

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

CRA-D-1246-DB-2013 (O&M)

Reserved on : April 29, 2019

Date of Decision: May 16, 2019

Jagbir

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Laghuinder Singh Sekhon, Advocate for the appellant.

Ms. Shubhra Singh, Addl. AG, Haryana.

HARINDER SINGH SIDHU, J.

This appeal is instituted against the judgment and order dated 17.8.2013 rendered by the Additional Sessions Judge, Bhiwani in Sessions Case No.21 of 2012 whereby the appellant, who was charged with and tried for offence punishable under Sections 304-B of the Indian Penal Code (in short 'IPC'), has been convicted and sentenced to undergo rigorous imprisonment for a period of fourteen years and to pay fine of Rs.10,000/- and in default to further undergo simple imprisonment for a period of two months.

2. The case of the prosecution in a nutshell is that on 18.12.2011 on receipt of a telephonic information SI Mahender Singh along with police party reached General Hospital, Hisar and recorded the statement of Mohan Lal s/o Rameshwar r/o Village Kabrel, Police Station Adampur Mandi, District Hisar. Mohan Lal stated that he worked as a labourer. His niece

Kali aged 24/25 years was married with Jagbir s/o Dhan Singh, Nayak by caste r/o Village Gangwa about three years ago. She did not have any child. His niece was living with her husband, mother-in-law and father-in-law at their matrimonial home. For the last 1½ month, she was doing labour work at Balaji Brick Kiln, Karawar. On 18.12.2011 at about 8/9 am, he received information that his niece Kali had died and that her dead body was lying in village Gangwa. On receiving this information, he along with his elder brother Manju and other residents of the village reached village Gangwa and saw that the dead body of Kali was lying in the house. He stated that he was convinced that his niece was beaten to death by her husband Jagbir, mother-in-law Santosh, father-in-law Dhan Singh, sister of her mother-in-law Mahindro Devi w/o Babli and brother-in-law (devar) Beeru s/o Dhan Singh on the night intervening 17/18.12.2011 in the hut of Balaji Brick Kiln at village Karawar. His niece was having injuries on her face, head, back and both the feet. She had been killed for not fulfilling the demand of dowry of the accused.

3. On this statement of the complainant case under Section 304-B IPC was registered. On 22.12.2011 accused Jagbir Singh was arrested. On completion of investigation and the challan was presented.

4. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He claimed that he was innocent and that he has been falsely implicated in the case. Kali had died after a brick *chatha* had fallen on her. However, he did not lead any evidence in his defence.

5. The appellant was convicted and sentenced as referred to

above. Hence, this appeal.

6. We have heard learned counsel for the parties and have gone through the judgment and record.

7. PW1 Constable Naresh Kumar stated that on 19.12.2011 he along with Assistant Sub Inspector Satbir Singh went to General Hospital, Hisar for the postmortem examination on the dead body of Kali. After postmortem examination the doctor handed over a sealed parcel which was taken into possession by Sub- Inspector Mahender Singh vide Memo Ex.PA.

8. PW2 Constable Anil Kumar stated that on 22.12.2011 accused Jagbir was interrogated by SI Mahender Singh in his presence. He suffered disclosure statement Ex.PB that he has kept concealed one Danda which was used in the commission of crime in between wall of the hut and the cemented sheet and he could get the same recovered. In pursuance of the disclosure statement he got recovered one Danda. The same was taken into possession vide recovery Memo Ex.PB/1 after converting the same into a sealed parcel.

9. PW3 Mohan Lal- complainant stated that his niece Kali was married with accused Jagbir about three years back. They did not have any child. Kali used to live with her husband and parents-in-law in her matrimonial home. Before the incident she used to live in village Kirawar at Balaji Brick Kiln where they worked as labourers. About five months back at about 8/8.30 am he received information from his relatives that his niece Kali has been murdered. Immediately thereafter, he along with Rampal, Manju and other villagers went there and found the dead body of his niece in her matrimonial home at village Gangwa. There were several injuries on her body. After enquiry it was learnt that his niece had been murdered

mother-in-law Santosh, father-in-law Dhan Singh, Mahendro (sister of Santosh) and Dewar Beeru. He made statement Ex.PC to the police which bore his thumb impression. He also identified accused Jagbir present in court. In cross-examination he stated that he is an illiterate person. He was aged about 35 years. Kali was the daughter of his brother Pappu (deceased). He stated that after their marriage Jagbir had visited his house with Kali. He could not tell the number of times he visited the complainant's house, but whenever they visited the house of his brother they also came to his house. He stated that after the marriage of his niece Kali no complaint had been filed by the complainant's brother with the police. However, two-three times village Panchayat was convened. On one such occasion he was present when the Panchayat was convened. On other occasions his brother and his relatives were present. The Panchayats were convened in the house of Kali deceased at village Kabrel though he did not remember the date and month when the Panchayats were convened. He also did not remember the date, month and year when demand of dowry was raised by the accused, but this fact was disclosed to him by his brother when he was alive. After the death of his brother his Bhabhi Bala had given a sum of Rs.50,000/- to accused Jagbir for purchase of a tractor as loan. This fact had been disclosed to him by his Bhabhi Bala. Demand of dowry i.e. cooler, motorcycle, fan and rings etc. were raised by the accused after the marriage of his niece, but he did not remember the date, month and the year of the demand of dowry. He denied the suggestion that at the time of working in the brick-kiln one Chatta of about 500 bricks had fallen upon his niece and she had sustained multiple grievous injuries due to which she died.

with accused Jagbir about three years back. Sufficient dowry was given at the time of the marriage. Husband of Kali and members of his family used to demand money and harass her in this connection. Two days before her death accused Jagbir demanded Rs.50,000/- from him but his demand could not be fulfilled. On 18.12.2011 he came to know that his niece Kali had died at a brick-kiln in village Kirawar where they worked as labourers. Upon this he along with Mohan Lal, Rampal and 15-20 persons of the village went to village Gangwa. The dead body of his niece was lying in the house of Jagbir. She was having injuries on her face, forehead, head, back, legs and ribs etc. On enquiry it was learnt that Kali was murdered by Jagbir, Dhan Singh (father-in-law), Beeru (brother-in-law), Santosh (mother-in-law) and Mahendro Devi (sister of mother-in-law of the deceased). In cross-examination she stated that the accused used to beat the deceased. Accused started harassing the deceased after two years of the marriage. No complaint was made to the police. However, Panchayats were convened in this regard. Sharvan doctor, Rampal, Zile Singh, Leelu, Subhash, Mohan were present in the Panchayat. The Panchayat was convened at village Kabrel. Jagbir was on visiting terms with him and his family after marriage. He (PW4) and his family members were also on visiting terms with the accused. No Panchayat was convened at the house of the accused with his family members. He denied the suggestion that Jagbir had not demanded any dowry and that the deceased had died on account of Chatta of 500 bricks falling upon her when she was working at the brick-kiln.

11. PW5 Head Constable Bahadur Singh tendered affidavit Ex.PD

stating that on 30.12.2011 he was handed over the case property in the form

of *Pullandas* along with sample seal and envelope which were handed over to him by the doctor after postmortem examination. After withdrawing the same from Malkhana he handed over the same to Constable Umed Singh for the purpose of depositing in PGIMS, Rohtak where they were deposited on the same day. Till the time they remained in his possession, the same were not tampered with.

12. PW6 Constable Rattan Singh tendered affidavit Ex.PE regarding receipt of sealed parcels, envelopes, *Pullanda* of viscera on 27.12.2011 and deposit of the same with the Chemical Examiner, Karnal on the same day.

13. PW8 Dharambir Singh Patwari Halqa Kirwar stated that on 6.2.2012 he had visited the spot and prepared scaled site plan Ex.PF on the demarcation of SI Mahender Singh.

14. PW9 Head Constable Madan Singh tendered affidavit Ex.PG to the effect that on 19.12.2011 SI Mahender Singh had deposited *Pullandas* of viscera of the deceased, envelope and sample seal in Malkhana out of which the *Pullanda* of viscera of Kali in one envelope along with sample seal were withdrawn on 27.12.2011 and deposited with Chemical Examiner Karnal by Constable Rattan Singh.

15. PW10 Constable Umed Singh stated that on 30.12.2011 the *Pullandas*, envelope and sample seal were withdrawn from Malkhana and were deposited with PGIMS Rohtak on the same day.

16. PW11 SI Mahender Singh stated that on 18.12.2011 he along with other police officials reached General Hospital, Hisar on receipt of telephonic information. There he recorded the statement of the complainant

Ex.PC. After admitting it to be correct complainant Mohan Lal affixed his

thumb impression over the same. He had endorsed the same and sent the written intimation Ex.PC/1 through Constable Naresh Kumar to Police Station Bawani Khera for registration of FIR. He proved the Inquest report Ex.PM prepared by him. On his application Ex.PQ postmortem examination of the body of the deceased was got conducted. Vide memo Ex.PA sealed parcels were taken into possession. He prepared the rough site plan Ex.PR after inspecting the place of occurrence. Accused Jagbir was produced by his relatives and arrested (on 22.12.2011). During investigation, he suffered disclosure statement Ex.PV regarding his involvement and the manner in committing the crime. He got recovered one Danda which was taken into possession vide memo Ex.PB/1. On 6.2.2012 he moved application Ex.PS to the Naib Tehsildar Tosham for preparing scaled site plan. The Halqa Patwari prepared the scaled site plan Ex.PF. He denied the suggestion that the factum of accidental falling of Chatta of bricks on the person of Kali while she was working had come to his notice during investigation and he had deliberately concealed this fact.

17. PW12 Dr.Amit Kumar Medical Officer General Hospital, Hisar along with Dr.Sethi conducted the postmortem examination on the body of Kali on 19.12.2011 at 2.00 pm. The following injuries were found:

“(a) Lacerated wound present on left forehead (2 x 1) cm.

(b) The contusions were present on left side of face, one which was lateral to left eye of size (6x3) cm, second was present on ... region of size (4x2) cm.

(c) Multiple abrasions were present on Right side of face (0.5x0.5) cm to (6.0.5) cm.

(d) Abrasion was present on left lower abdomen of size (3x1) cm.

(e) lacerated wound was present on back of size (2x1) cm in

... midline.

(f) Multiple abrasions were present on back of size (0.5 x 0.5) cm to (4x1) cm.

(g) Lacerated wound was present on Right leg of size (5.0.5) cm.

(h) Multiple other lacerated wound were present with pus formation on Right leg with size (1x0.3) cm to (4x1) cm.

(i) Hair were missing from frontal region of skull.

On dissection of skull following findings were seen :

(a) Sub-dural and Epidural haematoma was present underlying the injury.

(b) Mixed hemorrhagic contusion was also seen in the same area.”

It was opined that the time between injuries and death was variable and between death and postmortem was 0-48 hours. It was also opined that the cause of death would be given after histopathological examination and chemical examination reports.

Later after seeing the chemical examiner report Ex.PJ and the Histopathology examination report Ex.PJ/1 and after coordinating the same with PMR Ex.PL, PW 12 opined that the cause of death in the present case may be due to some kind of asphyxia.

18. PW13 EHC Jagbir Singh stated that on 18.12.2011 ASI Satbir Singh had handed over to him copies of FIR Ex.PN as special report to deliver the same to the learned Area Magistrate and Senior Police Officers.

19. PW14 ASI Satbir Singh stated that on 18.12.2011 on receipt of ruqa Ex.PC/1 through Constable Naresh Kumar he had recorded formal FIR Ex.PN and made his endorsement Ex.PN/1 on the ruqa. The copies of FIR/Special Report were handed over by him to EHC Jagbir Singh.

20. From the above evidence the ingredients of the offence u/s 304-B against the appellant are clearly proved.

21. Both PW3 Mohan Lal- complainant and PW4 Manju have deposed that the marriage of their niece Kali was performed with the accused about 3 years before the incident. This fact has not been controverted by the accused.

22. Her death is also not natural. The PMR indicated a number of injuries on the person of the deceased which included lacerated wound on left forehead, contusions on left side of face, multiple abrasions on right side of face, abrasion on left lower abdomen, lacerated wound on right leg, multiple other lacerated wounds were present with pus formation on right leg. Hair was missing from frontal region of skull. On dissection of skull sub-dural and epidural haematoma was present underlying the injury. Mixed hemorrhagic contusion was also seen in the same area.

23. After coordinating the report of the chemical examiner Ex.PJ and the Histopathology examination report Ex.PJ/1 with PMR Ex.PL, PW 12 Dr. Amit Kumar opined that the cause of death in the present case may be due to some kind of asphyxia.

24. PW3 Mohan Lal complainant in his initial statement Ex.PC recorded on the date of the incident had stated that his niece had been done to death by beating by her husband Jagbir, mother-in-law Santosh, father-in-law Dhan Singh, sister of her mother-in-law Mahindro Devi w/o Babli and brother-in-law (devar) Beeru s/o Dhan Singh on the night intervening 17/18.12.2011 in the hut of Balaji Brick Kiln at village Karawar. His niece was having injuries on her face, head, back and both the feet. She had been

killed for not fulfilling the demand of dowry of the accused. In his

deposition before the Court PW3 had stated that though no complaint had been filed by the complainant's brother with the police however, two-three times village Panchayat was convened. On one such occasion he was present when the Panchayat was convened. On other occasions his brother and his relatives were present. The Panchayats were convened in the house of Kali deceased at village Kavreil though he did not remember the date and month when the Panchayats were convened. He did not remember the date, month and year when demand of dowry was raised by the accused, but this fact was disclosed to him by his brother when he was alive. After the death of his brother his Bhabhi Bala had given a sum of Rs.50,000/- to accused Jagbir for purchase of a tractor as loan. This fact had been disclosed to him by his Bhabhi Bala. Demand of dowry i.e. cooler, motorcycle, fan and rings etc. were raised by the accused after the marriage of his niece, though he did not remember the date, month and the year of the demand of dowry.

25. PW4 Manju in his deposition stated that sufficient dowry was given at the time of the marriage. Husband of Kali and members of his family used to demand money and harass her in this connection. Two days before her death accused Jagbir demanded Rs.50,000/- from him but his demand could not be fulfilled. In cross-examination he stated that the accused used to beat the deceased. Accused started harassing the deceased after two years of the marriage. Though no complaint was made to the police, however, Panchayats were convened in this regard. Sharvan doctor, Rampal, Zile Singh, Leelu, Subhash, Mohan were present in the Panchayat. The Panchayat was convened at village Kabrel. From this is clear that the

continuing soon before her death.

26. The accused in his statement under Section 313 Cr.P.C. had claimed that he was innocent and that he had been falsely implicated in the case. Kali had died after a brick *chatta* had fallen on her. However, he did not lead any evidence in his defence.

27. The learned Trial Court has rightly concluded that the marriage of Kali was solemnised with accused Jagbir three years before the incident i.e. 18.12.2011. The death thus had taken place within seven years of marriage. The death was unnatural. The cause of death was some kind of asphyxia. She had received multiple injuries on her body. The accused had made repeated demands for dowry. The deceased was subjected to harassment on account of dowry soon before her death. The accused was thus guilty of an offence under Section 304-B IPC.

28. The prosecution has proved the case against the appellant beyond reasonable doubt. Accordingly there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 16, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No