
(2004) 11 CriminalCC 61

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 88-SB of 1991

Nachhatar Singh and
Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Sept. 16, 2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 215, 221, 313#Evidence Act, 1872 â€”
Section 113B#Penal Code, 1860 (IPC) â€” Section 109, 302, 304B, 306, 34

Citation: (2004) 11 CriminalCC 61

Hon'ble Judges: Jasbir Singh, J

Bench: Single Bench

Advocate: J.K. Sibal, with Mr. Sapan Dhir Mr. B.S. Bhalla, for the Complainant, for the
Appellant; S.S. Randhawa, A.A.G, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Jasbir Singh, J.

This judgment will dispose of Criminal Appeals NO.88-SB of 1991 and 278-SB of 1991, as both these appeals arise out

of a judgment and order dated February 21, 1991. For facility of reference, facts are being mentioned from Criminal Appeal No. 88-SB of 1991.

2. Vide judgment and order dated February 21, 1991, appellants were found guilty and convicted for commission of an offence u/s 304-B of the

Indian Penal Code (for short IPC) and were sentenced to undergo rigorous imprisonment for seven years. Hence they have filed this appeal. State

of Punjab filed Criminal Appeal No. 278-SB of 1991 with a prayer that punishment awarded vide order dated February 21, 1991 be enhanced.

3. On the basis of FIR No. 189, dated December 25, 1987, initially, appellant Nos. 1 and 2 were committed to face trial for commission of

offences under Sections 302/498-A/ 34 IPC. Subsequently, on a complaint filed by Sukhmander Singh (PW-6) appellant No.3 Nirmal Singh was

also summoned and was directed to face trial along with appellant Nos. 1 and 2. Vide order dated April 6, 1989, passed by the trial Court, State

case and the complaint case were ordered to be clubbed.

4. As per prosecution story, marriage of Balbir Kaur deceased was solemnized with appellant No.3 Nirmal Singh about five years prior to the date

of occurrence. Out of the wed lock, one female child was born. After about two/three years of the marriage, appellants-accused started fighting

with Balbir Kaur for bringing less dowry. Appellants-accused used to maltreat her continuously and force her to demand more dowry from her

parents. She had gone to the house of her parents three/four times and made a prayer for more dowry articles. However, due to financial

constraints, her parents failed to fulfill greed of the appellants. On intervention made by respectables of both the sides, Balbir Kaur started living in

the house of her in-laws. Her brother Sukhmander Singh (PW-6) used to meet her off and on and she used to tell him about the maltreatment

being given to her by the appellants for bringing less dowry as the same was not upto their expectations.

5. On December 25, 1987, at 7 A.M., information regarding Balbir Kaur's death was received by her parents. Sukhmander Singh along with other

family members and relatives came to the house of the appellants. They saw Balbir Kaur lying dead on a cot. Frost (Forth?) was coming out of her

mouth. On suspicion, Sukhmander Singh PW went to the Police Station and made statement Ex.PA, on the basis of which FIR Ex.PA/1 was

recorded. Post-mortem was performed on the dead-body. Viscera was sent for chemical examination and also for hystopathology examination.

On receipt of Chemical Examiner's report, cause of death was declared to be poisoning. Investigation was completed as per norms. Appellant

Nos. 1 and 2 were arrested and final report for trial was submitted against them.

6. A criminal complaint was filed by Sukhmander Singh PW against appellant No.3. After recording preliminary evidence, he too was summoned

to face trial. Both State case and complaint case were clubbed together.

7. Appellants were charge-sheeted for commission of offences under Sections 302 read with Sections 34 and 304-B IPC, to which they pleaded

not guilty and claimed trial. Prosecution then led oral as well as documentary evidence to prove guilt of appellants. On completion of prosecution

evidence, statements of the appellants were recorded u/s 313 Cr.P.C. wherein they denied all the allegations appearing against them in prosecution

evidence and claimed false implication. They further pleaded as under:-

The deceased was a Steno-typist and she wanted to live at Moga and was also desirous of joining service for the reasons best known to her. Our

circumstances were such that myself and my wife were old and there was nobody else in the house to do house-hold work. So, we were not

allowing her to join service and for that purpose she was depressed and had committed suicide. I also got her treated from Dr.Dharam Pal during

the night prior to the day of the occurrence. I also sent the message through Mohinder Singh, Basant Singh regarding the condition of the deceased

during the night to her parents. I also informed the police after the death.

8. They also led evidence in their defence and examined Gurmit Singh (DW-1), who stated that deceased Balbir Kaur had passed Stenography

examination in the year 1982. Dr.Dharam Pal Joshi (PW-2) also deposed that about two years and nine months ago, at about 1.45 A.M.,

appellant Nachhatar Singh and his brother Naranjan Singh came to him for medical check up of their daughter-in-law. He gave one injection to her

and told them that since her condition was serious, she be shifted to hospital in Moga. They arranged some vehicle. In the meantime, their

daughter-in-law had expired. S.K.Kochhar (DW-3) had deposed that appellant No.3 Nirmal Singh was working at Moga in "Nestle India"

factory and he was on duty from 5 A.M. to 1 P.M. on December 24, 1987 and from 9 P.M. to 7 A.M. on the next day. He also placed on record

certificate Ex.DC to support above mentioned deposition. K.C.Joshi (DW-4) deposed that Balbir Kaur deceased had appeared for Clerk's grade

examination in the year 1987.

9. Trial Court, on appraisal of evidence, as led by the parties, found the appellants guilty, convicted and sentenced them as found mentioned in

Parr 2 of this judgment. Hence this appeal.

10. Shari J.K.Sibal, Senior Advocate, for the appellants, has vehemently contended that conviction and sentence of appellants were not justified.

He, by referring to evidence on record, submitted that no offence was made out against them for commission of an offence u/s 304-B IPC. He, by

further referring to the contents of the FIR and statements of prosecution witnesses, contended that allegations regarding demand of dowry and

cruelty meted out to the deceased were very vague. No time or date has been mentioned. It had not been brought on record that soon before her

death, she was harassed in connection with demand of dowry. He further submitted that appellant Nos. 1 and 2 are father-in-law and mother-in-

law respectively of the deceased. Their age was more than 55 years at the time of occurrence. No specific instance of demand of dowry and

cruelty at their instance had been mentioned by any of the witnesses. They, being old persons, had nothing to do so far as family life of the

deceased and appellant No.3 was concerned. They only wanted their daughter-in-law to stay with them as they were feeling insecure because of

their old age.

11. Shri Sibal, by referring to above mentioned facts, submitted that it has become a tendency to rope in all family members when girl dies in her

in-laws' house. By referring to affidavit dated December 20, 2003, put on record by the complainant by moving an application, counsel contended

that during pendency of the appeal, Sukhmander Singh (PW-6) the complainant had died. Her mother Tej Kaur had mentioned in that affidavit that

because of intervention of the relatives, misunderstanding had been cleared and now she did not want to pursue the matter against the appellants.

Shri Bhalla has put in appearance on behalf of the complainant and he has affirmed the contents of affidavit, as referred to above. He has further

stated that mother of the deceased is no more interested in taking any action against the appellants. Shri Sibal, by referring to above mentioned

facts, prayed that the judgment and order under challenge be set aside and the appellants be acquitted of the charges framed against them.

12. Arguments raised by counsel for the appellants have vehemently been opposed by Shri S.S.Randhawa, Assistant Advocate General, Punjab.

He, by referring to statements of prosecution witnesses, argued that ingredients for commission of an offence u/s 304-B IPC, by the appellants

were proved on record. Conviction and sentence awarded to them were perfectly justified. He further contended that death had occurred within

seven years of the marriage. It was unnatural death. Demand of dowry and harassment of the deceased at the hands of the appellants were proved

on record. As such, trial Court below had rightly convicted them. He prayed that keeping in view gravity of the offence committed by the

appellants, sentence awarded to them was less and the same required to be enhanced. He submitted that at this stage, no benefit can be extended

to the appellants on the basis of affidavit dated December 20, 2003, which has now been put on record by moving an application by Smt. Tej

Kaur mother of complainant Sukhmander Singh (PW-6). He prayed that the appeal of the appellants be dismissed as the same was without any

substance and that of the State be allowed by enhancing sentence.

13. After hearing counsel for the parties and on perusal of evidence on record, as led before trial Court, this Court has to determine as to whether

allegations levelled would constitute an offence against the appellants for commission of an offence u/s 304-B IPC or not. Their Lordships of the

Supreme Court in *Sunil Bajaj v. State of M.P.*, 2002 (1) CCC 196 (S.C.): 2001(2) ACJ 715 (S.C.): 2002 SCC (Cri.) 608, after noticing

provisions of Section 304-B IPC and Section 113-B of Evidence Act, had opined that following ingredients must be essential before any death

can be termed as dowry death:-

(1) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(2) Such death must have occurred within 7 years of her marriage;

(3) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

(4) Such cruelty or harassment must be for or in connection with demand of dowry.

14. To the same effect is the opinion of Hon"ble Supreme Court in Sham Lal Vs. State of Haryana, .

15. Now it is to be seen as to whether in view of evidence on record, above mentioned four essential ingredients to constitute an offence u/s 304-

B IPC were satisfied or not?

16. Evidence on record shows that marriage between appellant No.3 and deceased Balbir Kaur had taken place on December 9, 1984, and out of

this wed-lock, a female child was born after about 1-1/2 year of the marriage. Death had taken place on December 24, 1987. Doctor had

mentioned cause of death as poisoning. As such, it is evident that death had occurred within seven years from the date of solemnisation of

marriage. It was unnatural death. Accordingly, it can safely be said that first two essential ingredients, as laid down by their Lordships of the

Supreme Court in Sunil Bajaj's case (supra), to constitute an offence u/s 304-B IPC were completed.

17. Now it is to be noticed whether, on the basis of evidence, remaining two essentials to constitute an offence with which appellants were

charged, were proved on record or not. FIR Ex.PA/1 was recorded at the instance of Sukhmander Singh (PW-6), brother of the deceased. He, in

his statement, had deposed as under:-

I am resident of Patti Mohabbat Moga Mehal Singh and do agricultural work. My sister Balbir Kaur was married to Nirmal Singh s/o Nachhattar

Singh, Jat, r/o Daroli Bhai, three years back. She has a daughter aged about 1-1/2 years. After 2/3 months of the marriage of my sister, her

husband Nirmal Singh, her mother-in-law Nachhattar Singh, started quarrelling with my sister and used to ask for more dowry. My sister had also

come to us two/three times to get more dowry but we could not give more dowry. Then Panchayat had intervened and sent Balbir Kaur to her in-

laws" house. Thereafter, whenever we used to go to see my sister, she used to inform us that her husband-Nirmal Singh, Nachhattar Singh, father-

in-law and Harbans Kaur, mother-in-law, harass her for bringing more dowry and used to give threats to kill her, saying that after killing her, they

will get another marriage but we used to return home after giving assurance to our sister. Today at about 7 A.M., I and my brother Chamkaur

Singh and my Bharjai Bajbir Kaur, were present at the house, when Mohinder Singh r/o Daroli Bhai, who also does work in the Moga dairy, with

my sister's husband, came to our house and informed that our sister Balbir Kaur as expired at night at 2/2-112 O'clock.

18. Sukhmander Singh had appeared in Court as PW-6. In his deposition, he had reiterated his allegations, as referred to above, in his statement

Ex.PA. In cross-examination, he had denied that his sister had passed Steno-typist's test. Similarly, Sajjan Singh PW-7) had tried to say that he

had told fact of demand of dowry to the parents of Balbir Kaur, one day prior to her death. However, in his cross-examination, he had candidly

admitted that before the Magistrate and also in his statement made before the police, he had not mentioned that fact. Apart from this, he had not

given any year, month and date of Balbir Kaur's informing him regarding cruelty committed upon her by her in-laws.

19. On the similar lines was the statement of Raghbir Singh (PW-9). After deposing in general terms regarding cruel treatment given to the

deceased he had stated that a scooter and a television were demanded by in-laws of the deceased but Sukhmander Singh (PW-6), being poor,

had failed to fulfill that demand. In his cross-examination, this witness had also admitted that above mentioned fact was not stated before the police

and also when his statement was recorded before the Magistrate in complaint case. Statement of Gurcharan Singh (PW-10) is in general terms.

20. Analysis of statements of prosecution witnesses, referred to above, clearly indicates that allegations regarding demand of dowry and cruelty

inflicted upon the deceased are in general terms and vague. None of the prosecution witnesses had stated as to when, in which year, date and

month any act of cruelty in connection with demand of dowry was committed by any of the appellants against the deceased. Not even a single

witness had given any specific instance in that regard. None of them except Sajjan Singh (PW-7) had stated that soon before death, acts of cruelty

in connection with demand of dowry were committed by the appellants against the deceased.

21. Sajjan Singh (PW-2) in his deposition had stated that one day prior to death of Balbir Kaur, he had informed her parents about demand made

by the appellants. However, this witness, in his cross-examination, had admitted that this fact he had not mentioned before the Magistrate when his

statement was recorded in a complaint case and also before the police when his statement was recorded u/s 161 Cr.P.C. Sukhmander Singh

(PW-6), brother of the deceased, had not mentioned this fact as deposed by Sajjan Singh PW-7 in his statement. Under these circumstances, this

Court feels that deposition, to that extent of PW-7 Sajjan Singh was not reliable as this witness had tried to make improvements when he had

appeared before trial Court in witness-box.

22. Regarding cruelty and demand of dowry prior to death of Balbir Kaur, no complaint was made to the police or any other responsible officer.

Under these circumstances, it is established that prosecution had failed to prove demand of dowry and cruelty inflicted upon the deceased soon

before her death. Accordingly, it is difficult to maintain conviction of the appellants u/s 304-B IPC. However, at the same time it is very difficult to

absolve them from their liability in compelling Balbir Kaur to commit suicide.

23. Combined reading of statements of prosecution witness clearly indicates that immediately after marriage, there was demand of dowry by

appellants. Though the prosecution had failed to give a specific instance but at the same time, such an inference is coming out from reading of

deposition of the witnesses and other documentary evidence on record.

24. Defence version of the appellants that Smt. Balbir Kaur had committed suicide because she was not allowed to join some Stenography post at

Moga is difficult to believe. Record shows that she had passed Stenographer's examination prior to her marriage. After marriage, she continued to

stay with her in-laws and gave birth to a female child. Merely because she had appeared for Clerk's examination in the year 1987, no inference

can be drawn that she was adamant to join any service as has been alleged by the appellants in their defence.

25. Unless compelled under extreme circumstances, no woman after marriage, having a small child, would commit suicide as had happened in this

case. Cruelty as defined u/s 498-A IPC does not amount only to physical cruelty but it also attracts mental cruelty as well. This Court feels that in

view of evidence on record, conduct of appellants was such that they had forced Balbir Kaur to commit suicide.

26. Under these circumstances, they cannot be absolved of their liability of abetment of commission of offence of suicide u/s 306 IPC. Abetment

can be performed by a positive act or by conduct or may be by omission. Evidence on record would lead this Court to an irresistible conclusion

that due to vitiated atmosphere created by the appellants, Smt. Balbir Kaur had no option but to take extreme step of taking poison and ending her

life.

27. A Single Bench of this Court in Naveen Kumar etc. v. State of Haryana, Criminal Appeal No.31 -SB of 1998, decided on 9.7.1998, had

observed as under:-

No sane lady would try to finish her life until and unless she is subjected to cruelty to such an extent that it had compelled her to finish herself for

all times to come from this beautiful world. When a woman agrees for a marriage, she does not expect death under unnatural circumstances but the

expectations are that she would get love and affection and financial security at the hands of her husband. If her those hopes are frustrated by the

positive act of the husband or by wilful negligence of the husband, in my opinion, it will constitute abetment within the meaning of Section 109 IPC,

punishable u/s 306 IPC, if in pursuance of that abetment, the death of a person takes place.

28. To the same effect is the opinion of another single Bench of this court in Gurbachan Singh and others v. The State of Punjab, Criminal Appeal

No.90-SB of 1998 decided on 6.8.2003.

29. In the cases, referred to above, this Court came to a definite conclusion that since cruelty and harassment in connection with demand of dowry

soon before death was not proved, conviction of the accused in those cases, u/s 304-B IPC was not justified. However, keeping in view facts and

circumstances of those cases, accused were found to be guilty of commission of an offence u/s 306 IPC.

30. Now it is to be seen as to whether appellants in this case can be convicted and sentenced for commission of an offence u/s 306 IPC or not.

Their Lordships of the Supreme Court in K. Prema S. Rao and Another Vs. Yadla Srinivasa Rao and Others, while dealing with similar situation,

opined that even though charge was framed only u/s 304-B IPC, yet an accused can be convicted u/s 306 IPC in a case where all ingredients

necessary to frame charge for that section are available on record. In the judgment referred to above, Hon"ble Supreme Court considered the

provisions of Sections 221 and 215 Cr.P.C. To the same effect is the ratio of judgments in Naveen Kumar"s case and Gurbachan Singh"s case

(supra).

31. In the case in hand, this Court feels that there exist necessary material to constitute an offence by the appellants u/s 306 IPC. By raising

demands in connection with dowry, appellants had vitiated the family atmosphere, which compelled the deceased to put an end to her life.

32. In view of facts referred to above, conviction and sentence awarded to the appellants for commission of an offence u/s 304-B IPC are set

aside and they are acquitted of the charge under that section. However, they are found guilty and convicted for commission of an offence u/s 306

IPC and sentenced to undergo rigorous imprisonment for a period of four years.

33. With above mentioned modification, Criminal Appeal N0.88-SB of 1991 stands disposed of.

34. In view of reasoning given while disposing of this appeal. Criminal Appeal No.278-SB of 1991, filed by the State, stands dismissed.