

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-2230-SB of 2003
Date of Decision: February 11, 2015

Jaspal Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Subhash Godara, Advocate
Legal Aid Counsel for the appellant.

Mr.A.S.Klar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

This appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 20.09.2003, passed by learned Addl. Sessions Judge, Sangrur, whereby the accused-appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of ten years under Section 304-B IPC and to further undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 498-A IPC. Both the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that on 18.09.2001, complainant Charan Kaur wife of late Sh.Amarjit Singh

got recorded her statement to Sub Inspector Ajaib Singh, in which she stated that she has three sons and two daughters including Sukhwinder Kaur. The marriage of her daughter Sukhwinder Kaur had been solemnized with accused Jaspal Singh about 2½ years back and a son was born out of the wedlock. She further stated that at the time of marriage, she gave sufficient dowry to her daughter but her son-in-law Jaspal Singh was not happy with the dowry given. Soon he started demanding some cash money as he wanted to purchase a truck for himself as he is driver by occupation. The accused used to beat Sukhwinder Kaur and she came to live with her (complainant). Sukhwinder Kaur resided with her mother for quite some time. About three months before the occurrence, accused Jaspal Singh came to the house of the complainant and in the presence of respectable of the village, confessed his fault, apologized to them and assured them in future he will not maltreat Sukhwinder Kaur. Believing the bonafide of Jaspal Singh, complainant sent Sukhwinder Kaur with Jaspal Singh. On 18.09.2001, at about 5.00 P.M., the complainant received a message through Nazar Khan regarding the burn injuries received by Sukhwinder Kaur and thereupon the complainant along with respectable of village, went to the house of the accused and found her daughter lying dead in complete burnt condition. A kerosene oil stove was lying nearby . She alleged her death due to maltreatment on the part of accused for failure to arrange more dowry for the accused. Ruqa was sent to the police station for lodging FIR. Inquest report and site plan were prepared. Statements of witnesses were

recorded. Post mortem examination was got conducted on the dead body. After necessary investigation, challan was presented against the accused-appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, accused-appellant was charge-sheeted under Sections 304-B and 498-A IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Jameel Bhatti, who conducted post mortem examination and opined that cause of death was 100% burns all over the body. He further deposed that body was emitting smell of kerosene oil. The burn injuries were ante-mortem and sufficient to cause death in ordinary course of nature. PW-2 Constable Daljit Singh and PW-3 Head Constable Karamjit Singh, are formal witnesses, who tendered into evidence their affidavits Ex.PD and PE respectively. PW-4 Charan Kaur, complainant deposed as per prosecution version. PW-5 Major Singh, uncle of Sukhwinder Kaur, who accompanied complainant Charan Kaur to the village after getting information regarding burn injuries received by Sukhwinder Kaur, also deposed as per prosecution version. PW-6 SI Bahadur Singh, who was with the police party, deposed regarding the investigation of the case. PW-7 Jarnail Singh, Panch, who had also accompanied Charan Kaur to the village on getting information, also made similar statement as made by PW-5. PW-8 Pawan Kumar, Photographer deposed regarding

photographs Ex.P5 to Ex.P20 and proved negatives Ex.P21 to P26. PW-9 SI Ajaib Singh, is the Investigating Officer, who deposed regarding investigation conducted by him in the present case. PW-10 Amrik Singh, Draftsman, proved scaled site plan Ex.PO.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself as innocent.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant, as stated above.

At the time of arguments, learned counsel for the appellant argued that demand of ₹50,000/- has not been mentioned in the FIR and material improvements have been made by the complainant in her statement. He further argued that in the site plan and recovery memo, the stove has been shown containing one litre of kerosene. If the occurrence, would have been taken place as per prosecution version, then there would not have been any kerosene in the stove. He next argued that Nazar Khan's statement has not been recorded. He further contended that accused-appellant has been falsely implicated in the present case and Sukhwinder Kaur has committed suicide. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. It is duly proved by the PWs

by leading cogent evidence that Sukhwinder Kaur was harassed and maltreated by the accused on the ground of demand of dowry and accused used to raise demand, which was not fulfilled. He next argued that even Sukhwinder Kaur resided with her mother and after about three months earlier to the occurrence, she was taken back to the matrimonial house by Jaspal Singh after seeking apology. As the demand was not fulfilled, she was continuously harassed. He next contended that there being unnatural death in the matrimonial house within seven years of marriage and harassment has been duly proved on the ground of demand of dowry, therefore, presumption arises against the accused-appellant and there is no evidence led by the accused-appellant to rebut this presumption. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely and carefully.

From the evidence on the record, I find that the prosecution has duly proved its case by bringing cogent evidence on record. The oral statements of PWs have been duly supported by the medical evidence. Sukhwinder Kaur died due to 100% burn injuries. As per the evidence of the Doctor, her body was emitting kerosene oil smell. Therefore, it is clear that it is a case of unnatural death. Kerosene was poured on the person of Sukhwinder Kaur. During investigation, kerosene oil stove having one litre kerosene in it along

with one plastic container etc. have been recovered from the spot. Complainant Charan Kaur PW-4 has deposed as per prosecution version. As per the prosecution case, Sukhwinder Kaur was harassed and maltreated by the accused-appellant and she came to her mother in her parental house and resided with complainant. It is in the evidence that appellant Jaspal singh came to Charan Kaur and took Sukhwinder Kaur back after seeking apology and by making promise that in future Sukhwinder Kaur will be kept nicely in the matrimonial house.

The accused is a truck drive and he was asking for money from Sukhwinder Kaur and that money was not paid and the harassment continued. Other PWs Major Singh and Jarnail Singh have also supported and corroborated the version of complainant Charan Kaur, mother of the deceased. The mere non-examination of one Nazar Khan, in no way, creates doubt in the prosecution version. The mere fact that specific amount i.e. ₹50,000/- has not been mentioned in the FIR, also does not create any doubt. Other facts regarding demand of dowry and money have been mentioned in the FIR. This fact is also mentioned that accused used to tell Sukhwinder Kaur that he wants to purchase a truck.

Furthermore, I find that no defence witness has been examined by the accused-appellant to rebut the presumption. What happened in the matrimonial house on that day, is in the knowledge of the accused-appellant. These are the special facts which were in the knowledge of the accused and he is to prove the same under Section

106 of the Indian Evidence Act. The accused-appellant has not stated anything regarding the occurrence, even in the statement recorded under Section 313 Cr.P.C. He has simply stated that he is innocent and has been falsely implicated. There is nothing on the record produced in the defence as to why Sukhwinder Kaur committed suicide, especially when, she was having one year old child.

Keeping in view the evidence on the record, there is nothing to show that accused-appellant has been falsely implicated or is innocent in the case. There is nothing to show as to why the PWs are deposing falsely against the accused-appellant.

In view of the above, I find that the prosecution has duly proved its case against the accused-appellant by leading cogent evidence beyond reasonable doubt. Sukhwinder Kaur died unnatural death in the matrimonial house within seven years of marriage and there was demand of dowry etc. which remained unfulfilled till the occurrence.

In view of the above discussion, I find that the judgment of conviction and order of sentence dated 20.09.2003, passed by learned Addl. Sessions Judge, Sangrur is correct, as per law and the same is upheld.

Learned counsel for the appellant also prayed for reduction of sentence.

Keeping in view the facts and circumstances of the present case and the fact that accused-appellant is facing long criminal protracted proceedings for the last more than 13 years and is only

bread earner of the family, I reduce the sentence of the accused-appellant under Section 304-B IPC from rigorous imprisonment of ten years to seven years. However, the other sentence under Section 498-A IPC, sentence of fine and default sentence shall remain intact.

With the above-said modification in the sentence, the present appeal stands dismissed.

Since appellant Jaspal Singh is on bail, his bail bonds stand annulled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

February 11, 2015
Vgulati

(INDERJIT SINGH)
JUDGE