
(2005) 05 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 442-SB of 1996

Lakhwinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-05-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304B

Citation : (2005) 13 CriminalCC 649

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : H.S. Bhullar, for the Appellant; Ayender S. Chandail, A.A.G., Punjab, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Bedi, J.—The prosecution story is as under :-

2. Rakhpal Kaur daughter of Ajmer Singh was married to accused Lakhwinder Singh of Village Chotian and at the time of marriage, Ajmer Singh had given dowry as per his capacity. Lakhwinder Singh, his mother Mukhtiar Kaur and his father Nachhattar Singh, however, were not satisfied with what had been given and maltreated Rakhpal Kaur on that account. They also demanded a sum of Rs.50,000/- out of which Rs.5,000/- was ultimately paid by Ajmer Singh while taking his daughter to the village to Nachhattar Singh. Two days prior to her death. Ajmer Singh left Rakhpal Kaur at her matrimonial home and also paid an additional amount of Rs. 10,000/- to Nachhattar Singh and when he was leaving, Rakhpal Kaur told him to return shortly and to pay the remaining amount, failing which the accused would kill her. At about 7.00 A.M. on 30.8.1992, Ajmer Singh along with Sadhu Singh went to village Chotian to visit Rakhpal Kaur and found her lying on a cot along with her baby girl. On seeing them, Rakhpal Kaur cried out that she had been administered poison and soon thereafter she as well as her daughter expired. Leaving Sadhu Singh near the dead body, Ajmer Singh returned home to his village to inform his family and again returned to village

Chotian at about 5.00 A.M., the next day and lodged the report with the police, leading to the registration of an FIR at 9.05 A.M. on 31.8.1992. ASI Gural Singh thereafter visited the place of incident and made the necessary inquiries and also sent the dead bodies for the postmortem examinations. The three accused were arrested and were committed to the Court of Sessions to stand trial for the offences punishable under Sections 498-A, 302 or in the alternative u/s 304-B of the Indian Penal Code. The accused denied the allegations levelled against them, pleaded false implication and claimed trial.

3. The prosecution in support of its case examined inter alia PW1 Dr. H.N.Singh, who after the receipt of the reports, Exh. PD and Exh.PJ, of the Chemical Examiner, had opined that the case of death of Rakhpal Kaur was organo phosphorus poisoning; PW5 Ajmer Singh, the complainant; PW6 Sadhu Singh, who had gone with Ajmer Singh on the fateful day to Rakhpal Kaur's house; and PW7 ASI Gural Singh, the Investigating Officer.

4. The prosecution case was then put to the accused and their statements recorded u/s 313 of the Code of Criminal Procedure. They denied the allegations levelled against them. In addition, Lakhwinder Singh took the plea that he had not been married to Rakhpal Kaur. He further stated as under :-

"The deceased was not my wedded wife, but she had eloped with me and was living in my house. On the day of occurrence, she had gone with my daughter in her lap to ease herself in the fields. Our house is situated in the fields and around our house cotton crop was growing in those days and in the same insecticides were sprayed and she and my daughter got some affect in the fields either by eating something over which insecticide was sprayed or by inhalation, but when they returned to the house she was complaining giddiness and as if she had been affected by some poisonous insecticide. Later on we tried to consult local Dr. Bakshi Singh R.M.P. because town was at a long distance from our village, but when Bakshi Singh was brought, both the child and Rakhpal Kaur had expired. Thereafter we sent information to the parents of Rakhpal Kaur, who came next day and as they were not on good terms with me so they involved me and my father and mother falsely in this case.

We had not to pay any instalments of our tractor. The same were paid and nothing was due against us and there was no question of any demand of dowry. It is all fabrication."

5. They also produced DW1 Dr. Bakshi Singh, DW2 Smt. Kulwant Kaur and DW3 Nachhattar Singh in defence.

6. The trial Court held that from the evidence it was clear that the death had occurred by organo phosphorous poisoning. It also held that the defence plea that Lakhwinder Singh and Rakhpal Kaur had not been married was falsified from the writing, Exh.DA, vide which the dowry articles had been returned by the accused to Ajmer Singh after Rakhpal Kaur's death. It accordingly held that the story projected by the prosecution that the marriage between Lakhwinder Singh

and Rakhpal Kaur had taken place 2-1/2 years before the present incident and that the demand for dowry had been made from time to time stood proved on record. The Court nevertheless held that the dying declaration allegedly made by Rakhpal Kaur that she and her daughter had been poisoned by the accused could not be believed and having held as above, acquitted the accused of the charge of murder but convicted and sentenced them as under :-

Under Section 498-A of the to undergo rigorous imprisonment for three years Indian Penal Code. and to pay a fine of Rs.500/- each or in default of payment of fine, to undergo further rigorous imprisonment for two months each. u/s 304-B of the to undergo rigorous imprisonment for ten years. Indian Penal Code.

7. Both the sentences were, however, ordered to run concurrently. Hence this appeal.

8. Mr. H.S.Bhullar, the learned counsel appearing for the appellants, has argued that there was no evidence to show that Rakhpal Kaur and Lakhwinder Singh were married and as such the very basis of the prosecution story for a conviction u/s 498-A IPC was missing. It has also been argued that there was no evidence to prove that the demands for dowry had been made before the marriage and if at all, any demand had been made, it was after the marriage and as such, the prosecution story suffered from this infirmity as well. It has further been argued that there was an inordinate delay of 26 hours in the lodging of the FIR in the Police Station, Kot Bhai, which was a mere 4-5 kms from the place of incident and that it was evident that the prosecution story was an afterthought as the trial court had itself disbelieved the dying declaration made by Rakhpal Kaur to Ajmer Singh and Sadhu Singh (PWs).

9. As against this, the learned State counsel has supported the judgment of the learned trial court and has argued that there was documentary evidence to prove that the marriage between Rakhpal Kaur and Lakhwinder Singh had been solemnized and it was immaterial in a prosecution u/s 304-B IPC as to whether the demands for dowry had been made before or after the marriage. It has also been pleaded that in such a situation, the fact that the FIR had been lodged belatedly was not of great significance and in any case, the delay had been explained by the prosecution.

10. I have considered the arguments advanced by the learned counsel for the parties and have gone through the record.

11. It will be seen that the first issue that arises is as to whether Rakhpal Kaur and Lakhwinder Singh were married to each other. To prove this fact, the prosecution has relied on the statements of Ajmer Singh and Sadhu Singh (PWs). Sadhu Singh deposed that the marriage between Rakhpal Kaur and Lakhwinder Singh had been performed about 2-1/2 years before the present incident. He further deposed that he had been the go in between in arranging the marriage. The story, however, stands fully proved by the document, Exh. DA (produced by the appellants in their defence) which is a deed of compromise dated 14.9.1992

signed by Nachhattar Singh, Ex-sarpanch, Dayal Singh, Joginder Singh; Jeet Singh and Jagjit Singh and several others, whereby it was undertaken by the appellants to return the dowry articles given to them by Ajmer Singh at the time of the marriage. To my mind, this document by itself completely falsifies the defence plea that Lakhwinder Singh and Rakhpal Kaur were in fact not a married couple.

12. The alternate, defence plea that Rakhpal Kaur and her daughter had been poisoned when they had gone to ease themselves in the Narma (Cotton) fields, which had been sprayed with some insecticide is clearly unbelievable. In this connection, it is relevant that there is no evidence on record to show that the fields in which they had gone to ease themselves had been sprayed. It is also clear that the insecticide poisoning to the extent of being fatal would seldom occur where the fields had been previously sprayed, although it could perhaps be possible if the insecticide was ingested as the spraying operation was being performed. The defence plea is, therefore, unacceptable.

13. It is clear from the evidence of Ajmer Singh and Sadhu Singh that no demands for dowry had been made before the marriage of Lakhwinder Singh and Rakhpal Kaur but this appears to be so because the marriage was a mutual arrangement between them. It has, however, come in evidence that the demands for various sums of cash had been made by the appellants from time to time after the marriage and Ajmer Singh (PW) had also made some payments as he was apprehending danger to his daughter's life. In this connection, it is relevant that shortly before the incident, a sum of Rs.50,000/- had been demanded, out of which certain amounts had been paid with a promise for payment of some additional amount at a later date.

14. It is also true that the FIR in this case, appears to have been lodged belatedly but Ajmer Singh has explained that on seeing what had happened, he had left Sadhu Singh near the dead bodies and rushed to his own village to inform his family members and thereafter, lodged the report with the police. I am of the opinion that in such matters, a clock-wise procedure cannot be expected as they have deep emotional and social implications as well. It is, therefore, not surprising that Ajmer Singh had first gone to take the support and advice of his family members before taking any action against the appellants. It is also significant that u/s 113-B of the Evidence Act, the presumptions are against the accused and it is for them to dispel those presumptions. I am of the opinion that in view of the fact that an obvious false stand has been taken by the appellants and on the other hand, a positive one by Ajmer Singh and Sadhu Singh, the mere fact of delay in lodging the FIR would not dilute the effect of the other evidence. I, however, find some merit in the final argument of Mr. Bhullar with regard to the quantum of sentence for the offence punishable u/s 304-B of the Indian Penal Code. The normal sentence provided under this Section is seven years. I am of the opinion that this would be the adequate sentence in the present case as well.

The appeal is accordingly dismissed with the mortification that the appellants shall undergo rigorous imprisonment for seven years for the offence u/s 304-B of the Indian Penal Code.