

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

Crl. Appeal No.S-886-SB of 2003

Date of Decision: 26.10.2016

Mukhtiar Singh & Ors.

... Appellants

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. T.S. Sangha, Senior Advocate with
Mr. Narinder Singh, Advocate
for the appellant.
Mr. Deep Singh, AAG Punjab.**

ANITA CHAUDHRY, J.

This appeal is directed against the judgment dated 22.03.2003 by virtue of which the appellants were convicted and sentenced under Sections 304-B read with Section 34 IPC. A challenge has also been laid to the order dated 24.03.2003 vide which appellants Mukhtiar Singh and Harinder Kaur were awarded rigorous imprisonment for seven years with a fine of Rs.1500/- each. In default of payment of fine, they were required to further undergo rigorous imprisonment for one month. Appellant Bhupinder Singh was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.2500/-. In default of payment of fine, he was sentenced to undergo further rigorous imprisonment for two months.

The facts which emerge out from the records are as follows:-

Ramjit Kaur @ Ramanjit Kaur(since deceased), younger sister of complainant Pargat Singh was married to appellant Bhupinder Singh, sometime in the year 1995. A son was born to them. Bhupinder Singh was working as a Constable in Punjab Police. Appellant Mukhtiar Singh and Harinder Kaur are his parents.

On 15.07.1998 an intimation was received in the police station

regarding the admission of Ramanjit Kaur in Kiran Maternity Home as a suspected case of poisoning. DDR No. 25 dated 15.07.1998 was entered. The police went to the hospital, where they were told that on account of the serious condition, the patient had been referred to DMC Ludhiana. It is the case of the prosecution that on the way to DMC Ludhiana, Ramanjit Kaur died.

On the next day i.e. 16.07.1998 when the police was going towards village Rajgarh Khubey to enquire, on the way they met Pargat Singh who suffered statement Ex.PD and disclosed that after marriage, the in-laws of his sister demanded a maruti car and some more articles. His father and uncle went to the accused to make them understand and gave a sum of Rs.50,000/-. Lateron, Ramanjit Kaur told them that she was being harassed by her parents-in-law on account of demand of maruti car. He further disclosed to the police that on 15.07.1998 at about 12 noon he went to village Rajgarh Khubey to see his sister. He noticed that the father-in-law and mother-in-law were holding legs and arms of his sister and Bhupinder Singh poured some medicine in her mouth and exhorted that she would be taught a lesson for not bringing the maruti car. The complainant raised alarm, upon which Ramanjit Kaur told him that the aforesaid persons had administered some pesticide and she should be saved. The father-in-law of his sister rebuked him (Pargat Singh) and due to fear, he fled and reached his village late in the evening and narrated the whole occurrence to his father. On the next day, he along with his father, uncle Sardara Singh and Karnail Singh and mother Labh Kaur reached the matrimonial home of his sister and found her dead body lying on the cot.

On the basis of aforesaid statement, FIR No. 49 dated

16.07.1998 was registered under Sections 304-B, 148 and 149 IPC. A bottle containing remaining pesticide and a steel glass were taken into possession; rough site plan was prepared; the dead body was sent for post-mortem examination. The appellants were arrested on 18.07.1998 and on completion of investigation, challan was filed against them.

Charge under Section 304-B read with Section 34 IPC was framed, to which they pleaded not guilty.

At the trial, the prosecution examined nine witnesses, viz. PW1 Dr.S.S. Malik had conducted the post-mortem examination vide PMR Ex.PA and on the basis of report of Chemical Examiner, he opined the cause of death was due to organo phosphorous, a group of insecticide poisoning; PW2 Pargat Singh was the complainant and he deposed on the lines of prosecution case; PW3 Sardara Singh, uncle of the complainant and PW4 Labh Kaur, the mother of the deceased supported the prosecution case; PW5 Const. Surjit Singh tendered his affidavit Ex.PF; PW6 SI Manjit Singh had conducted the initial investigation of the case; PW7 Const. Karnail Singh had tendered the affidavit Ex.PW7/A; PW8 DSP Darshan Singh had partly investigated the case and had arrested the accused on 18.07.1998 and PW9 HC Sukhmander Singh had tendered his affidavit Ex.PW9/A.

In their statements recorded under Section 313 Cr.P.C., the accused abjured the trial and pleaded false implication. Accused Bhupinder Singh took the stand that on 15.07.1998 his wife was supervising the insecticide spray in the fields and on return home she suffered fits. She was immediately taken to Kiran Maternity Home at about 1:50 p.m. where she was treated upto 8:40 p.m. The parents and other relatives of his wife

Ramanjit Kaur had arrived in hospital. Due to her serious condition she was referred to DMC Ludhiana and on the way she died. The relatives of Ramanjit Kaur did not doubt anything and made no complaint to the police. On the next day Pargat Singh complainant made a demand of Rs.2 lacs and as the same was not paid, a false case was registered by concocting a story. He denied raising any demand of maruti car or being given cash by the complainant side. According to him, he was not financially sound to maintain a car. He also took the plea that his relations with his wife were cordial and she was nominated as his beneficiary in his insurance policy as well as service benefits.

In defence, the accused examined DW1 Const. Paramjit Singh; DW2 Dr. Kiran Garg who gave initial treatment to Ramanjit Kaur; DW3 R.S. Gill, Administrative Officer, LIC Mansa; DW3 Jagga Singh, the landlord of appellant Bhupinder Singh and DW4 Chand Singh, the mediator of marriage.

The trial Court convicted the appellants and sentenced them to the punishment mentioned here-in-before.

I have heard learned counsel for the parties and have perused the records.

Initiating the arguments, it was submitted by the Senior counsel for the appellants that there was inordinate and unexplained in lodging the FIR. He had submitted that the occurrence took place around 12 noon of 15.07.1998 but the matter was reported to the police next day at about 9:15 a.m. and thereafter the FIR was lodged.

Adverting on the unnatural conduct of complainant Pargat Singh, it was urged that the story propounded by the prosecution about

presence of Pargat Singh and administering of insecticide to Ramanjit Kaur was unbelievable and it does not appeal to prudence that despite witnessing all this, he remained silent and had he been present at the spot, he would definitely had made attempt to save his sister by calling the neighbourers etc. He had further urged that this witness admitted that Police Station Maur Mandi was on the way to his village, but he did not make a complaint to the police.

It was further submitted that the presumption under Section 113-A of the Evidence Act cannot be invoked as there is no evidence that there was any cruelty or harassment soon before death. Elaborating his arguments, he had urged that as per prosecution case, the demand of maruti car was raised immediately after marriage, but it is not proved that the demand still persisted at the time of her death. No specific date or time was given about the demand and Pritam Singh, the father to whom the deceased had narrated about the demand was not examined by the prosecution. He had further urged that witnesses had contradicted so far as payment of Rs.50,000/- to the accused, was concerned. According to him, from the testimony of DW3 Jagga Singh that appellant Bhupinder Singh and the deceased were residing separately from appellants Mukhtiar Singh and Harinder Kaur and they cannot be termed to be beneficiaries of the demand of maruti car or dowry. He has relied upon **Gurdeep Singh Vs. State of Punjab & Ors. 2012(1) RCR(Crl.) 300, Anil Kumar Gupta Vs. State of U.P. 2011 AIR(SC)(Cri.) 922 and Sewa Ram & ors. Vs. State of Punjab 2011(5) RC(Crl.) 48.**

He had further urged that the prosecution withhold the evidence of Dr. Kiran who initially treated the deceased and when Ramanjit

Kaur was brought to her at about 1:50 p.m. and she was conscious and in the history there is no reference to any forcible administration of insecticide and had it been so, Ramanjit Kaur would have narrated the fact to the doctor. It was submitted that appellant Bhupinder Singh had brought her to the hospital.

The State counsel supported the judgment and urged that the prosecution has been able to prove the charges beyond reasonable doubt.

The case of the prosecution was that after the marriage the deceased was harassed by the accused on account of demand of a maruti car and at one point of time Rs.50,000/- was paid by the father of the deceased to the accused, but the demand still persisted and when it was not fulfilled the accused forcibly administered insecticide in the presence of complainant Pargat Singh and she died.

The trial Court placed implicit reliance on the testimony of complainant PW2 Pargat Singh; PW3 Sardara Singh and PW4 Labh Kaur and concluded that the prosecution had proved that soon before her death, the deceased was treated with cruelty on account of demand of car and when the demand was not fulfilled she was administered insecticide by the accused. But there are several factors which impeach the credibility of the prosecution witnesses and cast doubt on the prosecution version which go to the root of the case.

As per prosecution, on 15.07.1998 at about 12 noon, complainant Pargat Singh had gone to the house of his sister and in his presence appellants forcibly administered insecticide to her. The matter was reported to the police on 16.07.1998 at about 9:00 a.m. and thereafter FIR was lodged.

Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding its true version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint may prove to be fatal. In such case of delay, it also cannot be presumed that the allegations were an after thought or it had been given a coloured version. The court has to carefully examine the facts before it, for the reason, that the complainant party may initiate criminal proceedings just to harass the other side with mala fide intentions or with ulterior motive of wreaking vengeance. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law. (See: Sahib Singh v. State of Haryana, AIR 1997 SC 3247; G. Sagar Suri; Anr. v. State of U.P.; Ors., AIR 2000 SC 754; Gorige Pentaiah v. State of A.P.; Ors., (2008) 12 SCC 531; and Kishan Singh (dead) thr. Lrs. v. Gurpal Singh ; Ors., AIR 2010 SC 3624).

Adverting to the facts of the case, an attempt had been made by the prosecution to cover up the delay by putting forth a version that due to fear PW Pargat Singh rushed to his village and narrated the occurrence to his mother and his father was not at home and he returned home the next day. PW2 Pargat Singh and PW3 Sardara Singh also deposed on this lines.

But this fact gets falsified when PW4 Labh Kaur stepped into the witness

box and deposed that her husband Pritam Singh had returned home in the night on 15.07.1998 and the incident was disclosed to him. Strangely, no attempt was made by any of the prosecution witness to inform the police that night and this fact get strengthened by the version given by DW2 Dr. Kiran Garg who had deposed that the relatives of Ramanjit Kaur had arrived during her admission in the hospital.

It is necessary to mention here that Pritam Singh was not examined by the prosecution. A specific suggestion was given to PW3 Sardara Singh that Pritam Singh was not ready to depose against the accused and he had denied it. But the facts comes true as the prosecution failed to examine Pritam Singh.

Pargat Singh stepped into the witness box as PW2 and deposed that on reaching the house of his sister at about 12 noon he noticed that front gate was lying closed. He entered the house and noticed that father-in-law and mother-in-law had caught hold of legs of Ramanjit Kaur while her sisters-in-law had caught hold of arms and Bhupinder Singh was administering insecticide to his sister and the accused were saying that she was given this treatment for not bringing dowry. His sister told that accused had administered insecticide to her. The accused tried to overpower him and due to fear he ran and reached his village through the fields and narrated the occurrence to his mother. His father was not in the house. On the next morning, his father came home and he disclosed the occurrence. He along with his father, uncle and other villagers were going towards village Rajgarh Khube when they met the police and they reported the matter. Despite knowing that his sister had been administered insecticide, no steps were taken by the brother to save her. The explanation given by the

prosecution was that he was under fear, appears to be false. His village is 15/16 Kms away and his explanation that he went through the fields so that he may go unnoticed, seems to be highly improbable. The accused were not pursuing him. This witness admitted that two sisters of his mother were residing at Maur Mandi. No attempt was made to seek help from them. Had he been in fear, he would have called the relatives or informed the police. He admitted that the police station Maur Mandi was situated on the way, but he failed to make the complaint to the police. He admitted that the house of the accused was surrounded by residential houses, he did not raise alarm nor sought help. He admitted that he did not enter the village to inform anybody. He admitted that people were working in the fields. He admitted that telephone facility was available in the village. Had he been present in the village of the accused, he would have taken help from the villagers or attempted to save her. He did not bother to approach the police station which was at a distance of 3-4 kms from the village of the accused. He preferred to run to his village situated about 15-16 kms away. The unnatural conduct of this witness is inconsistent with the normal human conduct. It appears that he had been introduced by the prosecution.

The inordinate delay in lodging the FIR and unnatural conduct of the prosecution witnesses clearly speak volume about the veracity of prosecution case and leads to the conclusion that PW Pargat Singh was not present on the spot and was introduced later on and the FIR was lodged after due deliberations and consultations.

The other mitigating circumstance which cast doubt on the prosecution case is that the evidence led in defence, namely, Dr. Kiran Garg DW2. She had treated Ramanjit Kaur. As per her deposition, the patient was

brought by her husband Bhupinder Singh on 15.07.1998 at 1:50 p.m. as she had been vomiting since two hours and had diarrhoea and pain in abdomen. According to her, the patient was conscious and both pupils were equal and reacting to light. She had deposed that patient was given treatment and again examined at 4:00 p.m. and pain in abdomen was still there though vomiting had decreased. Treatment continued up to 5:40 p.m. Though vomiting had stopped but there was moderate pain in abdomen. Patient was found semi conscious when she was examined at 7:50 p.m. and at about 8:15 froth came out from her mouth and cyanosis of tongue was noticed and intimation was sent too the police being suspected case of poisoning. Considering the serious condition of the patient, she was referred to DMC Ludhiana at 8:40 p.m. This witness deposed that during treatment relations of deceased and Bhupinder Singh came there. There is nothing on record that till time the patient was conscious, any complaint was made regarding forcible administration of insecticide. The medical officer who had firstly examined the patient was not associated by the investigating agency and was not shown as a witness. Thus the prosecution had withheld vital evidence.

The case of the prosecution was that it was a dowry death and Ramanjit Kaur had been done to death by the accused and soon before her death she was subjected to cruelty in relation to demand of dowry.

The main thrust of the appellants 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.

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. The 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 a relative term 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 death. It contemplates reasonable time which 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.

Ramanjit Kaur died within seven years of her marriage and in the matrimonial home. There is no evidence that the girl was subjected to cruelty on account of demand of dowry soon before her death. The evidence is conspicuously missing. To show that there was demand by the accused, the prosecution case mainly rests on the testimony of PW2 Pargat, the brother of the deceased, PW3 Sardara Singh and PW4 Labh Kaur, uncle and mother respectively of the deceased.

PW2 Pargat Singh had deposed that a sum of Rs.3 lacs was given to the accused at the time of marriage to purchase household articles of their choice and after 2/3 months of the marriage, the accused started harassing his sister for bringing more dowry. He deposed that his sister told them that the accused were demanding Maruti car, upon which his uncle

Sardara Singh and father Pritam Singh had gone to the village of the accused and paid a sum of Rs.50,000/- in cash. But it was not specified as to when the demand was raised. This witness failed to depose as to when the amount of Rs.50,000/- was paid to the accused. He had also indulged in exaggeration when he deposed that the sisters-in-law also demanded the car and caught hold of the arms while Bhupinder Singh administered poison to her. The factum of payment of Rs.3 lacs to the accused was not mentioned by this witness in his statement Ex.PD. He failed to tell the date, time and place when the sum of Rs.3 lacs was given to the accused. He even showed ignorance as to when the amount of Rs.50,000/- was paid by Pritam Singh and Sardara Singh. He admitted that his sister had never written any letter regarding maltreatment and demand of dowry/ money/ car. He admitted that they brought fact to the notice of Chand Singh, but no panchayat was convened nor any complaint was given to the police. It is necessary to mention here that Chand Singh, the mediator had appeared as a defence witness. He denied that parents of deceased had made any complaint to him. He denied that cash of Rs.3 lacs was given in the marriage. PW2 Pargat Singh gave contradictory statement. In statement Ex.PD he had said that the accused while administering insecticide exhorted that it was done as she had not brought the maruti car, but in the statement in Court he had deposed that the accused were saying that she had not brought any dowry. He admitted that 5-6 months prior to the death of his sister, he had gone to the house of the accused along with 4-5 tractors to level the fields of Mukhtiar Singh and had stayed there for three days. It appears that the parties had cordial relations. Had there been any demand or harassment, the complainant side would not have given a helping hand.

PW3 Sardara Singh deposed that deceased Ramanjit Kaur was married to Bhupinder Singh three years prior to the occurrence. According to him, dowry worth Rs.3 lacs and other articles were given in the marriage. He deposed that the deceased made complaint to her father about the demand of maruti car by the accused. He along with Pritam Singh (father) had gone to the house of accused and on their insistence a sum of Rs.50,000/- was paid to the accused. He further deposed that the accused maltreated his niece. This witness failed to give any date or time when the demand was raised. According to this witness, Rs.3 lacs were paid 5/7 days before the marriage, whereas PW2 deposed that it was given on the date of marriage. He also failed to give specific date when payment of Rs.50,000/- was made, but disclosed that it was about six months prior to the occurrence. He admitted that in his statement to the police he had not mentioned that the payment was given six months prior to the occurrence. He admitted that no complaint was given to the police regarding demand of car

Likewise PW4 Labh Kaur, mother of the deceased deposed that a sum of Rs.3 lacs in cash was given to the accused to purchase dowry articles. After three months of the marriage, the accused started demanding more dowry. She further deposed that Pritam Singh and Sardara Singh had gone to the house of the accused to settle the demand of maruti car and gave Rs.50,000/- to the accused. When her daughter came to them, she complained about harassment as he had not brought the car. She admitted that the couple had come to their house 5/6 times and she had also gone to their house four times. She admitted that the amount of Rs.3 lacs or Rs.50,000/- was not paid in her presence. Though, Sardara Singh claimed

that the amount was paid six months prior to the death, this witness deposed that amount was paid 3-4 months prior to the death. She also admitted that no complaint was made to the police about the demand nor any Panchayat was convened.

None of the witnesses had stated that there was any demand soon before the death. No specific instances of dowry demand were given. No date or month was mentioned as to when the demand was raised by the accused. Their evidence does not suggest that “soon before” her death Ramanjit Kaur was treated with cruelty in relation to demand of dowry. According to the prosecution, the deceased had told her father about the demand, but Pritam Singh was not examined. He was an important witness but was withheld. His non-examination is fatal to the prosecution case. The evidence on record falls short of requirement of essential ingredients stipulated under Section 304-B IPC. In absence of any evidence that there was demand of dowry soon before her death, the presumption under Section 113-B IPC cannot be raised. In this view of the matter, it is not necessary to deal with the argument raised by the the defence that the couple had been residing separately from the appellants Mukhtiar Singh and Harinder Kaur.

For the reasons recorded above, the prosecution has miserably failed to prove its case beyond reasonable shadow of doubt. The appeal is allowed. The appellants are acquitted of the charge. Their bail bonds and surety bonds stand discharged.

October 26, 2016
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No