

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

CRA-D No. 1095-DB of 2010 (O&M)

Date of decision : September 30, 2016

Manjit Singh and others

.....Appellants

Versus

State of Punjab

....Respondent

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. A.P. Kaushal, Advocate
for the appellants.

Ms. Ritu Punj, Addl. AG, Punjab.

LISA GILL, J.

This appeal has been preferred by the appellants - Manjit Singh, Faqir Chand and Nachhatar Kaur challenging the judgment and order dated 30.08.2010 passed by learned Additional Sessions Judge, Hoshiarpur. All the appellants have been convicted for the offence punishable under Section 304-B Indian Penal Code ('IPC' - for short) and sentenced to undergo rigorous imprisonment for life.

The appellant - Manjit Singh @ Manjit Ram is the husband of the deceased Karmi Devi. Faqir Chand and Nachhatar

Kaur are the father-in-law and the mother-in-law of the deceased.

Learned counsel for the State on instructions from Sh. Amrik Singh, Deputy Superintendent, Central Jail, Hoshiarpur informs that Nachhatar Kaur – appellant No. 3 has passed away on 30.09.2011. This appeal qua Nachhatar Kaur, therefore, abates in terms of Section 394 of the Code of Criminal Procedure ('Cr.P.C.' - for short). The appeal survives qua appellant No.1 - Manjit Ram and appellant No.2 - Faqir Chand.

As per the prosecution case, appellant No. 1 - Manjit Ram was married to the deceased Karmi Devi on 23.03.2008. Karmi Devi died on 18.10.2008 on account of asphyxia due to hanging. Statement (Ex. PA) of Santokh Lal (brother of the deceased) in this regard was recorded on 18.10.2008. Santokh Lal stated that he was a labourer. His sister Karmi Devi was married to Manjit Ram in June 2008 (later corrected to 23.03.2008 in his supplementary statement). They had at the time of her marriage given her dowry beyond their capacity. After some time of the marriage, his sister's in-laws i.e. mother-in-law, father-in-law and her husband started demanding more dowry. She was subjected to physical abuse for not bringing sufficient dowry. About a month prior to the incident, which occurred on 18.10.2008, the deceased Karmi Devi was turned out of her matrimonial home after beating her. She was told that she could come back only if she brought more dowry from her parents. Members of the village specifically Nanak Chand took back the complainant's sister to her matrimonial home and left her there after making the appellants understand. The complainant received a

telephone call on 18.10.2008 from village Kharkan that his sister Karmi Devi @ Punam had strangled herself and died. Santokh Lal stated that the complainant's sister had put an end to her life due to the harassment meted out to her by her in-laws.

Formal FIR (Ex. PW13/A) was registered on the basis of the statement recorded by SI Paramjit Singh (PW13) (then ASI) at 8.30 p.m. on 18.10.2008. Inquest report (Ex. PW13/B) was prepared. A red and yellow coloured 'dupatta' (long scarf worn alongwith a suit) was taken in possession vide recovery memo (Ex. PW13/C). Site plan (Ex. PW13/D) of the place of incident was prepared.

The dead body of Karmi Devi was sent for post mortem examination with a request (Ex. PF). Post Mortem was conducted by Dr. Jatinderpal Singh Bains (PW6) and Dr. Rajinder Raj on 19.10.2008. As per the post mortem report (Ex. PE/PE1), the cause of death was asphyxia due to hanging. The clothes removed from the dead body were taken in possession vide memo (Ex. PW13/F). Apart from the ligature mark on the neck, no other injury was detected on the dead body. The probable time between injury and death was immediate and between death and post mortem was 24 hours. PW6 Dr. Jatinderpal Singh Bains, Medical Officer, Civil Hospital, Hoshiarpur proved the Post Mortem Report.

SI Paramjit Singh arrested all the appellants on 19.10.2008. The articles given to the deceased at the time of marriage were taken in possession by SI Paramjit Singh on 20.10.2008 vide recovery memo (Ex. PB). The detail of the articles is contained in Ex. PE. The photographs of the marriage were taken in

possession (mark 1 to mark 3). The bills relating to purchase of articles given in dowry at the time of marriage of the deceased with appellant No. 1 are Ex.PH, Ex.PJ, Ex.PK and Ex.PL.

The police report under Section 173 Cr.P.C. was prepared and presented by SHO Sukhminder Singh, Police Station Sadar, Hoshiarpur, on completion of investigation. The case was committed to the Court of Sessions for trial and charge for the commission of an offence under Section 304-B IPC against all the accused was framed on 18.02.2009. All the appellants pleaded not guilty to the charge and claimed trial.

The prosecution examined 13 witnesses to prove its case. The appellants in their statements under Section 313 Cr.P.C. denied all the incriminating evidence put to them, while pleading innocence and false implication.

The appellant - Faqir Chand pleaded that he and his wife Nachhatar Kaur were living apart from their son Manjit Ram, having a separate residence, mess, and ration card. They had no knowledge about the differences between their son Manjit Ram and deceased Karmi Devi. Furthermore, the marriage between Manjit Ram and Karmi Devi was a simple marriage. No dowry was ever demanded at the time of marriage or thereafter by them. The appellant - Manjit Ram stated that he was living separately from his parents - Nachhatar Kaur and Faqir Chand. He had his own scooter and the deceased was never maltreated by him nor any demand for a motorcycle was ever raised. The deceased often used to leave the house without informing him. She was of stubborn nature. The

deceased had told him that she was forced into this marriage against her wishes and she had been unwilling to marry him. Karmi Devi used to remain depressed due to this reason. She had even quarrelled with her parental family on this account. The appellant took a defence that Karmi Devi committed suicide due to this reason.

The learned trial Court on considering the entire evidence as well as the facts and circumstances of the case concluded that the prosecution had proved its case against all the accused beyond reasonable doubt. The appellants had failed to rebut the presumption drawn against them under Section 113-B of Indian Evidence Act and they had taken false pleas which provided an additional link to the prosecution case. Consequently, all the appellants were convicted under Section 304-B IPC and sentenced as detailed above.

Aggrieved therefrom, this appeal has been preferred. As noted above, the appeal survives only qua Manjit Ram and his father Faqir Chand as Nachhatar Kaur – appellant No. 3 has since passed away on 30.09.2011.

Learned counsel for the appellants submits that the appellants have duly and effectively rebutted the presumption drawn against them under Section 113-B of the Indian Evidence Act. There is no evidence on record to hold the appellants guilty of the offence under Section 304-B IPC. The marriage of the deceased with appellant No. 1 was a simple affair with only ten or fifteen persons attending the marriage. No articles were given to the deceased or the appellants at the time of marriage. There was no question of any demand of dowry. The allegation of the demand of a motorcycle is a

clear afterthought as there is no mention of such a demand at the outset. It is only later that such a demand had been added merely with a view to cement the prosecution case. Even otherwise, once it is admitted that appellant No. 1 already had a scooter, the demand of a motorcycle is illogical.

Learned counsel further submits that the appellant - Faqir Chand and his wife were living separately from appellant No. 1 and the deceased Karmi Devi. Therefore, the allegations qua them are absolutely incorrect and unsubstantiated. There is nothing on record to reflect that they had subjected the deceased to any cruelty or harassment in connection with any demand of dowry. The demand of a motorcycle by Faqir Chand is absolutely false as he had no use for it.

It is vehemently argued that positive evidence had been led on behalf of the defence to show that the appellant - Manjit Ram alongwith his wife (deceased) started living separately from Faqir Chand in the first week of August, 2008. This was for the reason that the deceased used to persist with her demand of visiting her parental home every four or five days. Furthermore, it is submitted that the prosecution witnesses failed to give any specific date or time when the alleged demand for dowry was raised by the appellants. None of the witnesses were able to state the date or even the month in which PW2 Nanak Chand allegedly brought back the deceased Karmi Devi to her matrimonial home. It is not proved on record that she was ever turned out of her matrimonial home. The evidence led in defence has been wrongly ignored by the learned trial Court. In this situation it is

prayed that the conviction and sentence imposed upon the appellants be set aside and they be acquitted of the charge framed against them.

Per contra, learned counsel for the State has argued that there is clear and cogent evidence on record to show that the appellants are guilty of the offence punishable under Section 304-B IPC. Karmi Devi wife of appellant No. 1 met an unnatural death in her matrimonial home within seven months of her marriage. The evidence on record proves that she was subjected to cruelty and harassment at the hands of her in-laws in connection with a demand of dowry. Thus, the conviction and sentence imposed upon the appellants should be maintained. It is, thus, prayed that the impugned judgment and order dated 30.08.2010 passed by the learned Additional Sessions Judge, Hoshiarpur, be upheld.

We have given our thoughtful consideration to the contentions as raised by learned counsel appearing for the parties and with their assistance have gone through the records of the case.

The appellants have been convicted for the offence punishable under Section 304-B IPC, which 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 purposes 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."

Section 113-B of the Indian Evidence Act reads as under:

113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in section 304-B, of the Indian Penal Code.

It has been held by the Hon'ble Supreme Court in **Kaliyaperumal and another v. State of Tamil Nadu, AIR 2003 SC 3828** that an accused can be convicted under Section 304-B and the presumption under Section 113-B of the Indian Evidence Act can be raised only on proof of certain essential conditions as enumerated hereunder:-

- (i) the death has occurred within seven years of marriage;
- (ii) the deceased was subjected to cruelty or harassment

by husband or his relative;

(iii) such cruelty or harassment was for or in connection with any demand for dowry; and

(iv) such cruelty or harassment was soon before her death.

In the present case, marriage of appellant No. 1 - Manjit Ram and the deceased Karmi Devi was admittedly solemnised on 23.03.2008. Karmi Devi died an unnatural death on 18.10.2008. PW1 – Santokh Lal has specifically stated that dowry beyond their status was given at the time of marriage. Santokh Lal deposed that they were three brothers and seven sisters. Santokh Lal was a labourer. The deceased - Karmi Devi was subjected to harassment and physical abuse by her in-laws on account of demand for more dowry. Approximately one month before her death on 18.10.2008, Karmi Devi was turned out of her matrimonial home. She was told that she should return only after getting a motorcycle from her parents. Nanak Chand, a member of the Panchayat of the complainant's village intervened in the matter. It was decided with his intervention that the demand of the appellants would be fulfilled as and when Malkit Singh would come home on leave. Malkit Singh, a brother of the complainant and the deceased was serving in the Army. Nanak Chand thereafter left the complainant's sister at her in-laws house. However, the complainant was informed on 18.10.2008 that his sister had committed suicide by hanging herself. The complainant proceeded to her village Kharkan and his statement Ex.PA was recorded.

PW2 Nanak Chand has also deposed regarding the

marriage of the deceased with Manjit Ram. Nanak Chand has testified regarding the oral compromise which took place after the deceased was thrown out of her matrimonial home. PW2 stated that the in-laws of the deceased were demanding more dowry, particularly, a motorcycle. He got the matter compromised being a member of the Panchayat. It was decided that the demand of additional dowry including the motorcycle would be fulfilled, once Karmi Devi's brother Malkit Singh came on leave. Malkit Singh was serving in the Army. Leave was not granted to Malkit Singh by his seniors. In the meanwhile, the accused continued to maltreat Karmi Devi due to which she committed suicide.

PW5 Ram Aasri, mother of the deceased has also supported the prosecution case. Ram Aasri testified that her daughter Karmi Devi was married to Manjit Ram on 23.03.2008. Karmi Devi was subjected to harassment on account of bringing less dowry. The accused demanded a motorcycle as well. Ram Aasri stated that her daughter was turned out of her matrimonial home with a direction to return only if she could bring a motorcycle. The matter was compromised with the intervention of Nanak Chand and Karmi Devi was sent back to her matrimonial home. It was decided that the motorcycle would be given once Karmi Devi's brother Malkit Singh came home on leave. Ram Aasri stated that the accused, however, continued to illtreat her daughter. They received a telephone call on 18.10.2008 at about 7.00 p.m. that their daughter had died due to hanging. Thereafter, action was taken against the accused.

As per the medical evidence on record, Karmi Devi died

on account of asphyxia due to hanging which was sufficient to cause death in normal course. PW6 Dr. Jatinderpal Singh Bains, Medical Officer, Civil Hospital, Hoshiarpur deposed that the post mortem was conducted on the dead body of Karmi Devi on 19.10.2008. In respect to the injuries on the body of Karmi Devi, it was observed as under:

“that the brown coloured glistening ligature mark measuring 28 cm x 3 cm was placed obliquely around the neck extending from the left angle of jaw to the posterior lateral aspect of left side nape of neck. Ligature is placed obliquely higher on the left side than anteriorly and right side. Margin of ligature are abraded, ligature is depressed. On dissection, the underneath subcutaneous tissue, muscle are contused. Conjunctiva both sides shows hemorrhages petica.”

No other external injury was detected on the dead body. It is, thus, proved that the deceased, who was married to appellant No. 1 on 23.03.2008 met an unnatural end in her matrimonial home within a few months of her marriage which was in connection of demand for dowry.

It is relevant to note that in respect of the appellant - Faqir Chand, it has come on record that he alongwith his wife Nachhatar Kaur were living separately from appellant No. 1 and the deceased Karmi Devi. They were separate in mess. PW5 Ram Aasri, mother of the deceased has not asserted that all the appellants were living together. In her cross examination she stated that she did not know whether Faqir Chand and Nachhatar Kaur - appellant No. 3 (since

deceased) were separate in mess and residence from Manjit Ram. In the next breath, Ram Aasri, stated that their residences were having a door side by side.

PW13 SI Paramjit Singh, the investigating officer of this case admitted that Faqir Chand was over 60 years of age. It is further stated that Faqir Chand was a mason, who used to leave the village in the morning to go to Hoshiarpur and adjoining villages in connection with his work. SI Paramjit Singh admits that he did ascertain whether Faqir Chand and his wife were living separately from the appellant - Manjit Ram and his wife (deceased). Ranjit Singh (DW3) Sarpanch of village Kharkan has clarified that Faqir Chand and his wife were living with their youngest son Binda in one portion. The other three (3) married sons of Faqir Chand were living in separate portions with their families, though in the same compound.

Contention of learned counsel for the appellant that even if Faqir Chand and his wife were separate in residence and mess, harassment meted out to the deceased is proved on record, is incorrect. This averment is not borne out from the record. It is pertinent to note that Faqir Chand is the father-in-law of the deceased Karmi Devi. The demand for a motorcycle that was raised may be relevant for appellant No. 1 - Manjit Ram and not Faqir Chand. It is deposed by PW1 Santokh Lal that he did not know whether Faqir Chand knew how to drive a scooter nor had he ever seen Faqir Chand driving a scooter. Santokh Lal has deposed that Manjit Ram owned one scooter and he himself used to ride it. It is

pertinent to note at this stage that the complainant - Santokh Lal in his statement (Ex. PA) does not mention about a demand of a motorcycle by any of the appellants. An omnibus statement regarding demand of dowry by all the accused persons was raised at the outset. No specific allegations of demand of dowry by Faqir Chand had been levelled. Neither is there a specific allegation of any harassment towards the deceased by him. PW13 SI Paramjit Singh has affirmed that appellant No. 2 - Faqir Chand aged about 62 years was working as a mason. It is testified by PW13 that Faqir Chand used to leave the village in the morning for work in the city of Hoshiarpur and adjoining villages. SI Paramjit Singh has admitted that he did not try to ascertain the status (joint or otherwise) of the family of Faqir Chand. Ranjit Singh (DW3) as noted above has clarified the situation. Therefore, in this situation it is not possible to draw a presumption in law to the effect that appellant No. 2 - Faqir Chand is guilty of the offence of 'dowry death' punishable under Section 304-B IPC. Faqir Chand is entitled to the benefit of doubt.

However, in respect to the appellant – Manjit Ram, the prosecution has succeeded to prove its case beyond reasonable doubt and there is a presumption in law that he committed the offence of 'dowry death'. The appellant - Manjit Ram has failed to rebut the presumption raised against him under Section 113-B of the Indian Evidence Act. The fact that appellant No. 1 was separate from his parents in August, 2008 itself is indicative of his discord with the deceased and the anxiety of the parents of appellant No.1 to distance themselves from the acrimony.

Appellant No. 1 has failed to rebut the presumption under Section 113 of the Indian Evidence Act against him. In terms of his defence he has failed to prove that there was any misbehaviour on the part of the deceased or that she was forced into marriage with him. To say that the case against appellant No. 1 is not made out because none of the prosecution witnesses have given a specific date and time when the deceased was brought back to the matrimonial home by Nanak Chand is not correct. It is stated at the outset by Santokh Lal (PW1) that about a month prior to the incident in question, his sister (deceased) had been turned out of her matrimonial home. It is thereafter that Nanak Chand had rehabilitated his sister in her matrimonial home. In the supplementary statement of Santokh Lal recorded on the same day i.e.18.10.2008, it is specifically mentioned that appellant - Manjit Ram was raising a demand for a motorcycle. The complainant side had assured Manjit Ram that the demand would be fulfilled once the other brother of the complainant and the deceased namely Malkit Singh would come on leave. Malkit Singh was serving in the Indian Army. The articles of dowry were admittedly recovered vide memo Ex. PB. The details in regard to the said articles are on record as Ex.PH, Ex.PJ, Ex.PK and Ex.PL. PWs 10, 11 and 12 have proved the purchase of certain articles given in marriage to the deceased with appellant No. 1. To accept the contention of learned counsel for the appellant that the articles in question were not out of the ordinary and not too expensive would be a travesty of justice.

The ingredients constituting the offence under Section

304-B IPC are clearly established in this case as against appellant No.1. Therefore, there is no ground for setting aside the conviction of appellant No. 1 - Manjit Ram. He has been rightly convicted for the offence punishable under Section 304-B IPC.

At this stage, learned counsel for the appellant submits that the sentence imposed upon appellant No. 1 is excessive inasmuch as he has been sentenced to undergo rigorous imprisonment for life. It is submitted that Manjit Ram is suffering from paralysis of the right side, therefore, it would be in the interest of justice to reduce the sentence imposed upon appellant No. 1 to that already undergone by him.

It is to be noticed that according to the affidavit that has been filed by Sh. Ajmer Singh, PPS Superintendent, Central Jail, Hoshiarpur in respect to the custody undergone by appellant No. 1 - Manjit Ram, he has undergone actual imprisonment of 07 years, 01 month and 15 days as on 15.09.2016. In case, remission of 06 years, 01 month and 10 days is included, the total sentence undergone by him is 13 years, 02 months and 25 days as on 15.09.2016. An affidavit dated 29.09.2016 of Sh. Ajmer Singh, PPS Superintendent, Central Jail, Hoshiarpur has been filed in CRM No. 26163 of 2015 in respect to the medical condition of appellant - Manjit Ram. Para 2 of the said affidavit reads as hereunder:-

“ That as per medical record of Civil Hospital Hoshiarpur and PGIMER, Chandigarh, appellant Manjit Ram was referred to Civil Hospital Hoshiarpur first time on 25.01.2016 from this jail, where he was diagnosis

Hemiparesis right side with Dysarthria and refer to PGIMER Chandigarh for CT/MRI & Neurologist opinion. The all relevant tests of appellant were conducted at PGIMER Chandigarh and as per these test reports appellant suffering from weakness of right upper limb and lower limb with slurring of speech. Appellant Manjit Ram admitted there till 28.01.2016 and discharged with the advice to follow up in OPD.

On 03.08.2016, appellant Manjit Ram again referred to Civil Hospital Hoshiarpur with the same complaint of weakness of right upper limb and lower limb with slurring of speech, where he was again diagnosis CVA right Hemiparesis with aphasia and referred to PGIMER Chandigarh for better treatment. The neurosurgeon of PGIMER Chandigarh diagnosis the patient a case of left basal ganglia infarct, where he was again admitted for treatment till 08.08.2016 and discharge with the advice to follow up in Neurology OPD PGIMER. The patient is still under treatment of Neurology Department of PGI as OPD patient.

Conclusion:- The appellant is suffering from CVA right Hemiparesis with aphasia (weakness of right upper limb and lower limb with slurring of speech) with left basal ganglia infarct. The tests of appellant have been conducted and he is under treatment of Neurology Department of PGI as OPD patient.”

The entire medical record of Manjit Ram has been attached alongwith this affidavit. It is reflected that the appellant is indeed suffering from paralysis of the right side and he is under treatment of Neurology department of Post Graduate Institute of Medical Education and Research, Chandigarh.

In view of the abovesaid circumstances, we find it a fit case to reduce the sentence imposed upon appellant No. 1 - Manjit Ram @ Manjit Singh from that of life imprisonment to the period already undergone by him. Consequently, while maintaining the conviction of Manjit Ram @ Manjit Singh under Section 304-B IPC, the sentence imposed upon him is reduced as above. Manjit Singh @ Manjit Ram (appellant No.1) son of Faqir Chand be set at liberty forthwith, if not wanted in any case.

Appellant No. 2 - Faqir Chand is acquitted of the offence for which he was charged. Faqir Chand is on bail. The bail bonds furnished by him shall stand discharged.

Consequently, this appeal is, partly allowed.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

September 30, 2016
rts

Whether speaking/reasoned : Yes

Whether reportable : Yes/No