

(2008) 05 P&H CK 0158

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 623-SB of 1995

Balwinder Singh and others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 30, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 113A, 113A
- Penal Code, 1860 (IPC) - Section 304B, 306

Citation: (2009) 1 RCR(Criminal) 633

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: APS Deol, assisted by Mr. Devender Bir Singh, for the Appellant; C.S. Brar, D.A.G., for the Respondent

Final Decision: Dismissed

Judgement

A.N. Jindal, J.

The accused-appellants Balwinder Singh, Jagrup Singh and Rajinder Kaur (herein referred as the 'accused') were tried, convicted and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 500/-, each, u/s 306 of the IPC, vide judgment dated 5.10.1995 passed by Additional Sessions Judge, Mansa.

2. On the demise of accused Rajinder Kaur, the appeal qua her was abated vide order dated 21.4.2008.

The factual matrix of the case is that Amarjit Kaur alias Gurvinder Kaur was married with accused Balwinder Singh, in the year 1988, whereas, accused Rajinder Kaur is her mother-in-law and Jagrup Singh is her father-in-law. All of them were maltreating and beating her. The complainant - Gurjant Singh, father of bride Amarjit Kaur (herein referred as the complainant) had approached the accused

many times to mend their ways, but they did not agree. The complainant also convened a Panchayat, but it failed to resolve the dispute. On 25.8.1992, the complainant along with Bhola Singh had visited Amarjit Kaur. On request made to the accused, they told the complainant that Amarjit Kaur is outspoken and she will be kept under their thumb. On the fateful day i.e. 25.8.1992, the accused taunted Amarjit Kaur in the presence of the complainant and Bhola Singh, upon which she requested to disclose her fault. Reacting to it, Rajinder Kaur prompted Balwinder Singh, whereupon, he gave 2/3 slaps to Amarjit Kaur. Rajinder Kaur and Jagrup Singh further uttered that they would have a sigh of relief, if Amarjit Kaur dies. After sometime, Amarjit Kaur went outside with a container of water. The complainant suspecting that she may not do anything wrong in the fit of anger, they followed her and tried to stop her, but she started running and uttered that she would finish herself in order to avoid daily clash. Consequently, she jumped into a well and drowned herself. On the statement of the complainant, case was registered against the accused. The investigation was commenced. Ultimately, the challan was presented against the accused. They were charged u/s 306 IPC, to which they pleaded not guilty and claimed trial.

3. On commencement of the trial, the prosecution examined Gurjant Singh (PW1), Bhola Singh (PW2), Dr. Amrit Pal (PW3), Baldev Singh (PW4), Darshan Singh DSP (PW5) and the report of the Chemical Examiner was tendered in evidence as Ex.P1. Affidavits of HC Bharat Singh, MHC Balraj Singh and Ajaib Singh were also tendered in evidence.

4. When examined u/s 313 of the Code of Criminal Procedure, the accused denied all the incriminating circumstances appearing against them and further pleaded that Amarjit Kaur remained sick due to tuberculosis. Two days prior to the occurrence, she had gone to her parental house and after coming back, she jumped into the well. Amarjit Kaur used to compel Balwinder Singh to live separately from his parents. Jagrup Singh informed about her death to the complainant. In defence, the accused examined Dr. R.M. Arora (DW1), Sukhdev Singh - Laboratory Technical (DW2) and Sukhdev Singh (DW3) to prove that the deceased was suffering from tuberculosis. The trial ended in conviction u/s 306 IPC. Hence, the present appeal.

Arguments heard. Record perused.

5. The first plank of arguments advanced by the counsel for the appellants is that the case is based on false pleas. The prosecution has failed to prove the demand of dowry and similarly, the complainant has also tried to change the date of marriage from 1986 to 1988 and, the very basis of the prosecution is found to be false and, therefore, the entire prosecution story should not be believed. Having considered the submissions, I find myself not persuaded. As regards the plea of dowry, the complainant never set up the said plea in his very initial statement made before the police, nor any charge u/s 304-B IPC was framed against the accused. If anything has been stated by the complainant regarding the demand of dowry while

appearing in the witness box, then that being over and above the case set up by the prosecution, is liable to be taken out of consideration, but at the same time, it would be altogether relevant to consider the case set up by the prosecution against the accused with regard to cruelty and abetment to commit suicide, by the deceased.

6. As regards, the date of marriage, Bhola Singh while appearing as PW2 has clearly depicted that Amarjit Kaur was married about 4/5 years before the occurrence. Gurjant Singh (PW1), complainant - father of the deceased has also corroborated this fact as uttered by Bhola Singh (PW2). The accused has tried to rebut the prosecution evidence by examining Sukhdev Singh as DW3 in defence evidence, but he is neighbour of the accused and he being an interested person could go to any extent to support the cause of accused. Sukhdev Singh (DW3) has tried to take the date of marriage beyond seven years, saying that it took place in the year 1985, but it was not a case of either party that the marriage was solemnised in the year 1985. In any case, for the purpose of Section 306 IPC, the date of marriage is immaterial, but the only fact, which is to be determined is that the evidence led by the prosecution regarding commission of cruelty over the deceased, is sufficient circumstance compelling Amarjit Kaur to commit suicide.

7. As regards cruelty, sufficient evidence has been led by the prosecution by examining Gurjant Singh (PW1) and Bhola Singh (PW2) that the accused had been beating Amarjit Kaur, maltreating her and taunting her continuously since the date of the marriage. Even on the day of occurrence, she was beaten by Balwinder Singh. The statement of Gurjant Singh finds corroboration from the testimony of Bhola Singh. Thus, in view of the direct evidence adduced by the prosecution, I am convinced that the accused committed cruelty upon the deceased. As the statements made by Gurjant Singh (PW1) and Bhola Singh (PW2) inspire confidence of the court, therefore, presumption u/s 113-A of the Indian Evidence Act, is attracted. Section 113-A of the Act reads as under:

"113A. Presumption as to abetment of suicide by a married woman. - When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband".

The aforesaid provision was inserted in the Act by Criminal Law (Second) Amendment Act, 1983 with a view to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws incriminating evidence was usually available within the four-corners of the matrimonial home and such cases used to fail for want of evidence. However, with the introduction of the aforesaid section, the prosecution had to have a sign of relief. Section 113-A of the Act applies where the

following conditions are fulfilled:-

(i) the woman has committed suicide,

(ii) such suicide has been committed within a period of seven years from the date of her marriage,

(iii) the husband or his relatives, who are charged had subjected her to cruelty.

8. In the presence of the aforesaid conditions, presumption u/s 113A of the Act is available to the prosecution. No doubt, the Apex Court in case *Ramesh Kumar v. State of Chhattisgarh*, 2001 (4) RCR (Crl.) 537 has observed that presumption is not an irrebuttable one, but in the present case, no such evidence has been led by the accused from where the presumption could be said to have been rebutted.

9. It has been next contended that in the given circumstances of the case participation of Jagrup Singh is doubtful. On scrutiny of the entire evidence, it comes out that the accused had been maltreating and taunting the deceased. Even on the date of incident, Balwinder Singh had beaten the deceased at the instigation of Jagrup Singh and Rajender Kaur. Even earlier, when the complainant and Bhola Singh went to see Amarjeet Kaur, there all the accused challenged them saying that they will keep their daughter under the thumb. The accused even did not make any effort for taking out the dead body out of the well. Further more, their absconding also contributes to their guilt.

In view of the foregoing discussion, finding no merit in the appeal qua accused-appellants (Balwinder Singh and Jagrup Singh), the same is hereby dismissed.