

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

**CRA-S-365-SB of 2003
DATE OF DECISION :- July 31, 2018**

Swaran Kaur and others **...Appellants**

Versus

State of Punjab **...Respondent**

CRA-S-2120-SBA-2003

State of Punjab **...Appellants**

Versus

Swaran Kaur and others **...Respondents**

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

Present:- Mr. D.S. Pheruman, Advocate for the appellants
in CRA-S-365-SB of 2003 and
Advocate for the respondents in CRA-S-2120-SBA-2003.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

My this order shall dispose of two appeals bearing CRA-S-365-SB of 2003 filed by Swaran Kaur and others and CRA-S-2120-SBA-2003 filed by State of Punjab.

Swaran Kaur and Assa Singh, both of them being accused in F.I.R. No. 123 dated 19.10.1998 for offence under Section 304-B IPC registered with Police Station Patti, faced trial by Additional Sessions Judge (Adhoc), Amritsar, who vide judgment dated 4.2.2003 convicted them for

offence under Section 498A IPC whereas vide order of the even date sentenced them to undergo rigorous imprisonment for three years each and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo further rigorous imprisonment for two months each.

Briefly stated the facts of the case are that Bhupinder Kaur (deceased) daughter of Ajit Singh got her statement recorded with ASI Baldev Singh while she was admitted in Military Hospital, Amritsar in which she stated that she was married with Jaswant Singh a year prior to occurrence. Jaswant Singh was serving in Army. Assa Singh is elder brother of Jawant Singh whereas Swaran Kaur is his sister; that dowry articles had been given by her parents at the time of marriage but accused were not satisfied with the same and they had been raising demand of more dowry and she was given beatings for that reason. However, her parents and other respectable persons had been sending her back to the matrimonial home. Swaran Kaur used to ask her brother Jaswant Singh to leave Bhupinder Kaur and she would arrange his second marriage in some rich family which would give costly articles in dowry; that about 15 days before the occurrence Jaswant Singh had come on leave and he asked her to bring Scooter or Rs.25,000/- in cash from her parents. When she tried to make him understand that her parents were poor and could not afford to meet that demand then he gave her beatings and forced her to leave the matrimonial home. She went to her parental house and lodged complaint with her parents. Her parents gave her Rs.5,000/-. She returned to the matrimonial home and gave that amount to her husband Jaswant Singh who was not

satisfied. On 15.10.1998 Jaswant Singh had gone to see Swaran Kaur at her village Bath and returned in the evening. He had consultation with Assa Singh-accused that since his wife was not bringing money from her parents to purchase Scooter, therefore, she should be taught a lesson. Then both of them beat her up and forced her to leave matrimonial home at about 6.00 P.M. Fed up with the said maltreatment and cruelty she thought that it was better to die since her parents would not be able to meet the demand of her husband for Scooter, therefore, she returned home and doused her clothes with kerosene oil and set herself on fire. Hearing her cries Jaswant Singh came running from outside the house, however, by that time she had already suffered burn injuries. Jaswant Singh arranged conveyance and took her to Military Hospital, Amritsar getting her admitted there.

On getting information in that regard on 17.10.1998 ASI Baldev Singh from Police Station Sadar, Patti went to Military Hospital, Amritsar and moved an application seeking opinion of the attending doctor regarding the fitness of Bhupinder Kaur to make statement. The doctor opined in negative. Similar position was there on the next day and it was on 19.10.1998 when the doctor declared Bhupinder Kaur fit to make statement. ASI Baldev Singh recorded her statement which was thumb marked by her as token of correctness. ASI Baldev Singh made endorsement on the statement and sent it to Police Station and on that basis formal F.I.R. Ex.PJ/2 was recorded.

After registration of the F.I.R. the matter was investigated. Bhupinder Kaur had succumbed to burn injuries on 25.10.1998. Inquest

proceedings with regard to her death was carried out by the investigating officer, who got the post mortem examination conducted on the dead body. Offence under Section 304-B IPC was added. Jaswant Singh, who was in Army could not be joined in the investigation. The other accused were arrested. After completion of investigation and other formalities challan against Swaran Kaur and Assa Singh was presented in the Court of Illaqa Magistrate, who after making necessary compliance of Section 207 Cr.P.C. of supplying the copies of documents relied upon to the accused free of cost, committed the case to the Court of Sessions and from there it was assigned to Additional Sessions Judge (Adhoc), Amritsar. Swaran Kaur and Assa Singh were charged for an offence under Section 304-B IPC and trial against them proceeded, during the course of which an application under Section 319 Cr.P.C. was filed by the prosecution which was allowed and Jaswant Singh was summoned as an additional accused to face trial along with Swaran Singh and Assa Singh. His presence could not be procured despite issuance of summons and warrants. The trial Court then directed that separate challan against Jaswant Singh be filed. It was so done. A letter was written to Army authorities.

Jaswant Singh was released on bail as per orders passed by this Court. He appeared in the Court. The documents were supplied to him. He was separately charge sheeted under Section 304 B to which he pleaded not guilty. Later on both the cases were clubbed together. The prosecution led evidence orally as well as documentary.

PW1 Lt. Col. Deepak Bahadur stated that while he was on

duty as Medical Officer in Army Hospital, Amritsar Cantt. On 18.10.1998, on that day at about 5.30 P.M. on an application moved by the police officer he had declared Bhupinder Kaur admitted in the hospital as unfit to make statement.

PW2 Capt. Sukhraj Kaur stated that on 17.10.1998, while she was on duty in Army Hospital, Amritsar Cantt. on police enquiry about fitness of Bhupinder Kaur to make statement she had opined that Bhupinder Kaur was not in a fit position to make statement.

PW3 Dr. Gurmanjit Rai deposed that on 25.10.1998 he had conducted post mortem examination on the dead body of Bhupinder Kaur who had suffered 98% ante-mortem burns. The cause of death was septicaemic shock which was sufficient to cause death in the ordinary course of nature. He proved copy of the post mortem report as Ex. PC.

PW4 Sh. Ajit Singh father of deceased supported the case of the prosecution on material aspects. He proved the letter received by him from the deceased as Ex. PD.

PW 5 ASI Baldev Singh, who had conducted the investigation in this case partly deposed in that regard.

PW6 Smt. Joginder Kaur, mother of deceased lent support to the case of the prosecution on material points.

PW7 Dr. Ajay Kumar from Military Hospital, Amritsar Cantt. proved bed head ticket of the deceased.

PW8 MHC Harjinder Singh happened to be formal witness who stated that on 19.10.1998 while he was posted at Police Station Patti an

empty can was deposited to him with ASI Baldev Singh.

PW9 Rishi Ram proved the scaled site plan of place of incident prepared by him as Ex. PW19/A.

PW10 Inspector Swaran Singh stated that he had arrested the accused in this case and filed the challan in the Court.

PW11 SI Kulwinder Singh, who had conducted the investigation partially deposed regarding his role.

Statement of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them but they denied allegations contending that they are innocent and have been falsely involved in this case. As a matter of fact on 15.10.1998 deceased was preparing tea when she accidentally caught fire, she was immediately rushed to the hospital. They denied allegations of prosecution. During their defence evidence accused examined DW1 Mohinder Singh and DW 2 Jaswant Singh. DW/1 Mohinder Singh stated that his house is adjoining the house of the accused and there was no electric supply to the house of the accused.

DW2 Jaswant Singh stated that about four years earlier at 5/6 P.M. when the deceased had suffered burn injuries, at request of Jaswant Singh accused he had taken deceased to the hospital in his tractor trolley and till her death she remained unconscious.

After hearing arguments, the trial Court came to the conclusion that it is not proved if suicide was committed by the deceased rather it is proved that it was a case of accidental death. However, the prosecution

succeeded in establishing Jaswant Singh-husband of the deceased and Assa Singh, his brother as well as Swaran Kaur, his sister used to subject her to cruelty before her death, therefore, charge for offence under Section 498A IPC was established as such accused were convicted for offence under Section 498A IPC.

This judgment had left both the sides aggrieved. Accused convicts have preferred an appeal praying that the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them. Whereas, the State has filed an application under Section 378(3) Cr.P.C. for permission to file appeal which was allowed and leave to appeal was granted. The appeal was admitted and ordered to be registered along with CRA-S-365-SB-2003 filed by the appellants-convicts.

By way of filing the said appeal, the State craved that the accused be convicted for offence under Section 304-B IPC.

It may be mentioned here that appellants Swaran Kaur and Assa Singh have since expired and appeal qua them has abated. The only surviving appellant is Jaswant Singh.

I do not find any illegality or infirmity in the judgment passed by the trial Court holding the accused guilty of offence under Section 498A IPC, whereas not convicting the accused for offence under Section 304B IPC. Of course, sufficient evidence was there justifying conviction of accused for offence under Section 498A IPC, whereas it was not so as regards offence under Section 304B IPC. The prosecution has failed to

bring cogent and convincing evidence to prove the essential ingredients for offence under Section 304B IPC. Therefore, the trial Court rightly acquitted the accused of the said charge and correctly convicted them for offence under Section 498A IPC.

Keeping in view the facts and circumstances of the case, the sentence awarded to the convicts cannot be said to be on higher side and does not call for any interference. Therefore, the appeal filed by Jaswant Singh stands dismissed and appeal filed by Swaran Kaur and Assa Singh stands abated, whereas appeal filed by State of Punjab stands dismissed. Jaswant Singh accused, who is on bail in this case, his bail bonds are cancelled and he be taken into custody for undergoing the sentence. Chief Judicial Magistrate, Tarn Taran to get the arrest warrants issued against Jaswant Singh.

(H.S. MADAAN)
JUDGE

July 31, 2018
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No