

(2003) 10 P&H CK 0133

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 177-SB of 1989

Satto and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Oct. 23, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304B, 306, 498A

Citation: (2003) 8 CriminalCC 85 : (2003) 4 RCR(Criminal) 878

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Advocate: K.S. Ahluwalia, for the Appellant; Shailender Malik, AAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Virender Singh, J.

Satto wife of Dev Raj, Jagtar Singh son of Dev Raj and Dev Raj son of Sansar Chand have filed the present appeal. All the three appellants stand convicted under Sections 304-B, 306 and 498-A of the Indian Penal Code on March 21, 1989 by the learned Additional Sessions Judge, Hoshiarpur and they have been sentenced to undergo R.I. for 7 years and to pay a fine of Rs. 1000/- each and in default of payment of fine to undergo further R.1. for six months u/s 304-B IPC, R.1. for seven years and to pay a fine of Rs. 1000/- each and in default of payment of fine to further undergo R.1. for two years and to pay a fine of Rs.500/- each and in default of payment of fine to further undergo R.1. for three months u/s 498-A IPC. It was ordered that all these sentences shall run concurrently.

2. Balwinder Kaur wife of Jagtar Singh (appellant herein) committed suicide by jumping into the well along with her daughter Harvinder Kaur aged about 3 years on 23.6.1988 in the village of her in-laws. The matter was reported to the police by Nazir Singh, brother of the deceased-Balwinder Kaur (P.W.2) on 24.6.1988.

3. In his statement, Exhibit P.C., Nazir Singh stated that Balwinder Kaur had married Jagtar Singh-appellant about five years before her so-called unnatural death and after the marriage she had given birth to two daughters, namely Harvinder Kaur and Rajvinder Kaur, who at the time of death were aged about 3 years and 9 months respectively. It was further stated by Nazir Singh (P.W.2) that on 6.6.1988 Balwinder Kaur had come to their house and disclosed that the appellants used to complain very often that he had given birth to two daughters and to no son. It is then alleged that they used to tease her by saying that she had not brought sufficient dowry in her marriage. She also complained that she was being called "Kelehni" (inauspicious person). According to P. W.2-Nazir Singh, Balwinder Kaur had disclosed all this in front of her father-Wattan Singh (P.W.6) and Kewal Singh (P.W.3). It is then alleged that on 23.6.1988 they were informed that Balwinder Kaur had committed suicide by jumping into the well on account of teasing and taunting by the appellants and when they reached the village of in-laws of Balwinder Kaur in the evening on that day (24.6.1988), the dead body of Balwinder Kaur and Harvinder Kaur were fished out from the well. On these allegations, the FIR was registered by ASI Harbhajan Singh, P.W.7.

4. After completion of the investigation all the appellants were charged under Sections 304-B, 306 and 498-A IPC by the trial Court. In support of its case, the prosecution examined as many as seven witnesses besides tendering certain documents. The defence put forth by all the appellants was common to the effect that after the delivery of second daughter-Rajvinder Kaur, the deceased-Balwinder Kaur had become of unsound mind for which she was taking treatment from the "Chelas" (spiritual healers) and ultimately she committed suicide along with her elder daughter-Rajwinder Kaur who was aged about 3 years at that time. The appellants had also examined four witnesses in defence. On consideration of the entire evidence on record, the learned Trial Court convicted all the appellants for the charges as mentioned above. Aggrieved by the judgment convicting and sentencing them, all the three appellants have preferred this Criminal Appeal.

5. I have heard Mr. K.S. Ahluwalia, learned counsel for the appellants and Mr. Shailender Malik, learned Advocate-General for the State of Punjab. I have also perused the entire evidence recorded by the trial Court and the other relevant documents minutely.

6. Opening his arguments, Mr. K.S. Ahluwalia, learned counsel for the appellants contended that even if the prosecution story is taken to be true, still Section 304-B IPC is not attracted at all because there is no evidence worth the name against the appellants to the effect that Balwinder Kaur was subjected to cruelty or harassment soon before her death by the appellants in connection with any demand of dowry and as such, one of the basic ingredients of Section 304-B are missing in this case. Advancing his arguments, Mr. Ahluwalia further submitted that in this eventually, the presumption u/s 113-B of the Indian Evidence Act cannot be drawn against the

appellants. In support of his arguments, he has drawn my attention to the statement of Nazir Singh Ex.P.C which formed the basis of FIR and his statement recorded by the Trial Court in order to point out material contradictions. It was, therefore, submitted by the learned counsel that the ingredients of Section 304-B IPC are not made out in view of the material contradictions in the statements made by Nazir Singh, P.W.2.

7. Mr. Ahluwalia meeting the other two charges under Sections 306 and 498-A IPC, have also very strenuously contended before me that there was no abetment from the side of the appellants to Balwinder Kaur to take the extreme step of committing suicide by jumping into the well along with her elder daughter. He submits that in fact after the birth of the second daughter who was hardly 8-9 months old at the time of death of Balwinder Kaur, she had gone deranged for which she used to be treated by the Chelas and that in that situation also, the presumption as to the abetment of the suicide u/s 113-A could not be drawn against the appellants. In the same breath, Mr. Ahluwalia has contended that Section 498-A IPC also loses its effect along with Section 306 IPC. He thus prays for acquittal of all the appellants.

8. On the other hand, controverting the arguments advanced by Mr. Ahluwalia, Mr. Shailender Malik, learned Assistant Advocate-General vehemently submitted that the appellants do not deserve any leniency from this Court as it is proved on record that Balwinder Kaur was harassed by all the appellants on account of demand of dowry and she was also tortured and teased by the appellants who used to call her "Kelehni" after the birth of second daughter. Mr. Malik then contended that all the charges against the appellants are proved to the hilt and the present appeal, therefore, merits dismissal.

9. On a consideration of the evidence on record, I find substance in the arguments of Mr. Ahluwalia so far as conviction u/s 304-B is concerned. But at the same time, for the charges punishable under Sections 306 and 498-A IPC, Mr. Ahluwalia is on a slippery wicket.

10. It is admitted case of both the sides that Balwinder Kaur had married Jagtar Singh about five years before her death. It is also admitted that she had given birth to two daughters and the second daughter was hardly of the age of 8-9 months when Balwinder Kaur committed suicide. Nazir Singh, P.W.2 in his statement recorded on December 16, 1988, gave the age of Raj winder Kaur, the youngest daughter of the deceased, as 10 months and from this it can be safely inferred that at the time of death of Balwinder Kaur, she was of the age of about 4 months. The relevant extract of the statement of Nazir Singh, Exhibit P.C. dated 24.6.1988 when rendered into English is reproduced as under:-

"It is stated that I am resident of Village Tapparain-Ranewal and am a cultivator. About 5 years ago, Balwinder Kaur, my sister was married to one Jagtar Singh son of Dev, Jat r/o Village Sajawalpur. She gave birth to 2 daughters, namely Harvinder

Kaur aged 3 years and Rajwinder Kaur, younger daughter was about 9 months.

That on 6.6.1988, my sister Balwinder Kaur came to my house and she disclosed to me that her husband Jagtar Singh, father-in-law Dev and mother-in-law Satto often complained her saying that she only gave birth to daughters and to no son. She said further that they used to tease her that she had not brought sufficient dowry in her marriage. She also complained to us prior to this statement that they also used to call her Kelehani. While she was disclosing at that time, my father, Wattan Singh and our neighbour Kewal Singh son of Ram Nath were also present there. I too was also there. At this time, all persuaded her to be calm and sent her to in-laws house. Some money was also paid to her in order to support her....."

11. When Nazir Singh stepped into the witness box, he made improvements on many material points in order to bring the case of the prosecution within the four corners of Section 304-B IPC. He was duly confronted on all material contradictions. For ready reference, the relevant extracts of his Chief-in-Examination are reproduced as under:

"....Balwinder Kaur together with her two daughters came to our house in village Tapparian Ranewal at about 4 P.M. on 6.6.1988. She cried and wept bitterly. She disclosed to us that her husband Jagtar Singh-accused and her mother-in-law Satto-accused and her father-in-law, Dev Raj-accused often complained to her that she had not brought sufficient dowry in marriage. She said that the complaint of these accused was that her parents had promised to provide to them one scooter, one T. V. set, one fridge, one cow or buffalo and that these articles were not provided as promised. She further said that they teased her on this account as well as on account of her having given birth to two daughters and no son. She told us that these accused persons had asked to return with a scooter or not to return at all and kill herself by jumping in a well. She talked these facts to us in the presence of Kewal Singh, Jagat Singh, Lambardar and my father. I too was there then. We all persuaded her to claim and not to be irritated about it all. On 8.6.1988, I gave her a sum of Rs.5000/- and took her to her in-laws house in village Sajawalpur. Both her daughters accompanied her."

X X

I stated before the police that my sister had bitterly wept and cried at our house. (Attention of the witness is drawn to his police statement Ex.P.C. wherein it is not so mentioned). I did not state to the police at Adda Majari that these accused persons had complained to Balwinder Kaur that we had promised to provide to them in dowry one scooter, one T. V. set, one fridge and one cow or buffalo. Voluntarily said, at that time I was bewildered. I did not state to the police at the Adda Majari that Balwinder Kaur told us that these accused-persons had asked her either to return with a scooter or not to return at all and to jump in some well. I did not state to the police that Jagat Singh-Lambardar was present when my sister Balwinder Kaur

talked to us at our house. I did not state to the police at Adda Majari that on 8.6.88, I gave Rs.5000/- to Balwinder Kaur and took her and her two daughters to her in-laws village Sajawalpur....."

12. From the perusal of the extract of statement of Nazir Singh as reproduced above, it can be safely concluded that Balwinder Kaur was never harassed or maltreated on account of demand of dowry by the present appellants. That Nazir Singh, the so-called star witness of the prosecution has made many material improvements so as to bring the case within the four corners of Section 304-B IPC. It is worth-mentioning here that Kewal Singh (P. W.3) did not support the case of the prosecution and was declared hostile. Even from his cross-examination, the prosecution agency could not advance his case. Wattan Singh, father of the deceased was also examined as P.W.6, but his evidence too is of no help to the prosecution and the whole of the prosecution case revolves round the statement of Nazir Singh, brother of the deceased.

13. In my considered view, Section 304-B IPC is not at all attracted in the facts and circumstances of the case and charge u/s 304-B is not sustainable. However, at the same time, it cannot be lost sight of that there are two deaths in this case. It is also the case of prosecution that Balwinder Kaur was being harassed and tortured by her in laws after the birth of second daughter by taunting and teasing her by passing remarks such as "Kelehni". The case of the appellants is also to the effect that after the birth of second daughter, Balwinder Kaur had become of unsound mind and was getting treatment from Chelas. This is the defence taken by the accused. Jagtar Singh is his statement u/s 313 Cr.P.C. which is reproduced as under;-

Q. 11 Have you anything else to say?

Ans. I am innocent. After the delivery of the younger daughter, Balwinder Kaur become of unsound mind. Sometimes she used to be of sound mind and sometimes of unsound mind. We got her treatment from the Cheias. There was no quarrel in our family with Balwinder Kaur. We came to know that she had fallen into the well.

14. The appellants have also adduced evidence in support of their defence but the same has been disbelieved by the learned Trial Court while entering into detailed discussion and observed that they are not worthy of credence because the defence of unsoundness of mind of Balwinder Kaur is not proved by convincing evidence. I have no reason to differ with the observations of the learned Trial Court on this count except that I am of the view that Dev Raj, father-in-law" of the deceased who was of the age of 65 years at the time of occurrence could not be expected to join the chorus with his wife Satto in passing the taunts saying "Kelehni" to his daughter-in-law. In normal circumstances and by experience, it is noticed that such type of taunts are usually hurled by rustic women like in this case the mother-in-law of the deceased. At the same time, however, it cannot be ignored that the husband also joined hands with her (his?) mother on account of constant instigation to him

and as such, the husband cannot be absolved of the suffocating atmosphere created around the daughter-in-law. In the present case also, I feel that Satto, the mother-in-law and Jagtar Singh, the husband of the deceased were solely responsible by constantly taunting/teasing and torturing her on account of birth of second daughter and it can be safely held that she was subjected to cruelty which was the cause of abetment of suicide. As Balwinder Kaur had died within 7 years of her marriage, the presumption of abetment to suicide was rightly drawn against Satto and Jagtar Singh-appellants. There is no reason to disturb the conviction of Satto and Jagtar Singh-appellants under Sections 306 and 498-A IPC.

15. Consequently, this appeal is allowed qua Dev Raj-appellant and he is acquitted of all the charges whereas in the case of Satto and Jagtar Singh-appellants, they are acquitted of the charge u/s 304-B IPC, but their conviction for the offences punishable under Sections 306 and 498-A IPC.

16. As regards quantum of sentence, it is stated that Jagtar Singh was arrested on 26.6.1988. He remained in custody during the pendency of the trial. His sentence was suspended by this Court on 1.5.1989 and thus, it remained pending adjudication for more than 13 years. It is also stated at Bar by Mr. Ahluwalia that the youngest daughter-Rajvinder Kaur who was of the age of less than one year at the time of death of Balwinder Kaur has now attained the age of less than one year at the time of death of Balwinder Kaur has now attained the age of about 15 years and she is living with Jagtar Singh-appellant. He further submits that in case Jagtar is once again made to undergo the rigour of remaining part of his sentence, this would certainly have an adverse effect upon the future of growing daughter who might not even be aware of the fact that his father has been convicted in a criminal case.

17. So far Satto-appellant is concerned, it was been submitted by Mr. Ahluwalia that at the time of death of Balwinder Kaur, she was of the age of 50 years and by now she has attained the age of about 65 years and is suffering from many ailments. It is further submitted that being the grandmother, she too has been giving all love and affection to Rajvinder Kaur and hence a sympathetic view should be taken in her favour regarding quantum of sentence, as per the record, she remained in custody for about 3 months and 9 days as under-trial and has also undergone 1-1/2 month after conviction. Mr. Ahluwalia, on the point of quantum of sentence, has referred to two judgments of this Court rendered in Jagjit Singh and others v. State of Punjab (Criminal Appeal No.448-SB of 1987) decided on 7.9.1999 and Jai Kishan v. State of Chandigarh (Criminal Appeal No.582-SB of 1987) decided on 8.9.1999.

18. After giving my careful thought to all the circumstances, especially keeping in view the time elapsed in hearing the present appeal after admission in the year 1989 i.e. about 13 years and also taking into consideration that both the appellants, namely Satto and Jagtar Singh, have suffered some imprisonment, I am of the view that it would be just and proper to reduce their sentence to the period already

undergone by them. My view in this respect is further strengthened by a latest judgment of the Apex Court in Mohd. Hoshan and another v. State of Andhra Pradesh, AIR 2002 S.C.W.3795 : 2003 (1) ACJ 88 (S.C.).

No other point has been argued.

19. In view of the above, the appeal is allowed qua Dev Raj-appellant, and he is consequently acquitted of all the charges whereas the conviction of other two appellants namely, Satto and Jagtar Singh is set aside u/s 304-B IPC but upheld u/s 306 and 498-A IPC with the above modification in the sentence.