

(2008) 08 P&H CK 0156
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 790-SB of 1998

Joginder Singh and others

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 304B, 34, 498 A

Citation : (2008) 4 RCR(Criminal) 575

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Advocate : Arshwinder Singh, for the Appellant; Dinesh Arora, AAG, Haryana, for the Respondent

Judgement

K.C. Puri, J.—The appellants, in this appeal, impugn the judgment/order dated 14.9.1998/16.9.1998 passed by Mr. Dewan Chand, the then Additional Sessions Judge, Hisar whereby they were convicted under Sections 304-B/34 and 498-A/34 IPC and Krishna and Lal Chand accused were sentenced to undergo rigorous imprisonment for a period of seven years for the offence punishable u/s 304-B IPC. Joginder Singh accused was sentenced to undergo rigorous for a period of ten years for the said offence. The accused were further sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1,000/- for the offence punishable u/s 498-A IPC. In default of payment of fine, the defaulting accused was ordered to further undergo imprisonment for a period of three months. All the sentences were ordered to run concurrently.

2. Shortly, the facts of the prosecution case are that deceased Savitri was married with Joginder Singh accused about five years prior to the date of occurrence and sufficient dowry according to the capacity of the parents of deceased Savitri was given at the time of marriage but the accused were not satisfied with the quantum of dowry and they started harassing the victim immediately after the marriage. Even accused and the members of his family

used to oust deceased Savitri from her matrimonial home and her father alongwith her maternal uncle Dharampal used to leave her at her matrimonial house and they used to request the accused to keep deceased Savitri with due care. About two months prior to the date of occurrence, deceased Savitri was sent by her in-laws to her parent's house asking her to bring Rs. 20,000/- for purchasing a tractor. Accordingly, the deceased came to her parents' house and asked her parents to arrange Rs. 20,000/- for handing over the same to the accused for purchase of a tractor. Her father arranged the money. The father of the deceased alongwith Dharampal went to the house of the accused and handed over the said money to them. They again requested the accused to keep deceased Savitri with due respect.

3. On 18.5.1996, Subhash Chand, complainant, who is brother of deceased, visited the village of the accused, where he came to know from his sister that she was being harassed for not bringing additional money and she requested him to bring her back to her parental house but Subhash Chand pacified her and asked her to live with her in-laws. He also requested the accused to allow his sister to live peacefully with them and narrated the above story to his parents and his maternal uncle Dharampal.

4. On 19.5.1996 at about 4.00 AM, Rajinder son of Khem Chand and Ram Chander son of Bisala came to the house of the complainant and disclosed that deceased Savitri had taken some insecticide and had died. Then, the complainant along with his father went to village Daulatpur and narrated the incident to Dharampal, who also accompanied them to village Kohli where they asked the accused about the reason of death of Savitri but they could not give any positive reply and they begged pardon. Suspecting foul play, the matter was reported to the police by Sadhu Ram.

5. After the registration of a case, the investigation was taken up and after completion of the same, challan was presented against the accused in the Court.

The accused were charge-sheeted for the said offences to which they pleaded not guilty and claimed trial.

6. The prosecution, in order to prove its case, has examined PW-1 Dr. R.S. Dalal, PW-2 HC Tek Chand, PW-3 Constable Pritam Singh, PW-4 Radhey Sham, Draftsman, PW-5 Sadhu Ram, complainant, PW-6 Subash Chand, brother of the deceased and PW-7 SI Ram Mehar, Investigating Officer.

7. After the close of prosecution evidence, the statements of the accused u/s 313 Cr.P.C. were recorded wherein they pleaded false implication claiming themselves to be innocent. It was further pleaded that Savitri deceased was pressing her husband to separate himself from the joint family, but her husband refused to separate himself saying that he could not leave his old parents as he was duty bound to serve them. But the deceased started quarrelling, for which she was snubbed by her husband. Since the deceased was hot tempered lady, so she ended her life. The allegations regarding demand of dowry were denied.

However, the accused did not lead any evidence in defence.

8. The learned counsel for the appellants has submitted that Joginder Singh is the husband of Savitri, deceased whereas Lal Chand is his father and Krishana is his mother. He has further submitted that to prove the offence u/s 304-B IPC, the prosecution is required to establish the following ingredients:

- (a) That the woman died within seven years of her marriage;
- (b) That the woman/bride has died an unnatural death; and
- (c) That the woman died due to demand of dowry articles by the husband or the other relatives of deceased soon before her death.

9. It has been further submitted that the prosecution has failed to prove second and third ingredients of offence, mentioned above. According to the prosecution case, Organo Phosphorus, a poisonous substance was administered by the accused. Organo Phosphorus leaves such a pungent smell that no one can forcibly administer the same to the deceased. In case any person tries to administer the same by force, in that case, the deceased must have resisted and would have suffered an injury on her person. The doctor has categorically stated that there was no injury on the dead body of Savitri. So, the question of forcibly administering Organo Phosphorous is totally ruled out. The only possibility left is that the deceased has taken the said Organo Phosphorous to commit suicide. So, it is a case of suicide.

10. It has also been submitted that there is a tendency prevailing to involve all the family members of husband for the offence u/s 304-B IPC. So far as accused Lal Chand and Krishna are concerned, there are general allegations of demand of Rs. 20,000/- two months prior to the death of Savitri. The said demand is alleged to be in connection with the purchase of a tractor. According to the FIR, all the accused demanded Rs. 20,000/- in cash for the purchase of a tractor and the said amount of Rs. 20,000/- was accepted by all the accused. It has been further submitted that it was not possible that all the accused shall accept an amount of Rs. 20,000/-. It has to be paid to one person. PW-5 Sadhu Ram and PW-6 Subhash Chand have simply stated that Rs. 20,000/- were paid to all the accused. However, on realizing the above- said position, Subhash Chand, while appearing as PW-6 has stated that firstly they wanted to pay money to Joginder Singh but his mother Krishna asked them to pay the money to her. So, by making the above-said improvement, the prosecution has tried to pin-point Krishna but when Subhash Chand was confronted with his statement u/s 161 Cr.P.C., the said fact was found missing. It has also been submitted that Subhash Chand stated that on 18.5.1969 he went to the matrimonial house of Savitri and noticed that Savitri had injuries on her person at the hands of accused. He has further stated that he asked the accused as to why she had been given beatings. He has further stated that in case the accused did not want to keep Savitri nicely, she be sent with him. He was told by his sister that the accused wanted to kill her. It has been submitted that this part of statement of Subhash Chand is

believed by the testimony of Dr. R.S. Dalal. The doctor did not find any injury on the dead body of Savitri. Moreover, when Subhash Chand was confronted with his statement u/s 161 Cr.P.C. the said allegation was found missing. So, Subhash Chand made material improvement regarding giving injuries by the accused to the deceased.

11. It has also been submitted that no ingredient of offence u/s 304-B IPC is made out against Lal Chand and Krishna. The demand of Rs. 20,000/- can be at the hands of Joginder Singh for the purchaser of a tractor although the appellants disputed that demand also. The allegation of demand of dowry articles and maltreatment cannot be the basis of conviction against the father-in-law and mother-in-law. In fact, Joginder Singh is the elder son of Lal Chand Appellant and the deceased wanted to have a separate residence from them. Joginder Singh wanted to serve his old parents to which Savitri did not agree and, on that count, she has committed suicide by taking poisonous substance. A prayer for the acquittal of the accused has been made.

12. The learned State counsel has supported the judgment of the trial Court. It has been submitted that all the ingredients of offences under Sections 304-B and 498-A IPC are made out against the accused. The deceased died within seven years of her marriage with Joginder Singh. She died an unnatural death. She was subjected to cruelty on account of demand of dowry articles soon before her death. So, the appeal is liable to be dismissed.

13. I have carefully considered the said submissions and have gone through the record of the case.

So far as the fact that Savitri died within seven years of her marriage with Joginder Singh is concerned, that fact has not been disputed by the accused. Otherwise also, the said fact is proved from the testimony of PW-5 Sadhu Ram and PW-6 Subhash Chand. Both of them have stated that Savitri was married with Joginder Singh on 1.4.1992. The occurrence relates to 19.5.1996. So, Savitri died within seven years of her marriage with Joginder Singh. The relationship of Lal Chand with Krishna accused is also not disputed. Lal Chand is the father-in-law and Krishna is the mother-in-law of Savitri, deceased.

14. So far as the second ingredient of offence to the effect that Savitri died an unnatural death is concerned, the same has not been disputed by the accused also. She died by taking Organo Phosphorous (a group of insecticide i.e. poisonous substance). The submission of learned counsel for the appellants is that since there was no mark of injury on the dead body of Savitri, as such Savitri might have committed suicide by taking poisonous substance. Even if the plea raised by the counsel for the appellants is taken as correct, in that case also, it is an unnatural death. The second ingredient, mentioned above, to the effect that Savitri died an unnatural death is also proved on the file. The testimony of PW-1 R.S. Dalal proves the said fact that Savitri died due to taking Organo Phosphorous.

15. So far as the last ingredient of offence u/s 304-B IPC to the effect that Savitri died due to demand of dowry articles by Joginder Singh and his parents soon before her death is concerned, that point has been hotly contested so far as accused Lal Chand and Krishna are concerned.

16. To prove the said ingredient of offence, the prosecution has relied upon the testimony of PW-5 Sadhu Ram, father of the prosecutrix and PW-6 Subhash Chand, brother of the prosecutrix.

17. So far as the testimony of PW-5 Sadhu Ram to the effect that Subhash Chand, PW-6 had gone to the house of Savitri on 18.5.1996 and on that occasion he found that Savitri was mercilessly beaten by the accused is concerned, the same has been stated by this witness after making improvement in his statement, Exhibit PA, made before the police. He was duly confronted with that portion and the same was not found in the original statement. The testimony of PW-6 Subhash Chand is to the same effect. He went to the house of Savitri and found injuries on her person is also an improvement and that improvement has to be ignored. Otherwise also, the said testimony is not corroborated by the medical evidence as according to Dr. R.S. Dalal, no external injury was found on the dead body of Savitri. So, that part of statements of both PW-5 Sadhu Ram and PW-6 Subhash Chand has to be ignored.

18. So far as accused Lal Chand Krishna are concerned, the allegations against them are stated by PW-5 Sadhu Ram and PW-6 Subhash Chand to the effect that dowry articles were given as per demand made by Joginder Singh and his parents Lal Chand and Krishna but they were not happy with the dowry articles and used to maltreat Savitri, on that count. In the original version in the shape of Exhibit PH, it is mentioned that dowry articles, according to their capacity were given to accused Joginder Singh, Lal Chand and Krishna but they were not satisfied with those dowry articles and all of them used to maltreat Savitri. PW-5 Sadhu Ram was duly confronted regarding demand of dowry articles at the time of marriage and that fact has not been mentioned in Exhibit PH. Demand of dowry articles at the time of marriage is an improvement made by PW-5 Sadhu Ram and PW-6 Subhash Chand.

19. The other allegations against accused Joginder Singh, Lal Chand and Krishna are that in the month of March, 1996, a demand of Rs. 20,000/- was made by all the accused and that demand of Rs. 20,000/- was met with by Sadhu Ram, Subhash Chand and Dharma, maternal uncle of Savitri. In this connection, no instance of any specific demand of dowry article has been attributed against Lal Chand and Krishna. The demand of Rs. 20,000/- has also not been stated to have been made by any accused specifically. No doubt, Subhash Chand, PW-6 has stated that payment of Rs. 20,000/- was to be made to Joginder Singh accused, but, on the asking of Krishna, that amount was paid to her. However, that fact is also a material improvement made by Subhash Chand, in order to pin point Krishna and that improvement has to be ignored. The demand of Rs. 20,000/- is stated to be in connection with the purchase of a tractor. From the

statements of PW-5 Sadhu Ram and PW-6 Subhash Chand, it is revealed that the land is in the name of Joginder Singh and his two brothers in equal shares. So, the tractor is meant for ploughing the land and that would be required by Joginder Singh. Both the material witnesses, PW-5 Sadhu Ram and PW-6 Subhash Chand have not given any specific instance of any demand made by Lal Chand and Krishna. The allegation of general demand of dowry articles, without any specific instance and similarly the general allegation of maltreatment, without any specific instance, cannot form the basis of conviction. The Hon'ble Apex Court in authority in case *Kans Raj v. State of Punjab*, 2000 (2) RCR (Crl.) 695 has dealt with this aspect of the case elaborately in Para No. 5 as under:

"5. We agree with the learned counsel for the respondents 3 to 5 that his clients, namely Ramesh Kumar, brother of the husband, Ram Pyari, mother of the husband and Bharti sister-in-law of the husband-accused cannot be alleged to be involved in the commission of the crime and were rightly acquitted by the High Court. There is no evidence produced by the Appellant worth the name against the aforesaid respondents. Even PW Nos. 5 and 6 have not brought on record any incriminating circumstances attributable to the afore-said accused which could be made the basis for their conviction. Ram Kishan, PW-5 in his deposition before the Court had stated that after the marriage, Rakesh Kumar, accused raised a demand of Rs. 15,000/- for a scooter and refrigerator. We fulfilled that demand by giving Rs. 20,000/- to him for scooter and refrigerator..... Rakesh Kumar used to threaten Sunita that she would be done to death because of having inadequate dowry. On 21st September, 1988 Sunita had come to my younger brother Tarsem in connection with a ceremony concerning his son. She also visited us as the house of Tarsem Kumar is close to our house. She stayed with us for the night. We gave her customary presents i.e. clothes etc. and cash amount of Rs. 500/-. She apprehended danger to her life in the house of her in-laws and was not willing to go there." He has not referred to any demand of dowry or harassment by the respondents except Rakesh Kumar. Tarsem Kumar, the other brother of the deceased at whose residence she had gone on 21st September, 1988 has not been produced as a witness in the case. Kans Raj PW-6, the father of the deceased stated before the Trial Court that Sunita Kumari had told him that she was being taunted by her mother-in-law Ram Piari, accused Rajesh Chander and his wife Bharti accused besides her husband Rakesh Kumar. The details of the alleged taunting have not been spelt out. The only thing stated is that the accused used to tell the deceased that she being the daughter of BJP leader, who used to boast about his financial position had brought inadequate dowry. He further stated that various sums of money and the colour TV was given to Rakesh Kumar on his demand. Amar Nath and Janak Raj, President and General Secretary of Mahajan Sabha respectively and one Kundan Lal Gaba were taken by him to the residence of the accused persons. The deceased was alleged to have been taunted again in presence of the aforesaid witnesses. However, none of the aforesaid witnesses supported the case of the prosecution. In the light of the evidence in the case we find substance in the

submission of the learned counsel for the defence that respondents 3 to 5 were roped in the case only on the ground of being close relations of respondent No. 2, the husband of the deceased. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tenancy has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

20. So, from the above observations, it is clear that for the fault of the husband, the in-laws or other relations cannot, in all the cases, be held to be involved for the demand of dowry. In case, such accusations are made against the relations of the husband, the prosecution is required to prove those allegations beyond reasonable doubt. By mere conjectures or implications, such relations cannot be held guilty of offence relating to dowry death. It has been further observed in that ruling that tendency has developed for roping all the relations of the in-laws which should be discouraged. The general demand of dowry articles and maltreatment cannot be made the basis of conviction against relations of husband.

21. A Division Bench of our own High Court while dealing with the case of relatives of husband, in case Kanwal Singh and others v. State of Haryana, 2006 (3) RCR (Cri) 783 (P&H) observed as under :

"36. In a case where the bride either commits suicide or is murdered by her in-law's family, the tempers run high. So much so that attempt is made to rope in the entire family of the husband of the victim. Almost all the family members of the husband are attributed one role or the other so as to implicate them, although they may not have done anything in the entire occurrence. Under these circumstances, duty is cast upon the Court to sift the grain from the chaff and find out if some of the accused have been falsely roped. The facts and circumstances of the present case also point towards the false implication of accused Kanwal Singh, Jaibeer, Bhateri and Reena. As has been held above, their part and participation in the occurrence was highly doubtful. Three out of them were also able to prove their respective pleas of alibi. As a measure of abundant caution we extend the benefit of doubt to the four accused namely, Kanwal Singh, Jaibeer, Bhateri and Reena, while at the same time we find sufficient evidence to connect Anand Singh accused with the commission of the crime."

22. So, in view of the above-said principle and testimony of PW-5 Sadhu Ram

and PW-6 Subhash Chand, I have no hesitation in holding that general allegations of demand of dowry articles and cruelty are not sufficient to prove the guilt of accused Lal Chand and Krishna. Therefore, I hold that the prosecution has failed to prove the third ingredient regarding demand of dowry articles soon before death against Lal Chand and Krishna and consequently both of them stand acquitted u/s 304-B IPC. However, their conviction u/s 498-A IPC is maintained.

23. So far as Joginder Singh accused is concerned, he is the husband of deceased. There was a demand of Rs. 20,000/- for the purchase of tractor and that is obviously for the benefit of Joginder Singh as he owns land. So, ingredients of offences under Sections 304-B and 498-A IPC stand proved against Joginder Singh, beyond reasonable doubt. So, the conviction of Joginder Singh, under Sections 304-B and 498-A IPC stand confirmed.

24. Now, reverting to the quantum of sentence, the occurrence relates to the year 1996. Accused Joginder Singh suffered protracted trial for 12 years. So, his sentence u/s 304-B IPC stands reduced to seven years. His sentence of imprisonment and fine u/s 498-A stand confirmed. Both these sentences shall run concurrently.

25. So far as accused Lal Chand is concerned, he is stated to have undergone imprisonment for 2 years and 5 months during the trial. Krishna accused has also undergone incarceration for a period of one year. So, the sentence of Lal Chand and Krishna u/s 498-A IPC stand reduced to already undergone. Their sentence of fine u/s 498-A IPC is, however, maintained.

26. Accused Joginder Singh is on bail. His bail bonds and surety bonds stand cancelled. He be taken into custody to undergo the remaining sentence of imprisonment u/s 304-B and imprisonment and fine u/s 498-A, as narrated above the bail bonds of Lal Chand and Krishna also stand cancelled.

27. Accused Lal Chand and Krishna shall pay the amount of fine within two months from today failing which they will have to undergo the imprisonment awarded by the trial Court u/s 498-A IPC and under default clause.

This appeal stands disposed of in the above terms.

A copy of this judgment be sent to the learned trial Court for strict compliance.