

**(2013) 08 P&H CK 0830**

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

**Case No:** C.R.A. No. 1469-SB of 2002 and C.R.R. No. 2256 of 2002

Rajbir and Others

APPELLANT

Vs

State of Haryana <BR> Bhoj Raj

RESPONDENT

Vs Rajbir and Others

**Date of Decision:** Aug. 20, 2013

**Citation:** (2013) 4 RCR(Criminal) 177

**Hon'ble Judges:** Mehinder Singh Sullar, J

**Bench:** Single Bench

**Advocate:** Bipan Ghai, with Mr. Paras Talwar in C.R.A. No. 1469-SB of 2002 and Mr. Karan Pathak in C.R.R. No. 2256 of 2002, for the Appellant; Bipan Ghai with Mr. Paras Talwar, Advocate in C.R.R. No. 2256 of 2002 and Mr. Gourav Verma, AAG Haryana for State, for the Respondent

**Judgement**

Mehinder Singh Sullar, J.

As identical questions of law and facts are involved, therefore, I propose to decide CRA No. 1469-SB of 2002 filed by appellants-convicts Rajbir & Ors. and CRR No. 2256 of 2002 filed by petitioner-complainant Bhoj Raj, arising out of the same impugned judgment of conviction & order of sentence of trial Judge, by virtue of this common decision, in order to avoid the repetition. The matrix of the facts & evidence, unfolded during the course of trial, which needs a necessary mention for the limited purpose of deciding the instant appeal and emanating from the record, as claimed by the prosecution, is that the marriage of Roopwati, sister of complainant Bhoj Raj (PW3) (for brevity "the complainant") was solemnized with appellant Rajbir son of Manohar Lal on 11.3.1995, according to Hindu rites and ceremonies. He was stated to have spent an amount of Rs. 1,50,000/- on her marriage beyond his capacity and gave one scooter marka Chetak, Godrej almirah, black & white TV, sewing machine, table, chair, bed, HMT watch, and gold ornaments, besides other customary dowry articles including cash of Rs. 5100/-, but the accused were not satisfied. They started demanding Hero Honda motorcycle, colour TV and cash of Rs. 50,000/- from her. She used to narrate the pointed demands to her parents. It was alleged that 15/16

days prior to the present occurrence, Roopwati had come to her parental house and narrated the tale of her woe that the accused were demanding the Hero-Honda motorcycle, colour TV etc. and Rs. 50,000/- in cash, failing which, they would continue to harass and beat her in this regard.

2. Sequelly, the case of the prosecution further proceeds that on 20.9.1998, appellant Rajbir came to the house of complainant and told that Roopwati was missing from her matrimonial home. The complainant and his brother searched for her in their relations, but in vain. On 22.9.1998, when the complainant and his brother had gone to her matrimonial home in village Pelak in search of his sister, then they noticed that the dead body of Roopwati wrapped in the cloth was lying there. According to the complainant that appellants-accused Rajbir (husband), Ramesh, Prem ss/o Manohar Lal (brothers-in-law), Manohar Lal s/o Karelal, his wife Chironji (parents-in-law) (since acquitted), Ramsiri w/o Ramesh and Maya w/o Prem (sisters-in-law) had murdered her either after giving beating or administering some poisonous substance to her on account of demand of dowry. In the background of these allegations and in the wake of complaint (Ex.PA) of complainant, the present criminal case was registered against the accused, by means of FIR No. 409 dated 22.9.1998 (Ex.PA/1), on accusation of having committed the offences punishable under sections 304B, 498A and 406 IPC by the police of Police Station Sadar Palwal, previously District Faridabad, now Distt. Palwal, in the manner depicted here-in-above.

3. After completion of the investigation, the final police report (challan) was submitted by the police against the appellants and acquitted accused to face the trial for the offences in question.

4. Having completed all the codal formalities, the appellants and acquitted accused were charge-sheeted for the commission of indicated offences. As they did not plead guilty and claimed trial, therefore, the case was slated for evidence of the prosecution by the trial Judge.

5. The prosecution, in order to substantiate the charges framed against the appellants and acquitted accused, examined PW1 ASI Roop Lal, who, on receipt of ruqqa (Ex.PA), recorded the formal FIR (Ex.PA/1) in this case. PW5 Anoj Kumar, Draftsman has prepared the scaled site plan (Ex.PC) of place of occurrence with its correct marginal notes at the instance of the complainant.

6. Sequelly, PW3 Bhoj Raj is the complainant and material witness of the prosecution, who has deposed in the following manner:-

Roopwati since deceased was my sister. Her marriage took place with Rajbir accused present in court in March, 1996. We had spent near about 1,50,000/- by giving dowry articles like scooter, black and white TV, utensils, ornaments and other house hold articles as per our capacity. Ramesh Chand is the elder brother of accused Rajbir, while Ramshri is wife of Ramesh Chand, similarly Prem Chand is younger brother of

Rajbir and Maya wife of said Prem Chand. All accused present in court. Manohar is father-in-law of my sister Roopwati and Chironji is mother-in-law of my sister Roopwati. My sister was living in joint family with accused in one house, with common kitchen. The accused were not satisfied with dowry and started to demand colour TV, Hero Honda motorcycle and cash of Rs. 50,000/-from my sister Roopwati. Since the demand is not fulfilled, they all maltreated her and also gave beatings time to time. My sister used to narrate her fairy tails as and when she visited her house in village Kuslipur. Prior to death of my sister, she came 15-16 days earlier and told about the miseries and repeated harassment and torture committed by accused on account of demand of additional dowry. My sister further told that she would suffer the same treatment by accused till the demand of dowry is not met out. She was, however, sent to her in-laws" house after consoling her appropriately. On 20.9.1998 Rajbir husband of my sister Roopwati came to my house village Kuslipur and gave information that Roopwati had gone out of house. It was wrong information given by accused. After this information, I started search of my sister in relations but we failed to search my sister. When I visited village Pelak on 22.9.1998 and found that dead body of my sister was lying on a cot in front of house of accused. Thereafter, I reported the matter to police in the form of application Ex.PA which bears my signatures. The accused persons present in the court caused the death of my sister Roopwati by means of strangulation on account of non-fulfillment of demand of dowry.

7. Likewise, PW4 Hardei widow of Arjun Lal, mother of the deceased, has also corroborated the statement of complainant (PW3) on all vital counts, as regards the demand of dowry from her daughter by the accused was concerned.

8. Similarly, the next to note is the testimony of PW2 Dr. Ramesh Kumar, who, on police request (Ex.PB), conducted the post-mortem examination on the dead body of Roopwati, vide his report (Ex.PB/1). He has proved diagram (Ex.PB/2), endorsement (Ex.PB/3) and inquest report (Ex.PB/4). In his opinion, the cause of death in this case was due to asphyxia as a result of strangulation, which was ante-mortem in nature. Probable time that elapsed between injury and death was within few minutes and between death & post-mortem examination was within 24 to 48 hours.

9. The last to mention is the testimony of PW6 ASI Vijay Singh, Investigating Officer, who has maintained that on 22.9.1998, the complainant moved an application (Ex.PA) to him. He made his endorsement (Ex.PA/2) and sent the same to the police station for registration of the case. Thereafter, he visited the spot, prepared the inquest report (Ex.PB/4) of the dead body of Roopwati. He despatched the dead body for postmortem examination, vide request (Ex.PB). He prepared the site plan (Ex.PD) of place of occurrence. He has also prepared the site plan (Ex.PE) of Bitoda, where the dead body of Roopwati was initially found. He arrested the accused. He recorded the disclosure statements (Ex.PF, Ex.PG and Ex.PK respectively) of accused Prem Chand, Rajbir & Ramesh. They also pointed out the place where the dead body

was found and the memos in this respect are (Ex.PH, Ex.PJ & Ex.PL). The dowry articles were recovered from accused Rajbir, Maya and Ram Siri, vide recovery memos (Ex.PM and Ex.PN) respectively. He has testified his entire investigation. The prosecution has also placed reliance on the voter list (Ex.P1) in documentary evidence.

10. After the close of the prosecution evidence, the statements of the appellants and acquitted accused were recorded. The entire incriminating material/evidence was put to enable them to explain any circumstance appearing against them therein, as contemplated u/s 313 Cr.P.C. However, appellant Rajbir has denied the prosecution evidence in its entirety and pleaded false implication in the following manner:-

There had been no demand of dowry on my part or any of the family members. I and Roopwati were living separately, maintaining separate kitchen. There was perfect love and affection between us. On the fateful day Roopwati had gone in the heap of the cow-dung cake, where she was sexually assaulted but she resisted and in that attempt, she had been strangulated by some unknown person. The proper information was sent to the complainant, when she was found missing and thereafter, on the information about the dead body the complainant along with other family members came in the village but thereafter with due consultation and deliberation the present case was foisted upon me and my family members. I did not make any disclosure statement and the entire investigation conducted by Vijay Singh ASI is tainted. I am innocent.

11. Sequelly, the other accused have also adopted the same line of defence. They, in order to prove their plea of defence, have examined DW1 Lekhi Ram son of Devi Sahai, DW2 Chhattar Singh son of Rameshwar, DW3 Nanak Chand son of Udai Ram, DW4 Ashok Kumar son of Dharampal and DW5 Dharambir son of Sohan Lal. The crux of their evidence is to the effect that appellant Rajbir (husband) was separately residing with his wife Roopwati after solemnization of the marriage, whereas the remaining accused were separately residing. This is the entire evidence brought on record by the parties.

12. Taking into consideration the pointed evidence on record, all the accused were acquitted for the commission of an offence punishable u/s 406 IPC. Accused Monohar Lal and his wife Chironji (parents-in-law) were also acquitted u/ss 304B and 498A IPC. At the same time, appellant Rajbir (husband) was convicted and sentenced to undergo rigorous imprisonment (for short "RI") for a period of ten years, to pay a fine of Rs. 5000/- in default thereof to further undergo RI for a period of two years for the commission of offence punishable u/s 304B IPC and to undergo RI for a period of two years u/s 498A IPC, whereas remaining appellants Prem Chand, Ramesh Chand, Ram Shree and Maya were convicted & sentenced to undergo RI for a period of seven years, to pay a fine of Rs. 1000/- each, in default thereof to further undergo RI for a period of one year each on accusation of having committed an offence punishable u/s 304B IPC and to undergo RI for a period of one year u/s 498A

IPC. However, all the sentences were ordered to run concurrently, by way of impugned judgment of conviction dated 9.9.2002 & order of sentence dated 11.9.2002 by the trial Judge.

13. Aggrieved thereby, the appellants have preferred the instant appeal to challenge the impugned judgment of conviction & order of sentence, whereas the complainant has filed CRR No. 2256 of 2002 challenging the acquittal of accused Manohar Lal & Chironji and for enhancement of the sentence of the appellants. That is how I am seized of the matter.

14. After hearing the learned counsel for the parties, going through the evidence on record with their valuable assistance and after considering the entire matter deeply, to my mind, the present appeal deserves to be partly accepted in this context.

15. As indicated here-in-above, all the accused were acquitted for having committed an offence punishable u/s 406 IPC. Accused Monohar Lal and his wife Chironji (parents-in-law) were also acquitted u/ss 304B and 498A IPC. At the same time, the appellants were convicted for the commission of offences punishable u/ss 304B & 498A IPC. Section 304B IPC postulates that "Where the death of a woman is caused by any burns or bodily injury or occurs 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." Similar is the provision of offence punishable u/s 498A IPC as well.

16. Therefore, a conjoint and meaningful reading of these provisions, as also so held by Hon"ble Supreme Court in cases Shiva Karam Payaswami Tewari Vs. State of Maharashtra, and Kanti Lal Vs. State of Rajasthan, , would reveal that the prosecution is legally required to prove the following essential ingredients before invoking the provisions of sections 304B and 498A IPC:-

- (i) The death of wife should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) Such death should have been occurred within seven years of the marriage;
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry soon before her death.

17. At the same time, the distinction between the required volume and appreciation of relevant evidence brought on record by the prosecution in dowry death case against the main accused & husband on the one hand and his relatives on the other hand, was considered by Hon"ble Apex Court in a celebrated judgment in case Kans

Raj Vs. State of Punjab and Others, which was subsequently followed in a line of judgments, wherein it was ruled that for the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases, where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry death. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused.

18. Again the same very view was reiterated by Hon'ble Supreme Court in case Preeti Gupta and Another Vs. State of Jharkhand and Another,

19. Such thus being the legal position & evidence on record, now the sole controversy, which invites an immediate attention of this Court and arises for determination in this appeal is, as to whether all the essential ingredients of the pointed offences are complete or not ?

20. Having regard to the rival contentions of learned counsel for the parties, to me, the prosecution was successful in proving all the essential ingredients as regards main accused appellant Rajbir (husband), is concerned. At the same time, it has miserably failed to prove any such specific role or overt-act in respect of remaining appellants and they deserves the benefit of doubt and acquittal as well, for the reasons mentioned here-in-below.

21. What cannot possibly be disputed here is that the marriage of appellant Rajbir was solemnized with Roopwati on 11.3.1995. She died an unnatural death on 22.9.1998, indisputably within a period of four years of her marriage. Hence, the initial two indicated premises of offence punishable u/s 304B IPC stand established on record. Having so held, now it has to be seen as to whether the prosecution has brought on record the sufficient and reliable evidence to prove the 3rd and 4th pointed ingredients i.e. soon before the death of deceased, she was subjected to cruelty in connection with and on account of demand of dowry and by whom or not ?

22. As is evident from the record that the marriage of appellant Rajbir was solemnized with the deceased on 11.3.1995, according to Hindu rites and ceremonies. Appellants Prem Chand (brother-in-law) (Devar), Ramesh Chand (brother-in-law) (Jeth), their wives appellants Maya and Ram Siri are sisters-in-law of Roopwati deceased, whereas Manohar Lal and his wife Chironji are her parents-in-law (acquitted accused). The complainant (PW3) has vaguely mentioned

in his initial complaint (Ex.PA), which formed the basis of FIR (Ex.PA/1) that although he had spent an amount of Rs. 1,50,000/- in the marriage of his sister, but the accused were not satisfied. They started demanding Hero Honda motorcycle, colour TV and cash of Rs. 50,000/- from the deceased. 15/16 days prior to the present occurrence, she had come to the parental house and narrated her tale of woe of demand of dowry by the accused. On 20.9.1998, appellant Rajbir came to the house of complainant and told that Roopwati was missing from her maternal house. The complainant and his brother had searched for her in their relations, but in vain. They did not raise any accusing finger with regard to demand of dowry against the relatives of her husband. It was only on 22.9.1998, the complainant lodged the report against the accused after noticing the dead body of the deceased in her matrimonial home.

23. Not only that, appellant Rajbir has adopted a specific defence from the very beginning that he alone was residing with his wife Roopwati, whereas the remaining appellants and acquitted accused were separately residing. In order to prove the line of defence, they have examined DW1 to DW5 and produced the account book (bahi) (Ex.D1). The epitome of their evidence is that appellant Rajbir and Roopwati (deceased) were residing separately, whereas the remaining appellants and acquitted accused were residing separately. The mere fact that in the voter list (Ex.P1), all the accused are shown to be living in one house, is not sufficient to infer that they were joint in mess and kitchen. It is a matter of common knowledge that although all the family unit independently reside in the same house in different rooms, but still, they are separate in their mess and kitchen. Merely, their common address is shown in the voter list, to my mind, is not sufficient to hold that they were also residing with appellant Rajbir and Roopwati (deceased). The trial Court accepted the defence evidence of separate residence of Manohar Lal and his wife Chironji (parents-in-law) and acquitted them, but, strange enough, that same very evidence was just ignored without assigning any cogent reasons as regards the case/separate residences of remaining relatives of appellant Rajbir (husband) are concerned. The defence evidence appears to be probable and convincing with respect to separate residences of the relatives of husband is concerned. So much so, the prosecution did not examine Sarpanch, any member panchayat or lambardar or any person of village Pelak to prove that all the accused were residing together with the deceased, having common mess and kitchen.

24. This is not the end of the matter. The complainant in his initial complaint (Ex.PA) has very vaguely stated that the accused had demanded one Hero Honda motorcycle, colour TV and cash of Rs. 50,000/-. While appearing as PW3 in Court, he has only deposed that the accused were not satisfied with the dowry and started demanding the Hero Honda motorcycle, colour TV and cash of Rs. 50,000/- from her sister. Since the demand is not fulfilled, they all maltreated and gave beatings to her.

25. Meaning thereby, neither any specific entrustment, role or overt-act is attributed to the relatives of the husband. It remains an unfolded mystery as to when, how and in what manner, the other relatives of appellant-husband had treated the deceased with cruelty in connection with and on account of demand of dowry soon before her death. By mere conjectures and implications, they cannot possibly be held guilty for the offences relating to dowry death for the fault of husband of the deceased. Above-all, the very vague & general allegations are assigned to his relatives in this relevant connection.

26. Again, it is not a matter of dispute that the same very general and vague allegations of demand of dowry were assigned to Manohar Lal and his wife Chironji (parents-in-law) of the deceased in the evidence, but the trial Judge has disbelieved the same and acquitted them. At the same time, it believed the same very vague allegations relatable to the other relatives of the husband. Moreover, they were not going to be benefitted in any manner from the alleged demand of motorcycle and colour TV, meant for husband of the deceased. They were residing separately, whereas appellant Rajbir was residing with the deceased separately. The case of remaining relatives of husband is on better footing than the case of parents-in-law, who were acquitted by the trial Judge. They appear to have been falsely implicated by the complainant in this case in order to wreak vengeance by leveling very vague and general allegations. Thus, the ratio of law laid down by Hon"ble Apex Court in Kans Raj and Preeti Gupta"s cases (supra) "mutatis mutandis" is applicable to the case of other relatives of appellant husband and is the complete answer to the problem in hand. Therefore, to me, it would not be safe to convict them in the absence of any acceptable evidence of specific role, overt-act and demand of dowry, soon before the death of the deceased. They are entitled to the-benefit of doubt, deserve to be and are hereby acquitted as well.

27. Be that as it may, as regards the role of appellant Rajbir (husband) and main accused is concerned, although there is a legal presumption as envisaged u/s 113B of the Indian Evidence Act, but still, there is a positive evidence of cruelty against him. Undisputedly, as per his own admission, the deceased was separately residing with him. PW3 and PW4 have categorically, inter-alia, maintained, on oath, that the deceased used to narrate her tale of woe of demand of dowry when she used to visit her parental house. They have specifically stated that 15/16 days prior to the present occurrence, the deceased had come to their house and told that the accused were demanding a Hero-Honda motorcycle, colour TV and cash of Rs. 50,000/- from her. This indicated demand is directly relatable to appellant (husband) alone as no other person was going to be benefitted in this regard. He was ultimate beneficiary of pointed demand of a Hero-Honda motorcycle, colour TV and cash of Rs. 50,000/. The case of the prosecution further proceeds that on 20.9.1998, appellant Rajbir came to their house and informed them that Roopwati had gone out of her matrimonial home. This information supplied by him was misleading and was unfounded. His unnatural conduct to conceal the factum of death of deceased

raises an accusing finger towards his guilt. He kept her parents in dark. It was only on 22.9.1998, when the complainant visited her matrimonial home and came to know about her death and found her dead body lying in the house of appellant-Rajbir. In that eventuality, it was his duty to explain the reasons of her death, which, he has utterly failed to do so in this behalf. Instead of truly disclosing the factum of death of Roopwati, he had kept concealed and misled the complainant. Moreover, there is a positive and acceptable evidence of PW3 and PW4 on record that the indicated demand of Hero Honda motorcycle, colour TV and cash of Rs. 50,000/- was made from the deceased. The defence taken by him that she might have been raped and murdered by some one, does not inspire confidence and outrightly deserves to be rejected in the absence of any cogent evidence in this relevant direction.

28. Therefore, if the crux of the totality of the facts & evidence, emitting from the record, as discussed here-in-above is put together, then, to my mind, the conclusion is inescapable and irresistible that it was appellant Rajbir (husband) alone, who had demanded the Hero Honda motorcycle, colour TV and cash of Rs. 50,000/-, harassed and treated the deceased with cruelty in connection with and on account of demand of dowry soon before her death. In this manner, he has committed the offence of dowry death and the trial Court has rightly convicted him for the offences in question.

29. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties. In the light of aforesaid reasons, the instant appeal is partly accepted. The impugned judgment of conviction, relatable to appellants Prem Chand, Ramesh Chand (brothers-in-law) and their wives Maya and Ram Siri (sisters-in-law) of the deceased, is set aside. Having extended the benefit of doubt, they are acquitted of the charges framed against them. At the same time, the appeal of appellant Rajbir (husband) and revision petition of complainant-petitioner are hereby dismissed as such. Consequently, the impugned judgment of conviction & order of sentence of appellant Rajbir (husband) are maintained in the obtaining circumstances of the case. The Chief Judicial Magistrate is directed to secure his (appellant Rajbir) presence forthwith and commit him to jail to serve out the remaining portion of his sentence.

Needless to mention that the necessary compliance and procedural consequences would naturally follow.