

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

**CRA-S-1916-SB-2003(O&M)
Date of decision:-5.7.2018**

Gur Harjinder Singh

....Appellant

Versus

State of Punjab

....Respondent

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

Present : Mr.A.P.S. Mann, Advocate
for the appellant.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

H.S. MADAAN, J.

This appeal has been preferred against the judgment of conviction and order of sentence dated 24.9.2003 passed by the Court of learned Additional Sessions Judge (Ad hoc), Amritsar, vide which accused Gur Harjinder Singh was convicted and sentenced as follows:

Under Section	Sentence Awarded
304-B(1) IPC	Rigorous imprisonment for ten years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for two months.

Whereas other co-accused, namely, Varinder Singh, Amritpal Singh – brothers, Kartar Singh – father, Surjit Kaur – mother, Narinder Kaur and Ranjit Kaur – sisters-in-law of Gur Harjinder Singh had been acquitted of the charge framed against them.

The accused-convict - Gur Harjinder 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 prosecution story is that the criminal machinery in this case was set into motion by complainant Rattan Singh son of Teja Singh, resident of Bundala, Police Station Jandiala Guru, aged about 60 years, an agriculturist by avocation, who in his statement made to the police on 28.2.2001 stated that his daughter Ninderjit Kaur was married with Gur Harjinder Singh about a year prior to the incident, as per Sikh religious rites and at that time he had given dowry as per his financial position, nevertheless since from the very beginning Ninderjit Kaur was being harassed by Narinder Kaur wife of Dalwinder Singh – *JETHANI* (husband's elder brother's wife), Varinder Singh – *JETH* (husband elder brother), Ranjit Kaur wife of Varinder Singh and Amritpal Singh – *DEVAR* (husband's younger brother) besides Surjit Kaur - mother-in-law; that she was harassed and taunted by them for bringing less dowry; that they were demanding a car from them but he was not in a position to meet that demand; that a scooter had been given in dowry. *Inter alia*, the complainant further stated that his daughter Ninderjit Kaur had been informing him and his wife Kulwinder Kaur regarding her maltreatment by his in-laws for not bringing a car in dowry; that he and his wife had pleaded with the accused but they remained adamant and persisted in their maltreatment and taunting of Ninderjit Kaur for bringing less dowry; that on 28.2.2001 at about 7:00 a.m. in the morning, Gur Harjinder Singh made a telephonic call to him

from village Khapar Kheri stating that Ninderjit Kaur was missing since last night, as such, he (complainant), his wife along with wife's brother Karnail Singh, a resident of U.P., who had come to see them, went to village Khapar Kheri; that they observed that dead body of Ninderjit Kaur was floating in a pond of the village near the house of Kartar Singh; that the complainant had left his wife near the dead body and was proceeding to police station to report the matter however on the way, at the turning of the metalled road, he came across the police headed by SI/SHO Sukhwinder Singh (hereinafter referred to as the Investigating Officer/I.O.) and got his statement recorded. The Investigating Officer appended his endorsement below such statement and sent ruqa to the Police Station Chheharatta, Amritsar, on the basis of which formal FIR was registered.

Thereafter, the police party accompanied by the complainant went to the place of occurrence and carried out spot inspection. The Investigating Officer prepared rough site-plan of the house of accused and the pond. The dead body of Ninderjit Kaur, which was floating in the pond was taken out. The Investigating Officer prepared inquest report with regard to it. The dead body of Ninderjit Kaur was identified by Rattan Singh and Bachan Singh. The Investigating Officer then deputed HC Dharampal and Constable Balkar Singh to take the dead body of Ninderjit Kaur to Civil Hospital for the purpose of getting the post-mortem conducted thereon. Both the police officials got the needful done and thereafter dead body of Ninderjit Kaur was handed over to the complainant Rattan Singh, father of the deceased, whereas clothes of the deceased handed over to those police

officials by the doctor after post-mortem examination had been produced by them before the Investigating Officer, which were taken into possession by the Investigating Officer. The Investigating Officer had then recorded statements of witnesses. During the spot inspection the Investigating Officer had summoned Raj Kumar, Photographer to the place of incident and he took photographs of the floating dead body. After the dead body was taken out of the pond it was again got snapped from that Photographer. Subsequently, the Photographer handed over the photographs along with the negatives to the Investigating Officer. During the investigating of the case, viscera of the deceased was sent to the office of Chemical Examiner, Patiala through Constable Balkar Singh on 28.2.2001 itself and later on a report therefrom was received that no poison was found in the contents. During the course of investigation, the complainant Rattan Singh made a supplementary statement before the Investigating Officer on 14.3.2001 to the effect that Gur Harjinder Singh son of Kartar Singh, husband of Ninderjit Kaur and Kartar Singh son of Teja Singh, father-in-law of Ninderjit Kaur had also been harassing her and were responsible for her death. The accused were arrested in this case. The dowry articles were recovered from the house of the accused, which were taken into police possession.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Additional Chief Judicial Magistrate, Amritsar.

On presentation of challan in the Court of learned Additional Chief Judicial Magistrate, Amritsar, 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 Additional Chief Judicial Magistrate, Amritsar vide order dated 6.7.2001 committed the case to the Court of learned Sessions Judge, Amritsar from where it was entrusted to the Court of learned Additional Sessions Judge, Amritsar.

On receipt of case in the Court, learned Additional Sessions Judge, Amritsar, observing that prima facie charge for an offence under Sections 304-B IPC was disclosed against all the accused, they were charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

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

PW1 Constable Balkar Singh, who on 28.2.2001 while posted at Police Station Chheharta had taken sealed parcel containing viscera of the deceased given to him by MHC Mukesh Kumar for taking it to the office of Chemical Examiner, Patiala depositing it there, deposed in that regard stating that during the period the parcel remained in his custody neither he tampered with the same nor he allowed anybody else to do so.

PW2 Rattan Singh – complainant (father of the deceased) and PW6 Kulwinder Kaur (mother of the deceased) deposed in consonance with the prosecution story.

PW3 Dr.Gurmanjit Rai, Lecturer, Forensic Medicine, Medical College, Amritsar provided the medical evidence stating that on 28.2.2001 while posted as Lecturer in Forensic Medicine and

Toxicology Department, Medical College, Amritsar, he along with Dr.Gaurav Sharma had conducted post-mortem examination on the dead body of Ninderjit Kaur wife of Gur Harjinder Singh, 24-25 years female, resident of village Khapar Kheri and that the dead body had been brought by HC Balkar Singh and Constable Dharam Pal, whereas it was identified by Ram Singh and Bachan Singh. He proved copy of the post-mortem report stating that there was no mark of external injury on the dead body and for the reasons recorded in detail in the post-mortem report Ex.PA, he had deferred his opinion regarding cause of death till the receipt of report from Chemical Examiner. He stated that as per report received from Chemical Examiner, no poison was found in the contents of four parcels of viscera of the deceased sent there. He opined that Ninderjit Kaur had died as a result of Asphyxia, which was caused by drowning and that a few minutes had elapsed between drowning and death and further post mortem was conducted within 12 to 24 hours from the death.

PW4 Balkar Singh stated that he knows PW Rattan Singh whose daughter Ninderjit Kaur was married with Gur Harjinder Singh and that Rattan Singh had given sufficient dowry at the time of marriage; that on 27/28.2.2001 Ninderjit Kaur had died in village Khapar Kheri; the matter was reported to the police and during investigation, he joined the policy party headed by Sarabjit Singh going to the house of accused and dowry articles were recovered in his presence, which were seized by the police officer vide recovery memo attested by him (this witness), Rattan Singh, Manmohan Singh and Constable Pargat Singh.

PW5 Raj Kumar, Photographer deposed regarding taking of photographs of the dead body at the place of occurrence.

PW7 Sukhwinder Singh, Sub-Inspector (Retd.), who had carried out investigation of this case initially and to a major extent deposed in that regard.

Statements of accused were 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 had been falsely involved in this case.

Further, accused Gur Harjinder Singh and Kartar Singh took up the plea that no demand of dowry was ever made.

Further, accused Varinder Singh and Amritpal Singh took up the plea that they have been falsely involved being members of the family.

Further accused Narinder Kaur, Surjit Kaur and Ranjit Kaur took up the plea that no demand of dowry was ever raised nor Ninderjit Kaur was ever maltreated or taunted for bringing inadequate dowry.

In defence evidence, the accused examined as many as three witnesses as per details below.

DW1 Pawan Kumar, Development Organiser and Panchayat Secretary, Gram Panchayat village Khapar Kheri had brought proceeding book of the Gram Panchayat of that village from former Sarpanch and produced the same.

DW2 Balbir Singh, Member Panchayat of Gram Panchayat village Khapar Kheri since the year 1983 stated that he knows the accused being co-villagers and five houses lie in between his house and

that of accused. Going further he stated that accused Gur Harjinder Singh had separate residence from other accused; that in 1995, Amritpal Singh, Varinder Singh, Kartar Singh and Gur Harjinder Singh had partitioned their land with the intervention of village Panchayat in his presence and at that time, a writing was entered in the proceeding book of the village Panchayat. He proved that writing dated 5.7.1995 bearing his signatures in the proceeding book produced by DW1 Pawan Kumar as well as several other persons proving its copy as Ex.DE.

DW3 Dr.Swinder Singh (wrongly numbered as DW2) stated that he had done BAMS from DAV College, Jalandhar and has been working as Medical Officer at Navpreet Nursing Home, Chhaherta since the year 1995. He stated that he had brought the register maintained in their hospital having entries with regard to admission of patients and as per register brought by him, on 4.6.2000 Ninderjit Kaur wife of Gur Harjinder Singh, resident of village Khaper Kheri was admitted in their hospital with history of depression and hysterical behaviour and convulsion; that she remained hospitalized till 7.6.2000 and then she was discharged after having recovered. He stated that he had treated Ninderjit Kaur during the aforesaid period. He proved the entry in the register with regard to admission of Ninderjit Kaur as Ex.DB.

With that defence evidence of accused was closed.

After hearing arguments, learned trial Court convicted and sentenced accused Gur Harjinder Singh as mentioned above, which left him aggrieved and he has filed the present appeal.

Whereas co-accused Varinder Singh, Amritpal Singh –

brothers, Kartar Singh – father, Surjit Kaur – mother, Narinder Kaur and Ranjit Kaur – sister-in-law of Gur Harjinder Singh had been acquitted of the charge framed against them.

I have heard learned counsel for the appellant – accused - convict, learned Assistant Advocate General for the State of Punjab besides going through the record.

Learned counsel for the appellant has argued that in the FIR got recorded by the complainant, he has not named the present appellant and his father Kartar Singh as accused and has not levelled any allegations of harassment with regard to demand of dowry from the deceased and it was after 14-15 days that they were named as culprits by making supplementary statement to the police, which goes to show that it was so done as an afterthought putting a question mark over the authenticity of such allegations levelled against the appellant-convict and his father and furthermore Kartar Singh, father of the appellant/convict has been acquitted by the trial Court on the basis of the same evidence.

The second submission made by counsel for the appellant was that there are no specific allegations with regard to demand of dowry, cruelty and harassment with respect to the appellant/accused and the allegations are quite general lacking material details. He has further contended that the accused by examining DW3 Dr.Swinder Singh (wrongly numbered as DW2) has proved on record that deceased was suffering from hysterical behaviour, depression and convulsion for which she remained hospitalized and for that very reason, she had committed suicide by jumping in the pond and this evidence was

wrongly disbelieved by the trial Court while convicting the accused. While referring to the statement of the complainant Rattan Singh, learned counsel for the appellant has argued that his deposition does not go to prove that the appellant had abetted suicide of Ninderjit Kaur and as regards the depositions of PW6 Kulwinder Kaur, she had made material improvements from her statement made to the police under Section 161 Cr.P.C. She was duly confronted with those, as such much reliance cannot be placed upon her testimony. According to the learned counsel for the appellant, the prosecution has failed to prove its charge against the appellant/accused beyond a shadow of reasonable doubt and necessary ingredients of the offence under Section 304-B IPC were not fulfilled but despite that the trial Court wrongly convicted and sentenced the appellant/accused. He prays that the appeal be accepted and the appellant/accused be acquitted of the charge framed against him.

On the other hand, learned State counsel while stoutly defending the judgment passed by the trial Court and refuting the submissions put forward by learned counsel for the appellant has contended that the prosecution had successfully brought home guilt the appellant/accused for the offence under Section 304-B (1) IPC by bringing cogent, convincing, reliable ocular as well as documentary evidence. The judgment passed by the Court below does not suffer from any illegality and infirmity, as such, it should be upheld and the appeal being without merit should be dismissed.

In this case the appellant has been convicted for the offence under Section 304-B IPC i.e. dowry death. The necessary ingredients of the offence are as under:

“(i) Unnatural death of a married woman caused by burns or bodily injury.

(ii) Death should have taken place between seven years of her marriage.

(iii) The deceased were subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be in connection with demand of dowry.

(v) The cruelty or harassment of the deceased woman soon before her death.

If viewed in context of the present case, the first two ingredients are definitely there since Ninderjit Kaur deceased had died an unnatural death by way of drowning within seven years of her marriage. However, the remaining ingredients are certainly not established. There is nothing on file to show that the deceased was subjected to cruelty or harassment by the appellant/accused, who happened to be her husband or any of his relative that too in connection with demand of dowry soon before her death. As a matter of fact, in the statement got recorded by complainant Rattan Singh, father of the deceased with the police on 28.2.2001, he had not named the appellant as a culprit. It was only after about 14-15 days that he is said to have got recorded his supplementary statement with the police naming the appellant accused and his father being also responsible for death of his daughter. Here it has to be noticed that desirability of prompt reporting of an incident constituting a cognizable offence to the police cannot be under estimated since that provides a true and spontaneous version of

the incident and with the passage of time the element of truth gets diluted and chances of a coloured version being introduced after due deliberation and consultations come out to be there. Therefore, prompt lodging of FIR is desirable. In this case unexplained delay of more than 14 days in naming the appellant/accused as a culprit puts a big question mark over credibility of the prosecution story because if he was involved in the incident, then the complainant would have named him along with the other accused in his initial statement to the police got recorded by him on 28.2.2001, which formed basis for registration of the formal FIR. Furthermore, the prosecution has not been able to bring cogent and convincing evidence to show that any demand of dowry was raised by appellant/accused from the deceased much less alleging that the appellant/accused had been torturing or harassing the deceased so as to compel her to bring more dowry articles from her parents. No details of the dowry actually given at the time of marriage, the details of alleged demand of dowry by appellant/accused from the deceased and her parents, details of such demands having allegedly been met and the details of alleged harassment or torture of deceased at the hands of appellant/accused are there. In that way, the allegations are quite vague and of general type. The evidence adduced by the prosecution in that regard is no better. If we see the evidence produced by the prosecution, PW1 Rattan Singh, complainant, father of the deceased had stated that although sufficient dowry articles including the scooter had been given in dowry but accused were not satisfied with the same and instead a car was demanded by them and on his inability to provide car to accused, they started maltreating and taunting Ninderjit Kaur. These assertions

lack material particulars. No specific instances of alleged demand of dowry have been given. As a matter of fact, there is no cogent and convincing evidence to show that any dowry had in fact been given at the time of marriage. In his cross-examination, PW1 Rattan Singh has stated that while recording his statement under Section 161 Cr.P.C. Ex.PA, he had asked the Investigating Officer to record names of Gur Harjinder Singh and Kartar Singh, which does not appear to be convincing since in his examination-in-chief itself, he had stated that he got recorded his statement Ex.PA with SI/SHO Sukhwinder Singh, however, contents were not read over to him and his signatures were obtained when the papers were blank. But then there is nothing on record to show that the Investigating Officer was favourably inclined towards the accused and was out to demolish the case of prosecution for any ulterior motive. Had it been so, then the complainant would definitely have lodged complaints against such police officer to the higher authorities but admittedly he did not do so. Therefore, his contention that although he had named appellant/accused Gur Harjinder Singh and Kartar Singh but SI/SHO Sukhwinder Singh did not incorporate their names and his signatures were obtained on blank papers does not appeal to logic.

PW6 Kulwinder Kaur though in her statement levelled allegations of demand of dowry against the accused further adding that they had been maltreating the deceased but when confronted with her original statement under Section 161 Cr.P.C., most of such type of allegations were not found to be there showing that she had made material improvements in her statement, putting a big question mark

over her credibility. The prosecution has not examined any other witness in whose presence, the accused might have raised any demand of dowry or had maltreated or tortured the deceased. It needs to be mention here that PW7 Sukhwinder Singh, SI (Retd.) in his cross-examination stated that he had recorded statement of complainant without any alteration or addition on his part of what was uttered by the complainant. Similarly he proved statement of Kulwinder Kaur recorded under Section 161 Cr.P.C. stating that he had recorded the statement as was stated to him by her.

The prosecution has not led any evidence by examining any police officer with regard to recording of supplementary statement of complainant naming appellant/accused and his father as culprits. So the evidence with regard to demand of dowry and harassment by appellant/accused from the deceased and her harassment at his hands on that count is clearly lacking. All the necessary ingredients of Section 304-B IPC were not fulfilled but the trial Court wrongly convicted the appellant/accused though acquitting the remaining accused on the same set of evidence. As it transpires from the record, Ninderjit Kaur had committed suicide. The crucial question to be seen is as to whether accused Gur Harjinder Singh had abetted that suicide of Ninderjit Kaur. To determine that we have to see as to what abetment actually means. Section 107 of the Indian Penal Code deals with abetment. For ready reference, the provision is reproduced as under :-

“107. Abetment of a thing.—A person abets
the doing of a thing, who—

(First) — Instigates any person to do that

thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the

commission thereof, is said to aid the doing of that act.”

The sine qua non of abetment is instigation, which means to goad, urge, forward or to provoke, incite urge or encourage to do an act. The alleged act and conduct on the part of the appellant/accused in this case do not come within the mischief of abetment. Therefore, he cannot be held guilty of abetment of suicide of the deceased.

Although under Section 113-A of the Indian Evidence Act, there is presumption so as to abetment of suicide by married woman but then the crucial ingredient that her husband or such relative of husband had subjected her to cruelty or harassment and under Section 113-B relating to presumption as to dowry death to the effect that such harassment was there that too in connection with demand of dowry is clearly missing in this case. The accused in their defence have led evidence by examining DW3 Dr.Swinder Singh (wrongly numbered as DW2) that the deceased was admitted in Navpreet Nursing Home, Chhaherta as a case of depression and hysterical behaviour besides convulsions. PW1 father of the deceased has admitted in his cross-examination that deceased was hospitalized at Amritsar though he stated that it was for one day. There is possibility of the deceased committing suicide for that reason. From the statement of DW2 Balbir Singh, it stands established that the appellant/accused and his brothers had been separate in their residence.

The prosecution in this case had failed to prove its charge against the appellant/accused beyond a shadow of reasonable doubt but the trial Court by misappraisal of evidence and misinterpretation of law

wrongly convicted the appellant/accused for the said offence.

In the light of above discussion, the appeal stand accepted. The impugned judgment of conviction and order of sentence under appeal as a result thereof are set aside. The appellant – accused is acquitted of the charge for which he had been held guilty and convicted vide the impugned judgment. The appellant is on bail and as such he and his surety also stand discharged from their liability of bail bonds and surety bonds.

Necessary intimation be sent to the quarter concerned.

5.7.2018
Brij

(H.S.MADAAN)
JUDGE

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