

**(1994) 01 P&H CK 0028**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 466-SB of 1991

Inder Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

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**Date of Decision:** Jan. 5, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 174
- Evidence Act, 1872 - Section 134, 145
- Penal Code, 1860 (IPC) - Section 304B , 498A

Citation: (1995) CriLJ 2944 : (1994) 1 RCR(Criminal) 724

Hon'ble Judges: S.S. Grewal, J

Bench: Single Bench

Advocate: R.S. Cheema and J.K. Goel, for the Appellant; P.S. Sullar, AAG, for the Respondent

Final Decision: Allowed

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**Judgement**

S.S. Grewal, J.

This appeal is directed against the order of Additional Sessions Judge, Kaithal, dated 4th of December, 1991 whereby the present appellants were convicted u/s 304B and 498A of the Indian Penal Code. They were sentenced to undergo rigorous imprisonment for seven years u/s 304B of the Indian Penal Code. They were further sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 100/- each and in default of payment of fine to undergo further rigorous imprisonment for one month u/s 498A of the Indian Penal Code.

2. In brief facts of the prosecution case as emerge from the statement of Dhanna Singh PW recorded in the inquest proceedings u/s 174 of the Code of Criminal Procedure, 1973, are that his daughter Smt. Rano alias Amarjit Kaur aged about 20/21 years was married to Roshan accused about 1 year back; at the time of marriage he gave dowry according to his financial status. After 1 1/2 months of their

marriage Inder Singh father-in-law of Rano (deceased) came and met Dhanna Singh PW and his brother Ram Singh in the village and requested that he should be given one buffalo. Dhanna Singh PW informed Inder Singh accused that at that moment he had no money and promised that he would take loan and arrange the money and send buffalo or pay Rs. 4000/- to the accused. In the month of Maghar of the previous year Inder Singh accused again came to the house of Dhanna Singh PW to get money from the latter. Dhanna Singh PW was not having any money for delivering the same to Inder Singh accused. Inder Singh and his son Roshan started harassing Rano for bringing lesser dowry to the tune of Rs. 5000/- to Rs. 6000/-. After another month he went to the house of his daughter at Kaithal. The latter told him that her husband Roshan and her parents-in-law Inder Singh and Smt. Punna Devi had been harassing her for bringing lesser dowry and they were forcing her to bring Rs. 5000/- to Rs. 6000/- from her parental home in order to enable her husband to start some business with that money. Dhanna Singh PW then talked to his daughter and tried to persuade both Inder Singh and Roshan accused by handing over a sum of Rs. 2000/- to them. He narrated the entire version to his cousin sister's son Ramesh. In the month of Vaisakha of the year 1990. Roshan accused along with his wife Smt. Rano visited Dhanna Singh PW at Munak and left Rano at her parental home. A sum of Rs. 500/- was given to him when he left for his own village. At that time Roshan accused told his father-in-law that remaining amount should be paid to him at Kaithal at the earliest. After about 1/2 months, Gunnel Singh son of Dhanna Singh PW left his sister at Kaithal and handed over Rs. 3000/- to Roshan accused and his father Inder Singh accused. The accused, however, were not satisfied and again started harassing Smt. Rano and pressurised her to bring more money from her parents. About 10 or 15 days prior to that Ramesh cousin sister's son of Dhanna Singh PW told them that Rano was being harassed by her in-laws and she had asked for more money. Dhanna Singh PW then went to his daughter who told him that her parents-in-law and husband were asking for a sum of Rs. 3000/- or Rs. 4000/- and that she should bring the same from her parental home otherwise they would remarry their son and they also gave her beatings. Dhanna Singh PW told Inder Singh accused that he would arrange the money and then visit Kaithal. On 19-7-1990, he got information on telephone from Ramesh that Smt. Rano had committed suicide by taking poison as she had been harassed by her in-laws. Thereafter Dhanna Singh PW went to Kaithal and saw the dead body of his daughter Smt. Rano and reported to the police that his daughter ended her life by taking poison, as she had been tortured by the accused for bringing inadequate dowry. On the basis of the aforesaid statement of Dhanna Singh Ex. PF formal first information report Ex. PF2 was recorded. After completion of the investigation, the accused were challaned, tried, convicted and sentenced as stated earlier.

3. I have heard the learned counsel for the parties and have carefully perused the record with their help.

4. The learned counsel for the appellants has rightly argued that according to the prosecution case statement of Dhanna Singh father of Rano deceased was recorded by the Investigating Officer SI Jati Singh in the inquest report at 4.10 p.m. on 19-7-1990 and on its basis formal first information report was registered at Police Station at 4.35 p.m. that evening whereas the statement of Ganesh PW cousin sister's son of Dhanna Singh PW was recorded by the same Sub-Inspector on 19-7-1990 at 9.05 a.m. and on its basis entry in the daily diary register at Sr. No. 12 was made at 9.30 a.m. It is well settled that information concerning commission of a cognizable offence which reaches the police first in point of time would be legally considered as the first information report. Thus in the present case statement of Ganesh PW Ex. PJ is the first information report which reached the Investigating agency first in point of time.

5. The earliest prosecution version in the said report is to the effect that prior to her death a dispute of domestic nature continued between Smt. Rano deceased and her husband Roshan for a period of 15 days. Nature of the dispute was known to Dhanna Singh father of Rano. Dhanna Singh PW also visited his daughter at her matrimonial home, stayed for the night and after giving advice to his daughter he went back to his village. According to Ganesh PW he came to know about the death of Smt. Rano in the morning and she had committed suicide by taking poison during the night. He was not specific about the nature of the dispute. He further stated that only his maternal uncle Dhanna Singh could give details about the nature of the dispute.

6. Gunesh while appearing as PW5 did state in his examination-in-chief that he had lodged the report Ex. PJ on the basis of which daily diary entry was recorded. He, however, stated that he does not know for what reason Rano had committed suicide. This witness was permitted to be cross-examined by the Public Prosecutor and deposed that he did not make any such statement to the police. Ramesh real brother of Ganesh PW5 while appearing as PW6 has also not thrown any light about the nature of the dispute between Rano deceased and her husband Roshan. He too was permitted to be cross-examined by the Public Prosecutor. I however, strangely enough neither Ganesh nor Ramesh was duly confronted with their statements made before the police as contemplated u/s 145 of the Indian Evidence Act. Dhanna Singh PW4 had admitted that both Ganesh and Ramesh are the sons of his cousin sister who was instrumental in arranging the marriage of Rano deceased with Roshan accused.

7. Careful perusal of the prosecution evidence produced in this case reveals that only Dhanna Singh PW4 supported the prosecution story and had specifically mentioned that his daughter Smt. Rano was maltreated by the accused after 1 1/2 months of her marriage with Roshan accused because of inadequacy of dowry. According to this witness Inder Singh accused father-in-law of the deceased had complained about inadequacy of dowry when he visited the house of Dhanna Singh

PW after 1 1/2 months of the marriage of the deceased. Dhanna Singh promised either to give buffalo or pay Rs. 4000/- in due course of time. Inder Singh accused again came to the house of Dhanna Singh after one month and repeated his demand. Dhanna Singh, however, could not fulfil the demand and on that account all the three accused allegedly harassed Rano deceased. After another month Dhanna Singh PW went to the matrimonial home of his daughter who told her father that the accused had demanded Rs. 5000/- to Rs. 6000/- and were harassing her. Rs. 2000/- was allegedly paid at that time by Dhanna Singh PW to Inder Singh accused. The former also requested the accused not to harass his daughter any more. About three months prior to her death, Smt. Rano along with her husband came to her parental home and was left there. At that time Dhanna Singh PW gave Rs. 500/- to Roshan accused who demanded more money. After another 1 1/2 months Gurmel Singh son of Dhanna Singh PW4 took Smt. Rano to her matrimonial home and allegedly paid Rs. 3000/- to Inder Singh and Roshan accused. After 10 or 12 days thereafter on receipt of message from Ramesh that Rano was being harassed by her husband, Dhanna Singh PW went to the house of the accused and at that time again Smt. Rano allegedly informed her father that the accused were demanding more money and on that account they harassed her, gave her beating and also told her that in case their demands were not fulfilled Roshan would remarry. Dhanna Singh allegedly requested the accused not to harass his daughter and that he would arrange for more money and pay the same. 5/6 days thereafter Smt. Rano committed suicide.

8. Apart from the fact that Ramesh and Ganesh PWs did not support the version given by Dhanna Singh PW referred to above, another important aspect of the case is that Gurmail brother of Smt. Rano and son of Dhanna Singh PW4 did not support the prosecution story at all. He specifically denied that he had paid Rs. 3000/- to Inder Singh or Roshan accused. He also denied that Rs. 500/- was paid by his father to Roshan accused. He also denied that his sister Rano had informed him that she was harassed by the three accused on account of inadequacy of dowry. It is further significant to note that Rama Singh real brother of Dhanna Singh PW also did not support the version of Dhanna Singh that the accused had either acted with cruelty or maltreated or harassed Smt. Rano because of inadequacy of dowry or had made any demands in cash and kind at a later stage. Ram Singh while appearing as PWS categorically stated that the accused (standing trial and present in the Court) never demanded any item of dowry or amount from the father or other relations of Rano since deceased. He further stated that no cash . or buffalo was given to any of the accused standing trial by his brother in his presence. Even though this witness was permitted to be cross-examined, strangely enough, the Public Prosecutor did not care to duly confront this witness with his statement before the police as required u/s 145 of the Indian Evidence Act. In his cross-examination by the Public Prosecutor this witness stated that his niece since deceased never complained to him about any demand from the side of the accused.

9. Testimony of Dhanna Singh PW4 father of the deceased is thus contradicted in material particulars by his own son and real brother. Apart from that his testimony is further contradicted on salient features of the prosecution story by the testimony of his cousin sister's sons namely Ganesh and Ramesh PWs as detailed above. Even though there is no legal bar from acting on the sole testimony of a witness as envisaged u/s 134 of the Indian Evidence Act, in the instant case, it would not be prudent to place implicit reliance on the testimony of Dhanna Singh PW concerning the allegations that his deceased daughter was continuously harassed, maltreated or beaten on account of inadequacy of dowry or on account of other demands made from him by the accused. In case the version given by Dhanna Singh PW, referred to above, on this material aspect of the prosecution story had been correct, then there was no cogent reason for the aforesaid nearer relations of Dhanna Singh PW not to support the version given by Dhanna Singh PW.

10. Apart from that it is significant to note that according to the earliest version given by Ganesh PW cousin sister's son of Dhanna Singh PW4, there was dispute of domestic nature between the deceased and her husband Roshan accused for a continuous period of 15 days. In case the nature of domestic dispute merely related the cruelty on the part of the accused towards the deceased on account of inadequacy of dowry, it is difficult to believe that such fact would not be known to the close relations of the deceased including her brother, uncle and her two cousin brothers.

11. It is true that as per medical and other evidence on the record, the deceased died because of intake of organo-phosphorus compound within 15. months of her marriage. Neither there is any reliable evidence on the record that Rano deceased had been subjected to cruelty or harassment by her husband or any relations of her husband, nor, there is any reliable evidence on the record to prove that such cruelty or harassment on the part of the accused towards the deceased soon before her death, was for, or, in connection with demand for dowry.

12. The prosecution has thus not been able to bring home charge either u/s 304A or u/s 498A of the Indian Penal Code against the accused-appellants beyond any reasonable doubt and as an abundant caution giving the benefit of doubt I hereby acquit all the accused by setting aside the order of conviction and sentence passed by the trial Court. This appeal is accordingly allowed.