

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

Criminal Appeal No. S.1940 -SB of 2003
Date of decision

Baljinder Singh and another

..... Appellants.

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 : Ms. Ruchi Sekhri, Advocate for appellant No.2.
Mr. Yogesh Gupta, AAG, Punjab.

K.C.PURI, J.

Baljinder Singh and Seeso accused-appellants have directed the present appeal against the judgment and order dated 17.09.2003 passed by Shri S.N.Aggarwal, the then learned Sessions Judge, Jalandhar vide which accused/appellants stood convicted under Sections 498-A and 304-B of the Indian Penal Code (in short – the IPC) and sentenced to undergo rigorous imprisonment for a period of eight years each and to pay a fine of ₹2000/- each, in default thereof to further undergo rigorous imprisonment for a period of three months under Section 304-B of the IPC

and to further undergo rigorous imprisonment for a period of two years each and to pay a fine of ₹500/- each and in default thereof to further undergo rigorous imprisonment for a period of one month under Section 498-A of the IPC. Both the sentences were however, ordered to run concurrently.

2. The prosecution story in brief is that Kamaljit Kaur deceased was married to Baljinder Singh alias Tony (accused) about 2½ years prior to the occurrence. Dowry was given to her by her father to his capacity and one week after the marriage of Kamaljit Kaur, her father Balbir Singh had gone Behrin. After marriage, Baljinder Singh and his mother Seeso accused asked Kamaljit Kaur that they need money for defending litigation regarding land and asked her to bring ₹10,000/- from, her parents. On the demand of Kamaljit Kaur, Gurmukh Singh complainant and his aunt Avtar Kaur borrowed money of ₹10,000/- from the relative and had given the same to Baljinder Singh. Thereafter, Baljinder Singh and his mother Seeso continued asking Kamaljit Kaur to bring more money/articles from her parents. When Kamaljit Kaur told her in laws that her parents had spent enough on her marriage and even thereafter they had made payment of ₹10,000/- to them, they were unable to pay more. For this reason, Baljinder Singh and his mother Seeso started harassing Kamaljit Kaur and they had also quarreled with Kamaljit Kaur many times. Whenever Kamaljit Kaur told the complainant and her mother about their behaviour, they used to persuade Kamaljit Kaur to bear with it and they used to finish the matter by persuasion.

3. It is further alleged that on 31.7.2001 at about 11a.m., Baljinder Singh and his mother Seeso accused had come on Tata Sumo bearing registration No. PB-08-V-2533 and brought Kamaljit Kaur to his house in village Dhaliwal. At that time, Kamaljit Kaur was semi conscious. Baljinder Singh and his mother Seeso accused told them that Kamaljit Kaur had consumed poison and they had taken Kamaljit Kaur to Doctor Khera in Nurmahal and from there they took her to Nakodar in Civil Hospital. The doctor gave first aid and then referred Kamaljit Kaur to Civil Hospital, Jalandhar. Accused told them that they had come to take the complainant with them. On this Gurmukh Singh complainant his aunt Avtar Kaur and his Taya (uncle) Gurmej Singh sat in Tata Sumo alongwith Baljinder Singh and his mother and took Kamaljit Kaur to Civil Hospital, Jalandhar but the doctor informed them that Kamaljit Kaur had died. On the basis of aforesaid statement, FIR was got recorded. Post mortem examination was got conducted. Statements of the prosecution witnesses were recorded. After completion of necessary investigation challan against the accused was presented in the Court.

4. Copies of the documents were supplied to the accused free of costs. The Illqua Magistrate committed the case to the Court of Session as the offence alleged against the accused was exclusively triable by the said Court. The accused were charge-sheeted for offences punishable under sections 304-B and 498-A of the IPC to which, the accused pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined Dr. Jai Krishan, Medical Officer, Civil Hospital, Phillaur as PW-1, Dalip Singh draftsman as PW-2, HC Joginder Singh as PW-3, Constable-II Kulwant Singh as PW-4, Dr. Mukesh Kumar as PW-5, Dr. Harinderpal Singh as PW-6, Ramesh Lal as PW-7, Constable Jarnail Singh as PW-8, Gurmukh Singh complainant as PW-9, Avtar Kaur PW-10, HC Bakhshish Lal as PW-11, ASI Manjit Singh as PW-12 and closed the prosecution evidence.

6. In their statements recorded under Section 313 Cr.P.C., the accused have denied all the prosecution allegations and pleaded their false implication. Accused Seeso termed the prosecution evidence to be false and stated that she has been falsely implicated in his case. Her son Baljinder Singh had very cordial relations with his wife Kamaljit Kaur. He had always treated her with utmost love and affection. She was the mother of an infant son and they were happily living. Unfortunately, she had no brother and Gurmukh Singh PW-9 her cousin exploited and had demanded loan. On the assurance of Kamaljit Kaur, her son had given ₹30,000/- to Gurmukh Singh at the time of his marriage. Later her other son who was in England sent more than a lac of rupees from England and Gurmukh Singh learnt about it. He again demanded ₹50,000/- for his business/electrical shop in the village. Her daughter-in-law wanted her to pay the loan but her son Baljinder Singh replied that he (Gurmukh Singh) has not given back ₹30,000/- given by him at the time of marriage. Her daughter in law Kamaljit Kaur took it ill and Gurmukh Singh further pressurized her and showed his resentment on the refusal of her son. In their absence, deceased

might have committed suicide by consuming poison. Her son Baljinder Singh plies a taxi and cultivates more than 10 acres of land. Her other son is in England and her son Baljinder Singh and herself never demanded any financial help from his in-laws, who had no capacity to financially help them. Similar statement was made by accused Baljinder Singh. The accused examined Lakhbir Singh as DW-1, Renu Bala DW-2, Joginder Singh DW-3, Amarjit Singh as DW-4 and Devinder Kumar as DW-5 and closed the defence evidence.

7. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment and order dated 17.09.2003 , as aforesaid.

8. Feeling dissatisfied with the aforesaid judgment and order dated 17.09.2003, the present appeal has been directed.

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

10. The instant appeal was preferred by Baljinder Singh and Seeso. On 07.01.2015, report from the police station was received in which it is mentioned that appellant No.1-Baljinder Singh has expired and death certificate has also been placed on file. So, appeal qua appellant No.1-Baljinder Singh was dismissed as having been abated vide order dated 07.01.2015 passed by this Court. Now the appeal of appellant No.2-Seeso only survives.

11. Learned counsel for appellant No.2-Seeso has submitted that according to the prosecution version, there are allegations that ₹10,000/-

was demanded by the present appellant-Seeso and Baljinder Singh-appellant No.1 (since deceased) for defending litigation. The said amount is stated to have been paid to Baljinder Singh-appellant No.1 (since deceased). It is further submitted that prosecution has not placed on record any documentary evidence that any litigation in respect of accused was pending anywhere. It is further submitted that though there was allegation for demand of amount but the time, place and date of said amount has not been mentioned in the FIR. The prosecution witnesses made improvements in the court by saying that 15 days prior to the death, the demand was made. Moreover, PW-9 Gurmukh Singh (complainant) and PW-10 Avtar Kaur are discrepant regarding the said demand. Gurmukh Singh (complainant) has stated that accused's family was demanding more money, dowry articles and a scooter, whereas PW-10 Avtar Kaur has stated that Kamaljit Kaur (deceased) told her about the demand of money by the appellants. She has nowhere stated about the demand of scooter and dowry articles. Otherwise also, from the testimony of PW-9 Gurmukh Singh (complainant) and PW-10 Avtar Kaur, no specific demand was made by the appellants. It is further submitted that the appellants have placed on record the documents which shows that prior to the marriage, the appellants have a motorcycle as well as Sumo car. So, in these circumstances, it is not possible to demand for a scooter. Moreover, the factum of demand of scooter and dowry articles is not mentioned in the FIR.

12. Learned counsel for the appellant No.2-Seeso has further submitted that according to prosecution story, the deceased was taken to the

house of complainant at 9:00 AM and she remained alive till 3:00 PM. She remained admitted in the hospital but no dying declaration was recorded.

13. Learned counsel for the appellant No.2-Seeso has submitted that no complaint to the police or Panchayat was made by the family members of the complainant. It is further submitted that infact PW-9 Gurmukh Singh (complainant) has raised loan of ₹30,000/- from Balwinder Singh. The present false case has been registered against Baljinder Singh and present appellant Seeso in order to pressurize upon them not to demand the said amount of loan.

14. Learned counsel for appellant No.2-Seeso has further submitted that present appellant is more than 70 years old and the child of Kamaljit Kaur (deceased) and Baljinder Singh is being looked after by her. His father i.e Baljinder Singh- appellant No.1 has also died and as such, there is none else to look after the said child. It is further contended that prosecution in order to prove the ingredients of offence under Section 304-B IPC the prosecution has to prove that soon before her death, the deceased was subjected to cruelty in connection with demand of dowry articles at the hands of appellants. In case the version given by PW-9 Gurmukh Singh (complainant) and PW-10 Avtar Kaur is taken as it is, in that case, it is not proved that prior to the death also, Kamaljit Kaur (deceased) was subjected to cruelty in connection with dowry articles.

15. Learned State counsel has supported the judgment passed by the trial court and has submitted that deceased died within seven years of her marriage i.e after two and half years of her marriage with Baljinder

Singh-appellant No.1 (now deceased). It is further contended that she died unnatural death by consuming poison. With the testimonies of PW-9 Gurmukh Singh (complainant) and PW-10 Avtar Kaur, it was proved that deceased Kamaljit Kaur was subjected to cruelty at the hands of appellants. So, conviction under Section 304-B IPC is made out.

16. I have considered the submissions made by both the sides and have gone through the records of the case.

17. In order to prove the offence under Section 304-B IPC, the prosecution is required to prove the following ingredients:-

“304-B Dowry Death- Ingredients of Section – *In order to seek conviction under Section 304-B, I.P.Code against a person for the offence of dowry death, the prosecution is obliged to prove that : (1) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;*

(2) Such death should have occurred within seven years of her marriage

(3) The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(4) Such cruelty or harassment should be for, or in connection with the demand for dowry; and

(5) To such cruelty or harassment the deceased should have been subjected soon before her death.

18. So far as the first two ingredients are concerned, learned counsel for the appellant No.2-Seeso has not disputed the presence of those ingredients. The death of Kamaljit Kaur (deceased) was an unnatural death

i.e by consuming aluminum phosphate and secondly, the death has taken place within seven years of her marriage i.e two and half years of marriage. The argument advanced by learned counsel for the appellant No.2-Seeso resolves around the fact that prosecution has failed to prove that soon before the death of deceased, she was subjected to cruelty in connection with demand of dowry at the hands of appellants.

19. First of all, the allegations made in the FIR are to be taken into consideration. The FIR in the present case was recorded at the instance of Gurmukh Singh (complainant) and in the said FIR, it is mentioned that marriage of Kamaljit Kaur was solemnized with Baljinder Singh-appellant No.1 (now deceased) two and half years prior to the occurrence. One year after the marriage, Baljinder Singh-appellant No.1 (now deceased) and appellant NO.2-Seeso demanded ₹10,000/- for litigation of land. It is further mentioned in the FIR that Gurmukh Singh PW-9 (complainant) borrowed money from his relative and had given the same to Baljinder Singh-appellant No.1 (now deceased). It is further mentioned in the FIR that thereafter Baljinder Singh-appellant No.1(now deceased) and his mother Seeso-appellant No.2 (present appellant) directed Kamaljit Kaur to bring more money and articles from her parents and quarrel was raised many a times and the matter was settled by the complainant. It is further mentioned in the FIR that both the appellants came in Tata Sumo and brought Kamaljit Kaur (deceased) to his house in semi-conscious condition. However, while appearing in the Court as PW-9, Gurmukh Singh (complainant) has stated about the demand of ₹10,000/- made one year after the marriage and the

amount is stated to have been paid to Baljinder Singh-appellant No.1 (now deceased) and has further submitted that 15 days prior to her death, Kamaljit Kaur (deceased) came to his house and told him that the accused/appellants were demanding more money, dowry articles and a scooter many a times. However, PW-10 Avtar Kaur has stated that 15 days prior to the death, Kamaljit Kaur (deceased) told her about the demand of money. Avtar Kaur has not stated about the demand of scooter and dowry articles.

20. The prosecution witnesses PW-9 Gurmukh Singh and PW-10 Avtar Kaur have made improvements regarding period of demand i.e 15 days prior to the death of Kamaljit Kaur (deceased). In the FIR, no time, place and date is mentioned regarding the demand raised by both the appellants and only general demand has been made. It is not disputed during the course of arguments that dead body of Kamaljit Kaur was not bearing any mark of injury. So, the evidence of prosecution fall short of proving the fact that soon before the death of Kamaljit Kaur (deceased), she was subjected to cruelty at the hands of both the appellants regarding demand of dowry articles. There are general allegations of demand of dowry against the appellants. The witnesses PW-9 Gurmukh Singh (complainant) and PW-10 Avtar Kaur are discrepant regarding the demand of dowry. PW-9 Gurmukh Singh (complainant) has stated about the demand of money, one scooter and other articles, whereas PW-10 Avtar Kaur has stated about the demand of money only. It has come on record that prior to the marriage, Baljinder Singh-appellant No.1(now deceased) was having a motorcycle as well as a Sumo car. In the absence of specific demand of any article, it cannot be said

that third ingredient of Section 304-B IPC “*soon before the death the deceased was subject to cruelty*” is fulfilled.

21. So, in view of the above, I have no hesitation in holding that trial court has committed grave error by convicting the appellant no.2-Seeso under Section 304-B IPC. Consequently, the appeal of appellant No.2-Seeso stands partly accepted and she stands acquitted under Section 304-B IPC.

22. So far as conviction of appellant No.2-Seeso under Section 498-A IPC is concerned, that does not call for any interference. Seeso-appellant No.2 was living with the deceased and she has to explain the reason for unnatural death of Kamaljit Kaur (deceased). So, conviction of appellant No.2-Seeso under Section 498-A IPC stands affirmed.

23. Now reverting to the quantum of sentence, so far as Section 498-A IPC is concerned, as per the conviction slip, the appellant No.2-Seeso has already undergone incarceration for a period of 02 years and 17 days out of the substantive sentence of 02 years under Section 498-A IPC. So, the sentence of appellant No.2-Seeso stands affirmed under Section 498-A IPC.

The appeal stands disposed of accordingly.

A copy of the order be sent to the trial court for strict compliance.

12.01.2015
shalini

(K. C. PURI)
JUDGE