

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

**CRA-D-390-DB-2012
Date of decision:27.09.2016**

Virender @ Bintu

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE GURMIT RAM**

Present: Mr. Deepinder Singh, Advocate with
Mr. R.K. Rana, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

GURMIT RAM, J.

The abovesaid appellant-Virender alias Bintu has preferred this appeal against the judgment dated 30.03.2012 and order of sentence dated 02.04.2012 passed by the Court of learned Additional Sessions Judge, Bhiwani in criminal case bearing FIR No.15 dated 16.02.2009, Police Station, Baund Kalan, under Sections 304-B, 406, 498-A and 506 of the Indian Penal Code ("IPC" - for short) vide which he was acquitted of the charges punishable under Sections 406 and 506, IPC and was convicted for the offence punishable under Section 304-B, IPC and was awarded the sentence as detailed below:-

Virender @ Bintu	304-B, IPC	Rigorous imprisonment for life and to pay a fine of Rs.50,000/-.	In default of payment of fine, the convict shall further undergo simple imprisonment for a period of two years.
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2. The prosecution case in brief as put forth before the learned trial Court was that on 15.02.2009 on receipt of a V.T. Message at Police Station, Baund Kalan from Police Station Civil Line, Bhiwani regarding admission of patient Pooja wife of Virender resident of Sanwar at J.B. Gupta Hospital, Bhiwani, ASI Attar Singh, Police Station Baund-Kalan, reached at Police Station Civil Line, Bhiwani. After obtaining medical ruqa, he went to abovesaid hospital and sought the opinion of the Doctor with regard to fitness of said patient, who gave his opinion that she was unfit to make her statement. Then on next day i.e. 16.02.2009, ASI Narain Singh of Police Station Baund-Kalan went to abovesaid J.B. Gupta, Hospital and sought the opinion of the Doctor with regard to fitness of patient Pooja who on that day also declared her unfit to make statement. Her brother Neeraj Kumar son of Randhir Singh resident of Hamirpur, Police Station Sadar Gurgaon-Complainant (PW-1) anyhow met him in the hospital who made his statement Ex.PA before him, the long and short of which was as under:-

“That they are six siblings, who all are married. His youngest sister Pooja was married with Virender s/o Ram

Niwas r/o village Sanwar on 08.03.2008. A sum of Rs.15/16 lacs was spent on her marriage and they gave dowry in her marriage beyond their capacity. One Santro car and Rs.2.5 lacs in cash were given in the dowry. Besides this, 15 tolas gold jewellery i.e. one necklace, one gold chain, one gold ring for bridegroom and two gold rings and one set for bride was given. When his sister came to his house after her marriage, then she disclosed to her parents that her in-laws are harassing and taunting her for bringing Rs.5 lacs more from her parents. His brother-in-law Virender @ Bintu (Jija), his brother Vikram, Jethani (sister-in-law) Poonam and her father-in-law Ram Niwas are the greedy persons for dowry. Thereupon, he alongwith one Davender son of Puran Singh went to village Sanwar to make the in-laws of his sister understand 2/3 times, but they misbehaved with them also. Further, they also clearly told them that unless their demand of Rs.5 lacs was not fulfilled, they would not keep Pooja, but anyhow they assured them not to harass Pooja and they came back to their house. Accused No.1-Virender @ Bintu also threatened that since he is a police official, so they cannot cause any kind of harm to him. On 15.02.2009 at about 9/10:00 a.m., his sister told on the mobile phone of his father i.e. 9991256601 that her in-laws are intending to kill her in case their demand of dowry was not fulfilled. Then 10

minutes thereafter, the elder sister-in-law (Jethani) of Pooja telephonically informed them on the same mobile number that Pooja had hanged herself and that they were taking her to J.B. Gupta Hospital, Bhiwani. When he alongwith his family members reached at J.B. Gupta Hospital, Bhiwani, there they found his sister admitted for her treatment, who was unconscious. Request was made to take legal action against the culprits since they had maltreated his sister Pooja due to their greed of dowry.”

Complainant signed his abovesaid statement in English after admitting it to be correct. After making endorsement Ex.PA/1 on the above statement of complainant, ruqa was sent to police station on the basis of which initially FIR Ex.PA/2 under Sections 498-A, 406, 506 read with Section 34, IPC, was recorded at Police Station Baund-Kalan.

Injured Pooja had expired on 21.02.2009 at Sir Ganga Ram Hospital, Delhi while under treatment, Offence u/S 304-B, IPC, was added in this case. Inquest report in respect of her dead body was prepared. Postmortem on her dead body was got conducted on the next day i.e. 22.2.2009.

Accused Virender @ Bintu was arrested in this case on 25.02.2009. He got recovered the dowry articles including gold jewellery which were taken into police possession. During investigation of this case, accused Vikram, Poonam and Ram Niwas were found innocent and as such they were not challaned. Statements of witnesses were recorded.

On the completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate, Dadri, who committed the case to the Court of learned Sessions Judge, Bhiwani for its trial vide order dated 7.4.2009 after making compliance of provisions of Section 207 of the Criminal Procedure Code ("Cr.P.C." - for short).

3. On finding a *prima facie* case punishable under Sections 304-B, 406, 498-A and 506, IPC, against accused Virender @ Bintu, he was chargesheeted accordingly vide order dated 04.05.2009, to which he pleaded not guilty and claimed trial.

4. Then after recording statement of one PW, the prosecution moved an application under Section 319, Cr.P.C., for summoning Vikram, Poonam and Ram Niwas as additional accused in this case to face trial alongwith accused Virender @ Bintu.

This application was accepted by learned trial Court vide order dated 18.08.2009.

Then feeling aggrieved from this order, abovesaid Vikram and others preferred a revision (CRR No.2332 of 2009) before the Hon'ble High Court of Punjab and Haryana, which was accepted vide order dated 17.3.2010 meaning thereby that accused Virender @ Bintu alone was left to face trial in this case.

5. Then as per the record vide order dated 03.03.2012, accused was chargesheeted in the alternative for the offence punishable under Section 302, IPC, to which he pleaded not guilty and claimed trial.

6. The prosecution during trial of the case examined thirteen

witnesses in total to prove its case against the accused and to bring him to book.

7. Thereafter examination of the accused as required under Section 313, Cr.P.C., was duly conducted in which the entire incriminating evidence as brought on file during trial of the case was put to him which he denied entirely. Further, he pleaded his innocence and false implication in this case. It was also his plea that deceased used to believe in *Tantriks*. There was *Kuan* (well) *Poojan* ceremony at the house of the sister of deceased-Pooja. His wife wanted to go there to which he showed his inability since he was on duty on that day. Due to this reason also, his wife Pooja hanged herself, who was a hot tampered and arrogant lady.

In the defence, the accused did not lead any evidence.

8. The learned trial Court after hearing learned counsel for both the parties and going through the record as well held the appellant-herein (accused) guilty for the offence punishable under Section 304-B, IPC and awarded him sentence as detailed in para No.1 of this judgment.

9. The appellant-herein (accused) being not satisfied with the impugned judgment of conviction and order of sentence has come up before this Court vide the instant appeal, notice of which was given to the respondent-State. Record of learned trial Court was also requisitioned.

10. Learned counsel for both the parties were heard and record was also perused with their able assistance.

11. In order to support prosecution version, PW-1 Neeraj Kumar

complainant deposed before the Court as per his statement Ex.PA made by him before the police on 16.02.2009 in the premises of J.B. Gupta Hospital, Bhiwani. Further, he proved the memo Ex.PC vide which dowry articles were taken into police possession on 27.02.2009. Further, he proved the disclosure statement Ex.PD suffered by the appellant-herein (accused) Virender @ Bintu on 02.03.2009 in pursuance of which he got recovered dowry articles including ornaments and watches which were taken into police possession vide memo Ex.PD/1. It was further in his statement that on 21.03.2009, one CD was taken into police possession vide memo Ex.PE.

PW-2 Jitender was the brother, whereas PW-3 Shashi Prabha was the mother of Pooja (since deceased). Both of them lent support to prosecution version by corroborating the above statement of PW-1 Neeraj Kumar-complainant. It was further in statement of PW-3 Shashi Prabha that her statement was also recorded at Delhi before Executive Magistrate

PW-4 Y.P. Malhotra, Executive Magistrate, Karolbagh, New Delhi initiated proceedings under Section 174, Cr.P.C., on 22.02.2009 with regard to death of Smt. Pooja who expired on 21.02.2009. Further, he proved his report Ex.PF.

PW-7 ASI Shree Pal Singh of Delhi police also stated that on receipt of information regarding the death of Pooja who was under treatment in Sir Ganga Ram Hospital, Delhi, he went to the said hospital. After collecting death summary and other relevant documents, he took the dead body from the Mortuary of Maulana Azad Hospital, New Delhi for

postmortem, which was conducted on 22.02.2009.

PW-11 SI Narain Singh was posted as ASI on 15.02.2009 at Police Station Baund Kalan. On receipt of V.T. message from Police Station, Civil Line, Bhiwani, he went to J.B. Gupta Hospital, Bhiwani on 16.02.2009. He sought the opinion of the Doctor with regard to fitness of patient Pooja by moving an application on which Doctor declared her unfit to make statement. Then he recorded statement Ex.PA of Neeraj Kumar, brother of Pooja and sent ruqa Ex.PA/1 to police station for the registration of the case.

PW-8 Sajjan Singh, ASI (Retired) recorded the formal FIR Ex.PA/2 on receipt of ruqa Ex.PA/1 on 16.02.2009.

PW-12 Sandeep Kumar Inspector was posted as SHO at Police Station, Baund-Kalan on 21.02.2009. On receipt of a telephonic message with regard to the death of Pooja in Sir Ganga Ram Hospital, New Delhi, he made an entry in the DDR and the offence under Section 304-B, IPC, was inserted in this case. Thereafter, he went to the abovesaid hospital at New Delhi, where he met complainant-Neeraj Kumar - PW1 who told him that dead body of deceased had been taken to Maulana Azad Medical College for postmortem examination. Thereupon, he went to said hospital where the officials of Delhi Police told him that after postmortem, concerned documents would be sent by post. Then on the same day, he came to the village of accused Varinder @ Bintu where his house was found locked. Then on the next day, he again went to the village of accused along with Neeraj Kumar - PW1 wherein he inspected

the spot of occurrence and prepared rough site plan Ex.PN. Further, he removed noose (piece of cloth used for hanging) Ex.P7 from the hook of ceiling fan and prepared its parcel. Further, he also took from the spot certain broken pieces of bangles Ex.P8 which were also converted into a parcel and the same was taken into police possession along with the said parcel of cloth vide memo Ex.PB. On returning to police station, he deposited the case property with the MHC.

PW-13 DSP Jai Parkash, was posted as Inspector/SHO of Police Station Baund-Kalan on 25.02.2009. He proved the disclosure statements Ex.PN and Ex.PN/1 suffered by accused Virender @ Bintu and stated about recovery of dowry articles which was got made by the accused as per the disclosure statements and the same were taken into police possession vide memo Ex.PC. Then during further investigation of the case, accused suffered another disclosure Ex.PD who in pursuance thereof got recovered jewellery and two wrist watches. Then he also proved memo Ex.PE vide which CD Ex.P7 produced by complainant-Neeraj Kumar was taken into police possession. Post-mortem report of deceased Pooja was obtained.

PW-5 Amir Chand Taneja was the draftsman who proved the scaled site plan Ex.PG prepared on 24.03.2009.

PW-9 Suresh Kumar was the photographer who took photographs Ex.P1 to Ex.P6 of the spot of occurrence on 24.02.2009.

12. PW-6 Dr. J.B. Gupta, conducted medico-legal examination of patient Pooja in his hospital at Bhiwani on 15.02.2009 who was admitted

in the hospital with the alleged history of hanging. The patient was semi unconscious and unaware of time and space. He found following injuries on her person:-

A broad ligature mark interrupted with irregular margins not raised, pinkish coloured. It was 3.5 cm broad in front of neck. It was on the right side upto the angle of jaw, so on the left side. Ligature mark interrupted at places not continuous. The patient was having quadrupedal spasm off and on. No other injury anywhere.

Further, he proved carbon copy of her Medico Legal Report Ex.PH and ruqa Ex.PH/1, which he sent to the Police Station, Civil Line, Bhiwani regarding admission of patient Pooja in his hospital.

Then he also proved his opinion Ex.PJ/1 vide which he declared the patient unfit to make statement on 15.02.2009 on the police request Ex.PJ. Then he further proved his opinion Ex.PK/1 which he gave with regard to unfitness of patient Pooja to make her statement on 16.02.2009. Then he gave his opinion Ex.PL/1 on police request Ex.PL on 19.02.2009 that opinion with regard to nature of injuries on the person of patient will be given after receipt of remarks and report of MRI etc. from the higher center.

13. PW-10 Dr. Sreenivas, Associate Professor, Maulana Azad Medical College, Delhi conducted postmortem on the dead body of deceased Pooja on 22.02.2009 who expired on 21.02.2009. He found following injuries on her person during postmortem:-

1. *Ligature mark (7 cm x 0.6 cm) present in the form of*

pressure abrasion with reddish brown scab (5-6 days) old present on the front and right side of neck 3 cm. below chin in midline going obliquely upwards, lying 1 cm from right angle of jaw on right side where, it ends.

2. *Ligature mark (6 cm x 0.5 cm) was present in the form of pressure abrasion with reddish brown scab present on the front and left side of neck 8 cm below chin in midline going almost horizontally going laterally ending 6 cm below left angle of jaw.*

3. *Pressure abrasion size (3 cm x 3 cm) with reddish brown scab present on the front and left side of neck 3 cm below left angle jaw merging with injury No.2.*

4. *Multiple coin shaped greenish coloured contusion present on inner front of left arm and outer front of left forearm.*

5. *Multiple coin shaped greenish coloured contusion present on inner front of lower one third of right arm and upper 1/3rd of right forearm.*

6. *Multiple coin shaped greenish coloured contusion present on inner front of left leg at lower half.*

Further he proved original postmortem report Ex.PM and the inquest papers Ex.PM/1 bearing his initial. In his opinion, *“the cause of death was as a result of cerebral damage due to hypoxic ischemic encephalopathy consequent upon compression of neck. All injuries were ante mortem and about (5-6) days old in duration”.*

14. The learned counsel for the appellant has contended that there was an inordinate delay in lodging FIR which had been misused by

the complainant-party in collusion with the police to make out a concocted story to falsely implicate the appellant-herein (accused) and his entire family in this case.

In the case in hand as per the case of prosecution, the alleged occurrence took place on 15.02.2009 at about 9:00 a.m. in the house of the appellant-herein (accused) at village Sanwar. Patient Pooja was brought to J.B.Gupta Hospital, Bhiwani on the same day at about 1:00 p.m. wherein she was got admitted and medico-legally examined. On the receipt of information of admission of injured Pooja in the said Hospital, ASI Rattan Singh of Police Station Baund-Kalan reached at the said Hospital on the same day who sought the opinion with regard to fitness of patient in writing and Doctor declared her unfit to make the statement. Then on the next day ASI Narain Singh (PW-11) went to the abovesaid Hospital and on seeking opinion with regard to fitness of patient, Doctor declared her again unfit to make the statement. Thereafter, complainant-Neeraj Kumar (PW-1) met him in the hospital who got recorded his statement Ex.PA on the same day at 5:30 p.m.. So in this case, statement of patient-Pooja could not be recorded on 15.02.2009 since she was unfit to make her statement as per opinion of Doctor and nobody of her family met ASI Rattan Singh on the said date. Then on the next date also, she was declared unfit to make her statement and her brother Neeraj Kumar (PW-1) met ASI Narain Singh (PW-11) and his statement Ex.PA was recorded by the police qua this occurrence. So in this case, the abovesaid delay in lodging FIR cannot be termed either as an

inordinate delay in lodging the FIR for the reasons aforementioned or that the same was misused by the complainant-party in order to implicate the appellant-herein (accused) and his family in the instant case falsely after concocting a false story in collusion with police.

15. Then it is also contended by learned counsel for the appellant that the case in hand was the case of alleged suicide by Pooja (since deceased) which had been given the colour of dowry death without any reason to support it. But he has failed to point any material from the medical evidence available on the file in order to substantiate his this plea. PW-10 Dr.Sreenivas, who conducted postmortem on the dead body of deceased had clearly deposed in cross-examination that injuries No.1 to 3 found on the person of deceased were caused by ligature compression of neck and these injuries could be possible by a rope. After receipt of neck compression, the deceased could have survived for 5/6 days, which was in the case in hand. So this contention of learned counsel for the appellant is also found to be not tenable.

16. Then during the cross-examination of PW-1 Neeraj Kumar-complainant, the accused tried to set up the plea in defence that there was tendency to commit suicide in the parental family of the deceased. The learned counsel for the accused in order to establish this plea put certain suggestions to this effect to PW-1, Neeraj Kumar-complainant in his cross-examination, but he fulminated the same very stoutly. Then the accused also failed to bring on the record any material in the shape of medical evidence to establish his abovesaid plea

and consequently his this plea also failed.

17. Lastly, he has prayed for the modification of the sentence for the reason that appellant-herein (accused) has remained in jail in this case since the date of his arrest.

18. In the light of the above discussion, it is held that ends of justice in this case will meet, if the sentence of imprisonment of the appellant-herein (accused) is reduced from rigorous imprisonment for life to rigorous imprisonment for 10 years. So his sentence of imprisonment is reduced accordingly.

Hence the impugned judgment of conviction is upheld. So far as fine imposed by the learned trial Court upon the appellant-herein (accused) is concerned, the same is upheld since it is ordered by learned trial Court that out of the amount of this fine, if paid, a sum of ₹45,000/- be paid to the parents of the deceased. Consequently, in view of the above discussion, this appeal is accepted to the extent above indicated and the sentence of substantive imprisonment of the appellant-herein (accused) is modified as ordered above.

27.09.2016
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |