

Crl. Appeal No.1889-SB of 2002

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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

Crl. Appeal No.1889-SB of 2002  
Date of decision 29 June, 2012

Major Singh and others

... Appellants

Versus

State of Punjab

...Respondent

**CORAM : HON'BLE MR.JUSTICE PARAMJEET SINGH**

Present: Mr. Malkeet Singh, Advocate  
for the appellant.

Ms. Jaspreet Kaur, AAG, Punjab

Paramjeet Singh, J.

The instant appeal has been filed by the appellants for setting aside the order of conviction dated 18.11.2002 whereby the Additional Sessions Judge (Adhoc) Fast Track Court, Patiala convicted the appellants under Section 498A and 304B IPC and sentenced them as under:

1. Major Singh under Section 304B IPC for 7 years R.I and fine of Rs.500/- in default of payment of fine to undergo RI for two months.

Under Section 498A IPC R.I. for 2 years.

2. Devinder Kaur under Section 304B IPC for 7 years R.I. and fine of Rs.500/- in default of payment of fine to undergo R.I. for two months.

Under Section 498A IPC R.I for 2 years

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3. Sulakhan Singh under Section 304B IPC for 7 years R.I. and fine of Rs.500/- in default of payment of fine to undergo R.I. for two months.

Under Section 498A IPC R.I for 2 years.

4. Gurdip Singh under Section 304B IPC for 7 years R.I. and fine of Rs.500/- in default of payment of fine to undergo R.I. for two months.

Under Section 498A IPC R.I for 2 years

5. Surjit Kaur under Section 304B IPC for 7 years R.I. and fine of Rs.500/- in default of payment of fine to undergo R.I. for two months.

Under Section 498A IPC R.I for 2 years.

However, all the sentences have been ordered to run concurrently.

Brief facts of the case are that on 15.02.2000 when Sub Inspector/SHO Police Station Julkan was on patrol duty in a Government Vehicle No.PB11-C-9679 then Kapoor Singh-complainant met the police and got recorded his statement to Sub Inspector Krishan Kumar alleging that he is resident of Village Kurali, Police Station Sadar, Karnal. He has one son and four daughters. His daughter Raj Kaur was married with Major Singh son of Gurdip Singh as per Sikh Rites about 2¼ years back. He had given sufficient dowry according to his capacity. After *Muklaw*, no member of in-laws family came to take Raj Kaur to Village Kurali. So complainant -Kapoor Singh along with his son Mukhtiar Singh Jaswant Singh-Sarpanch went to village Marhoo of their son-in-law, one

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of the appellants. Besides above persons, Gurbachan Singh, and Balkar Singh resident of Village Dera Uppali and Hardev Singh resident of Pathan Majra also accompanied them. They reached the house of Gurdip Singh-father-in-law of Raj Kaur. About 7/8 months prior to incident, Raj Kaur came to the house of her parents and told her father-Kapoor Singh that she was being tortured by Gurdip Singh-father-in-law, Major Singh-husband, Surjit Kaur- mother-in-law, Sulakhan Singh-brother-in-law (Jeth) and Davinder Kaur-sister- in-law(Nanad). They were demanding more dowry and hero honda motorcycle. Complainant-Kapoor Singh convened a Panchayat to talk with Gurdip Singh and Major Singh. In the Panchayat, they admitted their folly and told that there would be no complaint from Raj Kaur in future. Thereafter, Raj Kaur came to Village Kurali and told Kapoor Singh-complainant that she should visit Village Marhoo, her in-laws village, with more dowry and hero honda motorcycle. Thereafter on 30.01.2000 Mukhtiar Singh son of complainant-Kapoor Singh went to village Marhoo to leave Raj Kaur at her in-laws house. It is alleged that Gurdip Singh, Major Singh, Surjit Kaur, Sulakhan Singh and Davinder Kaur asked Raj Kaur as to why she had not brought dowry and Hero Honda Motorcycle, thereupon Mukhtiar Singh told them that they were poor persons and after arranging the money they would give the dowry and hero honda motorcycle and requested them to rehabilitate Raj Kaur and not to maltreat her. Mukhtiar Singh on return to his village told the entire story to Kapoor Singh-complainant. On 15.02.2000, the complainant along with his son and Village Sarpanch Jaspal Singh went to Village Marhoo to enquire

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about the well being of Raj Kaur but found Raj Kaur dead. They were having apprehension that either Raj Kaur had committed suicide on account of ill treatment by her in-laws i.e. father-in-law, husband, Jeth, mother-in-law and sister in law (*Nanad*) or she had been murdered for want of dowry and hero honda motorcycle.

The police authorities lodged an FIR in this regard on the statement of Kapoor Singh. Thereafter, Balwinder Singh-photographer was called by Sub Inspector Krishan Kumar at the spot and photographs were taken and inquest report of the dead body of Raj Kaur was also prepared in the presence of Kapoor Singh, Mukhtiar Singh and Jaspal Singh and thereafter post mortem was conducted. Police arrested accused Major Singh on 25.02.2000 and on interrogation Major Singh suffered disclosure statement that he had removed the old clothes worn by Raj Kaur and made the dead body wear new clothes and he had concealed the removed old clothes by wrapping in a glazed paper in a heap of cow dung cakes, which was got recovered as per disclosure statement. Other accused were subsequently arrested.

After completion of investigation, challan was presented against all the accused except Sulakhan Singh. Sulakhan Singh was shown in column No.2 of the report under Section 173 Cr.P.C. He was subsequently summoned under Section 319 Cr.P.C. Thereafter charge under Sections 498A and 304B was framed against all the accused-appellants.

In order to prove its case, prosecution examined PW1

Kapoor Singh, PW2 Dr. S.S. Obroi, PW3 HC Sohan Singh, PW4

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Mukhtiar Singh, PW5 CI Ram Karan, PW6 Jaspal Singh, PW7 Bansi Lal constable, PW8 HC Gurdip Singh, PW9 Balwinder Singh-photographer, PW10 Brij Bhushan, PW11 Prem Singh, PW12 Krishan Kumar-SI.

After the closure of prosecution evidence, statements of accused under Section 313 of Cr.P.C. were recorded, who pleaded innocence and were afforded opportunity to lead evidence. In defence, the accused-appellants examined DW1 Devinder Singh.

After hearing the learned Public Prosecutor and defence counsel, the trial Court held accused appellants guilty for the offence under Sections 498A and 304 B IPC and sentenced them as mentioned in the opening para of this appeal. Hence, the present appeal.

With the able assistance of learned counsel for the appellants and learned counsel for the State, I have perused the record.

Learned counsel for the appellants vehemently argued that PW1 Kapoor Singh-complainant, father of deceased Raj Kaur has stated that Major Singh (husband) of the deceased had demanded Rs.25,000/- for getting the post of Secretary, there are general allegations regarding demand of dowry against the entire family members of Gurdip Singh i.e. father in law, mother in law, brother-in-law and sister in law of the deceased as well as against Major Singh(husband). Learned counsel for the appellants stated that there is not an iota of evidence with regard to harassment and cruelty on the part of Gurdip Singh- father-in-law, Surjit Kaur- mother-in-law, Sulakhan Singh-brother-in-law(Jeth) and Davinder Kaur-sister-in-law (Nanad). In these circumstances, the conviction of appellants is not sustainable.

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The said contentions of learned counsel for the appellants have been vehemently opposed by learned State counsel.

With the able assistance of learned counsel for the parties, a reading of the evidence makes it clear that the entire family consisting of Gurdip Singh, father in law, Surjit Kaur- mother in law Sulakhan Singh- Jeth and Davinder Kaur-sister in law have been implicated. There is no evidence to prove the charge against them beyond reasonable doubt. The evidence of PW1-Kapoor Singh and PW4 Mukhtiar Singh and PW6 Jaspal Singh in this regard is general in nature. At least no case is made out against Gurdip Singh, father in law, Surjit Kaur- mother in law Sulakhan Singh-brother-in-law (Jeth) and Davinder Kaur-sister in law (Nanad). There is no evidence that these persons subjected the deceased to any harassment or cruelty immediately before death. The only allegation in the FIR is that they are beating and demanding dowry and hero honda motorcycle. In the Panchayat, Gurdip Singh and Major Singh had admitted their fault. Except this there are no specific allegations and circumstances of harassment of Raj Kaur (deceased) by Major Singh-husband, Gurdip Singh-father in law, Surjit Kaur- mother in law Sulakhan Singh-brother-in-law (Jeth) and Davinder Kaur-sister in law (Nanad). It is also admitted by the prosecution witnesses that Sulakhan Singh brother of Major Singh accused is already married many years back and has issues and was living separate from Major Singh in residence and mess. It is also admitted in the evidence that Davinder Kaur-sister in law (Nanad) of Raj Kaur is married and residing with her husband and children near Patiala and she was married much prior to the

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marriage of Major Singh. As such they have nothing to do with the demand of dowry nor they would be benefited by such demands.

I have considered this contention of the learned counsel for the appellants.

Since there is no specific allegations against Gurdip Singh, father in law, Surjit Kaur- mother in law, Sulakhan Singh-brother-in-law (Jeth) and Davinder Kaur-sister in law with regard to harassment and demand of dowry immediately prior to death of Raj Kaur, as such they cannot be held guilty for the offence under Section 498A, 304B IPC. Prosecution witnesses have not described the exact conduct of father-in-law, mother-in-law, brother in law and sister-in-law on account of which deceased felt tortured and taunted. Prosecution witnesses have merely used word "she was being beaten and tortured". Prior to the incident no complaint of whatsoever nature was got lodged against these persons. When the prosecution witnesses do not describe the exact conduct of the accused then such statements cannot be believed by the Court in cases under Section 498A and 304B IPC. The prosecution has failed to establish the charges beyond reasonable doubt. In the case of Kans Raj Vs. State of Punjab and others, (2000) 5 SCC-207, the Hon'ble Supreme Court has cautioned that in cases where accusations of dowry deaths are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. In the aforesaid case, the Hon'ble Supreme Court has observed that a tendency has developed for roping in

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Learned State counsel has not been able to controvert the above mentioned position as nothing is on record to specifically prove the guilt of the aforesaid four appellants justifying their conviction.

In view of above discussion, I give benefit of doubt to appellants Gurdip Singh-father-in-law, Surjit Kaur- mother-in-law Sulakhan Singh-brother-in-law (Jeth) and Davinder Kaur-sister in law.

However, there is a categoric evidence against Major Singh (husband). He had been giving beatings and torturing the deceased and had raised the demand for Rs.25,000/-, although the same is for getting employment to the post of Secretary. Admittedly, Raj Kaur had died in her in-laws house within seven years of her marriage with Major Singh-appellant. Prosecution case has been fully proved by ocular as well as medical evidence that Raj Kaur had died an unnatural death. Presumption of dowry death can be drawn against the appellant-Major Singh under Section 113B of the Evidence Act. The prosecution has brought sufficient evidence on record to prove that she was subjected to cruelty and harassment by Major Singh-appellant just before her death. The visit of Kapoor Singh PW1 cannot be said as unnatural to enquire about the well being of his daughter. There is a categorical and sufficient evidence to the effect that on 25.05.2000 Major Singh-accused suffered disclosure statement that he had removed the old clothes worn by Raj Kaur and made the dead body to wear new clothes, the old clothes were wrapped in a glazed paper and concealed in a heap of cow-dung cakes which have been recovered at the instance of Major Singh-appellant. This clearly shows the conduct of Major Singh. I do not

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any fault with the conclusion arrived at by the trial Court while convicting Major Singh.

In the result, the appeal is partly allowed. Gurdip Singh-father-in-law, Surjit Kaur- mother in law Sulakhan Singh-brother-in-law (Jeth) and Davinder Kaur-sister-in-law (Nanad) are acquitted of the charge and sentence of Major Singh (husband) is upheld. Appellant Major Singh is stated to be on bail. He is ordered to be taken into custody forthwith to serve the remaining part of sentence.

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(PARAMJEET SINGH)  
JUDGE

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