

(2006) 07 P&H CK 0238

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 528-DB of 2003

Harbans Kaur and another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 27, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 304B

Hon'ble Judges: R.S. Madan, J; K.S. Garewal, J**Bench:** Division Bench**Advocate:** Sunil Chandha, for the Appellant; A.S. Virk, Additional Advocate General, for the Respondent

Judgement

K.S. Garewal, J.

Brij Lal (23), a hosiery worker, resident of Pritam Nagar, Ludhiana alongwith his mother Harbans Kaur (55) were tried by learned Additional Sessions Judge, Ludhiana for the "dowry death" of Brij Lal's wife Baljit Kaur on February 17, 1999. Learned Trial Judge found both guilty under Indian Penal Code and sentenced Brij Lal to rigorous imprisonment for life while Harbans Kaur was sentenced to rigorous imprisonment for seven years. They were also sentenced to fine of Rs.10,000/- and Rs.5,000/- respectively. Brij Lal's sister Manpreet Kaur (26) and her husband Charanjit Singh (32) had also been tried but they were both acquitted.

2. Baljit Kaur deceased was the sister of Jai Ram (PW-1) of Madnipur, Police Station Payal, District Ludhiana. She died in her matrimonial home at Pritam Nagar on February 17, 1999. Baljit Kaur had been married to Brij Lal only for about 1-1/2 years before her death. Couple had a daughter who was born on September 11, 1998. According to Jai Ram, sufficient dowry alongwith a scooter had been given to Brij Lal at the time of marriage but four months after marriage Brij Lal and his co-accused started harassing Baljit Kaur and demanded a car. Four months before her death,

Baljit Kaur had given birth to a daughter and due to this her harassment increased. Jai Ram visited Baljit Kaur's matrimonial home on 2/3 occasions and was accompanied by his aunt (Massi)'s son Amarjit Singh and his aunt (Mami). Aki They requested the accused not to harass Baljit Kaur but this did not have any effect.

3. 30th February 17, 1999 at about 12 noon Sarpanch Bahadur Singh of his village received a telephone call from Baljit Kaur who asked him to inform Jai Ram that she was being harassed and dowry was being demanded. She had also asked that Jai Ram should meet her on teat very day otherwise she apprehended that the accused would kill her.

4. On getting the message Jai Ram reached Baljit Kaur's home at Ludhiana where he met Harbans Kaur who told him that Brig Lal and Baljit Kaur had gone to the bazar. Jai Ram did not wait for his sister, ate dinner and, went off to sleep in the drawing room. At 10-30 P.M. he heard screams and also heard Baljit Kaur's weeping. He found her lying on bed at the adjoining room. He witnessed Manpreet Kaur and Charanjit Singh holding Baljit Kaur from her legs, Brij Lal strangling her neck while Harbans Kaur had caught hold of her arms. When Jai Ram raised an alarm, he was threatened by Charanjit Singh. Jai Ram ran out of the house due to fear and returned to his village at about 4-30 A.M. He informed his brothers, Bahadur Singh (PW-2) and some other members of the panchayat of his village. All of them alongwith 100 other persons of the village returned to Baljit Kaur's home at 10-30 A.M. and found her dead body lying on the bed but none of the accused was present at the home.

5. The matter was reported to the police by Jai Ram and his statement was recorded by SI Darshan Ram (PW4) on the basis of which the case was registered. The Investigating Officer prepared the site plan of the place of the occurrence and also prepared the inquest report on the dead body. Thereafter the dead body was sent for post mortem to Civil Hospital, Ludhiana where post mortem examination was conducted by a Medical Board consisting of Dr. Anil Verma (PW-6), Dr. Harjap Singh and Dr. I Karamvir Geel, on February 19, 1999 at 11.00 a.m. The following injuries were found on the person of the deceased :

1. Purple (dark) coloured contusion 2-1/2" x 1/2" on the front of neck, horizontally placed in the middle. The Medical Officer explored the injury and found that there was contusion of the underlying tissue and some tracheal rings were crushed and depressed. All the organs were congested. Stomach contained about 50 mls of gastric juices. Small intestines contained gases and large intestines contained faecal matter. Uterus was empty and slightly enlarged. In the opinion of the Medical Officer cause of death was shock as a result of asphyxia sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injury and death was immediate and between death and post mortem was about 40 hours. After completion of the investigation accused were sent up for trial.

At the trial prosecution examined Jai Ram (PW-1), Sarpanch Bahadur Singh (PW-2), Balbir Singh (PW-3), S.I. Darshan Singh (PW-4), ASI Harbans Singh (PW-5), Shammi photographer (PW-6) and closed the case.

6. The accused were examined without oath u/s 313 Cr.P.C. Brij Lal admitted his marriage to Baljit Kaur but stated that after Baljit Kaur had given birth to a daughter she kept falling ill. Her body would become stiff and she got afflicted with a number of other diseases. He got her treatment from a number of Doctors but there was no improvement in her condition. Due to her illness she was frustrated with life and committed suicide.

7. When called upon to enter defence, Brij Lal examined Sarita (DW-1) who was a tenant in Brij Lal's house and knew the entire family. She testified that Brij Lal's behaviour with his wife was good and she had never noticed demand of dowry or any maltreatment by the accused. On February 17, 1999 she had returned home at about 6.00 p.m. and gone to Baljit Kaur to fetch chilly powder but found absent from the kitchen. At that time Brij Lal was away to work and Harbans Kaur had gone to bazar. Sarita looked for Baljit, she did not find her in the drawing room or the bed room. She then went to bath room and found that the door was bolted from inside. No sound was coming from the bathroom. She knocked the door but there was no response. She thought that Baljit Kaur may have got a fit. So she called her mother who also knocked on the door but in vain. They then called Vishav Nath who broke open the door and found Baljit Kaur hanging from the shower with a chunni around her neck.

8. Dr. R.C.Sharma (DW-2) testified that Baljit Kaur was his patient and she suffered from rheumatic pain after her delivery. Dr. N.D. Awasthi, (DW 3) testified that he had examined Baljit Kaur on October 22, 1998. She had complained of joint pain for the last 15 days with history of delivery about six weeks earlier. Dr. Veena Sethi (DW-4) testified that she had been examining Baljit Kaur during her pre-regulation ncy. She had also prescribed medicines to her after her delivery because she had body ache and temperature etc. Dr. Subhash Sachdeva (DW-5) testified that he had prescribed medicines to Baljit Kaur as she had complained of numbness and tingling sensation in the entire body.

9. Jagmohan Sharma (DW-6) testified that he was running a P.C.O. in Chander Nagar, Ludhiana. According to his register on February 17, 1999 a call had been placed on telephone No. 01628-79226 at 20.08 hours. S.I. Balbir Singh (DW-7) testified that he had received the investigation of the case on February 24, 1999 and had sought the opinion of the doctor regarding cause of death of Baljit Kaur. He also recorded statements of some witnesses. From his investigation S.I. Balbir Singh concluded that the deceased had hanged herself in the bath room with a chunni. He had taken into possession chunni vide memo Ex.DW-7/A which had been attested by the PWs Sukhpal Singh and Gurmantar Singh,

10. The learned Trial Judge did not accept that Baljit Kaur had committed suicide on account of illness. On the other hand the learned Trial Judge believed the prosecution case regarding demands of dowry and also the version put forth at the trial by Baljit Kaur's brother Jai Ram (PW-1) and Sarpanch Bahadur Singh (PW-2) and found that the testimony of both these witnesses was sufficient to hold that the main cause of death of Baljit Kaur was insufficient dowry, harassment and ill-treatment when further demands of dowry were not fulfilled. However, the learned Trial Judge felt that in the present case Jai Ram (PW-1) had falsely named Charanjit Singh and Manpreet Kaur as parties to the killing of Baljit Kaur. The story as put forward by the prosecution against these accused persons appeared to be doubtful. Benefit of doubt was required to be given to them. Learned Trial Judge also held that the evidence regarding Baljit Kaur's illness was not reliable and it was not a case of either hanging or suicide. On the contrary there was evidence of the Medical Officer that Baljit Kaur's death had been caused due to asphyxia. Learned Trial Judge further held that Brij Lal had pressed Baljit Kaur's throat.

11. On behalf of the accused, it has been argued that Jai Ram's version that he was present in the house of the accused on the night of the occurrence was false. If accused had planned to kill Baljit Kaur then they would not have done so in the presence of her brother. Furthermore, Jai Ram had not stayed back for a moment after Baljit Kaur had died. He immediately rushed to his village which was nearly 30 kms from Ludhiana. Reaching there at 4-30 a.m. Jai Ram then returned to Ludhiana with a large number of people of his village and reached the spot at 10.30 a.m. Learned counsel also relied upon the statement of Dr. Anil Verma (PW-6) that there was possibility of hanging which could not be ruled out in the present case. Learned counsel then went on to argue that the deceased had become depressed after she gave birth to a daughter and also suffered from body aches and pains for which she was treated. Therefore, she had committed suicide on this account.

12. On behalf of the State it was submitted that ingredients of Section 304 B were present in the case. Therefore, the presumptions could be pressed into service to hold that the appellants had committed offence u/s 304 B IPC.

13. Murder, dowry death or suicide, it could be any of the three though the prosecution's own case was that Baljit Kaur's death was neither murder nor suicide but dowry death punishable u/s 304 B of the Indian Penal Code. The defence claims that Baljit Kaur had committed suicide. A young woman of 23 years of age who had been married for just 1-1/2 years who had a child about 4 months old, would have strong reasons to take her own life. Aches and pains are a part of child bearing. Such afflictions come and go, treatment makes it easy for the patient to endure pain but it is unbelievable that a woman would suffer such severe pain that she would take her own life. According to the defence evidence Baljit Kaur was being treated by a number of Doctors for her pains but none of them testified that she was suffering from acute depression or suicidal tendencies. Therefore, suicide must be

ruled out altogether as the cause of death. Secondly, if it had been a case of suicide simpliciter, not accompanied by any harassment on the part of Brij Lal, then Brij Lal would have kept the scene intact to show to others that his wife had committed suicide. S.I. Balbir Singh (DW-7) did seem to support the suicide theory that Baljit Kaur had hanged herself in the bathroom with a chunni but medical evidence has completely ruled this out. According to Dr. Anil Vohra the ligature mark was not continuous around the neck. There was no bleeding from the nose, ear and mouth of the deceased. There was no fracture of larynx, trachea or hyoid bone. Surprisingly, the Medical Officer did contradict himself and stated that death could be due to hanging.

14. Typical cases of hanging show a ligature around the neck and going upwards. The learned Trial Judge also relied upon Modi's Medical Jurisprudence and mentioned that "in case of hanging, there should be saliva" dribbling out of the mouth down on the chin and chest whereas no such saliva can be seen in case of strangulation. Secondly, the neck should be stretched and elongated in fresh bodies in case of hanging, whereas this ingredient cannot be seen in case of strangulation. Thirdly there can be fracture-dislocation of the cervical, vertebrae, in case of hanging while in case of strangulation this ingredient can be rare."

15. Coming to the evidence of Jai Ram (PW-1), it would require considerable stretching of one's imagination to accept his version that he was present in the house and saw the deceased being done to death on the night of February 17, 1999. There is no corroborative evidence whatsoever that could establish that Jai Ram was in the house of the deceased. Even if Sarpanch Bahadur Singh stated that he receive/telephonic message asking that Jai Ram should be sent to Ludhiana, this does not establish that Jai Ram actually went to Ludhiana and reached there on the evening of February 17. It is strange that when he found that his sister was not present in the house, he did not wait for her to return and instead went off to sleep only to be woken at night by screaming of the deceased. The learned Trial Judge had also disbelieved Jai Ram as far as Charanjit Singh and Manpreet Kaur are concerned and found that they had been falsely roped in. Therefore, we have no hesitation in holding that Jai Ram did not witness the occurrence but we also have sufficient reason to accept the medical evidence to hold that Baljit Kaur had not committed suicide by hanging.

16. While confirming the findings of the Trial Court regarding the guilt of the appellants u/s 304 B of the Indian Penal Code, we feel that circumstances of the case do not warrant the maximum sentence of life imprisonment u/s 304 B of the Indian Penal Code to Brij Lal. His sentence is hereby reduced from imprisonment for life to (sic) imprisonment for 8 years but sentence of fine of Rs. 10,000/- stand as before. This appeal stands disposed of.