

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

CRA-S No.1736-SB of 2004
Date of decision: 23rd September, 2019

Harjit Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Gurveer Sidhu, Advocate as Amicus Curiae
for the appellant.

Mr. Amrik Narwal, Dy. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

Where a married woman dies within seven years of her marriage under suspicious circumstances, will it in every case tantamount to dowry death? This is the precise question that has cropped up before this Court in this appeal filed by the convict husband appellant Harjit Singh.

Undisputedly, the appellant convict Harjit Singh from sikh community fell in love with Kavita (now deceased) and the couple entered into a wedlock on 02.11.1996. It was on 01.01.1999, Kavita suffered burn injuries and was admitted to hospital and thereafter, was referred to PGIMER, Chandigarh where she died on 13.01.1999. Prior to her death, on 01.01.1999 the dying declaration of the deceased was got

recorded by learned Judicial Magistrate 1st Class on police request Ex.PF after medical opinion of fitness Ex.PH by way of Ex.PG by PW7. It is on the statement of PW11 Shakunt Sharma Ex.PM, the present FIR by way of Ex.PL was got registered by MHC Jasbir Singh PW-9. The injured was medico legally examined by PW-4 Dr. Alak Nanda who brought about the injury statement Ex.PC detailing that there were 60-70 percent burn injuries on the body of the deceased who was also photographed by PW-3 Atul Dhawan Photographer by means of negatives Ex.P1 and Ex.P2 and the corresponding positives Ex.P3 and Ex.P4. It was on the statement of PW-5 Dr. Amitabh Lehri who gave certificate Ex.PE/1 on application Ex.PE by way of Ex.PH and Ex.PH/1 declaring Kavita fit to make statement. Accused Harjit Singh, on orders of learned Chief Judicial Magistrate, Ambala dated 14.01.1999 was medico legally examined by PW-1 Dr. Dinesh Kumar Goel by way of MLR Ex.PA showing burn injuries on the forelimbs. Consequent upon death of the deceased, PW-8 Dr.Surinder conducted post mortem examination and proved report as Ex.PJ and the cause of death being due to shock and septicemia as a result of burns. During the course of investigation PW-2 Constable Ram Saran prepared scaled site plan Ex.PB and after the special reports were delivered by PW-6 Constable Ashok Kumar and delivery of parcels by PW-9 Jasbir Singh HC through PW-10 Constable

Dharamvir, reports of laboratory Ex.PO and Ex.PO/1 were received. The investigating officer PW-13 ASI Nar Singh along with independent witnesses, PW-11 complainant Shakunt Sharma and PW-12 Sandip Sharma brother of the deceased, proved recovery of the articles through memo Ex.PS. It is upon completion of investigations, appellant Harjit Singh along with his parents Balwant Singh father and Tirath Kaur mother, were put to trial and vide impugned findings dated 23.08.2004, the Court of learned Sessions Judge, Ambala acquitted accused Tirath Kaur and Balwant Singh, holding accused appellant Harjit Singh guilty and convicting him for commission of offence under Section 498A IPC who was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. That is how the present appeal has come about.

Going through the arguments of Mr. Gurveer Sidhu, Advocate appointed as Amicus Curiae to assist the Court on behalf of the appellant; Mr.Amrik Narwal, Dy. Advocate General, Haryana for the respondent/State and perusal of the records.

The appellant has been found guilty for commission of offence punishable under Section 498A IPC. The same deals with harassment of woman to coerce her to meet unlawful demand of dowry

and for which learned Amicus Curiae has placed reliance on ‘**Girdhar Shankar Tawade vs. State of Maharashtra**’ 2002(4) RCR(Criminal) 589; ‘**Girish Singh vs. State of Uttarakhand**’ (SC) : Law Finder Doc Id # 1543389; ‘**Ramesh Chand vs. State of Himachal Pradesh**’ 2017(2) ILR (HP) 687; ‘**State of Maharashtra vs. Vijay Dhondiram Shinde & others**’ 2018(3) RCR(Criminal) 983; ‘**Babaji Charan Barik vs. The State**’ 1994(2) HLR 506; ‘**State of M.P. vs. Geetabai**’ 1998 CriLJ 2724; ‘**State of Karnataka vs. M.V. Manjunathgowda & another**’ 2003(1) RCR(Criminal) 543; ‘**Randhir Singh & another vs. State of Punjab**’ 2004(4) RCR(Criminal) 740; ‘**Ramilaben Hasmukhbhai Khristi and another etc. vs. State of Gujarat**’ 2002(3) RCR(Criminal) 786; and ‘**Paparambaka Rosamma vs. State of Andhra Pradesh**’ 1999(4) RCR(Criminal) 104. It is vehemently submitted on behalf of the appellant that before presuming even a case of dowry death, it must be established that the woman was subjected either by the husband or his relatives to cruelty or harassment in connection with demand of dowry; submitting further that in the present case it is not so and the deceased in her dying declaration Ex.PG recorded by PW-7 learned Sub Divisional Judicial Magistrate, has categorically stated that it is as a sequel to quarrel between the deceased and her husband in which her in-laws supported the husband, she poured kerosene oil upon herself

after going to the kitchen and set herself on fire and her husband has tried to save her from the same, and has categorically stated further that no-one is responsible for the same. The factum of the husband, the present appellant, making efforts to extinguish the fire is corroborated by PW-1 Dr. Dinesh Kumar Goel, who examined the accused on 14.01.1999 by way of MLR Ex.PA and testified that he found burn injuries on the hands and fingers of Harjit Singh. The dying declaration as has come about, was recorded by the Judicial Magistrate on police request Ex.PF after obtaining medical opinion Ex.PH that the injured was fit to make statement and therefore, lays to rest the fact of any suspicious circumstance or the deceased being in unfit state to make such a declaration.

The learned Amicus Curiae has sought to hammer home the point that there is a dying declaration by the deceased and in the absence of any proof of demand of dowry and cruelty, no offence whatsoever is committed, though the learned State counsel Mr. Amrik Narwal, Dy. Advocate General, Haryana has sought to rebut these submissions on the premise that a young woman had died under suspicious circumstances by fire at her matrimonial home within two-and-a-half years of her marriage, is in itself suggestive of the role of in-laws, as is sought to be projected by the complainant Shakunt Sharma PW-11 and brother of the deceased

PW-12 Sandip Sharma. The testimonies of these two material witnesses, on close perusal show that they are much in contradiction to the dying declaration of the deceased. When confronted with her examination in-chief in the cross-examination, PW-11 states that she has never mentioned about any alleged relationship of the husband with one Reena. Furthermore, the primary admission that has come about through the testimony of this witness is that the accused used to demand ₹50,000/-, when it is there in the testimony of the witnesses that the husband had opened a bank account in the name of the deceased, secured her an insurance policy and has also applied for a plot to be allocated by HUDA in the name of the wife and thus, demand of ₹50,000/- in such an eventuality does not appeal to this Court and appears to be highly unpalusible. Furthermore, the claim of brother of the deceased that the allegations of harassment and cruelty levelled against the accused were never brought to the notice of the Panchayat or to the police and has failed to examine even a single witness to corroborate this fact. Since it is the own stand of complainant, mother of the deceased, and the brother that they were never present at the time of occurrence and their entire testimony has come about on the basis of hearsay, the information which they claim to have gathered after the occurrence, certainly is a

circumstance which creates a doubt in the mind of the Court over acceptability of such a piece of evidence.

The learned State counsel could not point out any incident with date, month, year and the manner in which it has come about, which could fall within the terminology of 'cruelty' as defined under Section 498-A IPC. The accusations of PW-11 and PW-12 are mere general in nature and it needs to be kept in mind that the term 'cruelty' used in Section 498A IPC was created purposely to deal effectively with cases of dowry deaths as well as to discourage demand of dowry, means that in cases where there is allegation of cruelty to a married woman by the in-laws, it does not imply the word 'dowry' and therefore it is matrimonial cruelty to the wife which falls within the ambit of Section 498-A IPC. In such a situation, cruelty is the willful conduct of a person as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life. Since neither PW-11 nor PW-12 could give any cogent or corroborative allegation of cruelty and even from the own dying declaration of the deceased recorded by the Judicial Magistrate, one cannot even loosely construe that there was any such cause of grave injury or cruelty to the deceased which could have been perpetuated on the deceased compelling her to take such a drastic step of ending her life. Even it is nowhere suggestive that the accused had been instrumental in

heaping cruelty upon the deceased with a view to coerce her relatives to meet unlawful demands of any property or valuable security.

In the present case, as is there in the impugned findings, the learned trial Court holds the view that there is no specific allegation against the co-accused Tirath Kaur and Balwant Singh and merely on the basis of dying declaration Ex.PG, has held the appellant guilty for commission of offence under Section 498A IPC, which is purely a misinterpretation of the dying declaration which clearly enumerates that on account of heated discussion between the husband and the wife and the quarrel, she went inside the kitchen and poured kerosene oil upon her body and put herself on fire, is suggestive that it is at the spur of the moment by emotional turmoil, she has taken this step and it was not on account of any coercion or pressure from the side of the husband who rather has tried to save the wife which is well established from the MLR of Harjit Singh appellant which shows burn injuries on his arms and hands. Furthermore, as is observed even by the trial Court that the deceased in her dying declaration has given clean chit to the husband by stating that nobody should be held responsible for her suicide, leaves nothing to doubt that there is not even an iota of evidence to connect the accused appellant with the commission of the offence. Thus, the learned Court below has fallen into an error by holding that because of this

skirmish between husband and wife, the husband is responsible for heaping cruelty on the wife which led to her suicide. In the light of what has been detailed and discussed above, there is nothing substantial to hold that the husband is responsible of treating the wife with cruelty and therefore, offence under Section 498-A IPC does not stand attracted. The impugned findings to this effect are thus, wrong interpretation of evidence and the law, and thus need to be set aside. The instant appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

September 23, 2019
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No