

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

**CRA-S-938-SB of 2004
Date of Decision : 18.12.2015**

Sukhmander Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr.H.S.Rakhra, 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 21.04.2004, vide which appellant Sukhmander 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 seven years and to pay a fine of Rs. 2000/-, in default of payment of fine he was further ordered to undergo rigorous imprisonment for a period of two months.

2. In brief the facts of the prosecution case are that Amarjit Kaur @ Simranjit Kaur, the daughter of complainant Nagaur Singh PW-2 was married with appellant Sukhmander Singh about one year and three months prior to the occurrence. The complainant has given sufficient dowry at the time of marriage even beyond his capacity. But, soon after the marriage, the accused started raising the demand of more dowry and started maltreating and harassing the victim. She use to tell the complainant as well as other family members whenever she use to visit their house in respect of their maltreatment. But, every time, they use to send her back. The appellant has sold the scooter given to him in dowry about eight months back and thereafter, he put-forward a demand of Rs. 20,000/- and asked the deceased Amarjit Kaur @ Simranjit Kaur to bring the same from her parents. The deceased disclosed these facts to the complainant and asked that the said demand raised by the appellant should be fulfilled, otherwise she would be done to death. But, he made the deceased to understand and sent her back to the matrimonial house

with the assurance that he would arrange for the money and bring that to her in-laws house and further that he would also take up the matter in this regard with the appellant. He could not arrange for the money. On 15.01.2001, at about 2.30/ 3.00 p.m, he accompanied by his brother Nachattar Singh went to village Dune Wala to meet his daughter. When, they entered the main gate of the house, they found that the door of the residential room was lying closed and when they opened the door, they found that appellant Sukhmander Singh while strangulating the deceased by putting a *Parna* (piece of cloth) around her neck was dragging her. On seeing them, the accused-appellant fled away from the spot. When, they check, they found Amarjit Kaur @ Simranjit Kaur to be dead. The complainant left his brother Nachattar Singh to guard the dead body and came to his village Sangat Kalan to inform the other family members. Thereafter, he made his statement Ex.PD to ASI Avtar Singh. On the basis of which, the formal FIR Ex.PD/2 was registered and investigation was started.

3. During the investigation, ASI Avtar Singh visited the place of occurrence and prepared the inquest report Ex.PC. The dead body of Amarjit Kaur @ Simranjit Kaur was sent for postmortem examination. The Investigating Officer took into possession the *Parna* vide memo Ex.PE. After the

postmortem examination, a parcel containing the clothes of the deceased were produced before the Investigating Officer, which were taken into possession by him.

4. On 02.02.2001, when the investigation was entrusted to SI Balwinder Singh, accused-appellant Sukhmander Singh was produced before him by Jagdev Singh and was arrested in this case. The dowry articles were recovered from the house of the accused, which were taken into possession vide memo Ex.P-1. On completion of the formalities of the investigation, the report under Section 173 of Code of Criminal Procedure (for short Cr.P.C) was presented in the Court.

5. On commitment of the case to the Court of Sessions for trial, accused-appellant was charge sheeted for the offences punishable under Sections 302, 498-A IPC and in the alternative for the offence punishable under Section 304-B IPC by the learned trial Court vide order dated 13.06.2001, to which the accused pleaded not guilty and claimed trial.

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

7. When examined under Section 313 Cr.P.C, appellant Sukhmander Singh pleaded that his marriage took place with Amarjit Kaur @ Simranjit Kaur deceased about

more than two years earlier to her death. During this period, she could not conceive despite their best efforts. She usually remained under depression for that reason. At that time, he was working as Mechanic at Bathinda and used to return at about 9.00 p.m and on the fateful day of occurrence, he found her hanging with ceiling fan. He removed her and laid on the cot. He called parents of the deceased Amarjit Kaur @ Simranjit Kaur. He never demanded any dowry nor maltreated deceased Amarjit Kaur @ Simranjit Kaur. He further pleaded that he is innocent and the case is false.

8. In the defence evidence, accused-appellant examined Ghokar Singh son of Puran Singh, r/o village Dune Wala as DW-1 and thereafter, he closed the defence evidence.

9. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court vide impugned judgment dated 21.04.2004 held guilty and convicted appellant Sukhmander Singh for the offence punishable under Section 304-B IPC and 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.H.S.Rakhra, 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 is inordinate delay in lodging the FIR. He contended that occurrence has allegedly taken place at 2.30/3.00 p.m on 15.01.2001. But, the FIR has been lodged at 09.05 p.m. So, there is delay of about 6 ½ hours in lodging the FIR, which has been utilized to fabricate the prosecution story as a result of consultation and deliberation.

13. He further contended that there is no cogent and convincing evidence to establish the demand of dowry. The marriage was more than two years old on the date of occurrence. There is no material on record that during this period the victim or her parents had made any complaint against the appellant for her maltreatment and harassment on account of dowry. The allegations regarding the demand of Rs.20,000/- have only surfaced after the death of Amarjit Kaur @ Simranjit Kaur. There is no independent corroboration to the statements of PW-2 Nagaur Singh and PW-3 Nachattar Singh to prove the demand of dowry. He contended that PW-2 Nagaur Singh and PW-3 Nachattar

Singh are not reliable witnesses as they had even levelled the false allegations of strangulation against the appellant.

14. He further contended that the ingredients of the offence punishable under Section 304-B IPC are not made out. Thus, he pleaded that conviction of the appellant has been wrongly recorded.

15. He also pleaded that no punishment of fine has been provided for the offence punishable under Section 304-B IPC. The punishment of fine imposed by the learned trial Court is against the law.

16. On the other hand, learned State counsel pleaded that the delay of six and half hours in lodging the FIR cannot be considered to be inordinate delay and the same is satisfactorily explained. He further contended that from the statements of PW-2 Nagaur Singh and PW-3 Nachattar Singh, it is established that the deceased was maltreated and harassed for the demand of Rs. 20,000/- soon before her death. Thus, he pleaded that all the essential ingredients of the offence punishable under Section 304-B IPC are clearly made out and there is no legal infirmity in the conviction of the appellant.

17. I have duly considered the aforesaid contentions.

18. Though, the appellant was also charge sheeted for the offences punishable under Sections 302, 498-A IPC, but

he has only been convicted by the learned trial Court on appreciation of the evidence for the alternative charge i.e. for the offence punishable under Section 304-B IPC. The respondent-State has not raised any grievance for not recording the conviction of the appellants for the offence punishable under Section 302 IPC.

19. 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.”

20. As per the statement of PW-1 Dr. Vinod Kumar, Medical Officer, Civil Hospital, Bathinda, who was the member of the Medical Board consisting Dr. Jugraj Singh Sandhu and Dr. Rupinder Kaur Romana, which carried out the autopsy on the dead body of deceased Amarjit Kaur @ Simranjit Kau the cause of death in this case was asphyxia due to hanging which was ante mortem in nature and sufficient to cause death in the ordinary course of events. Thus, as per the medical evidence, deceased Amarjit Kaur @ Simranjit Kaur has died due to asphyxia due to hanging,

which is death otherwise than under normal circumstances. There is no dispute that hanging is suicidal. 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 Amarjit Kaur @ Simranjit Kaur has died otherwise than under normal circumstances i.e. due to the hanging.

21. PW-2 Nagaur Singh complainant, the father of the deceased has deposed that his eldest daughter Amarjit Kaur @ Simranjit Kaur was married to appellant Sukhmander Singh about three and half years ago from today i.e. the date of his statement according to Anand Karaj ceremonies. This version of the complainant has not been challenged. Rather, even in the statement under Section 313 Cr.P.C, the accused-appellant has pleaded that his marriage has taken place with Amarjit Kaur @ Simranjit Kaur deceased about more than two years earlier to her death. So, Amarjit Kaur @ Simranjit Kaur has died an unnatural death within seven years of her marriage. Thus, the first two ingredients of the offence punishable under Section 304-B IPC are established.

22. The prosecution has relied upon the statements of PW-2 Nagaur Singh, the father of deceased Amarjit Kaur @

Simranjit Kaur and PW-3 Nachattar Singh, the uncle of deceased Amarjit Kaur @ Simranjit Kaur to establish that she was subjected to cruelty or harassment by the appellant Sukhmander Singh in connection with the demand of dowry soon before her death. PW-2 Nagaur Singh has categorically deposed that at the time of marriage of Amarjit Kaur @ Simranjit Kaur with appellant Sukhmander Singh, he has given one scooter, two gold rings, one gold *Karha* to the appellant at his demand. He also gave one gold chain to the mother of the appellant and one gold set to the deceased. He has also given the sufficient dowry articles including two iron boxes, furniture, utensils, cloths and bedding etc. He further deposed that after 3-4 months of the marriage, the accused started maltreating Amarjit Kaur @ Simranjit Kaur on account of insufficient dowry. He raised the demand of more dowry and cash amount. His daughter Amarjit Kaur @ Simranjit Kaur as and when used to visit his house, she used to disclose that accused is demanding an amount of Rs.20,000/- and if the demand is not met, she will be killed. He further deposed that scooter which was given at the time of marriage to accused-appellant Sukhmander Singh was sold away by him. He further categorically deposed that about ten days prior to the occurrence, Amarjit Kaur @ Simranjit Kaur came to village Sangat Kalan and told that

either the demand of Rs.20,000/- should be met otherwise, she would be done to death. He sent Amarjit Kaur @ Simranjit Kaur back to her in-laws house with his son Harbhajan Singh with the assurance that amount so demanded would be paid within 5-7 days after making the arrangements of the amount. PW-3 Nachattar Singh, the brother of complainant Nagaur Singh has fully corroborated the testimony of Nagaur Singh. He also deposed in detail about the dowry articles given in the marriage, the demand of Rs.20,000/- by the accused-appellant and the visit of deceased Amarjit Kaur @ Simranjit Kaur ten days prior to the occurrence to her parental house disclosing that either the demand of Rs.20,000/- should be met otherwise she would be killed.

23. The prosecution has also examined PW-4 Parkash Chand, from whom the clothes were purchased at the time of the marriage of Amarjit Kaur @ Simranjit Kaur. All these witnesses have been cross-examined at length by the learned defence counsel. But, their testimonies could not be shattered on the demand of dowry and consequent maltreatment of the deceased by the appellant.

24. 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-2 Nagaur Singh, the father of Amarjit Kaur @ Simranjit Kaur and PW-3 Nachattar Singh, the brother of complainant Nagaur Singh, which is also corroborated to some extent from the statement of PW-4 Parkash Chand, from whom the clothes were purchased at the time of the marriage of Amarjit Kaur @ Simranjit Kaur. 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 inspires confidence and can be safely relied upon with respect to the demand of dowry.

25. 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 Rs.20,000/- 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 Uttarakhand 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 will certainly constitute demand of dowry.

26. In the instant case, there are specific allegations that a scooter was given by the parents of the deceased to the appellant on his demand at the time of the marriage. But, the said scooter was sold away by him about eight months prior to the occurrence and thereafter, he started raising the demand of Rs.20,000/-. So, the prosecution story appears to be genuine.

27. Learned counsel for the appellant has vehemently contended that the complainant or the deceased 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 Amarjit Kaur @ Simranjit 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 daughters. 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, the absence of any complaint in lifetime of deceased is no ground to discard the prosecution version.

28. 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-2 Nagaur Singh, the father of deceased and PW-3 Nachattar Singh, the uncle of deceased have specifically stated that there was the demand of Rs.20,000/- and the deceased was being maltreated for the aforesaid demand. So, both these witnesses have specifically deposed about the demand of Rs.20,000/-. This demand arose after the appellant sold the scooter given in the dowry at the time of marriage.

29. From the statements of PW-2 Nagaur Singh, the father of deceased and PW-3 Nachattar Singh, the brother of Nagaur Singh, it comes out that the demand of Rs.20,000/-

was raised by the appellant. The victim has visited her parental house only just ten 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 ten days before the victim had approached her parents by visiting parental house to narrate her maltreatment and harassment by the appellant for the demand of dowry and then came her death due to hanging, 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 Amarjit Kaur @ Simranjit Kaur was subjected to cruelty or harassment by the appellant in-connection with the demand of Rs.20,000/-. 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 6 ½ hours in lodging the FIR. The death of Amarjit Kaur @ Simranjit Kaur has occurred in the matrimonial house. On receiving the information, complainant Nagaur Singh and his brother Nachattar Singh arrived to village Dune Wala. 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, 6 ½ 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 burden to rebut the presumption under

Section 113-B of the Indian Evidence Act, 1872 was upon the appellant. The appellant has taken the plea that the deceased could not conceive despite their best efforts and she usually remained under depression. He has also examined DW-1 Ghokar Singh, who has deposed that after the marriage, no issue was born to Amarjit Kaur @ Simranjit Kaur and she was under some depression prior to her death. He further deposed that she used to remain under some treatment and there was no dispute between Amarjit Kaur @ Simranjit Kaur and Sukhmander Singh prior to the occurrence. But, the plea raised by the accused-appellant that deceased used to remained under depression as she could not conceive is not supported from any cogent and convincing evidence. If, the deceased was undergoing such acute depression which led her to commit suicide, she might be receiving some treatment from a doctor. DW-1 Ghokar Singh has also stated that she was under some treatment, but the accused-appellant has not produced any record regarding the treatment of the deceased for his alleged ailment of depression. So, it appears that the defence plea raised by the appellant is an afterthought. The Statement of DW-1 Ghokar Singh his co-villager also does not inspire any confidence.

34. I found substance in the contentions raised by

learned counsel for the appellant that the imposition of punishment of fine is not permissible for the offence punishable under Section 304-B IPC. 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.

35. 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 of fine awarded to the appellant by the learned trial Court is hereby set aside.

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

37. 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, Bathinda, who shall send him to jail to undergo the remaining part of his sentence. If, he fail to surrender, the learned Chief Judicial Magistrate, Bathinda, shall take

coercive steps to secure his presence and send him to jail to
undergo the remaining part of the sentence.

December 18, 2015
s.khan

(DARSHAN SINGH)
JUDGE