

(2015) 02 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : CRM-A-1648-MA of 2014

Baljit Kaur

APPELLANT

Vs

Satpal Singh and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(4)
Evidence Act, 1872 — Section 113-B
Penal Code, 1860 (IPC) — Section 304-B, 34

Citation : (2015) 4 RCR(Criminal) 701

Hon'ble Judges : Darshan Singh, J.;Muttaci Jeyapaul, J.

Bench : Division Bench

Advocate : Gagandeep Jammu, Advocate Learned Counsel, for the Appellant

Final Decision : Dismissed

Judgement

Darshan Singh, J.—The present application has been filed by complainant Baljit Kaur under Section 378(4) of the Code of Criminal Procedure, 1973 (for short Cr.P.C) for grant of leave to appeal against the judgment of acquittal dated 25.08.2014 passed by the learned Additional Sessions Judge, Patiala, vide which accused-respondents have been acquitted for the offences punishable under Section 304-B/34 Indian Penal Code (for short IPC).

2. The present case has arisen from the private complaint filed by complainant/applicant Baljit Kaur alleging therein that marriage of her daughter Amandeep Kaur was solemnized with accused Satpal Singh on 05.12.2003 with great pomp and show. Sufficient dowry was given and an amount of Rs. 6 lac was spent on the marriage. However, accused were not satisfied and soon after the marriage, they started taunting and harassing Amandeep Kaur on the ground that neither the Barat was attended properly nor the dowry articles were given. The parents of the deceased approached the accused with respectables of their village to convince the accused, but all in vain. Amandeep Kaur gave birth to a son and on his birth, sufficient gifts were given by her parents. But, the accused were not

satisfied. Ultimately, the deceased was turned out of the matrimonial home on 13.05.2007 for the demand of Rs. 1 lac. The said amount was paid to accused Satpal Singh, but on 31.10.2007, the complainant rang up to her daughter and she told that the accused persons had given beatings to her and demanded another sum of Rs. 1 lac for the purchase of car. On 1.11.2007, a call was received from the accused persons and when the complainant reached at the matrimonial house of Amandeep Kaur, she was found dead. The postmortem examination on the dead body was conducted at Civil Hospital, Samana on 02.11.2007. FIR was registered against the accused persons, but the police did not take any action against them. Rather, the police obtained the signatures of the husband of complainant on some blank papers. Hence, the complainant filed the private complaint.

3. On the basis of the preliminary evidence, respondent Satpal Singh @ Paramjit Singh, the husband of the deceased, his father Karamjit Singh and his mother Harmeet Kaur were ordered to be summoned to face the trial for the offence punishable under Section 304-B read with Section 34 IPC vide order dated 13.08.2012, passed by the learned Judicial Magistrate, Samana. However, the complaint against the remaining accused was dismissed. Accused Harmeet Kaur died during the pendency of the case and proceedings against her were abated. The trial was faced by respondents Satpal Singh @ Paramjit Singh and his father Karamjit Singh, who were charge sheeted for the offence punishable under Section 304-B read with Section 34 IPC to which they pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution examined total four witnesses.

5. When examined under Section 313 Cr.P.C., the accused-respondents denied all the allegations and pleaded their innocence and false implication by the complainant only to extort the money.

6. In the defence evidence, accused-respondents examined HC Balwinder Singh as DW-1 and also brought on record the documents Ex.DX, Ex.DY, Ex.DZ, Ex.DZ/1 and Ex.DZ/2.

7. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court acquitted the respondents. Hence this application along with appeal.

8. We have heard Mr. Gagandeep Jammu, learned counsel for the applicant-complainant and have meticulously examined the record of the case.

9. Learned counsel for the applicant-complainant contended that the learned trial Court has not properly appreciated the evidence and has wrongly acquitted the respondents. He contended that it was a case of dowry death. As per Section 113-B of the Indian Evidence Act, the presumption arises against the accused. So, the burden was upon the accused to dislodge the prosecution case. But, the

learned trial Court has taken an erroneous view and had put the entire burden on the prosecution and acquitted the respondents.

10. He further contended that Amandeep Kaur has died other than under normal circumstances. So, she has died an unnatural death within seven years of her marriage. There is sufficient evidence on record in shape of the statement of PW-2 complainant Baljit Kaur and PW-3 Jeet Singh to show that the deceased was subjected to cruelty in connection with the demand of dowry soon before her death. All the ingredients of the offence punishable under Section 304-B of IPC were established. Thus, he contended that the judgment of acquittal recorded by the learned trial Court is unsustainable.

11. We have duly considered the aforesaid contentions.

12. The present application has been filed by the complainant in order to seek leave to appeal against the judgment of acquittal. It is the settled principle of law that if two reasonable conclusions are possible on the basis of evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the learned trial Court. The Appellate Court should not interfere against the acquittal in the absence of perversity in the judgment. The order of acquittal can only be interfered with when there are compelling and substantial reasons for doing so, when the order is clearly unreasonable the trial Court had ignored the evidence or misread the martial evidence or has ignored the material documents. To support this view reference can be made to case *Mrinal Das and Others Vs. The State of Tripura*, , *Anil Kumar Gupta Vs. State of U.P.*, and *Prem Singh Vs. State of Haryana*, . In view of the aforesaid ratio of law, we are to examine the case in hand.

13. In order to establish the charge under Section 304-B IPC, the prosecution is required to prove the following essential ingredients:-

(i) Death of the woman was caused by burn or bodily injury or had occurred otherwise than under normal circumstances.

(ii) Such death should have occurred within seven years of her marriage.

(iii) The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with the demand of the dowry.

(v) To such cruelty or harassment the deceased should have been subjected to soon before her death.

14. We do not find any substance in the plea raised by the learned counsel for the applicant that in dowry death cases the burden to prove is on the accused as the burden to establish the ingredients of the offence punishable under Section 304-B IPC is always on the prosecution. The presumption under Section 113-B Indian Evidence Act only arises when the prosecution successfully proves the

aforesaid ingredients.

15. In the instant case, there is no dispute that the death of Amandeep Kaur had occurred within seven years of her marriage. The dispute is about the remaining ingredients. The learned trial Court has elaborately discussed the medical and other evidence. There was no evidence to establish that deceased Amandeep Kaur had died otherwise than under normal circumstances. Dr. Karan Singh, who was the member of the team of the doctors who conducted the postmortem examination on the dead body of Amandeep Kaur on 02.11.2007 has appeared as PW-4. He has nowhere deposed in his testimony about any injury on the person of the deceased. He has simply mentioned about the presence of lot of secretion at orifice . No external injury on the person of the deceased has been narrated by this witness. He has further deposed that as per his statement opinion regarding cause of death was to be declared on receipt of the report of Chemical Examiner and Histopathological Department report. He further deposed that report of Histopathological and report of Chemical Examiner were received, which are Ex.PW4/D and Ex.PW4/E. According to the report of Chemical Examiner, no poison was detected. He further deposed that after perusing death reports, the Board was of the opinion that since no poison was detected and no abnormality was seen in histopathological report, hence the cause of death in this case can not be commented. The opinion of the Medical Board to this effect is Ex.PW4/F-1. He further deposed that on 13.03.2008, the police moved another application for seeking clarification regarding the cause of death. The Board again perused the record and pointed that cause of death is not certain and may be the natural disease process could be the cause of death. The said opinion is Ex.PW4/G- 1. Except the aforesaid medical evidence, the prosecution has not brought any other evidence to show that Amandeep Kaur has died otherwise than under normal circumstances. So, The prosecution has not been able to establish that Amandeep Kaur has died an unnatural death i.e. otherwise than under normal circumstances. The medical board has given the opinion that the natural disease process could be her cause of death.

16. The prosecution has also not led any cogent and convincing evidence to establish that the deceased was subjected to cruelty or harassment in connection with the demand of dowry soon before her death. The entire case of the prosecution is based on the statement of PW-2 complainant Baljit Kaur and PW-3 Jeet Singh. It is pertinent to mention that immediately after the death of Amandeep Kaur, the matter was reported to the police. Harmesh Singh, the father of the deceased had made the statement on 2.11.2007, which is Ex.PW4/DA, wherein he had stated that his daughter Amandeep Kaur used to remain ill due to the mental ailment. On 01.11.2007, he received the telephonic information from his relative Karamjit Singh that Amandeep Kaur was not well and was admitted in private Aggarwal Hospital, Samana. He reached there at about 5.30.p.m. Thereafter, she suddenly died. The dead body was brought by him and her in-laws to village Harchandpure. He has further sated that his daughter has died suddenly due to illness. No one is at fault. He and his family

members did not want any action with respect to her death. Later on police case with respect to this occurrence was also recorded on the statement of complainant Baljit Kaur, the mother of the deceased. The said statement is Mark D-2, wherein she has levelled the allegations with respect to the harassment and maltreatment of the deceased and further alleged that the husband, father-in-law, mother-in-law and sisters-in-law of the deceased after conspiring with each other, gave some poisonous substance to the deceased and murdered her. The wearing clothes of the deceased were smelling poison and her clothes were changed by her in-laws. But, as already mentioned in the report of the Chemical Examiner Ex.PW4/E, no poison was detected in the viscera of the deceased. So, these allegations have no legs to stand.

17. The learned trial Court has rightly observed that complainant Baljit Kaur, when stepped into the witness box in this case, has made numerous improvements in her statement. She has alleged that on 31.10.2005 (stated to be 31.10.2007 in the cross-examination by the learned PP) she made the telephonic call to her daughter for knowing her well being and she disclosed that she was again given beatings by her husband, father-in-law, mother-in-law and both unmarried sister-in-laws for bringing insufficient dowry and for not bringing the car. She further deposed that on 1.11.2005 (stated to be 1.11.2007 in the cross-examination by the learned PP) father-in-law of her daughter made telephonic call to them and disclosed that they had killed their daughter. So, as per the statement of the complainant, the deceased was being treated with cruelty and harassed on account of the demand of car.

18. As already mentioned, she has made numerous improvements in her statement and in the cross-examination she contradicted various facts based on record to render her an unreliable witness. She deposed that her husband Harmesh Singh has not given any statement to the police on 02.11.2007, whereas the said statement is available on record as PW-4/DA. She also denied his signatures on the joint statement mark D-1, which is signed by various other persons along with her exonerating the accused. She further deposed that on 2.11.2007, no police official from Police Station Ghagga of police Post Badshahpur had come at the spot, nor any papers were prepared with respect to the dead body. Thus, she is disowning the inquest proceedings available on record. On her statement Mark D-2 the case FIR No. 137 dated 6.11.2007 under Section 304-B IPC Police Station Ghagga was recorded. But, in the cross examination she deposed that she had never made any statement before the police during the investigation of the case and never met the police officials at any point of time during the investigation of the case. She never signed any document before the police at any point of time. She has even gone to the extent of denying the contents mentioned in the complaint and deposed that she does not know as to what was written in the complaint as she had not gone through the contents. She even denied having made any statement in the Courts at Samana, which is again against the judicial record. She, further deposed that complaint, which was filed in Samana Court i.e. the complaint out of which these

proceedings have arisen, was prepared by his counsel and he disclosed that complaint has been filed. In the further cross-examination she deposed that she has made the statement in the Samana Court that justice be given to her and she made the statements in Samana Court on various occasions. She deposed that she had never made any statement to any authority that her daughter was killed by administering poison. She further categorically stated that no FIR bearing No. 137 dated 6.11.2007 Police Station Ghagga was registered on her statement, which is again against record. As per record, her statement Mark D-2 was also endorsed by Jeet Singh, but she pleaded failure of knowledge about this fact. She has further denied various material facts.

19. Similar, is the position of statement of PW-3 Jeet Singh. He happens to be the co-brother of Harmesh Singh, the father of the deceased. Though, in his examination in chief, he has deposed that in-laws of the family of Amandeep Kaur were demanding the car and they were not satisfied with the payment of Rs. 1 lac by the father of the deceased. But, in cross-examination he has also been confronted on various material aspects of the case. He deposed that in his presence Baljit Kaur had never made any statement before the police and he does not know whether any FIR in this case was registered. However, he has admitted his signatures at point B (Ex.PW3/DA) on the statement of Baljit Kaur Mark D-2 on the basis of which the police case was registered. He has also made various improvements over his statement Mark D-5 recorded by the Sub-Divisional Judicial Magistrate, Samana. He was duly confronted with his statement Ex.DA recorded by the police on material aspects regarding the articles given in the dowry and the allegations regarding humiliation of the family members of the deceased for the demand of dowry, the holding of the Panchayat when the demand of car was raised and fulfillment of the said demand to some extent. So, the statements of both PW-2 complainant Baljit Kaur and PW-3 Jeet Singh suffer from various material improvements and are contradictory to the documents available on record. The statements of these type of witnesses can not be relied upon.

20. As already mentioned for this very occurrence on the statement of complainant Baljit Kaur, the police case bearing FIR no. 137 dated 6.11.2007 under Section 304-B/34 of IPC Police Station Ghagga was registered and in that case the police has prepared the cancellation report, which is evident from the report of Superintendent of Police (D) Patiala Ex.DZ/1.

21. The father of the deceased would be the best witness to prove the factum regarding the demand of dowry. As per the prosecution case he has paid Rs. 1 lac to respondent/accused Satpal Singh his son-in-law to satisfy his demand. But, surprisingly he has not been examined by the prosecution. It appears that he has been withheld by the prosecution only due to the reason that he has made the statement Ex.PW4/DA to the police which was the first version about this incident and wherein no allegations regarding the demand of dowry or harassment of the deceased were mentioned. Rather, it was mentioned that she

has died due to ailment and nobody was responsible for her death.

22. In these circumstances, the prosecution has not been able to establish that Amandeep Kaur has died otherwise than under normal circumstances. The prosecution has also not been able to establish that she was subjected to cruelty or harassment in connection with the demand of dowry soon before her death. So, there is no question of the presumption under Section 113-B of the Indian Evidence Act being drawn against the accused.

23. Consequently, we do not find any perversity in the impugned judgment of acquittal and there are no compelling and substantial reasons to interfere with the acquittal of the respondents. Thus, the impugned judgment does not suffer from any legal infirmity or impropriety which could call for any interference by this Court.

24. Resultantly , finding that there is no merits in the appeal, the leave to appeal sought for by the applicant/complainant is hereby declined. Thus, the application filed by her under Section 378(4) Cr.P.C is hereby dismissed.