

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-993-SB of 2003

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Date of decision:7.1.2015

Major Singh and others

...Appellants

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. S.S. Tiwana, Advocate/Legal Aid Counsel for the appellants.

Mr. Neeraj Sharma, Assistant Advocate General, Punjab for the respondent-State.

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Inderjit Singh, J.

This appeal has been filed by Major Singh, Raskaranjit Singh and Gurdip Kaur challenging the impugned judgment of conviction and order of sentence dated 8.5.2003 passed by learned Sessions Judge, Kapurthala, whereby the accused have been held guilty and convicted for the offences punishable under Sections 304-B and 498-A IPC. They have been sentenced to undergo rigorous imprisonment for ten years each and to pay a fine of ₹5,000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each for the offence under Section 304-B IPC. They have also been sentenced to undergo rigorous imprisonment for two years each and to pay a fine of ₹2,000/- each and in

default of payment of fine to further undergo rigorous imprisonment for three months for the offence under Section 498-A IPC. However, both the sentences have been ordered to run concurrently.

The brief facts as given in the judgment of the learned Sessions Judge, Kapurthala are given below:-

“The marriage of complainant's daughter Rajwinder Kaur was solemnized with Swaranjit Singh son of Major Singh accused according to Sikh rites and ceremonies in the month of ASSUN, 1997. Swaranjit Singh is serving in the Army. From this wedlock, one male child was born to Rajwinder Kaur and further she was also in family way. In the said marriage, sufficient dowry was given according to his capacity. However, the accused persons, namely, Major Singh father-in-law, Gurdip Kaur mother-in-law and Raskaranjit Singh brother-in-law (Dewar) of Rajwinder Kaur used to taunt, maltreat, harass and beat her for not bringing scooter and colour Television in the dowry at the time of marriage. The accused also used to taunt her that by her coming to their house, their family work has ruined. She disclosed this fact to her parents at Village Godani. Thereafter Swaran Singh complainant, Dharam Singh Ex-Sarpanch and Mohinderpal Sarpanch went to the house of the accused persons and requested them not to harass Rajwinder Kaur and also not to raise demand for more dowry. It is also alleged that one

month prior to the occurrence, all the accused persons raised demand of one scooter, colour T.V. and cash of Rs.one lac for sending Raskaranjit Singh abroad. Swaran Singh pacified his daughter and sent her back to her in-laws house with the assurance that they will arrange for money and on 17.6.2000, Swaran Singh complainant sent his son Major Singh and daughter-in-law Paramjit Kaur with Rs.50,000/- to give this amount to the accused persons and accordingly they handed over the said amount of Rs.50,000/- to Major Singh accused but the accused persons were not satisfied and they started beating and harassing Rajwinder Kaur in the presence of the son and daughter-in-law of the complainant and they returned to their Village Godani and narrated these facts to Swaran Singh. Ultimately, Rajwinder Kaur being fed up with the harassment and beatings given to her by the accused persons, consumed some poisonous substance and ended her life. On this information received from Sarmukh Singh, complainant Swaran Singh, his son and wife went to the house of the accused where they found Rajwinder Kaur lying dead. Thus the case was registered on the statement of Swaran Singh. After completion of all the necessary formalities of investigation, the challan against the accused persons was prepared and presented in the Court of the Illaqa Magistrate.”

On presentation of challan, the trial Court finding prima facie case

against the accused-appellants framed charges for the offences punishable under Sections 304-B and 498-A IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 MHC Joginder Singh, PW-2 Constable Charan Dass, PW-3 Rana Punjab Singh, PW-Swaran Singh complainant, PW-5 Major Singh son of the complainant, PW-6 HC Jaswinder Singh, PW-7 C-I Manjit Singh, PW-8 Granthi Manjit Singh, PW-9 Jagat Singh, PW-10 C. Balkar Singh, PW-11 Sarmukh Singh, PW-12 Dr. Gurbachan Singh, PW-13 Dr. Parveen Sehgal and PW-14 SI Gurbachan Singh and thereafter after tendering report Ex.PX of the Chemical Examiner, closed prosecution evidence.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution but they denied the correctness of the evidence and pleaded themselves as innocent. They also deposed that they have been falsely implicated. They were living separate from the deceased and they have also separate Ration Card and Gas connection. The deceased was upset because her husband Swaranjit Singh was not taking her to his place of posting in the Army. She committed suicide because of frustration as her husband was not keeping her with him. However, they did not produce any evidence in defence and closed the defence evidence.

After going through the evidence on record, the learned trial Court vide impugned judgment and order convicted and sentenced the

accused-appellants as stated above.

At the time of arguments, learned counsel for the appellants argued that the appellants have been falsely implicated in the present case. There is no written application/complaint to the Police or any higher authorities. No application was given to the Panchayat. No resolution etc. was passed by the Panchayat. There was nothing on the record to prove the harassment or demand of dowry by way of documentary evidence. Learned counsel for the appellants further argued that Rajwinder Kaur died as she was under depression and due to frustration as her husband Swaranjit Singh was in the army and she was not taken by him to his place of posting. Learned counsel for the appellants further argued that the appellants were living separate from the deceased. Therefore, they cannot be held guilty under Section 304-B IPC and they were not the beneficiaries for any demand of dowry. Learned counsel for the appellants further pointed out discrepancies in the prosecution version as PW-11 Sarmukh Singh in his statement has stated regarding the oral dying declaration made by Rajwinder Kaur in the hospital whereas the doctor PW has stated that Rajwinder Kaur had said nothing. He argued that the appellants have been wrongly convicted and the appeal should be allowed and they be acquitted accordingly. In the alternative, the learned counsel for the appellants argued that the sentence may be reduced.

On the other hand, learned Assistant Advocate General, Punjab appearing for the respondent-State argued that the case of the prosecution has been duly proved by PW-4 Swaran Singh-complainant,

who is the father of the deceased Rajwinder Kaur. PW-5 Major Singh, who is the brother of the deceased and PW-11 Sarmukh Singh have also consistently deposed regarding the prosecution version. He further argued that Rajwinder Kaur was married in October 1997 and the occurrence took place within seven years of the marriage. There is cogent evidence produced on record regarding the demand of dowry and harassment on the ground of demand of dowry. She had died in the matrimonial house and the death is unnatural, therefore, presumption arises in this case. No cogent evidence has been led by the accused-appellants to rebut that presumption. He argued that there is neither anything on the record to show that they were residing separately nor there is any other cogent evidence led by the appellants to show that they are having separate gas connection etc. No DW has been examined in this case. Therefore, defence version is also not believable. Learned State counsel further argued that the PWs have further supported the oral dying declaration made by Rajwinder Kaur to Sarup Singh. Therefore, he argued that there being no merit in the appeal, it should be dismissed.

I have heard learned counsel for the appellants and learned Assistant Advocate General, Punjab, appearing for the respondent-State and have gone through the evidence on record minutely and carefully.

From the record, I find that the arguments of the learned counsel for the appellants have no merit. In this case, PW-1 MHC Joginder Singh, PW-2 Constable Charan Dass and PW-3 Rana Punjab Singh are formal witnesses. PW-4 Swaran Singh-complainant, father of

the deceased has deposed as per the prosecution version. He has specifically stated that after six months of the marriage, accused Gurdip Kaur mother-in-law and Raskaranjit Singh younger brother of Swaranjit Singh started taunting and beating his daughter on account of giving less dowry. They demanded scooter and colour TV and were causing harassment and torture due to non-fulfillment of desire for more dowry. They were also taunting that since the day she had come to their house, their whole work had been damaged as she was unlucky. PW-5 Major Singh has also deposed as per the prosecution version that Rajwinder Kaur was taunted and maltreated by the accused as she had not brought scooter and colour TV at the time of her marriage. It has also come in the statement of PW-4 Swaran Singh that about one month before her death, accused demanded colour TV, scooter and in addition to it ₹1 Lac by saying that Raskaranjit Singh was to go abroad. He also stated that on 17.6.2000, he along with his brother's wife Paramjit Kaur went to the house of the accused along with ₹50,000/- which he handed over to accused Major Singh father-in-law of the deceased. The accused started abusing and beating his sister in the presence of son and daughter-in-law of the complainant saying that they had brought less money and had also not brought TV and scooter. It is also in the evidence that all the accused used to beat his daughter. Because of the maltreatment and harassment by the accused, his daughter died after consuming some poisonous substance. From the evidence on record, it is clear that Rajwinder Kaur died after consuming poisonous substance due to the harassment, maltreatment,

beating given by the accused-appellants on the basis of demand of dowry i.e. scooter, colour TV etc. and this harassment is immediate before the occurrence. PW-4 Swaran Singh has also stated that he was told by Sarmukh Singh about the death of his daughter.

PW-11 Sarmukh Singh in his statement has stated that on 21.6.2000, Satnam Singh asked him to go to Village Damulian to repair the electric motor there. He started from there at about 10.30 a.m. and when he reached near the shop of Dr. Parveen, which is in Nadala itself, he found Rajwinder Kaur lying in his clinic and she was being administered glucose. He went near her and inquired about her health. She told him that she was being harassed by Major Singh, Gurdip Kaur and Raskaranjit Singh accused. She also told him that the accused were demanding dowry and were harassing her on that account. She also told him that Gurdip Kaur had misbehaved with her on account of not serving food and water to Raskaranjit Singh. She also told him that Raskaranjit Singh had slapped her on that day and being fed-up on this account, she consumed some poisonous substance due to the aforesaid circumstances. As she was serious, he also inquired from the doctor in this regard. The doctor advised that she be taken to Jalandhar hospital. He went away to do his routine duty and also informed the parents of Rajwinder Kaur. This statement of PW-11 Sarmukh Singh further supports and corroborates the prosecution version. He has also proved the oral dying declaration of Rajwinder Kaur made to him regarding the occurrence recorded there. The mere fact that in cross-examination, this witness stated that at the time

of marriage, dowry articles TV, scooter were given itself will not falsify the whole case of the prosecution.

PW-12 Dr. Gurbachan Singh, Surgical Specialist, Civil Hospital, Kapurthala, who was member of the Board of doctors, who conducted post-mortem examination, has opined that cause of death in this case was due to organo phosphorous a group of insecticide, which caused asphyxia due to poisoning, which was sufficient to cause death in ordinary course of nature. PW-13 Dr. Parveen Sehgal, Sehgal Clinic, Nadala was also examined by the prosecution. He in his examination-in-chief stated that during examination of the patient, Gurdip Kaur accused told him that some dispute with Rajwinder Kaur took place in the house. Their son had slapped Rajwinder Kaur two/three times for not serving food to son of the accused. Rajwinder Kaur did not give any reply to his inquiry made from her. He specifically stated that Rajwinder Kaur was not unconscious. This statement shows that Rajwinder Kaur was conscious when the Doctor made inquiry but she did not give any reply. From this fact, it cannot be held that Rajwinder Kaur had not made oral dying declaration to Sarmukh Singh. PW-13 Dr. Parveen Sehgal has specifically stated in examination-in-chief that in the meantime one relative of Rajwinder Kaur, who was working near his clinic, also came there. This statement supports the prosecution version that Sarmukh Singh went to the clinic and Rajwinder Kaur made statement to him.

Keeping in view the evidence on record, I find that there is nothing in the cross-examination of these PWs which may make their

statements unreliable. No material contradictions or material improvements in the statements of witnesses have been pointed out at the time of arguments. No defence witness has been examined by the accused-appellants to prove that they are residing separately or having separate gas connection etc. nor any evidence has been produced to show that she was under depression or frustration, the presumption under Section 113-B of the Indian Evidence Act, 1872 would apply. Therefore, the presumption under Section 113-B of the Indian evidence Act, 1872 arises against the accused and there is no evidence on record to rebut this presumption of dowry death as Rajwinder Kaur had died in her matrimonial house under unnatural circumstances within seven years of her marriage and she was subjected to cruelty and harassment by the accused in connection with the demand for dowry soon before her death. The mere fact that no written application or complaint was filed to any Police or Gram Panchayat etc. will not prove the innocence of the accused-appellants in view of the evidence produced on the record. Generally to save the matrimonial relation between the parties such type of written applications or complaints are not made.

Therefore, from the above discussion, I find that the learned Sessions Judge has correctly convicted the appellants for the offences under Sections 304-B and 498-A IPC.

As regards the reduction of sentence, I find that the appellant, who are father-in-law, mother-in-law of the deceased and younger brother of the husband of the deceased, are suffering for the last 14 years due the

long protracted criminal proceedings.

Keeping in view the facts of the present case, the sentence of the appellants is reduced to rigorous imprisonment for seven years instead of rigorous imprisonment for 10 years for the offence under Section 304-B IPC. Further, the fine imposed under Section 304-B IPC of ₹5,000/- each upon the appellants is also set aside as no fine has been provided under Section 304-B IPC. The same be refunded. The remaining sentence for the offence under Section 498-A IPC will remain the same. Both the sentences shall run concurrently.

The sentence of imprisonment of the appellants was suspended by this Court and they were released on bail during the pendency of the appeal. As they are on bail, their bail/surety bonds stand cancelled. They are directed to surrender themselves before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against them in accordance with law.

January 7, 2015.

(Inderjit Singh)
Judge

hsp