
(2010) 08 P&H CK 0305
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 93-SB of 2002

Sulakhan Singh and Others	Vs	APPELLANT
State of Punjab		RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2011) 1 RCR(Criminal) 466

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Raman Sharma, for the Appellant; J.S. Bhullar, Assistant General, Punjab, for the Respondent

Judgement

Jitendra Chauhan, J.—This appeal is directed against the judgment and order dated 21.12.2001 (for short as 'impugned judgment') whereby the learned Additional Sessions Judge, Rupnagar (hereinafter referred as "Trial Court") convicted all the Appellants for the commission of offence under Sections 307/34, 498-A and 406 of the Indian Penal Code and accordingly sentenced all of them to undergo rigorous imprisonment for a period of three years each and to pay a fine of Rs. 500/- each and in default thereof, to further undergo rigorous imprisonment for six months u/s 307 read with Section 34 of the Indian Penal Code; rigorous imprisonment for one year each and to pay a fine of Rs. 500/- each for the offence u/s 498-A of the Indian Penal Code and in default of payment of fine, to undergo further rigorous imprisonment for three months and also rigorous imprisonment for one year each u/s 406 of the Indian Penal Code. All the substantive sentences were ordered to run concurrently.

2. Brief facts, as narrated in para 2 of the Trial Court judgment, are that:

Harmanjit Kaur PW/complainant was living with her uncle Jaswant Singh alias Bawa Singh in village Dulchi Majra on account of death of her father 1= years back. On 7.3.1999, Harmanjit Kaur was married with Sulakhan Singh accused at village Dulchi Majra. In the marriage, brother of the complainant and his uncle

gave sufficient dowry. On the next day of the marriage, uncle of the complainant, his brother Gurmel Singh, left dowry articles at village Khera belonging to the accused. On the same day, mother in-law of the complainant Joginder Kaur, Jasbir Kaur Jethani (sister-in-law) of the complainant started taunting the complainant that she has not brought Maruti car in dowry and that they are not satisfied with the scooter. About 10/15 days after the marriage, Sulakhan Singh husband of the complainant along with Raghbir Singh, brother in law of the complainant (Jeth), Jasbir Kaur Jethani (sister-in-law) and Joginder Kaur mother-in-law of the complainant started taunting the complainant for not bringing Maruti Car in dowry. They proclaimed that they will not keep the scooter given in dowry. Complainant was told to approach is uncle to give Maruti Car of in the alternative Rs. One lac in cash. Complainant told them that her father is already dead and that his uncle and brother have given sufficient dowry. Even Criminal Appeal then the accused used to taunt the complainant. One day all of them beaten up the complainant and threatened her. This process of taunting the complainant continued. Even the complainant was taunted on account of cooking. After some days Gurmel Singh, brother of the complainant took her back. She stayed in her parents house and stayed for some days with her uncle and disclosed the entire matter to his uncle and brother Gurmel Singh. Upon this, Jaswant Singh and Gurmel Singh accompanied by Sohan Singh Sarpanch of village Dulchi Majra went to village Khera of the accused. Accused returned them saying that if they want the girl to be rehabilitated, they should send the Maruti car. Thereafter, some relations of in laws of the complainant intervened and the matter was settled. On 26.6.1999, Sulakhan Singh accused took the complainant back to his village Khera. 7/8 days later, mother in law, brother-in-law and sister-in-law and husband of the complainant beat her mercilessly and proclaimed that unless the complainant bring Maruti car, she will not be allowed to live in the house. Sulakhan Singh, husband of the complainant, sold the scooter given in dowry. On 8.7.1999 at about 10 a.m. complainant Harmanjit Kaur was brooming the courtyard. All the accused were sitting inside the room. Joginder Kaur accused on the pretext of taking tea called the complainant inside the room. When the complainant entered the room, Jasbir Kaur bolted the room from inside. Raghbir Singh accused caught hold of the complainant from arm, Jasbir Kaur caught hold of complainant from legs, Joginder Kaur caught hold of complainant from hair and Sulkhan Singh forcibly put some poisonous liquid already lying in a glass in the mouth of the complainant and closed her mouth with a cloth. Complainant was kept locked in the room. After some time complainant started vomiting and became unconscious. When she gained consciousness, she found herself in PGI, Chandigarh where Gurmel Singh brother of the complainant and his uncle Jaswant Singh were getting her treated. The doctor sent intimation Exhibit PQ dated 8.7.99 to in-charge police post Khizrabad regarding admission of the injured. Thereupon, ASI Kulbir Singh visited PGI Chandigarh and moved application Exhibit PN on 9.7.99. Patient was declared unfit to make statement. The complainant was again declared unfit to make statement on 11.7.99. Again application Exhibit PO was moved on 18.7.99 and

Harmanjit Kaur complainant was again declared unfit to make statement. On 19.7.99, she was declared unfit to make statement. She was, however, declared fit to make statement on 20.7.99 and thereupon ASI Kulbir Singh recorded the complaint Exhibit PN of Harmanjit Kaur and after making endorsement Exhibit PN/2, got the case registered under Sections 498A, 406, 506, 307/34 Indian Penal Code against the accused. Site plan Exhibit PR of place of occurrence was prepared. Accused were later-on arrested. Dowry articles were taken into possession through recovery memo Exhibit PT on 17.8.99. The medical record of the patient was also taken into possession. After completion of investigation, challan was presented in the court.

3. Accused-Appellants were charge-sheeted under Sections 307 read with Section 34, 498A, 406 and 506 Indian Penal Code, to which they pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined as many as 18 witnesses, viz., Dr. Raju Dhir PW-1, Sukhinder Singh PW-2, Kaka Singh PW-3, Dharinder Kumar PW-4, Balbir Singh PW-5, Sushil Kumar PW-6, Dr. Savita Kumari, PW-7, HC Ramesh Kumar PW-8, Tarsem Lal, photographer, PW-9, complainant Harmanjit Kaur PW-10, Gurmel Singh PW-11, ASI Kulbir Singh PW-12, Inspector Jagdev Singh PW-13, Jaswant Singh PW-14, Sohan Singh Sarpanch PW-15, Dr. Sanjay Jain PW-16, Gian Chand draftsman PW-17 and Dr. Shibu Philip PW-18.

5. PW-1-Dr. Raju Dhir merely proved the medical examination of Sulakhan Singh. PW-2-Sukhinder Singh denied the purchase of scooter from Appellant Sulakhan Singh. PW-3-Kaka Singh is witness of the search memo. PW-4-Dharinder Kumar, PW-5-Balbir Kumar and PW-6-Sushil Kumar proved the purchase of dowry articles by the complainant-party and proved the original bills. PW-7-Dr. Savita Kumari proved the admission of Harmanjit Kaur on 8.7.1999 and her discharge on 20.7.1999. She stated that patient was admitted as a case of organo phosphorous poisoning, aspiration pneumonia. PW-9-Tarsem Lal merely proved the photographs of the marriage from Exhibits P-1 to P-12.

6. PW-10-complainant Harmanjit Kaur stated that after few days of the marriage, her mother-in-law Joginder Kaur and Jethani Jasbir Kaur started taunting her for not bringing Maruti Car in dowry and after 15 days of the marriage, her husband along with other family members started taunting her for bringing insufficient dowry. Complainant further stated that the accused- Appellants sold the scooter and told her that if she cannot bring Maruti Car, then she should tell her uncle Jaswant Singh to give Rs. 1 lac in cash in the alternative. Complainant Harmanjit Kaur also stated that her father had already died and her brother and uncle have already given sufficient dowry as per their capacity. She also stated that the accused-Appellants started harassing her more and more and on 8.7.1999, at 10.00 a.m., they all forcibly put some medicine in her mouth.

7. PW-12 and PW-13 are formal witnesses. PW-16-Dr. Sanjay Jain stated that on 8.7.1999, Harmanjit Kaur was admitted in semi conscious condition by accused-

Appellants Raghbir Singh (brother-in-law) and Sulakhan Singh (husband). The attendant denied the history of consumption of any poisonous substance. PW-16 further stated that the patient was put on ventilator and received various antibiotics and also improved. She was finally discharged on 20.7.1999 in a stable condition. PW18-Dr. Shibu Philip proved the various opinions given to the police regarding the fitness of the injured. He stated that the patient had told her that she was forced to consume poison, however, he did not saw any mark of injury on her body.

8. Accused-Appellants were examined u/s 313 of the Code of Criminal Procedure while putting all incriminating material coming against them in prosecution evidence and pleaded that they never demanded any dowry and also that the complainant was never ill-treated nor taunted for Maruti Car. Jagtar Singh was examined as DW1 in defence.

9. After hearing learned Counsel for the parties, learned Trial Court convicted and sentenced the Appellants as mentioned in the outset in para 1 of the judgment.

10. Learned Counsel for the Appellants has submitted that the occurrence is dated 8.7.1999 and the complainant was first removed to a local hospital and thereafter to PGI, Chandigarh by the Appellant-husband Sulakhan Singh and his brother Raghbir Singh. She was admitted in PGI on 8.7.1999, itself. The statement of the injured-Harmanjit Kaur was recorded on 19.7.1999, on the basis of which, a formal FIR was registered against the present Appellants. On 16.7.1999, complainant-Harmanjit Kaur disclosed to Dr. Shibu Philip, PW18, that she was administered poison by her in-laws. As per the statement of Dr. Shibu Philip, one attendant was allowed to remain with the patient, therefore, according to the learned Counsel for the Appellants, chances of the complainant being tutored could not be ruled out.

11. Learned Counsel has stated that the complainant, in her statement, while appearing as PW10, in her examination-in-chief has supported the prosecution case but in her cross-examination, she gave a new version altogether that neither she was given any beatings nor was administered any poison by the accused persons. She has further clarified that she had consumed the poisonous substance by mistake, presuming it to be medicine.

12. Learned Counsel has further argued that the case of the prosecution was not supported by prosecution witness, namely, Gurdev Singh, PW-11, Jaswant Singh, PW-14, and Sohan Singh, Sarpanch, PW-15 and they all were declared hostile.

13. Learned Counsel has next submitted that there was no material with the learned trial Court to convict and sentence the Appellants in view of the statement of complainant-Harmanjit Kaur itself and, therefore, the conviction is not legally sustainable and liable to be set aside.

14. The learned Counsel has further stated that it is established on the basis of evidence that the Appellant-husband Sulakhan Singh and his brother removed

the complainant to the hospital. If they had forcibly administered the poisonous substance to the complainant then there was no compulsion for them to take her to the hospital. From the record of the hospital, it is proved that the Appellant-husband remained present during her admission in the hospital. The statement of the complainant made to the doctor was recorded on 16.7.1999 i.e., after 8 days of her admission in the hospital and, therefore, it cannot be taken as the first version. The complaint is a result of tutoring by her parents' family. Even the initial version of the complainant is that her husband-Sulakhan Singh sold the scooter, given in dowry, to Sukhinder Singh, PW-2, but this fact has been denied by this witness. The material witnesses, i.e., the complainant, her uncle and Sarpanch of the village, have resiled from their earlier version while appearing before the Court and, therefore, conviction cannot be sustained in this situation.

15. The learned Counsel has further submitted that other attending circumstances also go to establish the innocence of the Appellants. He has referred to the zimni orders of various dates. On 31.10.2000, the case was adjourned to 14.12.2000 because the case property was not produced. On 14.12.2000 the witnesses were present but could not be examined and were bound down for 22.1.2001. On 22.1.2001, a request was made by P Ws 10 and 11 on the ground of marriage of their brother and the case was adjourned to 26.2.2001 and on 26.2.2001, a request was made by the counsel for the complainant that they wanted to compromise the matter. In this backdrop, the learned Counsel has argued that no special circumstances existed to convict the Appellants in the instant case as made out by the learned trial Court. Rather, the circumstances point towards innocence of the Appellants.

16. On the other hand, the learned Counsel for the State has contended that the accused-Appellants have committed the offence and therefore, do not deserve leniency in the matter of sentence. Learned Counsel has prayed that the judgment and order of the learned trial Court be maintained.

17. I have heard learned Counsel for the Appellants and perused the record.

18. As per the case of the prosecution, on 8.7.1999 at about 10.00 am when the complainant was brooming the courtyard, the accused persons called her inside and bolted the room from inside. Raghbir Singh caught hold of complainant from her arm, Jasbir Kaur caught hold her from legs, Joginder Kaur caught her hair and Sulakhan Singh forcibly put some poisonous substance in the mouth of the complainant-Harmanjit Kaur and closed her mouth with a cloth. She became unconscious and regained consciousness after she had been removed to the hospital. There is nothing on record to suggest that the complainant disclosed to Dr. Shibu Philip, PW-18, on 16.7.1999 that she had been administered poison by her in-laws. Her statement was recorded on 19.7.1999 and subsequently, the FIR was registered. However, the complainant has not supported the case of the prosecution in her cross-examination wherein she has stated that she had herself mistakenly consumed the poisonous substance. Other material witnesses,

namely, Gurdev Singh, PW-11, brother of the complainant; Jaswant Singh, PW-14, uncle of the complainant; and Sohan Singh, PW-15; Sarpanch of the Village; also resiled from their statements.

19. Another material aspect which attracts attention of this Court is that the Appellant Sulakhan Singh and his brother, Raghbir Singh, removed the complainant to the hospital and had borne all the expenses.

20. From the statement of Dr. Shibu Philip, PW-18, it is proved that there used to be one attendant remaining present throughout with the complainant. Therefore, in my opinion, the tutoring of the complainant by the members of her parents' family cannot be ruled out. The other allegation of selling the scooter which was given in dowry by Appellanthusband, Sulakhan Singh, is not proved in view of the statement of Sukhinder Singh, PW-2.

21. Hon"ble the Supreme Court, in Suraj Mal Vs. State (Delhi Administration), , has held as under:

2..... We have perused the statements of P Ws. 6, 8 and 9 and we find that while in the examination-in-chief they have tried to implicate all the three accused persons equally without any distinction, in their cross- examination, they have tried to save Ram Narain and made out a different story so far as Ram Narain is concerned and have even gone to the extent of stating that he did not demand any money and that he refused to accept the money which was offered to him. In this state of the evidence, we feel that the High Court was not right in convicting the Appellant....

22. From the perusal of the zimni orders also, it is made out that the complainant did not support the version of the prosecution and wanted to compromise the matter after realizing her mistake.

23. In view of the vacillating stand taken by the complainant and the fact that the case of the prosecution was not supported by the material witnesses and there are vital discrepancies in their statements and substantial delay in lodging the FIR, the case of the prosecution has miserably failed to establish itself beyond a reasonable doubt.

24. Accordingly, the present appeal succeeds. The impugned judgment and order passed by the learned trial Court is set aside. The Appellants are stated to be on bail. Their bail bonds shall stand discharged.

25. Ordered accordingly.

26. Since the main appeal is decided, misc. application(s) pending, if any, shall stand disposed of accordingly.