

2024:PHHC:126840-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-24.09.2024

CRA-D-683-DB-2007(O&M)

State of Punjab.

.....Appellant.

Vs.

Pushpa Rani & Anr.

.....Respondents.

AND

CRR-606-2006(O&M)

Sudharshan Kumar Goel.

.....Petitioner.

Vs.

State of Punjab & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Eklavya Darshi, Deputy Advocate General, Punjab
for the Appellant (in CRA-D-683-DB-2007) &
for the respondent no.1 (in CRR-606-2006).

Mr. Anmoldeep Singh, Advocate for the Petitioner
(in CRR-606-2006).

Mr. Harsh Aggarwal, Advocate for the
Respondent no.2 (in CRA-D-683-DB-2007) &
for respondent no.3 (in CRR-606-2006).

JASJIT SINGH BEDI, J.

By this common order we shall dispose of both the
aforementioned cases i.e. one State appeal against the judgment of acquittal

and the other criminal revision of the first informant/complainant challenging the acquittal of the accused.

2. As per record, the FIR came to be registered on 02.12.2000. The judgement of acquittal was recorded on 10.01.2006. The appeal/revision were filed in 2006 & 2007 and have come up for hearing today after nearly 24 years of the registration of the FIR.

3. The instant case was registered at police station, Shahkot on 2.12.2000 on the complaint of Sudershan Goel, father of Sonia deceased. He stated that his daughter married Sanjiv Kumar on 19.02.94. She was subjected to cruelty and was pressurised to bring more dowry and was killed by her in laws by administering poison to her. After completion of the investigation, the accused were challaned.

4. On commitment of the case to the Court of Sessions, charge for the offence under sections 304-B, 201 IPC was framed against the accused to which they pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined Sudershan Kumar Goel PW1, Tilak Goyal PW2, Ashok Kumar PW3, Mrs. Aruna PW4, Sakattar Singh retired inspector PW5 and Shiv Kumar PW-6.

6. The accused when examined under section 313 Cr.P. C. denied the prosecution allegations and pleaded innocence.

7. Sudershan Kumar Goel, Pwl who is the complainant in this case, testified that Sonia was his daughter. On 19.2.94, her marriage was performed with Sanjiv Kumar accused and he had given dowry to the accused beyond his capacity. On the eve of the first Lohri in 1995, he went to the accused and gave them huge customary gifts. Thereafter, the accused started demanding a VCR and he gave the same to them. Sarvmittar husband of his sister was the mediator of this marriage. A son and a daughter were

born to Sonia from the loins of Sanjiv Kumar. Pushpa Rani accused was the mother of accused Sanjiv Kumar. Both of them had been maltreating Sonia from the very first day of the marriage on the ground of bringing less dowry. He disclosed the fact to Sarvmittar and he showed his helplessness by saying that he had already told them that Pushpa Rani was of an odd nature. He had been advising his daughter that Pushpa Rani was her father and mother and she should obey her. He further testified that after the marriage, his daughter had been living with the accused in Malsian. On 13.5.2000 at about 10.30 p.m., he received information that Sonia had died and on this information he tried to contact the accused at Malsian on telephone. The telephone was picked up by Manju and when she heard his voice, she kept the same down. Then he gave information on telephone to his brother in-law Shiv Kumar. He told him that he should immediately come to him with a taxi. Shiv Kumar came to him with his wife. He gave information to his relative Ashok at Phillaur on telephone. He, his wife, sons, their wives and children, Shiv Kumar and his wife Aruna went to Malsian. The abovesaid relatives from Phillaur reached there simultaneously. They went to the house of the accused. At that time, the dead body of his daughter was lying in the courtyard. The leaves of the Neem tree were placed on her dead body and all the ice had already melted away. Four ladies were sitting by the side of her dead body but were not weeping. When he tried to inspect the dead body, one of the men sitting there, took him on one side. The men were also sitting by the side of the dead body including Sanjiv Kumar. On his inquiry, he was told by those persons that tea was served to Sonia by Pushpa Rani accused at 5 p.m. and after taking that tea, she died. Sarvmittar was also present at that time. He brought him outside. He told him that froth was coming from the mouth of Sonia but Sadhu Ram who had come there contradicted him.

Saravmittar told him that he was there to take all the responsibility and no untoward incident had taken place. During the night they kept on sitting outside the house. In the morning the accused and other persons made an effort to cremate the dead body by taking the same to the cremation ground. They did not allow them to take out the dead body out of the house. Sarvmittar and others prevailed upon them and allowed the accused to take the dead body to the Gurudwara. They also accompanied them to that place. Saravmittar asked them as to who would look after the children of Sonia He told them that it was not a case of death by poisoning and he was ready to give an assurance to them to that effect. Then the dead body was taken to the cremation ground and was cremated. Lateron, he came to know that his daughter died of poisoning. The accused had demanded generator from her on the date of her death. In the Gurudwara, five shops were got transferred by the accused in the name of the son and two killas of land were transferred in the name of the daughter of Sonia. This witness further testified that on 23.5.2000 he gave an application EX PA to the SSP Jalandhar which bore his signatures. An inquiry was conducted by Harpreet Singh DSP. After the inquiry, he gave another application dated 3.7.2000 to the SSP. That application bore his signatures and was Ex. PB. Then, he approached the High Court with a petition for issuance of directions to the police for registration of an FIR. Before the disposal of that petition, the FIR was registered by the police. The list of articles which were given by him to the accused as dowry at the time of marriage were EX PC and EX PD. In the course of investigation, his statement was recorded by the police.

8. Tilak Goel wife of Sudershan Goel, PW2 also deposed on the lines of the statement of the complainant.

9. Ashok Kumar while appearing as PW 3 also tried to support and corroborate the version of the prosecution. He also produced a conversation by way of an audio cassette Ex.PW-3/A in Punjabi between him, Sarvmittar, Sudershan Goel and Harish. He also produced the Punjabi version of the conversation between him and residents of Malsian as Ex. PW3/B, recorded in the audio cassette.

10. Aruna PW-4 wife of Parveen Jain testified that she knew Sanjiv Kumar accused who was married to Sonia. On 13.5.2000 she came to know about the death of Sonia. She had informed her father in-law and mother in-law about the death of Sonia. On 14.5.2000 they all reached village Malsian to the house of Pushpa who is their Mausi. On their arrival at the house of Sanjiv Kumar they found the dead body of Sonia lying in their house. At that time, Pushpa and one girl alongwith three/four other persons were sitting by the side of the dead body. There were bluish contusions on the dead body of Sonia on which Neem tree leaves were also placed and stool of black colour had come out from the dead body. The dead body was washed before it was taken to the cremation ground. The In-laws of Sonia were taking the dead body to the cremation ground but they were stopped. The dead body was later taken to a Gurudwara and then to the cremation ground. All the members of their family and of the in-laws family of Sonia alongwith some other people were present there. The four sisters of Sanjiv Kumar were laughing despite the fact that it was contrary to the atmosphere of a dead body being taken to the cremation ground. She stated that Sonia could not have died herself and that she had been done to death by her in-laws. Pushpa Mausi, mother in-law of deceased was saying to a servant like boy that he should not tell anybody that some poisonous substance had been added in the tea administered to the deceased. This witness further stated that she

wrote two letters, one to SSP Jalandhar and the other to her father's brother (Chachaji). She also recorded her statement with the police.

11. Sakattar Singh IO was examined as PW 5 who testified that on 2.12.2000, he was posted as SI/SHO, police station Shahkot. On the receipt of application EX PA and the order of the SSP Jalandhar Ex PA/1, where it had been ordered to register case under section 304-B, 201 PC, he registered the same on the basis of the inquiry report of SP Headquarter M.F. Farooqi, IPS, the then SP headquarter. He also identified the signatures of M.F.Farooqi as Ex PA/2. He registered the case and recorded statements of the witnesses. He further stated that after completion of the investigation, accused were challaned and report u/s 173 CrPC. was prepared by him.

12. Shiv Kumar PW6 testified that Sonia got married with Sanjib in February, 1994. Whenever Sonia and her husband came to Phagwara to meet her parents, they used to come to him also. His sister Tilak Rani was living at Phagwara. He stated that Sonia was hale and hearty. She never suffered from any serious ailment. Whenever Sonia came to his house, she used to complain that her in-laws were greedy persons and always made some demand of dowry and gifts on festive occasions from her parents. The rest of the statement is on the lines of the statement of the complainant.

13. Based on the evidence led as described above the accused were acquitted by the court of Additional Sessions Judge, Jalandhar vide judgment dated 10.01.2006.

14. It is the aforementioned judgment which is under challenge in the appeal and revision petition.

15. The Counsel for the State and the Counsel for the complainant contend that from the testimonies of PW-1, PW-2 PW-3, PW-4 & PW-6 it was established on record that the deceased Sonia had died within a span of

07 years from the date of marriage and she was subjected to harassment on account of demand of dowry. Even on the date of occurrence the demand of generator was made. These facts had not been properly appreciated by the Trial Court. The photographs taken at the time of occurrence showed the conduct of the accused persons to be abnormal. In fact the cremation took place under shady circumstances. An agreement had been arrived at between the accused and the complainant party wherein the accused had agreed to transfer 05 shops in the name of the minor son of the deceased Sonia and two acres of land in the name of a minor daughter. This compromise had been arrived at as the accused had committed the offence in question. This fact had not been appreciated in its proper perspective. They further contend that a sum of Rs.2,40,000/- paid by Goverdhan Lal father of the accused Sanjiv Kumar to Sudershan Kumar Goel, complainant was in lieu of bricks supplied to the firm of Goverdhan Lal, father of the accused Sanjiv. This fact had also not been properly appreciated by the Trial Court. They contend that the Trial Court had wrongly discarded the tape recording/audio cassette in which the accused had confessed their guilt. They therefore contend that the impugned judgment of acquittal was liable to be set aside and the accused were liable to be convicted for having committed the offence in question.

16. The Counsel for the respondent nos.1 & 2 at the very outset submits that respondent no.1-Pushpa Rani has passed away on 09.08.2023. On merits he contends that firstly, the unnatural death of the deceased was not established in the absence of a post mortem. Further the prosecution was not able to establish that the deceased was subjected to cruelty and harassment on account of dowry soon before her death. Therefore, the impugned judgment had been passed on proper appreciation of the evidence

on record and the instant appeal was liable to be dismissed.

17. We have heard counsel for the parties and have gone through the record.

18. Section 304-B lays down that 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.

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

19. From the record it stands established that the marriage of the deceased Sonia took place in the month of February, 1994 and she died on 13.5.2000 which clearly establishes that she had died within a span of seven years from the date of marriage. Now, what is to be examined is as to whether the remaining ingredients were made out from the evidence of the prosecution.

20. In case of a dowry death, the prosecution has to rule out the possibility of natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”.

21. The prosecution has failed to establish that Sonia deceased died otherwise than under normal circumstances. No postmortem examination was conducted on the dead body of Sonia. From the perusal of the record, it

transpires that Sudershan Goel complainant PW1, father Ashok Kumar DW3 the cousin and Tilak Goel, PW2 mother of deceased Sonia and other relatives had reached the house of the accused at Malsian after knowing about the death of Sonia but they did not make any effort to get the postmortem conducted on the dead body of Sonia. However, they have come forward with the plea that they were pressed by Sarvmittar not to take any action. But this contention on the face of it cannot be believed. It cannot stand to reason that the parents came under the pressure of the family of the accused if they had come to know about any mischief being played by the accused. Further it is the case of the prosecution that even on the day of the demise of Sonia, a telephonic demand for supplying a generator set was raised in the morning by Sanjiv Kumar accused. In this situation it does not stand to reason as to why the complainant or his relatives did not compel the inlaws family of the deceased to get conducted the postmortem of deceased Sonia. It is also the plea of the prosecution that they had seen froth oozing out from the mouth of the deceased and black stool in her Salwar. The dead body of deceased was covered with Neem leaves and ice slabs had melted at the time of arrival of the complainant and his family. However, it is strange that the complainant and his family members despite noticing all these things did not raise a finger or suspect any foul play on the part of the accused. No attempt was made to contact the police. The agreement Ex DF signed by both the parties transferring the ownership of the shops and the land in the name of the minor children does not bear the signatures of Sarvmittar, though he was the middleman of this marriage. Had Sarvmittar being present to pressurise the complainant party, not to take any action against the accused, he would have put his signatures on the agreement arrived at between the parties. Therefore, the story put forth by the

complainant party to the effect that they were pressurised by Sarvmittar is hard to accept. Sudershan Goel complainant has testified in his statement that he had made oral requests for postmortem examination and had not given any written application but in the next breath, he retracted from his statement saying that he did not even make any oral request for postmortem examination on the assurance given by Sarvmittar.

22. Apart from this, it stands established that an inquiry was conducted by M.F. Farooqi, IPS, the then S.P. (Headquarters) Jalandhar who had examined a number of persons and submitted his report Ex.PA/2 and found that the death of Sonia did not take place due to poisoning as alleged by the complainant. He found it to be a case of natural death. Sakattar Singh SI PW5, I.O had carried the investigation of this case and had found both the accused innocent. He had testified that no offence was made out against anybody and the case was fit for cancellation. This investigation was also verified by Harjit Singh Brar, the then Deputy Superintendent of Police being supervisor of the said police station and he also held the same opinion. SI Sakattar Singh had also examined Dr. Jagroop Kaur, MBBS, incharge of Jagroop Family Clinic, Malsian who was summoned by Goverdhan Lal, father of accused Sanjiv Kumar at the time of the illness of Sonia. But surprisingly, Dr. Jagroop Kaur whose statement u/s 161 Cr.P.C. was recorded, was not produced in the court to state the truth. The evidence of Dr. Jagroop Kaur was essential to and material as she lastly attended to Sonia before her death. She had given medical aid and also gave an injection. She had also stated before the I.O. that the death was due to cardiac arrest. It has also been admitted by Sakattar Singh SI that S. Ajit Singh Kohar, the then Minister in the Akali Govement had phoned him to help the complainant party. Therefore, it stands established that it was a natural

death.

23. Further from the perusal of the statements of the prosecution witnesses, it is difficult to accept that soon before death of Sonia, the accused subjected her to cruelty or harassment in connection with demand of dowry. The prosecution witnesses who are relation witnesses materially improved and contradicted their earlier version from the FIR and their statements recorded u/s 161 Cr.P.C. It stands established that Goverdhan Lal father of Sanjiv Kumar had given an amount of Rs. 2,40,000/- to Sudershan Kumar Goel, PW1 by way of a draft and this fact was admitted by him in the cross-examination. The complainant also admitted his fact that the draft was got encashed by him. Goverdhan Lal had also filed a civil suit in the Civil Court at Nakodar for the recovery of this money against Sudershan Goel and the copy of the plaint is Mark DG. If Goverdhan Lal, father of Sanjiv Kumar accused had given Rs. 2,40,000/- to Sudershan Goel complainant by way of a draft, then it is difficult to believe that the accused party was making demand of dowry from the complainant. So, the story put forth by the prosecution witnesses that the accused used to make demand of dowry is vague and cannot be accepted.

24. It transpires from the evidence that the relations between the complainant party and the accused remained cordial till the end. The statement of Sudershan Goel complainant PW1 was to the effect that his relations with the accused remained good till the end and they had been visiting the accused.

25. The tape recording produced by the prosecution has no evidentiary value since the recording is not clear and the transcript is at variance with audio recording. Further in the absence of a certificate under Section 65-B of the Evidence Act the said audio recording cannot be read in

evidence.

26. Apparently, there is no concrete evidence that the deceased was subject to harassment “soon before her death on account of demand of dowry” and the cause of death appears to be natural in the absence of a post mortem having been conducted.

27. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon’ble Supreme Court in *Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427* has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

28. In view of the aforementioned discussion and keeping in view the law laid down in *Kallu @ Masih & Ors. Case (supra)*, we find no reason to interfere with the well reasoned judgment of acquittal passed by the Additional Sessions Judge, Jalandhar. Therefore, the criminal appeal (CRA-D-683-DB-2007) filed by the State as well as the revision petition (CRR-606-2006) filed by the complainant challenging the acquittal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 24, 2024
Vinay

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