

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

CRA-AD-104 of 2015(O&M)

Date of decision :-5.4.2016

Vikas Kumar

.....Appellant

Versus

State of Punjab and ors.

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not? Yes / No
2. Whether the judgment should be reported in the Digest? Yes / No

Present :- Mr.Atul Lakhanpal, Senior Advocate with
Mr. Arjun Lakhanpal, Advocate
for the applicant/appellant.

GURMIT RAM, J.

CRM-9066 of 2016

1. This criminal miscellaneous application has been filed by above-said applicant/appellant – Vikas Kumar (complainant) for the grant of leave to appeal against impugned judgment dated 14.9.2015 passed by the learned Additional Sessions Judge, Patiala in criminal case bearing FIR No.318 dated 26.10.2013, u/Ss 304-B, 406 and 498-A of the Indian Penal Code ('IPC' – for short), Police Station Kotwali, Patiala vide which accused (respondent Nos.2 to 4 – herein) were acquitted of the charges u/Ss 304-B, 406 and 498-A of the IPC.

2. The case of prosecution as presented before the learned trial

Court in nut-shell was that on 26.10.2013, a wireless message was received at Police Station Kotwali, Patiala from Rajendra Hospital, Patiala that one Kanchan Rani wife of Vikramjit Singh, resident of House No.5547/1, Katra Sahib Singh, Triveni Chowk, Patiala has been brought dead in the hospital. Upon this, ASI Balkar Singh along with HC Lakhwinder Singh and other police officials reached in the said hospital where complainant Vikas Kumar son of late Jetha Nand, resident of village Badalgarh, Ratia (at present resident of Marh Colony, Fatehabad (Haryana) was found present. His statement Ex.PE was recorded which was to the following effect:

*“That he is an agriculturist by profession. They are two brother and sister. His sister Kanchan Rani younger to him was married with accused Vikramjit Singh (respondent No.2 – herein) on 18.3.2012. Out of this wedlock, she is blessed with a son namely Darvesh, now aged about 10 months. Her husband is doing agriculture work. Vikramjit Singh – husband, Ramesh Kaur – mother-in-law, Gagandeep Singh – brother-in-law (devar) and her sister-in-law (ninaan) namely Meera used to maltreat and harass his sister in routine for one reason or the other. His sister often told them about the act and conduct of her in-laws towards her but they used to persuade her by one way or the other. In June, 2013 the husband of his sister demanded from her a sum of Rs.10 lacs. On this, he gave a sum of Rs.2.5 lacs to the mother-in-law of his sister in the presence of his sister and her husband Vikramjit Singh. Yesterday on 25.10.2013 at about 1:30 p.m., his sister made a call on the mobile of his mother bearing No.93548-33322 which did not come to their notice. Then his wife Priya on coming to know about this 'missed call' contacted his sister on phone who disclosed '**that her mother-in-law, husband and sister-in-law are raising demand of Rs.7.5 lacs from her. They are also***

saying that in case this amount is not paid, then they will kill her.' Then thereafter at about 8:00 p.m., the husband of his sister informed them on phone that health of Kanchan Rani has deteriorated, come soon. Then he along with his friends Gurdeep Singh and Jarnail Singh proceeded towards Patiala on a vehicle. On the way, said Vikramjit Singh informed them on phone that they have taken Kanchan Rani for her treatment to Rajendra Hospital, Patiala and as such they should come there. On reaching the said hospital, they came to know that Kanchan Rani had expired and her dead body is lying in the dead house. He is of the firm belief that death of his sister has been caused by her mother-in-law - Ramesh Kaur, her sister-in-law - Meera and her husband - Vikramjit Singh. Request was made to proceed against the culprits as per law."

3. The above-said statement was signed by the complainant, upon which ASI Balkar Singh made his endorsement and sent *ruqqa* to the police station for registration of the case against the above-said culprits u/S 304-B read with Section 34 of the IPC. Inquest report with regard to the dead body was prepared. Then post-mortem examination on the dead body of deceased was got conducted. The snaps of the dead body were also taken. After the post-mortem, the doctor handed over the parcel containing clothes of the deceased to the police. Thereafter, ASI Balkar Singh along with other police officials including Inspector/SHO reached at the spot and prepared the rough site-plan of the scene of crime by inspecting the same. Photographs of the scene of crime were also taken. Two pieces of *chunni*, one kard (small knife) and one mobile phone were recovered from the spot which were taken into police possession. The matter was investigated from the vicinity. Accused Vikramjit Singh, Ramesh Kaur and Navdeep Kaur alias Meera

were apprehended in this case.

On 06.11.2013, on the basis of supplementary statement of complainant - Vikas Kumar, the offence u/Ss 406 and 498-A of the IPC were added in this case. The dowry articles were taken into police possession on 10.11.2013. Statements of witnesses were recorded. On completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate who after making compliance of the provisions of Section 207, Cr.P.C., committed this case to the Court of learned Sessions Judge, Patiala for its trial.

4. Finding a prima facie case u/Ss 304-B, 406 and 498-A of the IPC against all the accused (respondents No.2 to 4 – herein), they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

5. The prosecution in order to establish its case against the accused examined eight witnesses in total.

6. Then on completion of prosecution evidence, the accused were duly examined as required u/S 313 of Cr.P.C. Entire incriminating evidence and other circumstances as came on the file during trial of the case against them were put to them, which they denied in toto and pleaded their innocence and false implication in this case. They further pleaded that they never demanded any kind of dowry articles from the complainant nor they had ever compelled or harassed Kanchan Rani (since deceased) to bring dowry from her parents. Then it was also their plea that accused Vikramjit Singh and his wife (since deceased) were living separately from other members of his family. They both were leading a lief married life.

In addition to above, accused Vikramjit Singh also pleaded that complainant Vikas Kumar who was in financial debt was having knowledge that he (Vikramjit Singh) had given a sum of Rs.22 lacs to Kanchan Rani which was lying deposited in her two bank accounts at Patiala. He (complainant) was pressurizing her to give that money to him to which she was not ready. Even he (Vikas Kumar) had already taken the share of Kanchan Rani in the ancestral land. Thereafter, he (Vikas Kumar) along with his wife Priya Rani was compelling her (Kanchan Rani) to transfer the cash amount. Due to this reason, she used to remain in mental stress and depression. On the date of alleged occurrence, he was present in his fields at village Faloli. On receipt of information, he left for his house at once. He arranged the ambulance and got her (Kanchan Rani) admitted in the hospital and tried to save her. Further, he also informed the complainant Vikas Kumar and his wife Priya Rani about this incident. They both in order to save their own skin, concocted a false story and had implicated him, his mother and his sister in this case falsely.

7. In defence, accused also examined nine witnesses.
8. The learned trial Court after hearing the learned counsel for both parties and going through the record as well acquitted the accused (respondents No.2 to 4 – herein) of all the charges vide the impugned judgment by giving them benefit of doubt.
9. The applicant (complainant) being not satisfied with the impugned judgment has come up in the instant appeal. Record of the learned trial Court was also requisitioned.
10. We have heard learned counsel for the applicant and also

perused the record with his able assistance.

11. Learned counsel for the applicant has contended that the impugned judgment is against the facts on the file and as such it is not tenable in the eyes of law. Further, he has contended that as per the provision of law, the presumption under Section 304-B of the IPC is against the accused, but in the case in hand surprisingly the learned trial Court had drawn this presumption against the prosecution. The learned trial Court while recording the impugned judgment has given too much weightage to the fact of deposit of amount in the bank accounts of the deceased. Herein he has also submitted that deceased had never operated the said accounts as there was no withdrawal from these accounts. Then the learned trial Court also considered the fact that after the death of father of deceased, the land was to be inherited by the applicant, Kanchan Rani (since deceased) and her mother. Herein he has also contended that learned trial Court also drew the presumption that the deceased had transferred the land of her share in favour of the applicant after her marriage. Then the learned trial Court while passing the impugned judgment also ignored the provisions of Section 304-B of the IPC and Section 113-B of the Indian Evidence Act. The learned counsel for the applicant has contended that deceased had died in her in-laws' house after about 1 ½ years from the date of her marriage with accused (respondent No.2 herein) and hence as such, as per the provisions of Section 113-B of the Indian Evidence Act, the presumption was in favour of the prosecution to draw the conclusion that death of the deceased was dowry death caused on account of demand of dowry. Further, he has prayed for the grant of leave to file appeal and to decide it on merits and to punish the

respondent No.2 to 4 – herein as per law by setting aside the impugned judgment.

12. In order to deal with above contentions of learned counsel for the applicant, we deem it essential to have a glimpse of the evidence as available on the file of both the parties.

Vikas Kumar, complainant, during trial of the case appeared as PW3. He stated that marriage of his younger sister Kanchan Rani was solemnized with accused Vikramjit Singh (respondent No.2 – herein) on 18.3.2012. They spent a sum of Rs.28 lacs in this marriage. Prior to marriage, a ring ceremony was also performed in which a *Shagun* of Rs.21,000/- was given to accused Vikramjit Singh and to the other members of his family of varying amounts. Besides this, one gold kara, one gold chain and one LED were also given to accused Vikramjit Singh at that time. One Swift car, furniture along with gold ornaments weighing 25 tolas and electronic goods were also given in the dowry. After some time of the marriage, the accused started taunting and harassing his sister Kanchan on the ground of bringing insufficient dowry. Then on 23.6.2013, he handed over a sum of Rs.2.5 lacs to his sister after raising loan from HDFC Bank, Branch Ratia who further handed over the same to accused Ramesh Kaur and Ramesh Kaur in turn gave this amount to accused Navdeep Kaur in the presence of his grandfather Karam Narain and his uncle Balwant Rai. In fact the demand of accused Vikramjit Singh was of Rs.10 lacs for purchasing a luxury car. They continued to harass his sister by demanding from her the remaining amount of Rs.7.5 lacs. The remaining part of the statement of this witness is on the same line as per the statement Ex.PE made by him before

the police. Then he also proved the memo Ex.PF vide which a sealed parcel containing belongings of the deceased was taken into police possession. Then he also proved the memo Ex.PG vide which two pieces of *Chunni*, one *kard* and one mobile make Samsung recovered from the place of occurrence were taken into police possession. Besides this, he also proved the memo Ex.PH vide which the alleged dowry articles were taken into police possession. On 6.11.2013 he also made supplementary statement before the police qua certain material facts pertaining to alleged occurrence.

PW5 Priya Rani is the wife of complainant – Vikas Kumar (PW3). She also proved the memo Ex.PH vide which dowry articles were taken into police possession.

The above-said Balwant Rai, uncle of complainant appeared as PW7. He along with his uncle Karam Narain accompanied complainant Vikas Kumar to the in-laws' house of Kanchan at Patiala on 23.6.2013. He deposed to the effect that a sum of Rs.2.5 lacs was given to Kanchan in their presence who handed over the same to Ramesh Kaur, who further delivered this amount to Navdeep Kaur. Accused persons were not satisfied with this amount since they were expecting Rs.10 lacs. Both PW5 and PW7 had tried to corroborate the version of prosecution in their respective statements.

PW1 Dr.D.S. Bhuller along with other Members of Board of doctors conducted post-mortem examination on the dead body of Kanchan Rani on 26.10.2013 on police request Ex.PB. Further, he proved the carbon copy of her post-mortem report Ex.PA. Further, he gave opinion that cause of death was asphyxia from ante-mortem hanging sufficient to cause death in the ordinary course of nature. All the injuries which were found on the

dead body of deceased and as detailed in the copy of MLR Ex.PA were ante-mortem in nature.

PW2 Malkeet Singh was Photographer. He took photographs Ex.PD/1 to Ex.PD/14 of the scene of crime on the asking of police which were taken into police possession vide memo Ex.PD.

PW4 Navneet Parkash, Assistant Manager, HDFC Bank, Branch Ratia deposed to the effect that in June, 2013, Vikas Kumar approached their bank for the grant of loan facility against gold. The value of the gold was assessed to be Rs.2,87,374/- and the loan to this extent was disbursed to the borrower by crediting the same in his saving bank account. Further he also proved the loan sanction order/disbursement order Ex.PJ/1, besides the copy of valuation certificate Ex.PJ.

PW6 Pardeep Kumar, SDE, MSC, Panipat, BSNL, Haryana produced the record pertaining to mobile No.94169-88978 of Vikas Kumar – complainant and proved the photocopy of original subscriber application form as Ex.PK. Further, he also proved the call detail of this mobile number for the period from 20.10.2013 to 25.10.2013 as Ex.PK/1.

Then ASI Balkar Singh, the Investigating Officer, appeared as PW8. He proved the statement Ex.PE of the complainant, endorsement Ex.PE/1 made on it and the FIR Ex.PE/2. Then he also deposed about the formalities which he did in this case during investigation and proved the various memos vide which incriminating articles pertaining to the proof of this case were taken into police possession. Then he also proved the clothes of deceased as Exhibit MO1 to Exhibit MO4, two pieces of *chunni* as Exhibit MO5 and Exhibit MO6, knife Exhibit MO7 and one mobile set

make Samsung Exhibit MO8.

13. Now let us see how far the above contentions of the learned counsel for applicant are correct.

PW-5 Priya Rani wife of Vikas Kumar (applicant - herein) in her cross-examination admitted that her husband availed gold loan on 19.06.2013 to the tune of about Rs.2,70,000/-. She and her husband were holding a joint account No.14791000020827 in HDFC Bank, Branch Ratia. Then she also admitted that amount of gold loan was deposited in their abovesaid joint account. Then it was also her admission that her husband made the payment of Rs.2,62,000/- out of abovesaid gold loan amount to somebody by way of cheque. Further she proved the certified copy of the statement of this account Ex.D1. From the perusal of this statement of account Ex.D1, it is found that a sum of Rs.2,62,000/- was paid to somebody out of this account by way of cheque on 21.6.2013. After making this payment, the balance amount which was left in this account was Rs.7,282.33/-.

Then PW-4 - Navneet Parkash in his cross-examination admitted that as per Bank Rules, the abovesaid loan amount was to be utilized by Vikas Kumar for agricultural purpose only. He (Vikas Kumar) also furnished a declaration to the Bank that he needed the loan for utilizing the same for agricultural purposes only. This loan amount was utilized by the loanee for the said purpose and thereafter this account was closed.

There is nothing on the record to show that Rs.2.5 lacs was transferred from the abovesaid loan account of Vikas Kumar and his wife to any bank account of accused Vikramjit Singh (respondent No.2 herein) on

23.06.2013 or subsequent thereto. So the plea of prosecution that complainant (applicant-herein) had paid a sum of Rs.2.5 lacs to the accused persons (respondents No.2 to 4 herein) by raising a loan from HDFC Bank against gold on 23.06.2013 has remained unproved on the record.

No doubt under Section 113-B of the Indian Evidence Act, presumption is to be drawn in favour of the prosecution, but at the same time the prosecution is legally bound to establish the fact that deceased was subjected to any kind of cruelty on account of demand of dowry soon before her death. In the case in hand, there is no evidence to say that deceased (Kanchan Rani) was subjected to any kind of cruelty or harassment on account of any demand of dowry at the hand of accused (respondent Nos.2 to 4 herein) at any time after her marriage.

14. DW-5 Sh.S.K.Goel, Senior Manager, OBC, Branch A -Tank, Patiala produced record pertaining to bank account of Kanchan Rani wife of Vikaramjit Singh and of Vikramjit Singh son of Gurpreet Singh. As per his statement, said Kanchan Rani was having savings-cum-flexi bank account No.00092011016767 in their bank and a sum of Rs.11,12,677.68 was lying in this account in her name as on 25.10.2013. Ex.DW5/1 was the statement of account of this saving bank account. Then as per the statement of this witness, said Vikramjit Singh was also having a savings-cum-flexi bank account No.00092010019900 in their bank and a sum of Rs.42,68,725.11 was lying in this account as on 25.10.2013. Ex.DW5/2 was the statement of account of this saving account.

15. DW-6 Ravneet Singh, Assistant Manager, Union Bank of India, Branch Dharampura Bazar, Patiala produced the record of savings-cum-

flexi account of Kanchan Rani wife of Vikramjit Singh and of Vikramjit Singh son of Gurpreet Singh bearing account Nos.427402010006382 and 427402050000005, respectively. Ex.DW6/1 was the statement of account of said account of Kanchan Rani which shows that a sum of Rs.10,51,272/- was lying deposited in her account as on 25.10.2013. Then statement of account Ex.DW6/2 shows that a sum of Rs.15,12,233/- was lying in the said account of Vikramjit Singh as on 25.10.2013.

16. No evidence had come on record that the abovesaid amounts in the abovesaid accounts of Kanchan Rani (since deceased) were deposited in her said accounts by her parents after her marriage or that she had earned so much amount by running any kind of business separately from her in-laws. So in this situation, there is nothing wrong to draw conclusion that the said amounts in her accounts were deposited either by her husband or by the family members of her in-laws after her marriage in the said family.

17. DW-7, Amrinder Singh, Circle Patwari, Saifdipur proved the copy of Jamabandi Ex.DW7/1 of village Falloli. As per the record, Vikramjit Singh was the owner of five acres of land and was also in possession of twenty one acres of land in village Falloli. Father of Vikramjit Singh was shown to be a co-sharer to a considerable extent in the abovesaid land of which Vikramjit Singh was in possession. Then as per Jamabandi Ex.DW7/2, he was also having a plot measuring seventy one yards in village Karheri.

18. DW-2, Jony Garg, partner of firm M/s Arun Kumar Avinash Kumar Commission Agents, 52, New Grain Market, Sirhind Road, Patiala produced the record of J-Forms. His statement was to the effect that

Vikramjit Singh son of Gurpreet Singh (accused) used to sell his crops through their commission agency. He produced the J-Forms Ex.DW2/A to Ex.DW2/M issued in the name of said Vikramjit Singh from time to time and the detailed statement in this regard Ex.DW2/N. As per this statement, accused Vikramjit Singh sold Wheat and Paddy crops at the shop of this commission agency from April 2012 till November 2013 and the total balance shown in it was Rs.3,26,583/- as on 04.11.2013.

19. DW-1, Harbans Singh, Circle Patwari, Halqa Badalgarh, Tehsil Ratia, District Fatehabad deposed to the effect that Vikas Kumar (applicant) and his mother Manohar Devi were owners in possession of the land measuring 112 kanals to the extent of $\frac{1}{2}$ share each. Then he also deposed that as per record, they mortgaged their said land with Axis Bank for availing loan in the sum of Rs.18,00,000/-. Further, he also deposed about the entries with regard to abovesaid transaction and proved the copies of *Jamabandis* as Ex.DW1/A and Ex.DW1/B. This witness was examined to show that applicant - Vikas Kumar himself was raising loan from bank and as such, his financial condition was not good. Further it also came on the record that he was a liquor contractor. It was the defence version that he was pressurising Kanchan Rani, his sister (since deceased) to give him the amount which was lying in her accounts to which she was not willing.

20. Then it was also found mentioned in the statement Ex.PE and FIR Ex.PE/2 that Kanchan Rani (since deceased) made a call to her mother Manohar Devi on her mobile phone No.93548-33322 on 25.10.2013 at about 1:30 p.m., which was not attended by her. Then it also came on record that mobile phone number which the deceased was using was 85919-45068. No

record with regard to call details of both these mobile numbers was produced by prosecution in order to establish fact that deceased had made any call to her mother on her mobile phone regarding her alleged harassment at the hands of the accused persons on account of demand of remaining sum of Rs.7.5 lacs.

21. Then PW-8 ASI Balkar Singh, Investigating Officer, in his cross-examination admitted that he took into possession call details record of mobile phone number of Priya wife of Vikas Kumar. It was admitted by this witness that as per the said call details record, Kanchan Rani did not make any call from her mobile number to Priya Rani on her mobile No.9416988978.

22. Then DW-4 Navneet Singh deposed to the effect that accused Navdeep Kaur (respondent No.3 - herein) was working as Librarian in their school namely Mukat Public School, Rajpura. She was residing at village Faloli and used to board the school bus from Punjabi University Road, Patiala to go to Rajpura to attend her duties and he himself also used to go to Rajpura in the same very school bus.

23. DW-9 Mukesh Thapar, Accountant of Mukat Public School Rajpura, Patiala produced the register pertaining to the attendance of the staff of the school for the period May 2013 to March 2014. As per his statement also accused Navjeet Kaur was working as Librarian in their school during the said period. He also proved the photocopy of attendance register as Ex.DW8/B.

24. DW-3 Manoj Khanna, neighbour of Vikramjit Singh (respondent No.2 - herein) deposed to the effect that relations between the

deceased and Vikramjit Singh were cordial and they were leading a happy married life. Kanchan Rani never reported to him of her harassment or maltreatment at the hands of her in-laws on account of any demand of dowry.

25. Then PW-8 ASI Balkar Singh, the Investigating Officer, in his cross-examination also admitted that it came to his notice during investigation that relations between deceased and accused were cordial and harmonious. Then it also came to his notice that accused Vikramjit Singh was owning sufficient agricultural land. His financial status was good and was also owning a car already.

Then PW-8 Investigating Officer also deposed that it came to his notice that accused Vikramjit Singh was present at his agricultural land located in village Faloli from morning till late evening. Then he also deposed that accused on his return from village Faloli found the door of the room of Kanchan Rani situated on the first floor of the house bolted from inside. He opened the door of this room by breaking its latch. On entering into the room, he found Kanchan Rani alive and made a telephone call to emergency ambulance services at 108 and took her to the hospital. The Doctor informed him (PW8) that Kanchan Rani suffered abrasions on her arms etc. when she was being brought down through staircase. Then it is also found in the cross-examination of this witness that no evidence could be collected during investigation that accused had ever raised any demand of money or of anything else from the deceased.

26. Then DW-8 Jaswinder Singh, produced the voter list of village Faloli, Tehsil and District Patiala and proved the same as Ex.DW8/A. This

voter list was produced to show that at the relevant time all other family members of Vikramjit Singh were residing at village Faloli separate from Vikramjit Singh and his wife Kanchan Rani (since deceased).

27. Then as per the record, complainant Vikas Kumar (PW-3) has made various substantial improvements in his statement while appearing in the Court which were not found recorded in his statement Ex.PE made by him before the police qua the alleged occurrence.

Then it is also to note that he made supplementary statement before the police on 06.11.2013 and as such, the offences under Sections 406/498-A of the IPC, were introduced in this case i.e. after a gap of two weeks from the date of alleged occurrence.

28. Then it also came on the record that after the marriage, deceased was blessed with a son who was of about 10 months at the time of alleged occurrence. Then PW-5, Priya Rani, in her cross-examination had admitted that Kanchan Rani (since deceased) was using face-book account of social site face-book. She liked certain pictures on face-book posted by Kanchan Rani in which she along with her husband Vikramjit Singh was found in happy moments. Then it is also found recorded in her cross-examination that accused Ramesh Kaur, mother-in-law of the deceased was residing along with her husband at village Faloli. The Farm House of Navdeep Kaur was also at village Faloli which was at a distance of about 8 to 10 kilometers from the house in which Kanchan Rani (since deceased) was residing.

29. Even nothing has come on the record to hold that the accused (respondents No.2 to 4 - herein) had ever abetted the deceased at any time in

order to instigate her to commit suicide.

30. In the light of above discussion, nothing has been found on the record to grant leave to appeal against the impugned judgment. Consequently, this application for grant of leave to appeal stands dismissed.

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This appeal also bears the same result as that of CRM-9066 of 2016 and stands disposed of accordingly.

5.4.2016
Brij/Gaurav Sorot

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE