

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2161-SB-2003 (O&M)

Date of Decision: 15.07.2015

Mangal Singh and another

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Present: Mr. R.S. Sekhon, Advocate
for the appellant(s).

Mr. Deep Singh, Addl. AG, Punjab,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. This appeal had been preferred by Mangal Singh and his father Hasham Singh who were convicted for commission of offence under Section 304-B read with Section 34 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of 7 years. Appellant No.1 Mangal Singh died during the pendency of the appeal. So far as his appeal is concerned, the same abates.

2. The facts leading to the registration of the FIR would require a narration. Sukha Singh, father of deceased Anita lodged a FIR with the police wherein allegations of cruelty and harassment at the hands of the in-laws were levelled. He had pleaded that there was a demand of scooter

and Rs.20,000/- in cash which he could not fulfil. The complainant had disclosed that on 31.08.2001, he had gone to the house of accused to meet his daughter and was told by her that in case the demand was not met, she would be turned out of the house. The complainant wanted his daughter to accompany him but they had refused. In the intervening night of 1/2 September, 2001 Mangal Singh, husband of the deceased came to the complainant's house and informed the complainant that his daughter had died in an accident. The complainant went to the place of accident which was about a kilometer from his village and found the body lying in the fields at a distance of 9 – 10 Karam from the road. The complainant thought that the death had occurred on account of the accident. He brought the body to the village and cremated her the next day. A day later Baldev Singh, Ex-Sarpanch and PW4 Manjit Singh of his village informed him that his daughter had not died in the accident but had been killed. They also disclosed that they were going to Ludhiana that night and had seen 3 – 4 persons grappling with a woman and they had left the spot as they felt that the fight was under the influence of liquor.

3. The complainant made his own inquiry and gave a complaint Ex.P3 to the DSP, Sub-Division, Jalalabad on 06.09.2001. The FIR was registered under Section 304-B/34 IPC.

4. Investigations were completed and challan was presented against the husband and the father-in-law.

5. Charge was framed under Section 304-B read with Section 34 IPC. The accused pleaded not guilty and claimed trial.

6. The prosecution examined the complainant Baldev Singh, Karnail Singh, Dr. Sandeep Singh Sidhu besides the official witnesses.

7. In the statement under Section 313 Cr.P.C., the accused denied the incriminating material but admitted that the marriage had taken place just 2½ months ago before the incident. It was pleaded that Anita Rani had died in an accident and the dispute arose on account of return of the dowry articles and thereafter, this case was got registered. No evidence in defence was led.

8. The trial Court accepted the solitary statement of the complainant and convicted both the father-in-law and the husband. It was of the view that as the death had taken place in un-natural circumstances, within seven years of marriage, it was for the accused to prove how she had died. It noted that the accused failed to get the case registered against the person who had caused the accident and the finger conclusively pointed towards the accused. The trial Court was of the view that the delay was not fatal and the story put forward by the complainant was believable. The trial Court convicted both the appellants to the sentence mentioned aforesaid.

9. I have heard learned counsel for both the parties.

10. The counsel for the appellant submits that the incident had taken place in the intervening night of 1/2.09.2001 and the FIR was lodged five days later. He urges that both the families had attended the cremation ceremony. It was contended that had it been a case of dowry death or murder, the husband would not have gone to the house of his father-in-law to inform him about the accident and the complainant went to the spot and brought the dead body to his house and it was cremated without a postmortem. It was urged that had there been any dowry demand and had the accused refused him earlier, he would have been suspicious and would have informed the police immediately. It was contended that the dispute arose with respect to the return of the dowry articles and then a story was concocted. It was urged that two witnesses who had stated that they had seen a scuffle the previous night, did not support the prosecution at the trial as Baldev Singh turned hostile while Manjit Singh was not examined. It was urged that Karnail Singh PW5 also did not support the prosecution story. It was urged that the weapon with which the injuries were caused was stated to be a brick but no scientific investigation was carried out and it did not have any blood stains and the trial Court has convicted the appellant solely on the statement of the complainant. It was urged that appellant Hasham Singh has already undergone 2 years and 7 months of custody.

11. The State counsel supported the judgment and urged that the death was un-natural and had taken place within 2 – 3 months of the marriage. It was urged that the Ex-Sarpanch of the village had informed the complainant that he had seen 3 – 4 persons and there was a lady with them but at the trial, the witnesses did not support the prosecution version and reasons for changing the statements can be several and the trial Court has taken a balanced view weighing the evidence and the accused did not lodge any FIR against the driver who had caused the accident and it was a circumstance which went against the appellant.

12. Mangal Singh, husband of the deceased had died during the pendency of the appeal. His appeal had abated. The only issue which remains is, whether there is any cogent evidence against appellant no.2.

13. The facts that emerge from the complaint are that Mangal Singh had contacted the complainant in the intervening night of 1/2 September, 2001 and had told the complainant that his daughter had died in an accident. The incident took place about 2 kilometer away from the house of the complainant. Both the complainant and the son-in-law went to the spot. The dead body was brought home and was cremated the next day. The complainant admits in his statement in the Court that the families of both the sides and their relatives had attended the cremation. He had also given the time of cremation. No postmortem was got done.

14. The case put forward by the prosecution is that the very next day, the Ex-Sarpanch of the village namely Baldev Singh along with Manjit Singh told him that they had seen three persons grappling with a lady by the road side and his daughter had not died in the accident and was killed. The complainant before the Court stated that he made his own inquiries and found all the clues of a murder and gave a complaint to the DSP after three days.

15. Baldev Singh PW4 denied having witnessed any occurrence the previous night. Manjit Singh, a cousin of Baldev Singh was given up. Karnail Singh PW5 failed to support the prosecution evidence. The other witnesses examined by the prosecution are the police officers who had arrested the accused and had completed the formalities. Harnek Singh, Patwari had prepared the site plan.

Dr. Sandeep Singh PW1 had stated that Manjit Singh PW had attended his clinic on 02.09.2001 between 3:00 P.M. and 5:00 P.M.

16. The above would show that there is no incriminating evidence so far as the appellant no.2 is concerned. Had there been any demand of dowry from in-laws side, the complainant would have immediately informed the police. His daughter had died within three months of marriage. The complainant failed to get the postmortem report. He did not inform the police. The appellant as well as his relatives attended the cremation. Not a single witness from the complainant's village came forward to support the

story. I find that the finding recorded by the trial Court was based on conjectures and perverse. There was absolutely no evidence to convict the appellant. The judgment of the trial Court is set aside. The appeal is accepted. Appellant no.2 Hasham Singh is acquitted. If any fine has been deposited, it shall be returned to the appellant. Lower Court record be sent back.

(ANITA CHAUDHRY)
JUDGE

15.07.2015
sunil