

(2009) 01 P&H CK 0242

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 233-SB of 1998

Bhim Singh and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision: Jan. 22, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304B

Citation: (2009) 30 CriminalCC 49

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: Bipan Ghai and Mr. Deepak Garg, for the Appellant; Tarunveer Vashisth, AAG Haryana, for the Respondent

Final Decision: Allowed

Judgement

Harbans Lal, J.

This appeal is directed against the judgment dated 07.03.1998/ order of sentence dated 10.03.1998. passed by the Court of learned Additional Sessions Judge, Gurgaon whereby he convicted and sentenced the accused Bhim Singh, Jai Singh, Jal Singh sons and Murti wife of Hari Singh to undergo rigorous imprisonment for a period of 7 years each u/s 304B of IPC and further sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- each and in default of the same, the defaulter to undergo further imprisonment for four months u/s 498A of IPC with a further direction that the substantive sentences shall run concurrently.

2. The facts in brief of the prosecution case are that Sharmila, daughter of Hukam Singh complainant was married to the accused Bhim Singh on 19.02.1992. The accused Murti is the mother, the accused Jai Singh and Jal Singh are the brothers of Bhim Singh. They were dissatisfied with the dowry given in the marriage of Sharmila since deceased. On her third visit to her parental house, she told her parents that the accused were demanding Rs. 1,25,000/- for house construction and were

maltreating her on that account. When Bhim Singh came to his in-laws" house to take Sharmila with him, he was assured by his father-in-law Hukam Singh that as and when he gets land compensation from the government, he will pay the money to him. Two months later, the complainant again received the information that his daughter was being harassed. He sent his son Pardeep to her in-laws" house. On return, he told that she was being ill-treated and beaten up on that account. On this, the complainant called her to his house and kept her there for about 5-6 months. Bhim Singh again came to take her along. She was sent to her matrimonial home. When the accused did not change their attitude, the complainant along with his aforesaid son, Attar Singh and Raj Kumar went to the house of the accused, where Sharmila narrated to them the story of maltreatment. They persuaded the accused and returned back. On 30.12.1993 Pardeep again went to the house of the accused. On his return, he informed the complainant that she was still being harassed. On 01.01.1994, the complainant got a message through Attar Singh, that she had died by consuming some poisonous substance. On receipt of this information, the complainant along with others went to Village Birhera and found his daughter lying dead. He lodged a report with the police. The case was registered. The dead body was subjected to post mortem examination. The accused were arrested. After completion of investigation, the charge-sheet was laid in the Court of learned Judicial Magistrate First Class, Gurgaon. He committed the case to the Court of Sessions for trial of the accused.

3. The accused were charged under Sections 498A/304B of IPC to which they did not plead guilty and claimed trial. To bring home guilt against the accused, the prosecution examined PW1 Mool Chand Punia, Draftsman, PW2 Dr. Sanjay Narula, PW3 Puran Singh, PW4 Puran Mal, PW5 Hukam Singh complainant, PW6 Anguri, mother of the deceased Sharmila, PW7 Pardeep Kumar, PW8 Attar Singh, PW9 Ram Kishan Photographer, PW10 Karan Singh Sub Inspector.

4. When examined u/s 313 Cr.P.C. all the accused denied the incriminating circumstances appearing in the prosecution evidence, against them and pleaded innocence. They put forth that they are victims of blackmail. Sharmila was a woman of extremely impulsive and short-temperament nature and used to take small things to heart and detested village life as she was brought up in the city atmosphere and also did not like to do household chores. She also used to insist upon separate living from the parents of her husband and other family members, which was assured to her after "gauna" ceremony of Jal Singh. She committed suicide in a fit of anger. The accused did not adduce any evidence in their defence.

5. After hearing the learned Public Prosecutor for the State, the learned defence counsel and examining the evidence on record, the learned trial Court convicted and sentenced all the four accused as noticed earlier. Feeling aggrieved with their conviction/ sentence, they have preferred this appeal.

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

7. Mr. Bipan Ghai, Senior Advocate on behalf of the appellants urged with great eloquence that Hukam Singh PW5 complainant father of the deceased under the stress of cross-examination has testified that "It is correct that one of my son had committed suicide by putting himself before a running train. It is correct that my children and myself are short tempered." It is in the cross-examination of Anguri PW6 mother of the deceased that "my daughter was brought up in the City. She was keen in study and tailoring etc. She was not knowing any agricultural work. It is correct that my daughter wanted to live separately from her in-laws in order to open a stitching school, but she was not permitted to do so by her in-laws." This evidence speaks volumes of the deceased being short-tempered lady and wanted to live separately and did not want to reside in the family. She having been groomed in the City temperamentally could not adjust with her rustic in-laws. He has further argued that it is in the evidence of Attar Singh PW8 that the deceased was not happy in staying at the house of the appellant-Bhim Singh and complained that there used to be quarrel with mother-in-law on petty matters. Thus, demand of dowry could not be the cause for suicide. A fortiori, admittedly, there was tendency in the family to commit suicide. The learned trial Court has lost sight of the fact that it was Bhim Singh- appellant husband of the deceased who in fact had informed Attar Singh PW regarding death of Sharmila, who further informed her parents. This apart, it was Bhim Singh who had gone to lodge a report and this fact has been affirmed by Hukam Singh PW by stating that Bhim Singh was present in the Police Station, when he (Hukam Singh) PW went there to lodge the report. As alleged by Hukam Singh PW5, in his evidence, the appellants had put forth a demand of Rs. 1,25,000/Rs. 1,50,000/- for construction of the house. If it is assumed to be so, such demand does not fall within the ambit of dowry in view of the observations rendered by the Division Bench of this Court in re: Hari Singh v. State of Punjab, 2002 (3) RCR (Cri) 541.

8. Mr. Tarunveer Vashisth, Addl. Advocate General, Haryana countered these arguments by urging with great rigour that it has been manifested in plain words in letter Ex.PJ written by the deceased to her father Hukam Singh that all the accused have been maltreating her and forcing her to bring more dowry. This letter in isolation of other evidence is enough to maintain the conviction recorded by the learned trial Court. He further agitated at the bar that on evaluating the ocular evidence, it transpires that the charged offence is established.

9. Mr. Ghai assailed these submissions by contending that a meticulous perusal of the alleged letter would reveal that it was written on 15.09.1993 and was received on 21.10.1993 which is quite impossible for the reason that had this letter been really written out by the deceased and posted on 15.09.1993, by all possibilities, it would have reached the hands of her father within 3-4 days. A period exceeding one

month would have not been consumed in the transit. This gives an inkling that in fact this letter was never scribed by her. The postal seals have been procured on it in connivance with the officials of the concerned Post Office to give a colour of justifiability to their version.

10. I have given a deep and thoughtful consideration to the rival submissions. As per Ex.PM, the death occurred at 3.15 P.M., on 01.01.1994. It is in the cross-examination of Hukam Singh that "I had not stated in my statement to the police about the receipt of letter Ex.PJ. 1 received the said letter after the death of my daughter through post." This letter has been purportedly written on 15.09.1993. As per the postal seal affixed on it, it reached their hands on 21.10.1993. Palpably, this letter was received after more than one month. By no stretch of imagination, the transitory period would have extended beyond one month. Had this letter been in the possession of Hukam Singh, he in all human probabilities would have disclosed it in his police statement. Admittedly, he did not make mention about the receipt of this letter in his such statement. It is his own version that this letter was received after the death of his daughter.

11. [Shiv Kumar and Others Vs. State of Haryana and Others](#), it has been held by the Apex Court that it is not safe to decide such dispute on the basis of postal certificate as it is not difficult to get such postal seals at any point of time. This view has been reiterated in re: Fakir Molui (Dead) by LRs. v. Sita Ram, 2002 (1) RCR 91. So, it was not difficult to procure the postal seals on this letter. Assuming that this letter is in the hand of the deceased and was received through postal authorities, nonetheless, the incidence narrated therein had become stale enough for the reason that the period exceeding more than three and a half months had expired before the occurrence. The period which come within the term "soon before" as held in re: Hira Lal (infra) has to be determined by the Court, depending upon facts and circumstances of each case. Consequently, in view of the provisions of 304B of IPC, the prosecution cannot cash in on this letter. To add further to it, it is also in the cross-examination of Hukam Singh that "I had not shown the said letter to anybody, including Pardeep and my other daughter. The letter received by me, it was closed with gum. My daughter-in-law has handed over to me the said letter." Startlingly enough, that Hukam Singh did not share about the contents of this letter with any member of his family. This unnatural and uncouth conduct further raises the dimensions of doubts qua the writing and posting of this letter by the deceased. Hence, it would be quite unsafe to place reliance thereupon. On the premise of these circumstances, it can be said though not with absolute certitude that this letter has been brought into being some how or the other to create evidence for strengthening the case. It is in his further cross-examination that "there was a bank balance of Rs. 5-6 lacs in his account, when his daughter had died." It is in his statement that "I had told Jal Singh as well as Jai Singh accused that he has not received the compensation of his acquired land and the moment he gets the same, he will meet their demand." If on the fateful day, he was having a bank balance to the stated extent, he would have

satisfied the demand of Rs. 1,25,000/Rs. 1,50,000/- out of the said amount. It is also in his evidence that "I had stated in my police statement that Jal Singh and Jai Singh had come in my house and demanded Rs. 1,25,000/Rs. 1,50,000/- at the behest of their mother Murti Devi." When he was confronted with his statement Ex. PK, it was not found so recorded therein. Thus, to rope in Jai Singh as well as Jal Singh, he has introduced material improvements. If Jal Singh and Jai Singh had verily come to him at the asking of their mother, he (Hukam Singh) would have left no stone unturned in making mention of this fact in his statement Ex. PK. Thus, in my view it would not be free from risk to rely upon the version projected by this witness.

12. Adverting to the statement of Anguri PW6, in the opening sentence of her cross-examination, she has deposed that "I had not made any statement to anybody prior to my statement today in the Court." It implies that she did not make any statement before the police. It is also in her cross-examination that "our bank balance was Rs. 4 lacs in our account, when my daughter expired." Again as per this evidence, the complainant party was possessed of sufficient amount, out of which, they could have fulfilled the demand of the accused as per assurance. It is in her further cross-examination that "my daughter was brought up in the city. She was keen in study and tailoring etc. She was not knowing any agricultural work. It is correct that my daughter wanted to live separately from her in-laws in order to open a stitching school, but she was not permitted to do so by her in-laws. It is correct that the accused party used to insist her to do agricultural work. Volunteered, she had been doing so under pressure." This evidence can be interpreted to mean that the deceased in fact was an urbanized. She would have been facing the problem of incompatibility with her in-laws. To acclimatise with a rustic family would have been another difficulty. She was bent upon to live separately from her in-laws in order to open a stitching school for which she was not being permitted by her in-laws. This would have further added fuel to the fire. If she was not permitted to live separately in order to open a stitching school, this in itself by no stretch of speculation can be described to be an act of abetment on the part of the accused. Pardeep PW7 has stated in the following terms: "Sharmila deceased was my sister. She was married with Bhim Singh accused. The marriage was performed about four years back. Sufficient dowry was given including Rs. 18000/- cash. When my sister came back from the matrimonial home on her visit to our house, she complained that she was being beaten by accused Bhim Singh, Smt. Murti, Jal Singh and Jai Singh. She also complained that they made a demand of Rs. 1,25,000/- to be brought for the construction of the house. The said money could not be paid for non-availability of fund and we conveyed that the amount will be paid when the compensation of the acquired land will be received. Jal Singh accused had visited us for the said amount of Rs. 1,25,000/-. We convened a Panchayat and took to the village of the accused. SI Charan Singh (retired) had also accompanied with us. The accused were persuaded not to beat her and the amount will be paid when the fund will be available. The accused agreed for the same. Thereafter also the accused had given beating to my

sister Sharmila with belts. On my visit to her matrimonial home, I was not allowed to see my sister and was being surrounded by the accused."

13. As alleged by Hukam Singh and his wife Anguri PWs, Jai Singh and Jal Singh both had come to their house to demand the above mentioned amount for the construction of house, whereas according to Pardeep (sic), only Jal Singh accused had visited their house for this purpose. Thus, the statements of these PWs are not in unison on this aspect. It is in the cross-examination of this witness Pardeep that "I had stated in my police statement that the accused demanded Rs. 1,50,000/-." When he was confronted with his such statement Ex. DA, the amount of Rs. 1,25,000/- only was found mentioned therein. He went on to say in his further cross-examination that "At that time, there was no bank balance with us and that is why the amount could not be paid" whereas according to his father, Hukam Singh and mother Anguri, they had bank balance exceeding the amount allegedly demanded by the accused. It is in his further cross-examination that "I had stated in my police statement that Jal Singh had come once and demanded money." When he was confronted with Ex. DA it was not found so recorded therein. Thus, at every step he has made material improvements. It is in his further cross-examination that "It is correct that a day earlier to the death of my sister, Bhim Singh had come to our house. It is correct that Bhim Singh had complained that my sister is creating trouble." On the face of this evidence, the trouble was being created by the deceased. She was the trouble-shooter. If Bhim Singh along with his co-appellants were all lent upon to physically liquidate her, he would have not come to his in-laws' house a little before the occurrence. May be that, Bhim Singh had persuaded his in-laws to take her back to avoid any untoward incident. It is in his (Pardeep) further cross-examination that "I had not stated before the police that my sister was given beating by the accused persons with belts. I had stated in my police statement that on one occasion, I was not allowed to see my sister and surrounded by the accused." When he was confronted with Ex. DA, it was not found so recorded therein. Thus again, he has made improvements. It is in his further cross-examination that "I had also stated in my police statement that my sister was prepared to accompany me, but not allowed by Bhim Singh." On being confronted with Ex. DA, it was found missing from his statement. It is in his further cross-examination that "I have not stated before the police that my sister was not provided regular meals. I had also not stated before the police that my sister had committed suicide by taking cell phones." When he was confronted with portion A to A of his statement Ex. DA, it was found so recorded therein. It is in his further cross-examination that "I do not remember, if I stated before the police, the month and year of taking Panchayat to the house of the accused." On being confronted with Ex. DA, the month and year were missing from it. Conspicuously speaking, material improvements are heaped upon material improvements in his testimony. In other words, his statement is bristled with such improvements. So, the judicial conscience does not allow to place implicit reliance on it.

14. It is in the examination-in-chief of PW8 Attar Singh that "I know Hukam Singh complainant. His daughter was married with Bhim Singh accused about five years back. I attended the marriage. It was a decent marriage. I was also a member of Panchayat convened by Hukam Singh to the village of the accused and I had met Sharmila at that time. She told that she is not happy and had not good relations with her mother-in-law. We persuaded Smt. Murti Devi to have peace with her daughter-in-law. She agreed to that. After some time Bhim Singh came to me and told that there remains a quarrel between him and his wife and I should help him. He also made a request that there may not be physical violence. I took Bhim Singh to the parents of Sharmila at Village Bagdola and suggested them to take their daughter from the matrimonial home, so that both should have cool mind for some time." Under the stress of cross-examination, this witness has admitted that his son Sujan is married with the sister of Hukam Singh. They being inter-related, it was not difficult for Hukam Singh (sic.) to procure his services to depose in favour of the prosecution.

15. Karan Singh SI PW10 Inspector has admitted in his cross-examination that "the information about the death was received by Hukam Singh (referring to the complainant) from the accused." If the accused-appellant had eliminated the deceased, they would have been perhaps the last person to give such information to the complainant party. It is in his further cross-examination that "allegations of dowry demand were made against all the accused and not specifically against Jai Singh and the remaining accused." As per this evidence, there were general allegations of demand of dowry. There were no specific allegations against any of the accused. So, is the position in the letter Ex.PJ.

16. In [Hira Lal and Others Vs. State \(Govt. of NCT\) Delhi](#), it has been observed as under:

The expression "soon before her death" used in the substantive Section 304B, IPC And Section 113B of the Evidence Act is present with the idea of proximity test.

No definite period has been indicated and the expression "soon before" is not defined. A reference to expression "soon before" used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period, which can come within the term "soon before" is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman

concerned, it would be of no consequence.

17. The same opinion was expressed in [Kaliyaperumal and Another Vs. State of Tamil Nadu](#), ; [Kamesh Panjiyar @ Kamlesh Panjiyar Vs. State of Bihar](#), Apex Court Judgments 448 (S.C.) : 2005 (1) Criminal Court Cases 935 (S.C.) : 2005 (2) SCC 388; [The State of Andhra Pradesh Vs. Raj Gopal Asawa and Another](#), [Harjit Singh Vs. State of Punjab](#), and [Biswajit Halder @ Babu Halder and Others Vs. State of West Bengal](#),

18. Hukam Singh (sic.) has stated in categoric terms that "My daughter was being maltreated by the accused Murti, husband Bhim Singh, and Dewars namely Jal Singh and Jai Singh. She was also subjected to beatings. Murti Devi accused was not happy with the dowry given at the time of the marriage. She used to complain that less dowry has been given. She also wrote a letter to me. The same is Ex.PJ. 1 identify her writing (Objected to). Jai Singh and Jal Singh both had also come in my house saying that they want to construct a house, and demanded Rs. 1,25,000/1,50,000/-. They also told me that they are being sent by their mother Murti Devi. I told them that I have not received the compensation of my acquired land and the moment, I will get compensation the said amount will be paid." Anguri PW6 has deposed that "The accused used to demand Rs. 1,25,000/- for the construction of their house. I used to tell my daughter that she should convey to them that when we get compensation of the acquired land, the amount will be paid and by that time, we had no money." It is in the cross-examination of Hukam Singh PW5 that "only on one occasion Jal and Jai Singh had come to demand Rs. 1,25,000/Rs. 1,50,000/- at the behest of their mother Murti Devi from me. There was no other demand from me except that." It is inferable from this evidence that the aforesaid amount was being demanded for the construction of house. It has been held by the Division Bench of this Court in re: Hari Singh (supra) that "the demand for Rs. 20,000/- for the construction of house could not be termed as demand of dowry." Thus, if the matter is looked in the background of these observations, the aforesaid demand does not fall within the definition of dowry. According to Hukam Singh PW5, there was no other demand. Under the stress of cross-examination, he has admitted that his son had also committed suicide by putting himself before a running train and that his children and he himself are short-tempered. The appellants have come up with the plea that the deceased was a woman of extremely impulsive and short-temperament nature. It is also in the cross-examination of Hukam Singh (sic.) that "I was dismissed from my service in CRPF after Court martial in the year 1971. I was Court martialled for having given beatings to senior officer. I assaulted him because he had given slap to me. He had given me a slap because I was asking a meal for which he was not agreeing." It is a commonplace experience that in the joint family, sometimes, uneducable brides feel suffocated. They try to get rid of such family on one pretext or the other. It is possible that for such reason the deceased was insisting upon segregation from the joint family. It is also in the cross-examination of Hukam Singh (sic.) that "I told them (referring to the accused party) and showed my daughter that she has black complexion. At that time, there was no demand from the side of the

accused. During the said period of eight months, I never visited the house of the accused. Nobody had also come from the side of the accused. During the said period, the accused never demanded anything directly or indirectly. At the time of the marriage also, there was no demand." It is axiomatic from this evidence that no demand was put forth by the accused party even at the time of marriage or during the afore-mentioned period of eight months. It bears repetition that if Ex.PJ is supposed to have been written genuinely by the deceased, despite that the allegations contained therein are vague and not specific and being remote in time, had become stale enough to disturb the mental equilibrium of the deceased.

19. In the present case, I have independently analysed and scrutinized the evidence of the material witnesses and found that there is practically no evidence that there was any cruelty or harassment for or in connection with the demand of dowry. The prosecution evidence falls short off establishing the nexus between the death of the woman and the alleged dowry related harassment. Sequelly, this appeal is accepted. The impugned judgment/order of sentence stand set aside. The appellants are hereby acquitted of the charged offence.