

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

CRA-D-946-DBA-2002(O&M)

Date of decision:-15.10.2019

State of Punjab

...Appellant

Versus

Kulwinder Singh and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.A.A. Pathak, Additional Advocate General,
Punjab, for the appellant – State.

Mr.Amit Jhanji, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that formal FIR No.44 dated 26.5.1999 for the offences under Sections 304-B/34 IPC was registered at Police Station Kartarpur on the basis of statement of complainant Smt. Swarn Kaur, which she got recorded with Sub-Inspector Sukhdev Singh (hereinafter referred to as the Investigating Officer/I.O.), SHO of said police station, while the

said police officer along with other police officials was present at bus stop Mustafapur.

Inter alia in the statement the complainant stated that her daughter Baljinder Kaur was married with Kulwinder Singh about four years previously; Mota Singh of village Dode had acted as a mediator in finalization of the matrimonial alliance; her husband Nirmal Singh had expired 6-7 months prior to the incident; at the time of marriage of Baljinder Kaur with Kulwinder Singh sufficient dowry articles were given; when Baljinder Kaur gave birth to a son named Jatinder Paul Singh about 1 – 1 ½ years earlier, then clothes and ornaments were given to accused Kulwinder Singh, his father Harbans Singh and his sister Kulwinder Kaur, however, all the three accused were dissatisfied with such gift articles given; her husband Nirmal Singh had left behind a Will bequeathing his properties to her and his two sons; all the accused had sent Baljinder Kaur to her parental place to demand her share in the land and a car in lieu of share in the landed property; at that time Jaswant Singh son of the complainant and Gurdial Singh, Ex-Sarpanch were present in the parental house of deceased Baljinder Kaur; they stated that her share in the land would be transferred in her name or in the name of her husband and they would purchase a car for her; thereafter, complainant Swarn Kaur, Jaswant Singh, Chain Singh and Gurdial Singh went to the house of accused at village Dode and lodged a protest as to why

they were torturing Baljinder Kaur, though they had given an assurance that demand of dowry would be fulfilled; the talks had taken place about a month prior to the occurrence. The complainant further stated that on 26.5.1999 she and her son Jaswant Singh received a message through Mota Singh, Mediator that their daughter Baljinder Kaur and her minor son Jatinder Paul Singh, aged about 1 – 1 ½ years had consumed poison and had died; that complainant Swarn Kaur, Jaswant Singh and Gurdial Singh went to the house of accused at village Dode immediately and found dead bodies of Baljinder Kaur and Jatinder Paul Singh to be lying there; complainant Swarn Kaur accompanied by Gurdial Singh was proceeding towards Police Station Kartarpur for lodging the report and on the way they came across police party headed by SI/SHO Sukhdev Singh at bus stop Mustafapur at about 7:30 p.m.

The said statement of complainant Swarn Kaur bearing endorsement of Investigating Officer was sent to Police Station Kartarpur for the purpose of registration of formal FIR.

Thereafter the police party accompanied by complainant Swarn Kaur and Gurdial Singh went to the place of occurrence. The police party inspected the spot. The Investigating Officer carried out inquest proceedings with regard to unnatural deaths of Baljinder Kaur and Jatinder Paul Singh, preparing reports in that regard. He recorded statements of witnesses and prepared the rough site-plan of the place of occurrence. He sent both the

dead bodies to Civil Hospital, Jalandhar for the purpose of getting postmortem examination conducted thereon. All the three accused were formally arrested in this case.

On completion of investigation accused Kulwinder Singh and his father Harbans Singh were challaned for the offences under Sections 304-B read with Section 34 IPC and accused Kulwinder Kaur was found to be innocent as a result of investigation and her name was placed in column No.2 of the challan.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Jalandhar, 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 offence under Section 304-B IPC was exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Jalandhar vide his order dated 13.9.1999 committed the case to the Court of Sessions at Jalandhar, from where it was entrusted to the Court of learned Additional Sessions Judge, Jalandhar.

Both the accused Kulwinder Singh and Harbans Singh were formally charge-sheeted for the offence under Section 304-B read with Section 34 IPC and trial against them proceeded, during the course of which, an application under Section 319 Cr.P.C. was filed for summoning Kulwinder Kaur as an additional accused, which was accepted. She was summoned accordingly. She put in

appearance and then formal charge for the offence under Sections 304-B read with Section 34 IPC was framed against all the accused, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as nine witnesses i.e. PW1 Dr.Shashi Chopra, PW2 Swarn Kaur, PW3 HC Jasbir Singh, PW4 Gurdial Singh, PW5 Dalip Singh, Draughtsman, PW6 Jaswant Singh, PW7 Gurmail singh, Patwari, PW8 SI Sukhdev Singh and PW9 ASI Kulwant Singh.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

In defence evidence, the accused had examined Ram Lal as DW1, Swarn Singh as DW2, Mota Singh, Mediator as DW3, Nirmal Singh as DW4 and Harjinder Singh, Sarpanch as DW5.

After hearing arguments, learned Additional Sessions Judge, Jalandhar vide judgment dated 8.7.2002 convicted accused Kulwinder Singh and Harbans Singh for the offence under Section 498-A IPC sentencing them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- each and in

default of payment of fine, they would further undergo rigorous imprisonment for three months each. Whereas accused Kulwinder Kaur was acquitted of the charge framed against her.

Feeling aggrieved by the judgment, State of Punjab has approached this Court seeking special leave to appeal under Section 378(3) Cr.P.C. This Court vide order dated 12.12.2002 granted such leave with regard to accused Kulwinder Singh and Harbans Singh, whereas it was declined with respect to accused Kulwinder Kaur. Both the accused Kulwinder Singh and Harbans Singh were ordered to be summoned throughailable warrants of arrest. They put in appearance through counsel.

We have heard learned counsel for the parties besides going through the record.

Certain facts in this case are not disputed i.e. Baljinder Kaur having got married with Kulwinder Singh accused four years prior to the incident and the couple having been blessed with a son named Jatinder Paul Singh about 1 – 1 ½ years prior to the incident. It is further not in dispute that Kulwinder Kaur is married sister and Harbans Singh is father of Kulwinder Singh i.e. sister-in-law and father-in-law of deceased Baljinder Kaur. Baljinder Kaur had died within seven years of her marriage in the matrimonial home. As per version of the complainant, she was being harassed and maltreated by the accused in connection with demand of dowry. Learned trial Court has dealt with such aspect in detail coming to the conclusion

that no such demand was proved on the file but then Kulwinder Singh and his father Harbans Singh were convicted for an offence under Section 498-A IPC with the following observations:

So far as Kulwinder Singh and his father, Harbans Singh, are concerned, evidence of Swarn Kaur is sufficient to come to this conclusion that they had caused harassment and cruelty to Baljinder Kaur which became the cause of her death. She was so frustrated at their hands that she also brought the life of her minor son to an end. Cruelty and harassment may not be in connection with dowry as discussed above but it was there and therefore these two accused are liable to be convicted under Section 498-A IPC which is lesser offence as compared to Section 304-B IPC with which they are charged.

For ready reference, Section 498-A IPC is reproduced as under:

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty”

means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

A perusal of this provision goes to show that it basically deals with harassment of woman in connection with demand of dowry. It is very strange that on one hand the trial Court gave a clean chit to the accused with regard to demand of dowry but simultaneously convicted Kulwinder Singh and Harbans Singh for the offence under Section 498-A IPC with the observation that they had caused harassment and cruelty to Baljinder Kaur, which became cause of her death. It is specific case of the prosecution that the harassment and cruelty meted out to Baljinder Kaur was in connection with demand of dowry. If for a moment, it is taken that the same was not in connection with demand of dowry, then what was the other reason for causing harassment and cruelty to Baljinder Kaur, has not been clarified by the trial Court. The trial Court was not itself sure about it since it has been observed that

cruelty or harassment may not be in connection with dowry but it was there. This was totally wrong and erroneous approach on the part of the trial Court and the findings recorded are completely contradictory. It may be mentioned here that Kulwinder Singh and Harbans Singh had not challenged the said judgment of their conviction by way of filing an appeal. Therefore, the judgment has become final and binding upon them. The three accused had been charged for the offence under Section 304-B IPC i.e. for causing a dowry death. For ready reference the provision 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.

A perusal of this provision goes to show that all the necessary ingredients i.e. death of Baljinder Kaur having been caused under unnatural circumstances due to poisoning within seven years of her marriage in the matrimonial home stands proved

and conviction of Kulwinder Singh and Harbans Singh for offence under Section 498-A IPC coupled with statement of her brother Jaswant Singh(PW6) and Gurdial Singh (PW4) clearly show that such harassment or cruelty was in connection with demand of dowry. Even otherwise, presumption under Section 113-A of the Evidence Act is there, which provides that when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative and her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Section 113-B of the Evidence Act deals with presumption as to dowry death providing that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Therefore, the necessary ingredients of offence under Section 304-B stood proved against Kulwinder Singh and Harbans Singh and the trial Court by misappraisal of evidence and wrong

interpretation of law came to erroneous conclusion that offence under Section 304-B read with Section 34 IPC was not proved against accused Kulwinder Singh and Harbans Singh.

Learned State counsel has referred to authority **Chandrappa and others Versus State of Karnataka, 2007(2) RCR(Criminal)92** wherein the Apex Court observed that there is no restrictions imposed by the Legislature on the powers of the appellate Court in dealing with appeals against acquittal and when such an appeal is filed, the High Court has full power to reappreciate, review and reconsider the evidence at large and material on which the order of acquittal is founded and to reach its own conclusion on such evidence. The law with regard to power of the Appellate Court while hearing appeal against acquittal was summed up as under:

1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such

phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

Learned counsel for the respondents/accused has also referred to authorities i.e. **Modinsab Kasimsab Kanchagar Versus State of Karnataka and another (2013) 4 Supreme Court Cases 551, Sher Singh @ Partapa Versus State of Haryana, 2015(1) RCR(Criminal)790, Baijnath and others Versus State of Madhya Pradesh (2017) 1 Supreme Court Cases 101, Anil Kumar Gupta Versus State of U.P., 2011(2) RCR(Criminal)292, State of Rajasthan Versus Teg Bahadur and others, (2004) 13 Supreme Court Cases 300** and **Anil Kumar and others Versus State,**

2000(2) Crimes 397. However, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

The judgment passed by the trial Court is not sustainable being perverse and calls for interference. Therefore, the conviction of accused Kulwinder Singh and Harbans Singh recorded under Section 498-A IPC is converted to one under Section 304-B IPC.

It is stated that accused Harbans Singh has since expired, a photocopy of his death certificate in that regard has been placed on file by learned counsel for the respondents/accused. This fact is not controverted by learned State counsel. Under the circumstances, accused Harbans Singh cannot possibly be sentenced.

However, with regard to accused Kulwinder Singh, keeping in view all the facts and circumstances and that about more than 20 years have elapsed from the date of incident and as per custody certificate filed by learned State counsel, he has undergone 3 years, 2 months and 11 days of total sentence and he is not shown to be involved in any other criminal case, we are of the view that ends of justice would be squarely met if he is sentenced to minimum imprisonment of seven years provided for offence under Section 304-B IPC.

Therefore, accused Kulwinder Singh is sentenced to

undergo rigorous imprisonment for seven years.

A copy of this judgment be sent to Chief Judicial Magistrate, Jalandhar and he is directed to issue arrest warrants against Kulwinder Singh so as to get him arrested to make him undergo the sentence imposed upon him.

15.10.2019
Brij
(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

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