

Gurdeep Singh Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 29, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313

Dowry Prohibition Act, 1961 â€” Section 2

Evidence Act, 1872 â€” Section 113B

Penal Code, 1860 (IPC) â€” Section 304B, 306

Citation: (2009) 1 ILR (P&H) 859

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: A.P.S. Deol and Manpreet Kaur, for the Appellant; T.S. Salana, D.A.G., for the Respondent

Judgement

Harbans Lal, J.

This appeal is directed against the judgment/order of sentence dated 5th March, 1998 passed by the Court of Learned

Additional Sessions Judge, Barnala whereby he convicted and sentenced the accused Gurdeep Singh to undergo rigorous imprisonment for 10

years and to pay a fine of Rs. 2,000 or in default of payment of the same, to further undergo rigorous imprisonment for three months u/s 304-B of

IPC and acquitted his co-accused Harbans Singh and Jaswant Kaur by giving benefit of doubt.

2. Succinctly put, the facts of the prosecution case are that Gurbachan Singh father of Paramjit Kaur deceased made statement before the police in

the terms that his daughter Paramjit Kaur was married to accused Gurdeep Singh alias Gareebu of Village Jodhpur about three and a half years

back. The accused Jaswant Kaur is the mother and the accused Harbans Singh is the brother of accused Gurdeep Singh. He had given necessary

dowry according to his means and status at the time of marriage, but these accused were dissatisfied therewith. They wanted Paramjit Kaur to

bring a scooter from her parents. The accused were saying that they had been humiliated in the eyes of their friends and relations by not giving a

scooter by her parents at the time of her marriage. A few days after the marriage, Gurdeep Singh left for Behrin from where, he sent a threatening

letter to the complainant Gurbachan Singh asking him to bring back Paramjit Kaur from the bridal house. On this, he brought her to his house in

Village Mehal Kalan. About one and a half month before the occurrence, the accused Gurdeep Singh returned from the afore-mentioned country.

With the intervention of various relatives of the parties and other respectables of Village Mehal Kalan and Jodhpur the accused Gurdeep Singh

took her back to the matrimonial home about 20 days prior to the occurrence. On 10th January, 1997, Gurbachan Singh (sic.) accompanied by

his brother-in-law Sukhdev Singh went to Village Jodhpur to see her and her in-laws. On that day, when they both reached there, the deceased

was found sitting near the hearth. At that time, the accused Gurdeep Singh, Harbans Singh and Jaswant Kaur were also present in the house. They

were taunting her for not bringing a scooter from her parents besides remarking that her father was in fact a Pauper. Gurbachan Singh and

Sukhdev Singh P.W.s intervened and told the accused that he (Gurbachan Singh) had already given necessary dowry beyond his means and could

not afford to give any scooter. All the accused were pacified. Paramjit Kaur told her father that she was being maltreated by her mother-in-law

Jaswant Kaur, brother-in-law Harbans Singh and her husband Gurdeep Singh accused since the day she returned to their house and that she was

fed up with her life. Having consoled her, they went to the house of Jal Kaur sister of Gurbachan Singh, Jal Kaur was married to Gurdeep Singh,

of village Jodhpur. Gurbachan Singh as well as Sukhdev Singh stayed in Jal Kaur's house for the night. On the next morning around 8.30 a.m.,

they went to the house of Paramjit Kaur's in-law to see her. They found her dead due to burn injuries. On the basis of statement, the case was

registered against all the three aforementioned accused. The autopsy was performed on her dead body. All the burn injuries were found to be ante

mortem in nature. SI Surinder Pal Singh inspected the spot, prepared the rough site plan showing the place of occurrence, recovered some earth

smelling of kerosene oil, some ashes from near the dead body, a tin containing kerosene oil, some half burnt clothes of the deceased lying near the

dead body. On 12th January, 1997, all the three accused were arrested. After completion of investigation, the charge-sheet was laid in the Court

of learned Illaqa Magistrate.

3. On commitment, all the three accused were charged u/s 304-B of IPC to which they did not plead guilty and claimed trial. To bring home guilt

against the accused, the prosecution examined Dr. Ashok Kumar Bansal PW1, Gurbachan Singh complainant PW2, Sukhdev Singh PW3, Dev

Raj Draftsman PW4, MHC Ajit Singh PW5, Constable Gurbachan Singh PW6, Constable Amarjit Singh PW7, SI Surinder Pal Singh Investigator

PW8 and closed its evidence by tendering passport Ex.P.5 of accused Gurdeep Singh, letters Ex.P.6 to Ex.P.9 written by him, wedding card Ex.P.

10 of Paramjit Kaur deceased with accused Gurdeep Singh and the report of the Forensic Science Laboratory Ex.PT.

4. When examined u/s 313 Code of Criminal Procedure , all the accused denied the incriminating circumstances appearing in the prosecution

evidence and pleaded false implication. They came up with the plea that they had cordial relations with Paramjit Kaur deceased. The accused

Gurdeep Singh further put forth that at the time of his marriage with Paramjit Kaur, he had been working as mason in Behrin and had come to

village Jodhpur for about two months. After his marriage, he had been sending letters to her from Behrin. She too, had been writing letters to him

full of love and affection. She had also been sending him greetings on the eve of new year. At the relevant time, he had come to India on the eve of

Diwali in the year 1996 with return ticket and his seat was also booked for Behrin for 15th February, 1997. On the day of occurrence i.e. 11th

January, 1997, he had to go Jagraon for collecting his ticket and passport for going back to Behrin. The deceased was not consenting to his return

to Behrin and had been persuading him not to go back to Behrin. When he refused to agree to her request, she became angry and committed

suicide. He was not at all at fault nor was he in any way responsible for her suicide. Similarly, other accused, namely, Harbans Singh and Jaswant

Kaur are also not liable for the suicide committed by her. They had informed Sukhdev Singh P W about her death and the latter, subsequently

informed Gurbachan Singh about the same. At the time of commission of suicide by her, they all the three accused raised hue and cry, whereupon

Darshan Singh son of Babu Singh and other neighboured came to the spot and tried to extinguish the fire on the dead body. At the time, the

accused also tried to remove her to the hospital, but she succumbed to the burn injuries at the spot. They had informed the police about her death

on 11th January, 1997 at about 8.00 a.m. They all three were arrested by the police from the spot on the same day, when they were crying by the

side of the dead body. He has (Gurdeep Singh accused) also placed on record various letters Mark A, Mark B, Mark C, Mark D, Mark E and

Mark F purporting to have been written by his wife Paramjit Kaur deceased to him, while he was residing abroad in Behrin. In their defence, they

examined Darshan Singh DW1, Paramjit Kaur DW2, Mohd. Sadip Clerk of the office of DTO, Sangrur DW3, Sukhwinder Singh DW4 and Dr.

Atul Kumar Singla Handwriting Expert DW5.

5. After hearing the learned Additional Public Prosecutor for the State, the learned defence counsel and examining the evidence on record, the

learned trial Court convicted and sentenced Gurdeep Singh accused as noticed earlier and acquitted his co-accused. Feeling aggrieved with his

conviction/sentence, he has preferred this appeal.

6. I have heard the learned Counsel for the parties, besides perusing the record with due care and circumspection.

7. Mr. A.P.S. Deol, Senior Advocate valiantly urged that the learned trial Court has disbelieved the prosecution story regarding the participation of

the co-accused Harbans Singh as well as Jaswant Kaur in causing the death of Paramjit Kaur with a positive finding returned in the impugned

judgment. In view of these findings, it is difficult to hold Gurdeep Singh accused guilty u/s 304-B of IPC, when admittedly he left for Behrin after

11 days of the marriage and returned back to India in November, 1996, i.e., about one and half months prior to this occurrence. In the absence of

any evidence that the deceased was subjected to cruelty or harassment in connection with any demand of dowry soon before her death, the

conviction u/s 304-B of IPC is unsustainable since one of the most essential ingredient to prove the case of dowry death is absolutely missing. The

learned trial Court has observed that Paramjit Kaur deceased was not subjected to any maltreatment by the in-laws during her stay in their house

in the absence of her husband Gurdeep Singh accused. The allegation that the accused used to taunt Paramjit Kaur for not bringing a scooter

appears to have been introduced falsely. Moreso, the accused already owned a scooter. Gurdeep Singh-Appellant had no reason to demand a

scooter, as he was to fly back to Behrin on 15th February, 1997. The letters Ex.P.6 to Ex.P.9 relied upon by the learned trial Court do not even

vaguely suggest that any demand of dowry was raised by the Appellant in those letters. No positive finding has been recorded that these letters did

suggest any demand of dowry. It has been observed by the learned trial Court that the letters suggest that Gurdeep Singh was not happy with his

wife and he wrote a letter to his father-in-law that he was at liberty to take back his articles from the house of his parents. Thus, the mere fact that

the Appellant was not happy with his wife does not suggest that it was necessarily for demand of scooter. The tenor and texture of the letters

suggest that the deceased was insisting upon the Appellant Gurdeep Singh to come back to India, though he expressed his inability on account of

his contract in the foreign country. Indeed, it is this frustration, which has led the deceased to commit suicide, since the Appellant after visiting India

for a month was to return to Behrin and had in fact got booked his flight for 15th Febraury, 1997 (wrongly typed as 15th Febraury, 1996) as

proved by Sukhwinder Singh DW4 a travel agent. Furthermore, the learned trial Court has admitted that the letters Mark A to Mark F are in the

hand of Paramjit Kaur deceased. These letters bring out the frustration of Paramjit Kaur living alone without her husband and her insistence upon

him to return back to India. Thus, it would be going too far to believe on the basis of the above-mentioned letters that the deceased was subjected

to cruelty in connection with demand of scooter, when the accused was living abroad. The learned trial Court has partly relied upon the evidence

of Gurbachan Singh as well as Sukhdev Singh P Ws who are highly interested in the success of the case. Their evidence has been acted upon in

relation to the allegation of demand of scooter by the Appellant without appreciating that a person living abroad who has come on a short visit to

India and who also owns a scooter, will not be foolish enough to raise a demand of scooter. Thus, there is no evidence to draw presumption

against the Appellant of causing the dowry death of his wife and whatever presumption could be drawn stands rebutted by the defence evidence.

8. To tide over these submissions, Mr. T.S. Salana, Deputy Advocate General, Punjab on behalf of the State maintained that on appraisal of the

prosecution evidence, no holes can be picked in the findings returned by the learned trial Court in convicting the Appellant u/s 304-B of IPC.

9. I have seriously cogitated upon these rival contentions.

10. PW2 Gurbachan Singh has stated in the following terms:

Paramjit Kaur was my daughter, who was married to Gurdeep Singh accused present in court about 3 1/2 years ago. I had given sufficient dowry

to Paramjit Kaur as per my capacity. I alongwith my brother-in-law Sukhdev Singh went to meet Paramjit Kaur at V. Jodhpur. My daughter

Paramjit Kaur was sitting before hearth and Gurdeep Singh, Harbans Singh brother-in-law, Jaswant Kaur mother-in-law were taunting her for not

bringing scooter in dowry and they had been insulted. I requested the accused not to press demand for scooter as I had already given sufficient

dowry beyond my capacity. The accused had started taunting my daughter for bringing less dowry immediately after the marriage. Gurdeep Singh

my son-in-law had gone to Behrin after 10/12 days of the marriage. From there he wrote a threatening letter asking me to bring back my daughter.

I accordingly brought my daughter to my village. Gurdeep Singh returned from Behrin after 3 years. The matter was patched up with the

intervention of village panchayat Mehal Kalan and Jodhpur and Gurdeep Singh took my daughter to his house. Then I and Sukhdev Singh about 9

months back had gone to the house of the accused to enquire about the well being of my daughter. After meeting my daughter we went to the

house of Gurdev Singh. Next morning at about 8.30 A.M., we again came back to the house of the accused. There we found my daughter lying

burnt and dead."* PW3 Sukhdev Singh has stated in the following terms:

"Gurbachan Singh PW is my brother-in-law from the loser side. About 8/9 months back, Gurbachan Singh had come to meet me at Barnala.

Then, I alongwith Gurbachan Singh went to Jodhpur to meet Paramjit Kaur, daughter of Gurbachan Singh. Paramjit Kaur and all the accused were

sitting near the hearth in their house at Jodhpur. They were cutting remarks that Paramjit Kaur belonged to a pauper family and she had not

brought scooter in the dowry.

Paramjit Kaur told us that she was being maltreated by the accused, since the day, she had come. Gurbachan Singh consoled her daughter saying

that we would solve the matter on the following day and then I and Gurbachan Singh went to the house of Gurdev Singh and spent the night there.

Next day we again came to the house of accused at about 7:30 or 8:00 A.M. and on reaching we saw that Paramjit Kaur was lying dead with

burn injuries.

11. The question which arises for consideration is as to whether on the above-mentioned evidence a case u/s 304-B of the Indian Penal Code can

be said to have been made out.

Section 304-B of the Indian Penal Code reads as under:

304-B. Dowry death.--(1) Where the death of a woman is caused by any burns or bodily injury otherwise than under normal circumstances within

seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative

of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be

deemed to have caused her death.

Explanation.--For the purpose of this Sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend

to imprisonment for life.

12. A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was

subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be

called "dowry death", and such husband or relative shall be deemed to have caused her death.

13. Section 113B of the Indian Evidence Act reads as under:

113-B-Presumption as to dowry death.--When the question is whether a person has committed the dowry death of a woman and it is shown that

soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry,

the Court shall presume that such person had caused the dowry death.

Explanation.--For the purposes of this Section, "dowry death", shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of

1860).

14. From a conjoint reading of Section 304B of the Indian Penal Code and Section 113B of the Indian Evidence Act, it will be apparent that a

presumption arising thereunder will operate, if the prosecution is able to establish the circumstances as set out in Section 304-B of the Indian Penal.

15. The ingredients of the aforementioned provisions are:

(1) That the death of the woman was caused by any burns or bodily injury or in some circumstances which is not normal; (2) Such death occurs

within 7 years from the date of her marriage; (3) That the victim was subjected to cruelty or harassment by her husband or any relative of her

husband; (4) such cruelty or harassment should be for or in connection with demand of dowry; and (5) is established that such cruelty and

harassment was made soon before her death.

16. As is borne out from the evidence referred to hereinbefore, the prosecution has sought to establish that the Appellant along with others had

been exerting pressure upon the deceased to fetch scooter from her parents. The learned trial Court indeed recorded conviction on the basis of the

letter Ex.P.7. It is in the cross-examination of Gurbachan Singh PW2 that accused Gurdeep Singh had made a demand regarding scooter in letter

Ex.P.7. A suggestion has been put to him that there is no demand of dowry/scooter in Ex.P.7. As emanates from Gurbachan Singh's above

referred evidence, he had requested the accused not to press the demand for scooter. On reading the letter Ex.P.7, it is not revealed that the

demand of scooter was put forth by the Appellant. For a little while, if such demand is assumed to be there, the same does not fall within the ambit

of dowry. As per Gurbachan Singh's evidence, the matter was patched up. It implies that the alleged previous acts were condoned. It is in his

further evidence that he along with Sukhdev Singh about nine months back had gone to the house of the accused to enquire about the well being of

his daughter. After meeting his daughter, they stayed for night in the house of Jal Kaur. Next morning at about 8:30 a.m., they again came back at

the house of the accused, where they found her dead with burn injuries. He has nowhere stated that on the day before the occurrence when they

visited the house of the accused, the latter had repeated their demand of scooter or due to failure of meeting of this demand, the deceased was

beaten up or harassed or ill- treated in any other manner soon before the occurrence. Thus, to say the least of it, there is no evidence to the effect

that the deceased was harassed for or in connection with the demand of dowry by the Appellant. So, the aforementioned ingredients of Section

304-B of IPC are not satisfied by the prosecution. The learned trial Court has observed that ""their (referring to the co-accused Harbans Singh and

Jaswant Kaur) participation in the commission of crime, in fact appears to be doubtful and they are entitled to acquittal by way of abundant

caution. However, as stated above, at the relevant time accused Gurdeep Singh appears to have set his wife ablaze and was liable for the same.

However, there is no direct evidence of murder against accused Gurdeep Singh, he is liable in this cause u/s 304-B of IPC for causing the death of

Paramjit Kaur deceased who died under unnatural circumstances within a period of seven years after her marriage apparently due to demand of

dowry made by her husband."" It is inferable from these observations that the learned trial Court in the absence of any luculent evidence has held

that the accused Gurdeep Singh appeared to have set his wife ablaze. In the same vein, it has been observed that there is no direct evidence of

murder. There being no cogent, convincing and clear evidence, such a finding is uncalled for. The learned trial Court has observed that ""however,

after his return from abroad, he (referring to the accused Gurdeep Singh) took back his wife to the bridal house but continued to harbour ill-will

against her. In these circumstances, there was nothing surprising, in case he set his wife ablaze by pouring kerosene oil on her, apparently due to

non-fulfilment of demand for more dowry."" Seemingly, the learned trial Court was bent upon to record that the deceased was done to death by the

accused. This finding being unfounded is unsustainable.

17. Now it is to be noticed as to whether any other offence is made out on the given evidence. It does not stand to the logic that the Appellant who

was to fly back within a few days would coerce his wife to bring scooter from her parents. It is own case of the prosecution that the passport

Ex.P.5 of the accused Gurdeep Singh was also taken into possession by the police. As per the evidence of Sukhwinder Singh DW4 on 15th

February, 1997, the Appellant Gurdeep Singh was to fly back. If it was so, where would have been the need of scooter by him. It is in the cross-

examination of Gurbachan Singh (sic.) that ""I do not know that Harbans Singh referring to the co-accused) owns a scooter or that the number of

his scooter is PW10-D/6038."" Palpably, he has not denied this fact in categorical terms. Mohd. Sadiq DW3 Clerk D.T.O. Office, Sangrur has

deposed from the official record that Scooter No. PB10-D-6038 was originally the ownership of Paramjit Singh and it was transferred in the name

of Harbans Singh son of Darbara Singh resident of Jodhpur, Tehsil Barnala on 1st July, 1996 (referring to the co-accused). Ostensibly, he owned

scooter long before this occurrence. That being so, the scooter was not required by any member of the family.

18. As testified by Dr. Ashok Kumar Bansal, PW1, "the cause of death in this case, in my opinion, is due to shock and suffocation due to burns,

which was sufficient to cause death in the ordinary course of nature." It is in his cross-examination that the liquor in the stomach was semi-digested.

The presence of liquor in the stomach tends to show that the deceased had consumed liquor. May be that to muster might to commit suicide, she

would have consumed it. Thus, it seems to be a case of suicide. Section 498-A of IPC reads in the following terms:

498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a

woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to

fine.

Explanation.--For the purpose of this section, "cruelty" means:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for

any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

19. Of course, the letters Mark A to Mark H spell out that the deceased had a lot of love and affection for the Appellant, who has also admitted

this fact, but in the letter Ex.P.7 sent by the Appellant Gurdeep Singh to his father-in-law Gurbachan Singh PW, the former told the latter that he

would not return to India for another ten years and that his wife be settled at the house of somebody else. In the letter Ex.P.6 sent by him to his

parents, he told them that he was not even prepared to see the face of his wife. He also wrote letters Ex.P.8 and Ex.P.9 containing various

objectionable things against his wife and her parents, which reflect that the Appellant in fact did not respond to the sentiments of the deceased. The

Appellant was to fly more than one month of the day of occurrence. So, the deceased could not be expected to pick up quarrel on the issue of

return of the Appellant to Behrin, a month before his flight. Something had occurred in between the Appellant and his wife on the night intervening

31st October, 1997 and 1st November, 1997 which brought about the situation to such a boil that she was forced to take her life. Such a situation

can be within the exclusive knowledge of the Appellant. May be that he had reiterated the above-referred contents of letter. From the contents of

the letters and other evidence on the record, it can be gathered that the wilful conduct of the Appellant was of such a nature as was likely to derive

the deceased Paramjit Kaur to commit suicide and she did so. On careful delving into the contents of the above referred letters as well as the

evidence of Gurbachan Singh PW2, Sukhdev Singh PW3, I am convinced that the prosecution has succeeded in proving that the Appellant had

subjected the deceased to cruelty within the meaning of Clause (a) of Explanation appended to Section 498-A of IPC. The mere fact that the

demand of scooter does not fall within the mischief of dowry or that the evidence of the aforesaid witnesses has not been found convincing for

upholding the conviction of the Appellant u/s 304-B of IPC, is not sufficient to discredit or discard the prosecution case as a whole.

20. In view of the observations rendered by the Apex Court in re: Dinesh Seth v. State of N.C.T. of Delhi 2008 (4) R.C.R. (Criminal) 81

ingredient of cruelty is common in Sections 304-B and 498-A of IPC and if the offence u/s 304-B of IPC is not established rather the offence

punishable u/s 498-A of IPC is made out on the given prosecution evidence though there was not specific charge u/s 498-A of IPC the Appellant

can be convicted and sentenced u/s 498-A of IPC. The contents of the above discussed letters indeed amount to extreme of humiliation and

mental torture of the deceased. If the husband addresses to his wife that her father is a Pauper in writing or says that she be settled in somebody

else's house or that he does not want to see her face, such remarks cause mental torture. Even in Satpal Vs. State of Haryana, the Apex Court has

held that ""even though the prosecution evidence was not sufficient to establish charge u/s 304-B or 306 of IPC, conviction u/s 498-A of IPC can

be upheld.

21. As a sequel of the aboe discussion, the offence is altered to Section 498-A of IPC. The maximum sentence prescribed for this offence is three

years and fine. The Appellant has already undergone imprisonment for two years, five months and eight days. As such, he is sentenced to the

already undergone imprisonment. However, he is also sentenced to pay a fine Rs. 10,000 and in default of the same, to further undergo rigorous

imprisonment for six months. He shall deposit this amount of fine within two months from today, in the trial Court failing which, he will undergo

rigorous imprisonment for one year. In the event of failure to deposit this fine, the learned Chief Judicial Magistrate, Barnala shall take necessary

steps to send the Appellant to the prison for serving the imprisonment in default of payment of fine. The Registry is directed to transmit a copy of

this judgment to learned Chief Judicial Magistrate, Barnala for necessary action.

22. Disposed of accordingly.