

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

**CRA-S-1726-SB-2004
Date of decision:-10.10.2018**

Kashmir Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Ms.G.K. Mann, Advocate with
Mr.Chandeep Singh, Advocate
for the appellant.

Ms.Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

Accused **Kashmir Singh** and his co-accused Gurdip Kaur faced trial by learned Additional Sessions Judge (Ad hoc), Amritsar, who vide judgment dated 22.7.2004 acquitted accused Gurdip Kaur, whereas convicted Kashmir Singh for an offence under Section 304-B IPC and vide order of that very date sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for one month.

The accused-convict – **Kashmir Singh**, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be

acquitted of the charge framed against him.

Briefly stated, the facts of the case as per the prosecution story are that Sukhpal Kaur, elder daughter of complainant Balwant Singh was married with Kashmir Singh accused on 21.1.2001; at that time, the complainant had given dowry articles to his said daughter as per his capacity, however, soon after the marriage Sukhpal Kaur was harassed and maltreated by Kashmir Singh, since he had a grudge that a scooter had not been given to him in dowry and he wanted Sukhpal Kaur to bring scooter from her parents; that Kashmir Singh accompanied by Sukhpal Kaur went to the house of his in-laws on 23.5.2001; that Sukhpal Kaur told her father that Kashmir Singh was harassing her by raising demand of scooter; Ranjit Kaur wife of complainant Balwant Singh and Sohan Singh son of Budh Singh were also present there at that time; Sukhpal Kaur had stated that her husband and mother-in-law Gurdip Kaur had been maltreating and taunting her in connection with demand of scooter; Balwant Singh, his wife and Sohan Singh tried to console Sukhpal Kaur and persuaded her to accompany her husband to the matrimonial home with the promise that they would visit her along with Pritam Kaur, resident of Baba Bakala, who had acted as a mediator in arranging matrimonial alliance between Sukhpal Kaur and Kashmir Singh, however, on 29.5.2001 at about 6:00 p.m., the complainant received a telephonic message that Sukhpal Kaur had died, then complainant Balwant Singh along with his family members and some other persons went to matrimonial home of the deceased and found that Kashmir Singh and his mother Gurdip Kaur were making preparation for cremation. The complainant had a suspicion that Sukhpal

Kaur had been administered poison by the accused for the reason that their demand of scooter had not been fulfilled. Balwant Singh was going to Police Station Beas to lodge the report, however on the way, at bus stand of Baba Bakala, he came across SI Wassan Singh (hereinafter referred to as the Investigating Officer/I.O.) along with other police officials and got his statement recorded with him. The police officer appended his endorsement below that statement and sent ruqa to the police station, on the basis of which formal FIR was recorded. The police party accompanied by the complainant went to the spot. The Investigating Officer carried out the inquest proceedings with regard to dead body of the deceased preparing a report in that regard. The dead body was sent to hospital to get post-mortem examination conducted thereon. Before that, the Investigating Officer had got the dead body photographed from a photographer. A site-plan of the place of occurrence was prepared. The investigation in the case proceeded. Accused Kashmir Singh was arrested in this case, whereas his mother Gurdip Kaur was found to be innocent.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Sub Divisional Judicial Magistrate, Baba Bakala.

On presentation of challan in the Court of learned Sub Divisional Judicial Magistrate, Baba Bakala, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 304-B IPC is exclusively triable by Court of Sessions, learned Sub Divisional Judicial Magistrate, Baba Bakala committed the case to

the Court of learned Sessions Judge, Amritsar.

On receipt of case in the Court, learned Sessions Judge, Amritsar, observing that prima facie charge for offence under Section 304-B IPC was disclosed against accused, he was charge-sheeted accordingly. The accused Kashmir Singh pleaded not guilty and claimed trial.

During the trial, an application under Section 319 Cr.P.C. for summoning of Gurdip Kaur as additional accused was filed, which was allowed. She was summoned. She put in appearance and charge was amended. Accused Kashmir Singh and Gurdip Kaur were charge-sheeted for the offence under Section 304-B IPC, to which, they pleaded not guilty and claimed trial and then the case was fixed for prosecution evidence.

During the course of its evidence, the prosecution examined as many as seven witnesses as per the details below:

PW1 Balwant Singh, complainant reiterated on oath his case in terms of the prosecution story.

PW2 Rishi Ram, Draughtsman proved the site-plan of the place of occurrence.

PW3 Ranjit Singh, Photographer, who had taken the photographs of the dead body of Sukhpal Kaur proved the photographs and negatives, which had been taken into possession by the police vide seizure memo.

PW4 Constable Baljit Singh and PW6 HC Kulwinder Singh happened to be formal witnesses, who had tendered in evidence their affidavits Ex.PD and Ex.PJ, respectively.

The medical evidence in this case was provided by PW5 Dr.Gurmanjit Rai, Lecturer Forensic Science Deptt, Medical College, Amritsar, who along with Dr.Didar Singh had performed post-mortem examination on the dead body of Sukhpal Kaur on 30.5.2001 and then viscera of deceased had been sent to Chemical Examiner from where report Ex.PG had been received. The cause of death was declared as cloro compound group of poison sufficient to cause death in the ordinary course of nature. This witness proved copy of post-mortem report, opinion given by him about cause of death.

PW7 SI Wassan Singh, who had carried out the investigation in this case deposed in that regard.

With that the prosecution evidence got concluded.

Statements of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and have been falsely implicated in the case.

In defence evidence the accused have examined Sh.Rajinder Singh, Principal, District Institute of Education and Training, Verka.

After hearing arguments, learned trial Court acquitted accused Gurdip Kaur whereas convicted accused Kashmir Singh and sentenced him as mentioned above, which left him aggrieved and he has filed the present appeal.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the present appeal.

Admittedly, Sukhpal Kaur had died in the matrimonial

home within one year of the her marriage and she had died an unnatural death by way of hanging. It is specific case of the prosecution and PW1 Balwant Singh has specifically stated that soon after the marriage Kashmir Singh accused husband of deceased Sukhpal Kaur along with his mother had been harassing and maltreating the deceased since he wanted the deceased to bring a scooter from her parents, which she could not manage, in that way, she had taken the extreme step of committing suicide by hanging, fed up with such torture and ill-treatment at the hands of the accused in connection with demand of dowry.

Section 304-B deals with dowry death. It provides 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 for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

All the necessary ingredients of offence under Section 304-B IPC are fulfilled in this case. The medical evidence duly corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction. The remaining evidence adduced by the prosecution provides vital link evidence. The accused had failed to render a reasonable or plausible explanation for unnatural death of Sukhpal Kaur in the matrimonial home. Although in their

defence evidence, the accused had examined Sh.Rajinder Singh, Principal, District Institute of Education and Training, Verka, who had stated that in the year 2001 his institution was the examination centre for the Elementary Teacher Education Course and Sukhpal Kaur, resident of Sultanwind Road had appeared. Her sister Tejinder Kaur had also appeared and result of examination was declared on 12.5.2001. Tejinder Kaur had passed the examination, whereas Sukhpal Kaur had failed. The defence tried to plead up a case that deceased had taken the decision to end her life since she had failed in the examination. I do not find this reason to be plausible and satisfactory. No normal person takes such a decision merely on account of failure in a particular test. There is nothing on record to show that deceased was extra ordinary sensitive girl, who would get upset over such type of small things. Nevertheless a perusal of the record goes to show that the defence has been taken various stands at different times. If we see cross examination of Balwant Singh PW1, father of the deceased, then the suggestion given to him is that Kashmir Singh was not liked by Sukhpal Kaur and she had returned to her parental house after a few days of the marriage and before 2-3 days of the occurrence, she was forcibly sent by Balwant Singh and family members or was taken them to the house of accused and left there or that Sukhpal Kaur committed suicide on account of the fact that she having been left with the accused to the matrimonial house. Absolutely a new twist to the matter was sought to be given. However, this defence version could not be believed.

During the course of arguments, learned counsel for the appellant accused had argued that Kashmir Singh husband of deceased

was working as a temporary *PAATHI* (recital of GURBANI) and that Sukhpal Kaur was unhappy for being married with a *PAATHI*, as such, she had committed suicide. However, such stand of the defence on which this argument has been developed was not specifically taken during the trial.

If we see statement under Section 313 Cr.P.C. of accused Kashmir Singh, then it comes out that he has not taken any such specific plea.

It needs to be mentioned here that Section 113-A of the Evidence Act deals with presumption as to abetment of suicide by a married woman. It provides that when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Thus, this presumption is also against the accused.

As regards the authorities referred to by learned counsel for the appellant first being *Rajeev Kumar Versus State of Haryana, 2013(4) RCR(Criminal)964* by the Apex Court wherein a case under Section 304-B IPC, the offence was not proved but the accused was convicted under Sections 306 and 498-A IPC instead of graver offence under Section 304-B IPC. This authority does not help the appellant in any manner since here all the ingredients of offence under Section 304-B

IPC stands proved as has been discussed in the earlier part of the judgment.

Learned counsel for the appellant has further referred to authority **Sher Singh @ Partapa Versus State of Haryana, 2015(1) RCR(Criminal)790** wherein it was observed as under:

The word “soon” finds place in Section 304-B IPC. It would not be preferable to interpret its use in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for death under Section 304-B or the suicide under Section 306 of the IPC.

This authority is also not of much help to the appellant since as per the prosecution story demand of dowry in the form of scooter started being raised soon after the marriage, therefore, demand of dowry cannot be held to be stale or aberration of the past.

The prosecution had successfully proved its charge against the accused Kashmir Singh beyond shadow of reasonable doubt. Whereas accused Kashmir Singh has failed to render a reasonable or plausible explanation for his alleged false implication in this case. The prosecution having been successfully proved its charge against the accused Kashmir Singh beyond a shadow of reasonable doubt, the trial Court was justified in convicting the accused Kashmir Singh for the offence under Section 304-B IPC and sentencing him accordingly. Keeping in view the fact that a young married girl had died within one year of her marriage and appellant is found responsible for the same, I do not see any reason to reduce the sentence of imprisonment in any

manner.

The judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellant – accused namely Kashmir Singh is on bail in terms of the orders passed by this Court. The bail order is cancelled. He is ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Amritsar.

10.10.2018
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No