

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM No.16085 of 2014 in/and  
CRA No.D-821-DB of 2014 (O & M)  
Date of Decision: 15.01.2015

Baldev Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON  
HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. H. S. Dhandi, Advocate for the appellant.

Ms. Rajni Gupta, Addl. AG, Punjab  
for respondent No.1.

Mr. Sunil Chadha, Senior Advocate with  
Mr. Kirpal Singh, Advocate  
for respondents No.2 and 3.

S.S. SARON, J.

The appeal has been filed by the complainant-Baldev Singh seeking modification of the judgment and order dated 03.01.2013/07.01.2013 passed by the learned Additional Sessions Judge, Ludhiana praying for setting aside the order of acquittal of Nasib Kaur alias Gurjit Kaur (respondent No.2) and for convicting and punishing her according to law and for enhancing the sentence awarded to Kulwinder Singh (respondent No.3).

Along with the appeal, Criminal Miscellaneous No.16085 of 2014 has been filed by the appellant seeking condonation of 405 days' delay in filing the appeal. Reply to the application seeking condonation of delay has been filed on behalf of respondents No.2 and 3.

The case of the appellant, who is the complainant, is that his daughter Sarabjit Kaur (deceased in the case) was married to Kulwinder Singh (respondent No.3) of village Katani Kalan on 26.01.2004. From the marriage they had a daughter namely Damanpreet Kaur who was 2 ½ years' old at the time of the incident that occurred on 18.07.2007. According to the appellant, he had given sufficient dowry in the marriage. Sometime after the marriage, Kulwinder Singh (respondent No.3) and Tejinder Singh the husband and brother in law respectively of Sarabjit Kaur, used to beat her after consuming alcohol. Kulwinder Singh (respondent No.3), it is alleged, had illicit relations with Gagandeep Kaur the sister in law of his daughter. Whenever the daughter of the appellant came to her parents' home, she disclosed that her husband and in-laws ill-treated her for bringing inadequate dowry. They raised demands for more money. On many occasions, the complainant sent his daughter back to the matrimonial home after giving her money. The appellant has disclosed everything to his brother namely Pritpal Singh and neighbour Mukesh Kumar. The appellant on 18.07.2007 received a telephone call from his son-in-law Kulwinder Singh (respondent No.3) who was in an inebriated condition. He stated that on account of his separate living, he was in need of Rs.50,000/-. The appellant showed his inability to pay the same. Kulwinder Singh (respondent No.3) then abused the appellant. Later on the appellant received a telephone call from his daughter that Kulwinder Singh (respondent No.3) had

beaten her mercilessly and he was proclaiming that if her parents did not give money, he would finish her. The Sarpanch of the village on the next day i.e. 19.07.2007 at about 8.00 am informed the appellant on telephone that his daughter had died due to burn injuries. The appellant on receiving the telephone call along with his wife Kuldeep Kaur, son Sukhwinder Singh and other respectables of the village, went to the in-laws' house of his daughter. There he found that his daughter had died due to burn injuries. The appellant had the firm belief that Kulwinder Singh (respondent No.3), his brother Tejinder Singh, mother Nasib Kaur (respondent No.2) and sister-in-law Gagandeep Kaur had set Sarabjit Kaur on fire due to non-fulfillment of demand of money. On the basis of the said statement, case (FIR) for the offences under Sections 304-B and 498-A of the Indian Penal Code (IPC -for short) was registered. During the investigation that was conducted, Gagandeep Kaur and Tejinder Singh were found innocent and were not sent up for trial. They were placed in column No.2 of the Police Report ('challan').

Learned Additional Sessions Judge to whom the case was assigned, charged respondents No.2 and 3 for the offences punishable under Sections 304-B and 498-A IPC. They pleaded not guilty to the charges and claimed trial. The prosecution led its evidence.

The learned Additional Sessions Judge, after considering the evidence and material on record has acquitted Nasib Kaur (Respondent No.2). However, Kulwinder Singh

(respondent No.3) has been convicted for the offences punishable under Sections 304-B and 498-A IPC. He has been sentenced to undergo rigorous imprisonment for ten years for the offence under Section 304-B IPC; besides, undergo rigorous imprisonment for two years and also pay a fine of Rs.2000/- and in default thereof undergo further rigorous imprisonment for three months, for the offence under Section 498-A IPC. Both the sentences awarded to Kulwinder Singh (respondent No.3) have been ordered to run concurrently. The appellant, aggrieved against the inadequate sentence awarded to Kulwinder Singh (respondent No.3) and acquittal of Nasib Kaur (respondent No.2), has filed the present appeal.

Mr. H. S. Dhandi, Advocate for the appellant has referred to the deposition of Baldev Singh-appellant made in Court while appearing as PW-1 wherein he has inter alia stated that on 18.07.2007, he received a telephone from his daughter Sarabjit Kaur who informed him that she was being beaten by Kulwinder Singh (respondent No.3), Tejinder Singh, Nasib Kaur (respondent No.2) and Gagandeep Kaur and were compelling her to bring an amount of Rs.50,000/-. She further informed the appellant that if she did not pay the said amount, then all the said accused would murder her. Therefore, it is submitted that there are allegations in connection with demand for dowry soon before the death of Sarabjit Kaur against Nasib Kaur (respondent No.2) as well. It is also contended that Sarabjit Kaur died after 2 ½ years of the solemnization of her marriage. Therefore,

presumption of dowry death is to be taken against Nasib Kaur (respondent No.2) also. It is further submitted that the respondents had not taken Sarabjit Kaur to the hospital after she suffered burn injuries. Besides, it is submitted that the sentence that has been imposed on Kulwinder Singh (respondent No.2) is liable to be enhanced in the facts and circumstances of the case. It is also submitted that the delay in filing the appeal has occurred as the appellant did not have sufficient means and resources to file the appeal within the period of limitation. Accordingly, it is prayed that the delay in filing the appeal be condoned and the appeal be allowed.

In response, Mr. Sunil Chadha learned Senior Counsel appearing with Mr. Kirpal Singh, Advocate for respondents No.2 and 3 submitted that the appeal against inadequate sentence awarded to Kulwinder Singh (respondent No.3) is not maintainable in view of the proviso to Section 372 of the Code of Criminal Procedure ('Cr.P.C.' - for short). Besides, the appellant while appearing as PW-1 made improvements in his statement inasmuch as he did not state before the police that Nasib Kaur (respondent No.2) had also given a beating to Sarabjit Kaur. A pointed reference has been made to the deposition of Baldev Singh (appellant) wherein he had stated that his son-in-law Kulwinder Singh (respondent No.3) raised a demand by stating that as he was living separate he needed Rs.50,000/-. From this, it is submitted that it is the admitted case of the appellant and the prosecution that Kulwinder Singh

(respondent No.3) was separate from his mother Nasib Kaur (respondent No.2). It is also submitted that the prosecution has not been able to show that Nasib Kaur (respondent No.2) had raised any demand in connection with dowry soon before the death of Sarabjit Kaur. Besides, the delay in filing the appeal is not liable to be condoned. According to learned Senior Counsel for respondents No.2 and 3, in fact the appellant and his wife Smt. Kulwinder Kaur had filed a civil suit on 11.12.2007 seeking compensation of Rs.5 lacs for the death of Sarabjit Kaur from the respondents No.2 and 3 and others. The said suit has been dismissed by the learned Additional Civil Judge (Senior Division), Ludhiana on 23.05.2014. In the said civil suit, the appellant in his cross examination had stated that he had not filed an appeal against the order dated 03.01.2013, which is now impugned. He voluntarily stated that he did not have money to file an appeal, therefore, he did not file any appeal. In fact the appellant had been engaging counsel at all stages, therefore, he did have the resources to file an appeal. From the cross-examination it is evident that the appeal was not filed by the appellant within the period of limitation. It is thereafter the appeal has been filed only when Nasib Kaur (respondent No.2) filed a civil suit claiming damages for her malicious prosecution.

Learned counsel for the State has submitted that the State has not filed an appeal against the acquittal of respondent No.2-Nasib Kaur nor an appeal seeking enhancement of the sentence awarded to respondent No.3-Kulwinder Singh.

We have given our thoughtful consideration to the matter.

Insofar as the question regarding inadequate sentence awarded to Kulwinder Singh (respondent No.3) is concerned, it may be noticed that proviso to Section 372 Cr.P.C provides for a right to prefer an appeal by a 'victim' against any order passed by the Court (i) acquitting the accused or (ii) convicting him for a lesser offence or (iii) imposing inadequate compensation. There is no provision for filing an appeal against inadequate or lesser sentence that has been imposed. The Hon'ble Supreme Court in National Commission for Women v. State of Delhi, 2010 (4) RCR (Criminal) 758 has held that the proviso inserted to Section 372 Cr.P.C. with effect from 31.12.2009 gives a limited right to a 'victim' to file an appeal in the High Court against any order of a criminal Court, acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation and it does not envisage an appeal against inadequate sentence. Therefore, the appeal at the behest of the 'victim' i.e. the appellant against inadequate sentence awarded to Kulwinder Singh (respondent No.3) is not maintainable.

As regards the acquittal of Nasib Kaur (respondent No.2), it may be noticed that in the initial statement of the appellant-Baldev Singh on the basis of which FIR was registered, it was not alleged by the appellant that Nasib Kaur (respondent No.2) had raised any demand for dowry on 18.07.2007 i.e. a day

earlier to the death of Sarabjit Kaur on 19.07.2007. However, while appearing as PW-1, he stated that he received a telephone call from his daughter Sarabjit Kaur on 18.07.2007 and she informed him that she was given a beating by Kulwinder Singh (respondent No.3), Tejinder Singh, Nasib Kaur (Respondent No.2) and Gagandeep Kaur and they compelled her to bring the said amount. She further informed that if she did not pay the said amount then all the said accused would murder her. However, in cross-examination it is stated by Baldev Singh (appellant PW-1) that it is recorded in his statement Ex.PA to the police, where he had got recorded that Gagandeep Kaur, Nasib Kaur (respondent No.2) and Tejinder Singh had given a beating to his daughter for bringing more dowry. Attention of the witness was drawn to relevant portion D-1 to D-2 of the statement (Ex.PA) where it was not so mentioned. Therefore, this aspect had been improved on the part of Baldev Singh (appellant).

Learned Additional Sessions Judge has held that it is in evidence that Sarabjit Kaur (deceased) and her husband Kulwinder Singh (respondent No.3) resided separately in the same house from Smt. Nasib Kaur (respondent No.2) and other family members. It was held that allegations against Nasib Kaur (respondent No.2) were general in nature and it appeared that she had been roped in simply on account of her relationship with Kulwinder Singh (respondent No.3). It was held that demand for money in this case was made simply on account of greed on the part of Kulwinder Singh (respondent No.2) and he ill-treated

Sarabjit Kaur (deceased) and also threatened her with dire consequences when the complainant (appellant) refused to fulfill the demand; besides, he used to beat her. The case against Kulwinder Singh (respondent No.3) was held to be proved. As has already been noticed, he has been sentenced to ten years of imprisonment. However, nothing has been shown as regards the involvement of Nasib Kaur (respondent No.2). There is nothing to show that she had raised a demand in connection with dowry soon before the death of Sarabjit Kaur; besides, it was held that she was separate from Kulwinder Singh (respondent No.3).

According to learned Senior Counsel for respondents No.2 and 3, the appellant in his initial statement Ex.PA stated that Kulwinder Singh (respondent No.3) under the influence of liquor raised a demand that on account of his separate living he was in need of Rs.50,000/-. Therefore, there is nothing to dislodge the finding of acquittal recorded by the learned trial Court in respect of Nasib Kaur (respondent No.2).

Accordingly, the appeal against inadequate sentence is not maintainable and there is nothing to show the involvement of Nasib Kaur (respondent No.2) in the incident that had occurred on 19.07.2007 resulting in the death of Sarabjit Kaur. Therefore, the appeal is dismissed summarily in terms of Section 384 Cr.P.C.

Since the appeal has been dismissed, the question regarding the delay in filing the appeal is only academic and the same is also dismissed.

It is however, made clear that nothing stated herein shall be taken as an expression of opinion on the merits of the case in the appeal filed by Kulwinder Singh (respondent No.3) against his conviction and sentence. The observations made herein are only for the purpose of disposing of the present appeal.

(S. S. SARON)  
JUDGE

(GURMIT RAM )  
JUDGE

15.01.2015  
A.Kaundal