

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1411-SB of 2012

DATE OF DECISION: MAY 6, 2015

SUKHDEV SINGH & 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. P.S.SEKHON, ADVOCATE FOR THE APPELLANTS.
MS. RITU PUNJ, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Appellants Sukhdev Singh @ Sukha, Kartar Kaur and Pritpal Kaur @ Raji were convicted under Section 304-B IPC and were sentenced to undergo 8 years' R.I. each. They have challenged in this appeal the above judgement of conviction and sentence passed by the trial Court.

2. It is the case of the prosecution that all the accused committed cruelty upon Harjinder Kaur @ Hinder who was married to the son of 2nd appellant Kartar Kaur on 24.11.2008, as a result of which Harjinder Kaur committed suicide and thereby, they committed an offence under Section 304-B IPC.

3. Appellant Sukhdev Singh was the brother-in-law, appellant Kartar Kaur was the mother-in-law and accused Pritpal Kaur @ Raji was the sister-in-law of deceased Harjinder Kaur who was married to Jaspal Singh on 24.11.2008.

4. PW1 Bishan Singh was the father of deceased Harjinder Kaur.

It was he who set the law in motion. PW1 deposed that he had given sufficient dowry articles when his daughter Harjinder Kaur was given in marriage to Jaspal Singh on 24.11.2008. After some time of the marriage, the appellants started taunting his daughter for bringing less dowry articles. One day prior to the occurrence, Harjinder Kaur called PW1 to bring a gas stove alongwith cylinder as her in-laws had separated her husband from them and she was unable to cook food. On 22.5.2009, at about 7.30 a.m., PW1 and his son Surjit Singh who was examined as PW4 proceeded to the matrimonial house of Harjinder Kaur alongwith gas stove and cylinder. The accused started teasing them for bringing gas cylinder and gas stove. They also informed PW1 that Jaspal Singh had got marriage proposals from others who could give sufficient dowry. Appellant Pritpal Kaur @ Raji also had brought a motorcycle for appellant Sukhdev Singh. They demanded a motorcycle from PW1. Harjinder Kaur having witnessed such a quarrel went inside the house in anger. After pacifying his daughter, PW1 and PW4 left for their village. On 23.5.2009 at about 11.00 a.m. Jaspal Singh, the husband of Harjinder Kaur, came to his house and informed that his wife had committed suicide, as she was not able to tolerate the atrocities committed by the appellants. PW4 Surjit Singh, brother of Harjinder Kaur, also corroborated the evidence of PW1. PW3 Baljit Kaur deposed that on 23.5.2009, she joined the police party in the presence of SHO Preet Inder Singh and other witnesses. While searching the dead body of Harjinder Kaur, she recovered suicide note Ex.P5.

5. PW8 Dr.Ashok Chanana conducted post mortem examination on the dead body of Harjinder Kaur on 24.5.2009 at about 11.00 a.m. and

gave opinion that Harjinder Kaur had died due to asphyxia as a result of ante mortem hanging which was sufficient to cause death in the ordinary course of nature.

6. The accused have come out with a statement under Section 313 Cr.P.C. that they were innocent, but a false case was foisted on them.

7. The trial Court having adverted to the evidence on record came to the conclusion that the prosecution established beyond reasonable doubt that the accused committed dowry death.

8. PW1 Bishan Singh, father and PW4 Surjit Singh, brother of the deceased are the star witnesses in this case. The most important vital document, namely, suicide note left behind by the deceased has a material bearing on this case.

9. PW1 Bishan Singh and PW4 Surjit Singh have, of course, spoken in one voice that they gave dowry articles, namely, refrigerator, cooler, almirah and T.V. Set. The accused also made a demand of motorcycle as dowry. Having thus demanded dowry articles, the appellants committed cruelty, it is deposed by PW1 and PW4.

10. The suicide note Ex.P14/C which is found to be a clinching document in this case reads as follows:-

“My Jethani wanted me to be good at sewing and embroidery and did not like me and used to fight with me everyday. I was unhappy in this house. My fridge, cooler, almirah, phone, gas, T.V. kindly take them back. My earrings are in the locker and keys are in the black purse.

Papa, you should have thought at least once before giving me

in the hands of these cruel people. Do I owe something to these cruel people from my past life. My mother in law and my brother in law Sukha and his wife Raji tortures me a lot. I am only taking this step because of these people only. My mother-in-law is a bundle of falsehood and she tortures me the most. My Sonu is innocent. You should take back all my belongings but in future think twice before marrying someone. Don't make relations with these kind of cruel people. I am very disturbed in this house.”

11. The above suicide note had been recovered by Constable Baljit Kaur who was examined as PW3. It was actually scribed on a cash receipt by the deceased when she was under deep depression.

12. It was submitted by learned counsel appearing for the appellants that suicide note had been written using two different ball point pens. Further, the prosecution failed to establish with the sample handwriting and signature of the deceased that it was only she who scribed the suicide note.

13. *Per contra*, learned Addl.A.G., Punjab would submit that the recovery made by the police official from the inner garment of the deceased would fortify the authenticity of the document.

14. I find that the suicide note was recovered from the brasserie of the deceased by Constable Baljit Kaur who made a search in the presence of the SHO and other witnesses. If such a document had been created by the prosecution witnesses, Jaspal Singh, the husband of deceased would have been implicated in this case. Further, the recovery of such a document is

found to be natural. Therefore, I do no doubt the authenticity of the said document.

15. The above suicide note would disclose that the appellants herein cruelly treated Harjinder Kaur. She had not whispered anything about the grievance of the appellants as regards less dowry articles she brought to the matrimonial house, nor has she stated that refrigerator, cooler, almirah and T.V. set had been brought to the matrimonial house as per the demand made by the accused. The provision made by the parents of the bride for her comfortable living in the matrimonial house cannot be treated as articles furnished by the parents of the deceased pursuant to the demand of dowry by the accused.

16. PW1 and PW4 have categorically stated that the appellants picked up a quarrel with PW1 and PW4 in the presence of Harjinder Kaur when they brought gas cylinder alongwith stove. It is their version that Harjinder Kaur went inside the house after the appellants picked up a quarrel demanding a motorcycle as dowry article. It is not as if that demand of dowry was made soon before the death behind the back of Harjinder Kaur. It is the case of the prosecution that such a demand was made only in the presence of Harjinder Kaur on the previous day of occurrence. If the above version of PW1 and PW4 was true, Harjinder Kaur would have definitely described in the suicide note that there was a demand of dowry which resulted in cruelty committed by the accused. She would not have failed to refer to the demand of motorcycle as a dowry by the accused, which as per the case of the prosecution had a direct nexus with her suicide.

17. Pritpal Kaur @ Raji was attributed with a disliking towards Harjinder Kaur, as the latter had not picked up the art of sewing and embroidery. The second appellant Kartar Kaur was attributed with a bundle of falsehood and torture she committed. Appellant Sukhdev Singh also was attributed with torture. They were branded as cruel people by the deceased. As there is no whisper indicating any trace of demand of dowry by the accused in the suicide note left behind by Harinder Kaur, I really doubt the evidence of PW1 and PW4 that Harjinder Kaur committed suicide only due to the demand of dowry.

18. Learned Addl.A.G., Punjab referring to Section 304-B IPC would submit that even if there was no demand of dowry, mere cruelty or harassment committed by the accused would attract the offence under Section 304-B IPC.

19. In my considered view, such an interpretation is the result of misreading of Section 304-B IPC. Caption given for the penal offence under Section 304-B IPC is 'Dowry Death'. As per the above penal provision, the death of the woman should have taken place within 7 years of the marriage. She should have been subjected to cruelty or harassment soon before her death. Such a cruelty or harassment should be in connection with any demand of dowry. Only then, can the death of a woman be classified as “dowry death” as per the above penal provision.

20. Learned Addl.A.G., Punjab would submit that when the death of a woman due to cruelty was established, dowry death shall be presumed as per Section 113-B of the Indian Evidence Act, 1872.

21. On a careful reading of Section 113-B of the Evidence Act, I find that a presumption can be drawn that an accused had committed dowry death only when the prosecution has established that a woman was subjected to cruelty or harassment in connection with any demand of dowry.

22. In the instant case, the suicide note left behind by the deceased throws doubt on the evidence of PW1 and PW4 that accused committed cruelty in connection with demand of dowry. In other words, the prosecution failed to establish that there was a demand of dowry on the part of the appellants in the face of the suicide note produced by the prosecution. Under such circumstances, the question of drawing any presumption under Section 113-B of the Indian Evidence Act, 1982 does not arise for consideration.

23. I find that the prosecution has miserably failed to establish the charge under Section 304-B IPC as against the appellants. When there is a clear evidence that appellants have committed cruelty as explained under Section 498-A IPC which had driven victim Harjinder Kaur to commit suicide, in my view, the prosecution has established the lesser charge under Section 498-A IPC.

24. In view of the above, the judgement of conviction and sentence passed by the trial Court under Section 304-B IPC stands set aside. Instead, all the three appellants are convicted under Section 498-A IPC and are each sentenced to undergo three years of rigorous imprisonment, which period they have already undergone as per the custody certificate produced by learned Addl.A.G., Punjab. They shall also pay a fine of ₹5000/- each,

failing which they shall each undergo a further period of three months rigorous imprisonment. If the fine amount is paid they be released from jail, in case their custody is not required in connection with any other case.

25. With the above modification in the matter of conviction and sentence, the appeal stands dismissed.

May 6, 2015
Gulati

(M. JEYAPPAUL)
JUDGE