
(2006) 01 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 347-DB of 1999

Visakha Singh and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

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

Citation : (2006) 2 DMC 94 : (2006) 1 RCR(Criminal) 891

Hon'ble Judges : Uma Nath Singh, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : D.D. Sharma, for the Appellant; Matvinder Singh Sidhu, DAG, for the Respondent

Judgement

Mehtab S. Gill, J.—This is appeal against the judgment/order dated 19.7.1999 of the Additional Sessions Judge, Bamala whereby he convicted appellant Visakha Singh u/s 304B, I.P.C. and sentenced him to undergo imprisonment for life. He was also convicted u/s 498A, I.P.C. and sentenced to undergo RI for 2 years and to pay fine of Rs. 5,000, in default, to further undergo RI for six months. Appellants Jaggar Singh, Tej Kaur and Harpal Kaur were convicted u/s 304B, I.P.C. and sentenced to undergo RI for 10 years. Further, they were convicted u/s 498A, I.P.C. and sentenced to undergo RI for 2 years and to pay a fine of Rs. 5,000, in default, to further undergo RI for six months.

2. The case of the prosecution is unfolded by the statement Ex. PF of Harnek Singh made to Darshan Singh. SI/SHO Police Station Dhanaula on 5.2.1997 at 9.30 a.m. at Canal Bridge, Kotduna. Harnek Singh stated that he is a resident of Village Jandawala. He has two sons namely Nachhatar Singh and Resham Singh. His daughter is named Binder Kaur. His wife's sister's husband Bikkar Singh resident of Village Pandher had got his daughter Binder Kaur engaged with Visakha Singh of Village Pandher. Harnek Singh solemnised the marriage of his daughter Binder Kaur with Visakha Singh about 6 years ago. He had given dowry

to his daughter, according to his capacity. After a few days of the marriage of his daughter, her-in-laws started demanding more dowry and cash. They also started harassing his daughter. This was disclosed to Harnek Singh by his Saddu (wife's sister's husband) Bikkar Singh when he came to his house. After consulting the members of his family, Harnek Singh went to Village Pandher to see his daughter Binder Kaur. Harnek Singh's son-in-law Visakha Singh, his father Jaggar Singh, Jaggar Singh's wife Tej Kaur and Visakha Singh's sister Harpal Kaur did not behave properly with him. Jaggar Singh father-in-law of his daughter asked Harnek Singh as to why he had not given Rs. 50,000 which he had agreed to do so. Visakha Singh then stated that he would not keep Binder Kaur in his house till a scooter is open to him. Tej Kaur mother-in-law of his daughter and Harpal Kaur, her sister-in-law asked Harnek Singh, as to what he had given them in dowry. They also stated that unless the demands are fulfilled. Binder Kaur cannot be kept in the house. After making a promise. Harnek Singh brought his daughter Binder Kaur to his own village. On the way, Harnek Singh's daughter told him that her in-laws were harassing her, for not bringing a scooter and cash. On reaching his house. Binder Kaur narrated the story about her harassment and demands made by her-in-laws, to all the members of her house. Harnek Singh and the other members consoled her and told her to act wisely with her in-laws. They also assured Binder Kaur that they would meet the demand of her in-laws. Harnek Singh then talked to his relatives and other persons of the village about the harassment being meted out to his daughter by her in-laws. Visakha Singh his son-in-law did not come to take his wife back to his house. Thereafter Mohinder Singh, Gurcharan Singh and Roop Singh son of Puran Singh all residents of Village Ballo went to Village Pandher in order to talk to Jaggar Singh. It was settled that Binder Kaur would be brought back to her in-laws' house after some days. About 7 days after the meeting with Jaggar Singh, Visakha Singh along with Mohinder Singh Lambardar of Village Pandher, came to Village Jandawala and he took Binder Kaur along with him. After some days, Harnek Singh went to Village Pandher to enquire about the welfare of his daughter. This time again the in-laws of his daughter did not behave properly with him. Binder Kaur told her father that her in-laws were harassing her and that he should fulfil their demands at the earliest. After advising his daughter, Harnek Singh came back to his village. The in-laws of Binder Kaur kept harassing her. Binder Kaur was pregnant, so, Harnek Singh brought her back from Village Pandher to his own Village Jandawala. His daughter gave birth to a male child. Visakha Singh did not come to see his son, but only Jaggar Singh father-in-law of Binder Kaur came with some eatables and then went away. Harnek Singh's daughter remained with him for about one year. During this period Visakha Singh did not come to see her. Harnek Singh along with some persons then went to Village Pandher and talked to the Panchayat of the village. The Panchayat asked Visakha Singh to bring Binder Kaur. After some days Visakha Singh along with his brother Joginder Singh came to Village Jandawala to take Binder Kaur. At that time, Harnek Singh gave Visakha Singh one Kara of gold, one ring of gold and clothes as Chuchak (gifts) and sent his daughter with him. After some time,

Harnek Singh's daughter was asked to fulfil the demand of a scooter and Rs. 50,000. His daughter was harassed. Her in-laws started beating her. Bikkar Singh resident of Village Pandher informed Harnek Singh he then went to Village Pandher and the matter was settled. The in-laws of his daughter still did not desist from harassing her. Harnek Singh then brought his daughter back to his own village. Applications were made to the higher authorities with regard to the harassment being meted out to his daughter by her in-laws. Superintendent of Police, Nehala Mandal, Barnala, then called both the parties and settled the matter. Harnek Singh left his daughter and the child at Village Pandher On 3.2.1997, Harnek Singh's son Resham Singh went to Village Pandher to bring Binder Kaur, but her in-laws refused to send her. Binder Kaur told Resham Singh that her in-laws were harassing her, for not bringing a scooter and cash. She requested her brother Resham Singh that she should be immediately taken back to her parental house, otherwise they would kill her. Resham Singh came back to Village Jandawala on 4.2.1997 and narrated everything to the family members. On the next morning Harnek Singh was to go to Village Pandher along with two persons to bring his daughter back. At about 3/4 o'clock in the morning on 5.2.1997 Harnek Singh along with his family members was present in his house when Bikkar Singh and Mohinder Singh Lambardar of Village Pandher came to Harnek Singh and told him that his daughter had been killed by administering some poisonous substance. Thereafter Harnek Singh along with his sons Nachhatar Singh and Resham Singh and Sulakhan Singh son of Harnam Singh and some other persons reached Village Pandher where they saw that his daughter was lying dead on a cot, in the house of her in-laws. Foul smell of insecticide was coming out of her mouth. After leaving some persons near the dead body, Harnek Singh along with Bikkar Singh son of Chatar Singh of Village Pandher went to the police station to inform the police. A police party met him at the canal bridge of Kotduna. Harnek Singh further stated that his daughter Binder Kaur was killed on the intervening night of 4/5.2.1997 after she was given some poisonous substance.

3. On the basis of this statement, F.I.R. Ex. PF/2 was recorded on 5.2.1997 at 10.15 a.m. Special report reached the S.D.J.M., Barnala on the same day at 4.45 p.m.

4. The prosecution to prove its case, brought into the witness-box Dr. Subhash Singla PW-1. Harnek Singh PW-2, Bikkar Singh PW-3, Dev Raj Garg PW-4, Kulwant Singh PW-5, SI Guljara Rani PW-6, MHC Daljit Singh PW-7, SI Darshan Singh PW-8 and Amritpal Singh PW-9.

5. Learned Counsel for the appellants has argued that Bikkar Singh PW-3 is the brother of appellant Jaggar Singh. He was inimical towards Jaggar Singh's family. It was at his instigation that a false case was registered against the appellants. Bikkar Singh PW-3 himself has stated in his statement that appellant Jaggar Singh is his real brother and appellant Visakha Singh is his real nephew. Further, Harnek Singh PW-2 is the husband of his wife's sister (Saddu). Since he

was inimical towards the appellants due to a land dispute, and he being the brother-in-law (Saddu) of Harnek Singh PW-2 is an interested witness, his testimony before the Court should not be relied upon. He has stated that he heard the shrieks of Binder Kaur. He rushed to the spot and saw that all the four appellants were physically catching hold of deceased Binder Kaur and appellant Visakha Singh was administering something into the mouth of the deceased. Binder Kaur started vomiting and told him that all the four appellants had administered some poisonous substance to her. It is strange that this witness though having stated, that he saw the occurrence, did not call for help from his family members, nor did he go to the police station, but instead went 80 kms. away to Village Jandawala to inform Harnek Singh. It is thereafter that Bikkar Singh PW-3 and Harnek Singh PW-2 came to the spot. They saw the police party standing at the Canal Bridge of Village Kotduna and Harnek Singh PW-2 made statement Ex. PF. The Investigating Officer SI Darshan Singh PW-8 prepared the inquest report Ex. PC. Darshan Singh PW-8 in his testimony before the Court has stated that he filled in the columns as to the condition of the deceased, of inquest report Ex. PC, by asking two children aged 5/6 years, whose names he does not remember at the time when poison was being administered to Binder Kaur. SI Darshan Singh, Investigating Officer PW-8, has not come forward with clean hands. His investigation is tainted. The best person for him to ask about the condition of deceased Binder Kaur was Bikkar Singh PW-3 who had allegedly seen the occurrence. It is not that only one column of the inquest report Ex. PC was filled in, but a number of columns were filled by Darshan Singh PW-8, after putting questions to the children. The story of the prosecution is that Resham Singh brother of deceased Binder Kaur and son of Harnek Singh PW-2 had gone to the house of the deceased, one day earlier and the deceased had complained to him, about her being beaten up and the demand for dowry being made. She pleaded that she should be taken back to her parental house, otherwise her in-laws would kill her. Strangely Resham Singh a very important witness who was cited as a witness by the prosecution, was given up, as being unnecessary. In fact, this witness was the most important witness, to put light on what was happening in the house of the deceased, soon before her death.

6. In complaint Ex. PG made by Harnek Singh PW-2 to the S.S.P., Bhatinda on 26.6.1996 he has stated that Harpal Kaur and Chhinder Kaur sisters-in-law of his son-in-law Visakha Singh were, in fact, the persons who were creating trouble in the house. Harpal Kaur and Chhinder Kaur used to maltreat his daughter. They had illicit relations with appellant Visakha Singh. In fact, this was the root-cause of the trouble. He prayed that this relationship be broken and his daughter and son-in-law be separated from the rest of the family and they should be allowed to stay in a separate house. Learned Counsel has stated that in fact the root-cause of the trouble between Binder Kaur and her husband was that Binder Kaur wanted appellant Visakha Singh to stay in a different house, away from his family members.

7. Learned Counsel for the State has argued, that no explanation has come

forward from the side of the appellants, as to the reasons regarding the injuries on the person of the deceased. All the injuries on the person of the deceased as per Dr. Subhash Singla PW-1 are on the lips or the cheeks. It clearly shows that some poisonous substance was forcefully put into her mouth. Bikkar Singh PW-3 is an eye-witness to the occurrence. He would not depose falsely against his own brother Jaggar Singh appellant and his family members. Document-Ex. PG, F.I.R. Ex. PF/ 2 and the statements of both the witnesses Harnek Singh PW-2 and Bikkar Singh PW-3 have specifically stated that there was a demand for dowry. A scooter was demanded along with Rs. 50,000 for which Binder Kaur was being harassed and maltreated. She went to her parents' house for the delivery of a child. No one from the appellants went to take her back, for the reason that they demanded a scooter and Rs. 50,000. It has come in evidence that appellants are living in a joint family in the same house. Binder Kaur deceased had died within seven years. She was being harassed and maltreated for the demand of dowry, soon before her death.

8. We have heard the learned Counsel for the parties and perused the record with their assistance.

9. Harnek Singh PW-2 in his testimony before the Court has stated, that after the marriage of his daughter Binder Kaur, appellants Visakha Singh, Jaggar Singh, Tej Kaur and Harpal Kaur started maltreating her that she had not brought sufficient dowry at the time of her marriage. Further he has stated that the accused asked her to bring a sum of Rs. 50,000 from her parents. Besides this, appellant Visakha Singh demanded a scooter from her parents. Appellants Tej Kaur and Harpal Kaur used to tell Binder Kaur, that so long as the demand for cash and scooter was not met, they would not allow her to stay in the house. Similarly, Bikkar Singh PW-3 in his testimony before the Court has stated that the appellants were demanding cash of Rs. 50,000 and a scooter. Appellants made these demands for cash and scooter in his presence. Further, he has stated that before the death of Binder Kaur, there was some dispute regarding dowry. The matter had gone to the police and a compromise had been effected by the Police Post, Kotduna. This compromise was made in writing which is Ex. PL. In F.I.R. Ex. PF/2, complainant Harnek Singh PW-2 has stated, that a few days after the marriage, the in-laws of his daughter started demanding more dowry and cash. They also started harassing her. This fact was disclosed by Bikkar Singh PW-3 who is his Saddu. He has further recorded in F.I.R. Ex. P W-2 that when he went to meet his daughter Binder Kaur in her in-laws' house, appellant Jaggar Singh asked Harnek Singh PW-2, as to why he has not given Rs. 50,000 to them, which he had agreed to give. His son-in-law Visakha Singh stated that he will not keep Binder Kaur in his house, till a scooter is not given. Further, appellants Tej Kaur and Harpal Kaur also questioned him as to why they had not given anything to them in dowry. From the statements of Harnek Singh PW-2 and Bikkar Singh PW-3 and what has been recorded in the F.I.R. Ex. PF/2 no specific allegations of demand of dowry have been made by appellants Jaggar Singh, Tej Kaur and Harpal Kaur. A specific demand was made by appellant Jaggar Singh that Rs.

50,000 be given to his son Visakha Singh and by appellant Visakha Singh to give him a scooter. There was no need for appellant Jaggar Singh to make such a demand, since Visakha Singh while demanding a scooter, would have naturally demanded Rs. 50,000 also. It has come in the statement of Harnek Singh PW-2 that after the son was born to deceased Binder Kaur, in the house of Harnek Singh PW-2, appellant Jaggar Singh along with appellant Tej Kaur brought sweets and visited the house of Harnek Singh PW-2. If appellants Jaggar Singh, Tej Kaur and Harpal Kaur were estranged with the complainant, then where was the need for them to go with sweets and other gifts. It shows that they were happy with their daughter-in-law. Harnek Singh PW-2 has also stated that appellant Visakha Singh did not come to see his son nor to take back Binder Kaur. It is after one year that she went back to her in-laws' house, after respectables of the village had intervened.

10. Bikkar Singh PW-2 is the brother of appellant Jaggar Singh. He has stated in his testimony, that on 4.2.1997 at 8/8.30 p.m. he was present in his house and he heard the shrieks of Binder Kaur from her house. He rushed to the spot. At that time, he saw all the four appellants physically catching hold of Binder Kaur and appellant Visakha Singh who has some liquid in a glass, administering to Binder Kaur. Binder Kaur started vomiting and she told Bikkar Singh PW-3 that, all the four appellants had administered some poisonous substance to her. This witness as per his own testimony is an eye-witness to the occurrence. He has further stated that he went to arrange for a vehicle to take Binder kaur to hospital but as no vehicle could be arranged, he came back to the house of the appellants but by that time, Binder Kaur had expired. Thereafter, he rushed to Village Jandawala to inform Harnek Singh PW-2 about the death of his daughter Binder Kaur. The distance between Village Pandher and Village Jandawala is 80 kms. Behaviour of Bikkar Singh PW-3 is suspicious and not natural. He did not think it prudent to inform Police Post, Kotduna which was hardly 4/5 kms. away from the place of occurrence, nor did he find it prudent to inform the respectables of his village that he had seen the appellants committing the murder of Binder Kaur but went to Village Jandawala which was at a distance of 80 kms. Binder Kaur deceased was no other person than the daughter of his wife's real sister. She was no stranger. If Bikkar Singh was present and was a witness to the occurrence, he would have first tried to save the life of Binder Kaur.

11. We are of the considered opinion that Bikkar Singh PW-3 is a planted witness. He did not see the occurrence. He came into the witness-box, only to take out some grudge against appellant Jaggar Singh and his family, or to give false evidence in favour of Hamek Singh PW-2. who is the husband of his wife's real sister (Saddu).

12. The Investigating Officer SI Darshan Singh PW 8 while preparing the inquest report Ex. PC. has filled up Column Nos. 9, 10, 12. 13, 14, 16, 18. 19,20, 21, 22. 23 and 25 by information being supplied to him by Bikkar Singh PW-3 and two small children. He has stated in his testimony before the Court that the children

were aged 5/6 years. He does not remember the name of the children, nor has he mentioned these names in his diary. This part of the statement of Darshan Singh PW- 8 of filling up the columns, is falsified by the fact, that he did not know the names of the two children, from whom he had collected the information. Further Bikkar Singh PW-3 has not signed the inquest report Ex. PC. This itself shows that Bikkar Singh PW-3 or the two children, at the time of the preparation of the inquest report Ex. PC. were not present.

13. We are of the considered view that appellants Jaggar Singh. Tej Kaur and I larpal Kaur have been roped in. As per the testimony of Harnek Singh PW-2 and the evidence brought before the Court by appellant Visakha Singh in his defence, i.e. Binder Singh DW-I and Dalip Singh DW-2, appellant Visakha Singh cannot escape from the accusation that he had maltreated his wife Binder Kaur. It is due to the demand of dowry and maltreatment that she ended her life. No explanation has come forward from the Counsel for appellant Visakha Singh as to injuries on the person of the deceased which are as under:

(1) Bluish black bruise 5 cm x 3 cm on the lateral side of the left upper arm 5 cm above the left elbow joint.

(2) Bluish black bruise 3 cm x 1 cm present 1.5 cm above injury No. 1. On dissection of injury Nos. 1 and 2 coagulated blood present in subcutaneous tissue and muscular tissue.

(3) Lacerated wound 1/2 cm x 1/4 cm muscle deep on the inner side of middle of upper lip. On dissection haematoma was present.

(4) Abrasion of 1 cm x 1/4 cm present in middle of the upper lip just below nostrils.

(5) Abrasion 3/4 x 1/4 cm on upper lip just above the left angle of the mouth.

(6) Multiple abrasions 5 in number varying in size from 0.3 cm to 1 cm x 0.1 cm to 0.2 cm in an area of 7.5 cm x 5 cm on mandible and upper part of the neck.

(7) Two abrasions of 0.75 cm x 0.25 cm and 0.5 cm to 0.2 cm present, 0.5 cm below left angle of mouth.

(8) Multiple abrasions numbering 6 varying 0.75 cm to 0.5 cm x 0.5 cm x 0.5 cm to size present on the left side of chin, lateral to the left angle to the mouth in the area of 5.5 cm x 3 cm.

(9) Abrasion of 0.3 cm to 0.2 cm on the lateral side of right wrist joint. All the abrasion Nos. 4 to 9 covered with reddish brownish scab. On dissection of injury Nos. 4 to 9 underlying subcutaneous tissues were healthy.

14. These injuries are all on the region of the face. They were suffered by the deceased when she was in the house of appellant Visakha Singh. It is not the case of the appellants that deceased was not living with Visakha Singh. In his statement u/s 313, Cr.P.C. he has stated as under:

I am innocent. I and deceased were residing separately in a room in which diesel drums and spraying material and spray medicines were lying. Deceased was ill and was taking medicines and she inadvertently took the spray medicine. She was suspecting that I had illicit relations with wives of my brothers and father of the deceased had made applications to higher authorities to get me separated from other family and consequently I separated from other members of the family but she still suspected my illicit relations with the wives of my brothers, who were living separate from me. Bikkar Singh is a step-brother of my father and there was property dispute with him. I informed the police by sending some persons and informed the parents of the deceased through Dalip Singh son of Mehar Singh and Ajaib Singh son of Natha Singh. This false case was fabricated at 7.00 p.m. on 5.2.1997.

15. From this statement u/s 313, Cr.P.C. of appellant Visakha Singh, two things come out, one that Binder Kaur had consumed the insecticide inadvertently herself and further, that she was suspecting that Visakha Singh had illicit relations with the wives of his brothers. Appellant Visakha Singh apart from the statement of Binder Singh DW-1 and Dalip Singh DW-2 has not brought any cogent and convincing evidence to rebut the case of the prosecution.

16. As discussed above, no case is made out against appellants Jaggar Singh, Tej Kaur and Harpal Kaur. Benefit of doubt is given to them and they are acquitted of all the charges framed against them. Appeal qua these three appellants is allowed.

Case against appellant Visakha Singh has been proved. His conviction u/s 304-B read with Section 498-A, I.P.C. and the sentence awarded to him by the learned Trial Court shall remain intact. If on bail, Visakha Singh son of Jaggar Singh is directed to surrender before the C.J.M., Barnala forthwith, to undergo the remaining part of his sentence. Appeal qua Visakha Singh is dismissed.