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Date: 21/10/2025

Hardeep Singh Vs State of Punjab

Criminal Appeal No. 409-DB of 1994

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 18, 1996

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 302

Citation: (1996) CriLJ 2733 : (1996) 2 DMC 225 : (1996) 2 RCR(Criminal) 32

Hon'ble Judges: V.K. Bali, J; K.S. Kumaran, J

Bench: Division Bench

Advocate: R.S. Ghai and Bipan Ghai, for the Appellant; S.S. Dhaliwal, D.A.G., for the Respondent

Final Decision: Allowed

Judgement

V.K. Bali, J.
The appellants, Hardeep Shigh, his father Inder Singh and mother Baljit Kaur, have filed the instant appeal challenging the

order of conviction and sentence recorded against them by the Sessions Judge, Ferozepur, vide his judgment dated October 6, 1994, who held

that the prosecution had been able to prove its case against Hardeep Singh accused for an offence punishable u/s 302 of the Indian Penal Code

and against Inder Singh and Baljit Kaur accused for an offence punishable u/s 302 read with Section 34 of the Indian Penal Code and u/s 498-A

of the Indian Penal Code against all the three accused-appellants herein. They were held guilty as such and whereas, Hardeep Singh was

sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/-, in default whereof to further undergo RI for six months under Sections

302 of the Indian Penal Code, Inder Singh and Baljit Kaur were sentenced to undergo imprisonment for life each and to pay a fine of Rs. 500/-

each, in default " whereof to further undergo RI for six months each u/s 302 read with Section 34, IPC. All the appellants were further sentenced

to undergo imprisonment for three years each and to pay a fine of Rs. 200/- each, in default whereof to further undergo RI for two months each,

u/s 498-A, IPC. All the sentences were, however, ordered to run concurrently.

2. The prosecution version was unfolded by Mukhtiar Kaur, real sister of deceased Daljit Kaur, who died of poisoning on August 2, 1992 at 8

a.m. in Village Ghanga Khurd, Police Station Sadar Jallalabad. The statement of Mukhtiar Kaur was recorded on the same day i.e. August 2,

1992 but at 4.30 p.m. by Malkiat Singh, ASI at bus stand. Mukhtiar Kaur stated that she was resident of Village Ghanga Khurd was married with

Kabal Singh son of Hamam Singh about 18 years ago. It is she who had arranged the marriage of her younger sister, Daljit Kaur @ Bindro with

Hardeep Singh son of Inder Singh about seven years back. After about one year of the marriage, her sister gave birth to a son, who had died after

four days. Thereafter, no other child was born. For the last about one year, Hardeep Singh, Inder Singh and her mother-in-law Baljit Kaur used to

ask her sister to bring more dowry and used to create trouble on that count. Her parents, at the time of marriage, had given to her 8 tolas of gold,

television, two boxes, two buffaloes and double bed etc. There was marriage of Bindro, her sister''s husband''s sister and at that time her sister had

gone to her parental house at Village Nurpur Machhiwara, Police Station Zira. Her sister was not brought even at the time of marriage. The dowry

articles of her sister, which were given by her parents at the time of marriage, were given to her sister-in-law Bindro by her sister''s husband Hardip

Singh. Later on, a panchayat had come from her parental side in which Raj Singh, Sarpanch of Ghulewala, who was her mother''s sister''s

husband, had also come and enquired as to why the appellants had not brought the girl. The in-laws of her sister and her husband Hardeep Singh

told that two buffaloes and 2-3 tolas of gold, out of gold which was given by them, had been given in dowry to their daughter (Bindro, sister of

Hardeep Singh). The same should be given to them and only then they would bring the girl. Her parents had brought and given two buffaloes and

gold and then they brought the girl. Now they were saying to her for the last about 2-3 months to bring a Fridge from her parents. Her sister

Bindro had told her that the appellants used to harass her for not bringing Fridge and they gave her beating also. She came and made entreaties

before her sister''s husband that her parents were poor persons, and that they were not in a position to give Fridge. She went to her parental village

and discussed the demand of Fridge with her brothers, Rachhpal Singh, Amrik Singh and Hardial Singh. They told her that she should go and

implore as they could not give Fridge. Thereafter, her brothers, Raj Singh Sarpanch and other respectables of her village in the shape oipanchayat

had come to advise her brother-in-law and his parents that they should not demand more dowry. On the eventful day, at about 8 a.m., she

alongwith her husband Kabal Singh and wife of elder brother of her husband, Jagir Kaur were passing through the street near the house of

Hardeep Singh for their domestic work. She heard the shrieks of her sister, Daljit Kaur. They all entered inside by running and saw that mother-

law of her sister, Baljit Kaur, had caught her sister from her legs, father-in- law Inder Singh, from her arms and her brother-in-law, Hardeep Singh,

after putting insecticide, meant for spray, in the receptacle (Batti), was pouring the same into her mouth. She tried to snatch the receptacle by

running but by that time, the insecticide had already been poured into her mouth. They all got released her sister from their clutches. Receptacle

and box of insecticide were lying on the spot. She enquired from her sister as to what had happened. Her sister told that today again, the quarrel

had taken place on account of the inability of her parents to give dowry. When her sister (Daljit Kaur) expressed her inability of her parents in

meeting the demand of the appellants, they told, ""To-day the daily disputes be finished."" They caught hold of her forcibly and put insecticide into

her mouth. Within her sight, her sister Daljit Kaur died. She had sent Major Singh, son of elder brother of her husband, to her parental Village

Nurpur Machiwala, Police Station Zira for conveying the message. On their arrival, she alongwith her brother Amrik Singh and her mother''s

sister''s husband, Raj Singh, was going to the Police Post for lodging a report but when they were going to the Police Post, Malkiat Singh ASI met

them, before whom she made statement at the bus stand. As mentioned above, on the statement of Mukhtiar Kaur, an F.I.R. was recorded by

Malkiat Singh, ASI at 430 p.m. on August 2, 1992 and a special repbrt was received by the Magistrate concerned on August 3, 1992 at 7 a.m.

3. The prosecution, with a view to bring home the offence against the appellants, examined Dr. Birbal Dang, PW1, Mukhtiar Kaur, PW 2, Raj

Singh, PW 3 and Malkiat Singh, ASI, PW4. On April 27, 1993, vide statement given by Mr. Gurcharan Singh Sandhu, Public Prosecutor, Jagir

Kaur PW was given up as having been won over by the accused. Learned Public Prosecutor also gave up Kabal Singh, being relation of the

appellants, vide his statement given on that behalf on December 15, 1993. Amrik Singh and Rachhpal Singh, PWs were also given up as

unneceessary vide statement given by Darshan Singh, Public Prosecutor, on July 24, 1994.

4. When examined u/s 313 of the Code of Criminal Procedure, the appellant stated that they were innocent. Daljit Kaur, wife of appellant

Hardeep Singh, used to remain under depression as she could not bear her child and under attack of depression, she consumed something, as a

result of which, she died and they had been falsely implicated in the case in order to harrass them. The appellants led no evidence in defence.

5. Before the matter might proceed any further, it is worthwhile to mention here that besides the parents of deceased, Daljit Kaur, there is clear

reference in the FIR of Raj Singh, Sarpanch of Ghulewala, who had earlier enquired into the matter with regard to demand of dowry and had later

accompanied the brothers of the deceased in the shape of a panchayat to advise the appellants not to demand more dowry. The first informant had

also informed the treatment meted out to her deceased sister at the hands of the appellants to her brothers Rachhpal Singh and Amrik Singh and on

the eventful day, the first informant was going in the company of her husband Kabal Singh and wife of elder brother of her husband, Jagir Kaur,

when they all saw that the appellants were killing Daljit Kaur forcibly administering poison to her. The prosecution, however, chose to examine

only Mukhtiar Kaur as PW2 and Raj Singh as PW3. The other persons, who could throw light on the demand of dowry or to the actual

occurrence, were either not examined by the Investigating Agency or even if examined, were given up at the stage of trial.

6. Dr. Birbal Dang, PW1, Medical Officer, Civil Hospital, Fazilka, conducted post-mortem on the dead body of Daljit Kaur on August 3, 1992 at

8 a.m. He observed that there was no external or internal injury. Viscera was sent to the Chemical Examiner, Punjab, Patiala, whose report was as

follows :

A Chloro compound group of insecticide was detected in the contents of Exhibit Nos. 1, II, III and IV. No poison was detected in the contents

of Exhibit No. V"".

After the receipt of the report of the Chemical Examiner, the cause of death in this case was opined to be due to insecticide poisoning. The time

that elapsed between death and post-mortem was about 24 to 36 hours. PW 1 in the cross- examination stated that he had not found any injury on

the person of Daljit Kaur nor there was any abrasion even on the arms and legs of the deceased and that it takes one to four hours for a person

consuming the insecticide to die. The doctor also stated that if the insecticide spils on some cloth and if that cloth is not washed, it would continue

giving foul smell and that he did not find any smell coming out of the clothes of the deceased. Mukhtiar Kaur, PW 2, as mentioned above, is the

real sister of deceased Daljit Kaur, and Raj Singh, PW 3, who also happens to be her relation, deceased being daughter of his sister-in-law,

broadly supported the prosecution version. ASI Malkiat Singh, PW 4 detailed the way and manner in which the investigation had progressed in the

case. PW 2 Mukhtiar Kaur, in her cross-examination, however, stated that she had got in her statement given to the police recorded that her sister

had got married 7 years ago. It requires to be mentioned here that in examination-in-chief she stated that her sister was married 5Ã¯Â¿Â½ years ago

from the date of occurrence. She was duly confronted with her statement made before the police, on which she had to say that mention of seven

years before the police was by a mistake. She further stated that her brothers had reached the village on the date of occurrence at 3.30 p.m. She

also stated that she alongwith others was going to Jallalabad on that day for purchase of clothes for her children and medicines for her sister-in-

law. She stated that her house was near the house of accused and the house of Nambardar is at a distance of 3-4 killas from there. She also stated

that none of them made any noise on hearing the shrieks of her sister nor any one came there from the neighbourhood. She further stated that she

did not go to lodge the report immediately after the occurrence took place till her mother''s sister''s husband came and that the police had-met them

at 3.30 or 4 p.m. PW3 Raj Singh had reached the place of occurrence after he was so informed. He states that at about 3 p.m. other relations

came and it is at that time that Mukhtiar Kaur fold them as to how Daljit Kaur had died. He stated in his cross- examination that he had not talked

to the Sarpanch of the village or any body in the village with regard to the occurrence as no body was willing to come forward. He further stated

that he got intimation with regard to the. incident at 10 a.m. and it is only thereafter that he reached at the house of the appellants. He further stated

that the relations of Mukhtiar Kaur had reached at about 1 l-12noon on that day and that Mukhtiar Kaur could not have gone to lodge the report

without their arrival, PW4 Malkiat Singh, ASI, in his cross-examination, stated that the inquest proceedings were completed by 6 p.m. and he

handed over the dead body to HC Hardeep Singh and Constable Harbans Singh and had asked them to arrange a tractor-trolley to take away the

dead body. The dead body was removed at 6.30 p.m. from the house of the appellants. He further stated that the place of occurrence was

surrounded by residential houses and the persons from those houses were joined in the investigation.

8. We have heard learned Counsel for the parties and, with their assistance, have gone through the records of the case. From the totality of facts

and circumstances, that are available on records, we are, however, of the view that prosecution has not been able to prove the guilt of the

accused-appellants beyond shadow of reasonable doubt. It appears to us to be rather a case of suicide committed by Daljit Kaur. It is, however,

not possible to fathom the reasons as to why she took this ultimate step of finishing her life but whatever the reasons, it does not appear to be a

case where she might have committed suicide on account of demand of dowry. Mukhtiar Kaur clearly stated before the police that her sister was

married seven years prior to the date of occurrence but it appears to us that, on second thoughts, she tried to reduce this period of marriage

between her sister and appellant Hardeep Singh to less than seven years for an obvious reason i.e. the knowlege of law later derived that it is an

unnatural death within a period of seven years that might attract special provisions of the Indian Penal Code. It is proved on records of the case

that Bindro was married about a year after the marriage of deceased with Hardeep Singh and if in the said marriage the appellants had given

ornaments and two buffaloes to Bindro, which items were brought by the deceased in the dowry, there was no question for the appellants to have

demanded the same very items from the deceased Daljit Kaur. In any case, this demand, as per the prosecution case, was met and it is on meeting

of the same only that she was rehabilitated in her husband''s house but this all happened about 4-5 years before Daljit Kaur actually died and there

appears to be a lull during all these 4-5 years on the front of demad of dowry. It is only about 2-3 months before Daljit Kaur died that a demand

of Fridge was made from the parents of the deceased. In the very nature of things, the story put forth by the prosecution with regard to demand of

Fridge, which ultimately led the appellants to murder Daljit Kaur, does not appear to be plausible. That apart, neither the parents of deceased

Daljit Kaur nor her brother nor even the husband of Mukhtiar Kaur, PW 2, has stepped into the witness box to support the prosecution version

with regard to demand of Fridge. As mentioned above, they were either not examined by the Investigating Officer, or even if so examined, were

given up as either having been won over or unnecessary by the prosecution. No demand of dowry was made either from Mukhtiar Kaur or from

Raj Singh PW 3. They at the most heard so from the deceased Daljit Kaur. The evidence with regard to demand of dowry is, thus of very shaky

nature.

9. Coming now to the actual occurrence, it is once again Mukhtair Kaur only, who has stepped into the witness box. The other two witnesses have

been given up as either having been won over or unnecessary. We are surprised to see as to how husband of Mukhtair Kaur could be given up

being relation of the accused particularly when no evidence has been brought on records to that effect. The matter does not end there. There were

number of houses located in the close proximity where the house of appellants is situated and yet no body was attracted at the spot. The

Investigation Officer clearly stated that he had joined the neighbours of the appellants in the investigation but it appears to us, he did not record the

statements of any one of them. That apart it looks quite doubtful as to whether Mukhtair Kaur and two others were passing through the street

where the house of the appellants is located just at the time when the deceased was being administered poison. This finding is strengthened from

the fact that no injury not even an abrasion or a contusion had been found on any part of body of the deceased, which if the occurrence had taken

place in the way and manner as suggested by the prosecution, was likely to be there. So much so, the poison administered had not fallen on any

part of the body nor even on the clothes of the deceased and that, in our view, is not possible if the occurrence had actually taken place in the way

and manner as narrated by PW 2 Mukhtair Kaur. Added to it, there is an unexplained delay in lodging the FIR. Mukhtair Kaur had seen the

occurrence wherein her sister was done to death at 9 a.m. and yet the FIR came to be recorded at 4.30 p.m. on the same day i.e. August 2, 1992

despite the fact the there were persons who had seen the entire occurrence and it was not difficult for one of them to have lodged the FIR by going

to the Police Station which was only seven miles from the place of occurrence. The theory, that relations" arrival was awaited, apppears to us to

be a meek attempt to cover up the delay. The special report reached the Magistrate on the next day at 7 a.m. It appears that Daljit Kaur had

committed suicide either because she was quite frustrated being unable to deliver a child as is the defence version or for any other reason and after

she died and her relations came to know about it, they had deliberations and consultation and ultimately they thought of involving the appellants in

the way and manner it has been done.

10. From the facts and circumstances of this case, we are of the clear view that the prosecution has not been able to bring home the offence

against the appellants beyond shadow of reasonable doubt and, therefore, they deserve to be acquitted. Consequently, order of conviction and

sentence passed by the learned Sessions Judge, Ferozepur, vide his order dated October 6, 1994, is set aside and the present appeal is allowed.