

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

CRA-S-217-SB-2003

Date of decision : 26.08.2015

Parminder Singh and others

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Bipan Ghai, Sr. Advocate
with Mr. Paras Talwar and Mr. Mandip Kaushik, Advocates
for the appellants.

Mr. Mehardeep Singh, DAG, Punjab and
Mr. Luvinder Sofat, AAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

1. This appeal has been filed for setting aside the judgment of conviction and the order of sentence dated 14.12.2002, passed by the learned Additional Sessions Judge, Hoshiarpur whereby the appellants were ordered to be undergo rigorous imprisonment for 7 years for committing an offence under Section 304-B IPC.

2. Brief facts of the case in hand, as recorded in the opening para of the impugned judgment, are reproduced as under:-

“1. The case of the prosecution is that Kamaljit Kaur daughter of PW Chanan Singh son of Sewak Ram, Jat, R/o Kandhala Jattan, PS Tanda Distt. Hoshiarpur was married with the accused Parminder Singh about six years back. Out of the wedlock of Kamaljit Kaur with the

accused Parminder Singh, one male child who is of the age of about 4/5 years and one female child aged about 10 months were born. The case of the prosecution is that accused Parminder Singh, his father Santokh Singh and mother Harjinder Kaur were giving beating to Kamaljit Kaur for bringing less dowry from her parents. Kamaljit Kaur told this fact to her father Chanan Singh when she went to meet her parents. Kamaljit Kaur told her father that family of her father in law was demanding coloured TV and Rs.50,000/- in cash. At this Chanan Singh purchased coloured TV Marka-BPL about one month before the occurrence and gave it to the accused. After some days, Kamaljit Kaur informed her father on telephone that the accused were still demanding Rs.50,000/- and the accused were saying that they would keep Kamaljit Kaur in their house only in case she brings an amount of Rs.50,000/-. At this PW Chanan Singh, his son Kuldip Singh and Sucha Singh intervener in the marriage went to the house of the accused and beg pardon from the accused saying that the family of Chanan Singh is a poor family and they are unable to pay Rs.50,000/- and as and when they would be in a position to pay an amount of Rs.50,000/- they would pay the same to the accused and PW Chanan Singh and others left the house of the accused. On 08.06.01 at about 2.15 PM, PW Chanan Singh came to know that accused Parminder Singh, his father Santokh Singh and mother Harjinder Kaur, r/o Village Chak Khelan gave beatings to Kamaljit Kaur and Kamaljit Kaur consumed some poisonous substance and she was about to die. At this PW Chanan Singh, his son Kuldip Singh and Sucha Singh intervener in the marriage went to village Chak

Khelan and had seen the serious condition of Kamaljit Kaur and after arranging vehicle they took her to Civil Hospital Hoshiarpur where Kamaljit Kaur had died. On the basis of the statement made by PW Chanan Singh before ASI Paramjit Singh, Incharge, PP Bhunga, the present case FIR was registered against the accused. During investigation of the case, inquest report was prepared. The post mortem examination of the dead body of Kamaljit Kaur was conducted by Dr. Harinderjit Singh Garg. In the opinion of the medical officer, the cause of the death in this case was aluminium phasphose which was sufficient to cause death in the ordinary course of nature. During investigation of the case receipt of R.V. Ex.P1 was taken into possession vide memo Ex.PF.

2. *This case has been committed for trial by the court of Mrs. H. H. Randhawa, PCS, Judicial Magistrate Ist Class, Hoshiarpur and has been entrusted to this court for trial.*

3. *After hearing the Ld. Addl. PP for the State and the counsel for the accused, a charge under Section 304-B of IPC was framed against the accused. The accused pleaded not guilty to the charge and claimed trial.*

4. *In order to prove its case, the prosecution has examined PW1 Chanan Singh, PW2 Yogesh Kumar, PW3 Kuldip Singh, PW4 Dr. Harinderjit Singh Garg, PW5 Govinder Singh, MHC, PW6 ASI Paramjit Singh, PW7 SI Surjit Singh and the prosecution has closed its evidence.*

5. *When examined under Section 313 Cr.P.C., the accused Parminder Singh has denied the prosecution*

allegations and the accused has alleged that he is innocent and has been falsely implicated in this case. Letters Mark-D to D5 are in the hand writing of Kamaljit Kaur. He is well conversant with the writing of Kamaljit Kaur. They usually used to write letter jointly. He has purchased TV which was taken into possession by the ASI Paramjit Singh from him and on the asking of ASI he handed over the bill of TV. The accused Santokh Singh has alleged that he is innocent and has been falsely implicated in this case. On 08.06.01 Kamaljit Kaur left their house for going to village Kandhala Jatan to see her parents. In the afternoon, he received a telephone call from Chanan Singh PW and reached Haryana and came to know there that Kamaljit Kaur has consumed some poisonous substance and she was found unconscious at Haryana by some shop keepers. On receiving telephone call he reached Haryana from where he was taken into custody by the police and detained in the police station Haryana and later on false case was planted upon him. The accused Harjinder Kaur has denied the prosecution allegations and has alleged that she is innocent.

6. *In defence, the accused have examined DW1 Ranjit Singh and accused has tendered into evidence letters Ex.D1 to D4 and letters Mark-D1, D2, D3, D4 and D5.”*

3. After appraisal of the documents, prosecution evidence and the defence evidence, the learned Additional Sessions Judge, Hoshiarpur convicted the accused appellants under Section 304-B IPC and sentenced them to undergo rigorous imprisonment for seven years.

4. Feeling aggrieved against the same, the appellants have filed this appeal, which was admitted on 14.02.2003.

5. The learned counsel for the appellants makes reference to the letters written by the deceased, Kamaljit Kaur, while she had been residing with appellant No.1 in Goa, to the relatives which shows that the relationship between the deceased and the appellant were cordial and that the deceased was happy with the entire family members of the appellants. In these letters, nothing was ever mentioned with regard to the demand of dowry or the harassment of the deceased wife. The marriage took place about 6 years before the occurrence and there was no specific allegation of demand of dowry etc. which had been levelled against the appellants before the alleged demand of funds of Rs.50,000/-. Further, the appellants were saying that they would keep deceased, Kamaljit Kaur in their house only in case she brings an amount of Rs.50,000/-.

6. The learned counsel for the appellants cites **M. Srinivasulu VS State of A.P.**, 2007(4) RCR (Criminal) 146 and **Gurucharan Kumar and anr. Vs. State of Rajasthan**, 2003(1) RCR (Criminal) 577.

7. On the other hand, the learned State counsel submits that the letters reliance on which has been placed by the appellants are not admissible in evidence under any provisions of the Evidence Act. He further submits that the deceased Kamaljit Kaur had died otherwise

than under normal circumstances within 7 years of her marriage and soon before her death, there was a demand of dowry on the part of the appellants.

8. I have heard the submissions of the learned counsel for the parties and have carefully gone through the record with their able assistance.

9. Section 304-B IPC reads as under:-

“304B. Dowry death.—

1. Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

10. It has been manifested in plain words in the language of this Section by the legislature that the abetment is the most important ingredient of the offence and it is not defined separately in this Section.

Therefore, Section 107 of Indian Penal Code which defines abetment is

referable at this stage in which the ingredients of the abetment are explained. Section 107 ibid reads as under:-

“107. Abetment of a thing – A person abets the doing of a thing, who -

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 – Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

It is apparent that the three ingredients are basic requirement for determining the case of abetment. Firstly, the concerning person, who committed suicide should be instigated by the accused for the same and by secondly, there should be an involvement

of the accused in conspiracy, whereby the deceased committed said act and thirdly, there should be an intentional criminal aid to the deceased at the instance of the accused either by act or any omission for doing such act.

11. The term “dowry” has been defined in Section 2 of the Dowry Prohibition Act, 1961 (in short ‘Dowry Act’) as under:-

"Section 2. Definition of 'dowry' - In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies.

Explanation I- For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II- The expression 'valuable security' has the same meaning in Section 30 of the Indian Penal Code (45 of 1860)."

12. The deceased, Kamaljit Kaur, was married to the appellant

No.1-Parminder Singh on 14.05.1995. It is admitted by PW-1 Chanan Singh, father of the deceased that the appellant No.1-Parminder Singh was posted in the Indian Navy and after marriage he took the deceased Kamaljit Kaur to Colomba/Bombay in the month of October, 1995. Thereafter in September, 1996 the appellant No.1 alongwith the deceased Kamaljit Kaur came to village Chak Khalan, District Hoshiarpur, Punjab where the appellant No.2-Santokh Singh and the appellant No.3-Harjinder Kaur i.e. parents of the appellant No.1 were residing and a child was born to her at her matrimonial home.

13. Thereafter, the deceased Kamaljit Kaur alongwith the appellant No.1 went back to Goa in November, 1996. The appellant No.1 was having on official accommodation at Goa and the deceased Kamaljit Kaur gave birth to their second child in the year 2000 at Goa.

14. It is also an admitted fact that the elder child of the appellant No.1 and the deceased wife had been studying in a School at Goa. The appellant No.1 had come for training at Chandigarh on 15.06.2001 for one month and they were to leave for Goa on 31.07.2011. During this period, the deceased Kamaljit Kaur started living at the house of the appellants No.2 and 3. These facts shows that most of the time the deceased had been living with the appellant No.1 at Goa and it was only during short intervals during this period of six years that she stayed with her parent-in-laws i.e. appellant Nos.2 and 3.

15. The complainant lodged an FIR making allegations that the

appellants had been harassing the deceased for not bringing television and a sum of Rs. 50,000/- from her parents. The complainant has tried to project as if the appellants had been living for all these six years in the village Chak Khala District Hoshiarpur, Punjab. But during cross examination both witnesses i.e. PW-1, Chanan Singh, father of the deceased and PW-3 Kuldeep Singh, brother of the deceased had to admit that most of the time the deceased stayed with the appellant No.1 at Goa. The admitted fact of staying of the deceased with appellant No.1 at Goa itself falsifies the allegations that the deceased was being harassed for dowry.

16. Another piece of evidence produced by the appellants are the various letters written by the deceased to her sisters, brother, father, sisters of appellant No.1 and even to appellants Nos.2 and 3. These letters are Ex.D1 to D5 addressed from the beginning of year 1999 to year 2001. In all these letters the deceased, Kamaljit Kaur, had always praised her husband, her father-in-law and mother-in-law. In none of these letters, there was even a whisper that the deceased was harassed for dowry or any demand was raised by any of the appellants. Rather even in the letter written to her sisters, the deceased has praised all the members of her in-law's family. Not even a single adverse word has been written against any of the appellants.

17. Even in the cross examination of both PW-1 Chanan Singh and PW-3 Kuldeep Singh it was admitted that in none of the letters

written by the deceased she had ever indicated about any kind of harassment caused to her for dowry or in relation to a demand of any kind and that for those reasons they did not produce any letter before the police.

18. Men may tell lies but the circumstances do not. These letters falsify the version of the complainant that the deceased was ever harassed for the demand of a television and a cash of Rs. 50,000/-. No reliance can be placed on the oral version of the close relations of the deceased which is belied by the documents. It is not believable that if the deceased was harassed for dowry, she would not inform her own sisters, brother, father in these letters, rather in her communications she has praised all the members of her-in-law's family.

19. Another aspect of the case is that the marriage had taken place on 14.05.1995 and the deceased, Kamaljit Kaur, committed suicide on 8.6.2001 i.e. more than 6 years after the marriage. In the FIR, as well as in the sworn testimony in the Court, PW-1 Chanan Singh and PW-3 Kuldip Singh have leveled only general and vague allegations of the demand of television and a cash of Rs. 50,000/-. Both these witnesses admitted that they have not mentioned any month or year of the alleged demand and as to which of the appellants raised the said demands.

20. This Court cannot believe that for a period of a six years the demand of television and a cash of Rs.50,000/- continued without

being met and during this period of six years the deceased lived with her husband Parmidner Singh, appellant No.1, most of the times at Goa and visited for short duration to village and in her letters written to her parents and sister she never even mentioned that she was ever being harassed by the appellants.

21. All these facts show that the version of the demand of television and a cash of Rs.50,000/- were concocted just to bring the case within the ambit of Section 304-B IPC and no reliance can be placed on such unreliable evidence to convict the appellants.

22. It is alleged that father of the deceased had given television on the demand of appellants, a month earlier to the present occurrence. The receipt of the purchasing of said television was found to be in the name of appellant No.1 and it is rightly suggested by the defence counsel that it was in the knowledge of the complainant that the appellant had purchased the said television and for that reason this false version was created to implicate the appellants that a month prior to the demand of accused a television was got purchased.

23. As discussed earlier, this Court has already disbelieved both witnesses who deposed regarding harassment of the deceased with regard to the alleged demands as these allegations are contradictory to letters written by the deceased, her staying at Goa with her husband for most of times and there being no specific allegation of any demand or harassment.

24. Another aspect of the matter which shows the innocence of the appellants is that after the death of the deceased, Kamaljit Kaur, both children were kept by the appellants and the complainant admittedly even never tried to know the fate of both the children. And this Court has been informed that now the elder son is doing his Bachelor of Engineering and the younger daughter is a student of 10th class and that both the children have been residing with the appellants and are being looked after by them.

25. The conduct of the complainant party showing no interest in the children, reflects that it was out of vengeance that the present case was got registered.

26. Another aspect which falsifies the version of the complainant party is that as per the version of the complainant, upon receiving information given to them by somebody on phone, they reached the house of the accused and saw the deceased, Kamaljit Kaur lying in a serious condition and shifted her to the hospital. But the appellants have produced DW1, Ranjit Singh who runs STD booth at village Haryana. As per his version, the deceased came to his shop and called her father from his STD booth and told her father that she had consumed poison as she had a tiff with her brother Kuldeep and after saying so she fell in front of the shop. Number of persons gathered there, the police was telephonically informed and even the father of the deceased was informed by him on phone. The evidence of this witness

is corroborated by PW-4 Dr. Harinderjit Singh Garg that the dead body was brought to the hospital by C-Nirmal Singh 1885 and C- Jaspal Singh 1696, both from PS. Haryana. If the deceased had been brought to hospital by PW-1 Chanan Singh or PW-3 Kuldip Singh, then their names would have been mentioned by the doctor in his writing indicating the name of the person who brought the dead body. But mentioning of name of two constables by the doctor, who are independent persons, shows that the version of DW, Ranjit Singh that the deceased died at STD booth at Village Haryana and not at the house of appellants as alleged by the prosecution witness is true. This fact probablies the defence version that deceased had gone to meet her parents in the morning and had a tiff with her brother Kuldeep Singh and for that reason committed suicide.

27. Keeping in view the above, present appeal is allowed. The judgment of conviction and the order of sentence dated 14.12.2002, passed by the learned Additional Sessions Judge, Hoshiarpur are set aside and the accused-appellants are acquitted of the charges framed against them by giving them the benefit of doubt. The bail bonds furnished by the appellants shall stand discharged.

26.08.2015

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether referred to reporter? Yes/No.