

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

CRA-S No. 106-SB of 2004(O&M)

Date of Decision: January 12 , 2015.

Kuldip Singh and another

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Aman Dhir, Amicus Curiae
for the appellants.

Mr. P.S.Grewal, DAG, 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.

The appellants – Surjit Kaur and Kuldip Singh have been convicted and sentenced to undergo rigorous imprisonment for a period of ten years each, besides pay a fine of ₹3,000/- each and in default thereof, to further undergo rigorous imprisonment for three months for the commission of offence punishable under Section 304B IPC vide impugned judgment and order dated 06.12.2003 passed by learned Additional Sessions Judge, Gurdaspur.

As per office note dated 23.09.2014, appellant No.1 – Kuldip Singh is reported to have passed away during the pendency of this appeal on 15.05.2013. A photocopy of the Death Certificate has been attached alongwith.

Therefore, the present appeal survives only qua appellant No.2 – Surjit Kaur. Surjit Kaur is the mother-in-law of the deceased – Harwinder Kaur and it abates qua appellant No.1 – Kuldip Singh.

As per the prosecution version, information regarding the death of Harwinder Kaur wife of Kuldip Singh (since deceased) was received through a wireless message on 11.10.2000. ASI Darshan Singh on receipt of the information, proceeded to the Civil Hospital, Gurdaspur where the complainant Kundan Singh got recorded his statement that his daughter Harwinder Kaur aged about 21/22 years was married with Kuldip Singh son of Saudagar Singh about one year and four months ago. Dowry articles beyond his capacity had been given at the time of marriage of his daughter. However, her husband Kuldip Singh, mother-in-law Surjit Kaur and father-in-law Saudagar Singh (who passed away during the pendency of the trial) were not satisfied with the dowry received. They started maltreating his daughter and used to taunt her for bringing inadequate dowry. His daughter came to the parental home about two months ago and revealed that her husband, mother-in-law and father-in-law were demanding a Hero Honda motorcycle and she was told not to return till the demand was satisfied. His daughter stayed at her parental home for about one month when Kuldip Singh came to their house and demanded the motorcycle. On his assurance that the motorcycle would be bought for him on the harvesting of the paddy crop, his daughter was taken back to the matrimonial home.

Thereafter, his son Ravel Singh and daughter-in-law Jasbir Kaur (wife of Ravel Singh) visited his daughter Harwinder Kaur and stayed overnight at her home about 15 days prior to her death. On their return they revealed that

she was being compelled to bring a Hero Honda motorcycle by her in-laws.

Kundan Singh stated that they received information from Satnam Singh on 11.10.2000 at about 10.00 p.m. that there was a telephonic message from Balwinder Kaur (Kundan Singh, complainant's elder daughter) that Harwinder Kaur was admitted at Civil Hospital, Gurdaspur. He, however, proceeded to the hospital the next morning alongwith his son Sukhwinder Singh because there was no arrangement of conveyance at night. On reaching the hospital, they found the dead body of Harwinder Kaur lying in the mortuary. It was alleged that Harwinder Kaur committed suicide by consuming some poisonous substance due to maltreatment meted out to her by her husband – Kuldeep Singh, mother-in-law Surjit Kaur and father-in-law Saudagar Singh. On his statement FIR No.121 dated 12.10.2000, under Section 304B IPC, registered at police station Kalanaur was registered.

Post mortem was conducted and the post mortem report (Ex.PC) was received on 12.10.2000. Viscera was sent for chemical examination and as per Chemical Examiner's report (Ex.PD), presence of aluminum phosphide was detected in the viscera.

After completion of investigation, report under Section 173 Cr.P.C. was submitted. The case being exclusively triable by a court of Sessions, it was committed to the court of Sessions vide commitment order dated 23.01.2001. Charge was framed against the three accused on 27.02.2001 to which they pleaded not guilty and claimed trial.

Saudagar Singh, father-in-law of the deceased passed away during the pendency of the trial and the proceedings against him stood abated as

recorded in order dated 10.03.2003.

The prosecution examined as many as six witnesses to prove its case. Statements of the accused were recorded under Section 313 Cr.P.C. They pleaded innocence and false implication in this case and it is further submitted by the appellant – Surjit Kaur that the deceased Harwinder Kaur had aborted a child without their consent and they never demanded any dowry from her.

The learned trial court after considering the evidence on record found Kuldeep Singh and Surjit Kaur guilty of the offence punishable under Section 304B IPC and convicted and sentenced them as detailed above vide the impugned judgment and order dated 06.12.2003. The appellants (Kuldeep Singh since deceased) being aggrieved of the impugned judgment and order preferred the present appeal.

Learned counsel for the appellant submits that the demand of dowry does not stand proved from the evidence on record. No independent witness has been examined to prove the said demand of dowry. Furthermore, Raveel Singh i.e., the brother of the deceased and Jasbir Kaur, his wife who are alleged to have visited the deceased and stayed overnight with the deceased some time before the death have not been examined. An adverse inference should necessarily be drawn due to their non-examination. Benefit thereof should be given to the accused. It is argued that the prosecution has, thus, not been able to prove the demand of dowry in the period of time proximate to the death. No evidence has been led to prove that any Panchayat was constituted to resolve the issue as has been alleged by the complainant – Kundan Singh. No injuries were found on the person of the deceased. In fact, the deceased Harwinder Kaur in connivance with her parental family had got her pregnancy terminated about 15 days prior to her

death. The appellant – Surjit Kaur and the other accused had objected to the termination of the pregnancy without their knowledge. Due to this reason, Harwinder Kaur had committed suicide. The present appellant had no hand in her death. Furthermore, the appellant – Surjit Kaur is stated to be nearly 80 years of age. Her age is recorded as 68 years in the impugned judgment dated 06.12.2003. She has undergone a period of three years and seven months of the sentence. She is the only family member left as she has lost her son Kuldeep Singh as well as her husband Saudagar Singh since then. In the facts and circumstances, it is prayed that the appellant Surjit Kaur deserves to be acquitted of the charges against her.

Learned counsel for the State has vehemently refuted the arguments raised by learned counsel for the appellant. It is submitted that the death of Harwinder Kaur took place in her matrimonial home within a period of about one year and four months of her marriage. The statement of the father and brother as recorded by the learned trial court are sufficient to show the complicity of the appellant. It is prayed that the conviction and sentence as awarded vide the impugned judgment and order should be upheld.

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

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. Section 304B IPC 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 the death of Harwinder Kaur has occurred within seven years of her marriage otherwise than under normal circumstances. It is incumbent upon the prosecution to show that 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.

It is vehemently urged by the learned counsel for the State that the presumption under Section 113B of the Evidence Act precludes the prosecution from proving that the deceased was subjected to cruelty or harassment in connection with the demand for dowry soon before her death. The contention of the learned counsel for the State that the prosecution was completely absolved of any responsibility, is liable to be rejected.

It has been held by Hon'ble Supreme Court in **Kaliyaperumal and another v. State of Tamil Nadu, AIR 2003 SC 3828** that the presumption shall be raised only on proof of certain essentials i.e.,

- (i) the death has occurred within seven years of marriage;
- (ii) the deceased was subjected to cruelty or harassment by husband or his relative;

(iii) such cruelty or harassment was for or in connection with any demand for dowry; and

(iv) such cruelty or harassment was soon before her death.

The deceased – Harwinder Kaur had been married to Kuldeep Singh about one year and four months prior to her death. She died on 11.10.2000 at about 10.25 p.m. as per the post-mortem report Ex.PC. Information regarding her admission to the Civil Hospital was admittedly received by the complainant Kundan Singh at 10.00 p.m. at 11.10.2000 itself. Kundan Singh along with his son Sukhwinder Singh proceeded to the Civil Hospital, Gurdaspur on 12.10.2000 i.e., the next day. The explanation given is that there was no arrangement of a conveyance. The conduct of the complainant is clearly unnatural as in normal circumstances, a father/parent/sibling of the deceased would not be able to restrain themselves from immediately rushing to the hospital on receipt of such news.

Furthermore, the demand of dowry soon before the death of Harwinder Kaur is not borne out from the evidence on record. Kundan Singh, PW1 has stated that he had moved a written complaint to the Sarpanch of the village in regard to the demand of dowry. However, no such complaint has been placed on record neither has any person been examined to prove the submission of such a complaint. There is no evidence to show that any Panchayat was convened in this respect. The credibility of this witness PW1 Kundan Singh is highly suspect because PW2 Sukhwinder Singh, his son, has testified that he did not file any complaint against any person to the Sarpanch of the village or the police authorities and his father has also did not file any such complaint.

Another glaring fact which emerges is that Kundan Singh states that

his son Ravel Singh and his wife Jasbir Kaur (daughter-in-law of Kundan Singh) visited Harwinder Kaur about 15 days prior to her death and stayed overnight with her. The said Ravel Singh and Jasbir Kaur, who would be relevant and material witnesses to prove the demand of dowry soon before the death of Harwinder Kaur have not been examined. In fact, they are not even cited as witnesses. There is nothing on record to show that any articles had been handed over to the in-laws of the deceased Harwinder Kaur at the time of her marriage. There is no list of articles or any bills/receipts thereof. Furthermore, demand of motorcycle if any would not be relevant qua the mother-in-law who would have scant use for it.

There are material discrepancies in the statements of PW1 Kundan Singh, father of the deceased and PW2 Sukhwinder Singh, brother of the deceased.

PW1 Kundan Singh in his cross-examination states that his daughter came to his house for the first time after 8/9 days of her marriage and thereafter, she never came to visit them again. PW2 Sukhwinder Singh states that she came to their house twice after her marriage i.e., 15 days after her marriage and a month thereafter. However, Kuldip Singh, her husband, is stated to have visited them three or four times.

The defence version that Harwinder Kaur had got her pregnancy terminated without the knowledge of her in-laws and on their raising objection she had committed suicide, appears to be probable especially in the light of the testimony of PW2 Sukhwinder Singh, who admits that he was aware of the pregnancy of his sister Harwinder Kaur though he has denied the factum of her aborting the foetus 15 days prior to her death for want of knowledge.

As per the statement of PW3 Dr. Sudhir Kumar, who has conducted the postmortem examination upon Harwinder Kaur, there were no injuries on her body. As per Chemical Examiner's report, presence of aluminum phosphide was detected in the viscera. Thus, the cause of death is poisoning. Dr. Sudhir Kumar (PW3) confirmed that Harwinder Kaur was not pregnant at the time of her death. He further states that if a woman undergoes abortion the healing takes place within one week.

In my considered opinion, the prosecution has failed to prove its case beyond reasonable doubt against the accused- Surjit Kaur. The essential ingredients of Section 304B IPC have not been proved. Demand of dowry by Surjit Kaur is not proved from the evidence on record. No doubt Harwinder Kaur was found dead in unnatural circumstances in her matrimonial home within a period of seven years of her marriage, but there is no evidence on record to suggest that her death occurred due to her subjection to cruelty or harassment by Surjit Kaur in connection with any demand for dowry.

Keeping in view the evidence on record and the facts and circumstances of the case, appellant – Surjit Kaur is entitled to the benefit of doubt.

Consequently, this appeal by Surjit Kaur succeeds. She is acquitted of the charges against her, giving her the benefit of doubt.

Appeal is allowed. Consequently, the bail bonds/surety bonds submitted by the appellant – Surjit Kaur stand discharged.

January 12 , 2015.
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(LISA GILL)
JUDGE