
(2008) 02 P&H CK 0200
In the Punjab And Haryana At Chandigarh

Jagjit Singh, Inderjit Kaur and Balwinder Kaur @ Bholi APPELLANT
Vs
State of Punjab RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 114
Penal Code, 1860 (IPC) — Section 304B

Citation : (2008) 2 RCR(Criminal) 232

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Judgement

Sham Sunder, J.—This appeal is directed against the judgment of conviction and the Order of sentence dated 03-02-1997, rendered by the Court of Additional Sessions Judge, Ludhiana, vide which it convicted the accused/appellants, for the offence punishable u/s 304-B of the Indian Penal Code, and sentenced them to undergo rigorous imprisonment for a period of seven years each.

2. The facts, in brief, are that, Manjit Kaur d/o Dalbara Singh, complainant, was married to Jagjit Singh, accused, ten months before 19-10-1994. At the time of her marriage, Dalbara Singh had given the dowry to his daughter, according to his status. He had given one bracelet and two rings of gold to Jagjit Singh and one ring to the father of Jagjit Singh. A pair of ear-rings was given to Inderjit Kaur, mother of Jagjit Singh and two rings were given to the husband of the sister of Jagjit Singh. Several other articles were also given to the accused. One month after the marriage, Dalbara Singh and his wife Gurdial Kaur had gone to village Jassowal to meet their daughter, Manjit Kaur, in her-in-laws house. Manjit Kaur told them that Inderjit Kaur, her mother-in-law, Jagjit Singh, her husband and Balwinder Kaur @ Bholi, her sister-in-law, who was un-married, at that time, taunted her, on the ground, that she had brought in-sufficient dowry. She also told her parents that these accused further asked her that if she wanted to live in their house, then she should bring one scooter, fridge, coloured T.V., and an almirah, from her parents, otherwise, they would not allow her to live in their

house. Dalbara Singh and his wife told their daughter Manjit Kaur, that she should not complain about their-in-laws, and they would talk about this, with their relatives. His wife, Gurdial Kaur, also told Inderjit Kaur, mother-in-law of her daughter, her son-in-law Jagjit Singh, and Balwinder Kaur, sister-in-law of her daughter, not to maltreat her daughter, as they being poor persons were unable to give anything more than what they had already given in dowry.

3. About 20-25 days, thereafter, Manjit Kaur d/o Dalbara Singh came to her parents house, at village Akhara, and told her parents that her mother-in-law, husband and sister-in-law had turned her out of their house, after beating her, and had asked her to bring scooter, fridge, coloured T.V. and Godrej Almirah, otherwise, she should not come to their house. On the next day, Dalbara Singh and his wife, Gurdial Kaur, his brother-in-law, namely, Balbir Singh resident of village Johlan and Sukhdev Singh, Sarpanch of their village had gone to village Jassowal, along with his daughter Manjit Kaur, and left her in her in-laws house. They requested the accused, not to maltreat Manjit Kaur.

4. About 15 days, thereafter, Dalbara Singh had gone to village Jassowal to meet his daughter, where, she told him that she had again been beaten by the accused, in connection with the demand of dowry. She further told him that her father-in-law, Malkiat Singh had never asked anything about the dowry. Thereafter, when Dalbara Singh, visited Jassowal, his daughter again disclosed about the maltreatment at the hands of in-laws. She further told that she was afraid that she would be killed by them. The parents of Manjit Kaur, were, however, not in a position to fulfill the demand of dowry, referred to above, raised by the accused from Manjit Kaur.

5. On 19-10-1994, they received a message, that Manjit Kaur, had died. Dalbara Singh had suspicion that Jagjit Singh, Balwinder Kaur @ Bholi and Inderjit Kaur had killed his daughter, by giving her poisonous substance. When Dalbara Singh was going to the Police Station, for giving the information, about the death of his daughter, police party headed by A.S.I. Surjit Singh, met him, on the way, where his statement exhibit PF was recorded. After admitting the same to be correct, he signed the same, in english. Endorsement exhibit PF/1 was made thereon. Thereafter, the said statement was sent to the Police Station, on the basis of which, formal F.I.R., exhibit PF/2 was recorded.

6. Thereafter, Surjit Singh, ASI, reached the place of occurrence and found the dead body of Manjit Kaur, lying in the court yard of the house of her in-laws. He prepared the inquest report, exhibit PB of the dead body and recorded the statements of the prosecution witnesses. He deputed constable Gurjant Singh and Balbir Singh, Punjab Home Guard Volunteer with the dead body of the deceased for the purpose of postmortem examination. Surjit Singh, ASI, collected one packet containing medicines, namely, Fumino and sealed the packet with his seal, bearing impression `SS". The packet was taken into possession vide recovery memo, exhibit PG, attested by Head Constable Lakhbir Singh and Nand Singh, prosecution witness. Rough site plan was prepared. The

statements of the witnesses were recorded. After the postmortem examination, Constable Gurjant Singh, produced before ASI Surjit Singh, a parcel, containing the clothes of the deceased, bearing seals of the doctor, and one sealed envelop. The parcel and the envelop were taken into possession, vide recovery memo, exhibit PJ, attested by the witnesses. On reaching the Police Station, he deposited the case property with seals intact with the MHC. He had searched the accused for 2-3 days, and, thereafter, the investigation was taken over by Joginder Singh, Inspector. On 28-10-1994, Joginder Singh arrested Jagjit Singh and Inderjit Kaur, accused. On 27-12-1994, he arrested Balwinder Kaur, accused. After the completion of investigation, all accused were challaned.

7. On their appearance, in the Court of the Committing Magistrate, the accused were supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, in the Court of Sessions, charge u/s 304-B was framed against the accused, to which, they pleaded not guilty and claimed judicial trial.

8. The prosecution, in support of its case, examined Dr. Rajneesh Garg (PW-1), who conducted the postmortem on the dead body of Manjit Kaur on 19-10-1994. The dead body was identified by Gurdip Singh s/o Balbir Singh, r/o Akhara. The viscera was sent to the Chemical Examiner for analysis. The cause of death was to be given after the receipt of the report of Chemical Examiner. The probable time that lapsed between the injuries and death was to be declared after the receipt of Chemical Examiner's report. The time that lapsed between death and postmortem examination was 24 hours. On receipt of the report of the Chemical Examiner, exhibit PD, the doctor sent information exhibit PE to the SHO, Police Station Sadar, that the cause of death, according to his opinion, was aluminium phosphide poisoning.

9. Dalbara Singh (PW-2), is the father of the deceased. Nand Singh (PW-3) was a mediator, in arranging the marriage of Manjit Kaur d/o Dalbara Singh with Jagjit Singh.

10. Gurdip Singh (PW-4), is a nephew of the father of the deceased. Sukhdev Singh (PW-5) is Sarpanch of Village Akhara, where, Dalbara Singh, father of the deceased was residing.

11. Sukhwinder Singh (PW-6) prepared the site plan. Surjit Singh (PW-7) mainly investigated this case. Inspector Joginder Singh (PW-8) was the SHO, Police Station Sadar, who also investigated this case. Thereafter, the Additional Public Prosecutor for the State, closed the prosecution evidence.

12. The statements of the accused u/s 313 of the Code of Criminal Procedure, were recorded. Jagjit Singh, admitted in his statement that Manjit Kaur d/o Dalbara Singh was married to him according to sikh rites on 15-12-1993 and Nand Singh (PW-3) was a mediator. He took the following plea:

I am innocent. I was living happily with my wife. We have been in possession of

Fridge, colour T.V., almirah, and Scooter even before my marriage. I and my other coaccused never demanded the above items from the deceased Manjit Kaur and never tortured her on that account. We also never demanded anything from her parents. We have been implicated falsely at the instance of Nand Singh, PW. Son of Nand Singh was married 10 days before the present occurrence and reception was also held. On 18.10.94, I and my wife visited them to attend the reception. My wife gave a suit to the newly wed couple as shagan. But Nand Singh and his wife rebuked my wife saying that they have done so much for our family and she has given a substandard suit as shagan. My wife returned from the reception in a very serious mood and took this insult to her heart and attempted to commit suicide, due to this reason. We rendered medical aid to her and also took her to the hospital. But she could not be saved. We also informed the parents of the deceased. We blamed Nand Singh for this tragedy and took the matter to our brotherhood. Due to this grudge, Nand Singh PW, misguided the parents of Manjit Kaur and falsely implicated us in this case.

13. Inderjit Kaur, in her statement, stated that she was falsely implicated, in this case. She further stated that Manjit Kaur, deceased, her son Jagjit Singh and the other family members were living happily. She further stated that they were having a fridge, coloured T.V., almirah and scooter, even before the marriage of her son Jagjit Singh. She further stated that they never demanded the above articles, from the deceased, nor tortured her on this account.

14. Balwinder Kaur @ Bholi also took up the same plea, as was taken by Inderjit Kaur. Additionally, she stated that she was falsely implicated, in this case, at the instance of Nand Singh. The accused, however, did not lead any evidence in their defence.

15. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court convicted and sentenced the accused, as stated above.

16. Feeling aggrieved, the instant appeal was filed by the appellants.

17. I have heard the learned Counsel for the parties, and have gone through the evidence and record of the case, carefully.

18. For constituting the offence, punishable u/s 304-B of the I.P.C., the prosecution was required to prove that the death of a married woman took place within seven years of her marriage, otherwise, then under normal circumstances, and that soon before her death, she was maltreated, in connection with the demand of dowry. In the instant case, from the evidence of Dalbara Singh (PW-2), father of the deceased, it was proved that the deceased was married to Jagjit Singh on 15-12-1993. It was also proved from his evidence and the evidence of Dr. Rajneesh Garg (PW-1) that she died on 19-10-1994, i.e., within seven years of her marriage. It was also proved from the statement of Dr. Rajneesh Garg (PW-1) that the death of Manjeet Kaur was due to aluminium phosphide poisoning. It means the death of the deceased took place, otherwise,

than under normal circumstances. The fulfillment of the aforesaid ingredients, was also not disputed, by the accused. The dispute was only with regard to the factum, as to whether, the deceased was maltreated, in connection with the demand of dowry, soon before her death.

19. The Counsel for the appellants, at the very outset, contended that no credible evidence was led by the prosecution, to prove that Manjit Kaur, now deceased, was maltreated by the accused, in connection with the demand of dowry, soon before her death. He further contended that as such the ingredients required for constituting the offence u/s 304-B of the Indian Penal Code were not fulfilled. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. Dalbara Singh, father of the complainant, while appearing as, PW-2, in clear-cut terms, stated that at the time of marriage of his daughter, sufficient dowry was given. According to him, after one month of the marriage, he alongwith his wife Gurdial Kaur, went to meet their daughter at village Jasowal, where she was married. Their daughter told them that the accused were taunting her for bringing less dowry. She further told them that they were demanding articles like scooter, fridge, coloured T.V., and an almirah. She also told her parents that if the aforesaid articles were not given, she would not be kept in her in laws house. According to Dalbara Singh, about 20-25 days, thereafter, Manjit Kaur came to his house, at village Akhara, and told that she had been turned out of her in-laws house, after giving beatings. She further told that the accused had directed her that she should bring the aforesaid articles, otherwise, she should not come back to her in-laws house. Thereafter, Dalbara Singh, alongwith his wife Gurdial Kaur, his brother-in-law Balbir Singh and Sukhdev Singh, Sarpanch and his daughter Manjit Kaur had gone to village Jassowal and left her there, in her in-laws house. The accused were requested, not to make any demand of the articles. 15 days, thereafter, Dalbara Singh again went to meet his daughter, when she told that the accused were beating her and making demand of dowry of the aforesaid articles, as usual. He told her that he was unable to give the aforesaid articles in dowry. At that time, Manjit Kaur, told him that she feared that she would be killed, in case, their demand was not fulfilled. On 19-10-1994, he received a message regarding the death of his daughter, in the house of her in laws. There was no reason, on the part of Dalbara Singh (PW-2) to make a false statement with regard to the demand of dowry, made by the accused, from his daughter. The statement of Dalbara Singh (PW-2) was corroborated by Nand Singh (PW-3), mediator, who arranged the marriage, Gurdip Singh (PW-4), his nephew and Sukhdev Singh (PW-5), Sarpanch of the village. It is a matter of common experience, that a married daughter can only apprise her parents, and near relations of her tale of woes, suffered at the hands of her in laws. She is always reluctant to make such family matters public, so that unnecessary criticism is not faced by the family of her-in-laws. It was, under these circumstances, that when she was maltreated by the accused in connection with the demand of dowry, she narrated the tale of her woes to her father from time to time. The demand raised by the accused, was

continuous. The said demand of dowry started about one month, after the marriage of Manjit Kaur and continued till her death. No doubt, no report with regard to beatings was lodged by Manjit Kaur, or her parents with the police. As stated above, no married lady likes to disturb her family life. Minor quarrels and squabbles, which take place in the family, can be treated to be normal wear and tear of 'life'. Since, Manjit Kaur, did not want the things to make public, neither she nor her parents lodged the report, with the Police, with regard to her beatings and, on the other hand, tried to prevail upon the members of her in laws family to treat her in a proper manner. It therefore, could not be taken as an adverse circumstance against Manjit Kaur or her parents. In *Kans Raj v. State of Punjab and Ors.* 2002 Crimes 213 (SC) it was held that cruelty soon before her death, is a relative term, which is required to be considered, under specific circumstances of each case, and no straightjacket formula, can be laid down, by fixing any time limit. This expression is pregnant with the idea of proximity test. The term soon before is not synonymous with the term immediately before, and is opposite of the expression soon after, as used and understood in Section 114 of the Indian Evidence Act. Since, the demand of dowry of the aforesaid articles, was continued till the death of the deceased, as stated above, it can be very well said that she was maltreated, in connection with the said demand of dowry, soon before her death. The submission of learned Counsel for the appellants, in this regard, being without any merit, must fail and the same stands rejected.

20. It was the next contended by learned Counsel for the appellants, that the accused were having scooter, fridge, coloured T.V., and almirah, even before the marriage of Jagjit Singh, and Manjit Kaur, and, as such, the question of demand of these articles, in dowry by them, did not all arise. This submission of learned Counsel for the appellants, does not appear to be correct. Even if, it is taken that the accused were already having all these articles, it could not be said that they were not greedy. Greed knows no limits. Now-a-days, almost every member of the family has separate vehicles, subject to the condition, that they are able to afford the same. Even a large number of families possess more than two or three coloured T.V. Godrej almirah etc. There was no reason, on the part of the deceased, to complain against the conduct of the accused, had she been not tortured, in connection with the demand of dowry of the aforesaid articles, soon before her death, from her parents. She died within a period of ten months of her marriage. No married young lady wants to end her life, if she is not tortured or subjected to cruelty. She must be having high hopes, to live a happy married life, but the greed of the accused did not allow her to do so. Under these circumstances, the submission of learned Counsel for the appellants, being without merit, must fail, and the same stands rejected.

21. It was next contended by learned Counsel for the appellants, that the conduct of the accused, clearly revealed that they did not subject Manjit Kaur with cruelty, soon before her death. He further contended that the husband of the deceased sent message to her parents. He also took her to the hospital. He further contended that had it been the intention of the accused to get rid of

Manjit Kaur, they would not have taken her to hospital. No doubt, it is proved from the statement of Nand Singh (PW-3) that on the night intervening 18-10-1994/19-10-1994, at about 4.00 a.m., Jagjit Singh and his neighbour called the doctor, who was residing in front of his house. Nand Singh (PW-3) further stated that he heard the voice, woke up, came out of his house, and asked them as to what was the matter. He further stated that Jagjit Singh told him that his wife Manjit Kaur was in critical condition. Thereafter, he went to the house of the accused and saw that the body of Manjit Kaur was wrapped with a cloth, and when he enquired, he was told that she was sleeping. He also stated that Jagjit Singh took Manjit Kaur to a hospital at Mullanpur. He further stated that the accused sent two persons to him, to inform about the death of Manjit Kaur. Thereafter, he went to the village of Dalbara Singh and told him about the death of his daughter. He also admitted, during the course of cross-examination, that they were sent to Dalbara Singh, to convey the message that his daughter had died, in a van, which was procured by Jagjit Singh accused. Such conduct of the accused did not absolve them of their criminal liability. Such conduct might have been exhibited by the accused, with a view to prove their innocence, and to ensure that the police and the parents of the deceased may not suspect them, in the commission of crime. Such post occurrence conduct of the accused was required to be co-related with their pre-occurrence conduct. When their post occurrence conduct is co-related, with their pre-occurrence conduct, then only one and one conclusion, that can be arrived at, is that they did all this, with a view to save them from criminal liability. The submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

22. Now coming to the participation of the accused, in the commission of crime, it may be stated here, that Balwinder Kaur @ Bholi, was an un-married daughter of Inderjit Kaur and sister of Jagjit Singh accused. She, in my opinion, had no role, whatsoever, to play, in the commission of crime. She could not be said to be the beneficiary, in any manner, of coloured T.V., fridge, scooter and almirah, the demand in respect whereof, was raised by the other accused, from the parents of Manjit Kaur, through her. The Counsel for the appellants, submitted that after the occurrence, she was married. It is a matter of common experience, that when a married lady dies, in the house of her-in-laws, otherwise than under normal circumstances, no love is lost between the members of the family of her parents, and her-in-laws. The parents of such deceased do not miss an opportunity, to involve more and more members of the family of in laws of the deceased. Since, the ultimate beneficiaries of such a demand were Jagjit Singh, husband and Inderjit Kaur, mother-in-law of the deceased, they could only be held liable for the offence u/s 304-B of IPC. The evidence of Dalbara Singh, Nand Singh and Sukhdev Singh, to the effect that Balwinder Kaur @ Bholi also maltreated the deceased, in connection with the demand of dowry, soon before her death, is not believable. Out of an abundant caution, in my opinion, Balwinder Kaur @ Bholi, sister-in-law of the deceased, is required to be given the benefit of doubt, and is entitled to acquittal.

23. In view of the above discussion, it is held that the judgment of conviction and order of sentence, rendered by the trial Court, qua Jagjit Singh and Inderjit Kaur, accused/appellants, are based on the correct appreciation of evidence, and law, on the point, and need no interference, whereas, the judgment of conviction and the order of sentence qua Balwinder Kaur @ Bholi, warrant interference, for the reasons recorded here-in-above.

24. For the reasons recorded above, the appeal of Jagjit Singh and Inderjit Kaur is dismissed. The judgment of conviction and the order of sentence qua Jagjit Singh and Inderjit Kaur, appellants, are upheld. The bail bonds of Jagjit Singh and Inderjit Kaur are cancelled. The Chief Judicial Magistrate shall take necessary steps to comply with the judgment of this Court.

25. The appeal of Balwinder Kaur @ Bholi appellant is accepted. The judgment of conviction and order of sentence qua her are set aside. She is acquitted of the charge framed against her. In case, Balwinder kaur @ Bholi, appellant, is in custody, she be set at liberty, at once, if is not required in any other case.