

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRA-S No. 811-SB of 2004 (O&M)
Date of decision : 24-08-2016

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Vinod Kumar

.....Appellant

Versus

State of Punjab and others

.....Respondents

CRR No. 1579 of 2004 (O&M)

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Pawan Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr.. Arshdeep Singh Brar, Advocate
for Mr. A.D.S Jatana, Advocate for the appellant.

Mr. C.S Jattana, Advocate for
Mr. M.S Gill, Advocate for the complainant.

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RITU BAHRI, J.

By way of this common judgment, Crl. Appeal No. 811-SB of
2004 (Vinod Kumar vs. State of Punjab) and Criminal Revision No. 1579 of

2004 (Pawan Kumar vs. State of Punjab and others) shall be decided.

The present appeal has been filed against the judgment dated 23.3.2004 passed by the Additional Sessions Judge, Bhatinda, whereby appellant, Vinod Kumar was convicted under Section 304-B IPC. The other accused Neetu alias Rakesh Kumar and Seeto Devi were acquitted giving them the benefit of doubt. Present appellant has been acquitted under Section 498-A IPC. Criminal Revision petition has been filed by the petitioner, Pawan Kumar impugning the same judgment and praying that all the three accused be convicted under Sections 304-B/498-A IPC and punished in accordance with law.

Briefly stated the facts of the case are that FIR No.77 dated 15.12.1998 was registered at Police Station, Nathana on the complaint of Pawan Kumar son of Jagdish Rai Aggarwal resident of Kalianwali. As per his statement, he had one sister Parveen Kumari who was married to Vinod Kumar son of Sukhdev Raj resident of Bhucho Mandi about 4 years back and they had two children son aged about 2 ½ years and daughter 9-10 months old. After the death of his father, he spent about Rs.3,00,000/- on the marriage of her sister and gave sufficient dowry. After about one year of marriage his brother-in-law Vinod Kumar, his brother Neetu alias Rakesh Kumar and mother-in-law of her sister Seeto Devi started harassing his sister Parveen Kumari for want of dowry. On the birth of their son, they spent about Rs.30,000/- and on the birth of daughter, they spent about Rs.15,000/- but still they were not happy and were harassing his sister. Her sister used to complain oftenly about the harassment caused to her by her in-laws. He further stated that they also demanded to transfer a shop which

was in the name of mother of the Parveen Kumari at Kalian Wali in the name of Vinod Kumar. On 13.12.1998 at about 8:30 p.m, he received a telephone call from Bhucho Mandi from the in-laws of Parveen Kumari who stated that either they should fulfill their demand or take back their sister. His sister also spoke to him on the telephone and told him while crying that they should come to take her back otherwise they would kill her. In the morning, complainant along with his uncle Bhagwan Dass reached the house of his sister at Bhucho Mandi, where she was vomiting on the cot and on enquiry she told them that her mother-in-law Seeto Devi, brother-in-law Neetu alias Rakesh Kumar and her husband Vinod Kumar have administered some poisonous substance to her. She pleaded to save her as the lives of her minor children would be ruined. At that time, her in-laws picked up quarrel with them and the complainant and his uncle came back to Village Kalinwali to bring back other family members and their relatives. After gathering they came to Bhucho Mandi, where they came to know that his sister has expired in Punjab Relief Society Hospital, Barnala. After investigation, the Investigating Officer prepared rough site plan of the place of occurrence with correct marginal notes Ex.PL. Dowry articles as detailed in the list Ex.PN were also taken into police possession through recovery memo Ex.PO. The cause of death as per Doctor through endorsement Ex.PD/1 was declared to be aluminium Phosphide a pesticide poisoning. After completing the investigation, challan was presented in the Court of Ilaqa Magistrate. All the three accused were charged under Section 498-A read with Section 34 IPC and all the three were further charged under Section 304-B read with Section 34 IPC by the Court of Additional Sessions

Judge, Bathinda.

To prove its case, the prosecution examined PW-1, Dr. Narsi Ram, PW-2, Pawan Kumar, complainant, PW-3, Bhagwan Dass, PW-4, Hargobind Singh, PW-5, Head Constable Gurmit Singh, PW-6, Pandit Ved Parkash, PW-7 Naveen Kumar, PW-8 Arshdeep Singh, Inspector, PW-9, Constable Gurmail Singh. After the close of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. They took the plea that no dowry was demanded and relations between the parties were very cordial throughout their marital life. In June 1998, Vinod Kumar and Parveen Kumari along with their children had gone to Haridwar on tour.

In defence, the accused examined DW-1, Dr. Hem Raj Garg who was posted as Doctor in Punjab Relief Society Hospital, Barnala on 14.12.1998, who stated on oath that on that day Parveen Rani wife of Vinod Kumar was brought in the Hospital by Vinod Kumar at 11.30 a.m and he gave her best treatment but she expired at 12.15 p.m. This witness also brought OPD register and proved the relevant entry at Sr. 706/Ex. DW1/A. He also deposed that he sent ruqa Ex. PH to the Police Station, Barnala.

After going through the evidence led by the prosecution, the trial Court has returned a finding that the allegation regarding demand of transfer of a shop in the name of accused Vinod Kumar, was held to be a concocted version. The demand was made when Vinod Kumar had come to Kalian Wali to mourn the death of grandmother of the deceased and which was six months earlier to the death of the deceased. PW-7, Navin Kumar elder brother of the complainant in his statement has not attributed any such thing regarding demand of transfer of shop rather he has given explanation

of the amount which was spent at the time of marriage. The appellant's family had two shops and accused Vinod Kumar was running a separate shop. This finding has been rightly recorded by the trial Court. As per the version of the complainant, they had gone to the house of the deceased on the day when she was administered some poisonous substance by her in-laws. There, her in-laws started fighting with them. They went back to their village to bring other family members. On reaching back the village Bucho Mandi, they came to know that Parveen Kumari has expired. This version is not probable and the version of the prosecution that a phone was made immediately before the death of deceased to assert demand was also a concocted version. Even the story with regard to the administrative forcible poisoning was held not to be believable as there was no struggle marks nor any injury on the person. The Doctor admitted that aluminium phosphide is not available in the liquid form and if poison was to be given forcibly some poison should have fallen on the clothes of the deceased and marks of injury and struggle must have been there. The demand for transfer of a shop in the name of Vinod Kumar and presence of the complainant and his uncle in the house when the deceased had been administered poison has rightly been held to be not probable. Hence if they would have been present at the spot they would have immediately reported the matter to the police and would have taken Parveen Kumari deceased to the hospital. The prosecution has failed to link the mother-in-law and brother-in-law with the allegation of demand of dowry. The appellant has been convicted under Section 304-B as Parveen Kumari died an unnatural death within seven years of the marriage. Accused Neetu alias Rakesh Kumar was married

about six months earlier to the death of Parveen Kumari and he would not have been benefitted if the shop had been transferred to Vinod Kumar. He and his mother were residing separately from Vinod Kumar. They have been acquitted while giving them the benefit of doubt. Vinod Kumar was convicted under Section 304-B IPC on the legal presumption where the death of bride is within seven years.

After hearing counsel for the parties, the finding recorded by the trial Court that the demand of a shop was a concocted version, does not require any interference of this Court. Moreover, the version of the complainant that they were present at the house of the deceased when she was administered poison is also not proper as Dr. Hem Raj Garg, DW-1 had deposed that she was brought to the hospital by her husband Vinod Kumar. However, as the deceased had taken poison, the conviction of the appellant, Vinod Kumar under Section 304-B is converted into Section 306 IPC. Moreover, as per the Custody certificate, Vinod Kumar has already undergone imprisonment for a period of four years nine months and eight days and was released on bail on 3.9.2004. The substantive sentence awarded to him is reduced to the period already undergone by him. Present appeal is hereby disposed of in the above terms

For the reasons recorded above, the revision of the petitioner, Pawan Kumar for implication of all the accused is dismissed.

24-08-2016

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**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No