

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA-S-622-SB-2002 (O&M)

Date of Decision: 29.05.2015

Kulwinder Singh & another

--Appellants

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Ms. Baljeet K. Mann, Advocate for the appellants.

Mr. Mikhail Kad, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

The appellants assail the judgment and order dated 08.04.2002 passed by learned Additional Sessions Judge, Amritsar and by which they have been convicted for the offences punishable under Sections 498-A and 304-B IPC. Appellants have been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.10,000/- under Section 498-A IPC and under Section 304-B IPC, appellants have been sentenced to undergo RI for a period of 7 years.

Briefly noticed the process of law was set in motion on the complaint of Sukhpal Singh. Deceased is Narinder Kaur i.e. sister of the complainant and who died on 08.11.1995. Complainant asserted that his sister Narinder Kaur was married to Kulwinder Singh in November, 1992. Out of wedlock between Narinder Kaur (since deceased) and Kulwinder Singh, one daughter was born. Apart from Kulwinder Singh, allegations were raised against Bachan Singh and Bachan Kaur i.e. parents of Kulwinder Singh as also Bhola Singh his brother. It was alleged that soon

after marriage, Narinder Kaur was being maltreated for having brought less dowry. Narinder Kaur used to complain against the accused party and as such on numerous occasions, whenever she used to visit her parental home, she was given some money and sent back to her in laws. It was further alleged that 3-4 months prior to her death, the frequency of maltreatment and beatings increased and Narinder Kaur had informed her brother as also her father that the accused party are raising the demand of a Maruti car. Allegations are also that about 10 days prior to her death, Narinder Kaur had come to the parental home at village Fatehabad and had informed that she had been badly beaten up. She stayed at the parental home for about 2-3 days and thereafter returned to the matrimonial home. As per prosecution, complainant party came to know about the death of Narinder Kaur on 10.11.1998 and upon which they had proceeded to village Manawala i.e. the village of the accused party. At that stage, upon questioning regarding cause of death of Narinder Kaur, the accused party informed them that Narinder Kaur was suffering from fever and that a message had been sent to the complainant party but since they did not turn up, the body of Narinder Kaur was cremated. Complainant alleged that certain people of the village informed them that Narinder Kaur had been given severe beatings and she had succumbed to the same in a hospital at Amritsar. Thereafter, the complainant party approached Muni Lal Chopra Memorial Hospital, Amritsar and whereupon they learnt that Narinder Kaur died due to administration of poison.

It would be apposite to note that complainant Sukhpal Singh had made a complaint Ex.PA to the police on the basis of which FIR No.200 dated 21.11.1995 was registered. Thereafter, he filed a complaint Ex.PB

against Kulwinder Singh, Bachan Singh, Bachan Kaur and Bhola Singh qua the same occurrence. Vide order dated 09.03.1998, the Additional Sessions Judge, Amritsar in order to avoid conflicting judgments consolidated both the cases i.e. complaint case bearing Sessions case No.78/97 along with case title State Vs. Kulwinder Singh.

All the accused were charge sheeted under Sections 498-A and 304-B IPC to which they pleaded not guilty and claimed trial.

Trial culminated in the passing of the impugned judgment dated 08.04.2002 and in terms of which husband and father-in-law of deceased Narinder Kaur were convicted for offences under Sections 498-A and 304-B IPC. Mother-in-law and brother-in-law of the deceased Narinder Kaur i.e. Bachan Kaur and Bhola Singh were acquitted of the charges.

It is against such backdrop that Kulwinder Singh and Bachan Singh are in appeal before this Court.

Learned counsel appearing for the appellants would argue that the prosecution has miserably failed to prove its case beyond reasonable doubt. The alleged occurrence is stated to have taken place on 08.11.1995 and as per counsel, the appellants as also other relatives of Narinder Kaur had attended her cremation, yet no report was lodged by the complainant party for a number of days thereafter. It was only on 21.11.1995 that Sukhpal Singh i.e. brother of the deceased made an application to the police on the basis of which FIR was registered. During the course of investigation, the investigating agency came to the conclusion that Bachan Singh, Bachan Kaur and Bhola Singh had been falsely implicated. After almost two months of the date of death of Narinder Kaur, a complaint was instituted by Sukhpal Singh and wherein qua the same occurrence, Bachan

Singh, Bachan Kaur and Bhola Singh were summoned as accused. Counsel would argue that such inordinate delay in lodging the FIR in the first instance and filing of criminal complaint subsequently clearly shows that the complainant party was attempting to falsely implicate the appellants. Counsel has argued that in the complaint Ex.PB as also in the deposition before the Court by Sukhpal Singh complainant PW1 and Jaswant Singh father of the deceased as PW3, material improvements were made as opposed to the version initially set up in the statement at Ex.PA which led to the registration of the FIR. Counsel vehemently argued that there is nothing on record to show that the deceased died an unnatural death. No evidence was forthcoming indicating the demise of Narinder Kaur to be termed as a dowry death. Counsel has also contended that the record of Muni Lal Chopra Memorial Hospital cannot be given any weightage and the same was fabricated which would be clear from the deposition of the doctor concerned i.e. Dr. Shalenderjit Singh PW6 and who had admitted in his deposition that he did not send any intimation to the police as regards the admission of the deceased being a case of poisoning. Counsel while assailing judgment of conviction has also argued that the complainant party has not even disclosed during the course of trial the names of the persons who had revealed to them that the deceased had died of poison. Yet another argument raised is that a conjoint reading of the statements of complainant Sukhpal Singh PW1, his father Jaswant Singh PW3 and their close relatives Sharanagat Singh PW4 as regards the aspect of Narinder Kaur being maltreated or beaten up by the accused party on the pretext of dowry does not inspire confidence. It is argued that no reliance could be placed upon the version of the aforementioned prosecution witness i.e. PW4 to return a finding of guilt against the

appellants.

Per contra, learned State counsel submitted that the prosecution on the strength of testimony of Sukhpal Singh PW1, Jaswant Singh PW3, Sharanagat Singh PW4 and Dr. Shalenderjit Singh PW6 has been able to prove the guilt of the accused. The oral testimony led was a clear pointer of dowry demand for a car and the deceased having died an unnatural death i.e. by way of poisoning and within seven years of the date of marriage.

Learned State counsel would contend that the impugned judgment recording conviction of the appellants is based upon due appreciation of evidence and by assigning cogent and valid reasons and the same does not call for any interference.

Having heard counsel for the parties and having perused the records of the case, this Court is of the considered view that conviction of the appellants as recorded in the impugned judgment cannot sustain.

Sections 498-A and 304-B IPC read as under:

Section 498A in The Indian Penal Code

498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means

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(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 304B in The Indian Penal Code

304-B. Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

It was the duty of the prosecution to prove the ingredients of both Sections 498-A and 304-B IPC. The mandate under law is that each ingredient which forms offence under Section 304-B IPC has to be proved and which essentially are in the following terms:

- (i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) such death must have occurred within seven years from the date of the marriage;
- (iii) soon before her death, the woman must have been subjected

to cruelty or harassment by her husband or any relative of her husband and;

(iv) such cruelty or harassment must be in connection with the demand of dowry.

The harassment or cruelty caused to a woman in relation to demand for dowry at some point of time would not be sufficient to invoke Section 304-B IPC. Such allegation would need to be proved to have taken place “soon before her death”. Such expression cannot be specifically defined but certainly it has to be in some proximity to the date of death. In other words, there has to be a perceptible nexus between the death and dowry related harassment or cruelty inflicted on her. If the interval that has elapsed between the infliction of such harassment or cruelty and her death is wide part, it would be open for the Court to conclude that in all probability, the harassment would not have been the cause of death. Accordingly, it would be on the facts and circumstances of each case for the Court to decide whether the said interval in a particular case was sufficient to fall within or outside the expression “soon before her death”.

In the present case, there is a delay of 13 days in lodging the FIR and a delay of 56 days in lodging the complaint. In the initial version, as per statement of Sukhpal Singh complainant, Ex.PA, there are general allegations of Narinder Kaur having been maltreated on the pretext of getting less dowry. Undoubtedly, in such statement at Ex.PA, there is a mention of demand of a maruti car. The allegations contained in the statement Ex.PA which led to the registration of the FIR were rather sketchy. Material improvement was made in the complaint Ex.PB and in which a time factor was introduced in relation to the demand of dowry by

stating that 10 days prior to her demise, Narinder Kaur had visited her parental home and complained about the demand of car. Prosecution to bring home and to prove the ingredients as regards demand of dowry and harassment being in close proximity to the date of death introduced Sharanagat Singh as PW4 and who deposed that he had met Narinder Kaur (since deceased) at her matrimonial home in village Manawala on 05.11.1995 i.e. 3 days prior to her demise and whereupon she had complained that she was being harassed and beaten up by her husband, father-in-law, mother-in-law and brother-in-law on the pretext of dowry and against the demand of purchase of car. Such deposition of PW4 Sharanagat Singh does not inspire any confidence. In the initial statement Ex.PA, complaint EX.PB as well as in the deposition of the complainant Sukhpal Singh PW1 and of Jaswant Singh PW3 i.e. father of deceased there is no mention whatsoever as regards Sharanagat Singh PW4 having met the deceased on 05.11.1995. The trial Court has even brushed aside the testimony of Sanjay Guleria, Executive, Shivani Motors Limited Amritsar examined by the defence as DW1 and who had deposed on the basis of summoned record that a maruti 800 car was sold to Sukhwinder Singh son of Bachan Singh i.e. brother of appellant No.1 herein on 24.01.1996 for Rs.1,90,157.90/- and out of which a payment of Rs.1,67,017.11/- had been made by demand draft at the stage of booking of the car on 23.01.1995. Such deposition of DW1 based on summoned record would make it clear that almost the entire payment towards purchase of the car had been made on 23.01.1995 itself i.e. much prior in point of time to the date of death of Narinder Kaur.

In the considered view of this Court, prosecution has failed to

prove its case as regards harassment meted out to Narinder Kaur deceased as regards demand of dowry.

There is also no conclusive evidence coming forth to prove that Narinder Kaur had died an unnatural death and by way of poisoning. There is no medical record in the nature of Post Mortem Report/Chemical Examiner report to fortify such conclusion. The prosecution version set up as regards Narinder Kaur having been admitted to Muni Lal Chopra Memorial Hospital at Amritsar as a suspected case of attempt to suicide and she having been died on account of poisoning does not inspire any confidence. Dr. Shalenderjit Singh, Medical Officer stated to have been posted at Munni Lal Chopra Memorial Hospital, Amritsar upon having been examined as PW6 deposed that Narinder Kaur was admitted as a case of suspected suicide attempt. His deposition is that based on the clinic condition of Narinder Kaur, a provisional diagnoses of almunium phosphide poison was made. In his cross-examination, PW6 admitted that he did not inform the police about the case and did not even issue any note for informing the police.

There is no medical evidence forthcoming to conclusively record the case of death of Narinder Kaur to be by way of almunium phosphide poisoning.

It was the case of the defence that the complainant party i.e. brother, father and other relatives of Narinder Kaur deceased had attended the cremation. To the contrary, prosecution version was that the complainant party became aware of the death of Narinder Kaur only on 10.11.1995. Jaswant Singh i.e. father of deceased while being examined before the trial Court as PW3 stated in his deposition that they had

proceeded to village Manawala on being informed by sister's daughter namely, Sarabjit Kaur as regards the demise of Narinder Kaur. He deposed that Sarabjit Kaur had given a telephonic call to such effect on 10.11.1995 and upon receiving such information, they reached village Manawala at about 10:30 am. Strangely, Sarabjit Kaur, the author of such information was not even examined. To the contrary, the complainant Sukhpal Singh PW1 as also Jaswant Singh PW3 i.e. brother and father of Narinder Kaur deceased in their deposition admitted that daughters of Ajit Singh and Chanan Singh i.e. maternal uncles of Sukhpal Singh are married in village Manawala. It was further admitted that Sarabjit Kaur daughter of Jaswant Singh's sister is also married to Lakha Singh R/o of village Manawala. In other words, the clear admission of PW1 and PW3 was to the effect that their immediate and close relatives were married and residents of village Manawala i.e. the village of accused party. It goes without saying that unlike urban areas, a death taking place in a village does not go unnoticed. In the event of Narinder Kaur having died on 08.11.1995 and she having been cremated at village Manawala and her immediate family members having not attended the cremation, it would be natural for the close relatives of Narinder Kaur i.e. her cousins and who were residents of the same village to raise a hue and cry. This lends credibility to the defence version that the complainant party had attended the cremation of Narinder Kaur and the statement leading to the registration of the FIR as also complaint having been lodged after considerable length of time was an attempt to implicate the appellants herein.

As regards the presumption of dowry death under Section 113(B) of the Evidence Act, it was for the prosecution to have proved the

persistent demand of dowry and harassment, humiliation and violation/beatings by the husband and her in-laws and the deceased having died under unnatural circumstances within seven years of the marriage. That is precisely that the prosecution has not been able to prove by leading evidence so as to attract presumption under Section 113-B of the Evidence Act.

For the reasons recorded above, this Court is of the opinion that the trial Court fell into serious and grave error in recording the judgment of conviction. The impugned judgment is therefore set aside.

Since both the appellants had already been granted the concession of suspension of sentence by this Court and are presently on bail, they shall stand discharged from liability of the bail bonds furnished.

Appeal is allowed.

29.05.2015*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |