

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

CRA-S-1259-SB-2003
Date of decision : 20.08.2015

Sukhdev Singh @ Sikha

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashok Bhardwaj, Advocate for the appellant.

Ms. Harsimrat Rai, DAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

1. This appeal is directed against the judgment of conviction and the order of sentence dated 28.11.2002, passed by the learned Additional Sessions Judge, Sangrur whereby the appellant was ordered to undergo the rigorous imprisonment for 10 years for committing an offence under Section 304-B IPC.

2. Brief facts of the case in hand, as recorded in the opening para of the impugned judgment, are reproduced as under:-

“2. The case of the prosecution, in brief, is that on 07.02.2000 Station House Officer, Police Station, Dhuri, along with other police officials in Government vehicle No.PB-13C-3045 being driven by Kulwant Singh was present at Rajomajra in connection with patrolling. Ram Singh son of Jhanda Singh, Jat, resident of Dirba along with former Panch Labh Singh, came there who made statements Ram Singh son of Jhanda Singh Jat

resident of Dirba made the statement Ex.PH that he was agriculturist and was married with Labh Kaur daughter of Bhan Singh. Out of the wed lock, two daughters namely Malkiat Kaur and Rajpal Kaur and one son Satnam Singh were born. After some time Labh Kaur dies. He solemnised marriage with Sinder Kaur sister of Labh Kaur. Thereafter he married his elder daughter Malkiat Kaur at village Uggrahan. About five years ago he married his daughter Rajpal Kaur with Sukhdev Singh alias Sukha son of Parkash Singh caste Baragi Sadh resident of Hassanpur. Two sons namely Beant Singh aged 4 years and Dhanwant Singh aged 1 year were born. His son Satnam Singh died. From his second wife two sons and two daughters were born. His father-in-law Bhan Singh was not having any son. His wife was having two sisters. They were having 16 Killas of land, which was mutated in the name of all the three sisters and their mother equally.

3. *After some time of the marriage, Sukhdev Singh started torturing his daughter Rajpal Kaur because he was demanding transfer of four killas of land in his name and he was demanding more dowry. His son-in-law Sukhdev Singh got filed a civil suit from his two daughters Malkiat Kaur and Rajpal Kaur about three years ago about the agricultural land situated at village Khadial. He also got power of attorney from them. Sukhdev Singh went to village Khadial and tried to interfere in their possession. He filed complaint with S.S.P. Sangrur which was referred to police post Mehlan. After verifying the record the police and the Panchayat did not allow Sukhdev Singh to occupy the land forcibly. Both the parties were released on bail under Sections*

107/151 Cr.P.C. His daughter Malkiat Kaur made statement in the Court on the first date and withdraw the suit. Since he was apprehending that Sukhdev Singh would usurp her land. Then Sukhdev Singh turned Rajpal Kaur out of the house after beating her and asked her to bring money. His daughter Rajpal Kaur told the entire occurrence. She also withdrew the suit. Since she was also apprehending that Sukhdev Singh would usurp her land. Thereafter Sukhdev Singh took back Rajpal Kaur after making request. Then he sent Rajpal Kaur to him to bring money for the construction of the house. He paid him sum of Rs.30,000/- in three instalments. On 02.02.2000, he got started Akhand Path at Gurudwar Sahib Baissiane, Dirba. On that day, Sukhdev Singh left Rajpal Kaur at Bus Stand Dirba. He got angry with her and he returned after telling her to bring Rs.10,000/- on 4th day of February, 2000 Bhog of Akhand Path Sahib took place at Gurudwara Sahib. His daughter Rajpal Kaur disclosed to his relative gathered there that her husband Sukhdev Singh was torturing her for bringing less dowry and for not getting the land mutated in his name. On 06.02.2000 he along with his wife Sinder Kaur came to the village Hasssanpur to leave his daughter Rajpal Kaur in her house. Sukhdev Singh asked his daughter where she had brought the money with her. He told him that he had spend sufficient amount on Akhand Path. He would arrange the money very soon, and would give to him. Sukhdev Singh started hurling abuses at him and his daughter Rajpal Kaur. He slapped his daughter Rajpal Kaur in their presence. Since they were poor person so he pleaded with him and after requesting and persuasion he left his daughter with him and

returned to their village. He was asking if they failed to get four killas of land in his name by the next day, then he would kill their daughter. He used to give also such type of threats earlier.

4. *On that day it was 10 a.m. he received message on telephone that Sukhdev Singh had killed his daughter in the night. He along with his wife Sinder Kaur former Panch Labh Singh, Bhola Singh, Raj Singh, Bhan Singh Chand Singh went to village Hassan Pur and found their daughter lying dead on the cot in the room. After recording his statement Sub Inspector Swaran Singh made his endorsement Ex.PA/1 and sent the same to the police station on the basis of which FIR Ex.PD was registered. After completing investigation, the challan against the accused was presented in the court.*

5. *Copies of the documents as per provision of Section 307 Cr.P.C. were supplied to the accused free of costs by the learned Magistrate.*

6. *The learned Magistrate vide his order dated 22.05.2000 committed the case to the Court of Session, Sangrur.*

7. *On consideration charge under Section 304-B of the IPC was found and made out against the accused to which the accused pleaded not guilty and claimed trial.*

8. *In support of the case, the prosecution examined Dr. Vijay Kumar as PW1 deposed that post mortem examination of the dead body of Raj Pal Kaur was conducted by board of doctors consisting Dr. Vijay Kumar Jindal, Dr. R. P. Jindal, Dr. Ramesh Kumar Sharma. He proved the copy of the postmortem report Ex.PA. He further deposed ue of death in this case could*

not be ascertained and ultimately report would be given after examination of the chemical examiner. Report of the chemical examiner is tendered as Ex.PO. As per the report aluminium phosphide a pesticide was detected in the contents of exhibits No.II and No.III i.e. stomach and piece of small and large intestine. So cause of death in the present case was intake of pesticide which is poison, HC Mohinder Singh as PW2, HC Nirmal Singh as PW3, Rakesh Kumar as PW4, HC Gurmeet Singh as PW5, Raj Singh as PW6, Labh Singh as PW7, Inspector Swaran Singh as PW8 who proved the statement of Ram Singh Ex.PH and made endorsement Ex.PH/1 on the basis of which FIR Ex.PD was registered, Shinder Kaur as PW9, Kashmir Singh as PW10, Malkiat Kaur as PW11, Gurmail Singh as PW12. Sh. Prem Kaur Ahlmad appeared in the Court and made statement that the file of Civil Suit No.113 dated 26.04.1997 decided on 27.03.1999 was consigned to the record room at Sunam. So A.R.K. Record room, Sunam be summoned. Sh. S. P. Singla Addl. P. P. has made statement that Ram Singh had died so he may be deleted from the list of the witnesses. The learned Addl. P. P. gave up PW-Chand Singh C.II Bachhittar Singh, HC Mehma Singh, SI Surinderpal Singh, Dr. R. P. Jindal and Dr. Rajesh Kumar as unnecessary. The learned Addl. P. P. tendered documents and closed the evidence of the prosecution.

9. *Statement of the accused under Section 313 Cr.P.C. was recorded. Incriminating evidence was put to him. The accused denied the same. The accused pleaded false implication and innocence. The accused further submitted that his mother-in-law Labh Kaur had got three daughters namely Rajpal Kaur, Labh Kaur died in*

the year 1984. In the year 1985 his father in law got married Sinder Kaur. Satnam Singh brother of his wife died in the year 1996. Sukhwinder Kaur died in the year 1984. His mother in law had inherited 4 killas of land at village Khadial, her parental village out of which two killas of land fell to Malkiat Kaur and his wife Rajpal Kaur. But Sinder Kaur was not happy with the same. Malkiat Kaur and Rajpal Kaur filed civil suit. Power of attorney was executed in his favour. Malkiat Kaur wrote letter Ex.DB to him. Rajpal Kaur was annoyed with Sinder Kaur. Sinder Kaur was not liking to part with the property Malkiat Kaur and Rajpal Kaur. The accused did not lead any evidence in defence.”

3. After appraisal of the documents, prosecution evidence and the defence evidence, the learned Additional Sessions Judge, Sangrur convicted the accused appellant under Section 304-B IPC and sentence him to undergo rigorous imprisonment for ten years.

4. Feeling aggrieved against the same, the appellant has filed this appeal, which was admitted on 11.07.2003. The sentence of appellant was suspended on 05.08.2003.

5. The learned counsel for the appellant contends that the appellant is the victim of the circumstances created by Sinder Kaur-step mother of the deceased, who did not part with the land that had fallen to the share of the deceased Rajpal Kaur. The deceased in order to assert her right filed a civil suit in the year 1997, however, with the intervention of family members the same was withdrawn in the year

1999. The deceased stayed with her step mother for two weeks immediately preceding the death. The case of the prosecution is that the appellant raised the demand of Rs.40,000/- for construction of the house and to meet the demand, Rs.30,000/- had been allegedly paid to appellant in the presence of other relatives of the family. However, there is no proof on record with regard to payment as the prosecution has not examined any witness in this regard. He further states that even if the case of the prosecution is accepted as such, still in the absence of any demand of dowry or harassment by her husband or any relative soon before death is made out.

6. The learned counsel further refers to statements of PW-9 Sinder Kaur and PW-11 Malkiat Kaur, wherein it has been mentioned that the demand of funds had been raised for the construction of house, which does not attract Section 304-B of the Indian Penal Code.

7. It is further asserted that these tablets were in fact administered to the deceased by her step mother who had usurped the share of the deceased in the property and had come to drop the deceased to her matrimonial home in the absence of the appellant. From the postmortem report carried out by PW-1, Mr. Vijay Kumar no external injury on the person of the deceased was noticed. There is no evidence that demand of dowry was raised “soon before the death” of the deceased or the death was on account of demand of dowry.

8. He lastly submits that the appellant is saddled with the

responsibility of raising the two children left by the deceased, therefore, lenient view may be taken in the matter of sentence.

8. The learned counsel for the appellant cites **Prem Kanwar Vs. State of Rajasthan**, 2009(1) RCR (Criminal) 850, **Appasaheb and another Vs. State of Maharashtra**, 2007(1) RCR (Criminal) 747 and **Nishan Singh Vs. State of Haryana**, 2011(2) CRC (Criminal) 353.

9. On the other hand, the learned State counsel submits that there is evidence on record that a demand of Rs.40,000/- towards construction of house was raised which falls within the ambit of demand of dowry. She states that Rajpal Kaur had died in her matrimonial home, therefore, the presumption under Section 113 of Indian Evidence Act is attracted. The learned State counsel cites **Bansi Lal Vs. State of Haryana**, 2011 AIR (SC) 691.

10. I have heard the submissions of the learned counsel for the parties and have carefully gone through the record with their able assistance.

11. In this case, deceased Rajpal Kaur died unnatural death within seven years. This Court is to determine as to whether it is a dowry death or a case of abetment to compel her to commit suicide by the accused-appellant.

12. Section 304-B IPC reads as under:-

“304B. 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.”

13. It has been manifested in plain words in the language of this Section by the legislature that the abetment is most important ingredient of the offence and the abetment is not defined separately in this Section. Therefore, Section 107 of Indian Penal Code which defines abetment is referable at this stage in which the ingredients of the abetment are explained. Section 107 *ibid* reads as under:-

“107. Abetment of a thing – A person abets the doing of a thing, who -

*First. - Instigates any person to do that thing;
or*

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in

pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 – Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

It is apparent that the three ingredients are basic requirement for determining the case of abetment. Firstly, the concerning person, who committed suicide should be instigated by the accused for the same and by secondly, there should be an involvement of the accused in conspiracy, whereby the deceased committed said act and thirdly, there should be intentional criminal aids to the deceased at the instance of the accused either act or by omission for doing such act.

14. The term “dowry” has been defined in Section 2 of the Dowry Prohibition Act, 1961 (in short ‘Dowry Act’) as under:-

"Section 2. Definition of ‘dowry’ - In this Act, ‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies.

Explanation I- For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II- The expression 'valuable security' has the same meaning in Section 30 of the Indian Penal Code (45 of 1860)."

15. The Hon'ble Supreme Court in **Satvir Singh VS. State of Punjab**, 2001 (4) RCR (Criminal) 355, has held as follows:-

“Prosecution, in a case of offence under Section 304B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused soon before her death. The word dowry in Section 304B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. That definition reads thus:

In this Act, dowry means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to marriage to the other party to the marriage;
or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are in connection with the marriage of the said parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry. Hence the dowry mentioned in Section 304B should be any property or valuable security given or agreed to be given in connection with the marriage.”

16. In **Gurcharan Singh VS. State of Punjab**, 2011 (2) RCR (Criminal) 180, it has been held that demand of money for setting up a television shop would not amount to demand of dowry.

17. Hon'ble Supreme Court of India in **Appasaheb and another Vs. State of Maharashtra**, 2007 (1) RCR (Criminal) 747, has held that mere demand made by the husband to his wife to bring a sum of Rs.1,000/- from her parents to meet domestic expenses would not by

any stretch of imagination amount to demand of dowry.

18. Hon'ble the Supreme Court of India in **Baldev Singh Vs. State of Punjab, 2009 (3) SCC (Criminal) 537**, has held that the demand of share in ancestral property would not amount to demand of dowry. But any additional demand of dowry as such made by the accused coupled with cruelty and harassment would definitely fall under Section 304B Indian Penal Code when it culminated in the death of the victim lady.

19. This Court also in **Bhim Singh and others Vs. The State of Haryana and others, 2009(2) RCR (Criminal) 558**, has held that the demand of Rs.1,50,000/- made by the accused from his in-laws for the purpose of construction of a house would not amount to demand of dowry. Relying upon the aforesaid ratio, it was held that the demand for a sum of Rs.70,000/- for setting up a television shop would not amount to demand of dowry.

20. Hon'ble the Supreme Court of India in **Prem Kanwar Vs. State of Rajasthan, 2009 (1) RCR (Criminal) 850**, has held as follows:-

“9. The offence alleged against the accused is under Section 304-B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304-B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in

the definition of "dowry" under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the accused seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry."

21. The important and relevant evidence regarding the demand made is reflected in the statement of PW-9, Sinder Kaur. She has stated that accused had insisted upon Rajpal Kaur to bring Rs.30,000/- from his father Ram Singh for the purpose of construction of house, which Ram Singh paid in instalments. The accused had been insisting upon the deceased, Rajpal Kaur to further bring Rs.10,000/-. On 04.02.2000, after the 'Akand Path', prayer was completed, the accused Sukhdev

Singh had demanded further amount and insisted upon her to get the land transferred in her name i.e. the deceased.

22. Similarly PW-11 Malkiat Kaur stated that due to maltreatment of Sukhdev Singh his sister Rajpal came to her parental home. Sukhdev Singh had been insisting upon her sister Rajpal Kaur to bring funds from her parents (PW11) for construction of house. Her father paid sum of Rs.30,000/- in three instalments to Sukhdev Singh. On 02.02.2000, Sukhdev Singh, went back after dropping Rajpal Kaur at bus stand Dirba and bhog of akhand path took place on 04.02.2015.

23. A close scrutiny of the statements of both the witnesses go to prove that infact there was a land dispute inherited by her mother from maternal grand father of the deceased. It has come in the statement of PW11 that a civil suit was got instituted by appellant Sukhdev Singh from the deceased in the civil courts at Sunam. Not only this Ram Singh father of the deceased filed a complaint against appellant Sukhdev Singh to the Senior Superintendent of Police, Sangrur on which the police initiated proceedings under Section 107/151 C.P.C. against both the parties in which they were bailed out. Later on the civil suit was withdrawn on 27.03.1999. It has further come in evidence that appellant Sukhdev Singh dropped his deceased wife to bus stand to attend the akhand path at the residence of her parents but he himself avoided to attend that function. So it is apparent that relations of the appellant, Sukhdev were not cordial with his in-

laws due to the land dispute. PW11, further stated that her father Ram Singh and mother's sister Sinder Kaur left Rajpal Kaur deceased in the house of appellant Sukhdev Singh when the latter was not present at home. When her father had hardly returned to the house, then a telephone call was received regarding the death of Rajpal Kaur. From the bare reading of statements of these two witnesses who had a motive to depose against the appellant, Sukhdev Singh, it is borne out that there was some quarrel or altercation after the prayer meeting (Akhand Path) between the deceased Rajpal Kaur and her family members at her parental house who might have refused to give share of the land which her mother inherited from her maternal grandfather as her mother had no brother. The marriage was five years old. The couple had two children. The appellant Sukhdev Singh was not present at his house, when his wife committed suicide. PW11 had stated that the civil suit was withdrawn by Rajpal Kaur deceased, may be on the assurance of her father that she will be given her due share out of four killas of land, but later on, when the deceased demanded her share in the presence of the relatives from her father at his house, she might have been refused. The complainant, Ram Singh, father of the deceased died during trial and could not depose. The statements of PW9 and PW11 even if taken to be true, the case of the prosecution cannot succeeds as there is no demand of dowry soon before the death. Beyond the statement that demand of Rs.40,000/- was raised for the construction of house, there is

no proof of demand and evidence that demand was raised immediately before the death. There is evidence on record in the shape of filing of suit by the deceased along with her sister-Malkiat Kaur against their father-Ram Singh in the year 1997, which was subsequently dismissed as withdrawn on 27.03.1999 which suggests that the relation of the deceased with her parental family were not cordial. Therefore, the argument raised on behalf of the appellant that death occurred due to the denial of her share in the property inherited by the mother could not be said to be totally misconceived. So apparently, neither it is a case of demand of dowry “soon before death” nor any abetment on the part of the appellant Sukhdev Singh to compel her to commit suicide. PW-11 Malkiat Kaur admitted in cross examination that her deceased sister had been demanding the share in land. Appellant Sukhdev Singh was neither present at his in-laws' house after the Akhand Path nor at the time of death of his deceased wife. Presumption of Section 113-B of the Evidence Act would not be attracted in the present case because soon before her death, the deceased was in the company of her step mother and other relatives who attended Shri Akhand Path at her parental house, which is clear from the testimony of the PW-11, Malkiat Kaur who has stated that appellant did not attend the Akhand Path ceremony. No other independent witness or relative was examined to prove the demand of dowry. The testimony of PW-9, Sinder Kaur and PW-11, Malkiat Kaur are untrustworthy, unreliable, unbelievable and no

reliance can be placed on such witnesses who had a motive to falsely implicate the accused-appellant due to the land dispute as the accused-appellant was the attorney-holder of his deceased wife and his sister in-law and had been pursuing the civil suit for getting the land from his father in-law. The prosecution has miserably failed to prove its case against the appellant Sukhdev Singh beyond reasonable doubt, either under Section 306 IPC or under Section 304-B IPC.

24. Keeping in view the above, present appeal is allowed. The judgment of conviction and sentence dated 28.11.2002 passed by the Additional Sessions Judge, Sangrur are set aside and the accused-appellant Sukhdev Singh @ Sukha is acquitted of the charges framed against him. The bail bonds furnished by the appellant shall stand discharged.

20.08.2015

ashok

**(JITENDRA CHAUHAN)
JUDGE**

Whether referred to reporter? Yes/No.