

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2105-SB of 2004

DATE OF DECISION: MAY 27, 2015

SUKHBIR SINGH @ BILLA & OTHERS

...APPELLANTS

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest?

Yes

PRESENT: MR. R.S.CHEEMA, SR.ADVOCATE
WITH MR. R.K.TRIKHA, ADVOCATE
FOR APPELLANTS NO.1 AND 3.

MR. BIPIN GHAI, SR.ADVOCATE
WITH MR. PARAS TALWAR, ADVOCATE
FOR APPELLANT NO.2.

MS. RITU PUNJ, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. As against the conviction under Section 304-B IPC and the sentence of 10 years R.I. passed by the trial Court as against each of the accused, the accused have jointly preferred the present appeal.

2. When the matter was taken up for arguments on 19.5.2015, death certificate of appellant No.3 Ajit Singh was produced. On verification, learned Addl.A.G., Punjab admitted the fact that accused Ajit Singh had died. Therefore, the appeal qua accused Ajit Singh abated as per the order passed on 19.5.2015.

3. It is the case of the prosecution that on 5.6.2002 at about 11.30 p.m., PW3 Harbhajan Singh, father of deceased Balwinder Kaur received a

telephonic message from village Darongla that his daughter had expired. He proceeded alongwith his son PW4 Avtar Singh to village Dorangla and found the dead body of Balwinder Kaur lying on a cot in the verandah of the house of the accused. They noticed ligature marks around her neck. PW3 suspected some foul play. He arrived at a conclusion that his daughter was hanged by her husband Sukhbir Singh, his brother Nirmal Singh and his father Ajit Singh.

4. PW3 Harbhajan Singh lodged first information report alleging that deceased Balwinder Kaur was given in marriage to accused Sukhbir Singh on 30.11.1995. At the time of marriage, sufficient dowry was given. But unfortunately, Balwinder Kaur was issueless. Accused Sukhbir Singh forced her to bring a motorcycle and other dowry articles from her parents. PW3 expressed his inability to meet the illegitimate demand of the accused. Balwinder Kaur was turned out of her matrimonial house by her husband informing her that she could enter into his house only when she brought motorcycle for him from her parents.

5. PW1 Dr.Gopal Raj medico-legally examined accused Sukhbir Singh on 12.6.2002 and Ajit Singh on 5.7.2002 at about 10.00 a.m. He did not find any injury on those two accused.

6. PW2 Dr.H.S.Dhillon conducted autopsy on the dead body of Balwinder Kaur. He found the tongue of the dead body protruding out with cuts on it. Blood tinged secretions were coming out of the mouth and nostrils. There were abrasion and contusion around the neck. He also found dribbling of blood tinged secretion on either side of mouth extending

horizontally. After the receipt of the report of the medical examiner, he opined that the death has been caused by strangulation which was ante mortem in nature and was sufficient to cause death in the ordinary course of life.

7. PW3 Harbhajan Singh spoke about the marriage of his daughter with accused Sukhbir Singh. He also deposed that accused sent his daughter to his house about four times raising demand of motorcycle, colour television and cash amount. He also stated that his daughter informed him that accused harassed her for not bringing motorcycle, colour television and cash amount.

8. PW4 Avtar Singh, the brother of deceased Balwinder Kaur deposed that accused demanded motorcycle and cash amount. His sister came to the parental house for four times as a result of demand of above articles.

9. PW8 SI Baldev Singh was the investigating officer in this case. He spoke about the registration of a formal FIR based on the statement suffered by PW3 Harbhajan Singh, the arrest of the accused and the charge-sheet laid by him after concluding the investigation.

10. In his statement under Section 313 Cr.P.C., accused Sukbir Singh took a plea that his wife lived happily for more than 6 years. He never maltreated his wife demanding any dowry. He had his own scooter and his father too had his scooter. They have television set in their house. As his wife did not conceive, he had made arrangement for medical treatment for her from various Doctors. Lastly, they approached one Baba

who gave jal bhabhuti and advised him not to take liquor. But on the date of occurrence, he consumed liquor at which his wife got angry and quarreled with him alleging that he was neutralizing her treatment. On that evening she did not prepare food. She bolted the door from inside which he discovered at 8.30 p.m. He had to open the door after breaking the glass ventilator. Thereafter, he discovered that she had committed suicide by hanging.

11. Accused Nirmal Singh took up a plea in his statement under Section 313 Cr.P.C. that he was working as an Inspector in Agriculture Department and was posted at Mukerian. On 5.6.2002, he had been to village Hardo Khundpur in connection with his duty and collected samples of soil from that village. He has been living at Mukerian far away from his parental house for 2½ years.

12. On the side of the defence, the accused examined as many as 9 witnesses.

13. DW1 Dr.Uma Kaushal deposed that on 14.6.2001, deceased Balwinder Kaur came to her for treatment in OPD. She prescribed medicine in OPD slip Ex.DB for pain in abdomen and uterus.

14. DW2 Kundan Singh deposed that the relationship of the deceased with her husband was cordial. Accused Ajit Singh and Sukhbir Singh were having separate mess. Accused Nirmal Singh was residing at Mukerian. On 5.6.2002 at about 9.00 p.m., he heard a noise and reached the house of the accused and found that door of the house of accused Sukhbir Singh was closed. Accused Sukhbir Singh was trying to open the door. On

opening the door, he found that wife of accused Sukhbir Singh was hanging with the ceiling fan by putting turban around her neck. The dead body of Balwinder Kaur was removed from the ceiling fan and was put on the cot.

15. DW3 Som Raj deposed that he was the Manager of spiritual destination run by Baba Badbhag Singh. The ladies who have no child used to come to Baba who provides them jal and bhabhuti to conceive a child. Accused Sukhbir Singh and his wife used to meet him. The Baba also gave them jal and bhabhuti. Restriction was imposed that the couple should not take meat, egg and liquor. The wife of accused Sukhbir Singh came to him after one week and complained that accused Sukhbir Singh started taking liquor.

16. DW4 Mohan Singh spoke about the fact that on 5.6.2002 accused Nirmal Singh visited his village for collecting samples of soil.

17. DW5 Dr.Gurdip Kaur deposed that she examined Balwinder Kaur on 5.5.1996, 31.5.1996, 4.6.1996 and 10.9.1996. As per the prescriptions Ex.DC to DF, treatment had been given for vaginal infection. Thereafter, treatment was given as Balwinder Kaur faced infertility.

18. DW6 Dr.Vijay Laxmi Mahajan spoke about the treatment she gave as per the prescription Ex.PG to Balwinder Kaur for pelvic infection.

19. DW7 Dr.Gagandeep Bajwa deposed that she prescribed medicine to Balwinder Kaur on 17.7.1996 for general anemia and weakness and also for pelvic inflammation.

20. DW8 Jasbir Singh deposed that on 5.6.2002, accused Nirmal Singh had been to Channi Nand Singh to collect the sample of earth.

21. DW9 Dr.Neeran Kirpal deposed that as per the prescriptions Ex.DM and DN, she treated Balwinder Kaur on 16.6.2001 and 15.7.2001 for pelvic inflammation.

22. The trial Court having adverted to the above evidence on record came to the conclusion that the prosecution has established beyond reasonable doubt that accused committed an offence punishable under Section 304-B IPC.

23. In order to attract the offence under Section 304-B IPC, the prosecution should establish firstly that the marriage of the accused with the deceased that took place within 7 years; secondly that death was in abnormal circumstances; thirdly that there was cruelty or harassment in connection with demand of dowry; fourthly that such a cruelty or harassment was committed soon before her death.

24. The first information report has been lodged by PW3 Harbhajan Singh, the father of deceased Balwinder Kaur as though Balwinder Kaur had died due to homicidal violence. Very strangely, PW2 Dr.H.S.Dhillon who conducted autopsy on the dead body of Balwinder Kaur came out with an opinion that strangulation, which was ante mortem in nature, was the cause of death of Balwinder Kaur.

25. It is true that no charge was formulated as against the accused under Section 302 IPC. At any rate, to clear the doubt as to whether Balwinder Kaur died due to homicidal violence, it is better to refer to the Modi's Medical Jurisprudence & Toxicology. The prominent and distinct difference between hanging and strangulation as per the above text of the

reputed author is that in hanging there will be a dribbling of saliva out of the mouth down on chin and chest, whereas in strangulation, there is no such dribbling of saliva. In the instant case, PW2 Dr.H.S.Dhillon had clearly noted down that there was dribbling of saliva out of the mouth of deceased Balwinder Kaur. But quite unfortunately, he had not properly adverted to such a distinct feature found on the dead body to distinguish between hanging and strangulation. Therefore, it is a definite case of death due to hanging and not due to strangulation.

26. Further, DW2 Kundan Singh has spoken to the fact that he rushed to the house of accused Sukhbir Singh where he found accused Sukhbir Singh making an attempt to break open the door. He also joined hands and ultimately after breaking open the door, he found Balwinder Kaur hanging in the ceiling fan. Therefore, it is not definitely a case of murder as projected in the first information report or in the opinion expressed by PW2. The trial Court has rightly chosen not to frame a charge under Section 302 IPC.

27. The evidence of PW3 Harbhajan Singh, the father of the deceased and PW4 Avtar Singh, the brother of the deceased, has to be thoroughly analyzed to find whether there was any demand of dowry which resulted in cruelty or harassment.

28. Learned senior counsel appearing for the appellants rightly pointed out referring to the allegation found in the first information report that PW4 never spoke about either cruelty or harassment caused by the accused. The FIR is totally silent about the allegations which was made

later on by PW3 and PW4 that Balwinder Kaur was subjected to cruelty or harassment in connection with demand of dowry.

29. Further as pointed out by learned senior counsel appearing for the appellants, it was only accused Sukhbir Singh who was the target of attack by the informant in the FIR lodged by him. But the first informant chose to attribute the demand of dowry to all the accused when he deposed before the Court. Though the demand of colour television was not there in the first information report, it was also added during the course of evidence by PW3. But, it is to be noted that he admitted unambiguously that his daughter Balwinder Kaur lived a peaceful life with Sukhbir Singh for about 3-4 years. PW3 and PW4 had not specifically spoken about the cruelty or harassment meted-out to the deceased by the accused even in their testimony. The fact remains that this is not a case where the accused stood charged for the demand of dowry.

30. PW3 has come out with a strange case during the course of evidence that his daughter was issueless and therefore, the accused demanded dowry. As rightly pointed out by learned senior counsel for the appellants, the case of the prosecution will have to be tested on probability of the case projected by the prosecution.

31. It is not a case where there was frequent quarrel between the deceased and the appellants. They had been living peacefully as husband and wife. No cruelty had been alleged and established by the prosecution. There was no mediation by the panchayatdars. There was no earlier complaint made either by the deceased or by her father or brother.

32. PW3 has categorically admitted that not only accused Sukhbir Singh, but also his father Ajit Singh possessed their individual scooters. In such circumstances, the accused would not have demanded motorcycle when they have already got two-wheelers. It has also been contended by accused Sukhbir Singh in his statement under Section 313 Cr.P.C. that television set was very much available in their house. Therefore, there was no question of demand of television by the accused. Even otherwise, the allegation of demand of colour television did not appear in the first information report.

33. PW3 and PW4 were not in a position to state as to the date on which the demand of dowry was made. There is virtually no evidence that the deceased was harassed by the accused to meet their demand of dowry. There is no allegation that accused abused or beat the deceased to force her to yield to their demand.

34. From the evidence of DW4 Mohan Singh and DW8 Jasbir Singh the defence has established that accused Nirmal Singh had been far away at the time of occurrence in connection with the discharge of his official duty. DW2 Kundan Singh spoke about the separate mess and establishment accused Nirmal Singh had. Even otherwise, there is no allegation of demand of dowry made as against accused Nirmal Singh in the first information report lodged by PW3 Harbhajan Singh. Firstly, the FIR does not refer to the role of accused Nirmal Singh. Secondly, PW4 also failed to speak about the role of accused Nirmal Singh.

35. It is found that there is no reliable evidence of demand of

dowry subjecting deceased Balwinder Kaur to cruelty. General and vague allegation of PW3, the father of the deceased and PW4, the brother of the deceased does not inspire confidence. PW8 Baldev Singh has admitted that neighbours infact informed him that they lived together peacefully. No witness from the neighbourhood was examined by the investigating official. Further, in my considered view, it is highly doubtful that accused had chosen to make such a petty demand after 3-4 years of their marriage.

36. It is a settled position of law that mere demand of dowry alone will not attract the penal provision under Section 304-B IPC. Likewise, mere cruelty or harassment committed by the accused without any demand of dowry also would not attract the above penal provision. In other words, the prosecution should establish that there was a demand of dowry which resulted in cruelty or harassment to attract the above penal provision. In the instant case, in my considered view, the prosecution failed to establish the above ingredients which are necessary to establish the charge under Section 304-B IPC.

37. I find further that there is no evidence as to how much amount in cash was demanded by the accused soon before her death. A vague allegation that there was demand of amount in cash weakens the case of the prosecution.

38. Learned Addl.A.G., Punjab would submit that there was a specific allegation of demand of motorcycle. There is also evidence to show that about four times Balwinder Kaur returned to the parental house on account of demand of dowry. It is his further submission that the site plan

would establish that accused Nirmal Singh also resided in the house of accused Ajit Singh.

39. I have already dealt with the allegation of demand of motorcycle which is found to be quite abnormal, inasmuch as accused Sukhbir Singh and his father also possessed scooters. There is no allegation in the first information report that Balwinder Kaur returned to the parental house about four times on account of demand of dowry made by the accused. The site plan produced by the prosecution cannot be treated as a material evidence. Whereas, the evidence of DW2, DW4 and DW8 would go to establish that Nirmal Singh had a separate establishment and has been working at a station far away from the house of his father.

40. The evidence of DW1 Dr.Uma Kaushal, DW5 Dr.Gurdip Kaur, DW6 Dr.Vijay Laxmi Mahajan, DW7 Dr.Gagandeep Bajwa, and DW9 Dr.Neeran Kirpal would go to establish that deceased Balwinder Kaur was taking treatment for quite a long time on account of infertility problem she had. From the evidence of DW3 Som Raj, it is found that accused Sukhbir Singh had chosen to breach the prescription made by Dera Baba Badbhag Singh.

41. The accused has set up an effective defence that Balwinder Kaur was upset as accused Sukhbir Singh had chosen to breach the prescription by the spiritual leader. It is quite probable that she would have committed suicide vexed with her perennial infertility issue and the non-co-operation on the part of her husband who chose to take drinks against the spiritual advice. The above plea set up by accused Sukhbir Singh in his

statement under Section 313 Cr.P.C. is found to be probable.

42. For all these reasons, I find that the prosecution has miserably failed to establish that accused Sukhbir Singh and Nirmal Singh demanded dowry and committed cruelty and harassment in connection with the demand of dowry soon before the death of Balwinder Kaur. Therefore, the judgement of conviction and sentence passed by the trial Court stands set aside and as a result, accused Sukhbir Singh and Nirmal Singh are acquitted of the charge under Section 304-B IPC and consequently, the appeal is allowed. The appellants are on bail. Their bail bonds executed by them stand discharged.

May 27, 2015
Gulati

(M. JEYAPPAUL)
JUDGE