
(2009) 05 P&H CK 0208

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 234-SB of 1995

Darshan Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: May 15, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 306

Citation: (2010) 1 RCR(Criminal) 658

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: Dal Deep Singh, for the Appellant; Manjari Nehru Kaul, DAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Sham Sunder, J.

This appeal is directed against the judgment of conviction, and the order of sentence dated 19.04.1995, rendered by the Court of Additional Sessions Judge, Bathinda, vide which it convicted Darshan Singh son of Surjit Singh, accused, (now appellant), as under:-

Name of the accused (now appellant)	The offence for which conviction was recorded.	Sentence awarded
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Darshan Singh

U/S. 306 IPC

Rigorous
imprisonment for
five years. Fine of Rs.
5000/-. In default of
payment of fine to
undergo rigorous
imprisonment for
one year.

The trial Court, however, acquitted Shamsher Singh and Sukhdev Kaur, accused, of the charge framed against them.

2. The facts, in brief, are that Chhinder Kaur, (now deceased) sister of Bhura Singh, complainant, was married to Darshan Singh, accused about 7 years before the occurrence. Shamsher Singh, (since acquitted) was the elder brother of Darshan Singh, accused, whereas Sukhdev Kaur, (since acquitted) was the mother of Darshan Singh, accused. No issue was born from the wedlock. On account of this reason, Darshan Singh and his co-accused were pressurizing Chhinder Kaur to bring more dowry.

2-A. About one month prior to the occurrence, all the accused gave physical beatings to Chhinder Kaur. She was turned out of her matrimonial home. She was asked to bring a buffalo and only thereafter she would be allowed to reside in her matrimonial home. Accordingly, after some days, the complainant alongwith her sister came to her matrimonial home. He also brought a buffalo to the house of the in-laws of Chhinder Kaur (now deceased). Thereafter, the complainant again went to meet Chhinder Kaur, to enquire about her well being, but she (Chhinder Kaur) told him that all the three accused were harassing her. She further told him that she was apprehending danger to her life, at their hands. She was, however, advised to be courageous.

2-B. On 08.11.1991, the complainant received a message that Chhinder Kaur, her sister, had died after consuming insecticide. On reaching the house of the accused, the complainant found that the dead body of his sister, was lying. The complainant started towards Police Station, City Mansa, to lodge a report, when Deep Chander, Assistant Sub Inspector met him on the way. He recorded his statement, on the basis whereof, the FIR was registered. The spot was inspected by Deep Chander, Assistant Sub Inspector. He also prepared the site plan. During investigation, Deep Chander, Assistant Sub Inspector, recovered a plastic can, containing insecticide from the spot, which was taken into possession, vide separate recovery memo. He also prepared the inquest report of the dead body of Chhinder Kaur. Post-mortem of the dead body of Chhinder Kaur, was got conducted. The accused were arrested. The statements of the witnesses were recorded. After the completion of investigation, the accused were challaned.

3. On their appearance, in the Court of the Committing Magistrate, the copies of documents, relied upon by the prosecution, were supplied to the accused. After the case was received by commitment, charge u/s 306 of the IPC, was framed against the accused, to which they pleaded not guilty and claimed trial.

4. The prosecution, in support of its case, examined Dr. Pawan Kumar, Medical Officer, (PW-1), who conducted the post mortem examination on the dead body of Chhinder Kaur wife of Darshan Singh. On external examination of the body of Chhinder Kaur, cyanosis was found present. Face was pale. Eyes closed x cm reddish colour abrasion on right forearm on medial aspect 5 cm proximal to wrist joint was found on the dead body of Chhinder Kaur. On internal examination, membranes of brain and both lungs were congested. Pleurae were also congested. Liver spleen and kidney were congested. Stomach was healthy, patch of congestion was present and contained 3 tons of fluid, which was sent to the Chemical Examiner with the viscera. The cause of death was to be declared after the receipt of Chemical Examiner's report. The probable time between the death and post mortem was within 36 hours. On receipt of the report of the Chemical Examiner, the cause of death of the deceased was declared organo phosphorous, consumption, which is a group of insecticide as the said poison was detected in the viscera.

4-A. Bhura Singh s/o Basant Singh, (PW-2), brother of Chhinder Kaur (since deceased), deposed in terms of the prosecution version, as stated above, while narrating the facts of the case.

4-B. Nachattar Singh s/o Basant Singh, (PW-3), another brother of Chhinder Kaur (since deceased), also corroborated the statement of Bhura Singh, (PW2), in all material particulars.

4-C. Kaka Singh son of Chand Singh, (PW-4), a Member Panchayat of V. Atla Kalan, stated that about 3 years and 2 months before 18.01.1995, Bhura Singh, complainant, came to him, and told that his sister Chhinder Kaur was married to Darshan Singh. He further told him that she was being maltreated by Darshan Singh and the other accused. He further stated that they were beating her with a view to pressurize her to bring more dowry. He also corroborated the statement of Bhura Singh, complainant, in all material particulars.

4-D. Kishan Chand, Constable, (PW-5), and Jaswinder Singh, Moharrir Head Constable, (PW-6), tendered into evidence their affidavits Ex. PW5/A and Ex. PW6/A respectively.

4-E. Deep Chander, Assistant Sub Inspector, (PW-7), is the Investigating Officer. The Additional Public Prosecutor for the State, after tendering into evidence the report of the Chemical Examiner Ex.PK, closed the prosecution evidence.

5. The statements of the accused u/s 313 Cr.P.C., were recorded, and they were put all the incriminating circumstances, appearing against them, in the prosecution

evidence. They pleaded false implication. Darshan Singh, accused, in his statement u/s 313 Cr.P.C. admitted that he was married to Chhinder Kaur about 9 years earlier to 11.03.1995. He further stated that no child was born to Chhinder Kaur. He took up the following plea :-

I am innocent. I was married with Chhinder Kaur about 9 years back. But we did not have any issue. I separated from my brothers and in the family partition 15 acres of land, one tractor, 5 buffaloes and other agricultural implements came to my share. This family partition took place immediately after my wedding and I had been residing separate from my co-accused Shamsheer Singh and Sukhdev Kaur, since then. I am habitual in deigning and my wife Chhinder Kaur used to remain sad and depressed on account of that and also on account of the fact that she could not bear any child. Chhinder Kaur consumed insecticide on account of her depression. I never maltreated Chhinder Kaur, nor in connection with any demand of dowry. Utam Singh, my brother was sent to inform the parents of Chhinder Kaur about her death and he brought them to the village and thereafter the FIR was lodged after introducing a false demand of buffaloes. The investigation in this case was conducted by Ajit Singh, SP (H) Mansa and during his inquiry he found that Chhinder Kaur consumed insecticide on account of the fact that I used to consume liquor daily and on account of that on 08.11.1991 I started taking liquor from early morning and Chhinder Kaur took exception to it and there was exchange of hot words as a result of which Chhinder Kaur consumed insecticides.

6. The accused, in their defence, also examined Ajit Singh (DW-1). Thereafter, the accused closed their defence evidence.

7. After hearing the Additional Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced Darshan Singh, accused (now appellant), whereas Shamsheer Singh and Sukhdev Kaur, accused were acquitted of the charge framed against them.

8. Feeling aggrieved, against the judgment of conviction, and the order of sentence, rendered by the trial Court, the instant appeal, was filed by Darshan Singh, appellant.

9. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

10. The Counsel for the appellant, at the very outset submitted that no offence, punishable u/s 306 of the Indian Penal Code was made out, from the evidence, on record, but the trial Court, wrongly convicted and sentenced the accused, for the said offence. He further submitted that Chhinder Kaur had been married for the last 7-1/2 years before the occurrence. He further submitted that had any demand of dowry been made, from her, she would have complained to the Police or before Panchayat. He further submitted that the husband of Chhinder Kaur used to drink alcohol and, therefore, she was upset. He further submitted that the accused is a big

landlord and, as such, it could not be imagined that he would demand dowry from her wife (Chhinder Kaur) or her parents. He further submitted that it could also not be imagined that he tortured Chhinder Kaur, his wife, in connection with the demand of Buffalo. He further submitted that no evidence with regard to the beating of Chhinder Kaur, was produced. He further submitted that no panchayat was ever convened in this case that Chhinder Kaur was tortured in connection with the demand of dowry.

11. On the other hand, the Counsel for the respondent, submitted that from the evidence of Bhura Singh, complainant (PW-2) and Nachattar Singh, (PW-3), it was proved that Chhinder Kaur used to be maltreated by the accused, in connection with the demand of dowry. She further submitted that even, on demand of the accused, a buffalo was given a few days, before the occurrence, by Bhura Singh, brother of the deceased, to him. She further submitted that even then the behaviour of the accused, did not improve. She further submitted that even a few days, before the occurrence, when Bhura Singh, complainant, went to meet Chhinder Kaur,(now deceased) his sister, she told that she was apprehending danger to her life, at the hands of the accused. She further submitted that the mere fact that the accused has landed property, does not mean that he could not torture Chhinder Kaur, in connection with the demand of dowry or buffalo on account of greed.

12. From the evidence of Bhura Singh, (PW-2) and Nachattar Singh, (PW-3), it was proved beyond doubt, that Chhinder Kaur was being maltreated, from time to time, in connection with the demand of dowry, by the accused. Even a buffalo was demanded from Chhinder Kaur, by the accused, and when she told about the said demand to Bhura Singh, he took the buffalo to the house of the accused, and left the same there, only a few days before the occurrence. It was also proved from the evidence of Bhura Singh, (PW-2) and Nachattar Singh, (PW-3) that even then the behaviour of the accused, did not improve. Even Bhura Singh, again went to meet Chhinder Kaur, in the house of her in laws, a few days before the occurrence when she told him that she was apprehending danger to her life, at the hands of the accused for non-fulfilment of his demand. The mere fact that the accused was a rich person, did not mean that he was not greedy. A greedy person may be rich, he can go to any extent, to make demands from his in-laws, and, on account of non-fulfilment of the same, can torture his wife. The mere fact that the husband of Chhinder Kaur was addicted to alcohol, could not be said to be such a circumstance, which could compel her to commit a suicide. The accused, created such uncongenial circumstances and atmosphere, by subjecting Chhinder Kaur to cruelty, in connection with the demand of dowry and buffalo, as it was not possible for her to live happily. When the torture and cruelty became intolerable by Chhinder Kaur, she was left with no alternative, than to consume poison, and end her life. There was, therefore, continuous instigation on the part of Darshan Singh, accused, husband of Chhinder Kaur, on account of the aforesaid reasons, as a result whereof, she committed suicide. The ingredients required for constituting the offence, punishable

u/s 306 of the Indian Penal Code, thus, stood proved from the evidence on record. The trial Court was, thus, right in recording conviction and awarding sentence, for the offence, punishable u/s 306 of the Indian Penal Code. This Court also on re-appreciation and reappraisal of the evidence, comes to the same conclusion. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

13. The Counsel for the appellant, however, placed reliance on *Sohan Raj Sharma v. State of Haryana*, 2008 (2) RCR (Cri.) 810 : 2008 (2) RAJ 272 (SC), *Jai Parkash v. State of Haryana*, 1995 (2) RCR (Cri.) 186 (P&H) and *Hans Raj v. State of Haryana*, 2004 (2) RCR(Cri) 58 : 2004 (2) AC 476 : JT 2004 (3) 45 (SC) in support of his contention, that no offence, punishable u/s 306 of the Indian Penal Code was made out, from the evidence, produced by the prosecution. In *Sohan Raj Sharma's* case (supra) the husband had been trying to defame his wife, for having relationship with ladies. Ultimately, the wife committed suicide. It was observed that the husband could not be held guilty of abetment. It was further observed that the accused could be held guilty of abetment, if cruelty meted out to the deceased had the effect of inducing her to end her life by committing suicide. It was further observed that the accused could not be held guilty of abetment, if the victim was hypersensitive to ordinary discord and differences in domestic life. In *Jai Parkash's* case (supra), it was held that since the marriage took place eight years prior to death, presumption u/s 113-A of the Evidence Act, did not operate. In that case, the bride was tortured to bring more dowry. No complaint was made by the bride to her parents. Ultimately, she committed suicide. This Court held that there was no abetment of husband, as a result whereof, the wife committed suicide. In *Hans Raj's* case (supra), the allegations were that the husband was addicted to consumption of Bhang and there were frequent quarrels between him and the wife. Some time the wife was given the beatings by the husband. It was held that the offence of abetment u/s 306 of the Indian Penal Code was not made out. There is, no dispute, with the proposition of law, laid down, in the aforesaid cases. However, the facts of the aforesaid cases, are clearly distinguishable from the facts of the instant case. In the instant case as and when *Chhinder Kaur* (since deceased) was tortured in connection with the demand of dowry and buffalo by the accused, she narrated the tale of her woes to her brothers *Bhura Singh* and *Nachattar Singh*. It, therefore, could not be said that she did not inform her brothers that she was subjected to cruelty, by the accused, in connection with the demand of dowry and buffalo. It was not a case of frequent quarrels, between the husband and the wife. As stated above, the cruelty perpetrated by the accused against *Chhinder Kaur*, (now deceased) was of such a nature, as was likely to drive her to commit suicide. No help, therefore, can be drawn by the Counsel for the appellant, from the aforesaid cases. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

14. No other point, was urged, by the Counsel for the parties.

15. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, are based on the correct appreciation of evidence, and law, on the point. The same do not warrant any interference, and are liable to be upheld.

16. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment of conviction, and the order of sentence dated 19.04.1995, are upheld. If the appellant is on bail, his bail bonds, shall stand cancelled.

17. The Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Cr.P.C. and compliance report be sent within two months.

18. The District & Sessions Judge, is also directed to ensure that the directions, referred to above, are complied with, and the compliance report is sent within the time frame.

19. The Registry shall keep track of the matter, and put up the action taken report, if received, within the time frame. Even if, the same is not received, within the time frame, the matter shall be put up, within 10 days, after the expiry of the stipulated time, for further action.