

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

Criminal Appeal No. 572-DB of 2003

Date of Decision: 06.01.2022

Balkar Singh

... Appellant

versus

State of Punjab

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. A.S. Virk, Advocate with
Mr. Nagar Singh, Advocate
for the appellant.

Mr. H.S. Grewal, Addl.A.G, Punjab.

Mr. A.S. Gill, Advocate
for the complainant.

RITU BAHRI, J.

This appeal is against the judgment and order dated 14.06.2003/02.07.2003 passed by the learned Addl. Sessions Judge, *Ad hoc*, Patiala (herein after to be referred as 'the trial Court'), whereby appellant, Balkar Singh, was convicted under Section 304-B IPC and sentenced to undergo rigorous imprisonment for twelve years, whereas, accused Labh Singh and Gurmel Kaur were acquitted by extending benefit of doubt.

Brief facts of the present case as noticed in para No.2 of the judgment passed by the trial Court are as under:-

“2. In brief the prosecution case is that Dilbagh Singh s/o Late Dya Singh r/o Village Dhareri Jattan, complainant has two sisters. His younger sister namely Rajinder Kaur was married with accused Balkar Singh on 5.12.1999. At the time of marriage of Rajinder Kaur a handsome dowry was given as per their status and reach. His sister stayed in her in-laws house for two months.

Then as per custom, he brought his sister for a shortwhile at home. His sister and his wife Baljit Kaur told him that Rajinder Kaur's husband Balkar Singh, mother-in-law Gurmel Kaur and father-in-law Labh Singh are taunting her for not bringing car instead of Motor-cycle. Besides that her father-in-law was grumbling as to why he has not been gifted with gold bangles instead of ring. He told his sister that he will take up the matter with them in Panchayat. He told the matter to his uncle Harnek Singh. On 12.3.2000 Balkar Singh came there and said that he has come to take Rajinder Kaur alongwith him. He took up the matter of demands with him but Balkar Singh assured that demands will not be extended now. On that Dilbagh Singh persuaded his sister to accompany her husband to her in-laws house and if the occasion so arises, he will take up the matter in Panchayat.

3. At about 4.00 PM, Balkar Singh took Rajinder Kaur on his Motor-cycle for his house. At about 7.00 PM Sucha Singh s/o Harnek Singh came to Dilbagh Singh's house and told him that he was going to village Narru on cycle on the pavement of canal, when he saw a Hindu Gentleman standing besides a young girl there. A motor cycle was seen parked near them. Before he reached there, said young boy pushed the girl into canal and thereafter fled away on his Motor-cycle from there. He signalled him to stop his motor-cycle but he did not. He recognized him as he was Balkar Singh, his brotherin-law. This news spread like fire in the village. Dilbagh Singh along with other persons reached at Narwana branch canal in the area of village Narru but could not trace out Rajinder Kaur from anywhere. He reported the matter to the police alleging that he is dead sure that his sister Rajinder Kaur has been killed by throwing her into the canal for non-fulfilling the dowry demands of Balkar Singh, Gurmel Kaur and Labh Singh. During investigation, accused Gurmel Kaur and Labh Singh were found to be innocent. On conclusion of investigation, challan in hand was submitted against Balkar Singh accused for commencing trial and commitment proceedings are in consequence thereof.

4. Taking into consideration prima facie material on file firstly Balkar Singh accused was charged u/s 304-B IPC and secondly on 30.7.2002 he was charged u/s 302 IPC. On the evidence of PWs Sucha Singh and Dilbagh Singh, Labh Singh and Gurmel Kaur were summoned as accused. All the accused were charged u/s 302/120-B IPC and later on were charged u/s 302/34 IPC and in the alternate charged u/s 304-B/34 IPC to which they pleaded not guilty and claimed trial. ”

In support of its case, the prosecution has examined Sucha

Singh as PW-1; Dilbagh Singh as PW-2; Constable Talwinder Singh as PW-3; Harnek Singh as PW-4; Jiwan Singh as PW-5; Inspector Amarjit Singh as PW-5 (renumbered); and Kamaljit Singh as PW-6. Further, PWs Baljit Kaur, Ram Karan, Kuldeep Sharma and HC Satpal Singh were given up as unnecessary, whereas, PWs Gurmel Singh, Nihal Singh, Bant Singh and Jit Singh were given up as won over.

Thereafter, statements of the accused under Section 313 Cr.P.C were recorded and entire incriminating circumstances appearing in the prosecution evidence were put to the accused to which they denied and pleaded false implication. However, they did not lead any evidence in defence.

After considering the entire facts and circumstances of the case and appreciating the evidence brought on record, learned trial Court convicted and sentenced accused-appellant, Balkar Singh, whereas, co-accused Labh Singh and Gurmel Kaur were acquitted, as narrated above.

Aggrieved against the judgment of conviction and the order of sentence passed by learned trial Court, convict-Balkar Singh has preferred the present appeal, which was dismissed by this Court on 20.11.2019 along with CRR No. 2137-2003, which was filed by the complainant against the acquittal of Labh Singh and Gurmel Kaur. However, against this judgment, the appellant-Balkar Singh preferred SLP before Hon'ble the Supreme Court and Hon'ble the Supreme Court, vide judgment dated 05.08.2021 set aside the order/judgment dated 20.11.2019 and remanded the matter to this Court to decide afresh.

It is not in dispute that CRR No. 2137-2003 preferred by the complainant against the acquittal of Labh Singh and Gurmel Kaur, has

attained finality.

The question which requires consideration reads as under:-

1. Whether there was sufficient evidence against the appellant that he was guilty of offence punishable under Section 304-B IPC?
2. Whether the prosecution had put evidence against the appellant when he appeared for recording of his statement under Section 313 of the Code of Criminal Procedure?

At the very outset, learned counsel for the appellant has referred to judgment of Hon'ble the Supreme Court in a case of ***Satbir Singh vs. State of Haryana, 2021 (3) R.C.R (CrI) 167*** wherein Hon'ble the Supreme Court has considered the provisions of Section 304-B IPC and Section 113-B of the Evidence Act, 1872 and held that rebuttable presumption of causality creates a greater responsibility on Judges, defense and prosecution. They need to be extra careful during conducting criminal trials relating to Section 304-B IPC. In para No. 18 to 21, it has been observed as under:-

“18. Therefore, once all the essential ingredients are established by the prosecution, the presumption under [Section 113-B, Evidence Act](#) mandatorily operates against the accused. This presumption of causality that arises can be rebutted by the accused.

19. The usage of rebuttable presumption of causality, under [Section 113-B, Evidence Act](#), creates a greater responsibility on Judges, defense and prosecution. They need to be extra careful during conducting criminal trials relating to [Section 304-B, IPC](#). In order to address this precarious situation, procedural law has some safeguards, which merits mentioning herein.

20. It is a matter of grave concern that, often, Trial Courts record the statement of an accused under [Section 313, CrPC](#) in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under [Section 313, CrPC](#) cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This provision

incorporates the valuable principle of natural justice-“audi alteram partem”, as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the part of the Court to question the accused fairly, with care and caution. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense, since the inception of the trial, with due caution, keeping in consideration the peculiarities of [Section 304-B, IPC](#) read with [Section 113-B, Evidence Act](#).

21. [Section 232, CrPC](#) assumes importance, which reads as, “If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal”. Once the Trial Court decides that the accused is not eligible to be acquitted as per the provisions of [Section 232, CrPC](#), it must move on and fix hearings specifically for ‘defence evidence’, calling upon the accused to present his defense as per the procedure provided under [Section 233, CrPC](#), which is also an invaluable right provided to the accused. Existence of such procedural right cohesively sits with the rebuttable presumption as provided under [Section 113-B, Evidence Act](#).”

Learned counsel for the appellant has argued that once the deposition of eye witness Sucha Singh (PW-1) has been discarded, there was no evidence with the prosecution to show that the deceased-Rajinder Kaur was subjected to cruelty, as per Section 304-B of the IPC. Further no evidence was put to the appellant when he appeared for recording of his statement under Section 313 Cr.P.C. He has submitted that on 13.06.2003, the entire prosecution evidence was closed and statement of the appellant was recorded on 14.06.2003 under Section 313 Cr.P.C.

Learned counsel for the appellant while referring to page No. 163 to 165 of the record, has argued that the only question which was put to the accused-appellant was, “that on 13.03.2000 in the evening time in the area of village Nanuala, you all agreed to do (commit) the murder of

Rajinder Kaur by illegal means and her murder was committed in furtherance of common intention of you all. What you have to say?”.

Rest of the questions were related to the investigation conducted by the Investigating Officer and proceedings by the police party. No evidence has been put to the accused-appellant while recording his statement under Section 313 Cr.P.C that whether he had gone to the house of the complainant-Dilbagh Singh on 12.03.2000 and whether he left the house of the complainant with his deceased-wife on 13.03.2000. Once the charge under Section 304-B of the IPC had been framed against the accused-appellant, it was the duty of the prosecution to lead essential evidence that soon before the death of Rajinder Kaur, she was subjected to cruelty on account of bringing insufficient dowry to make out case under Section 304-B IPC. Hence the prosecution has not discharged its onus to prove the ingredients, as contemplated under Section 304-B of IPC. There was no occasion for the appellant to rebut or lead any evidence in his defense.

Learned counsel for the appellant has further argued that the entire incident was witnessed by Sucha Singh (PW-1) and his version has been discarded by the trial Court. Further the dead body of Rajinder Kaur has not been found till date. Thus, the finding cannot be given that Rajinder Kaur died in the company of the appellant and she had been subjected to cruelty by the appellant for bring insufficient dowry during the last four months.

On the other hand, learned counsel for the complainant has argued that the version of the complainant finds corroboration from the testimony of PW-4 Harnek Singh as they have categorically stated that on

12.03.2000, Balkar Singh came to the house of Dilbagh Singh and Dilbagh Singh talked to Balkar Singh about their demand for the car and more dowry. Labh Singh-father of the appellant also complained that he should have given a Golden kara instead of golden ring given to him at the time of marriage. Balkar Singh requested that Rajinder Kaur should be sent with him and he will never demand any car or dowry. Therefore, on 13.03.2000, Rajinder Kaur accompanied with the accused at about 4 P.M on his motorcycle. Sucha Singh came to the house of Dilbagh Singh at about 7 P.M and told that when he was returning from village Mandauli to village Narru on canal pavement on his cycle, he saw Balkar Singh pushed Rajinder Kaur in the canal.

In the cross examination of P.W.2 Dilbagh Singh and P.W.4 Harnek Singh, no question has been put to them with regard to presence of Balkar Singh in the house of the complainant on 12.03.2000. Hence once no question has been put to them, the presumption has been rightly drawn that Balkar Singh had gone to the house of the complainant and Rajinder Kaur had accompanied him on his motorcycle. Further it has also been rightly believed that Labh Singh-father of the appellant told that he should be given a Golden kara instead of golden ring given to him at the time of marriage. It has also not been disputed that the marriage of the appellant and Rajinder Kaur was solemnized on 05.12.1999 and in the F.I.R as well as while appearing as P.W.2 and P.W.4, the consistent version was that ***Balkar Singh had gone to the house of the complainant on 12.03.2000. Further Balkar Singh, mother-in-law Gurmel Kaur and father-in-law Labh Singh are taunting Rajinder Kaur for not bringing car instead of Motor-cycle. Besides that her father-in-law was grumbling as to why he has not been***

gifted with gold bangles instead of ring.

Hence even if version of P.W.1 Sucha Singh is discarded by the trial Court, the ingredients of Section 304-B of IPC have been clearly made out by the prosecution, as the appellant has failed to give any explanation as to under what circumstances, Rajinder Kaur, had gone missing, particularly, for appellant-Balkar Singh, being husband, from whose company she disappeared. The only thing is that the question that whether the appellant had gone to the house of the complainant-Dilbagh Singh on 12.03.2000 and whether he left the house of the complainant with his deceased-wife on 13.03.2000, were not put to the accused when he appeared for recording of his statement under Section 313 Cr.P.C.

On this aspect, Hon'ble the Supreme Court in ***Satbir Singh's case (supra)***, in para No. 27 to 29 and 31, has observed as under:-

“27. It must be emphasized herein that, just a week before the death, on the occasion of Teej festival, another brother of the deceased (P.W.10) had visited her while she was in her matrimonial home. The deceased had reiterated her plight to her brother. Thereafter, on 31.07.1995, the father of the deceased was informed by some villagers that his daughter has been admitted in the hospital. Upon reaching, the father discovered that the deceased succumbed to burn injuries. The aforesaid chain of circumstances proves that there existed a live and proximate link between the instances of demand of dowry and the death of the deceased. The Trial Court, and the High Court, upon a close appreciation of the aforesaid witnesses came to the conclusion that the statements were corroborative and consistent. They found the witnesses to be reliable and on the basis of the same held that the deceased was subjected to cruelty soon before her death as she failed to bring sufficient dowry. We are in complete agreement with the aforesaid finding of the Trial Court and the High Court.

28. From the above analysis, it is clear that the prosecution was able to successfully prove that the death of the deceased due to burn injuries took place within approximately one year of her marriage. It has further been proved that soon before her death she was subjected to

harassment and cruelty pursuant to demands of dowry. Since the ingredients of [Section 304-B, IPC](#) stand satisfied, the presumption under 113-B, [Evidence Act](#) operates against the appellants, who are deemed to have caused the offence specified under [Section 304-B of IPC](#).

29. The burden therefore shifts on the accused to rebut the aforesaid presumption. The counsel for the appellants has canvassed before us that it was a case of accidental death, and hence no liability can be fixed upon them. However, in the present case, the accused persons failed to place any evidence on record to prove that the death was accidental or unconnected with the accused persons.

31. Therefore, the presumption adumbrated in [Section 113-B, Evidence Act](#) takes full effect in this particular case, which has not been rebutted by the accused-appellants herein. The appellants have failed to make out a case for us to interfere in the concurrent opinions of the Courts below, convicting the accused-appellants under [Section 304-B, IPC](#).”

In the present case, no doubt while recording the statement of the accused-appellant under Section 313 Cr.P.C, no question has been put to him that whether he had gone to the house of the complainant and whether he left the house of the complainant along with deceased-wife. But it is a fact that in cross examination of P.W.2 Dilbagh Singh and P.W.4 Harnek Singh, no question has been put to these witnesses that the accused had not gone to the house of the complainant on 12.03.2000 and left the house of the complainant on 13.03.2000 along with deceased-Rajinder Kaur. Thus, in this background, it has to be presumed that the appellant had gone to the house of the complainant on 12.03.2000 and left his house on 13.03.2000 along with his wife. Further, the accused Labh Singh and Gurmel Kaur were demanding dowry and specific allegations have been raised against them in this regard.

The onus was upon the accused under Section 113-B of the Evidence Act to lead evidence to show that he had actually not gone to the house of the complainant and deceased-Rajinder Kaur had not accompanied him on 13.03.2000 on his motorcycle at 4 P.M. Even if the prosecution has

not asked the accused when he appeared for recording of his statement, it was the duty of the accused as well to rebut this evidence given by P.W.2 Dilbagh Singh and P.W.4 Harnek Singh. The accused was very well aware the version of the F.I.R as well as the statement of P.W.2 Dilbagh Singh and P.W.4 Harnek Singh.

In the absence of any evidence, the presumption has rightly been drawn by the trial Court that Rajinder Kaur disappeared from the company of her husband-appellant within four months of her marriage that took place on 05.12.1999. The appellant cannot be given the benefit of the fact that version of P.W.1-Sucha Singh has been disbelieved by the Court below.

After going through the entire facts, we hold that the prosecution evidence is reliable and trustworthy. The prosecution has completed the chain of circumstances from the date of alleged incident. The prosecution has followed all the procedures under the Act and successfully proved that the accused was guilty of the offences charged.

In the light of the above discussion, we are of the opinion that judgment and order dated 14.06.2003/02.07.2003 passed by the learned Addl. Sessions Judge, *Ad hoc*, Patiala, do not require any interference by this Court.

Consequently, the appeal is dismissed.

(RITU BAHRI)
JUDGE

06.01.2022
G Arora

(ASHOK KUMAR VERMA)
JUDGE

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