

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

**Crl. Appeal No. S-2007-SB of 2003
Date of decision : 22.08.2016**

Surinder Pal @ Bittu & Ors.

..... Appellants

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?

Yes/No

2. To be referred to the Reporters or not? Yes/No

3. Whether the judgment should be reported in the digest? Yes/No

**Argued by: Mr. R.P. Dhir, Advocate
for the appellant.**

Mr. Deep Singh, AAG Punjab.

ANITA CHAUDHRY, J.

Appellants have laid challenge to the judgment of conviction and order on sentence dated 14.10.2003 vide which they were held guilty under Section 304-B IPC. They were sentenced to undergo rigorous imprisonment for seven years.

The facts as culled out from the records may be noticed first.

Gurbax Kaur @ Baksho (since deceased) was married to appellant Surinder Pal somewhere in 1996. She gave birth to a daughter. On the night intervening 10/11.06.1999 she was found dead in her matrimonial home. Her brother, Harmesh Lal made statement (Ex.PB) to the police wherein he disclosed that Gurbax Kaur was the youngest sister. After the marriage, she was ill-treated by her husband and mother-in-law Gian

Kaur and she was left at her parental house after a beating. On the intervention of the Panchayat she was sent back to her matrimonial home. She was kept nicely for sometime. About one year prior to the occurrence, her father had died. Surinder Pal came to the house of complainant and demanded the share of Gurbax Kaur in the property left by her father. The complainant along with his brother Tarsem and Sarpanch Dilbagh went to the matrimonial home of his sister, where Gurbax Kaur told them that her husband and parents-in-law Kewal Ram and Gian Kaur had beaten her and she had sustained fracture on her wrist. The accused also misbehaved with Harmesh Lal and the complainant brought Gurbax Kaur to her parental home. This time also, with the intervention of Panchayat, the girl was sent back to her matrimonial home about one and a half month prior to the occurrence. It was further mentioned that about a week prior to her death, the complainant along with his brother had gone to the house of Gurbax Kaur to ask for her well being and in their presence Surinder Pal picked a quarrel with Gurbax Kaur and repeated their demand. The complainant tried to persuade Surinder Pal.

The complainant received the information that Surinder Pal, Kewal Ram and Gian Kaur had administered poison to Gurbax Kaur. They reached there and noticed the dead body lying the courtyard. Harmesh Lal made a statement, on the basis of which FIR No.60 dated 11.06.1999 was registered and investigated. Inquest was carried out. Autopsy was conducted. No poison was detected, whereas injury No.3 on the neck was held to be the cause of death.

Accused Gian Kaur and Surinder Pal were arrested, whereas accused Kewal Ram absconded. Challan was presented against them.

Charge under Section 304-B IPC was framed against them. Initially, the prosecution examined Dr. Baldev Singh as PW1 who had conducted the autopsy on the dead body of Gurbax Kaur; complainant Harmesh Lal as PW2; Simru son of Munshi, the uncle of Gurbax Kaur; Const. Ram Kishan as PW4 in whose presence belongings of Gurbax Kaur were taken into possession; PW5 Baldev Saini had prepared the scaled site plan of the spot. The remaining witnesses were PW6 Dilbagh Singh, Sarpanch; PW7 Inspector Parveen Kumar, the investigating officer and PW8 Const. Mukhtiar Singh who had deposited the sealed envelope with the chemical examiner.

After the arrest of Kewal Ram, supplementary challan was filed against him. Charge was re-framed and all the aforesaid witnesses were again examined.

In their statements recorded under Section 313 Cr.P.C., the accused denied the prosecution case and pleaded false implication. Appellant Surinder Pal took the stand that he was not present at the time when the incident had occurred while Kewal Ram and Gian Kaur took the plea of separate residence. According to the accused, Gurbax Kaur might have suffered injuries accidentally.

No evidence was led in defence.

The trial Court convicted and sentenced the appellants in the manner indicated above.

I have heard the learned counsel for the appellant and learned State counsel and have gone through the record carefully.

Learned counsel for the appellants had urged that in the FIR it was nowhere mentioned that the deceased was maltreated for bringing more

dowry and the prosecution had failed to prove that soon before death, the deceased was maltreated in relation to dowry. He had referred to **Panchanand Mandal @ Panchan Mandal & Anr. Vs. State of Jharkhand, 2013(4) RCR(Crl.) 591** and **M. Srinivasulu Vs. State of A.P. 2007(4) RCR(Crl.) 146.**

According to him, the alleged demand of share in the estates of her deceased father would not fall within the ambit of demand of dowry as has been held in **Baldev Singh Vs. State of Punjab 2009 AIR (SC) 913;** **K. Prem S. Rao Vs. Yadla Srinivasa Rao 2002(4) RCR(Crl.) 697.**

He further urged that the case of the prosecution rested on the testimony of PW2 Harmesh Lal; PW3 Simru Ram and PW6 Dilbagh Singh, who were closely related to the deceased being brother, uncle and Sarpanch of the village respectively and they had made number of improvements while stepping in the witness box and could not be relied upon in absence of any independent corroboration. Reliance was placed on **Shindo @ Sawinder Kaur & Anr. Vs. State of Punjab 2011(2) RCR(Crl.) 878.**

He had further submitted that the appellant Gain Kaur and Kewal Ram were living separately from the couple and in no way they could be said to be beneficiary of the alleged demand of share in the property and in the FIR no demand was attributed to them and in the statements of prosecution witnesses also, it was not specifically mentioned that any cash was handed to them and the essential ingredients of Section 304-B IPC were conspicuously missing. He had referred to **Bhola Ram Vs. State of Punjab 2013(4) RCR(Crl.) 1042**

Learned State counsel supported the judgment of the trial Court. It was submitted that the trial Court had correctly appraised and

analyzed the evidence and had rightly convicted and sentenced the appellant.

In the instant case, unnatural death of Gurbax Kaur in the matrimonial home within seven years of marriage is not in dispute. PW1 Dr. Baldev Singh had conducted post-mortem examination on the body and had found the following injuries:-

“1. Red bruise measuring 5 x 4 cm present over right side of face, at the middle part. Ecchymosis of blood was present over the subcutaneous tissues.

2. Red bruise 2.5 x 1.5 cm transversely placed at middle part of right side of neck. Ecchymosis of blood was present over the subcutaneous tissues and

3. There was abnormal mobility of head at the atlanto occipital joint. Deeper dissection revealed the fracture of first cervical vertebrae posterior arch into 3 pieces, underlying ligaments were torn, muscles were ruptured, spinal cord was lacerated, clotted blood was present. Pleurae was congested. Larynx, trachea and both the lungs were congested and frothy secretion was present.”

No poison was detected in the body and in his opinion death was the result of injury No.3.

The main thrust of the submission on behalf of the appellant was that there was no specific instance of demand and it was not proved that soon before the death the deceased was subjected to cruelty and harassment in connection with demand of dowry and the evidence falls short of the requirement to establish the offence punishable under Section 304-B IPC.

The contention is meritless.

Section 304-B of the Indian Penal Code lays down that 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 in connection with any demand of dowry, such death shall be called “dowry death”. Similar provision is contained in Section 498-A IPC, where cruelty to a wife by husband or relative in connection with demand of dowry has been made punishable. Section 113-B of the Evidence Act deals with the presumption of “dowry death” and proclaims that when the question is whether a person has committed a dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to demand of dowry, the court shall presume that such person had caused “dowry death”. It can, therefore, be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the “dowry death” provided the other requirements mentioned above are satisfied.

A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B IPC shows that there must be material to show that soon before death, the victim was subjected to cruelty or harassment. Expression “soon before” is very relevant where Section 113-B of the Indian Evidence Act and Section 304-B IPC are pressed into service. But, at the same time, “soon before” is relative terms which is required to be considered under specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. These words would imply that the

interval should not be too long between time of making the demand and the death. It contemplates reasonable time which as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In other words, demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time, under the circumstances, be treated as having become stale enough.

PW2 Harmesh Lal while stepping into the witness box had deposed that about 6-7 months of the marriage of his sister, her husband, father-in-law and mother-in-law started giving beatings to her for inadequate dowry. She was left at her parental home after giving beatings. He along with his brother Tarsem and Sarpanch Dilbagh and the deceased went to the house of accused where accused assured that they would not beat her. After the death of his father, accused Surpinder Pal and Kewal Ram came to their house and demanded a share out of the property left by the father and also a sum of Rs.5000/-. The accused also threatened that in case the share in the property was not given to Surinderpal, then they would end the life of his sister. About one and a half month prior to the death of Gurbax Kaur, when he along with Tarsem Lal and Dilbagh Sarpanch had gone to the house of Gurbax Kaur, there she told them that she had been beaten by all the accused and her right wrist had been broken. The witness had deposed that at that time, a sum of Rs.5000/- was paid to all the accused in the presence of Simar Chand. Later, her sister was done to death by the accused for bringing less dowry.

PW3 Simar Chand uncle of the deceased corroborated the testimony of PW2 Harmesh Lal. He deposed that after the marriage, accused started demanding dowry from the deceased. The deceased was given

beatings and share in the property was demanded after the death of father of Gurbax Kaur. He deposed that a sum of Rs.5000/- was paid to Surinder Pal in his presence.

PW6 Dilbagh Singh, Sarpanch deposed that after 5-6 months of the marriage, quarrels had started between Gurbax Kaur and her husband due to dowry. Kewal Ram, Gian Kaur and Surinder Pal used to say that she had brought lesser dowry. She was left at her parental house after the beatings, but with the intervention of Panchayat, she was sent back to her matrimonial home. After the death of father of Gurbax Kaur, the accused started demanding a share in the property and on one occasion Gurbax Kaur was sent back to her matrimonial home along with an Almirah and Rs.5000/-.

From the tenor and manner of deposition of prosecution witnesses above, it is apparent that the problem had started immediately after the marriage and persisted till the death of Gurbax Kaur. The deceased was harassed all the time and she was not living in congenial atmosphere in the matrimonial home. She was sometime left at her parental home, but with the intervention of Panchayat she was sent back to her matrimonial home.

It was not the case where the demand was only qua the share in the property of her father, but the evidence is suggestive of the fact that on another occasion Surinderpal was given Rs.5000/- so that the girl could be rehabilitated in her matrimonial home.

In the FIR it was only mentioned by the complainant that his sister was maltreated by the accused and not specifically mentioned that it was on account of lesser dowry, but in his testimony as PW2 he had specifically deposed that the ill-treatment given by the accused was on

account of less dowry. In the statements before the Court, it was stated that she was harassed for more dowry. It was not expected from a layman to give a detailed account of the allegations. Gurbax Kaur was sent back to her matrimonial home one and half month before her death and at that time Rs.5000/- was paid to Surinder Pal. The witnesses had elaborately deposed about the cruelty being meted upon Gurbax Kaur. Their statements cannot be rejected merely on the ground that they were interested witnesses.

I find that there are minor discrepancies in the statements, but it cannot be forgotten that the witnesses were simple and illiterate and discrepancies were bound to occur. Their statements indict the series of incidents forming part of the same transaction which culminated in the death which was otherwise than under normal circumstances within three years of marriage. It was cogently proved by the prosecution that soon before her death she was harassed on account of demand of dowry.

The stand taken by the defence that she died accidentally is just an after-thought. No evidence was produced by the defence to show that it was accidental death.

In the light of actual and factual aspect of the case, the defence cannot derive any help from the case law relied and referred to above, which are distinguishable from the facts of present case, except Bhola Ram's case (*supra*).

The Law Commission of India in its 91st Report of 10th August, 1983 (in paragraph 1.8) has observed that the truth may not come in a dowry death case due to the sequestered nature of the offence. This is what the LCI said:-

“Those who have studied crime and its incidence know that once a serious crime is committed, detection is a

difficult matter and still more difficult is successful prosecution of the offender. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family; other members of the family (if residing in the same house) are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no other eye witnesses, except for members of the family.”

This passage also clearly brings out that in a case of a dowry death, every member of the family may not be fully and equally guilty. The degree of involvement may differ as an associate, as a silent witness, as a conniving witness and so on.

Coming to the case of Kewal Ram and Gian Kaur, their case is distinguishable from the appellant Surinder Pal. They are the father-in-law and mother-in-law of the deceased. They claimed that they were residing separately. No evidence was produced by them, but it does not lead to any positive conclusion that they were actively involved. They were not beneficiary of the demand. It has come on record that the share was sought for Surinder Pal only. PW3 Simru had deposed that a sum of Rs.5000/- was handed over to Surinder Pal. No specific role was assigned to the parents. The allegations made against them are omnibus and appear to have been made just out of frustration. It appears that they tried their best to save the matrimonial life, they appeared before the Panchayat and took Gurbax Kaur back, but their soft attitude did not mend the attitude of their son. It can safely be presumed that Surinder Pal made the demands for his benefit. The father-in-law and mother-in-law may have been a silent participants but there is nothing to suggest that they had actively made a demand or that

demand was sought to be utilized by them. There is nothing on record to prove the active involvement of the appellants Kewal Ram and Gian Kaur in the crime. It was Surinder Pal who alone was involved. Thus, the father-in-law and mother-in-law deserve acquittal.

Consequently, the appeal qua Kewal Ram and Gian Kaur is allowed. They are acquitted of the charges. The judgment and order of conviction and sentence of the appellant Surinder Pal is affirmed and his appeal is dismissed. His bail bonds and surety bonds stand cancelled. Appellant Surinder Pal is directed to surrender before the CJM Nawan Shahar within a month from today to undergo the remaining part of the sentence. In case he fails to surrender before the Court within the stipulated time, the CJM would take appropriate action in the matter. A copy of this order be sent to the CJM, Nawan Shahar for compliance.

August 22, 2016
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No