

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRA-S-807-SB-2004 (O&M)

Date of Decision: *September 02, 2023*

Parkash Kaur and others

... Appellants

Versus

The State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Karan Pathak, Advocate
for the appellants.

Mr. Hittan Nehra, Addl. AG, Punjab.

Vivek Puri, J.

1. The appeal has been preferred against the judgment of conviction dated 31.03.2004 passed by the learned Sessions Judge, Sangrur, vide which the appellants have been convicted under Sections 498-A and 304-B of the Indian Penal Code (for short 'IPC') and the order of sentence dated 01.04.2004 vide which they have been sentenced to undergo rigorous imprisonment for a period of 2 years each and to pay a fine of Rs.1,000/- each under Section 498-A IPC, in default of payment of fine, the appellants were directed to further undergo rigorous imprisonment for a period of six months each and to undergo rigorous imprisonment for a period of 7 years each and to pay a fine of Rs.3,000/- each under Section 304-B IPC, in default of

payment of fine, the appellants were directed to further undergo rigorous imprisonment for a period of one year each. It was further directed that the substantive sentence shall run concurrently.

2. The appellants have been sent up to face trial for having committed the offence under Sections 498-A and 304-B IPC by the Officer Incharge, Police Station Bhawanigarh. The facts as put forth by the prosecution are to the effect that the marriage of Birpal Kaur, deceased was solemnized with Paramjit Singh-appellant no.2 about 2-1/4 years prior to the occurrence. The couple was blessed with a daughter, who was aged about 4-5 months at the time of occurrence. After the birth of the child, the parents of the deceased sent her to the house of her in-laws in Village Harkishanpura and gave articles worth Rs.80,000/- as customary gifts on the birth of the child. After sometime, Amandeep Kaur-appellant no.3 rang up to Jaswant Kaur, the mother of the deceased and raised a demand of Maruti car. Jaswant Kaur narrated the same to her husband Gurjant Singh, who after some days went to the house of the accused and assured them that the Maruti car will be given at the time of the delivery of the male child. After few days, the deceased again rang up Gurjant Singh and informed that the appellants were harassing her. Gurjant Singh along with his brother-in-law Malkiat Singh and other

respectables of village visited the house of the appellants and requested them to treat the deceased in a nice manner, but to no effect. On 07.09.2002 at about 10.00 p.m., Parkash Kaur-appellant no.1 telephonically informed Gurjant Singh that the deceased had consumed some insecticide, her condition was precarious and she has been shifted to Ravi Hospital, Bhawanigarh. Gurjant Singh along with his wife Jaswant Kaur and other persons reached the hospital where the deceased was lying unconscious and after some time, she passed away. It has been alleged that the deceased has been driven to death by the appellants as they had subjected her to severe harassment and cruelty for not bringing Maruti car and being fed up from the harassment, she has consumed some poisonous substance.

3. On the basis of the statement of Gurjant Singh, the FIR was registered.

4. On completion of the investigation, the challan was presented against the appellants no.1 and 2. During the course of proceedings in the trial Court, on the application under Section 319 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the appellant no.3 was also summoned to face trial in terms of the order dated 25.02.2003. As the offence under Section 304-B IPC was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions by the learned Additional Chief Judicial

Magistrate, Sangur in terms of order dated 07.12.2002. A prima facie case under Sections 498-A and 304-B IPC was made out against the appellants. The charge was accordingly framed. The contents thereof were read over and explained to them to which they pleaded not guilty.

5. In order to substantiate its case, the prosecution has examined 11 witnesses. The statements under Section 313 Cr.P.C. of the appellants were recorded and they have examined 05 witnesses in defence evidence.

6. In terms of the judgment dated 31.03.2004, the appellants were convicted under Sections 498-A and 304-B IPC and sentenced as afore-said.

7. Aggrieved by the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

8. I have heard learned counsel for the parties and perused the record.

9. Gurjant Singh, PW-2 is the father of the deceased. On the basis of his statement (Ex.PF), the FIR has been registered. As per the allegations, the death has occurred on account of consumption of poisonous substance. The post-mortem examination on the dead body of the deceased was conducted by Dr. Karamnit Singh, PW1 along with Dr. Prithba Bansal, the Medical Officer. On the receipt of the report of the chemical examiner, the cause of death has

been stated to be chlorocompound, group of insecticides. Jaswant Kaur, PW6, is the mother of the deceased. Harish Kumar, PW4, Surinder Kumar, PW5 and Hari Chand, PW10 have testified with regard to the purchase of articles and bills for the purpose of marriage ceremony of the deceased. Dharminder Singh, PW9, is the draftsman and he had prepared the site plan (Ex.PN) depicting the place of occurrence. HC Pritpal Singh, PW7 and ASI Pavitar Singh, PW8, have testified with regard to the safe custody of the case property. SI Sukhwinder Singh, PW3 had conducted the initial investigation. Subsequent investigation has been conducted by DSP Bhupinder Singh, PW11.

10. In their statements recorded under Section 313 Cr.P.C., the appellants have denied the correctness of the incriminating evidence appearing against them. The defence version sought to be put forth by the appellants is to the effect that the husband of appellant no.1 was the owner of some land. The husband of the appellant no.1 had died in an accident. The land owned by him was sold by the appellants. The deceased wanted that the sale proceeds should be deposited in the name of appellant no.2 or in the name of the deceased. However, the amount of sale proceeds was deposited in the account of appellants no.1 and 2. Being annoyed, the deceased consumed poisonous substance without disclosing the same to anyone.

11. The appellants have examined Bahadur Singh, DW1, who has testified to the effect that the deceased was named as nominee in the Life Insurance Policy of the appellant no.2. Ramesh Goyal, DW2 was working as Special Assistant in the State Bank of Patiala and has testified with regard to the deposit of the amount in the accounts of appellants no.1 and 2. Jangir Singh, DW3, was the mediator in the marriage and has testified to the effect that there was no demand of dowry raised by the appellants and he has also supported the defence version as sought to be put forth by the appellants. Sukhbir Singh, DW4, is a witness to the sale deed regarding which the property earlier owned by the husband of appellant no.1 was sold. Pawan Kumar, DW5 was working as postal assistant and he has testified with regard to purchase of Kisan Vikas Patras in the name of the deceased with appellant no.3 as nominee therein.

12. Learned counsel for the appellants has argued that during the pendency of the appeal, Paramjit Singh-appellant no.2, the husband of the deceased, has died and the proceedings against him stand abated. Furthermore, the appellant no.3 had moved an application for declaring her juvenile. The report was sought from the learned Chief Judicial Magistrate, Sangrur in this regard. As per the report, the appellant no.3 was juvenile at the time of occurrence. Consequently, she becomes entitled to the

benefits of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. Furthermore, the allegation against the appellants is with regard to demand of car. Such a demand could have been essentially raised by the husband and would have been for his benefit. The husband of the deceased has since died. The appellant no.1 and 3 are the mother-in-law and unmarried sister-in-law, respectively, of the deceased. Moreover, the appellant no.3 was found innocent during the course of investigation and has been summoned under Section 319 Cr.P.C.

13. Learned State counsel has argued that though the appellant no.3 is stated to be aged about 16 years, 07 months and 21 days at the time of occurrence as per the report received from the Court of learned Chief Judicial Magistrate, Sangrur and she was found innocent during the course of investigation, but there are categoric and specific allegations leveled against the appellants no.1 and 3 with regard to demand of Maruti car. The death has occurred within a period of about 2-1/4 years from the date of marriage. There is categoric allegation with regard to the demand of dowry and the death has occurred otherwise than under normal circumstances. Moreover, the defence version of the appellants to the effect that the deceased insisted for deposit of the sale proceeds in her account

cannot be accepted as the parents of the deceased were not cross-examined on this aspect of the matter.

14. Before proceeding further, it may be mentioned here that during the course of pendency of the appeal, the appellant no.3 has raised the question of juvenility. It has not been disputed that the claim of juvenility can be raised at any stage of the proceedings. A report was sought from the learned Chief Judicial Magistrate, Sangrur. The report has been submitted after examining the witnesses and also obtaining the school record. The date of birth of the appellant no.3 as recorded in the school record was 16.01.1986 and accordingly, it was concluded that at the time of the occurrence, the age of the appellant no.3 was 16 years, 07 months and 21 days.

15. The report submitted by the Court of learned Chief Judicial Magistrate indicates that the name of the sister-in-law of the deceased has been mentioned as "Amanjit Kaur". However, in the records of the trial Court, her name has been reflected as "Amandeep Kaur". Consequently, the learned State counsel had sought time to verify this aspect of the matter and as per the report received by him from the Officer Incharge, Police Station Bhawanigarh, the appellant no.1 has three daughters, namely, Kamaljeet Kaur, Karamjit Kaur and Amanjit Kaur, who were born on 25.09.1979, 15.02.1981 and 16.01.1986,

respectively. The appellant no.3 was unmarried at that point of time. There is nothing to indicate that there is any other unmarried daughter of the appellant no.1 by the name of Amandeep Kaur. In the statement of the appellant no.3 recorded at the time of framing of charge and in the statement under Section 313 Cr.P.C., the appellant no.3 had put her signatures as Amandeep Kaur. Even at the time of recording of the statement while affording hearing on quantum of sentence, the appellant no.3 had put her signatures as Amandeep Kaur. In these set of circumstances, it has to be concluded that the appellant no.3 i.e. Amandeep Kaur is also known by the name of Amanjit Kaur. As per the report, the appellant no.3 was less than 18 years of age and consequently, while settling the issue with regard to the juvenility, the report submitted by the learned Chief Judicial Magistrate qua appellant no.3 is accepted and is held to be juvenile at the time of occurrence.

16. Faced with this situation, the learned counsel for both the parties submit that further course of action to be adopted qua appellant no.3 is required to be adjudicated in the event the conviction is upheld and the juvenile is required to be sent to the Juvenile Justice Board for the purpose of imposition of adequate sentence.

17. With regard to the allegations regarding commission of offence under Section 304-B IPC, it may be

mentioned here that the relationship of the appellants with the deceased has not been disputed. The marriage of the appellant no.2 was solemnized with the deceased about 2-1/4 years prior to the occurrence. The death has occurred on 08.09.2002 and the cause of death is stated to be poisoning due to chlorocompound group of insecticides.

18. The question which arises for consideration is as to whether the case under Section 304-B IPC is made out against the appellants or not.

Section 304-B IPC provides as following:-

“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.*

Explanation – For the purpose of this subsection, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

19. As per the provisions of Section 304-B IPC, in the event of proof of the fact that soon before death, the deceased was subjected to cruelty or harassment by her husband or any of the relative for or in connection with any demand of dowry and the death has occurred otherwise than under normal circumstances, within a period of seven years of marriage, such death shall be called “dowry death”.

20. At this stage, it will be appropriate to mention here that presumption has to be raised with regard to the dowry death as per the provisions of Section 113-B of the Indian Evidence Act, which provides as under:-

“Presumption as to dowry death – 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.

Explanation – For the purposes of this section, “dowry death” shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)”

21. On a conjoint reading of Section 304-B IPC and Section 113-B of the Indian Evidence Act, the essential ingredients pertaining to the offence are enumerated herein-below:

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstances,
- (ii) Such death should have occurred within seven years of her marriage,
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death,
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.

22. On adverting to the merits of the present case, it is significant to note that primarily the allegation leveled against the appellants is with regard to the demand of maruti car at the time of birth of the daughter of the deceased. It has to be seen as to which of the accused had or could have raised the demand of car. The demand of car could have been raised by the husband of the deceased, which could be for his benefit or use. The other relatives cannot be involved for the demand of dowry, particularly when general accusations have been leveled against them. It could only be the husband who could have been the beneficiary with regard to the demand of car. At this stage, it shall be appropriate to refer **Naresh Kumar and another vs. State of Haryana, 2007(2) R.C.R. (Criminal) 660 (P&H)**, wherein it has been laid down as following:-

“17. The case of Bhagti Devi, so far demand, cruelty and harassment is concerned, is distinguishable as that of appellant Naresh. She is mother-in-law of the deceased. The statements of PW10 Mewa Devi, PW11 Jai Bhagwan and PW13 Jagdish are omnibus in relation to the harassment and mal-treatment by her. There are no specific instances attributed against her. She has nothing to do with the demand of motor-cycle, which is primarily for the use of accused Naresh. In **Salamat Ali and others v. State of Bihar, 1997 SCC (Crl.) 842**, it has been held that demand of scooter predominantly must have been raised by the husband. It cannot be expected that the father-in-law would be demanding a scooter for himself or that the mother-in-law needed it for her use and acquitted the father-in-law and mother-in-law and convicted the husband. Thus, following the ratio laid down in Salamat Ali’s case (supra), Smt. Bhagti Devi deserves acquittal.”

23. Similar view has been laid down in another Division Bench decision of this Court in **Baldev Kaur and another v. State of Punjab, 2007(2) R.C.R. (Criminal) 665**, wherein the allegations against the accused were with regard to the demand of car. It has been held that it was only the husband who can be direct beneficiary of the demand of car.

24. In **Kewal Krishan and another vs. State of Punjab, 2005(4) R.C.R. (Criminal) 484**, it has been held that the allegations with regard to the demand of scooter and video qua the sister could not be believed. In the event, the sister-in-law of the deceased was having a greed of dowry, she could have raised demand of items of her use like jewellery, dresses etc.

25. In the instant case, the main allegation is with regard to the demand of car and the same can be attributed to the husband of the deceased, who has since died and proceedings qua him stand abated. Furthermore, the prosecution version as unfolded in the statement of the complainant indicates that the demand of car was raised at the time of birth of the daughter of the deceased. However, he had persuaded the family members of her in-laws and assured that the car will be given at the time of birth of the son of the deceased. In such circumstances, even as per the prosecution version, the matter with regard to the demand of car had already been settled.

26. The defence version of the appellants is to the effect that the property owned by the husband of the appellant no.1 was sold and the sale proceeds were deposited in the account of appellants no.1 and 2. The deceased insisted for deposit of the amount in her account also and being annoyed, she had consumed some poisonous

substance. Although, the parents of the deceased have not been cross-examined on that aspect of the case, but it shall not be out of place to mention here that initial burden lies on the prosecution to prove the basic three ingredients of Section 304-B IPC including the fact that soon before her death, such woman was subjected by the accused persons to cruelty or harassment for or in connection with any demand for dowry. Once the prosecution discharges its initial burden of proving all the ingredients of the dowry death as laid down under Section 304-B IPC and only then Section 113-B of the Indian Evidence Act is to be invoked which mandatorily requires the Court to draw an adverse inference against the accused. Then, the burden shifts upon the accused to disprove the said presumption by preponderance of probabilities.

27. Although, the material on record indicates that the death has occurred in the instant case otherwise than under normal circumstances within a period of 2-1/4 years from the date of marriage, but the allegations with regard to subjecting the deceased to cruelty on account of demand of Maruti car or dowry with respect to appellants no.1 and 3 are not free from doubt and cannot be accepted. As such, the presumption under Section 113-B of the Indian Evidence Act cannot be raised. In these circumstances, the

case of the prosecution cannot be termed to be free from reasonable doubt qua appellants no.1 and 3.

28. For the aforesaid reasons finding sufficient merit in the appeal, the same is accepted qua appellants no.1 and 3. The appeal qua the appellant no.2 stands abated. The judgment of conviction dated 31.03.2004 and order of sentence dated 01.04.2004 qua appellants no.1 and 3 are set aside and they are acquitted of the charges leveled against them.

29. In the aforesaid terms, the appeal is allowed.

September 02, 2023

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(Vivek Puri)
Judge

Whether speaking/reasoned: Yes
Whether reportable : Yes