

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

CRA S-105-SB of 2004.

Date of decision : 14.1.2015.

Bhagwant Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE K.C.PURI

1. Whether Reporters of Local Newspapers 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?

Present : Mr. D.S. Pheruman, Advocate, for the appellant.
Mr. K.D. Sachdeva, Addl. AG, Punjab.

K.C.PURI, J.

This appeal has been directed against the judgment and order dated 6.12.2003 passed by Sh. Dhian Singh, Additional Sessions Judge, Amritsar vide which the accused appellant was convicted under Section 304-B IPC and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.5000/- and in default of payment of fine to undergo further RI for 6 months. However, the other accused stood acquitted by giving them benefit of doubt from the charges levelled against them.

2. The brief facts of the case are that Harjinder Kaur daughter of

complainant Balwinder Kaur was married with Bhagwant Singh accused appellant on 6.12.1999 and on the occasion of marriage, dowry which she could afford was given by her but Bhagwant Singh, his mother Balbir Kaur and father Balwinder Singh were not satisfied with the same and even used to say to the deceased that dowry had not been given according to their status and Bhagwant Singh being their only son and the people of the locality used to taunt them because of inadequate dowry. The deceased used to complain in this respect to her mother and other family members. Sometime before the occurrence, the deceased was turned out from her matrimonial house by the accused after beating her who was persuaded by her mother and others to go back to her matrimonial home. Balwinder Kaur had also entreated the accused that she being poor could not give more dowry. Despite that Bhagwant Singh accused and his parents continued making demand of fridge, furniture and other house-hold goods and they continued to maltreat the deceased. About 8/9 days before the occurrence; the deceased went to her parental house and while weeping before her mother and other members of the family told them that the accused were harassing her and were compelling to bring more dowry as the rooms of their house were lying vacant and Balwinder Kaur tried to satisfy the deceased by saying that they will arrange to give him more goods of dowry as soon as possible and she went back to live at the house of her in laws. On 21.9.2001 Balwinder Kaur and her son Mohan Singh went to the house of accused to make consultation with them about the dowry articles which they wanted to have from them. When they reached the house at 7.30 PM, they

found the gate of the house closed and lot of cries were heard from inside. They knocked the gate and pushed open the same and they saw quest of fire from the kitchen. Bhagwant Singh, Balwinder Singh and Balbir Kaur who were standing there ran away. Dalbir Singh and Kanwaljit Kaur were also there. When Balwinder Kaur and her son peeped into the kitchen they saw Harjinder Kaur had been set on fire and she had been badly burnt. They put blanket on Harjinder Kaur and extinguished the fire but she died. In the meantime, they protested Balbir Kaur and Kanwaljit Kaur as to what they had done and why they had killed their daughter. They also came to know that before the deceased was set at ablaze she was beaten by the accused. Balwinder Kaur went to her son Mohan Singh to village Chogawan. On the next morning Mohan Singh accompanied by other members of his family and neighbours came to the place of occurrence. On the statement of Balwinder Kaur complainant, FIR was registered.

3. After completion of the investigation, the challan was presented against accused Bhagwant Singh, Balbir Kaur, Balwinder Singh and Kanwaljit Kaur before the Illaqa Magistrate, Amritsar, who found that the case was exclusively triable by the Court of Session. Therefore, after complying with the provisions of Section 207 Cr.P.C, he committed the case to the Court of Sessions.

4. Charge under Section 304-B IPC against all the accused was framed. The accused denied the charge and pleaded not guilty and claimed trial. During trial, accused Dalbir Singh was summoned to face trial by invoking the provisions of Section 319 Cr.P.C.

5. In order to prove its case, prosecution examined Balwinder Kaur (PW-1), Balbir Singh (PW-2), Mohan Singh (PW-3), HC Harpal Singh (PW-4), Constable Rattan Singh (PW-5), HC Des Raj (PW-6), Dr. Amarjit Singh (PW-7), SI Gian Singh (PW-8) and closed its evidence.

6. The accused were examined under Section 313 Cr.P.C., and all the incriminating evidence was put to them to which they denied and pleaded false implication. Accused Bhagwant Singh stated that he is innocent and no demand of dowry was ever made by him from the deceased and he had never maltreated her. He was living separately from his parents. He was not present at the house at the time of the occurrence and so also his father and mother were not there. His married sister Kanwaljit Kaur and her husband Dalbir Singh have their house at village Vachhao. Harjinder Kaur deceased used to suffer from fits of epilepsy and in that state she fell on the fire and suffered burn injuries and Balwinder Kaur and Mohan Singh were not there at that time, who were called through Harbhajan Singh and Udham Singh of their village and Diwan Singh son of Piara Singh and Kashmir Singh of village Choganwan on the next date of the occurrence. This false case was got registered against them by Balwinder Kaur. The acquitted accused also taken the same plea as that of Bhagwant Singh.

7. The accused were called upon to lead defence evidence but they did not lead any evidence in defence.

8. After appraisal of the evidence, vide judgment and order dated 6.12.2003 passed by Additional Sessions Judge, Amritsar, the accused appellant has been convicted and sentenced to undergo imprisonment and

fine as narrated above. However, accused Balbir Kaur, Balwinder Singh, Kanwaljit Kaur and Dalbir Singh were acquitted.

9. Feeling dissatisfied with the aforesaid judgment and order dated 6.12.2003 passed by Additional Sessions Judge, Amritsar, appellant-accused has preferred the present appeal.

10. I have heard learned counsel for the parties and have gone through the records of the case.

11. Learned counsel for the appellant has submitted that in order to prove the ingredients of offence under Section 304-B of the IPC, the prosecution is required to prove the following ingredients of offence :-

- (i) That the death of a woman has taken place by burns or bodily injury or otherwise than under a normal circumstances.
- (ii) Said death has occurred within seven years of her marriage.
- (iii) Soon before death that woman was subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand of dowry.

12. Learned counsel for the appellant has not challenged the existence of first two ingredients of offence. The death has taken place in an unnatural manner i.e. by burn injuries and that has taken place within seven years of the marriage of deceased Balwinder Kaur with appellant Bhagwant Singh. The only point urged during the course of arguments is that prosecution has failed to prove that death has taken place on account of demand of dowry articles. It is submitted that main allegations levelled by the prosecution witnesses is in respect of demand of dowry.

13. Learned counsel for the appellant has further submitted that these allegations are general in nature and does not constitute that soon before her death Balwinder Kaur was subjected to maltreatment in connection with demand of dowry articles. It is submitted that PW-1 Balwinder Kaur complainant has also simply stated that deceased was subjected to demand of dowry articles at the hands of Bhagwant Singh appellant, Balbir Kaur, Balwinder Singh, Kanwaljit Kaur and Dalbir Singh. However, it is submitted that except Bhagwant Singh all the accused have been acquitted. It is submitted that Mohan Singh PW-3 brother of deceased has admitted that 20 days prior to the occurrence Bhagwant Singh appellant has purchased motor cycle. This witness has further admitted that television, fridge and furniture etc. was at the house of appellant. So, there was no question of demand of dowry articles. It is further submitted that as per prosecution story Mohan Singh PW-3 after the occurrence has gone to his village and remained there during night is not a probable story. It is further submitted that appellant has been convicted under Section 304-B of the IPC and not under Section 302 of the IPC. The statement made by the material witnesses i.e. Balwinder Kaur PW-1 and Mohan Singh PW-3 to the effect that they went to the house of the accused at about 7/7.30p.m. They have further stated that they knocked the door and found that Balwinder Singh, Bhagwant singh and Dalbir Singh were standing in front of the kitchen door in the courtyard and run away from the spot and Harjinder Kaur was burning in the kitchen and they extinguished the fire by putting blanket on her body. It is submitted that the story is not probable.

14. Learned counsel for the appellant has further submitted that in case the Court is not inclined to accept the prayer for acquittal of the accused, in that case, lenient view may be taken regarding quantum of sentence as the appellant is facing trial since 2001 i.e. for the last more than fourteen years.

15. Learned State counsel has supported the case of the prosecution.

16. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

17. The marriage according to the prosecution witnesses has taken place on 06.12.1999 and death of Harjinder Kaur has taken place on 21.09.2001 by burn injuries i.e. within seven years of her marriage. So, the counsel for the appellant has not challenged the first two ingredients of offence mentioned above.

18. Now the question arises whether the prosecution has been able to prove that deceased Harjinder Kaur was subjected to cruelty in connection with demand of dowry articles soon before her death? The learned trial Court, after appraisal of the evidence reached to the conclusion that prosecution has been able to prove the said ingredient against appellant only beyond reasonable doubt and consequently convicted the appellant under Section 304-B of the IPC. The further question arises whether any case is made out for interference on re-appraisal of the evidence? The answer to that question is in negative.

19. The death has taken place in the house of appellant within two

years of marriage of Harjinder Kaur with appellant. The death has taken place due to burn injuries. The Parliament in its wisdom has enacted Section 304-B of the Indian Penal Code as it was very difficult to prove the circumstances under which the death has taken place in the house of in-laws. No doubt, Mohan Singh PW-3 has stated that appellant has purchased motor cycle before 20 days of the occurrence and there is television, fridge and furniture in the house of the appellant but having these articles already in the house does not totally rule out the demand of dowry articles. No plausible reason has been given by the appellant under what circumstances deceased Harjinder Kaur has received the burn injuries. So, in these circumstances the learned trial Court has rightly relied upon the testimony of Balwinder Kaur PW-1 and Mohan Singh PW-3 that Harjinder Kaur was subjected to cruelty soon before her death at the hands of the appellant. Burnt blanket was recovered from the spot which lends support to the testimony of Balwinder Kaur PW-1 and Mohan Singh PW-3. Appellant along with other acquitted accused stated to have been run away from the spot when these two witnesses reached there. So far as the acquittal of other co-accused is concerned, since there was no specific demand of dowry articles against them and as such they have been acquitted but there are instances of demand against the appellant. Otherwise also appellant has to explain under what circumstances deceased Harjinder Kaur had received burn injuries to the extent of 96% while living in his house. So, in these circumstances, the conviction of the appellant under Section 304-B of the IPC stands affirmed.

20. Now reverting to the quantum of sentence. The occurrence took place on 21.9.2001 i.e., more than thirteen years ago. Bhagwant Singh has given his age as 24 years as on 29.02.2003 so at the time of occurrence he was about 22 years of age. As per conviction slip, appellant Bhagwant Singh is not a previous convict nor involved in any other case.

21. So, considering all the circumstances mentioned above, end of justice would be met in case the sentence is reduced to rigorous imprisonment for a period of seven years under Section 304-B of the IPC instead of ten years as awarded by the trial Court and I order accordingly. However, the sentence of fine stands affirmed.

22. In the manner indicated above, the appeal stands disposed of accordingly.

23. Bhagwant Singh accused-appellant is stated to be on bail. He be taken into custody to undergo the remaining part of his sentence.

24. A copy of this judgment be sent to the trial Court for strict compliance.

January 14 , 2015

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**(K.C. PURI)
JUDGE**