

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

CRA-S-1160-SB of 2002

Date of Decision: July 29, 2015

Amrik Singh and others

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mrs. B.K.Mann and Mr. A.P.S. Mann, Advocates for appellants.

Mr. P.S.Bajwa, Addl. A.G. Punjab.

Amol Rattan Singh, J.

This appeal arises out of, initially, FIR No. 27/2000 having been registered at Police Station Verowal, District Amritsar, on 13.04.2000 at 02:00 P.M. The FIR arose out of a statement made by Ajit Singh son of Gurmej Singh, resident of Kirtowal Kalan, aged about 30 years, to Govinder Singh, SI /SHO of the said Police Station.

As per the statement, the complainant, Ajit Singh, was one of four brothers and six sisters, with two of his brothers having expired and all sisters stated to be married.

The youngest sister, Sarabjit Kaur, was married on 26.03.2000, to appellant No. 1 Amrik Singh son of Major Singh, resident of village Alampur. After about 8 days of the marriage, Sarabjit Kaur is stated to have come to her parental home and told her parents and family that her husband Amrik Singh, father-in-law Major Singh

(Appellant No. 3), mother-in-law Sukhbir Kaur (Appellant No. 4), brother-in-law Surjit Singh (Appellant No. 2) and his wife Harjit Kaur (Appellant No. 5), were “teasing” her for bringing less dowry and when she was came to her parental home, had told her to bring a car with her from her parents' place, failing which she should not return. The narration in the complaint, further, is that Sarabjit Kaur had told her husband and in-laws that her parents had already given enough dowry and could not afford to give a car, despite which she was being pressurized by them.

After she had been staying at her parental home for about 5/6 days, Amrik Singh, Major Singh, Sukhbir Kaur, Ranjit Singh and Sarabjit Kaur's sister-in-law, came to the house of the complainant (where Sarabjit Kaur was residing) at village Kirtowal, to take her back. At that time too, appellants No. 1, 3 and 4, i.e. the husband, father-in-law and mother-in-law of Sukhbir Kaur, demanded a car from the complainant and his parents, in the presence of the complainants' brother, Darshan Singh and nephew Baj Singh.

Despite the complainant and his family telling them that they were unable to afford a car, appellant No. 3 is stated to have said that unless the car is given, Sarabjit Kaur would not be rehabilitated.

2. The statement of Ajit Singh, before the SHO, further goes on to state that on 12.04.2000, his brother-in-law Partap Singh and sister-in-law Jagir Kaur, visited Sarabjit Kaur at her in-laws' house, who again told them that she was being harassed for not bringing a car, which was conveyed to the complainant and his family by the said Partap Singh and Jagir Kaur.

On 13.04.2000, the complainant and his family received a message that Sarabjit Kaur had died, upon which he along with his father Gurmej Singh, brother Darshan Singh and nephew Baj Singh reached the house of the appellants and saw the dead body of his sister lying on a cot in the verandah of their house, covered with a blanket. The complaint further states that the complainant noticed injuries on the neck and cheek of Sarabjit Kaur. Therefore, as per his allegations, before the SHO, the appellants had murdered his sister with common intention, on account of her not having brought a car in dowry.

3. A report under Section 173 Cr.P.c. having been presented to the competent Court, against all the appellants, making out offences punishable under Sections 304-B, 498-A and 148 read with Section 149 of the IPC, the case was committed to the Court of Sessions by the learned JMIC, Tarn Taran, vide his order dated 29.07.2000.

4. The appellants were all charged by the trial Court for offences punishable under Sections 304-B, 498-A of the IPC. As it was claimed that appellant No. 1, Amrik Singh, was only 17 years of age, an application was moved for declaring him a juvenile and for trial by the Juvenile Justice Board. However, the said contention having been found to be false, he too was tried along with the other four appellants, by the trial Court.

5. It has been now submitted by learned counsel that appellant No.1, Amrik Singh, husband of the deceased, whose sentence was suspended by this Court vide order dated 28.05.2004 (after the sentences of the other four appellants had earlier been suspended on different dates), has died on 16.08.2013. Obviously, the appeal,

therefore, abates qua Amrik Singh, in the absence of any application moved in terms of the proviso to Section 394 of the Cr. P.C.

6. The trial Court having found all five accused guilty of the offences they were charged with, sentenced them to rigorous imprisonment for 10 years, for the offence punishable under Section 304-B of the IPC and to 1 years' rigorous imprisonment for the offence punishable under Section 498-A of the IPC; and further, to pay a fine of Rs.1,000/- each, for the offence punishable under Sections 498-A, in default of which they were all to undergo further rigorous imprisonment for 3 months. The substantive sentences were ordered to run concurrently, vide the judgment and order of the learned Additional Sessions Judge, Amritsar, dated 15.07.2002, against which the present appeal has been filed.

7. Before going to the statements of other witness, the statement of Dr. Jagjit Singh, Medical Officer, Civil Hospital, Tarn Taran (PW5), who deposed in respect of the postmortem examination conducted on the body of deceased Sarabjit Kaur, needs to be referred to.

The following injuries are stated to have been found on the person of the deceased, which are reproduced, *ad verbatim*, from the report:-

1. A brownish contusion of 6 X 2 cm present at the level of thyroid cartilage 7 cm below the chin on dissection underlying skin dry and sub cutaneous tissue interposed by petichial haemorrhage and ecchymosis.

2-A. A brownish contusion 4 X .75 present just below the chin. Along the mandibular margin, 3 cm to left and 1 cm to right of mid line.

2-B. Another brownish contusion 2 X .75 cm in size just below the chin in the same line of injury no. 2-A, 1.5 cm to right of mid line. Dissection of injury no. 2-A and B reveals dry skin, petichial haemorrhage and ecchymosis in sub cutaneous tissues.

3 Two nail marks present on the face on left side, 6 cm from left alar cartilage of nose.

4. A nail scratch mark was present behind the right ear. 2 cm from the lobule of right pinna.

Other than the above, the post mortem report also shows that there was a tongue bite, causing a lacerated wound on the lateral part of the tongue, 2 cms x .5 cm.

The post mortem report does not give the exact age of the deceased, simply showing her to be a young female moderately nourished and built. However, the age given at the top of the post mortem report, is mentioned as 22/23 years “as per police paper”.

As per the testimony of PW5, the cause of death was initially not given, to be opined upon after receipt of the chemical examiners' report, after which it was given to be asphyxia caused as a result of ante-mortem injuries No. 1, 2-A and 2-B.

The probable time between injuries and death was also subsequently given to be immediate, in the opinion of the board of doctors, as stated in the postmortem report (Ex.PW5/F).

In cross-examination, Dr. Jagjit Singh (PW5) admitted that the Board was not sure of the cause of death at the time of postmortem examination, but had suspected that it may be due to poisoning. He also admitted that poison was detected in the viscera by the chemical examiner, but the Board did not have the exact blood levels of the poison, in the report. However, he further stated that had the death been

caused by poison, ante mortem injuries could not have been present and as such the poison may have been of a sub-lethal dose.

The doctor was cross-examined extensively on the issue of possible death due to poisoning, but he firmly opined that the death was not due to poison but on account of asphyxia, further giving reasoning that had the poisonous dose been lethal, there would have been a foul smell from the mouth and nose. He also admitted that asphyxia can be contributed to by poison, with a sub-lethal dose.

8. Coming to the other witnesses, PW1 was Ajit Singh, the complainant and brother of the deceased, who testified in consonance with his statement before the police, though in his testimony he gave the exact date that Sarabjit Kaur had gone back to her matrimonial home, as 10.04.2000. He also stated that the deceased had told his sister Jagir Kaur and brother-in-law Partap Singh that she (deceased), was not being given any food to eat.

The testimony further goes on to read that the complainant and his family had made a plan to go and meet Sarabjit Kaur on the next day after they were informed (on 12.04.200) by Jagir Kaur and Partap Singh, of the above, but at 10:00 A.M. on the next day, they received a message that Sarabjit Kaur had died.

He also stated that he, his father Amrik Singh, his brother Darshan Singh, his nephew Baj Singh and cousin Baldev Singh went to the house of the in-laws of Sarabjit Kaur and found none of the accused present there. He gave the distance between his village (Kirtowal) and that of his sisters' matrimonial home (Alampur) to be 50 Kms.

In cross-examination, he stated that though he had not seen village Alampur, the “Dera” (place of residence) of the accused, is at a distance of 5 Km from Khadur Sahib.

Other than giving other facts about the age of his father, the death of his mother and the number of siblings, he gave his sisters' educational qualification to be matriculation and her age to be 25/56 years, with a healthy body. He denied knowledge of whether Amrik Singh (now late) husband of his sister was only 16/17 years old, but stated that he had studied up to the 8th standard from Khadur Sahib. He denied the suggestion that Amrik Singh was totally illiterate.

PW1 further gave name of the person who acted as mediator in the marriage as one Bhagwan Singh, resident of village Failoke, who he described to be the “foster brother” of his brother-in-law.

This witness further stated in cross-examination, that Amrik Singh had two brothers, i.e. Ranjit Singh (not an accused) and Surjit Singh (appellant No. 2), who were both married, with children, and that Amrik Singh also had one sister who was married.

He further stated that the appellants had 21 acres of land and denied the suggestion that they owned only 8/10 acres of land. He also denied the suggestion that the land had been partitioned between the appellants.

Though he stated that he had told the police that the accused were living jointly, he was confronted with his statement Ex.'PA', where it was not recorded so. He also stated that after 8 days of the marriage, his mother had sent a car along with a driver, to bring Sarabjit Kaur from her in-laws, and was again confronted with his

statement to the police where it was not so recorded; after which PW1 stated that he had been told by his father that the car had been sent but he was not present. He also gave the name of the driver of the car to be Gurbachan Singh from his village, who was not joined by the police in the investigation nor was he produced by his own family.

The complainant also denied as incorrect that his sister had come back home after the 3rd day of her marriage, along with her husband, but did not go back with him.

9. PW1 Ajit Singh, further in his cross-examination, stated that though the accused had demanded a car even when they came to his home after his sister had been staying there for about 5/6 days, and were told that the complainant and his family could not afford the same, the accused took his sister back, "on persuasion".

The witness further stated that he had also brought to the notice of the mediator in the marriage, that a car could not be given and that the mediator, Bhagwan Singh, was actually present in the house when Sarabjit Kaur was taken by the accused.

He further stated that the members of the Panchayat of the village were not informed about the incident but his brother-in-law and Bhagwan Singh had come on the day that his sister went back.

Still further in the cross-examination, PW1 stated that he did not remember the name of the person who had delivered the message about the death of Sarabjit Kaur on 13.04.2000 but the messenger was sent by Bhagwan Singh. However, the said messenger had not accompanied them to the house of the accused after that. Bhagwan Singh is stated to have reached the spot of occurrence, as per the PW1.

PW1 also stated that he had reached the house of the accused at about 11/11:30 A.M. on 13.04.2000, where only 1 or 2 ladies were present near the dead body and that the police reached the spot at about 1:30 P.M., before which Bhagwan Singh had arrived.

The complainant further denied that his sister had been “forcibly left” by his family and him at her in-laws house, against her wishes, on 12.04.2000.

He also denied the suggestion that before her marriage, his sister had been engaged to different people at three different villages. He also denied the suggestion that his sister used to worship a “Pir” and used to go into a trance when she worshipped the said “Pir”, whose “Samadh” was adjacent to their house.

PW1 further stated that no person from the village of the accused came to the place of occurrence till the police remained there; and further, that he himself had left the place of occurrence at about 3 P.M., with the dead body.

He denied knowledge of any relatives and neighbours of the accused.

10. Partap Singh son of Gurdeep Singh, resident of Anandpur, Tehsil Tarn Taran (brother-in-law of the complainant and the deceased) appeared as PW2 before the trial Court and stated that Sarabjit Kaur had come to her parental home on 04.04.2000 after getting married to Amrik Singh on 26.03.2000 and had informed the family (including himself) that her in-laws were harassing her for dowry and were demanding a car. He corroborated the statement of PW1 that Sarabjit Kaur was taken by the accused to their village on 10.04.200 and that he (PW 2) and his wife Jagir Kaur had gone to village Alampur to meet Sarabjit Kaur on

02.04.2000. He further stated that all the accused present in the Court were present at their home at that time, but they did not speak to him and his wife.

He reiterated what PW1 had stated, to the effect that Sarabjit Kaur had informed him and his wife that the accused were maltreating her and were demanding a car in dowry, upon which he and his wife left for village Kirtowal, to inform the family of the complainant with regard to the same. This witness further stated that he and his wife came back to their own village, Anandpur, which is 25 Km away from village Kirtowal. On the next day they received a message with regard to the death of Sarabjit Kaur and therefore, went to the village of the accused, where the police were present and he (PW2) made a statement to them.

In cross-examination, nothing significant, contrary to the facts narrated by the witnesses and in the complaint, could be elicited from this witness. He was, however, confronted with various statements that he had made with regard to the fact that he had not told the police (as he had claimed to have done in his testimony), with regard to the specific dates on which Sarabjit Kaur first came to her house (04.04.2000) and when she went back to her matrimonial home (10.04.2000).

It is also significant that this witness also, in his cross-examination, stated that Bhagwan Singh, i.e. the mediator in the marriage, was present at the spot of occurrence on 13.04.2000, as had also been stated by PW1.

11. PW3 was ASI Harbhajan Singh of P.S. Verowal, who testified that he joined the investigation of the case with SI Govinder

Singh on 14.04.2000 and took into possession some gold ornaments which were made into a parcel and sealed with the seal of the SHO. He identified the parcels to be Ex.P1 and also identified the contents thereof. This witness further identified the clothes on the dead body as given in Ex.PW3/A, to which he was a signatory.

In cross-examination, he had admitted that the clothes and the ornaments were those which were removed by the doctor at the time of postmortem examination from the dead body.

12. PW4 was Bhagwan Singh son of Diwan Singh, aged 46 years, resident of village Failoke, Tehsil Tarn Taran.

This witness stated that he was the mediator in the marriage of Sarabjit Kaur and Amrik Singh as he was a relative of Major Singh, father of Amrik Singh. Apart from giving the date of the marriage as 26.03.2000 and identifying the accused in Court, he stated that he had joined the investigation of the case and was called by the police to the office of the DSP Goindwal Sahib, where he had produced the invitation card of the marriage (Ex.P3). He further stated that the invitation card was taken into possession by the police vide a recovery memo (Ex.PW4/A), to which he was a signatory alongwith Kultar Singh, Sarpanch and HC Iqbal Singh.

In cross-examination, PW4 stated that his village is at a distance of 8 to 10 Kms from the village of the accused and at a distance of 16 Kms from the village of the complainant. He further stated that though he had visited village Kirtowal before the marriage, he never visited there after the marriage, though he had gone to bring Sarabjit Kaur.

He also stated that he was related to the accused but not to the complainant.

13. PW6 was SI Govinder Singh, who first investigated the case.

He testified that he had recorded the statement of the complainant, "Ex.PA" and had forwarded the same with the endorsement Ex. "PA/1", for registration of the FIR, which was recorded by ASI Harbhajan Singh, after which he had accompanied the complainant along with other police officials, to the house of the accused, where he found the dead body of Sarabjit Kaur lying on a cot in the Verandah.

This witness next testified with regard to the preparation of the "inquest report", Ex.PW5/C and stated that the body was identified by Darshan Singh and Baldev Singh, after which it was handed over to ASI Sohan Lal and one Harjinder Singh, for getting the postmortem examination conducted.

PW6 further testified to the preparation of a rough site plan, Ex.PW6/A, and recording of the statements of various persons. He further testified that on 14.04.2000, ASI Sohan Lal had produced before him the clothes of the deceased, along with one "Churra" (Bangles), which were taken into possession vide memo "PW3/A". He identified the clothes of the deceased as Ex.P1, Ex.P2 and Ex.P3, along with the ornaments stated to have been recovered.

This witness further stated that the remaining investigation was conducted by DSP Lakhwinder Singh.

In cross-examination, he stated that the statements of complainant Ajit Singh (Ex.PA) and of Partap Singh (Ex.DA), were

correctly recorded by him and that he had reached the spot at about 01:40 P.M., where about 50 persons were present at the spot, including the mother, father and other relatives of the deceased.

In further cross-examination, PW6 also stated that he had examined some persons present at the spot, including the father and the mother of the deceased, though he had not recorded the statement of the deceaseds' mother or of taxi driver Gurbachan, at any stage of the investigation.

He denied the suggestion that the FIR was actually recorded after deliberations and consultation at about 4/5 P.M. and was ante-timed and it was actually for this reason that the dead body reached the mortuary at about 06:55 P.M.

He further admitted that he did not join neighbours of the accused in the investigation, when he visited the spot. However, he stated that it had come to his knowledge, during investigation, that the deceased used to visit a "Mazar" and that she had some mental disorder.

14. PW7 and PW8 were HC Gurdial Singh and C Harjinder Singh respectively, who were formal witnesses, who tendered their affidavits by way of evidence with regard to the making of the parcel of bangles etc. and statements/carrying of reports. They were not cross-examined by the defence.

15. PW9 was DSP Lakhwinder Pal Singh Khaira, who stated that on 13.04.2000, he was posted as DSP Goindwal Sahib Police, District Tarn Taran, where he received information of the occurrence and had gone to the spot where SI Govinder Singh was present along with other police officials. PW9 testified to having "verified the investigation" and that on 21.04.2000 during the course of the trial, he

had arrested all the accused, who were produced before him by Sarpanch Rasal Singh, after which they were sent to the lock-up at P.S. Verowal. He further testified to having recorded the statements of Iqbal Singh (Reader of this DSP), Bhagwan Singh (resident of village Failoke), Kultar Singh (resident of Failoke) and Salwinder Singh (Granthi of Gurdwara Kirtowal), as also the statement of one Gurmej Singh of village Kirtowal.

He further testified to having completed the investigation and the “challan” having been prepared by SI Rattan Singh.

On cross-examination, PW9 stated that he had not recorded the statement of Partap Singh or any witness on 13.04.2000 and that the statement of other persons named in his testimony, were recorded by him in his office. He also stated that he had not gone to village Alampur after 13.04.2000 but had joined Darshan Singh, Swaran Singh, Harnam Singh, Kartar Singh and Gurnam Singh in the investigation, along with some other persons, though he had not recorded the statements of these persons.

He further stated that it did not come in the investigation that Amrik Singh (husband of the deceased) was living separate from the other members of the family, or that Sarabjit Kaur was mentally unsound. He stated that he had never met Sarabjit Kaur in her life time.

On further cross-examination, PW9 stated that it had come out during investigation that Sarabjit Kaur had visited her parents' place about 10/15 days after her marriage, though he did not know who brought her from her in-laws' house, but it was some body from her parents side. He admitted that he had not mentioned this fact in the “Zimini”. He further stated that the complainant had not produced any

driver before him who had brought Sarabjit Kaur from her in-laws home. He further admitted that he had recorded in the “Zimini” that Rasal Singh had produced the accused before him; however, he had not recorded Rasal Singhs' statement.

16. The Additional Public Prosecutor had given up Dr. Dinesh Gupta and Dr. Ajit Singh, as unnecessary witnesses, though they were present in Court. He also gave up Darshan Singh, Gurmej Singh, Jagir Kaur and Baj Singh (brother, father, sister and nephew respectively, of the deceased), as also Kultar Singh and Salwinder Singh, as unnecessary witnesses, on an application moved by the complainant.

17. In his statement under Section 313 Cr.P.C, Amrik Singh had stated that his marriage with the deceased was mis-matched, as she was an educated beautiful woman, 24/25 years of age, whereas he himself was an illiterate boy aged 15/16 years. He further stated that the deceased had love affairs with other persons, which her parents did not approve of, and had therefore married her forcibly to him, against the deceaseds' wishes.

He further stated that the deceased came back to her matrimonial home 2 days after the marriage and had not come back to her in-laws place, in spite of their request. On 2.04.2000, as per this accused, the complainant, Ajit Singh, brother of the deceased and some other relatives, had brought her to her matrimonial home in the evening and had left her there despite her protests, after which she committed suicide.

He further stated that the FIR was registered after deliberation and consultation only to falsely implicate him and his

family and that no demand for dowry had ever been made, nor had the deceased been maltreated. Amrik Singh, thus pleaded his innocence.

18. In her statement under Section 313 Cr.P.C., Harjit Kaur (appellant no.5), wife of Surjit Singh, brother of Amrik Singh, simply stated that she had been falsely implicated in the case.

To the same effect are the statements of Surjit Singh (Appellant No. 2), Major Singh (Appellant No.3) and Sukhbir Kaur (Appellant 4), under Section 313 Cr.P.C.

19. Amrik Singh, husband of the deceased, also appeared as the only defence witness in the case and largely testified in tune with his statement under Section 313 Cr.P.C.

He further stated that as a protest against having been forced to stay with his family, Sarabjit Kaur took some poisonous substance and died at night, after which a message was sent to the complainant the next morning, who thereafter reached their village and falsely implicated them in the case.

DW1 further stated that his brother, Surjit Singh, co-accused, was married about 4/5 years earlier and had a child and that Surjit Singh and his wife resided separately and also had separate cultivation. He further stated that Surjit Singh had purchased his own land about 3½ years ago. He also stated that he had brought the registered deed vide which his brother had purchased the agricultural land, and tendered a photocopy of the registered sale deed as Mark 'A'. DW1 also testified before the trial Court that he had never demanded any car from the deceased or from the parents or had maltreated her.

In cross-examination, he stated that he was illiterate and was born in the year 1984, though he had no birth certificate. He further

stated that he had not been admitted to any school and gave the names of his elder brothers, as Ranjit Singh and Surjit Singh. He further stated that Ranjit Singh was also cultivating land and was married, but again was illiterate. Surjit Singh had however studied upto the 10th class.

He denied that he was 22 years of age and was falsely claiming to be 17 years.

20. Other than giving the relationship between his father and Bhagwan Singh, whom he admitted to be the mediator in his marriage, this witness further stated in cross-examination that his engagement to the deceased took place about six months prior to the marriage and that 10 to 12 persons had come from his in-laws side at that time.

He next stated that his wife was taken away from his home by his mother-in-law and father-in-law, after two days of the marriage and that his in-laws had come of their own to take her away. He denied that he or his family went to his wife's parental home to bring her back to stay; instead, she was brought back by her parents after about 15 days, who then left her in his house and returned the same night. He further stated that Sarabjit Kaur was brought to his home at 10:00 or 11:00 AM and that his in-laws stayed at his village for about two hours, during which period he and his family (co-accused) were all present in the house.

DW1 further stated that his family was living in a big house and had separate rooms for their residences, with a common court yard.

He denied knowledge of any Ration-Card having been issued to them or not. He further stated that the family took their meals at about 7:00 PM on that day and that no dispute had taken place between him and his wife, Sarabjit Kaur. He further stated that they both

slept in the same room but he came to know of her death only the next morning at about 7:00 or 8:00 AM, after which he informed his parents, who were present at home and thereafter neighbours also came to their house.

DW1 denied signs of injuries of any type on the body of Sarabjit Kaur but admitted that they had not informed the police about her death.

In fact, he also denied the suggestion that there were any contusion marks on the neck or the other parts of Sarabjit Kaur's body. He also denied the presence of any nail injuries on her face.

He further stated that when Sarabjit Kaur had been taken by her parents (earlier), from her matrimonial home, his family had not informed the mediator, Bhagwan Singh, about the same.

Of course, he denied the demand of a car in dowry, or maltreatment of Sarabjit Kaur by his family, or that she had been strangled and poisoned to death.

He, lastly, denied that he had wrongly deposed that Sarabjit Kaur was not ready to live with him.

21. Though the Chemical Examiners' report has already been referred to in the deposition of PW5, Dr. Jagjit Singh, a brief reference to the same would be in order, separately also.

The said report (Ex.PW5/E) states that five sealed jars were sent for examination, the contents of each of which, were as follows:-

- i) Stomach and its contents.
- ii) A portion of small & large intestine.
- iii) A portion of liver spleen and kidney.
- iv) Blood from the heart.
- v) Sample of preservative.

The result given by the Chemical Examiner, as given in the report, is to the following effect:-

“Aluminium phosphide a pesticide was detected in the contents of exhibits No.I and No.II. Phosphine a constituent of aluminium phosphide was detected in the contents of exhibits No.III and No.IV. No poison was detected in the contents of exhibit No.V.”

22. Having considered the evidence led before it, the learned trial Court did not accept the argument that the deceased had committed suicide, on account of the fact that, firstly, Amrik Singh even in his testimony as DW1, had admitted that he and his wife had slept in the same room and that he had discovered her to be dead in the morning, denying any kind of injury marks on her, including contusion on her neck and scratch marks on her face etc. The said scratch marks having been self-inflicted, was not believed by the trial Court, on account of the fact that had they been so self-inflicted, during the course of hanging, it would not be possible that Amrik Singh would not have woken up at night and seen his wife committing suicide.

The story of alleged love affairs of Sarabjit Kaur and some other persons, was disbelieved on account of the fact that neither the mediator, Bhangwan Singh, nor anyone else had even whispered anything to that effect and, if that had been so, then in the six month period that Sarabjit Kaur and Amrik Singh had been engaged, something would have come to light on that issue, which could have led to termination of the engagement itself.

23. Thus, while not believing the theory of suicide, eventually the accused were all held guilty for offences punishable under Sections

304-B and 498-A of the IPC and were punished as per the sentences imposed upon them, as given earlier in this judgment.

24. Addressing arguments for the appellants, Mrs. Baljit Kaur Mann and Mr. A.P.S. Mann, first pointed to the question and answers put to Dr. Jagjit Singh, PW5, with regard to the fact that when a corrosive type of poison is ingested by a deceased, the larynx and tracheae get congested; to which the doctor had replied that there would be ulceration of the tongue, larynx and tracheae, alongwith congestion. Thereafter, as already noticed earlier, the doctor, upon a question put to him, stated in his cross-examination, that asphyxia could also have been contributed to by poisoning with a sub-lethal dose.

Thus, Mr. Mann submitted, that the theory of poisoning even by a sub-lethal dose is completely 'destroyed' in view of the admission by the doctor, that in case of corrosive type of poisons, there would be ulceration of the digestive track, which admittedly, as per the post mortem report, did not exist in the case of the deceased.

25. He next pointed to what he described as discrepancies between the statements of PW1 and PW2, Ajit Singh and Partap Singh respectively and certain improvements in the testimony of PW1 Ajit Singh, over his (complaint) statement, on the basis of which the FIR was registered.

In this regard, he specifically pointed to the fact that though in his improved version, while testifying before the Court, PW1 stated that PW2 had told him (PW1) and his parents, that Sarabjit Kaur had told him and his wife that she was not being given any food to eat and a demand of a car had been made in dowry, no such allegation of food not being given to her, was stated by PW2 in his testimony. He only made a

general statement with regard to Sarabjit Kaur telling him and his wife that she was being ill-treated and a car was being demanded in dowry.

Mr. Mann further pointed to the fact that it would not be believable that PW2 and his wife Jagir Kaur (sister of the deceased and the complainant) simply went on a casual visit to Sarabjit Kaur's matrimonial home on 12.04.2000 (as deposed by PW2) and thereafter, went to the house of the complainant.

In this regard, he pointed to the cross-examination of PW2 to submit that the visit itself, claimed to have been made on 12.04.2000, does not seem to have been actually made, because, on the one hand, PW2 stated that he remained at the matrimonial home of the deceased for about 4 hours and thereafter, later in the cross-examination, stated that he went there on a casual visit. Thus, this witness, according to Mr. Mann, was only introduced in order to try and strengthen the case of the prosecution and factually neither he nor his wife Jagir Kaur, who was not even examined by the prosecution, had visited the house of the accused and the deceased.

26. Learned counsel further submitted that actually it was a case of a wholly mismatched marriage, as is obvious from the fact that even if Amrik Singh (Appellant no.1, now deceased) is taken to have been about 22 years of age, admittedly Sarabjit Kaur, even by her brothers' own statement as PW1, was about 25/26 years old and was a matriculate, whereas Amrik Singh though actually illiterate, was alleged to have studied upto class-8th, as per the prosecution, in respect of which no certificate from any school was produced.

Thus, Mr. Mann submitted, that the marriage being wholly mismatched, actually led to the suicide of Sarabjit Kaur, rather than on account of any demand of dowry having been made at any stage.

He further submitted that this fact was fortified from a perusal of the testimony of PW4, Bhagwan Singh, who admitted to being the mediator of the marriage but did not say a word on any maltreatment by the appellants, to Sarabjit Kaur, even though both PWs1 and 2 had stated that Bhagwan Singh had been told all along about such maltreatment and, in fact, as per PW1, Bhagwan Singh even came to the house of the complainant, on the day that Sarabjit Kaur went back to her matrimonial home, after 5-6 days of stay at her parents' place. He further submitted that despite the mediator being a prosecution witness, he did not utter a word in favour of the prosecution case; yet he was not declared to be hostile and cross-examined, the prosecution thereby accepting his testimony to be correct.

Thus, counsel submitted that the entire story of a demand of dowry, not being corroborated by any independent witness, was not believable and had only been introduced in order to ensure that the appellants are punished for the death of Sarabjit Kaur, even though it was a case of suicide, wholly on account of a mismatched marriage.

Learned counsel for the appellants next pointed to the statement of Sub-Inspector Govinder Singh (PW6), the first Investigating Officer, to the effect that during his investigation, he had come to know that the deceased used to visit a "Mazar" and that she had some mental disorder. Mr. Mann submitted that, obviously, the suggestion in this regard earlier put to PW1 was not without basis and as a matter of fact, it was a cumulation of these facts which led to the

marriage being mismatched, thereby leading the deceased to commit suicide.

27. Mr. Mann next submitted that unless there are specific allegations against the relatives of the husband of the deceased, with regard to the demand of dowry and ill-treatment, such relatives cannot be held to be guilty for the commission of offences punishable under Sections 304-B and 498-A of the IPC.

In this regard, learned counsel relied upon a judgment of the Apex Court in **Kans Raj v. State of Punjab and others** (2000) 2 RCR (Crm.) 695, wherein their lordships had observed as follows:-

“For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.”

In this regard, learned counsel further relied upon the following judgments of the Supreme Court:-

- i) **Sakharam v. State of Maharashtra** 2003 (12) SCC 368;

ii) **Amar Singh v. State of Rajasthan** 2010(3) SCC (Cri) 1130.

He also relied upon a judgment of a Division Bench of this Court and of two co-ordinate Benches in:-

i) **Kanwal Singh and others v. State of Haryana** 2006(3) RCR (Criminal) 783;

ii) **Joginder Singh and others v. The State of Haryana** 2008(4) RCR (Criminal) 575; and

iii) **Kaul Singh and others v. State of Punjab** 2010(2) RCR (Criminal) 113.

Mr. Mann thus submitted that there being no specific allegations against the brother-in-law of the deceased and his wife, i.e. appellants no.2 and 5, Surjit Singh and Harjit Kaur respectively, the charges against them and their conviction for the same, was, in any case wholly unsustainable.

In this regard, he further submitted that the brother-in-law and sister-in-law named by PW1 in his cross-examination, as those who came to his house alongwith Amrik Singh and his parents, and made a demand of dowry, were her 'jeth' Ranjit Singh and the deceaseds' 'jethani', (implying thereby that it was Ranjit Singhs' wife), who were not even arraigned as accused by the police, or in any application moved under Section 319 Cr. P.C. before the trial Court. Thus, Mr. Mann contended, that appellant no.2, Surjit Singh and appellant no.5, Harjit Kaur have in any case simply been roped in by the complainants with no specific allegations against them at all, in the testimonies of the prosecution witnesses.

28. Learned counsel for the appellants next argued that Harjit Kaur was only 23/24 years old and had admittedly been married only

3/4 years earlier. As such, she was unlikely to have made any demand of dowry from another young bride who had just come into the house.

29. Mr. Mann thereafter submitted that even as per the complainant, he and his sister Sarabjit Kaur were amongst ten children of his parents, which included six daughters. Hence, even the demand of dowry from the appellants, would be wholly illogical, knowing that their daughter-in-laws' parents had married six daughters and consequently, would hardly have any large means with them. In other words, he submitted that there would be no expectation of dowry, in such a situation.

The next argument of learned counsel was that even going by traditional demands of dowry, the likelihood of a daughter-in-law being killed within seventeen days of her marriage, for lack of dowry brought, was a wholly unnatural phenomenon as, if there was greed for dowry, it would normally continue over a period of time, so as to ensure that at least some dowry keeps coming from the girls' family every now and then, to try and buy her happiness. As such, if the daughter-in-law was to be actually done away with, then it would be at least after a few months of marriage and not within the first 2/3 weeks itself.

30. Learned counsel, lastly, submitted that appellants no.3 and 4, i.e. Major Singh and Sukhbir Kaur, mother-in-law and father-in-law respectively, of the deceased, are now close to 80 years of age, having been shown to be 65 and 60 years old respectively, at the time of the decision of the trial Court. Hence, he prayed that even if this court comes to the conclusion that they were guilty as found by the trial Court, then clemency may be granted to them, though, he finally submitted, that actually even they were wholly innocent, in view of the

fact that the suicide of Sarabjit Kaur was not on account of any dowry demand by anybody, but because of the wholly mismatched marriage, on account of the age difference, educational difference and superstitious beliefs of the deceased.

31. Per contra, Mr. P.S.Bajwa, learned Additional Advocate General, Punjab, submitted that as per Section 133-B of the Indian Evidence Act, the presumption in this case would lie against the appellants, as Sarabjit Kaur died in their residence, within seventeen days of her marriage.

32. Mr. Bajwa next submitted that though, no doubt, PW2 in his cross-examination stated that it was a casual visit to the matrimonial home of the deceased, i.e. the house of the appellants, on 12.04.2000, that single statement cannot nullify the detailed facts of the visit, as given by PW2 and as such, the visit cannot be treated to be a casual visit but one which was made by PW2 and his wife, who was the sister of the deceased, specifically because the deceased had already come to her parental home earlier and complained of harassment for dowry (a car). As such, the visit was obviously purposeful and wholly natural.

33. Learned Additional Advocate General next submitted that, moreover, the injuries on the person of deceased were consistent with an occurrence of strangulation, inasmuch as, injuries No.2-A and 2-B are both of the same width of .75 cms and on dissection, both injuries revealed ecchymosis of the sub-cutaneous tissues.

In fact, Mr. Bajwa submitted, that in the case of hanging there would be a ligature mark going from below upwards, from the front to the back of the neck, whereas in the present case, the ligature marks were immediately below the chin in the front part of the neck,

which shows that it was actually a case of strangulation by the appellants. As such, Mr. Bajwa submitted that the appellants should have been charged for the commission of an offence punishable under Section 302 IPC, rather than under Section 304-B IPC.

34. Learned State counsel next submitted that, as a matter of fact, even PW4, Bhagwan Singh, had mentioned harassment to the deceased, in a statement to the police but, being related to the accused, did not specifically say so during his deposition before the Court. He next submitted that Amrik Singh was found to be 22/23 years of age and therefore, the application to declare him to be a juvenile, was dismissed. Being 22/23 years of age, the difference (in age) between him and the deceased was only about 2 to 3 years, which cannot be said to be of any great significance. Hence, as per learned Additional Advocate General, the contention of counsel for the appellants that the death of the deceased was on account of suicide committed by her due to a mismatched marriage, actually holds no water.

35. Lastly, Mr. Bajwa submitted that all the accused have undergone only slightly over three years of actual imprisonment before their sentences were suspended by this Court at various points of time, during the pendency of this appeal; except Harjit Kaur (appellant no.5) who has actually undergone only one year, seven months and seventeen days of actual imprisonment.

He, therefore, submitted that the appellants deserve no clemency and the appeal be dismissed.

36. After having heard learned counsel for the appellants, as also the State, and having gone through the evidence presented before

the trial Court, it is seen that the conviction of the appellants is based primarily on three facts:-

- i) The testimonies of PWs1 and 2 read with the initial statement (complaint) of PW1, on the basis of which the FIR was lodged.
- ii) The medical evidence in the form of the post mortem report and the testimony of PW5, Dr.Jagjit Singh.
- iii) The admission of Amrik Singh (appellant no.1 before this Court prior to his death) as DW1, that his wife and he were alone in the room at night and that he discovered only in the morning that she had died during the night, in the room itself.

37. Coming first to the medical evidence, there is obviously no doubt that Sarabjit Kaur died an unnatural death in her matrimonial home and the cause of death, determined by a Board of Doctors, was asphyxia caused by the three injuries visible on her neck, which were contusions.

Other than that, there were also nail marks on her face and right ear and a lacerated wound on her tongue.

Whether the wounds on her neck were caused by strangulation or by hanging was not clearly established, but in the opinion of this Court, as there was neither any allegation at all of her having been found to be hanging, nor any suggestion of a recovery of any material with which she could have hanged herself, the contusions on her neck leading to asphyxia, were obviously the result of strangulation.

The above has to be read with the fact that Amrik Singh, the late appellant no.1, husband of the deceased, admitted that he and the deceased, after having had their meal at about 7:00 PM with the family, had gone to sleep in their room together and in the morning she

was, as per his testimony, found by him to be dead. Though he tried to take a plea that Sarabjit Kaur had actually consumed poison and had died and that there were no injury on her body when he saw it in the morning, that statement is clearly belied by the fact that the injuries leading to her death, were found to be ante-mortem in nature as was, obviously, the wound on her tongue, caused by it having been bitten.

The very fact that Amrik Singh specifically denied any injury on her person, in his testimony, simply trying to show her death to be due to poison consumed by herself, makes his testimony unworthy of any credence, in the opinion of this Court. Had it been so, Amrik Singh would have been authoritative in stating that his wife had consumed poison and had inflicted wounds on herself, possibly in the throes of her body succumbing to poison and that he had tried to save her etc.. That not being the case, his complete denial of obvious injuries on her body, all proved by medical evidence to be ante mortem, makes the finger of guilt point towards him, with no mitigating factor. It was not even vaguely suggested by the defence that any outsider had entered the room of the deceased and Amrik Singh during the night and had murdered her.

Further, had the wounds on her body been self-inflicted, albeit even involuntarily during the course of any poison taking effect, very obviously it would have also created some commotion, if not verbally, then at least 'physically', looking at the nature of injuries on her person. Therefore, with the wounds themselves having been denied by Amrik Singh, even if Amrik Singh's version is to be accepted to the extent that his wife had committed suicide, and therefore, even if this Court infers that the wounds were involuntarily self inflicted, by a dying

person, his denial of their existence can only be construed to be due to complicity in her death, by him, either by causing it, or by abetting it. Hence, with the deceased and Amrik Singh admittedly having slept in the same room, the latters' involvement in her death, one way or another, is only too obvious.

38. It needs also to be said here, that the single statement made by PW6, SI Govinder Singh, the first Investigating Officer of the case, at the end of his cross-examination, that during investigation “it had come to his notice” that the deceased used to visit a “Mazar” and had some mental disorder, is something not even vaguely proved, either by way of any medical evidence to that effect or by the testimony of any witness in that regard, including DW1 himself, who put up a story of his wife having been in love affairs with somebody else; but he made no mention of her being mentally disturbed. In fact, none of the other appellants also took any such plea in their statements under Section 313 Cr. P.C., which were only to the effect that they had been falsely implicated. Hence, that argument of learned counsel for the appellants mainly based on a suggestion made in that regard to witnesses and the single statement of the said Investigating Officer, cannot be relied upon to establish any kind of mental disorder that the deceased was suffering from.

39. Having held as above, the question then is as to whether Sarabjit Kaur was done to death or aided in her death, by all the appellants in conspiracy/collusion with each other, or it was an act by Amrik Singh alone.

Though the trial Court has held all the appellants guilty for the commission of offences punishable under Sections 304-B and 498-A

of the IPC, in view of the fact that Sarabjit Kaur died an unnatural death within seventeen days of her marriage and PWs1 and 2 had made positive allegations of demand of dowry and harassment against the appellants, including obviously, late appellant no.1, however, it is to be seen as to whether, in the light of the nature of testimonies of all witnesses and the entire circumstances, the demand for dowry allegedly made by all the appellants, has actually been fully proved beyond doubt, so as to sustain their conviction on that count.

40. PW1 in his statement before the police, Ex.PA, initially named his sisters' husband, Amrik Singh, father-in-law Major Singh, mother-in-law Sukhbir Kaur, brother-in-law (Jeth) Surjit Singh and sister-in-law (Jethani) Harjit Kaur, as the ones who were taunting her for bringing less dowry. He had further stated in the said complaint, that when his sister came and stayed with them (complainant and his family) for 5/6 days, her husband, father-in-law, mother-in-law, brother-in-law (Jeth) Ranjit Singh and Jethani came to village Kirtowal to take Sarabjit Kaur back, and at that time, her father-in-law, mother-in-law and husband had demanded a car in the presence of his father Gurmej Singh, mother Surjit Kaur, brother Darshan Singh, his nephew and himself.

However, while testifying in Court, he stated that “all the accused present in Court” came to their house in village Kirtowal after Sarabjit Kaur had come to stay with them, and at that time his (PW1s') father, brother Darshan Singh and nephew were present in the house. Obviously, Ranjit Singh and his wife, not being even arraigned as accused, were not present in the Court and as such, the difference in the statement made to the police and in Court, is to the effect that whereas, in his complaint, PW1 named Ranjit Singh and his wife as the persons

who had come alongwith Major Singh and Sukhbir Kaur to the complainants' home and demanded a car in dowry, in the Court he instead named Surjit Singh and Harjit Kaur as those who had accompanied Major Singh and Sukhbir Kaur.

That alone may not have been a factor to discard the testimony of PW1. What further adds to the doubt is the fact that in the complaint, the complainants' (PW1s') parents, Gurmej Singh and Surjit Kaur, were stated to be present when the demand for dowry was made, as were his brother Darshan Singh and nephew Baj Singh. This was repeated by PW1 in his testimony also, except that Surjit Kaur (his mother) was not named in the testimony before the trial Court. However, none of these persons was examined as a witness.

In fact, it is recorded by the trial Court and is obvious from the statements present on the record, of the Public Prosecutor, that Darshan Singh, Gurmej Singh and Baj Singh, alongwith Baldev Singh, Kultar Singh, Salwinder Singh and Jagir Kaur, were given up as unnecessary witnesses, on an application made by the complainant himself. As to why the father and other immediate relatives, including one brother of Sarabjit Kaur, were not considered necessary witnesses to the allegations of demand of dowry, and were given up despite being listed as witnesses, is not understood, except to draw an adverse inference.

Thus, the only two witnesses who testified to the alleged demand for dowry, are PW1 Ajit Singh and PW2 Partap Singh, brother-in-law of PW1, being married to another sister of his, Jagir Kaur. No doubt, Partap Singh has testified before the trial Court that Sarabjit Kaur had told him and his wife, when they visited her on 12.04.2000, in her

matrimonial home, that she had been maltreated by the accused, who were demanding a car in dowry. However, again strangely, Jagir Kaur, i.e. the sister of the deceased, was given up as an unnecessary witness, as already seen.

41. The mediator to the marriage, Bhagwan Singh (PW4) though he accepted the factum of his being the mediator, also did not make any statement with regard to any complaint made to him of Sarabjit Kaur being harassed for dowry. Without doubt, this can be put to the fact that he was related to the appellants but not the complainants and as such, he did not depose against them. However, as he was cited as a prosecution witness in support of the prosecution case, as to why he was not declared hostile and cross-examined with regard to the demand for dowry etc., is again something which, in the opinion of this Court, would be taken as an inference against the case of the prosecution.

42. It needs, of course, to be seen as to why none-else, not even neighbours etc. from the village of appellants, stood in their defence and it was only the late husband of the deceased who stood as the sole defence witness.

However, since the unnatural death of Sarabjit Kaur is not in doubt, it would be natural for neighbours etc., unless they were to depose falsely, to not stand in defence of the accused in such circumstances. But eventually that again brings this Court to the inescapable conclusion that, as regards the demand for dowry, only PWs1 and 2 and not even the father and other brothers and nephew of the deceased testified, with regard to the demand for dowry and were specifically given up unnecessary on an application moved by the complainant.

43. It is also undeniable that in the case of an unfortunate death of a young bride, all relatives are often roped in. Hence, in circumstances where even the father and other brothers and sister of the deceased were not examined as witnesses, this Court would infer adversely against the prosecution case, and desist from sending the family members of the husband of the deceased to terms in prison, with large doubts lingering, on a demand for dowry having been made or not.

Therefore, despite the unnatural death of Sarabjit Kaur, the demand for dowry, at least, is not proved beyond reasonable doubt, in the opinion of this Court.

44. The question then is, as to whether all the appellants (including now deceased appellant no.1, husband of the deceased) were together responsible for the death of Sarabjit Kaur, for reasons other than dowry, or it was the late appellant no.1 alone who was involved. No charge under Section 302 IPC having been framed by the trial Court, no finding has, naturally, been given specifically in the light of any evidence produced before that Court, to the effect that Sarabjit Kaur was actually murdered, despite the story of suicide having been disbelieved.

Therefore, to repeat, in view of the facts discussed, and in the face of the testimony of DW1 himself, Sarabjit Kaur died in circumstances probably in the complete knowledge of her late husband, Amrik Singh. However, with Amrik Singh having died during the pendency of this appeal, nothing further can be said on that either, the appeal having abated against him.

Thus, whether the motive leading to the death of Sarabjit Kaur was incompatibility between husband and wife, or any quarrel that

took place during the night between them, or actually on account of a demand for dowry, is something which is not fully proved. Again, whether poison was administered to her in a sub-lethal dose as opined in the cross-examination by PW5, Dr.Jagjit Singh, or by Amrik Singh, or was taken by the deceased herself, with Amrik Singhs' knowledge, again is something which is not fully proved beyond shadow of doubt.

45. Consequently, this Court finds itself unable to sustain the finding of guilt recorded by the trial Court against the surviving appellants and their consequent conviction and sentences imposed upon them. Hence, this appeal is allowed and the surviving appellants, no.2 to 5, are given the benefit of doubt and are acquitted of the charges framed against them by the trial Court. Their bail and surety bonds be discharged.

(AMOL RATTAN SINGH)
JUDGE

July 29, 2015
amit rana/dinesh