

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No. 23-SB of 2003
Date of Decision: June 29, 2012

Jaswinder Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. J.S. Chahal, Advocate,
for the appellant.

Mr. K.S. Aulakh, AAG, Punjab.

Paramjeet Singh, J.

This appeal is directed against the judgment of conviction and order of sentence dated 11.12.2002 passed by the learned Additional Sessions Judge (Ad hoc), Faridkot, whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for ten years for the offence punishable under Section 304-B IPC.

Brief facts of the case are that Balwinder Kaur alias Pappu, daughter of the complainant- Harnek Singh was married to Jaswinder Singh (appellant) about 2-1/2 years prior to her death. The complainant had given sufficient dowry to his daughter according to his capacity and means. However, the appellant started giving beatings to his wife Balwinder Kaur after 2-3 months of the marriage and pressed her to bring Fridge and Scooter. The appellant turned her out of his house and threatened that he will not rehabilitate her

till she brings the demanded articles. A Panchayat was convened by Harnek Singh which consisted of the persons from the complainant's village, as well as, the village of the appellant. The appellant did not act on the advice of the panchayat. Another Panchayat was convened where the appellant admitted his fault and promised to keep his wife with due care. As a result of it, Balwinder Kaur was sent with the appellant. After that, Balwinder Kaur visited the parental house twice or thrice and she had also become pregnant. About 15 days prior to the occurrence, she came to her father's house and confided to her father that the appellant was still raising demand of Fridge and Scooter. He also used to rebuke and abuse her. It is alleged in the FIR that the appellant had declared that he would be entitled to these articles when she gave birth to the child and she should return if she would bring all those articles. On 11.08.1992, appellant took his wife along with him to his house in Village Rama. On 13.08.1992, at about 12 Noon, Jinder Singh, younger brother of the appellant, came to the house of the complainant and told him that Balwinder Kaur was ill and she was admitted in the hospital at Bilaspur. On this, complainant became suspicious and went to Bilaspur Hospital along with village Sarpanch and other respectables but she was not found there and then they went to Malti Thapar Hospital, Moga. On reaching in Hospital at Moga, they came to know that she had died. Her dead body was lying in the hospital. Since she was brought dead, she had not been admitted in the hospital. It is alleged in the FIR that the appellant caused death of Balwinder Kaur by inflicting some internal/invisible injuries to her because she had not brought Fridge and Scooter in dowry as per his demand.

Tej Singh, ASI recorded the statement of the complainant Harnek Singh as Ex.PE. On the basis of it, an FIR was registered. The statements of the other witnesses were recorded. After investigation, challan was presented in the Court of Judicial Magistrate First Class, Moga and the learned Judicial Magistrate, Moga committed the case for trial to the learned Sessions Judge, Faridkot. The learned Sessions Judge entrusted the case to the Additional Sessions Judge, Faridkot, who charge-sheeted the accused-appellant under Section 304-B I.P.C. The appellant pleaded not guilty.

At the trial, prosecution examined Harnek Singh – complainant as PW3. His evidence was corroborated by Harchand Singh (PW4) and Jangir Singh (PW9). Dr. Vinod Garg (PW1) was also examined who proved the post mortem examination (Ex.PA) of Balwinder Kaur deceased and inquest report (Ex.PC) and opinion (Ex.PC/1) to the effect that Balwinder Kaur deceased was hit in the abdomen and child could die because of injuries to the uterus. FIR (Ex.PE/1) was proved by PW2 Sarban Singh and another relevant documents were also exhibited on record. ASI Kundan Singh, Investigating Officer was examined as PW8, who conducted the investigation.

After conclusion of the prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded. The appellant pleaded that he never demanded any Fridge and Scooter. On the day of occurrence, his wife had suddenly fallen ill and fell down striking against the leg of the cot and then he immediately, brought her to Bilaspur Hospital from where she was referred to Malti Thapar Hospital, Moga and he then took her to Hospital at Moga. But all

efforts to save her were in vain. Information to her parents was sent. The appellant was afforded opportunity to enter upon his defence. In defence, he examined Sudagar Singh, Sarpanch of his village as DW1.

The learned Trial Court after hearing the learned Additional Public Prosecutor for the State and the learned defence counsel, held the appellant guilty and sentenced him under Section 304-B IPC for 10 years RI. Hence, this appeal.

I have heard learned counsel for the appellant, as well as learned State counsel and perused the record.

Learned counsel for the appellant argued that it is not the case of dowry death. The appellant had never demanded any dowry. He had brought his wife to his house few days before her death. He had referred to the cross examination of Harnek Singh (PW3) and submitted that "*CHHOCHAK*" after the birth of the child, particularly the first child is customary and is prevailing custom in the area. The story for the demand of dowry is false and fabricated.

This contention has vehemently been opposed by the learned State counsel, and he has stated that the appellant had never given up his demand of scooter and fridge. He had always been pressing the deceased to bring these articles and also saying to his father-in-law. He had repeatedly demanded these articles and was even giving beatings to the deceased for fulfilling the demand. The deceased had been telling the same to his father and also persuading the appellant that he was not supposed to raise all these demands. Even pregnancy of the wife could not change his behaviour towards her. The behaviour of the appellant never changed.

I have considered the above referred rival contentions.

From the statement of Harnek Singh (PW3), it is clear that the appellant had been raising demand and the death of Balwinder Kaur took place within 7 years of the marriage. Besides this, the deceased was in a family way and had died only few days before the due date of delivery. According to Dr. Vinod Garg (PW1), deceased Balwinder Kaur has died due to the injury caused to her abdomen resulting in shock and haemorrhage to her. In fact, gravid uterus had been injured, resulting in the death of a male fetus of approximately eight months duration and death of Balwinder Kaur. PW1-Dr. Vinod Garg has specifically stated that the deceased had been hit in the abdomen and child died because of injuries to the uterus. There is no reason to think that the deceased had sustained any injury as a result of fall on a cot, inasmuch as, wooden leg of the cot, hitting her abdomen.

In these circumstances, it can be presumed that Balwinder Kaur died under mysterious circumstances due to the injury caused to her abdomen, resulting in shock and haemorrhage which resulted into death of Balwinder Kaur along with child in womb. The story that the injury has been caused as a result of fall on a cot cannot be believed.

Learned counsel for the appellant further contended that deceased Balwinder Kaur was taken to Hospital at Bilaspur and thereafter, referred to Dr. Malti Thapar Hospital, Moga and the appellant made every effort to save her, but failed. This cannot be treated as mitigating circumstance. The appellant was fully conscious of the fact that deceased Balwinder Kaur was in advance stage of

pregnancy and was not supposed to be harassed and tortured by repeated demands for dowry. The demand was repeated and raised immediately before her death. As such, the appellant cannot be given any benefit.

The contention of the appellant that it is not a dowry death and his alleged demand is only 'chhoochak' which is a common practice, cannot be accepted. In support of this contention, learned counsel for the appellant has placed reliance upon a judgment of Hon'ble Supreme Court of India in **Ashok Kumar vs. State of Haryana, 2010 (3) RCR (Criminal) 900** and a judgment of this Court in **Rajesh Kumar and another vs. State of Punjab, 2009 (2) RCR (Criminal) 483** to contend that the customary gifts do not come under the definition of dowry articles. These authorities are not applicable in the present case because there was no birth of the child uptill now, rather he was repeating the earlier demands of Scooter and Fridge. Moreover, these articles cannot be said to be customary gifts as 'chhoochak'.

There is categorical evidence on record that demand was repeated by the appellant and deceased Balwinder Kaur died immediately after the demand was again raised by the appellant. There is categorical evidence of Harnek Singh (PW3) that appellant had never given up his demand for Scooter and Fridge. He always repeated the same and continued to tell the deceased, as well as, the father-in-law that his daughter had not been telling him about the demand.

In view of the above, the finding recorded by the learned Court below does not call for any interference by this Court as the

learned Court below has properly appreciated the evidence of the prosecution. There is nothing wrong with the impugned judgment and as such, the conviction of the appellant under Section 304-B IPC is upheld.

The appeal is hereby dismissed.

If the appellant is on bail, he be taken into custody for completion of remaining part of sentence.

June 29, 2012
vkd

[Paramjeet Singh]
Judge