

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-697-DB-2015

Date of decision: September 10, 2015.

Surjit Singh

... **Appellant**

v.

State of Punjab and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE HEMANT GUPTA**
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Shri Jasdev Singh Mehndiratta, Advocate, for the appellant.

Hemant Gupta, J.

Present appeal is preferred against acquittal of the respondents for an offence under Section 304-B IPC though Kulwinder Singh and Manjit Kaur, husband and mother-in-law of the deceased respectively, stands convicted for an offence under Section 498-A IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/- each.

Present appeal has been preferred by the brother of the deceased Inderdeep Kaur. Counsel for the appellant states that daughter of Inderdeep Kaur, with her marriage with Kulwinder Singh, is with her father and in the absence of any other class-1 heir, the appellant, brother of the Inderdeep Kaur, is competent to file the present appeal. In view of the aforesaid fact, we allow the present appellant to prosecute the present

appeal as a 'victim' within the meaning of Section 2 (wa) of the Code of Criminal Procedure, 1973.

The prosecution case was set into motion on the statement of Manjit Singh, another brother of Inderdeep Kaur and the present appellant, stating that Inderdeep Kaur married six years ago with Kulwinder Singh and they gave sufficient dowry. Rs.5.00 lacs were spent on her marriage but Kulwinder Singh and his mother Manjit Kaur and other family members were not happy and harassed her to bring more dowry. It was on 11.2.2007 that a telephonic call was received from Kulwinder Singh that whereabouts of Inderdeep Kaur are not known. When the near relations of Inderdeep Kaur reached Samrala, the daughter of Inderdeep Kaur told them that her mother was given beatings by the accused but she did not know where they left her mother. The apprehension was expressed that Inderdeep Kaur had been killed in the midnight of 11th and 12th February, 2007 and disposed of the dead body of his sister.

After investigations, report under Section 173 Cr.P.C. was filed for an offence under Section 498-A and 304-B IPC.

The learned trial court, after appreciating the evidence, convicted the husband and his mother for an offence under Section 498-A but in the absence of proof of death of Inderdeep Kaur, granted benefit of doubt and acquitted the accused for an offence under Section 304-B IPC. The daughter of Kulwinder Singh and Inderdeep Kaur appeared as DW12 and has not supported the initial version that her mother was given beatings by her father and other relations and they left her somewhere. There is no other evidence of death of Inderdeep Kaur. In fact, prosecution relied upon

recovery of a headless body, recovered by the police of Police Station Machhiwara, in respect of which FIR No.24 dated 4.3.2007 was lodged. One Jograj Singh claimed the headless body as that of his daughter and performed its cremation. Subsequently, Jaswinder Kaur returned home and therefore, Jograj Singh has wrongly identified the headless body as that of his daughter Jaswinder Kaur. It was thus inferred that the said dead body is that of Inderdeep Kaur. The headless body was identified on the basis of photographs clicked during inquest proceedings.

The learned trial court considered the evidence that in fact Inderdeep Kaur has gone to Gurdwara Sahib at Samrala on 11.2.2007 but she did not return. Her brother Manjit Singh was immediately informed and DDR was also lodged to seek help of police for tracing her.

The court returned the following findings in respect of the fact that the dead body is that of Inderdeep Kaur:-

“49. As far as the claim of the complainant that beheaded dead body recovered by police station Machhiwara is the dead body of Inderdeep Kaur, is concerned, the application in this regard moved by the complainant is dated 9.5.2009 i.e., Ex.D10 and the same was marked to SHO Samrala and the detailed inquiry on the same has been conducted by SHO Samrala and DSP Samrala, on the said application dated 9.5.2009 of the complainant Ex.D10 and the inquiry report of the then DSP Samrala is Ex.D12, which has been proved by Shri Ravinder Lumba, the then DSP Samrala and deposed that he recorded the statement of both the parties and after inquiring the matter in detail he found that the headless dead body was not of Inderdeep Kaur and no truth was found on the same and he recommended to file his complaint vide his inquiry report Ex.D12 and thereafter the same was filed by the then SSP on 3.9.2009.

50. Though after the recovery of the beheaded dead body by Police

Station Machhiwara, the DNA sample of the body was taken but the same was not compared by the police with the DNA of Jog Raj Singh, who claimed the said dead body of his daughter, who later on found to have been alive. But still there is no evidence on record to prove that the said beheaded dead body was of Inderdeep Kaur. From the perusal of the inquiry report Ex.D12, conducted by the then DSP Samrala, it reveals that the said dead body was recovered on 4.3.2007 from 1 kilometer prior to bridge Nehar Gari to Neelo side in one plastic bag from the side of the road. At that time Manjit Singh complainant accompanied with number of persons reached there, he admitted at that time that the said dead body is not of Inderdeep Kaur and the same was identified by one Jog Raj Singh, being the dead body of his daughter Jaswinder Kaur @ Pinki, but when said Jaswinder Kaur @ Pinki was found to have been alive, then complainant Manjit Singh claimed the said dead body, being the dead body of Inderdeep Kaur, by moving an application Ex.D10 and during the statement in the inquiry on the complaint, he claimed to have identified the dead body from the photographs of the dead body from her clothes, iron Kara and the physic; but before moving the above said application, the complainant nowhere claimed at any point of time that Inderdeep Kaur used to worn an iron Kara in her hand, where it has come in the report that Manjit Singh after seeing the dead body himself admitted that the same is not the dead body of Inderdeep Kaur, then it is not possible that after seeing the photographs, he identified the said dead body as the dead body of Inderdeep Kaur shown in the photograph.

51. Further DW3 HC Balwinder Kumar proved the complete inquiry file of the application of the complainant dated 9.5.2009 Ex.D10, as Ex.D13 and along with the said inquiry file, inquest report as well as the postmortem report of the beheaded dead body is attached and from the perusal of the postmortem report, it reveals that it has been mentioned in the postmortem report that the time of death and postmortem is within 36 hours and the postmortem was conducted on 5.3.2007, meaning thereby that the death has been caused, either on 3.3.2007 or on 4.3.2007. But in the instant case Inderdeep Kaur

was missing since 11.2.2007 from her matrimonial home and it has no where come in the evidence that till the above said period 3.3.2007 or 4.3.2007 she was kept confined some where and thereafter she was murdered by the accused.”

The said reasoning cannot be said to be erroneous in any manner. The finding recorded are based upon the evidence on record. The brother of the complainant has initially stated that the headless body is not that of his sister. Still further, the death of the person, whose body was recovered, had taken place 36 hours prior to postmortem, i.e., 5.3.2007, whereas the sister of the complainant had gone missing more than three weeks earlier, i.e., on 11.2.2007, therefore, the finding that the prosecution has not been able to prove death of sister of the appellant, cannot be said to be erroneous.

We do not find any perversity, illegality or irregularity in the findings recorded by the learned Additional Sessions Judge, which may warrant interference in the present appeal.

Dismissed.

[Hemant Gupta]
Judge

[Raj Rahul Garg]
Judge

September 10, 2015.
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