

Criminal Appeal No.S-1163-SB of 2000

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

...

Criminal Appeal No.S-1163-SB of 2000

Date of Decision: December 16, 2016.

Gurdas Singh

... Appellant

VERSUS

State of Haryana

...Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ? Yes

CORAM : HON'BLE Ms. JUSTICE RITU BAHRI.

Present: Mr. Kanisth Ganeriwala, Advocate,
for the appellant.

Mr. Anmol Malik, Additional Advocate General, Haryana.

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RITU BAHRI, J.

This appeal has been filed by the husband-Gurdas Singh against the judgment of conviction dated 06.11.2000 and the sentence order dated 07.11.2000 passed by the learned Additional Sessions Judge, Sirsa, vide he was convicted under Section 304-B of the Indian Penal Code (hereinafter referred to as 'the Code') and sentenced to undergo rigorous imprisonment for seven years and to

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undergo rigorous imprisonment for three year under Section 498-A of the Code and to pay fine of Rs.5,000/-, in default whereof to undergo further rigorous imprisonment for six months.

The parents of appellant, however, were acquitted of the charges framed against them under Sections 406/498-A/304-B/34 of the Code.

The instant case was registered on the basis of statement dated 07.05.1998 made by Gurmail Singh (father of deceased-Charanjit Kaur), before the Sub Inspector of Police Amar Singh, where in he inter alia, stated that his daughter was married to Gurdas Singh-appellant in the year 1997 and he had gifted her with a cash amount of Rs.50,000, one coloured T.V, one refrigerator, 20 tolas of gold etc. However, appellant and his parents started making demand for a Royal Enfield Motorcycle and a video cassette recorded after about two or three months of the marriage. The deceased was harassed and physically tortured by the appellant and his parents, as narrated by the deceased to him. But the complainant advised his daughter to return to her nuptial home and make a sincere attempt to defuse the situation but her husband and his parents refused to relent. The complainant was highly dismayed and convened the panchayat, who accompanied him to village Rori and advised the members of the nuptial family of his daughter to treat the young bride with love and compassion but they continued pressing their demand for more dowry and even threatened to do away with Charanjit Kaur and marry the appellant again in case their demands were not met. A nephew of the complainant

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Harminder Singh accompanied Charanjit Kaur to her matrimonial home but the demand for more dowry was again repeated in his presence. They were not allowed to enter the house without meeting their demand and both of them returned to their native village. The complainant thereafter agreed to meet the demand after harvesting the rabi crop and thereafter, the deceased was allowed to return to her matrimonial home. However, the complainant was informed on that night itself that his daughter had died at the Civil Hospital, Rori after consuming poison on 04.05.1998. The matter was then brought to the knowledge of the police that appellant and his parents had killed Charanjit Kaur since he had failed to meet their unjust demand for a motorcycle and a Video Cassette Recorder. Subsequently, a case under Sections 304-B/498-A/34 was registered against the appellant and his parents.

Investigation was conducted and the accused were arrested. After completion of investigation, challan was presented against the accused persons in the Court. The accused were charge sheeted vide order dated 06.08.1998 to which they pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined 09 witnesses and thereafter, the evidence of the prosecution was closed vide his statement dated 07.06.2000.

The statements of the accused were recorded under Section 313 Cr.P.C but they denied the allegations levelled against them. They examined Dr. Usha Madan as D.W.1 and Baldev Dass as D.W.2 and the defence evidence was concluded on 03.11.2000.

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The Court below after taking into consideration the deposition made by Gurmail Singh-P.W.4, Harminder Singh-P.W.5 and Teja Singh as P.W.6 came to a conclusion that the deceased-Charanjit Kaur was being ill-treated in her matrimonial home after three months of her marriage and demand of dowry was constantly being made from her. The deceased was shown the door on a number of occasions. The respectable of the society had intervened to save the marriage but in vain. It was presumed that the appellant had created a very hostile atmosphere for his young bride to breathe freely who could not bear the pressure for long and ultimately decided to destroy herself by consuming a rodenticide.

Learned counsel for the appellant contends that the deceased used to remain under depression and was treated for the problem. She was unable to conceive and thus undergoing mental agony. She has the tendency to commit suicide due to the problem.

Learned counsel for the appellant further contends that the appellant and his family members made every effort to save the life of the deceased and the information regarding consuming poisonous tablets was supplied to her parental home in due time. Further the appellant had taken the deceased to the hospital and she was conscious and was free to make any statement before the doctor.

Learned counsel for the appellant has further argued that the deceased had taken the medicine by mistake. Further learned counsel submits that the deceased had herself informed Dr. V.K. Mehta P.W.8 that she had taken some tablet by mistake.

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Learned counsel for the appellant further argued that the allegations against the appellant are similar to that of his parents and once his parents had been acquitted, the appellant also deserved to be acquitted.

The arguments raised by learned counsel for the appellant had been dealt by the Court below in detail wherein it has been concluded that the appellant has not produced any document on record that the deceased was suffering from any depression. Further the appellant and his family members had tempted the deceased to take poison, as they were demanding motorcycle and Video Cassette Recorder, which is evident from the statement of Harminder Singh who accompanied Charanjit Kaur to her matrimonial home but the demand for more dowry was again repeated in his presence. Further the tablet of aluminium phosphide is a very large as compared to an usual tablet made for human consumption and it has also a pungent smell. No person would take an aluminium phosphide tablet for the medicinal tablet.

The appellant, being the husband of the deceased had the responsibility to take care of his wife, as the father of the appellant would not have much to do with the demand of motorcycle, as he was very old. Further he was mentally disturbed, as admitted by P.W.5. Parents were acquitted being old age and they would not have much to do with the motorcycle and Video Cassette Recorder. The deceased was under lot of pressure to bring dowry.

Reference at this stage can be made to a judgment of Hon'ble the Apex Court in case ***Appasaheb and another v. State of Maharashtra***

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2007 (1) RCR (Criminal) 747, wherein, having interpreted the provisions of dowry death prescribed under section 304-B IPC, it was ruled as under (para 9) :-

“Two essential ingredients of Section 304-B IPC, apart from others, are (i) death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

Section 2 of Dowry Prohibition Act reads as under :-

"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 parent 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 mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

" In view of the aforesaid definition of the word "dowry" any property or 11 of valuable security should be given or agreed to

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*be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statutes that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See **Union of India v. Garware Nylons Ltd., AIR 1996 S.C. 3509 and Chemicals and Fibres of India v. Union of India, AIR 1997 S.C. 558**). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for*

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purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.”

Further Hon'ble the Supreme Court of India in a case of ***Narwinder Singh vs. State of Punjab, 2011 AIR (SC) 686*** was examining a case whereby initially the husband/appellant was convicted under Section 304-B by the learned trial Court. However, the High Court converted the conviction from 304-B to Section 306 IPC and this judgment was challenged by the appellant before Hon'ble the Supreme Court, which was dismissed observing that the deceased had committed suicide due to harassment meted out to her by the appellant but there was no evidence on record to suggest that such harassment or cruelty was made in connection to any dowry demands. Thus, cruelty or harassment sans any dowry demands which drives the wife to commit suicide attracts the offence of 'abetment of suicide' under Section 306 IPC and not Section 304-B IPC which defines the offence and punishment for 'dowry death'

Hon'ble the Supreme Court of India in a case of ***Gurnaiib Singh vs. State of Punjab, 2013(3) SCC (Cri) 49*** has expressed its distress that it has become a common practice and regular occurrence that the trial Courts flout the legislative command with impunity. It was a case where bride died by consuming poison. There was evidence of cruelty but demand of dowry not proved. The accused was convicted under Section 304-B IPC. Hon'ble the Supreme Court converted the offence from Section 304-B to Section 306 IPC and limit the period of sentence to the period already undergone by

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him.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Karan Singh and another vs. State of Haryana, 2014(5) SCC 738*** wherein conviction of the appellant was converted from Section 304-B IPC to Section 306 IPC. In this case, the bride committed suicide within 07 years of marriage by consuming poison. In para 25 to 28, it has been observed as under:-

25. But, there is no doubt that Manju and Sunita were subjected to ill-treatment and harassment from time to time by Karan Singh and Mukhtiari though it was not relatable to any demand for dowry. The evidence on record shows that they were turned out from the matrimonial home on more than one occasion. They were even turned out from the matrimonial home within about ten days after Manju gave birth to a baby boy. Ram Kishan had spoken about this to Satbir and Sukhbir but in spite of this, the attitude of Karan Singh and Mukhtiari did not change. As mentioned above, no allegation has been made against Satbir and Sukhbir. Again, a few days before Manju's death, Sunita was subjected to beating and turned out of the matrimonial home. Although, Manju did not accompany her sister, she paid the price for staying back in village Raiya. From the facts of the case it is quite clear to us that although there may be no evidence of Manju having been compelled by Karan Singh and Mukhtiari to consume poison, they had created a situation over a sufficiently long period

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of time whereby she was left with no option but to take her life. It is quite unlikely that a young lady, particularly one having a year old child, would take her life unless she had some mental health issues (which is not the case) or was compelled by circumstances to do so. An offence of abetment of suicide punishable under Section 306 of the IPC is much broader in scope than an offence punishable under Section 304-B of the IPC. Bhupendra v. State of U.P., (2014) 2 SCC 106. In this case an offence punishable under Section 306 of the IPC is clearly made out against Karan Singh and Mukhtiari.

26. It is significant that when Manju was admitted in the MCH at Rohtak, and even when the inquest proceedings were being conducted on 14th and 15th December, 1995 neither Karan Singh nor Mukhtiari was present at any time. They seem to have had some antipathy towards Manju and Sunita and this resulted in their harassing and treating Manju with cruelty such that she could not bear it any further and therefore decided to take her life.

27. The testimony of Badlu does not assist Karan Singh and Mukhtiari. His testimony in their favour was in the context of dowry demands but, as we have held, that is not the question agitating us. His testimony also showed that there was some friction between Ram Kishan on the one hand and Karan Singh and Mukhtiari on the other. This part of Badlu's testimony does not assist Karan Singh and Mukhtiari. On the contrary, the friction

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may have been an aggravating factor in the relationship between Manju and Sunita and their parents in law. In any event, it is not necessary for us to read too much, either way, in the statement of Badlu and we leave it at that.

Conclusion

28. Under these circumstances, we modify the judgment and order passed by the High Court and convict Karan Singh and Mukhtiari for an offence punishable under Section 306 of the IPC. The sentence awarded to them by the High Court would necessarily have to be modified. In our opinion, keeping in view the fact that both Karan Singh and Mukhtiari are in their midsixties and we are told by their learned counsel that Satbir and Sukhbir are living separately from them due to their differences and taking into consideration the fact that Manju's son is being looked after by Karan Singh and Mukhtiari for the last almost twenty years, we are of the opinion that the ends of justice would be met if they are sentenced to rigorous imprisonment for a period of two years. We are also of the opinion that each one of them should be subjected to pay a fine of Rs. 50,000/- each and in default of payment thereof to undergo simple imprisonment for a further period of six months.

The question for determination is whether the appellant is guilty of an offence punishable under Section 304-B or under Section 306 IPC.

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Section 306 of the IPC reads as under:-

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In the facts of the present case, Charanjit Kaur was married to the appellant in the year 1997 and her parents had gifted her with a cash amount of Rs.50,000, one coloured T.V, one refrigerator, 20 tolas of gold etc. After marriage, she was being ill-treated in her matrimonial home after three months of her marriage and demand of dowry was constantly being made from her. The deceased was shown the door on a number of occasions. The respectable of the society had intervened to save the marriage but in vain. However, appellant and his parents started making demand for a Royal Enfield Motorcycle and a video cassette recorder after about two or three months of the marriage. This fact was further proved by Harminder Singh who stated that the accused were demanding the motorcycle and video cassette recorder from the family of the deceased. This fact is further reiterated by P.W.6 Teja Singh, Sarpanch of the village from 1993 to 1996 who deposed that the deceased was being tortured by the accused and they were demanding Royal Enfield Motorcycle and a video cassette recorder after about two or three months of the marriage.

Looking at the status of the parties, who are agriculturists by profession, at the initial stage, the family of the deceased had given sufficient dowry to the accused family, which was sufficient. However, the accused again demanded Royal Enfield Motorcycle and a video cassette

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recorder from the deceased and this would amount to harassment, as held by Hon'ble the Supreme Court in the judgments mentioned above wherein it has been held that mere demand of money for some domestic expenses would not amount to demand of dowry as envisaged in Section 2 of Dowry Prohibition Act which reads as under :-

"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 parent 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 dowry or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

Thus, the demand of Royal Enfield Motorcycle and a video cassette recorder would at best amount to harassment and cannot be treated to be a demand of dowry, as per the judgments mentioned above and as per Section 2 of the Demand of Dowry Act.

In the facts of the present case, the deceased was married with the appellant in the year 1997 and was being harassed after 03 months of marriage and had also been inflicted injuries by the husband.

The sentence of the appellant was suspended by this Court on 09.01.2001. As per custody certificate, the applicant-appellant has undergone 02 years 08 months and 06 days including remission of 02 days out of substantial sentence of 07 years awarded to him.

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Applying the ratio of the above mentioned judgments, the conviction of appellant is, accordingly, converted from Section 304-B to Section 306 of the Code. The impugned judgment of conviction and the sentence order, insofar as convicting and sentencing the appellant under Section 304-B of the Code are accordingly set aside and, instead, the appellant is convicted under Section 306 of the Code.

Keeping in view the facts and circumstances of the case, I am of the considered opinion that the ends of justice will be adequately met with if appellant is sentenced to undergo rigorous imprisonment for the period he has already undergone. Therefore, I order accordingly. However, the sentence awarded to appellant by the Court below under Section 498-A of the Code shall remain unaltered.

This appeal is allowed to the extent indicated above.

December 16, 2016

G Arora

(RITU BAHRI)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>