

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

CRA-D No.181-DB of 2010

Date of decision:11.9.2015

Hargian Singh and others

....Appellants

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Ms. Sharmila Sharma, Advocate for the appellants.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

HEMANT GUPTA, J.

The present appeal is directed against an order passed by learned Additional Sessions Judge, Panipat dated 27.01.2010/29.01.2010 convicting the appellants for an offence under Section 304-B; 201 read with Section 34 of Indian Penal Code (for short 'IPC') and sentencing them to undergo life imprisonment and to pay a fine of Rs.9,000/- each.

The prosecution case was set in motion on the statement of Lachchman Singh, father of deceased - Sunita. He stated that his daughter Sunita was married to Ranbir Singh on 02.02.2003 and he had given sufficient dowry but his daughter was sent to village by beating on every matter. On 03.07.2008 she went to her in-laws' house with all rites and customs but the accused demanded Rs.20,000/-. But he could not pay the money as he is handicap by one hand. On 05.07.2008 at about 6:00 AM, he received a telephonic message on his phone No.99964-19528 that Sunita

has died on account of burning by fire on 04.07.2008 and that she has been cremated yesterday. They went to village Mandi and saw that there was no mark of fire in the house but there was blood-stain on floor at one or two places. He expressed an apprehension that his daughter has been cremated after her murder. She was pregnant for about 6 months. He levelled allegation against Ranbir Singh (husband), Hargian Singh (father in law) and Smt. Phooli Devi (mother in law). On the basis of said statement (Ex.P1), Investigating Officer Assistant Sub Inspector (for short 'ASI') Ram Niwas scribed First Information Report (for short 'FIR') (Ex.P6) after making endorsement (Ex.P7). On 05.07.2008, he found the house of Hargian locked but the next day house of Hargian was found unlocked and house was inspected where one iron stove and few burnt piece of clothes were lying there. The same were converted into parcel and taken into possession vide Ex.P8. The accused disclosed that Sunita was cremated in the cremation ground. He went to cremation ground where some bones were collected by Station House Officer (for short 'SHO'), Police Station Mandi. Appellants Phooli Devi and Ramesh were arrested on 14.07.2008.

After completion of the investigations, report under Section 173 of the Code of Criminal Procedure (for short 'Cr.P.C.') was filed and the accused were made to stand trial. During trial, the prosecution relied upon Forensic Science Laboratory report (Ex.P3). The said report is to the effect that Ex.1a, containing partially burnt, multicoloured, synthetic pieces of clothes beyond identification wrapped in a white polythene bag, were not found containing any inflammable material or its residues. In respect of iron stove, it was found to be kerosene tagged with some blue coloured dye. The report (Ex.P3) in respect of burnt bones and ash, they were

reported to be human in origin. However, opinion regarding sex could not be given as bones in exhibit were too fragmentary and insufficient.

During investigation, Lachchman Singh was examined as PW1. The prosecution also examined Chand Ram, younger brother of Lachchman Singh, as PW5, apart from examining Investigating Officer ASI Ram Niwas as PW6 and SI Rajnish as PW7 from PS Mandi. Incriminating circumstances appearing in the prosecution evidence were put to the accused as required under Section 313 of the Cr.P.C. In the statement under Section 313 of Cr.P.C., the stand of the accused is that Sunita died due to prolonged sickness. Information was given to complainant and his family members on the same day. The dead body was cremated in the presence of complainant and his family members with their consent. It is thereafter in order to extract money they got registered a false case. The accused produced DW1 Varinder Singh as a defence witness as well.

After considering the evidence recorded, learned trial Court granted benefit of doubt to Ramesh but convicted the other three accused i.e. husband, father-in-law and mother-in-law of the deceased.

The most material point for consideration is whether PW1 Lachchman Singh was informed of the death of his daughter and whether he participated in the cremation on 04.07.2008.

In the first version of Ex.P1, statement made to police, Lachchman Singh refers to a call from his son-in-law/accused Ranbir Singh on his mobile phone on 05.07.2008 at about 6.00 am informing him about the death of his daughter on 04.07.2008. However, the prosecution has not produced any call details of having received such phone call from

accused. Still further, the information regarding death, as per Lachchman Singh, was received at 6.00 AM but the statement Ex.P1 was made only at 5:30 PM, i.e. almost after 12 hours. The village of Lachchman Singh and that of the in-laws of his daughter is at a distance of 10-12 KMs. The delay in lodging of FIR has not been explained. Still further, it is a categorical statement of Lachchman Singh that he did not found any sign of burning on the ground i.e. the reason said to be given by his son-in-law on telephone but he noticed few drops of blood on the floor. Lachchman Singh further could not produce any list of dowry articles. He admitted in the cross-examination that he did not make any complaint to police regarding demand of dowry. He did say that several Panchayat were convened but could not give any date, month or year when the Panchayat were convened. He admitted that he has not made his daughter to undergo medico legal examination at any time after she complained of beatings. His daughter came on 01.07.2008 and sent back. She went alone. He denied that none of his relatives were present at the time of cremation of his daughter and that he cannot produce any witness who may say that the accused persons had murdered Sunita. He denied the suggestion that his daughter has been cremated with his consent.

PW5 Chand Ram, brother of Lachchman Singh, deposed that Rs.2,50,000/- was spent in marriage apart from Rs.50,000/- spent on meals in the marriage party. Such is not the statement of Lachchman Singh. He deposed that he paid loan of the accused availed from Cooperative Society but no such documentary proof has been produced nor is such stand of the father of the deceased. He deposed that Sunita was sent to her matrimonial home with her brother Vinod on 03.07.2008. But as per father, she went

alone. He deposed that on information when they reached the house of the accused, they did not find any sign of burning but the floor of the house was washed and few drops of blood were seen on the wall. He further stated that in fact Sunita had not died and she was taken to cremation ground when she was alive in Jhota Buggi (bullock cart) and she was unconscious. He also stated that his niece had a son but he cannot tell where he is residing and they have not filed any petition for taking custody of that child. The accused persons have no business rather they are casual labourers. He deposed that the police have photographed the place of occurrence and he had shown the blood on the wall to the police. The police had taken photograph of blood on the walls. He denied the suggestion that they were informed and had joined the cremation of Sunita.

PW6 Investigating Officer ASI Ram Niwas has not noticed any sign of blood at the place of occurrence on 06.07.2008. The Investigating Officer did not join any person from village Mandi on their first visit of place of occurrence on 05.07.2008. They did not visit the cremation ground to exhume part of body, if any available at that time on 05.07.2008. He has not taken any photographer to the village on 06.07.2008 and did not notice any struggle at the place of occurrence. His statement that all the villagers refused to come forward in the cremation ground cannot be accepted as he reached late on 05.07.2008. Obviously, at that time there will be no villager available. He did not make any effort to associate any resident of village in the investigations. He denied that it was a case of natural death and that Lachchman Singh and his family members were informed in time and they were present at the time of cremation of Sunita.

PW7 SI Rajnish deposed that from the place of occurrence one iron stove and few pieces of burnt clothes were lifted on 06.07.2008. Accused Phooli Devi and Ramesh were arrested on 14.07.2008. He deposed that on 05.07.2008, they did not visit the cremation ground as the complainant did not ask them to visit the cremation ground. He admitted that he could not notice presence of blood over the floor or over the walls. He did not find any clue or sign regarding any kind of struggle. He did not find any sign of smoke over the roof or the walls.

On the other hand, DW1 Varinder Singh resident of village of the accused deposed that Sunita, wife of Ranbir, was ill for some time. Ranbir and Sunita were living separately from the parents of Ranbir. At about 3:00 PM on 04.07.2008 they came to know that Sunita has died when the family members informed the parents of Sunita. After some time, parents of Sunita and other persons reached village. Lachchman Singh, father of Sunita, who is present in Court, also reached in village Mandi. The dead body of Sunita was cremated in presence and with permission of Lachchman Singh and his family members. In the cross-examination, he was asked the question regarding illness of Sunita or the hospital in which she was getting treatment and the date on which Sunita was cremated. No question has been asked from him in respect of presence of Lachchman Singh or other family members at the time of cremation except getting information that complainant party has come to village only on the day when the case was registered.

With this background, the prosecution case is required to be examined. PW1 Lachchman Singh in his statement (Ex.P1) has disclosed that he got information about death of his daughter on mobile on

05.07.2008 at 6:00 AM but the prosecution has not produced any evidence of receipt of a call on the mobile number of Lachchman Singh. The police had reached on 05.07.2008 at village Mandi but no attempt was made to go to the cremation ground or to exhume any part of the body which may be left after cremation on an earlier day. No resident of village Mandi has been associated by the prosecution during the course of investigation. None has been examined as to whether Sunita died un-natural death. It is admitted by PW6 Ram Niwas and PW7 SI Rajnish that none of the villagers of village Mandi was associated. On the other hand, the defence has examined DW1 Varinder Singh who has deposed that Lachchman Singh and his family members were present at the time of cremation. Lachchman Singh and Chand Ram appearing as PW1 and PW5, respectively, have been suggested that they were in fact present at the time of cremation. When DW1 Varinder Singh appeared in the Court, he was categorical that Lachchman Singh present in Court was present at the time of cremation. Still further, the prosecution started with the information attributed to the appellant Ranbir Singh that Sunita died of burn injuries but no proof of fire was found from the house of the appellants. The story of blood spots either on the wall or on the floor was not found to be true as none was noticed by PW6 Investigating Officer Ram Niwas and PW7 SI Rajnish.

Learned trial Court has convicted the appellants for an offence under Section 304-B IPC on the ground that Rs.20,000/- was demanded. Even the said allegation is not proved by the prosecution. Apart from the bald statement, the prosecution has not examined any independent person who could depose regarding the demand of dowry raised by the appellants.

PW1 Lachchman Singh has stated that Sunita was made to go alone on 03.07.2008 whereas PW5 Chand Ram deposed that Vinod, brother of Sunita, dropped her to matrimonial home. Vinod has not been examined. Admittedly, the parties are working as casual labourers. Their means are limited. To accept raising of demand of dowry, same is to be farfetched more so when there is no witness examined to prove such demand. As per PW1 Lachchman Singh, he has taken Panchayat number of times but none has been examined.

In the absence of cause of death to return a finding that it was unnatural death or in the absence of the proof of demand of dowry, we find that the prosecution has failed to prove the charges levelled against the appellants.

Consequently, while granting benefit of doubt, we accept the present appeal; set aside the judgment dated 27.01.2010/29.01.2010 and acquits the appellants of the charges levelled against them.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 11, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE