

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

CRA-S-419-SB of 2004

Date of Decision : 17.12.2015

Joginder Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr.G.S.Sidhu, Advocate
counsel for the appellant.

Mr.P.S.Bajwa, DAG, Punjab.

- 1. Whether Reporters of Local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 23.01.2004, vide which appellant Joginder Singh has been held guilty and convicted for the offence punishable under Section 304-B of Indian Penal Code (hereafter called the 'IPC') and the order on quantum of sentence of the even dated vide which he was sentenced to undergo rigorous imprisonment for a period of eight years and to pay a fine of Rs. 5000/-, in default of

payment of fine he was further ordered to undergo rigorous imprisonment for a period of six months.

2. The case of the prosecution in nutshell is that Balwinder Kaur, the daughter of complainant Mohinder Singh was married about four years back with appellant Joginder Singh. The complainant had given sufficient dowry in the marriage as per his capacity. Two children i.e. one male and one female were born from this wedlock. Female child namely Gagandeep Kaur died, who was one and half years of age. Male child namely Kamaljit Singh was aged about one year. Since the marriage, the in-laws of Balwinder Kaur use to beat her and were demanding the dowry. But, complainant was not in a capacity to give more dowry. On 17.06.2002, Balwinder Kaur alone came to her parental house at village Chakku Ladana and told that her in-laws were demanding the motorcycle and were saying that if motorcycle and money is not brought by her, she will be killed. The complainant asked her not to worry and he will patch up the matter with her in-laws. On 18.06.2002, Sahib Singh, the son of the complainant left deceased Balwinder Kaur at the house of appellant Joginder Singh in village Dhanetha. On 19.06.2002, appellant Joginder Singh, the son-in-law of the complainant went to the house of PW-6 Lakha Singh, the co-brother of the complainant and told

that his wife Balwinder Kaur does not do any household work and the smell of medicines is being emitted in the house. Thereafter, appellant Joginder Singh went back to his village. This fact was told to the complainant by Lakha Singh. On 22.06.2002, at about 10.00 a.m, Lakha Singh telephonically informed the complainant that four persons of village Dhanetha had visited him and told that Balwinder Kaur had died. On hearing this, he along with his sons Joga Singh, Fateh Singh, his brother Virsa Singh and Gurmukh Singh son of Gian Singh came to village Dhanetha and saw that Balwinder Kaur was lying dead in the house. There were injury marks on her back. The complainant pleaded that his daughter has been killed by appellant Joginder Singh, Hardial Singh, Sukhdev Singh, Santokh Singh, Jagir Kaur, Manjit Kaur @ Parkash Kaur and wife of Sukhdev Singh and his two elder daughters in-connivance with Sukhdev Singh @ Kala resident of village Chmjingarh. Gurdev Singh had told him that if his daughter was killed, he will get the accused acquitted by spending money. On the basis of statement made by complainant Mohinder Singh Ex.P-4 to PW-8 SI Virsa Singh, the FIR Ex.P4/2 was recorded and investigation was started.

3. SI Virsa Singh visited the spot. He prepared the inquest report EX.P-7. The dead body of Balwinder Kaur

was sent for postmortem examination through ASI Sukhwinder Singh vide application Ex.P-8. SI Virsa Singh prepared the rough site plan of the place of occurrence. After the postmortem examination, one sealed container and the parcel containing the clothes of the deceased were taken into possession by SHO Harbhajan Singh. Accused were arrested and on completion of the investigation, the report under Section 173 of Code of Criminal Procedure (for short Cr.P.C) was presented in the Court against appellant Joginder Singh, his father Hardial Singh, his brother Santokh Singh and his mother Jagir Kaur. The name of remaining persons were kept in column no. 2.

4. On commitment of the case to the Court of Sessions for trial, accused-appellant Joginder Singh, Hardial Singh, Santokh Singh and Jagir Kaur were charge sheeted for the offences punishable under Sections 304-B read with Section 120-B IPC vider order dated 09.11.2002 to which they pleaded not guilty and claimed trial.

5. After the examination of complainant Mohinder Singh, learned Public Prosecutor moved an application under Section 319 Cr.P.C and on the basis of which co-accused Sukhdev Singh, Balbir Kaur, Sandeep Kaur, Rajwinder Kaur and Satnam Singh were summoned as additional accused and supplementary report under Section

173 Cr.P.C was presented against co-accused Manjit Kaur. Later on, learned trial Court vide order dated 07.06.2003, discharged Rajwinder Kaur and Sandeep Kaur. The fresh charge against the present appellant and his co-accused namely Hardial Singh, Santokh Singh, Jagir Kaur, Manjit Kaur, Sukhdev Singh, Balbir Kaur and Satnam Singh was framed by the learned trial Court for the offences punishable under Sections 304-B read with Section 120-B IPC vide order dated 13.10.2003, to which they pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined as many as eight witnesses.

7. When examined under Section 313 Cr.P.C, appellant Joginder Singh pleaded that he had never demanded any dowry nor maltreated Balwinder Kaur for the demand of dowry. Balwinder Kaur was already married and she married him after her first marriage. She was residing separate from his father Hardial Singh, brother Santokh Singh and Satnam Singh. Brother Santokh Singh, Satnam Singh, Manjit Kaur wife of Satnam Singh and his mother Jagir Kaur were residing in separate house. He has no family relations with any of the co-accused. He further pleaded that he is innocent and the case is false.

8. No evidence was led by the accused-appellant in

his defence.

9. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court vide impugned judgment dated 23.01.2004 held guilty and convicted appellant Joginder Singh for the offence punishable under Section 304-B IPC, whereas his co-accused Hardial Singh, Santokh Singh, Manjit Kaur, Jagir Kaur, Sukhdev Singh, Balbir Kaur and Satnam Singh were acquitted. Appellant Joginder Singh was sentenced as mentioned in the upper of the judgment.

10. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

11. I have heard Mr.G.S.Sidhu, Advocate, learned counsel for the appellant, Mr.P.S.Bajwa, learned Deputy Advocate General, for the State of Punjab and have meticulously examined the record of the case.

12. Initiating the arguments, learned counsel for the appellant contended that there was no question of any demand of dowry. Deceased Balwinder Kaur was already married. It was her second marriage with appellant Joginder Singh. She had happily resided in the matrimonial house for four years with the appellant and had given birth to two children. There was no complaint moved by deceased or her

parents at any point of time against the appellant and his family members with respect to harassment of the deceased with respect to the demand of dowry. They have also not held any Panchayat in this connection. The allegations regarding dowry have been levelled for the first time after the death of Balwinder Kaur. He further contended that even these allegations are general in nature and are vague. It is not mentioned as to when the demand of motorcycle and cash was raised. He further contended that the story that the deceased had visited her parental house on 17.06.2002 is fabricated and concocted. It is not plausible that she will visit her matrimonial house by leaving her one year old son at her matrimonial house. It is also not plausible that if she was having apprehension to be killed on account of the demand of dowry, she will return back to the matrimonial house on the next day without taking any legal recourse. He further contended that appellant was already having a scooter, so there was no reason for him to raise the demand of the motorcycle. Thus, he contended that the allegations regarding demand of dowry is not established at all and the ingredients of the offence punishable under Section 304-B IPC are not established. To support his contentions he relied upon cases **State of Haryana Vs. Rajbati and others 2002 (3) R.C.R (Criminal)**

**743 and State of Punjab Vs. Nand Lal and another
2003(2) R.C.R (Criminal) 219.**

13. He further contended that the complainant had malafide intention to implicate the entire family. Even, the minor cousin sisters of the appellant have not been spared. The trial Court has disbelieved the version of the prosecution with respect to all other co-accused. Thus, he contended that the statements of PW-3 complainant Mohinder Singh, PW-7 Fateh Singh and PW-6 Lakha Singh are not reliable. PW-6 Lakha Singh, who was the person who had received the information first had not stated anything about the demand of dowry. No specific allegation with respect to the demand of dowry has been levelled against the appellant. The evidence against the appellant is also similar to the accused already acquitted. Learned trial Court has convicted the appellant simply on the ground that he happens to be the unfortunate husband of the deceased.

14. He further contended that there was delay of 8 hours in lodging the FIR, which has been utilized to concoct the false story. Thus, he pleaded that the appellant has been wrongly convicted by the learned trial Court.

15. On the other hand, learned State counsel contended that appellant Joginder Singh is the husband of deceased Balwinder Kaur. PW-3 complainant Mohinder

Singh and PW-7 Fateh Singh, the brother of deceased have categorically deposed that the deceased was treated with cruelty soon before her death on account of the demand of dowry. She had gone to parental house only on 17.06.2002, just five days prior to the occurrence and narrated about her harassment for the demand of motorcycle and cash. The medical evidence shows that she has died the unnatural death within seven years of her marriage with the appellant. The appellant has not explained as to how Balwinder Kaur suffered the death. He further contended that as all the ingredients of offence punishable under Section 304-B IPC are established, the statutory presumption under Section 113-B of the Indian Evidence Act arises against the appellant. Thus, he pleaded that there is no legal infirmity in the conviction and sentence of the appellant as recorded by the learned trial Court.

16. I have duly considered the aforesaid contentions.

17. The present appellant has been convicted for the offence punishable under Section 304-B IPC by the learned trial Court. The essential ingredients to constitute the offence punishable under Section 304-B IPC are as under:-

- “(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstances.
- (ii) Such a death should have occurred within seven years of her marriage.

- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.”

18. In the instant case, there is no dispute with respect to the first two ingredients. As per the statement of PW-1 Dr. Parshant Gautam, who has carried out the autopsy on the dead body of Balwinder Kaur, on the basis of the report of the chemical examiner wherein aluminum phosphide was found in the contents of the viscera, has opined that the cause of death of Balwinder Kaur is aluminum phosphide poisoning which is sufficient to cause death in the normal course of events. Thus, deceased Balwinder Kaur had died by poisoning due to aluminum phosphide. The Hon'ble Supreme Court in case **Satvir Singh Vs. State of Punjab 2001(4) R.C.R (Criminal) 355** has laid down that suicide is one of the modes of death falling within the ambit of Section 304-B IPC. So, it is established that Balwinder Kaur has died otherwise than under normal circumstances i.e. due to the poisoning.

19. PW-3 Mohinder Singh complainant, the father of the deceased has stated that Balwinder Kaur was married to appellant Joginder Singh four years prior to the occurrence. PW-7 Fateh Singh, the brother of deceased had also deposed

that she was married to the appellant about four years back. From the consistent testimonies of both these witnesses, it is also established that Balwinder Kaur has suffered the death otherwise than under normal circumstances within seven years of her marriage.

20. The prosecution has also adduced cogent, convincing and reliable evidence to establish the remaining ingredients of the offence i.e. the deceased was subjected to cruelty or harassment by the appellant in connection with the demand of dowry soon before her death.

21. PW-3 Mohinder Singh, is the most relevant witness being the father of the deceased. He categorically deposed that sufficient dowry according to status of the family was given at the time of marriage of Joginder Singh. Two children namely Gagandeep Kaur and Kamaljit Singh was born to Balwinder Kaur from the loins of Joginder Singh. Gagandeep Kaur had died. Kamaljit Singh was hardly one year old at the time of the occurrence. He further deposed that accused party and other family members started maltreating and beating Balwinder Kaur on account of the demand of dowry articles. He further deposed that on 17.06.2002, Balwinder Kaur alone came to their house and complained to them that accused are demanding more dowry articles and on that account maltreating her. She told

that in case the motorcycle is not now given to the accused party or in lieu thereof the cash amount is not paid, then she will be done to death. He further deposed that he tried to pacify her that she should go with her brother Sahib Singh and he will talk to the accused party in that regard. On 18.06.2002, Sahib Singh accompanied Balwinder Kaur to her in-laws house at village Dhanetha. He further deposed that on 22.06.2002, Lakha Singh telephonically informed him that four persons from village Dhanetha had come to him and told that Balwinder Kaur has expired. Thus, as per statement of this witness, though he has given sufficient dowry at the time of the marriage, but even then the deceased was harassed and maltreated for the demand of motorcycle or the cash in lieu thereof. PW-7 Fateh Singh, the brother of deceased has fully corroborated the version of PW-3 Mohinder Singh. He also deposed that on 17.06.2002, his sister Balwinder Kaur alone came to their house and told that her in-laws family demands motorcycle and cash and in case she did not take away the same with her, she will be killed. His father told her that she should not worry and he will make them understand. PW-6 Lakha Singh, though have not specifically narrated about the demand of dowry, but he had also stated that Balwinder Kaur was killed by the accused for the demand of dowry, which

Mohinder Singh could not meet out.

22. It is a fact of common knowledge that such demands originates and are raised in the four walls of the house being the private affair of the family. Only the close relatives of the victim can depose about the demand of dowry as the victim hardly divulge such incidents to the stranger other than the family members so as to avoid any scope of publicity. So, there is no reason to disbelieve the consistent testimonies of PW-3 Mohinder Singh, the father of Balwinder Kaur and PW-7 Fateh Singh, the brother of deceased Balwinder Kaur, which is also corroborated to some extent from the statement of PW-6 Lakha Singh, their relative, who is the co-brother of the father of deceased. It is also a fact that generally there is no documentary evidence to prove the demand of dowry. Thus, the oral evidence adduced by the prosecution is credible and inspires confidence and can be safely relied upon to determine the demand of dowry.

23. Mere this fact that appellant was already having a scooter and a tractor is no ground to negate the demand of motorcycle by the appellant. The Hon'ble Supreme Court in case **Kishan Singh and another Vs. State of Punjab 2007(4) R.C.R (Criminal) 621** has laid down that it is a matter of common knowledge that even if in-laws had

several things in the house, still they demand dowry. The Division Bench of this Court in case **Jarnail Singh @ Titu and others Vs. State of Haryana 2008 (1) R.C.R (Criminal) 925** has laid down that it cannot be said that a person who is rich, has no greed for money. Such a greed for money can erupt at any time.

24. As per Section 2 of the Dowry Prohibition Act 1961, the demand of any property at or before or any time after the marriage in connection with the marriage of the said party will fall within the definition of dowry. In the instant case also the demand of motorcycle and cash was being made by the appellant from the deceased in connection with the marriage, she being his wife. The Hon'ble Supreme Court in case **Bhim Singh and another Vs. State of Uttrakhand 2015 (2) R.C.R (Criminal) 22** has laid down that the demand for dowry can be made at any time and not necessarily before the marriage. The demand can be made on three occasions i.e. before the marriage, at the time of marriage and after the marriage. So, this demand of motorcycle or cash in lieu of that will certainly constitute the demand of dowry.

25. Learned counsel for the appellant has vehemently contended that the prosecution witnesses have admitted that they had not moved any complaint to any law enforcing

agency nor held any Panchayat to settle the matter with respect to the maltreatment of the deceased Balwinder Kaur in-connection the demand of dowry. But, it is a known fact that matrimonial relation is a very delicate. The parents, generally of the girl, avoid to raise the issues which are likely to adversely effect the smooth running of the marital life of their daughter. It is not that in each and every case the parents of the victim or the victim herself will rush to the police to lodge the complaint as they prefer to wait and see that the married life may settle and good sense may prevail with the passage of time. Such legal course is only adopted as a last resort. The Hon'ble Supreme Court in case **Monju Roy and others Vs. State of West Bengal 2015(3) R.C.R (Criminal) 154** has laid down that it is also true that till such an unfortunate event takes place, the family members may not disclose the demand of dowry being a private matter and under the hope that relationship of the couple may improve. Thus, mere this fact that no complaint was moved or no Panchayat was held during the lifetime of Balwinder Kaur is no ground to discard the prosecution version.

26. I do not find any substance in the contentions raised by learned counsel for the appellant that the allegations are general in nature and are vague. PW-3

Mohinder Singh, the father of deceased and PW-7 Fateh Singh, the brother of deceased has specifically stated that there was the demand of motorcycle and the deceased was being maltreated for the aforesaid demand. So, both these witnesses have specifically deposed about the demand of motorcycle and the cash. It is very difficult to narrate about the date and month with respect to such demands as these are generally a continuous affairs in the family. No doubt, in order to establish the culpability of the relatives of the husband, the prosecution has to establish the overt act on their part as per the principle of law laid down by the Hon'ble Supreme Court in case **Kans Raj Vs. State of Punjab and others 2000(2) R.C.R (Criminal) 695**. The demand of vehicle or cash is not attributable to the relatives of the husband in the absence of specific attribution that is why in the instant case the learned trial Court has enlarged the benefits to the relatives of the appellant and they were acquitted. The demand of motorcycle is definitely attributable to the present appellant being the beneficiary of the said demand. Thus, the present appellant cannot claim any benefit on account of the acquittal of his co-accused by the learned trial Court.

27. There is nothing unnatural in the conduct of the victim going alone to her parental house on 17.06.2002 to

inform her parents about the demand of motorcycle and cash being raised by the appellant. PW-3 Mohinder Singh has categorically stated that he advised the victim to accompany his brother Sahib Singh to the matrimonial home and he will talk to the appellant and his family members to sort out the issue. Resultantly, on the next day i.e. 18.06.2002, she returned to the matrimonial home having assurance from her father and ultimately she met with unnatural death on 22.06.2002. The testimonies of PW-3 Mohinder Singh and PW-7 Fateh Singh are consistent and could not be shattered in the cross-examination with respect to the visit of the victim to her parental house on 17.06.2002 to complain to her parents with respect to her maltreatment and apprehension to her life on account of the demand of motorcycle and cash. It appears that having the assurance of her father to settle the matter and the company of his brother Sahib Singh and further to carry on her matrimonial life, she had preferred to return to the matrimonial house. Thus, the conduct of the victim cannot be taken as a contradiction to the prosecution story.

28. PW-6 Lakha Singh has stated that on 19.06.2002, appellant Joginder Singh has visited his house and told that Balwinder Kaur does not do the household work and further told that some medicine like smell was coming out of the

house. It appears that this was only a preemptive move on the part of the appellant in order to show his innocence.

29. From the statements of PW-3 Mohinder Singh, the father of deceased and PW-7 Fateh Singh, the brother of deceased, it comes out that the demand of motorcycle and cash was raised by the appellant. The victim has visited her parental house only on 17.06.2002 just five days prior to the occurrence to inform her parents about this demand and her resultant harassment and maltreatment. It is settled principle of law that the expression 'soon before death' is a relative expression. 'Soon before' is not synonymous with 'immediate before'. All that is necessary is that demand for dowry should not be stale, but should be the continuing cause for the death of the married woman. The Legislature has not stipulated any definite period and it has been left to be determined by the Courts depending upon the facts and circumstances of each case. Suffice, however, to indicate that expression 'soon before' would normally imply that interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of proximate and live-link between the fact of cruelty based on dowry demand and the death concerned. In the instant case, just five days before, the victim had approached her parents by visiting the

parental house to narrate her maltreatment and harassment by the appellant for the demand of dowry and then came her death due to poisoning, which squarely falls within the expression 'soon before death'.

30. Thus, from the evidence on record, there is no escape from the conclusion that deceased Balwinder Kaur was subjected to cruelty or harassment by the appellant in connection with the demand of motorcycle and cash. Such cruelty or harassment is proved to be soon before her death.

31. Learned counsel for the appellant has also pointed out that there was delay of 8 hours in lodging the FIR. The death of Balwinder Kaur has occurred in the matrimonial house. On receiving the information, complainant Mohinder Singh and his relatives arrived to village Dhanetha. It is not expected that they will immediately rush to the police to lodge the FIR even without confirming the facts. The dowry death is very sensitive matter involving the close relatives and only after properly thinking over the matter, the report is lodged with the police. In these circumstances, 8 hours delay in lodging the FIR is inconsequential and is not going to adversely effect the veracity of the prosecution case.

32. Once, all these ingredients of the offence punishable under Section 304-B IPC are established, the

presumption under Section 113-B of the Indian Evidence Act, 1872 is also attracted to establish that the appellant has caused the dowry death.

33. The cases relied upon by the learned counsel for the appellant are quite distinguishable on facts. Cases **State of Haryana Vs. Rajbati and others (Supra)** and **State of Punjab Vs. Nandlal and another (Supra)** are appeal against acquittal. In **Rajbati's case (Supra)**, no specific demand of dowry was mentioned in the FIR. In the subsequent statement in the Court, the demand of money and cash was alleged, which was not believed. Similarly, in **Nandlal's case (Supra)**, there were bald allegations of demand of dowry by the accused. The nature of demand of dowry or time thereof was not stated. But, in the instant case, there are specific allegations regarding the demand of dowry i.e. motorcycle and cash soon before the occurrence.

34. Learned counsel for the appellant has also pleaded for reduction in the matter of sentence and that no fine can be imposed for the offence punishable under section 304-B IPC.

35. I have duly considered these contentions.

36. PW-1. Dr. Parshant Gautam, who has carried out the postmortem examination has deposed that there were only superficial abrasions on the body of deceased

Balwinder Kaur. It is not the case of the prosecution that she was subjected to any violence. She has committed suicide by poisoning. The occurrence has taken place on 22.06.2002, i.e. more than 13 years back. At the time of the occurrence, the deceased has left one year old child, which is being looked after by the appellant. The appellant has also faced the agony of these proceedings for the last more than 13 years. So, he certainly deserves some reduction in the matter of sentence. The Hon'ble Supreme Court in case **Arun Garg Vs. State of Punjab 2004(4) R.C.R (Criminal) 531** has laid down that imposition of fine is not prescribed as a punishment under Section 304-B IPC and the Court is not empowered to impose the fine as punishment. So, punishment of fine awarded by the learned trial Court is unwarranted.

37. Thus, keeping in view of my aforesaid discussion, the conviction of the appellant as recorded by the learned trial Court for the offence punishable under Section 304-B IPC is well founded and is hereby maintained and affirmed. However, the sentence awarded to the appellant is hereby modified. The appellant will undergo the rigorous imprisonment for a period of seven years instead of eight years as awarded by the learned trial Court. The sentence of fine stands set aside.

38. Thus, with aforesaid modification in the sentence, the present appeal being devoid of merits is hereby dismissed.

39. The accused-appellant is on bail. His bail stand cancelled. He shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Patiala, who shall send him to jail to undergo the remaining part of his sentence. If, he fail to surrender, the learned Chief Judicial Magistrate, Patiala, shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

December 17, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**