

**(2007) 09 P&H CK 0173**

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

**Case No:** Criminal Appeal No. 369-DB of 2002

Virender Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

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**Date of Decision:** Sept. 18, 2007

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 306, 498A

**Citation:** (2008) 1 RCR(Criminal) 3

**Hon'ble Judges:** Mehtab S. Gill, J

**Bench:** Single Bench

**Advocate:** Sarwan Singh and Mr. N.S. Rapri, for the Appellant; B.S. Bhinder, Additional A.G. Punjab, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Mehtab S. Gill, J.

This is an appeal against the judgment/order dated 11.2.2002 of the learned Additional Sessions Judge, Gurdaspur whereby he convicted Appellant Virender Singh son of Kartar Singh u/s 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 2000/-, in default, to further undergo RI for six months. He was also convicted u/s 498-A I.P.C. and sentenced to undergo RI for two years and to pay a fine of Rs. 500/-, in default, to further undergo RI for three months. Both the sentences were ordered to run concurrently.

2. The case of the prosecution is unfolded by the statement of Tarsem Devi Ex.PD given to ASI Sanjeev Kumar on 12.8.1997 at 11 a.m. at Adda Nangal Bhoor.

3. Tarsem Devi stated that she has three daughters and two sons. Her husband died about 16 years ago. All her daughters are married. Her daughter Kamla Devi was married about 10 years back with Virender Singh son of Kartar Singh. At the time of marriage, enough dowry was given as per her means. Virender Singh after about 2/3 months started beating her daughter Kamla Devi and he used to demand

money. He did not give any expenses to her daughter to run the house, Tarsem Devi had to give money, so that the house of her son-in-law could run. Kamla Devi had two daughters. Name of the elder daughter was Manjila. She was about 9 years of age. Name of the younger daughter was Pooja (Deepu). She was about 6 years of age. Her elder daughter Manjila used to reside in Village Bhoop and her younger daughter lived in Village Lamini i.e. the village of her father Virender Singh. Virender Singh used to harass Kamla Devi. Out of grief she used to write letters to her sister Suresh Kumari. About 2-1/2 years back Tarsem Devi asked her son-in-law to give divorce to her daughter, but the matter was later on compromised. Virender Singh came back from Bombay on 26.6.1997. He started mis-treating Kamla Devi. On 4.8.1997 Tarsem Devi's elder daughter Suresh Kumari and her younger son Jasbir Singh paid Rs. 1000/- to Virender Singh, as he had demanded the money. At about mid-night on 4.8.1997 Virender Singh and his brother Ranjit Singh along with Kamla Devi came in front of her house in Village Bhoop, where she was residing with her parents in Himachal Pradesh on Scooter No. PB-35-9275. Virender Singh told Tarsem Devi that Kamla Devi was a big hypocrite. Tarsem Devi went near Kamla Devi who was along with Virender Singh. Kamla Devi told her that her husband had given her a severe beating and made her eat something. Tarsem Devi called her elder son Baljit Singh. Baljit Singh and Ranjit Singh then took Kamla Devi to Civil Hospital where Kamla Devi died on 5.8.1997 at 3.05 a.m. Deepu, the grand-daughter of Tarsem Devi told her that in the night at about 10.30 p.m. her father Virender Singh had given a beating to her mother Kamla Devi and thereafter made her eat medicine. The matter was reported to the Police Station, Indora (H.P.). Complainant party was busy with the Kirya Karam of Kamla Devi. On 12.8.1997 they came to know that the incident was within the jurisdiction of Police Station Sadar, Pathankot, as the occurrence had taken place in Village Lamini (Punjab). On the basis of this statement F.I.R. Ex.PD/3 was recorded on 12.8.1997 at 11.40 a.m. and the special report reached the Illaqa Magistrate at Pathankot on the same day at 2.10 p.m.

4. The prosecution to prove its case, brought into the witness-box Baljit Singh PW-1, Suresh Kumari PW-2, Miss Deepu PW-3, Dr. B.M. Gupta PW-4, Tarsem Devi PW-5, Jagroop Singh PW-6, LC Satish Kumar PW-7, HC Onkar Singh PW-8, Rajesh Kumar Draftsman PW-9, Constable Gurdeep Singh PW-10, ASI Malkiat Singh PW-11, Pritam Singh SI/SHO PW-12, Dr. M.K. Saksena PW-13, ASI Sanjeev Kumar PW-14, and Inspector Jagdish Chand PW-15.

5. Learned Counsel for the Appellant has argued that there is an unexplained delay of 7 days in lodging of the F.I.R. Ex.PD/3. The occurrence had taken place on 4.8.1997 at 10.30 a.m. and F.I.R. Ex.PD/3 was recorded on 12.8.1997 at 11.40 a.m. This itself is fatal to the prosecution case. The statement of Deepu alias alias Pooja PW-3 is not trustworthy. She is a child of 6 years. She has stated that the statement she has made in Court was on the asking of her maternal uncles. She is the only eye-witness to the occurrence. Ranjit Singh DW-3, brother of the Appellant was the one who took Kamla Devi to the hospital and tried to save her life. In fact, it is a case

of suicide. If we go through the letters Exs.P1 to P4, it comes out that Kamla Devi was suffering from Cancer and was in a state of depression.

6. Learned Counsel for the State has argued that the delay in lodging of the F.I.R. has been adequately explained by D.D.R. Entry No. Ex.PW15/A made in Police Station, Indora (H.P.). The question of jurisdiction arose and it is later on when the complainant party came to know that Village Lamini falls within the jurisdiction of Police Station, Sadar, Pathankot and Tarsem Devi PW-5 gave her statement Ex.PD on 12.8.1997. Inspector Jagdish Chand PW-15 has also stated, that a dispute of jurisdiction arose between Himachal Pradesh Police of Police Station, Indora and Punjab Police of Police Station Sadar, Pathankot. Testimony of the child witness Pooja alias Deepu PW-3 is consistent and inspires confidence. When being asked as to whether her maternal uncles had tutored her to give her statement which she was giving in Court, she empathetically stated "No". She stated in her testimony, that her maternal- uncles told her that she has to give statement regarding the occurrence in Court. The letters Exs.P1 and P2 clearly show that she was being maltreated and mis-treated by Virender Singh. Appellant Virender Singh tried to show that it is a case of natural death when he along with his brother Ranjit Singh went to the house of Kamla Devi in Village Bhoop (H.P.).

7. We have heard the learned Counsel for the parties and perused the record with their assistance.

8. The occurrence in this case took place on 4.8.1997 at 10.30 p.m. Appellant Virender Singh along with his brother Ranjit Singh put Kamla Devi on a scooter and took her to Village Bhoop which is about 10/15 kms. away from Police Station, Indora (H.P.). Appellant Virender Singh on seeing, that a case may be foisted on him, ran away from there and it is thereafter that Baljit Singh, brother of deceased Kamla Devi and Ranjit Singh, brother of Appellant Virender Singh took Kamla Devi to the Civil Hospital. While going through the D.D.R. Entry, Ex.PW15/A, we find that it was recorded on 5.8.1997 at 3 a.m. Information was given to the Police Station, Indora (District Kangra), by Baljit Singh son of Moti Singh i.e. brother of the deceased. In this entry it has been stated that Kamla Devi was brought to the hospital, as allegedly she had consumed something. Further, it has been noted in this D.D.R., that the occurrence related to Village Lamini which was in the jurisdiction of Police Station Sadar, Pathankot (Punjab). Information was sent to the S.H.O. Police Station Sadar, Pathankot on VHF Set No. 2473/76/SA, dated 5.8.1997. In an application Ex.PW13/D moved by Inspector Jagdish Chand PW-15 to the Medical Officer, Civil Hospital, Nurpur (Kangra) on 5.8.1997 it has been stated, that Kamla Devi wife of Virender Singh had consumed poison in her house last night. Her Devar (husband's younger brother) i.e. Ranjit Singh removed her firstly to a private clinic, he was asked to take her to the Civil Hospital, but instead of bringing her to the Civil Hospital, Pathankot, he took her to her parents house. He left Kamla Devi in her parents house, in Village Bhoop. Appellant ran away from there. Thereafter Baljit

Singh brother of Kamla Devi removed her to Civil Hospital, Indora (H.P.) where she died. It is clear from Ex.PW13/D that Appellant Virender Singh was also accompanying his brother Baljit Singh when deceased Kamla Devi, in an unconscious condition was taken to her parents house in Village Bhoop (H.P.).

9. Inspector Jagdish Chand PW-15 in his testimony before the Court has stated that when he prepared the inquest report Ex.PW15/B, he recorded the statements of Ranjit Singh and Baljit Singh. He stated that after he received all the papers, after the inquest report was prepared and post-mortem conducted, he sealed the jar containing the viscera with seal "SLS". After receiving report Ex.PW13/B of the Chemical Examiner, all the papers along with the report were handed over to the Incharge Police Station Sadar, Pathankot. Further investigation was done by the Punjab Police.

10. From the sequence of events as discussed above, it comes out that in fact, there is no delay in lodging of the F.I.R. The delay has been adequately explained by the prosecution. The complainant party was confused regarding the jurisdiction as to whether they were to proceed with the case in Police Station Indora (H.P.) or in Police Station, Sadar, Pathankot (Punjab).

11. Going through the letters Exs.P1 to P4, it seems that deceased Kamla Devi was suffering from Cancer. These letters were written by her to her sister, wherein it comes out that she was suffering from cancer. She was not being looked after by the Appellant. She has further stated that nobody listened to her. She has stated in her letter Ex.P1 that her husband is an unbearable person and her fate being married in this house was bad luck for her.

12. Similarly, in her letter Ex.P2, she has stated that she was under great depression. Life was getting unbearable for her, though she wanted her sister to remain happy. She has stated that her life had become difficult for her, death was better than life. Doctors have examined her. There is a problem in her body and Cancer has developed.

13. Similarly, in letters Exs.P3 and P4, it comes out that she was under great depression. Her husband Appellant Virender Singh was not looking after her and caring for her, inspite of she being in extreme physical and mental difficulties.

14. Statement of Pooja alias Deepu PW-3, a child witness of 6 years is trustworthy and truthful. She is the daughter of the Appellant and deceased Kamla. She has stated in her testimony before the Court that she was brought to the Court by her maternal-uncle. She has deposed of her own. Her maternal uncles had told her to depose in Court, but did not tell her as to what has to be said. She has categorically denied to a question whether her maternal uncles told her about the statement she had to give. She replied in the negative. She has stated that when she returned at about 10 p.m. in the night after watching a TV Serial at her Taya's house, she saw that her father was drunk and was beating her mother. Thereafter he administered

some medicine to her.

15. Suresh Kumari PW-2 and Tarsem Devi PW-5, sister and mother respectively of the deceased inspire confidence. Their statements are consistent, but they have not given any satisfactory answer about Ranjit Singh brother of the Appellant coming to her house and leaving Kamla Devi there.

16. From the evidence on record and as discussed above, we are of the considered opinion that Kamla Devi was being harassed and maltreated by Appellant Virender Singh, her husband. He was a truck driver by profession. She could not bear the maltreatment, as she was already suffering from Cancer. She was under an acute depression. On the day of occurrence, she consumed Aluminum Phosphide to kill herself. Ranjit Singh, Devar and her husband Virender Singh got panicky. They put her on a scooter and took her to her mother's village at Village Bhoop (H.P.) which was just 10/15 kms. away. Appellant Virender Singh got afraid and ran away. Though Ranjit Singh, her Devar and her brother Baljit Singh tried to save her life, but were not successful.

17. Conviction of the Appellant could be at the most u/s 306 I.P.C. Sentence of the Appellant is modified from life imprisonment to RI for 10 years. Fine shall remain intact.

With the above modification in conviction and sentence, appeal is dismissed.