

In the High Court of Punjab and Haryana at Chandigarh

**CRA-D-63-DBA-2003
Date of Decision: 21.1.2019**

State of Haryana

.....Appellant

Versus

Kulwant Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Ms. Kirti Singh, DAG, Haryana.

Leave to appeal already declined
against respondent No. 1-Kulwant Singh.

Respondent No. 3-Sahej Ram @ Sadhu Ram died on 26.12.2005.

Mr. B.S.Saroha, Advocate for respondent No. 2.

HARNARESH SINGH GILL, J.

The present appeal has been preferred by the State against the acquittal of respondents vide judgment dated 10.7.2002 passed by Additional Sessions Judge (Adhoc), Hisar in case FIR No. 805 dated 31.12.1998 under Sections 304-B, 498-A, 34 IPC, Police Station Sadar, Hisar. Present appeal only survives qua Mayawati-wife of Sahej Ram, mother-in-law of Jagmati (deceased).

FACTS

The prosecution story, in brief, is that as per the statement recorded by Chiranji Lal, his daughter Jagmati was married to Dharambir-appellant on 7.3.1996. At the time of *Bana* ceremony, Rs. 11,000/- were given and the same amount was given at the time of marriage. Jagmati went to her in-laws house and right on the date of marriage, Dharambir (son-in-law) Sahej Ram (father-in-law), Mayawati (mother-in-law) and Kulwant

Singh (brother-in-law) showed unhappiness and taunted Jagmati for

bringing less dowry. On 8.3.1996 (next day), the marriage of his two sons namely Ram Singh and Ramesh was to be solemnized but Dharambir did not attend the marriage as Jagmati brought less dowry and she did not bring Rs. 21,000/- as demanded by them but later Jagmati went to her in-laws house. After some days, Ramesh (brother of Jagmati) went to the in-laws house of his sister. Then Jagmati told Ramesh regarding ill-treatment with her by her in-laws family. Ramesh brought all the facts in the knowledge of her father Chiranji Lal. Later Chiranji Lal sent her elder son Ramesh who brought Jagmati to her parental house in January 1997. Sahej Ram and family were adamant and were asking for dowry. Panchayat went to persuade the in-laws family of Jagmati thus, Dharambir took Jagmati to her matrimonial home but she was again given beatings and Jagmati was brought back to her parental house. That after some time the matter was again settled and Dharambir and his brother-in-law-Kulwant came and took Jagmati to her matrimonial home. On 30.12.1998, Mange Ram and Bhoop Singh went to the house of Chiranji Lal and informed that Jagmati has consumed poison. The complainant along with his brother Dharambir went to the in-laws house of her daughter Jagmati where her mother-in-law Mayawati informed that Jagmati has been taken to village Meham Kheri. On enquiry from village, Chiranji Lal came to know that Jagmati was compelled to consume spray chemical (Monochrotophos-an organo phosphorus pesticide) by her husband Dharambir, Sehaj Ram (father-in-law), Mayawati (mother-in-law) and Kulwant Singh (brother-in-law) on account of bringing less dowry. From Meham Kheri, Jagmati was taken to Medical College, Rohtak. That on the complaint of Chiranji Lal, an FIR No. 805 dated 31.12.1998, under Sections 304-B, 498-A, 34 IPC was

registered at Police Station Sadar Hisar.

That after investigation of case, challan under Section 304-B, 498-A, 34 IPC against Dharambir (husband of the deceased), Sehaj Ram (father-in-law), Mayawati (mother-in-law) and Kulwant (brother-in-law) was presented and the case was committed to the Court of Sessions vide order dated 14.5.1999.

Charge under Section 304-B IPC was framed against the accused. All the accused pleaded not guilty and claimed trial.

Prosecution entered into evidence and examined nine witnesses i.e. PW-1 Constable Telu Ram, PW-2 Head Constable Randhir Singh, PW-3 Constable Sombir Singh, PW-4 Tilak Raj, PW-5 Chiranji Lal (father of the deceased), PW-6 Ramesh Kumar (brother of the deceased), PW-7 ASI Raghubir Singh, PW-8 Constable Ganga Dutt and PW-9 Dr.R.P.Caloniya.

Vide judgment dated 10.7.2002 passed by Additional Sessions Judge, accused Dharambir was convicted under Section 304-B IPC whereas accused-respondents to Sahej Ram, Mayawati and Kulwant were acquitted of the offence charged.

Vide order dated 16.1.2003, leave to appeal was declined to respondent No. 1-Kulwant Singh who is the brother-in-law of deceased Jagwati and leave to appeal was only granted to Mayawati and Sahej Ram i.e. respondents No. 2 and 3, respectively.

During the course of arguments, it was brought to the notice of this Court that Sahej Ram @ Sadhu Ram son of Musadi Ram has passed away during the pendency of the appeal i.e. on 26.12.2005. Hence, the appeal qua respondent No. 3- Sahej Ram alias Sadhu Ram stands abated and is, thus, dismissed.

Ordered accordingly.

ARGUMENTS

Learned counsel for the appellant-State at the outset argued that Jagmati died within seven years of marriage and there was specific demand by the in-laws family of Jagmati. It is further stated that PW-5, Chiranji Lal, father of deceased Jagmati and her brother PW-6 Ramesh Kumar have categorically stated before the trial Court regarding beatings given to Jagmati and demand of dowry.

Per contra, learned counsel for the respondents opposed the present appeal and has submitted that the allegations regarding demand of dowry are not specific. PW-5 Chiranji Lal, father of the deceased has stated that Sahej Ram demanded Rs. 21,000/- who has unfortunately died. No demand was ever made by Mayawati, who is now more than 70 years of age. Learned counsel for the respondents has placed on record the voter card of Mayawati, issued on 29.10.1994 which is taken on record as X.

CONSIDERATION

With the assistance of counsel for the rival parties, we find that Jagmati consumed poison/spray and died on 30.12.1998. PW-5 Chiranji Lal has stated that PW-6 Ramesh Kumar went to meet his sister Jagwati in her in-laws house. It was Ramesh Kumar who informed that she was subjected to cruelty and was given beatings by the accused because of inadequate dowry. It is further stated that this factor was told to Chiranji Lal by Ramesh Kumar whereas while appearing as PW-6, Ramesh Kumar in his cross-examination admits that the police has not recorded his statement under Section 161 Cr.P.C.

The examination-in-chief of PW-5 Chiranji Lal is reproduced

hereunder:-

“Jagmati my daughter was married to Dharambir on 7th of March, 1996 according to Hindu Vaidik Rites. I gave dowry to my daughter as per my financial capacity. In the marriage, I had given 11,000/- each as Daan to my daughter but Sahaj Ram her father-in-law accused wanted the amount to be 21,000/- Rs. The marriage was held in village Budhsaily.

2. *On 8.3.1996 marriages of my two sons namely Ramesh and Ram Singh were to be performed. None from the family of my daughter came to attend the marriage as they told Jagmati that dowry items were very less and in protest they would not attend the marriage. My daughter however, attended the marriage.*

3. *During one day's stay of Jagmati, she told me that she was taunted by the accused for bringing inadequate dowry.*

4. *My daughter went to her matrimonial home next day of the marriages of my sons. Thereafter after about 13/15 days my son Ramesh had gone to meet her. My daughter told Ramesh that she was subjected to cruelty by giving beatings to her on the point of dowry by the accused. Ramesh came and told me about this fact. Then Ram Singh my son went to bring Jagmati and brought her at my house.*

5. *In the month of January, 1997 a panchayat consisting of myself, Mohan Lal, Dharambir Singh and Amil Lal went to the village of the accused and tried to console them and requested to bring Jagmati who was staying with me. But the accused did not agree. Thereafter, in the month of November, 1998 again a panchayat was taken by me consisting of abovenamed persons and requested the parties i.e. the accused to take Jagmati. We tried to console them. Finally they agreed to take my daughter.*

6. *A month prior to the death of Jagmati (death had taken place on 30.12.1998) Dharambir and his brother-in-law Kulwant took my daughter to her matrimonial home. The second panchayat held in the year 1998. Kulwant accused had*

dared saying that Dharambir has 18 acres of land so he would remarry him.

7. *On 30.12.98 Mange Ram and Bhup Singh of village Boora came to my village and told me that Jagmati had consumed insecticide and asked me to accompany them. Accordingly I went with them. Mayawati met me there. She told that Jagmati had been taken to village Meham Kheri. Thereafter we went to village Maham Khedri village of Kulwant Singh. At Meham Kheri, wife of Kulwant told that Jagmati had been taken to Rohtak by the accused. Then we came to our house. After collecting some money, we again went to Rohtak in the hospital and enquired about Jagmati. On enquiries made by us, we came to know that Jagmati was admitted in the hospital suspected case of having consumed insecticides. But by that time, Jagmati had died. Thereafter a police official of Hisar police met us in the hospital. I dictated my statement to him. It is Ex. P5. It bears my signatures.”*

In the cross-examination, PW-6 Ramesh Kumar deposed as under:-

“I had not accompanied my father on 30.12.98. Police had not recorded my statement in this case. However, I was questioned by the police. I had gone to Rohtak with my father on 1.1.1999. When I was told by my sister that she was being subjected to cruelty by the accused I left her there and came to my village. When my brother had gone to take my sister she was sent by the accused with him. When she came with my brother she stayed at our house for about 2/3 months. In all, my sister stayed at her matrimonial home for about 3/4 months. Myself, my brother and father had gone to the matrimonial home of Jagmati on 2/3 occasions. Dharambir had come to our house twice only. Last panchayat was held 1-1/2 months prior to the death of Jagmati. My sister had told to all the family members that she was being tortured by the accused on the point of

bringing inadequate dowry on her visit to our house after the marriage. It is incorrect that no demand of dowry was ever made by the accused nor on that account Jagmati was ever subjected to cruelty. It is further incorrect that Jagmati had never complaint to me or any other family members about the conduct of the accused. It is further incorrect that I have deposed falsely on the asking of my father.”

Taking into consideration the above factors, it was essential for Ramesh Kumar to have his statement recorded under Section 161 Cr.P.C. which would have become part of the charge-sheet. The charge-sheet is presented under Section 173 Cr.P.C. and copy of the same is supplied to the accused so that he would know exactly what case has been built up by the prosecution against him. Thus, it becomes essential pre-requisite document for a fair trial. If such statement is not recorded, and later on witness steps into the witness box for asserting the prosecution case, there is suspicion in the mind of the Court in the absence of satisfactory explanation.

Thus, it has been rightly noted by the trial Court that there was no evidence regarding any demand of dowry. The judgment passed by the trial Court is well reasoned. Hon'ble Supreme Court has laid down principles regarding powers of Appellate Court while dealing with the appeal against the order of acquittal in the case of ***Chandrappa and others versus State of Karnataka 2007 (2) R.C.R. (Criminal) 92*** which read as under:-

“From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(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 emphasize 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."

Similar view has been taken by the Hon'ble Supreme Court in

Nepal Singh versus State of Haryana 2009 (3) R.C.R. (Criminal) 418

which reads as under:-

“As was rightly noted by the trial court there was no evidence towards the claim regarding any demand of dowry. That being so the High Court ought not to have interfered with the well reasoned judgment of the trial court directing acquittal. The reasoning of the High Court that something must have happened and otherwise deceased would not have committed suicide is clearly indefensible. That certainly could not have been a reason to set aside the trial Court's judgment of acquittal.”

Thus, it cannot be accepted that there was any demand by Mayawati. Moreover, as per the voter card issued on 29.10.1994, the age of respondent No. 2-Mayawati is 50 years which now comes to 74 years.

Taking into consideration all facts and circumstances of the present case, we do not find any perversity in the findings recorded by the Court below qua respondent No. 2-Mayawati. In the result, we make the following order:-

ORDER

- (i) CRA-D-63-DBA-2003 is dismissed.
- (ii) The impugned judgment and order dated 10.7.2002 passed by Additional Sessions Judge (Adhoc), Hisar is upheld qua respondent No. 2-Mayawati.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

January 21, 2019
Gurpreet