

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1737-SB of 2003
Date of Decision: August 19, 2015

Roop Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.V.K.Sandhir, Advocate
for the appellant.

Mr.B.S.Bhullar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 06.08.2003, passed by learned Addl. Sessions Judge, Bathinda, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹1,500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year under Section 306 IPC and he was further convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 201 IPC. Both the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that FIR was registered on the statement of complainant Mukhtiar Kaur. She stated that her youngest daughter Iqbal Kaur was married with Roop Singh and she gave birth to two sons. About 2½ years back, Raj Singh, brother-in-law of Iqbal Kaur was married and he got scooter in dowry. After the said date, husband of Iqbal Kaur namely Roop Singh, mother-in-law and father-in-law started harassing her and raised demand of scooter from complainant side and her daughter many a times came to the village and told that her in-laws are demanding scooter but they kept silent as her only son was in the Army and there was no other person in the family as earning hand. Complainant further stated that 10-15 days earlier to the occurrence, she had come to village Gobindpura to see her daughter, who told her that accused are harassing her for demand of scooter. On the day of occurrence, mediator Gurdas Singh came to village Poohla and asked them that they had to rush to village Lelewala as he does not know what has happened to Iqbal Kaur. Then complainant along with some ladies and gents had to rush to village Lelewala. When she along with others reached village Lelewala, her daughter was lying dead on the cot and the people from village gathered there and she came to know that her daughter Iqbal Kaur committed suicide by jumping into the canal minor due to harassment caused by accused Roop Singh and others in connivance with each other. Complainant also stated that her daughter was cremated in her presence and by that time, her daughter Amarjit Kaur and son-in-law Mitthu Singh also reached there

and they all went to police station and got recorded the FIR.

After recording the FIR, the Investigating Officer went to the place of cremation, from where some bones and ash were removed and put in parcel and some were put in a gunny bag, which was taken into police possession, vide recovery memo Ex.PB. From the canal minor, *chappals* were recovered and taken into police possession. Site plan was prepared. Accused was arrested. After necessary investigation, challan was presented against accused-appellant Roop Singh.

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, the accused-appellant was charge-sheeted under Sections 306 and 201 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Mukhtiar Kaur, complainant and her daughter-in-law Paramjit Kaur as PW-2. They made statements in support of the prosecution. PW-3 Head Constable Gurinder Singh and PW-4 Head Constable Lakha Singh, are formal witnesses, who tendered into evidence their affidavits Ex.PD and PE respectively. PW-5 SI Major Singh, is the investigating officer, who deposed regarding investigation conducted by him in the present case. PW-6 Dr.J.S.Dalal deposed that one sealed packet bearing one seal was received in his office through Constable Lakha Singh. On opening the said parcel, pieces of burnt bones and ashes were found therein. The bones were whitish in

colour and gave his opinion that the bones belonged to an adult human being and proved his report Ex.PL.

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. He further pleaded that Mithu Singh, who is married with daughter of Mukhtiar Kaur is inimical to him from the very day of his marriage because Mithu Singh wanted his younger brother to get married with Iqbal Kaur. Mitthu Singh was not in speaking terms with him and he had quarreled with him on several occasions. He further pleaded that Iqbal Kaur and he had cordial relations with each other and they have two sons. No scooter was given to his brother Raj Singh in his marriage. He did not demand scooter from Iqbal Kaur or from her parents. Accused-appellant also pleaded that Harnek Singh, brother of Mukhtiar Kaur, Mohinder Singh, father of Paramjit Kaur, Sarpanch of village Gobindpura along 20-25 persons of village Gobindpura including Guranditta Singh, Nambardar, Kulwant Singh Parjapat, appellant's father-in-law came to his house. 20-25 persons of his village including Bhagwan Singh, Sarpanch, Dev Singh, Member Panchayat, Jugraj Singh, Panch, Nirbhai Singh, Panch, Rajbir Singh Chowkidar and Gulzara Singh, Panch were also collected at his house. All these persons of their free will cremated dead body and he has been falsely implicated in this case by his mother-in-law at the instance of Mitthu Singh.

In defence, accused-appellant examined DW-1 Nachhattar

Singh, who deposed that about four years back, when he was returning from his fields to his village and reached on the bridge of canal minor, Iqbal Kaur was trying to drink water on canal minor. She slipped into the canal because footsteps of the canal minor had become slippery due to the water. He and Jasvir Singh took her out of the canal minor and brought to village in camal cart and she complained of pain in the chest and expired in the village. DW-2 Bhagwan Singh deposed that Iqbal Kaur was living happily with Roop Singh as his wife and they had two sons. About four years back Iqbal Kaur suffered heart attack and died and at the time of her cremation her parents and panchayat members of her parental village including him were also there. Panchayat members of both the villages attended the cremation.

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 Iqbal Kaur was married with the accused Roop Singh 10-11 years back and two sons have born from the wedlock. The marriage of younger brother of Roop Singh was solemnized 2½ years before the occurrence. Till then, there was no allegation of any harassment/demand of dowry. He further argued that it is the case of prosecution that a scooter was given in the marriage of the younger brother of the accused and that accused had started raising the demand. He next argued that the version itself looks improbable.

Further, neither there was any harassment nor any earlier demand of

dowry, then why after 7-8 years of the marriage, the alleged demand would be raised i.e. of scooter. Learned counsel for the appellant contended that there is nothing on the record that any scooter had been given to the younger brother of the accused in the marriage as the Investigating Officer has not investigated on this aspect. Furthermore, there is no application given to the Gram Panchayat or the police against the accused. He next contended that no evidence of any type of harassment or maltreatment has been produced by the complainant. There are no specific allegations regarding harassment and only general and vague allegations are levelled that accused used to harass and maltreat Iqbal Kaur. Learned counsel for the appellant also argued that deceased Iqbal Kaur slipped into the canal as deposed by DW-1 Nachhattar Singh. Nobody had seen her jumping into the canal. He next argued that cremation took place in the presence of the family members of the deceased and they have not objected to it. Later on Mitthu Singh, with whom the accused had some enmity, abetted the complainant to get registered the FIR. It is further argued that neither father nor brother of the deceased had come to the witness box to support the version of the complainant Mukhtiar Kaur. Even Mukhtiar Kaur has not mentioned that her husband is alive. Rather, in the FIR, she has been described as widow. Even, she has not stated that her husband is earning in the family. The only version is that her son is in the Army and was only the earning hand. Learned counsel for the appellant, therefore, argued that accused-appellant should be acquitted and appeal should

be allowed.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence and the accused-appellant has been rightly convicted and sentenced. He therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that first of all, there are only two statements i.e. of Mukhtiar Kaur and Paramjeet Kaur. Except the allegation regarding demand of scooter, there is no other allegation that accused-appellant has ever maltreated or harassed Iqbal Kaur or demanded any dowry article. There is nothing in the evidence that accused or his family members have ever dissatisfied with the dowry articles given at the time of marriage of Iqbal Kaur. Iqbal Kaur was married with the accused about 10 years back and younger brother of the accused was married about 2½ years earlier to the occurrence, which means that for about 7 years, nothing has happened in the family and two children were born and they were residing happily. The version of the prosecution looks improbable that after 7 years of marriage, accused demanded scooter. Otherwise also, as per the statement of Investigating Officer, he has not investigated on this fact that any scooter was given in the marriage of younger brother of the accused. No application was ever given by the complainant side to the police or Gram Panchayat regarding demand of scooter. Neither the complainant side ever took

the matter to the Panchayat nor there is any allegation that Panchayat had ever visited the house of the accused, to tell him to not to harass Iqbal Kaur. Furthermore, there are no specific allegations regarding maltreatment or harassment as to how accused maltreated Iqbal Kaur. There is also no allegation that accused ever gave beating to Iqbal Kaur nor there is any allegation that Iqbal Kaur was ever turned out of the matrimonial house. There was no allegation that she was ever kept locked in the house or she was not allowed to meet her parents or she was not provided food or any restrictions were imposed upon her. Only general and vague allegations have been levelled that Iqbal Kaur told complainant 10-15 days earlier to the occurrence that accused side is harassing her.

Further, I find that in the present case, cremation has taken place admittedly in the presence of the complainant and some of other persons who accompanied complainant to the village Lelewala. Admittedly, there was no strong objection by the complainant in the cremation. Iqbal Kaur died at about 11.00 A.M. and she was cremated at about 5.00 P.M. No person tried to give complaint to the police during this period. In no way, it can be held that Iqbal Kaur was cremated by the accused side in haste manner. As per DW-2 Bhagwan Singh, so many persons attended the cremation and Panchayat members of both the villages were also present. One more important fact which creates reasonable doubt in the prosecution version is that father and brother of the deceased did not come to the witness box to support the prosecution version.

Furthermore, in the FIR, Mukhtiar Kaur complainant is described as widow and there is no mention in the FIR regarding her husband. Rather, she stated that Iqbal Kaur reported the complainant that accused is raising demand of scooter and it is case of the complainant that they kept silent. No person would remain silent when their married daughter complains regarding harassment. Rather, they will talk to the in-laws family of the daughter or report the matter to the mediator or to the Panchayat to save the girl from harassment and maltreatment. This fact also creates doubt in the prosecution version. As per complainant version, they kept silent. The only inference which can be drawn from this version is that there was no maltreatment or harassment to the deceased.

DW-1 Nachhattar Singh has stated that Iqbal Kaur slipped into the canal while taking the drinking water from the canal. PW-5 SI Major Singh, Investigating Officer, in the cross-examination stated that he did not record the statement of any witness regarding giving of scooter to Raj Singh, brother of the accused in his marriage. He also stated that he did not record statement of any witness regarding jumping of Iqbal Kaur deceased in the canal minor. He further stated in cross-examination that he went to the cremation ground after the registration of the FIR and there were about 19 persons of the village Gobindpura along with Bhim Singh Sarpanch, Guranditta Singh Nambardar, Kulwant Singh Parjapat. Mohinder Singh, Harnek Singh Parjapat were also present there. He further deposed in cross-examination that 20-25 persons of village Lelewala including

Sarpanch Bhagwan Singh, Dev Raj, Member, Jagraj Singh, Nirbhai and Rajbir Singh chowkidar were also present. The Investigating Officer further stated that out of these persons, nobody supported the allegation of forcible cremation. DSP came to the spot on 17.03.1999. The Investigating Officer also stated that he recorded the statements of all the Member Panchayat along with Sarpanch Bhagwan Singh and none of them supported the allegations of demand of scooter by Roop Singh from his wife or in-laws. It is also stated by the Investigating Officer that none of the resident of village Lelewala and Member Panchayat supported the allegations in the FIR. Keeping in view this cross-examination, I find that reasonable doubt exists in the prosecution version and benefit of doubt is to go to the accused. PW-2 Paramjeet Kaur, daughter-in-law of Mukhtiar Kaur has stated in cross-examination that her father-in-law is alive. She stated that she visited village Lelewala on various occasions and last time she visited there one year prior to the occurrence. In the present case, even mediator has not been examined to support the prosecution version. PW-1 Mukhtiar Kaur stated in cross-examination that no Panchayat was convened nor any complaint was filed regarding demand of scooter by the accused. She stated that Gurdas Singh was mediator of the marriage and he was informed many times regarding maltreatment by the accused. There is also nothing in the statement of the complainant that as to why her husband did not come along with her to the village Lelewala after hearing that something has happened to Iqbal Kaur.

All the above facts creates reasonable doubt in the prosecution version. The benefit of doubt is to go to the accused. Hence, giving benefit of doubt, the accused-appellant is acquitted of the charges framed against him. The judgment of conviction and order of sentence dated 06.08.2003 passed by learned Addl. Sessions Judge, Bathinda, are set aside.

Resultantly, the present appeal stands allowed.

Since, the appellant Roop Singh is on bail, his bail bonds stands discharged.

August 19, 2015
Vgulati

(INDERJIT SINGH)
JUDGE