

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

CRA-S-1201-SB-2002

DATE OF DECISION :- July 31, 2018

Gurdev Singh and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present:- Mr. D.S. Sidhu, Advocate for appellant no. 2.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

Gurdev Singh-husband, Mohinder Kaur mother-in-law of Harbhajan Kaur-deceased faced trial by Additional Sessions Judge (Adhoc), Faridkot, who vide judgment dated 11.7.2002 convicted them for offence under Section 304-B IPC and vide order of the even date, sentenced them to undergo rigorous imprisonment for 7 years each.

Feeling aggrieved, both the accused-convicts have preferred an appeal to this Court. Notice of the appeal was given to respondent-State, who put in appearance. It may be mentioned here that appellant Gurdev Singh has been released from jail on 23.9.2004 on completion of his actual sentence. This is so mentioned in the custody certificate of Gurdev Singh placed on record by the State counsel.

Briefly stated the facts of the case as per prosecution story are that criminal machinery in this case was set into motion by complainant

Sohan Singh, who in the statement made to the police on 4.7.1997 stated that his daughter Harbhajan Kaur was married with Gurdev Singh @ Debu (accused) 6½ years back and at that time he had given dowry more than his capacity. Harbhajan Kaur had given birth to a male child from loins of Gurdev Singh. That 2-3 years after marriage her in-laws started harassing. Harbhajan Kaur and demanded more dowry and cash from her. The complainant could not meet those demands. Gurdev Singh maltreated his wife and put pressure upon her to bring Rs.50,000/-. Several applications were made to the authorities complaining against maltreatment being given to Harbhajan Kaur. A compromise was effected between the parties with the intervention of Virsa Singh Sarpanch, Jassa Singh Nambardar and Mohinder Singh, however, after some time the accused again started demanding Rs.50,000/-in cash. Harbhajan Kaur went to her father and told him that if the demand of Rs.50,000/- was not met then she would be killed. But she was persuaded to return to her matrimonial home at village Wadhai. According to the complainant he had received a message that Harbhajan Kaur had consumed some poisonous substance and had been taken to Muktsar for treatment and thereafter he reached Sachdeva Nursing Home at Muktsar, where he found Harbhajan Kaur admitted there. After some time she had expired. Written intimation had been sent there by Sachdeva Nursing Home, Muktsar to police station Sadar, Muktsar on 3.7.1997 regarding Harbhajan Kaur being admitted there and intimation was sent on 4.7.1997 that Harbhajan Kaur had expired. Police party led by SHO Kirpal Singh had gone to the said hospital and recorded statement of Sohan Singh, father of deceased which formed basis for the registration of the F.I.R.

After recording the F.I.R. the investigation in the case started. Post mortem examination on the dead body of Harbhajan Kaur was got conducted. After completion of investigation, only Gurdev Singh was sent up to face trial. However, during pendency of trial against Gurdev Singh an application under Section 319 Cr.P.C. was moved for summoning Amrik Singh and Mohinder Kaur as additional accused which was allowed and they were also summoned to face trial for offence under Section 498-A and 304B IPC. All the three accused were then charge sheeted for offence under Section 498A and 304B IPC to which they pleaded not guilty and claimed trial.

It may be mentioned here that Amrik Singh died during the pendency of the trial as such proceedings qua him stood abated.

The prosecution led evidence oral as well as documentary. Thereafter statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against accused were put to them but they denied the same. Accused Gurdev Singh took up a plea that it was a marriage without dowry, he never raised any demand of dowry, his in-laws are Amrit Dhari (baptized Sikhs) and for that reason his wife and in-laws were annoyed with him; that the cause of death of his wife was that she had strained relations with her father as one brother of his wife had since died leaving behind two young sons; that his father-in-law was not inclined to give any share in the landed property to his said grandson; that his wife (deceased) was taken for compromise, a suit was also pending at Ferozepur; that on the day of occurrence when they came to know that Harbhajan Kaur had consumed some poisonous substance then he along

with fufar (paternal aunt's husband) of Harbhajan Kaur and his wife Amarjit Kaur and his mother reached the hospital where Harbhajan Kaur was admitted for treatment, they had gone to Sachdeva Nursing Home at Muktsar. Amarjit Kaur remained with Harbhajan Kaur in the hospital, whereas Mohinder Singh was sent to in-laws house of Gurdev Singh to bring them. The case is false and for the said reason, Surinder Pal, Mohinder Singh and Amarjit Kaur had not appeared as witness. Gurdev Singh stated that his brother Amrik Singh has since died, who lived separately. During the investigation Mohinder Kaur and Amrik Singh were not challaned by the police whereas he has been challaned on suspicion. Mohinder Kaur took up the same plea.

During their defence evidence accused examined Ajaib Singh as DW1. Ajaib Singh Sarpanch of village Wadhaian who stated that he was attesting witness of the compromise deed Ex.DA., since there was a dispute between deceased and her father on one side and the accused Gurdev Singh and his mother on the other side. Gurdev Singh used to take liquor but his wife used to object it since they are Amrit Dharis; Mother of Gurdev Singh separated from Gurdev Singh by raising separate wall. Mohinder Kumar then started residing with her other son Amrik Singh. Harbhajan Kaur started residing with her husband Gurdev Singh (accused). In the end he stated that Harbhajan Kaur had consumed some poisonous substance. Mohinder Kaur was not in the village on that day since she had gone to her parental village.; she was called when Harbhajan Kaur had died. He stated that writing Ex.D.A was also attested by him; father of Harbhajan Kaur had also signed stating therein that there was no dispute between Harbhajan

Kaur and the accused. DW 2 Shingara Singh brother of Mohinder Singh also supported the defence version.

After hearing arguments, the trial Court convicted and sentenced the accused which left them aggrieved and they have filed the present appeal.

I have heard learned counsel for appellants and learned State counsel besides going through the record.

Here the accused have been convicted for offence under Section 304B IPC. Section 304B IPC deals with offence of dowry death. For ready reference it is reproduced as under :-

“304B. Dowry death

(1) 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.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]”

A perusal of the provision goes to show that sine qua non of the offence are

- i) the death of a woman should have taken place otherwise than under normal circumstances.
- ii) such death should have occurred within 7 years of marriage.
- iii) Soon before her death she should have subjected to cruelty or harassment by here husband or by any relative of her husband
- iv) such cruelty or harassment should be for in connection with

the demand of dowry.

v) such cruelty or harassment the deceased should have been subjected soon before her death.

If we examine the present case on the touchstone of these ingredients, we find that it stands proved that Harbhajan Kaur was married with Gurdev Singh about 6½ years prior to her death and she has died an unnatural death. The crucial question, which arises for adjudication is as to whether she was subjected to cruelty and harassment by her husband Gurdev Singh and mother-in-law Mohinder Kaur in connection with demand of dowry and that too soon before her death. As far as Gurdev Singh-husband of petitioner (deceased) is concerned all the necessary ingredients are found to be fulfilled. The prosecution had examined Sohan Singh-complainant as PW1 who supported the case of the prosecution on material aspects. PW 4 Tek Singh, brother of deceased also lent support to the case of prosecution.

In the present case, the marriage between deceased Harbhajan Kaur and accused Gurdev Singh @ Debu had taken place 6½ years before her death. That means she had died within seven years of marriage. She had died an unnatural death i.e. due to poisoning rather she had committed suicide. Now the vital question arises whether she was subjected to cruelty or harassment by the accused that too in connection with demand of dowry. The trial Court on the basis of evidence adduced before it in the form of statement of complainant Sohan Singh appearing as PW1, who had toed the line of prosecution that of Tek Singh as well as concluded that deceased had in fact been subjected to cruelty harassment that too in connection with

demand of dowry. The other evidence adduced by the prosecution had supported its version.

The trial Court has convicted Gurdev Singh as well as Mohinder Kaur. With regard to Gurdev Singh, no illegality or infirmity can be found with the judgment holding him guilty of offence under Section 304B IPC and sentencing him to undergo rigorous imprisonment for seven years. But as far as his mother Mohinder Kaur is concerned, after scanning the record, I find that the prosecution had not been able to prove its charge against such accused beyond a shadow of reasonable doubt. It has to be taken note of that; though named in the F.I.R. as a result of investigation she was found to be innocent by the police and it was only on an application under Section 319 Cr.P.C. having been filed by the prosecution, she had been summoned as an additional accused.

A perusal of statement of PW1 Sohan Singh and PW2 Tek Singh goes to show that the allegations levelled by them against Mohinder Kaur are quite general lacking specific details. DW1 Ajaib Singh Ex-Sarpanch of village Wadhain has categorically stated that mother of accused Mohinder Kaur was separate from Gurdev Singh and a partition wall was there and that Mohinder Kaur had started residing with her another son Amrik Singh, whereas deceased had been residing with her husband Gurdev Singh. Thus it comes out that Mohinder Kaur had got a separate residence. It being so there were little chance of her interfering in the marital life of Harbhajan Kaur and Gurdev Singh or harassing or maltreating Harbhajan Kaur so as to force her to bring more dowry articles. Accused Mohinder Kaur was aged about 70 years at the time of incident. Such type of women

quarreling with her daughter-in-law just to force her to bring more dowry articles does not appear to be probable and convincing from the evidence brought on file by the prosecution. Thus, the prosecution was unable to establish all the necessary ingredients of Section 304B IPC as regards Mohinder Kaur accused and a doubt arises in the mind about her guilt. The trial Court was not justified in convicting or sentencing her, whereas no such defect is there with regard to Gurdev Singh accused. Accordingly, the appeal is accepted partly, inasmuch as it is dismissed as regards accused Gurdev Singh, whereas it is allowed with regard to accused Mohinder Kaur. Resultantly, the impugned judgment qua her is set aside and she is acquitted of the charge framed against her.

The appeal stands disposed of accordingly.

(H.S. MADAAN)
JUDGE

July 31, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No