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CRA-S-1745-SB-2003
Reserved on: 02.05.2025
Pronounced on:- 29.05.2025

Versus

State of PunjabRespondent

Present:- Mr. Chandeeep Singh, Advocate
Amicus Curiae for the appellants.

Mr. Kunwarbir Singh, Assistant A.G. Punjab

AMARJOT BHATTI, J.

1. Appellants/convicts Gurdial Singh @ Bittu and Amar Kaur have filed aforesaid appeal against judgment of conviction dated 18.08.2003 and order on question of sentence dated 19.08.2003 passed by learned Additional Sessions Judge, Gurdaspur in Sessions Case bearing No. 45 of 1999 dated 02.12.1999, titled as “State Vs. Gurdial Singh @ Bittu and another” in FIR No. 79 dated 18.07.1999 under Section 304-B of IPC registered at Police Station Kalanaur, Gurdaspur vide which appellants were sentenced as under :-

Name of Convict	Offence U/s	Sentence
1. Gurdial Singh @ Bittu	304-B of IPC	Rigorous Imprisonment for Ten years
2. Amar Kaur	304-B of IPC	Rigorous Imprisonment for Seven years



2. As per the facts of case, on 18.07.1999, complainant Harbhajan Singh gave his complaint to ASI Amarjit Singh, Police Station Kalanaur alleging that he was resident of Dhokowal and was an agriculturist. About one and a half years ago, he performed marriage of his daughter Sarabjit Kaur with Gurdial Singh @ Bittu son of Baldev Singh. Out of this wedlock, a female child was born. At the time of marriage of his daughter, he had given scooter, television and other dowry articles as per his capacity. After some time of marriage, her daughter's husband Gurdial Singh @ Bittu and his mother Amar Kaur started harassing and compelling his daughter to bring more dowry and cash. He told Gurdial Singh and Amar Kaur that he was a poor person and requested them to keep his daughter in their house. On the birth of girl child, accused demanded Rs. 10,000/-. On this, he (complainant) and his wife Kulwant Kaur borrowed Rs. 10,000/- and gave to Gurdial Singh in the presence of Amar Kaur. About one week ago, his daughter Sarabjit Kaur again came to her parent's house and told them that her in-laws and husband were demanding fridge. However, he (complainant) showed his inability to purchase the same and requested them that they would arrange the same after harvesting paddy crop. On 18.07.1999, he (complainant) alongwith his son Gurdial Singh went to village Dehriwal Kiran to inquire about his daughter and when they reached outer-skirts of village, they came to know that his daughter had been killed by his son-in-law Gurdial Singh and his mother Amar Kaur by giving his daughter some poison. At about 05:00 PM, when they reached in-laws house, they saw dead body of his daughter Sarabjit Kaur lying on a cot in the courtyard, whereas, accused after locking the rooms of the house had run away. It is further submitted that his daughter Sarabjit



Kaur was given poisonous material by her husband Gurdial Singh and mother-in-law Amar Kaur, for bringing less dowry. Accordingly, it was prayed that legal action be taken against aforesaid accused persons. With these allegations, FIR was registered under Section 304-B of IPC.

3. During investigation, inquest proceedings were conducted and dead body of deceased victim was subjected to postmortem. Rough site plan of place of occurrence was prepared. Both accused persons were arrested. Statements of witnesses were recorded under Section 161 Cr.P.C. After completion of investigation, accused were challaned under Section 304-B of IPC and Final Report under Section 173 Cr.P.C. was prepared and submitted before the learned Illaqa Magistrate.

4. On appearance, accused were supplied complete sets of copies of challan report as provided under Section 207 of Cr.P.C. Since the offence under Section 304-B of IPC was exclusively triable by the Court of Sessions, therefore, learned Additional Chief Judicial Magistrate, Gurdaspur committed the case to the Court of learned Sessions Judge, Gurdaspur for trial vide commitment order dated 12.11.1999.

5. Learned Additional Sessions Judge, Gurdaspur after hearing arguments framed charge-sheet against accused Gurdial Singh @ Bittu and Amar Kaur under Section 304-B of IPC, which was read over and explained to them in simple language to which they pleaded not guilty and claimed trial.

6. In order to prove the facts of case, prosecution examined Harbhajan Singh as PW-1, HC Partap Singh as PW-2, Gurdial Singh as PW-3, Inspector Prabhdev Singh as PW-4, Dr. H.S. Dhillon, Medical Officer, Civil Hospital Gurdaspur as PW-5, HC Jhirmal Singh as PW-6, J.S. Dhanjal,



Draftsman as PW-7 and SI Amarjit Singh as PW-8. Thereafter, learned Addl. Public Prosecutor closed prosecution evidence on 18.07.2003.

7. Statements of both accused persons were recorded under Section 313 Cr.P.C. by the trial Court to which they pleaded innocence and false implication. However, accused did not examine any witness in defence and closed the same on dated 18.08.2003.

8. After hearing arguments advanced by learned Additional Public Prosecutor for the State and learned counsel representing accused persons, accused persons namely Gurdial Singh @ Bittu and Amar Kaur were held guilty and convicted under Section 304-B of IPC vide judgment of conviction dated 18.08.2003 and order of sentence dated 19.08.2003 as referred above passed by learned Additional Sessions Judge, Gurdaspur. Feeling aggrieved of this judgment of conviction and order of sentence, appellants/convicts Gurdial Singh @ Bittu and Amar Kaur filed present appeal.

9. Learned counsel for appellants/convicts argued that judgment of conviction and order of sentence passed by learned trial Court is not on sound footing. Prosecution has relied upon the testimonies of witnesses who are close family members of deceased victim. There is no independent corroboration to the testimonies of Harbhajan Singh-father PW-1 and Gurdial Singh-brother PW-3. The Investigating Agency did not try to join any independent witness from neighbourhood who could tell about the true facts. Version put forward by prosecution that deceased victim was maltreated on account of demand of dowry is without any basis. It was a simple marriage in which no dowry was received. Victim got married about one and a half years ago and she was mother of a girl child when this occurrence took place. It is



wrongly alleged that she was being harassed on account of demand of dowry in the shape of cash amount or a fridge as alleged in prosecution version. Learned trial Court has failed to consider discrepancies and contradictions in statements of Harbhajan Singh PW-1 and Gurdial Singh PW-3. As per cross-examination of Harbhajan Singh PW-1, he is an agriculturist. Therefore, considering his financial status, it is difficult to presume in the absence of independent witness that appellants/convicts raised demand of Rs. 10,000/- or a fridge. There is no convincing evidence on record to show that soon before said occurrence, victim was ill-treated on account of any kind of demand.

Learned counsel for appellants/convicts further raised the issue that entire family has been wrongly roped in present case. Amar Kaur-appellant No. 2 is an old mother-in-law of deceased victim. Harbhajan Singh PW-1 during cross-examination admitted that Amar Kaur was about 70 years of age. Thus, at present she must be around 92 years of age. Cross-examination of Harbhajan Singh PW-1 indicates that first child of deceased victim was born in matrimonial home. After the unfortunate occurrence, girl child is being looked after by Amar Kaur being her grandmother. Allegations against appellants/convicts are vague and general in nature. Prior to this, neither victim nor appellants lodged any report with police.

Without considering the aforesaid factual position, both appellants have been wrongly convicted and sentenced by trial Court. It is submitted that judgment of conviction dated 18.08.2003 and order on question of sentence dated 19.08.2003 passed by learned Additional Sessions Judge, Gurdaspur may kindly be set aside by accepting present appeal.



10. On the other hand, learned counsel representing State pointed out that prosecution had led convincing evidence on record to prove the guilt of appellants under Section 304-B of IPC. Entire prosecution case is proved on record from the testimonies of Harbhajan Singh-father PW-1 and Gurdial Singh-brother PW-3 of deceased victim. Both witnesses consistently deposed that deceased victim Sarabjit Kaur was being continuously maltreated in matrimonial home on account of demand of dowry in the shape of cash amount and fridge. Matter was resolved in the family by requesting appellants not to ill-treat Sarabjit Kaur. She was rehabilitated in matrimonial home time and again but there was no change in their behaviour. Finally, on 18.07.1999, they were going to matrimonial home of Sarabjit Kaur at village Dheriwal Kiran and when they reached outskirts of village, complainant-father of victim came to know that his daughter was killed by giving some poisonous substance. Unnatural death of deceased victim is proved by Dr. H.S. Dhillon, Medical Officer PW-5, who has proved Postmortem Report as Ex.PW5/A and report of Chemical Examiner Laboratory as PW5/D, according to which Aluminium Phosphide pesticide was detected in contents of small and large intestine and vial of blood taken from her heart. As per opinion of doctor Ex.PW5/E, cause of death in this case was Aluminium Phosphide poisoning which was sufficient to cause death in the ordinary course of nature. Investigation carried out in this case is proved on record by SI Amarjit Singh PW-8. Link evidence in this case is also complete. Therefore, considering the entire evidence on record, appellants were rightly convicted and sentenced by the trial Court. Thus, appeal preferred by appellants/convicts deserves dismissal.



11. I have considered the arguments advanced before me by learned Amicus Curiae representing appellants/convicts and learned counsel representing State of Punjab and have carefully gone through the record of trial Court. As per facts of the case, FIR has been registered on the statement of Harbhajan Singh-complainant who is father of deceased victim, Ex.PA. Occurrence took place on 18.07.1999 and Harbhajan Singh came to know about unfortunate death of his daughter Sarabjit Kaur by poisoning when he reached the outskirts of their village at about 05:00 PM. Thereafter, matter was reported to police and his statement was recorded by SI Amarjit Singh (then ASI) PW-8 at about 06:30 PM, said endorsement is Ex.PA/1 and on that basis present FIR was registered, which is Ex.PA/2. Therefore, in the case in hand, there is prompt FIR.

Both appellants Gurdial Singh @ Bittu-husband and Amar Kaur-mother-in-law of deceased victim are charge-sheeted for the offence punishable under Section 304-B of IPC. In order to prove the charges, prosecution has examined Harbhajan Singh-father as PW-1 and Gurdial Singh-brother as PW-3. Testimonies of both these witnesses are material to prove the facts of present case. These witnesses categorically stated that Sarabjit Kaur got married with Gurdial Singh @ Bittu about one and a half years ago and she was having a girl child age about 5-6 months at the time of her (Sarabjit Kaur) death. Harbhajan Singh PW-1 father of deceased victim deposed that at the time of marriage, he had given scooter, television, 8 tolas of gold and other dowry articles as per their capacity. Even then his daughter was beaten up in matrimonial home and was even turned out of the house. There was demand for cash of Rs. 10,000/-. Thereafter, he alongwith his wife



had given Rs. 10,000/- in cash to accused persons and requested them to rehabilitate his daughter. Even thereafter, his daughter was given beating by accused and was again turned out of the matrimonial home. She came to parental home and disclosed that now there was demand for a fridge. He alongwith his son (Gurdial Singh PW-3) had gone to matrimonial home and again requested to rehabilitate Sarabjit Kaur. They expressed their inability to satisfy their demand for fridge. He told them that he will arrange fridge after harvesting of paddy crop. After about one week when he alongwith his son Gurdial Singh was going to matrimonial home of his daughter at village Dehriwal Kiran to know about her welfare, he came to know about unfortunate death of his daughter Sarabjit Kaur by poisoning. When they reached matrimonial home, dead body of Sarabjit Kaur was lying on a cot in the courtyard of their house. The rooms were locked and both accused had already gone. I have considered the testimonies of both Harbhajan Singh PW-1 and Gurdial Singh PW-3. Learned counsel for appellants could not pinpoint any material discrepancy in testimonies of both the witnesses. Their statements remained consistent on all material points. There is no reason to discard their testimonies.

12. Learned counsel representing appellants/convicts raised the issue that prosecution could not examine any private, independent witness to prove the facts of case. Testimony of SI Amarjit Singh PW-8 indicates that he did make inquiry from the persons who had collected there. It is usually seen that persons living in neighbourhood do not come forward to depose against their co-villager to avoid life long enmity. It cannot be ignored that even appellants/convicts could not examine any private person from their village in



support of their defence. Therefore, this objection raised by learned counsel for appellants/convicts does not hold any ground. Testimonies of aforesaid prosecution witnesses clearly indicates that Sarabjit Kaur lived in matrimonial home for about one and a half years of her marriage. During this period, she gave birth to a girl child who was 5-6 months old at the time of said unfortunate occurrence. During this short span of her stay in matrimonial home, she was maltreated by raising demand for dowry in the shape of cash amount and fridge. Evidence led by prosecution indicates that parents of deceased victim arranged cash of Rs. 10,000/- and satisfied demand of appellants/convicts. Thereafter, maltreatment again started by raising demand for a fridge. Harbhajan Singh PW-1 conceded that he could not satisfy this demand and requested for time to arrange for a fridge after harvesting of paddy crop. In the meantime, this unfortunate occurrence took place on 18.07.1999. Therefore, sequence of events clearly indicate that soon before her death she was subjected to physical and mental cruelty on account of one demand after the other.

On this point, gainful reference can be made to the judgment of **Supreme Court of India** cited in **2013(2) RCR(Criminal) 75**, case titled **“Kashmir Kaur and another Versus State of Punjab”**, where in order to constitute the offence under Section 304-B of IPC, following principles were culled out, which are as under :-

“16. From the above decisions the following principles can be culled out :

a) To attract the provisions of Section 304B Indian Penal Code the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and



harassment in connection with the demand of dowry.

b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

c) Such death occurs within seven years from the date of her marriage.

d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

e) Such cruelty or harassment should be for or in connection with demand of dowry.

f) It should be established that such cruelty and harassment was made soon before her death.

g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence.

h) It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act.

i) Therefore, the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.

j) However, the expression "soon before" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

k) Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming



fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304B.

l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304B were not satisfied.

m) The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence”.

13. In the case in hand, unnatural death of deceased victim Sarabjit Kaur is proved on record from the testimony of Dr. H.S. Dhillon, Medical Officer examined as PW-5. He conducted postmortem on the body of Sarabjit Kaur on 19.07.1999. He categorically stated that there was no apparent external injury mark on her body. Viscera was sent for chemical analysis and as per report of Chemical Examiner Laboratory Ex.PW5/D, he gave his opinion Ex.PW5/E that cause of death in this case was due to Aluminium Phosphide poisoning. Once it is established that Sarabjit Kaur died unnatural death in matrimonial home within one and a half years of marriage on account of continuous maltreatment on account of demand of dowry, then provisions of Section 113-B of The Indian Evidence Act, 1872 comes into play, which runs as under:-



“113B. 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 has 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 304B of the Indian Penal Code (45 of 1860).”

On this point, gainful reference can be made to the judgment of **Supreme Court of India**, case titled **“Surinder Singh Versus State of Haryana”** [*Law Finder Doc Id # 498981*] **2014(1) RCR(Criminal) 535**, where in para No. 13 it was held as under :-

“13. Section 113B of the Indian Evidence Act, 1872 states that 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 has 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. Section 304B of the IPC states 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. Thus, the words ‘soon before’ appear in Section 113B of the Indian Evidence Act, 1872 and also in Section 304B of the IPC. For the presumptions contemplated under these Sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words ‘soon before’ is, therefore, important. The question is how ‘soon before’? This would obviously



depend on facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death."

14. In the case in hand, prosecution led convincing evidence on record that Sarabjit Kaur victim was not allowed to live in the matrimonial home peacefully. She remained under constant stress on account of one demand or the other during her short stay of 1½ years in the matrimonial home, which finally led to her tragic death. Prosecution led credible evidence on file to establish the ingredients of offence under Section 304-B of IPC read with Section 113B of the Indian Evidence Act, 1872.

Now onus was on appellants to rebut the said presumption. Considering the evidence led by prosecution, learned counsel for appellants/convicts failed to pin-point anything in the testimonies of Harbhajan Singh PW-1 and Gurdial Singh PW-3 which could lead to conclusion that it was not a case of dowry death. Appellants/convicts could



not lead any evidence in defence to establish their own version. Gurdial Singh @ Bittu took the stand in his statement under Section 313 Cr.P.C. that his wife was sick, she used to take medicines and by mistake she consumed insecticide kept in the house for agricultural purposes. Infact, there is no evidence led in defence that prior to occurrence of 18.07.1999, Sarabjit Kaur was sick. Even otherwise, it cannot be believed that Sarabjit Kaur consumed insecticide tablet by mistake. Therefore, defence raised by appellant/convict Gurdial Singh @ Bittu is without any basis.

15. The other aspect of present case is when body of victim was brought by HC Partap Singh PW-2 and Constable Gurvail Singh to Civil Hospital, Gurdaspur for postmortem examination, a chit/slip Mark-A was recovered, when clothes from dead body were removed by mortuary staff in the presence of Dr. H.S. Dhillon PW-5. Said chit (Mark-A) was recovered from her clothes and was handed over to HC Partap Singh PW-2 and same was taken into possession vide memo Ex.PW5/A. HC Partap Singh PW-2 further confirmed that he had handed over said chit to ASI Amarjit Singh Investigating Officer which was taken into police possession vide recovery memo Ex.PB. It has come in cross-examination of SI Amarjit Singh PW-8 that when he prepared inquest report before sending dead body for postmortem examination, he did not recover anything from the body of deceased victim. I have gone through the contents of said slip (Mark-A). In the case in hand, Investigating Officer did not properly investigate regarding the chit (Mark-A) recovered from the clothes of deceased victim. There was no effort on the part of Investigating Agency to compare hand writing on the said chit with standard hand writing of deceased victim. Due to lack of proper



investigation, alleged hand written chit (Mark-A) could not be looked into, as a piece of evidence.

16. Despite aforesaid factual position, there is ample evidence on record to show that Sarabjit Kaur soon before her death was maltreated in matrimonial home by raising one demand after the another which resulted into her unfortunate unnatural death. Gurdial Singh @ Bittu being husband of deceased victim cannot escape his liability for unnatural death of his wife in matrimonial home. Therefore, learned trial Court rightly concluded that guilt of Gurdial Singh @ Bittu is duly established under the provisions of Section 304-B of IPC and was rightly convicted thereunder. With this observation, judgment of conviction dated 18.08.2003 and order on question of sentence dated 19.08.2003 passed by learned Additional Sessions Judge, Gurdaspur qua **appellant/convict Gurdial Singh @ Bittu does not require any interference and appeal preferred by him is, accordingly, dismissed.**

17. Appellant No. 2/convict Amar Kaur-mother-in-law of deceased victim has also preferred appeal against judgment of conviction dated 18.08.2003 and order on question of sentence dated 19.08.2003 vide which she is sentenced to undergo rigorous imprisonment for seven years. There is no specific allegation against appellant No. 2/convict Amar Kaur. Harbhajan Singh PW-1 during his cross-examination conceded that girl child of deceased victim was being looked after by Amar Kaur-grandmother. In the absence of specific attribution, prosecution failed to prove the guilt of appellant No. 2 Amar Kaur beyond the shadows of reasonable doubt. Therefore, **appeal on behalf of appellant No. 2 Amar Kaur is, accordingly, allowed** and judgment of conviction dated 18.08.2003 and order on question



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of sentence dated 19.08.2003 passed by learned Additional Sessions Judge, Gurdaspur passed qua her is set aside by giving her benefit of doubt and she is acquitted of the charge framed against her.

18. With aforesaid observation, present appeal preferred by appellants Gurdial Singh @ Bittu and Amar Kaur is, accordingly, disposed of. Sentence of appellant Gurdial Singh @ Bittu was suspended by the Coordinate Bench of this Court, he is directed to surrender before learned Chief Judicial Magistrate, Gurdaspur, within one month from today, failing which learned Chief Judicial Magistrate, Gurdaspur would issue warrants of arrest to secure his presence and send him to jail to undergo remaining sentence. Necessary intimation be sent to the concerned Court for information and compliance.

19. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

29.05.2025

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