
(1998) 03 P&H CK 0155

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 509-SB of 1996

Major Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 03-03-1998

Acts Referred:

Citation : (1998) 3 Crimes 131 : (1998) 2 RCR(Criminal) 425

Hon'ble Judges : R.L.Anand, J

Advocate : J.S. Brar, D.S. Pheruman, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. This is a criminal appeal filed by Major Singh, Biro and Didar Singh, and has been directed against the judgment and order dated 6.7.1996, passed by the court of Additional District and Sessions Judge, Gurdaspur, who convicted the appellants u/s 304B read with Section 34, IPC, and u/s 201/34 IPC, and sentenced them to undergo R.I. for a period of 10 years each u/s 304B/34 IPC and two year each u/s 201/34 IPC. The appellants were further directed to pay a fine of Rs. 200/ each u/s 201/34 IPC; in default of payment of fine, they were directed to undergo R.I. for one month each. All the substantive sentences were ordered to run concurrently.

2. Major Singh, aged 29 years, an employee of the Punjab State Electricity Board and his parents, Didar Singh, aged 90 years and Biro aged 70 years, faced a criminal trial on the allegations that on 25.1.1994, in the area of village Butter Kalan, in furtherance of their common intention, murdered Rajwant Kaur w/o Major Singh, appellant, and thereby committed an offence u/s 302/34 IPC. They were further charged with an offence u/s 3204B read with section 34, IPC on the ground that they allegedly committed dowry death of Rajwant Kaur who died under unnatural circumstances within 7 years of her marriage due to the alleged demand of dowry. The other charge against the appellants was that they knew that an offence u/s 302 or 304B, IPC, had been committed and they caused to disappear the dead body of Rajwant Kaur with the intention to screening

themselves from the legal punishment and, thus, committed an offence u/s 201/34, IPC.

3. The FIR in this case was lodged by Swaran Singh, PW3, father of the deceased. He stated before the police on 26.1.1994, vide his statement Exh. PA, before SI Balbir Singh that he was the resident of Village Chaura Kalan and was doing the work of agriculture. He had four children out of whom 3 were daughters. Elder daughter Darshan Kaur was married. Younger to her was Rajwant Kaur, deceased, aged 26 years, who was married to Major Singh, caste Jat, of Village Butter Kalan, about 4 years prior to her death. Dowry was given according to his financial position. Whenever Rajwant Kaur came to Village Chaura Kalan in order to see him, she used to complain that her husband Major Singh, mother-in-law Biro and father-in-law Didar Singh used to give her taunts for bringing inadequate dowry and they compelled her to bring more dowry. About one month back, they sent Rajwant Kaur to her parental village after beating her. Rajwant Kaur told the complainant that her in-laws were demanding a scooter failing which she would not be allowed to rehabilitate. Thereafter, Guriqbal Singh, Sarpanch and Harcharan Singh, Ex-Sarpanch of Village Chaura Kalan, intervened and they persuaded the deceased to go to the house of her in-laws. A promise was also given to the appellants that after the harvesting season of 1994, a scooter would be given. On 25.1.1994, in the morning, his son Paramjit Singh went to see his sister Rajwant Kaur in village Butter Kalan. On return in the evening, he told his father that the in-laws of Rajwant Kaur and her husband were quarrelling with Rajwant Kaur. They told Paramjit Singh that he should visit their house only after bringing the scooter. On hearing this, Paramjit Singh returned back to his village. On 26.1.1994, the complainant, along with his son Paramjit Singh, Guriqbal Singh, Sarpanch and Harcharan Singh, Ex-Sarpanch, and the respectables of the village went to village Butter Kalan. On reaching there, they came to know that Major Singh, Didar Singh and Biro, with their common intention, had killed Rajwant Kaur on 25.1.1994 and had destroyed the dead body by putting it on fire. The complainant, along with Guriqbal Singh, Sarpanch, after leaving the other respectables in the graveyard of village Butter Kalan, proceeded to the Police Station, Qadian, for the registration of the case, but on the way, in the area of Village Qadian, SI Balbir Singh met the complainant where the complainant gave his statement, Ex.PA. It was read over and explained to him.

He signed the same in token of its correctness. SI Balbir Singh made his endorsement, Ex.PA/1 underneath the said statement and it was sent to Police Station, Qadian, for the registration of the case and formal FIR Ex.PW6/1 was registered by SI Karanjit Singh. The Special Report of this case reached the Illaqa Magistrate at 7.00 p.m. on the same day. The FIR was recorded vide DDR 24, recorded at 5.40 p.m. on 26.1.1994. SI Balbir Singh took up the preliminary investigation of this case. He visited the cremation ground on 27.1.1994 and took into possession the burnt ashes vide recovery memo Ex.PA/8/A in the presence of Paramjit Singh, Harcharan Singh and Darshan Singh. He also took

into possession a steel karah and four bangles, vide recovery memo Ex.PW/8/B in the presence of the said witnesses. He further took into possession some burnt bones of the deceased and made a sealed parcel thereof vide recovery memo Ex.PW/8/C. He prepared the Inquest Report, Exh.PW10/A. He also prepared the rough site plan, Ex.PW10/B, besides the rough site plan, Ex. PW10/C. On return to the police Station, he deposited the case property with the Moharrir Head Constable Sardul Singh. On 6.2.1994, he arrested the appellants. On 8.2.1994, the statement of Major Singh was recorded. He was interrogated in the Police Station in the presence of Paramjit Singh and Harcharan Singh. On interrogation, Major Singh disclosed that he had kept the Cot on which Rajwant Kaur was taken to the cremation ground in his room and he could get the same recovered. He also disclosed that he had kept one Phial containing some poisonous matter in his residential room and he could get it recovered. Statement of Major Singh, Ex.PW10/D was recorded. It was read over and explained to him. He thumb marked the same. It was also attested by Paramjit Singh and Harcharan Singh. Thereafter, Major Singh got recovered the Cot and the Phial in pursuance of his disclosure statement and they were taken into possession vide recovery memo. Ex.PW9/8 and Ex. PW9/A, respectively. The same were attested by Paramjit Singh and Harcharan Singh. The S.I. also prepared the rough site plan, Ex.PW10/E, of the place of recovery. He recorded the statements of the witnesses u/s 161, Cr.P.C. The sealed parcel of ashes was sent to the office of the Chemical Examiner, who vide report, Ex.PD, found "No poison was detected". On the completion of the investigation of the case, all the three appellants were challaned in the Court of the Illaqa Magistrate u/s 304B/201/34 IPC. The learned Magistrate supplied the copies of the documents to the appellants according to law free of cost and vide commitment order dated 2.3.1994, committed all the three appellants to the court of Sessions. Vide order dated 30.4.1994, the learned Additional Sessions Judge, Gurdaspur, framed charges u/ss 302/34 IPC, 304B/34 IPC and 201/34 IPC, against all the appellants. The charges were read over and explained to them to which they pleaded not guilty and claimed trial.

4. In order to prove the charges, the prosecution examined Dr. Shabir Ahmad, PW1, Jagir Singh, PW2, Swaran Singh, PW3, Ashok Kumar, Photographer, PW4, Makhan Singh, Chowkidar of Village Butter Kalan, PW5, SI Karanjit Singh, who formally recorded the FIR, PW6, Satish Chander, Draftsman, PW7, Harcharan Singh, ExSarpanch, PW8, Pramjit Singh, son of the complainant, PW9 and SI Balbir Singh, the main I.O., PW10. The prosecution also tendered into evidence the report of the Chemical Examiner by giving up the remaining witnesses as unnecessary.

5. The statements of the witnesses were recorded u/s 313 Cr.P.C., and all the incriminating circumstances appearing in the prosecution evidence were put to the accused. Accused denied those circumstances. The plea of Major Singh was as follows :

"I am innocent, I have been falsely involved in this case. Rajwant Kaur died her

natural death. No dowry was demanded nor she was maltreated. We had cordial relations."

6. The stand of Biro and her husband Didar Singh was the same as of their co accused Major Singh.

7. When called upon to enter into their defence, the accused examined one Dilbagh Singh of Village Butter Kalan and closed their defence.

8. The learned trial court believed the prosecution story in part and convicted and sentenced the appellants u/s 304B/34 IPC read with Section 201/34 IPC. However, the trial court held that the prosecution had failed to prove the charge against the appellants u/s 302/34 IPC. Aggrieved by their conviction and sentence, the present appeal.

9. I have heard Mr. D.S. Pheruman, Advocate, on behalf of the appellants and Mr. J.S. Brar on behalf of the respondent and with their assistant have gone through the record of this case.

Section 304B IPC defines the dowry death and lays down as follows :

(1) 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.

Explanation. For the purpose of this subsection, "dowry death" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

10. A perusal of the above section would show that in order to succeed, the prosecution has to prove the following facts :

"(1) That the death of a woman took place due to burns or bodily injury or otherwise than under normal circumstances;

(2) That such death had occurred within 7 years of her marriage;

(3) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband; and

(4) That such cruelty or harassment should be for or in connection with demand of dowry."

11. Here, I will also like to make a mention of the provisions of section 113B of the Indian Evidence Act, which deal with the presumption as regards the dowry

death. According to this section, 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 had 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. According to the Explanation to section 113B, for the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the IPC, which provisions I have already mentioned above.

12. In such like cases, the law courts always look to the statements of the probable witnesses who can speak about the harassment, atrocity, maltreatment and cruelty given to the deceased. As per the allegations of the FIR, the appellants used to maltreat the deceased on account of bringing inadequate dowry and the demand was with regard to a Scooter. It is also the allegation of the prosecution in the FIR that the deceased had been complaining to her father about the alleged cruelty and harassment. The appellants were assured that after the harvesting season of 1994, they would be provided with a Scooter. It is further the case of the prosecution that on 25.1.1994, Paramjit Singh, brother of the deceased went to Village Butter Kalan in order to see his sister where he observed that the appellants had been maltreating the deceased. Paramjit Singh brought the matter to the notice of his parents and on 26.1.1994, the father of the deceased along with his son Paramjit Singh and the respectables went to Village Butter Kalan. They were informed about the death of the deceased and it was further brought to the notice of the complainant party that the dead body of Rajwant Kaur was taken to the village cremation ground and it was set on fire. Father of the deceased Swaran Singh appeared as PW3 and he had categorically stated that after the marriage, Rajwant Kaur used to visit him and she used to tell him that the appellants were beating her on account of bringing inadequate dowry in the marriage. It has further come in the statement of Swaran Singh that the deceased came to him about 11/2 months prior to her death and at that time she was turned out by the appellants after giving beating. It has also come in the statement of Swaran Singh that "Major Singh was demanding scooter and the other accused were demanding some other articles in dowry". It has further come in the statement of Swaran Singh that Major Singh and Didar Singh were called in Village Chaura Kalan and in the presence of the respectables, they were assured that they would be provided with a scooter and other articles. Resultantly, Rajwant Kaur was taken back by her husband. Swaran Singh further deposed that on 25.1.1994, his son Paramjit Singh went to Village Butter Kalan in order to see his sister and on returning to his village, his son told him that Rajwant Kaur was being beaten. On 26.1.1994, he along with Paramjit Singh, Harcharan Singh, Guriqbal Singh and others went to village Butter Kalan and it came to their notice that the accused had cremated Rajwant Kaur after killing her. They went to the cremation ground and found the ashes of Rajwant Kaur. Thereafter, they went to Police Station in order to lodge the report. The statement of Swaran Singh has been corroborated in material particulars by

Paramjit Singh, PW9, who deposed that on 25.1.1994, he went to village Butter Kalan in order to see his sister and he saw that the accused were quarrelling and were making a demand of scooter. It was also told to the deceased that in case the scooter is not given, she would be killed.

He returned to his village on the same day and told the entire occurrence to his father, Guriqbal Singh and Harcharan Singh and on 26.1.1994 when the along with others; namely Swaran Singh, Karnail Singh and Manan Singh, went to village Butter Kalan, they came to know that Rajwant Kaur was killed on 25.1.1994. They went to the cremation ground. The fire was extinguished. His father and Guriqbal Singh proceeded for Police Station in order to lodge the report. The police came in the evening. It was dark. On the next date, i.e. 27.1.1997, the police again went to the cremation ground and half burnt pieces of wood, burnt bones, ashes, four bangles and one karah of her sister were taken into possession. The statements of these two witnesses are further corroborated by the statement of PW8 Harcharan Singh, who deposed that about 11/2 months ago, Swaran Singh, PW1, called him in his house where his daughter Rajwant Kaur was saying that she was being harassed by her inlaws. Didar Singh and Major Singh were also sitting in that house. Guriqbal Singh was also called. The parents of the deceased told Didar Singh and Major Singh that in the next season, they would get the scooter. After about 1 month, Paramjit Singh went to village Butter Kalan and on return told him that Major Singh and others were beating Rajwant Kaur.

13. In such like cases, the relations are good witnesses. When a girl is in distress she will vomit out about her miseries to her parents, brothers and other respectables of her parental village. Though, Mr. Pheruman made an effort to convince to this court that the testimony of these three material witnesses should not be acted upon and believed on account of relationship and that Harcharan Singh belongs to the village of Swaran Singh, yet I am not impressed with the argument of Mr. Pheruman. The testimony of the witnesses cannot be rejected only on the ground of relationship. Similarly, the testimony of Harcharan Singh cannot be rejected because he hails from village Chaura Kalan. This court has to see whether the statements of these three material witnesses inspire confidence or not. This court cannot lose sight of the fact after the death of Rajwant Kaur, her family members on the parental side would try to implicate everybody from the side of the inlaws of Rajwant Kaur. In the FIR, the case of the prosecution was that Major Singh made the demand of Scooter while the other two appellants had made the demand of other articles. But, during trial, the case set up by the prosecution was that it was Major Singh who made the demand of Scooter while the demand of other two appellants remained vague. Didar Singh was an old man of 90 years at the time of trial. Biro was an old lady of 70 years. They would hardly be interested in the demand of Scooter. After scanning the statements of these three witnesses, it appears that so far as the alleged acts of cruelty visa vis Biro and Didar Singh are concerned, there is an exaggeration. They would hardly be benefited if the scooter came in the family.

Appellant Major Singh was an employee in the Punjab State Electricity Board. His expectations could be high.

14. The learned counsel for the appellants has also assailed the testimony of Swaran Singh, PW3, on the ground that this witness did not make any complaint to the Sarpanch of Village Chaura Kalan. He did not lodge any complaint about the maltreatment to the police. The argument is hardly convincing. It is not necessary that always a harassed father should make a complaint in writing to the Sarpanch of his own village or to the Sarpanch of the Village where his daughter is married. The evidence on the contrary is that Swaran Singh did bring the matter to the notice of the respectables of his village. So much so, those respectables assembled in the Panchayat where Major Singh and Didar Singh were allegedly called. No useful purpose was likely to be served if the complainant made a complaint in the Panchayat of Village Butter Kalan. Every father at the first instance would be interested to rehabilitate his daughter and not to make the relations worse. If Swaran Singh has not made a complaint in writing to the Panchayat of Village Butter Kalan, his testimony cannot be disbelieved on this account. A strange suggestion was also put to this witness that whether Rajwant Kaur suffered from vomiting and loose motions on the night of 25.1.1994. the witness has pleaded ignorance, The reasons was quite obvious. This witness never went to village Butter Kalan on 25.1.1994. According to the prosecution story, Paramjit Singh went to village Butter Kalan on 25.1.1994 and he met his sister. When this suggestion was given to Paramjit Singh, he categorically denied that the deceased died on account of vomiting and loose motions.

15. The learned counsel for the appellants, then submitted that Rajwant Kaur died on account of vomiting and loose motions, i.e. Cholera, and that she did die under abnormal circumstances and for this reason, the appellants cannot be convicted u/s 304B IPC.

16. I do not subscribe to this argument. No doubt, in this case, no post mortem examination has been conducted but we will have to see the totality of the circumstances. It is the affirmative evidence of Paramjit Singh that on 25.1.1994, when he went to village Butter Kalan in order to see his sister, at that point of time she was hail and hearty when Paramjit Singh last time left the house of his sister. The evidence on the record is that the appellants were beating the deceased. The deceased, at no point of time, had ever complained to her brother that she was a patient of Cholera, etc. The counsel for the appellants drew my attention to the statement of PW1 Dr. Shabir Ahmed, a Registered Medical Practitioner at Qadian, in order to build an argument that the deceased was suffering from Cholera. Least said the better about this stand of the appellants. There is not an iota of evidence that before 25.1.1994, the deceased ever visited the clinic of Dr. Shabir Ahmad for treatment. No prescription has been produced from the side of the accused to establish their plea that the deceased was suffering from Cholera or loose motions, etc. Now, let us examine

the statement of Dr. Shabir Ahmad. According to this witness, on 25.1.1994, he was away for lunch to his house when Rajwant Kaur was brought to his shop situated at Butter Road, Qadian. She was attended upon by his subordinate attendant Karnail Singh. Later on, he came to his shop and found that the conditions of Rajwant Kaur was critical. After seeing the conditions of the patient and it being a medico legal case, he refused to examine the patient and advised the attendants to take her to the Govt. Hospital. In the cross-examination, he stated that he did not know from what disease the patient was suffering and due to what reasons her conditions became critical. He had not noticed whether it was a case of poisoning or not. From his statement, it cannot be said that Rajwant Kaur was a patient of Cholera disease. There is not an iota of evidence on record that at any point of time, Major Singh or any of his relations took Rajwant Kaur to any hospital for her specialised treatment. What it looks to be is that on 25.1.1994, the deceased was maltreated by her husband on account of the nonavailability of scooter to him. Deceased could not suffer the humiliation in the presence of her brother. She ended her life under abnormal circumstances. Major Singh did not even bother to inform about the death of his wife to her parents. On 26.1.1994, it was the natural anxiety on the part of the parents of Rajwant Kaur to see her as they were informed by Paramjit Singh that the deceased was not happy in the house of her in-laws. On reaching there, they came to know that Rajwant Kaur had died under abnormal circumstances. The appellant Major Singh took the assistance of his parents and they wanted to destroy the evidence by burning the dead body of Rajwant Kaur so that her postmortem could not be conducted. In *Suresh Kumar v. State of Haryana*, 1997(1) R.C.R. (Crl.), 794, it was held as follows :

"A careful analysis of section 304B, IPC, shows that this section has the following essentials:

- "(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (2) Such death should have occurred within 7 years of her marriage;
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (4) Such cruelty or harassment should be for or in connection with demand of dowry."

Section 113B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, then the court shall presume that such person has committed the dowry death. The meaning of "cruelty" for the purposes of these Sections has to be gathered from the language as found in Section 498A and as per that section "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life etc. or harassment to coerce her or any other person related to her to

meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." As per the definition of "dowry" any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of "dowry".

17. If the principle of the above ratio is applied to the facts in hand, it can be safely concluded that it was Major Singh who made the demand of dowry. He caused harassment and treated his wife with cruelty which compelled her to finish her own life. So far as the case of Biro and Didar Singh is concerned, they possibly did not join with their coaccused Major Singh in the demand of dowry; i.e. Scooter. Their case is definitely distinguishable so far as the provisions of section 304B, IPC, are concerned. Nevertheless, they are guilty for the offence u/s 201, IPC, because Rajwant Kaur was none else but their daughter-in-law. They joined with their coaccused Major Singh in destroying the evidence. All the three appellants committed haste in taking the dead body of Rajwant Kaur to the cremation ground without informing her parents. All the three appellants wanted to destroy the evidence in order to screen themselves from punishment. Resultantly, they have been rightly convicted and sentenced u/s 201, I.P.C.

18. In view of the above, I allow the appeal of Didar Singh and Biro by extending the benefit of doubt to them and set aside the conviction and sentence u/s 304B I.P.C. However, their conviction and sentence u/s 201, IPC, is hereby maintained.

19. Lastly, it was submitted by the learned counsel for the appellants that if none of his contentions prevails visavis Major Singh, this appellant should be visited with leniency in the matter of sentence.

20. I am not inclined even to reduce the sentence of Major Singh as he has committed an offence of dowry death against his wife. The weaker sections of the society are supposed to be protected by law. Such an offender should not be visited with leniency. Resultantly, I dismiss the appeal of Major Singh in toto by maintaining the conviction and sentence of this appellant u/ss 304B and 201, IPC.

21. The appeal is partly allowed in the above terms. Intimation be sent to the jail authorities, C.J.M. concerned and S.H.O., Police Station Qadian.