

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

**(1) CRA-D-943-DBA of 2002 (O&M)
Date of Decision: 17.10.2019**

STATE OF PUNJAB

.....Appellant

VS.

SARABJIT KUMAR AND OTHERS

.....Respondents

(2) CRA-S-711-SB of 2002 (O&M)

SARABJIT KUMAR

.....Appellant

VS.

STATE OF PUNJAB

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice H.S. Madaan.**

Present : Mr. Ashok Kumar Singla, Sr. DAG Punjab
for the appellant(s) in CRA-D-943-DBA-2002 &
for the respondent in CRA-S-711-SB-2002.

Mr. Gurcharan Dass, Advocate,
for the respondents in CRA-D-943-DBA-2002 &
for the appellant(s) in CRA-S-711-SB-2002.

Ms. Divya Godara, Amicus Curiae,
on behalf of respondents in CRA-D-943-DBA-2002,
on behalf of the appellant(s) in CRA-S-711-SB-
2002.

JITENDRA CHAUHAN.J.

This judgment shall dispose of aforementioned two
appeals, CRA-D-943-DBA-2002 filed by the State of Punjab for
convicting respondent Nos. 2 to 4 for the offence punishable under
Section 304-B IPC and for converting the conviction of
accused/respondent No. 1-Sarabjit Kumar from offence under Section

306 IPC to 304-B IPC, Criminal Appeal No. CRA-D-711-SB of 2002 filed by accused/appellant, Sarabjit Kumar against the judgment of conviction and order of sentence dated 09.04.2002 passed by Additional Sessions Judge, Ludhiana vide which the appellant, Sarabjit Kumar was convicted under Section 306 IPC and sentenced to undergo R.I for a period of 6 years and to pay a fine of Rs. 2500/- in default of payment of fine, RI for another six months was ordered.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph Nos. 2 and 3 are reproduced as under:-

“2. The basis of the FIR is the statement Ex. PA got recorded by complainant/PW1 Smt. Jatinder Kumari mother of the deceased bride, with PW9 SI Harjinder Singh, the Investigating Officer on August 6, 2000 at 5.45 PM at Mohalla Guru Teg Bahadur Mhairwali Gali, Jagraon (where the complainant and her family resides) which is to the following effect:-

3. The complainant is resident of House No. 1717/33, Guru Teg Bahadur Nagar Mahisawali Gali, Jagraon. She is employed as teacher in Senior Secondary School at village Galib Kalan. Her husband Rajinder Lal is employed as a teacher in R.K.High School, at Jagraon. The complainant had two children. The elder is PW2 Rajesh Khanna who runs a chemist shop at Sherpur road Jagraon and the second child was deceased Suman Lata. The deceased was married with accused Sarabjit Kumar on August 31, 1998 at Goraya, Distt. Jalandhar. A daughter was born to the deceased out of this marriage who was aged about 1 year at the time of her death. The

parents of the deceased had given sufficient dowry as per their capacity at the time of marriage. However after 2 or 3 months of the marriage, all the four accused started taunting the deceased by saying that she had brought meagre dowry and that her parents had not given the complete dowry articles as demanded by them at the time of marriage. They started harassing the deceased in some other manners as well. The deceased informed about this maltreatment at the hands of the accused to the complainant when she came to see her. The complainant assured the deceased that whatever she wanted she should tell her and that she would arrange it. She then told the complainant that the accused were demanding a washing machine. Ultimately in January, 1999, two/three days earlier to the Lohri festival, the complainant visited the house of the accused and gave customary gifts to the deceased. She also paid a sum of Rs. 10,000/- to accused Surinder Kumar for purchase of a washing machine and told the accused to purchase the washing machine themselves. The remaining three accused were also present at that time. The complainant also requested the accused at that time not to further harass the deceased who was expecting a delivery. The accused also put pressure on the complainant that the delivery of the deceased should take place in her parents house and sent the deceased to the house of the complainant at Jagraon, despite the fact that as per the custom prevalent in the brotherhood of the complainant, the deliveries are to take place in the house of the in-laws of the bride. At the time of birth of Mini, the daughter of the deceased, the complainant gave customary gifts to the deceased beyond her capacity. However, the in-laws of the deceased were not happy. The deceased went to

her matrimonial home three months after the death of her daughter. All the four accused again started harassing the deceased. The deceased used to complaint to the complainant on telephone that the life had been made a hell for her by the accused. The deceased also requested the complainant to get her separated from accused Surinder Kumar and Goldi Takkar, because they were daily passing such remarks on her which were beyond tolerance. The husband of the complainant accompanied by his relations Satish Kumar, Ashok Kumar and Pawan Kumar went to the house of the accused and got separated the residence of the deceased from the other accused. The deceased and accused Sarabjit Kaur were given a room on the first floor (Chaubara) for their residence while accused Surinder Kumar and Goldi Takkar started residing on the ground floor. However, accused Sarabjit Kumar still remained obedient to accused Goldi Takkar and despite the separation the harassment of the deceased at the hands of the accused did not stop. The accused were running a factory jointly and told the deceased to bring Rs. 50,000/- from her parents to augment their business. The deceased informed the complainant of this fact on telephone. The complainant talked to her husband and son and informed the deceased that it was beyond their capacity to pay that much amount. This happened in May, 2000. After some days another telephone call was received from the deceased by the complainant to the effect that the accused were telling her that in case their aforesaid demand could not be met, it would not be possible rehabilitate her in her matrimonial home. A month thereafter accused Sarabjit Kumar gave a telephone call to the complainant that he was to leave for Delhi and was to

stay there for 7 or 8 days and that the deceased should be taken to Jagraon. On June 28, 2000, husband of the complainant went to Goraya and brought the deceased to Jagraon. Ten days thereafter, the deceased made a telephone call to accused Sarabjit Kumar at Goraya requesting him to take her back. However, accused Sarabjit Kumar told her that she should make arrangement of Rs. 50,000/- and only then he would come to bring her. This fact was conveyed by the deceased to the complainant. After consultation the complainant and her family members assured the deceased. However, thereafter the deceased started remaining under depression. On August 1, 2000 the complainant went to attend her School as usual and her husband also went to attend his school. Her son Rajesh Khanna went to attend his Chemist shop. At about 1.30 PM Pawan Kumar servant of the complainant went to her house to take lunch meals. He rang the door bell and knocked the door but there was no response from inside. He then opened the gate and entered the house and went inside the bedroom and saw that the deceased was lying dead on the floor. Pawan Kumar servant then gave information about this fact to Ashok Kumar nephew of the complainant who in turn informed her husband and her son. They came to her house. The complainant also followed them and found a number of persons collected in her house and saw that the deceased was lying dead on the floor. She reported that due to harassment at the hands of the accused and due to demand of money by the accused the deceased lost her life.”

After completion of investigation, challan/report under

Section 173 Cr.P.C was presented in the Court. As the offence under

Section 304-B IPC is triable by Court of Session, the case was committed to the said Court.

Charge under Sections 304-B IPC and in the alternative under Section 306 IPC was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Jatinder Kumari, PW-2 Rajesh Khanna, PW-3 HC Devinder Singh, PW-4 Dr. Hari Kishan Singla, PW-5 Constable Ranjit Singh, PW-6 Tarsem Lal, PW-7 SI Rajesh Kumar, PW-8 Shingara Singh, PW-9 SI Harjinder Singh and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication. Jatinder Kumari mother of Suman Lata suffered a fracture on her arm and on her request, Suman Lata went to Jagraon to take care of her. On 01.08.2000 a message was received about the death of Suman Lata at her parental house. The accused attended the cremation and had no role in the death of Suman Lata.

No evidence in defence was led.

After appraisal of evidence, the learned trial court vide impugned judgment of conviction and the order of sentence, convicted accused-Sarabjit Kumar under Section 306 IPC and sentenced him as narrated above. Further, accused Tarlok Singh Takkar, Goldi Takkar

and Surinder Kumar were acquitted of the charges framed against them.

Feeling dissatisfied with the impugned judgment and the order, CRA-D-943-DBA-2002 has been filed by the State of Punjab for conversion of conviction of Sarabjit Kumar from offence under Section 306 to 304-B IPC and for convicting Tarlok Singh Takkar, Goldi Takkar and Surinder Kumar under Section 304-B IPC.

CRA-S-711-SB-2002 has been filed by Sarabjit Kumar seeking acquittal under Section 306 IPC.

It is contended by the learned counsel for the appellant-Sarabjit Kumar that as per the case of the prosecution, a demand of Rs. 50,000/- was raised by the appellant. However, the demand was in connection with the business of the appellant which cannot be said to be a demand of dowry, therefore, offence under Section 304-B or under Section 306 IPC is not made out. It is further contended that it is an admitted position on record that deceased Suman Lata died at her parental home at Jagraon. She had gone there on 28.06.2000 to take care of her mother, Jatinder Kumari who had suffered a fracture on her arm. On 01.08.2000 Suman Lata died due to consumption of Potassium Cyanide. In such circumstances, it cannot be said that the deceased had died due to any abetment made by the accused-appellant or she was subjected to harassment to fulfil illegal demand of dowry.

On the other hand, it is argued by the learned State counsel that at the first instance, the trial Court had committed a grave error in

acquitting Tarlok Singh Takkar, Goldi Takkar and Surinder Kumar of the offences punishable under Section 304-B IPC and further fell in error in acquitting accused Sarabjit Kumar of the offence under Section 304-B IPC. All the ingredients of the offence under Section 304-B IPC were made out as the deceased had died under unnatural circumstances within a period of 7 years from the date of her marriage and soon before her death, there was a demand of Rs. 50,000/-. The trial Court fell in error in not invoking the provisions of Section 113-B of the Indian Evidence Act, 1972. The deceased was subjected to cruelty in connection with demand of dowry. It is further contended that had the deceased been residing happily with the accused, there would have been no occasion for the deceased to end her life. The mere fact that the deceased had died at her parental home does not absolve the accused from their liability as the impact of harassment is to be seen and not the place of death.

We have heard the learned counsel for the parties and have gone through the case file.

The factum of marriage is not in dispute. The deceased was married with accused Sarabjit Kumar on 31.08.1998. As per the case of the prosecution, while going to Delhi, accused Sarabjit Kumar made a telephonic call to the parents of deceased-Suman Lata to take her to their house till he returns from Delhi. However, this assertion of the prosecution has been specifically denied by the accused. The stand of the accused/appellant Sarabjit Kumar is that as Jatinder Kumari,

mother of Suman Lata suffered a fracture on her arm, a call was received from her parents to send her at her parental home enabling her to take care of her mother. Though, there is a specific deposition made by PW-1 Jatinder Kumari mother of the deceased that when her daughter made a call to her husband to take her back, a demand of Rs. 50,000/- was reiterated by the accused- Sarabjit Kumar but the fact remains that when Suman Lata died on 01.08.2000 at her parental home, there was not even a whisper of either with regard to demand of dowry or cruelty meted out to her at the hands of the accused. On the day of death of Suman Lata, i.e. 01.08.2000 statements of Rajinder Lal, father of deceased and Rajesh Khanna, brother of the deceased were recorded by the Police under Section 175 Cr.P.C during inquest proceedings wherein both of them specifically stated that they did not know anything about the death of Suman Lata or the cause of her death. This shows that the story of demand of dowry was cooked up after due deliberations and consultations.

Not only that, as noticed above that the deceased had died at her parental home and that PW Rajinder Lal father of the deceased was very conveniently given up by the learned Public Prosecutor. He was one of the best witnesses to narrate the circumstances leading to death of Suman Lata. Withholding of said PW Rajinder Lal casts serious doubt on the veracity of the prosecution case. No doubt, it is the quality of evidence and not the quantity which matters. However, the evidence led by the prosecution does not inspire confidence of the

Court. The trial Court rightly exonerated accused Tarlok Singh Takkar, Goldi Takkar and Surinder Kumar of the charges framed against them since there is nothing on record to conclude that they ever subjected the deceased to cruelty in connection with demand of dowry or for that matter to abet the commission of suicide by her. It is a common tendency to implicate all the family members of the husband.

As far as the role attributed to accused/appellant Sarabjit Kumar, husband is concerned, the learned trial Court rightly acquitted him of the charge under Section 304-B IPC but committed grave error in convicting him under Section 306 IPC. Section 107 of the IPC reads thus:-

“107. Abetment of a thing.---A person abets the doing of a thing, who-

First.-- Instigates any person to do that thing;or

Secondly.-- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-- Intentionally aids, by any act or illegal omission, the doing of that thing.”

The ingredients of abetment are clearly missing in the present case. By no stretch of imagination, the accused/appellant Sarabjit Kumar/husband can be said to have abetted the deceased to commit suicide. No doubt, Suman Lata lost her life on 01.08.2000. It cannot be lost sight of the fact that the FIR was lodged after six days of the death of Suman Lata. The delay in lodging FIR is not *per se* fatal

but it is to be seen in the light of the attending circumstances. In the case in hand, the inordinate delay of six days in lodging the FIR remains unexplained coupled with non-examination of the father of the deceased, Rajender Lal create dent in the case of the prosecution. The prosecution has to stand on its own legs and it cannot take the benefit of the weakness of the defence. The prosecution has miserably failed to prove its case against the accused. By extending the benefit of doubt, the accused-appellant Sarabjit Kumar is hereby acquitted of the charge framed against him. Consequently, the appeal filed by the State is dismissed and that of the accused-appellant Sarabjit Kumar is allowed.

Photocopy of this order be placed on the file(s) of other connected case(s).

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

17.10.2019
SN

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