in the matrimonial home around noon on 08.01.2001. The intimation regarding death had reached the family at about 2:00 PM. The star witnesses of the prosecution are the members of the immediate family who had deposed that they had come to meet their daughter the previous day and their daughter had narrated about the harassment and that they had been humiliated by the family. The family had gone to meet Jaspal to convey their sentiments regarding the behaviour. The accused in order to show that the family had not come to his factory, had called the visitors book but the visitors book for January was not produced. It was only this register which was missing. The accused had produced a witness to say that Jaspal was in the night shift of the evening of 7th January till morning of 8th January but the copy of the same was not got placed on

record. It is necessary to add here that no suggestion was given to any of the witnesses that Jaspal was not on duty on 07.01.2001 during day time. This defence has been taken up for the first time at the fag end of the trial and has to be rejected.

On scrutiny of evidence, it is found that the prosecution has been able to prove that the death of the deceased was caused within seven years of marriage and that soon before her death, she was subjected to cruelty and harassment by the appellants in connection with demand of dowry.

The first premise stands established in this case as the death has taken place within 7 years. The precise date of her marriage was 10.03.1996, which is not disputed. The second premise that the death was caused by burn injuries is a factum which has not been disputed even by the appellants and is proved by the postmortem report. In order to establish the third ingredient that soon before her death, she was subjected to cruelty, this fact has been proved by the witnesses. All of them had stated that they had gone to meet the daughter in the matrimonial home where not only they were humiliated but were abused. It has come on record that Jaspal had failed to get employment and usually remained idle and the deceased had conveyed to her family on numerous occasions that there was demand and on some occasions, the demand had been fulfilled. The prosecution was obliged to show that soon before occurrence, there was cruelty or harassment. That evidence is

available. There was no reason for the girl to end her life leaving two children behind. Had there been any reason that would have surfaced. There is a presumption against the accused. The fact shows existence of proximate link between cruelty based on demand of dowry and death of the victim and it passes the proximity test.

The prosecution has been able to establish that there was cruelty and harassment soon before the occurrence. Therefore, the presumption under Section 113(b) of the Evidence Act was rightly raised. The trial Court had examined the evidence in detail and had recorded conviction against both the appellants. In my considered view, the conviction passed by the Court below does not suffer from any error what-so-ever which would call for any interference and is affirmed.

The Hon'ble Supreme Court in ***Hem Chand Vs. State of Haryana 1994(3) RCR 625*** had observed that when a dowry death takes place in a matrimonial home, while awarding sentence, the Court should take notice of the fact that Section 304-B IPC only raises a presumption and lays down minimum sentence of 7 years which may be extended to imprisonment for life. The Hon'ble Supreme Court had held that awarding extreme punishment for life should be in rare cases and not in every case.

In ***Paramjit Vs. State of P 1(2003) DMC 305***, the Division Bench while convicting the mother-in-law and the husband under Section 304-B IPC had sentenced the appellants to undergo rigorous imprisonment for 8 years.

In the present case, the husband Jaspal had been sentenced to undergo imprisonment for 10 years while his mother has been sentenced to undergo 7 years' rigorous imprisonment. The ends of justice would be met if the sentence of Jaspal is reduced to 8 years under Section 304-B IPC. There will be no modification so far as the sentence awarded to Gurdev Kaur is concerned, nor in the fine which was imposed upon the appellants. The appeal is dismissed with the above modification in the sentence.

The appellants are on bail. They would surrender before the Chief Judicial Magistrate, Ludhiana within a fortnight to undergo the remaining sentence. A copy of this order be sent to the Chief Judicial Magistrate, Ludhiana. In case, the appellants failed to surrender, the Court concerned would issue warrants to procure their presence. Lower Court record be sent back.

(ANITA CHAUDHRY)
JUDGE

09.09.2015
sunil