

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : January 28, 2015

1. CRA-S 1004 SB of 2002 (O&M)

Harjinder Singh and others vs State of Punjab

2. CRR No.1861 of 2002

Gurcharan Singh vs State of Punjab and others

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. JBS Gill, Advocate
for the appellants in CRA-S 1004 SB of 2002.

Mr. MS Batth, Advocate
for the petitioner in CRR No.1861 of 2002.

Mr. Deepak Garg, AAG Punjab

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

This order shall dispose of CRA-S No.1004 SB of 2002 and CRR No.1861 of 2002, as both the cases arise from the same occurrence. Criminal Appeal has been filed against the conviction of the appellants under Section 498-A of IPC, while the revision petition has been filed by the complainant impugning the findings of the trial Court acquitting the appellants under Sections 302/304-B/34 of the IPC.

It is stated that Piari, appellant No.3 in the appeal, and respondent No.4 in the revision petition has died. Consequently, both the appeal as well as the revision petition qua her are abated.

Brief facts are that the complainant had married his daughter to appellant-Harjinder Singh some time in the year 1997. During her marriage, she gave birth to two male children. Within 15 days of the marriage, Harjinder Singh and his family members started harassing the daughter of the complainant on the ground that she had brought less dowry. Ten days prior to 15.9.2000, daughter of the complainant along with her husband came to the house of the complainant where she again expressed her apprehension that the accused persons were intending to kill her. On 15.9.2000, the complainant received a telephone call that his daughter was burnt and had been hospitalized. However, by the time the complainant reached the house of the in-laws of his daughter, she had already expired. The post-mortem report revealed the cause of death as extensive burns leading to shock which was sufficient to cause death in the ordinary course of nature.

The case of the appellants was that on the fateful day, the deceased got burn injuries due to stove burst and in fact, appellant No.1-Harjinder Singh-husband was not present in the house and when he reached back, he found the deceased in flames and he suffered burns on his own hands while trying to save her. It was the appellants who had admitted the deceased to the hospital. During evidence, the complainant appeared as PW2 and testified in support of his case. Uncle (mother's sister's husband) Satnam Singh appeared as PW1 and he stated that he had witnessed the occurrence when the appellant-Mandeep Kaur sprinkled kerosene oil, appellant-Chanan Ram and his wife appellant-Piari caught hold of the deceased and the husband-Harjinder Singh lit the fire. PW7-Dr. Jagmohan

Singh deposed that there were superficial and deep burns all over the body except soles of the feet, and public area and part of scalp, singeing of hair, eyebrows and blackening of skin were seen. He further deposed that 95% of the body area was burnt. He opined that such like burns normally could not result from an accidental fire and could have taken place if the deceased remained in flames for sufficiently long time.

The appellants had examined DW1-Gurnam Singh Lamberdar who stated that on hearing the shrieks of the deceased, he went to the house of the appellants and over there the deceased informed him that she had caught fire due to stove burst while boiling milk.

The trial Court disbelieved the testimony of Satnam Singh and of Gurnam Singh but held that there was no evidence that in the 10 days between the visit of the deceased to her house and her death, there was any demand of dowry and consequently acquitted the appellants under Sections 304-B/302/34 of the IPC and convicted them only under Section 498-A of the IPC.

Counsel for the appellants has assailed the findings of the trial Court primarily on the ground that the testimony of Gurnam Singh should have been believed. As per him, even the dispute regarding demand of dowry has not been proved because the complainant has only stated very vaguely that the appellants used to beat his daughter for 'bringing less dowry'. Consequently, even the charge against the appellants under Section 498-A of the IPC is not made out.

Counsel for the State of Punjab has argued that evidence of dispute regarding dowry is cogent, reliable and trustworthy. Counsel for the

complainant/revision petitioner has vehemently assailed the findings of the trial Court as regards the acquittal of the appellants under Sections 304-B/302/34 of the IPC. He has argued that the testimony of Jaspal Singh-PW5 maternal uncle (Mama) of the deceased has not even been discussed by the trial Court. PW5 has specifically stated that the appellants had demanded a refrigerator and scooter in dowry. He has further argued that reliance on the decision of the Hon'ble Supreme Court in Sham Lal v. State of Haryana, 1997(3) RCR 85, placed by the trial Court, is completely flawed. In Sham Lal's case (supra), what was stated that 1½ year prior to the occurrence the deceased had come to her parents' house due to dowry dispute, and 15-20 days prior to the occurrence, had gone back to her in-laws house after compromise. It was in those circumstances that the Hon'ble Supreme Court had held that the requirement of 'soon before' had not been satisfied. In the present case, as per counsel for the appellant, the complainant had testified that 10 days prior to the death, the deceased had come over to his house and had expressed her apprehension that the accused were planning on killing her. He has further argued that as per the recovery memo, apart from other things, kerosene oil stained earth and a stove were recovered from the spot. It is his contention that in case of stove burst, there would have been no chance that an undamaged stove could have been recovered. Further, in those circumstances, even kerosene oil stained earth could not have been recovered because in the event of an explosion all the kerosene would have ignited. In the absence of the materials, it is not possible to give any finding on this issue.

He has further pointed out that the trial Court ignored the

medical evidence to the effect that the extent of burns did not indicate it to be an accidental fire.

It is not in dispute that the jurisdiction of this Court in revision is limited and the findings of the trial Court cannot be lightly ignored. However, it is equally true that if material pieces of evidence have been evaluated perversely or have been completely ignored, this Court is not power less. In the present case, though I am loath to give my own opinion on the evidence, yet it cannot be gainsaid that the evidence of Jaspal Singh, that of the doctor, and the recovered materials have been completely ignored by the trial Court. Reliance is placed upon a decision of this Court in Kirpal Singh v. Ram Singh and others, 1981 PLR 275, wherein it was held as follows :-

“ 8. Thus, the judgment of the learned Additional Sessions Judge cannot be sustained on the reasons given by him for the Criminal Procedure that in a revision the High Court may in its discretion exercise any of the powers conferred on a Court of appeal yet the practice of the High Court is not to interfere ordinarily in revision with orders of acquittal. It is only in exceptional cases that the powers of revision for setting aside an acquittal can be exercised. I am of the view that the present case is an exceptional one. The appellate Court has been unable to give any such reasons which could be taken to be having any merit. It is apparent that the appellate Court arbitrarily took a decision to acquit the respondents and then tried to find out some reason to support the view. This fact was altogether ignored that the respondents case was supported by two of the injured witnesses and another independent witness. No reasons have been given for discarding the evidence of each one of them. The only thing which the learned counsel for the respondents could not urge is that the offence having been committed in the year 1973 and the acquittal having taken place in the year 1976, it would not be proper to set aside the acquittal at this stage. I am conscious of the delay that has occurred in the final consideration of the matter by this Court, yet when such a conclusion is reached that the judgment in appeal has no merit it has

necessarily to be set aside. The acquittal of the respondents is, therefore, set aside and it is ordered that the Additional Sessions Judge shall re-hear the appeal and then by ignoring the arguments already taken by him should come to a finding whether the evidence on record is sufficient for the conviction of the respondents or not. The respondents are directed to appear before the Additional Sessions Judge, Rupnagar, on December 1, 1980, for further proceedings.”

In these circumstances, the judgment of the trial Court is set aside and the matter is remanded back for a fresh decision on merits. The trial Court shall also see for itself the condition of the recovered material. Parties, through their counsel, are directed to appear before the trial Court on 31.3.2015. Registry is directed to forthwith send back the record of this case to the trial Court.

The appeal as well as the revision stand disposed of.

(AJAY TEWARI)
JUDGE

January 28, 2015
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