

**Maninder Singh Vs. Union Territory**

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**Court :** Punjab and Haryana

**Decided On :** Dec-13-1999

**Reported in :** II(2000)DMC201

**Judge :** T.H.B. Chalapathi, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 498A; [Evidence Act, 1872](#) - Sections 21, 27 and 113B

**Appeal No. :** Crl. Appeal Nos. 339-SB and 374-SB of 1996

**Appellant :** Maninder Singh

**Respondent :** Union Territory

**Advocate for Def. :** R.S. Rai, S.C.

**Advocate for Pet/Ap. :** R.S. Cheema, Sr. Adv. and; J.S. Toor, Adv.

**Disposition :** Appeal allowed

**Judgement :**

T.H.B. Chalapathi, J.

1. These two appeals arise out of the judgment of the learned Additional Sessions Judge, Chandigarh in Session Case No. 23 of 1991 dated 3.5.1996.

2. The 2nd accused is the appellant in Criminal Appeal No. 339-SB of 1996 while the 1st accused is the appellant in Criminal Appeal No. 374-SB of 1996. Both the accused, who are appellants in these two appeals, have been prosecuted for the offence under Sections 364,304-B, 120-B and 210, I.P.C. alongwith one Gurmit Kaur who was declared as a proclaimed offender.

3. The case of the prosecution may be briefly stated as follows :

4. The 1st accused Maninder Singh was married to Kuljit Kaur, daughter of Trilok Singh who is the complainant on 26.9.1990. The 1st accused was working as contractor with one Iqbal Singh at Faizabad and the said Iqbal Inder Singh was an Architect. The 2nd accused Kiran Chopra is the wife of said Iqbal Inder Singh. After the marriage, the daughter of the complainant Kuljit Kaur and the 1st accused started residing at Faizabad in the house of Iqbal Inder Singh. According to the complainant, his daughter used to tell him that her husband Maninder Singh and other member of his family were not happy with her and her husband Maninder Singh was having illicit relations with the 2nd accused Kiran Chopra wife of Iqbal Inder Singh and they were all harassing her on the pretext that she brought insufficient dowry. He further stated that his daughter came to his house in the last of week of March, 1991 and told that she was apprehending danger from Maninder Singh and Kiran Chopra as she over-heard them talking in each other and they wanted to remove her. It is also averred that Gurmit Kaur (proclaimed offender) who is an aunt of 1st accused Maninder

Singh, also started harassing and torturing her and she told her that she would not go back to the matrimonial home. While so, on 2.4.1991, when the complainant Trilok Singh was away from the house, both the accused alongwith Gurmit Kaur reached his house in a car and they took Kuljit Kaur forcibly with them after putting her in the car and his younger daughter Jaswinder Kaur was present in the house. Though Jaswinder Kaur raised hue and cry, nobody paid any heed. It is further averred in the complaint that on Karam Singh, resident of Bank Colony, had also seen Kuljit Kaur and told the complainant about the fact. On the basis of the complaint given by Trilok Singh, the case was registered in F.I.R. No. 51 of 17.4.1991 and the investigation was taken up. Both the accused were arrested on 20.4.1991 and during the course of investigation, it was revealed that Kuljit Kaur was killed and she was cremated in order to show that her death was natural. After completion of the investigation, a charge-sheet was filed against the accused. Gurmit Kaur could not be arrested as she was absconding.

5. On the basis of the material placed before him, the learned Magistrate committed the case to the Court of Session. Meanwhile, an application for transfer of the case from Ludhiana to Chandigarh was made and the Apex Court ordered on 23.3.1992 transferring the case from Ludhiana to Chandigarh and the trial of the case was made over to the learned Additional Sessions Judge, Chandigarh who framed the charges against the accused for the offences under Sections 120-B, 364, 302, 201, 304-B and 498-A, I.P.C. and the accused pleaded not guilty to the charges.

6. In order to prove the guilt of the accused, the prosecution examined 11 witnesses and marked documents. After closure of the evidence for the prosecution, the accused were examined under Section 313, Cr.P.C. In their examination the accused stated that the case has been foisted against them and they are innocent. In defence, the accused examined six witnesses and marked certain documents.

7. On a consideration of the evidence of record, the learned Additional Sessions Judge, Chandigarh convicted accused 1 and 2 for the offences under Section 304-B, 498-A, 364 and 201, I.P.C. and sentenced Maninder Singh to undergo rigorous imprisonment for a period of 10 years for the offence under Section 304-B, I.P.C. to undergo rigorous imprisonment for a period of 3 years and pay a fine of Rs. 1,000/- for the offence under Section 498-A, I.P.C., to undergo rigorous imprisonment for a period of four years and pay a fine of Rs. 1,000/- for the offence under Section 364, I.P.C. and to undergo rigorous imprisonment for a period of 3 years and pay a fine of Rs. 1,000/- for the offence under Section 201, I.P.C. while the 2nd accused Kiran Chopra was sentenced to undergo rigorous imprisonment for a period of seven years for the offence under Section 304, I.P.C., rigorous imprisonment for a period of three years and pay a fine of Rs. 1,000/- for the offence under Section 498-A, I.P.C. and rigorous imprisonment for a period of four years and pay a fine of Rs. 1,000/- for the offence under Section 364, I.P.C.

8. Aggrieved by the said convictions and sentences imposed by the learned Additional Sessions Judge, accused Nos. 1 and 2 preferred these two appeals.

9. There is no dispute of the fact that Kuljit Kaur daughter of Trilok Singh was married to Maninder Singh, the 1st accused. The learned Additional Sessions Judge acquitted both the accused for the offence under Section 302, I.P.C. observing that concrete and convincing evidence is lacking so far as the charge of committing of murder of Kuljit Kaur by the accused is concerned. He further observed that the prosecution did not lead any positive or substantial evidence which could have established that Kuljit Kaur was murdered by the accused persons with the requisite intention to kill her. There is no appeal by the State in regard to the acquittal of the accused for the offence under Section 302, I.P.C.

10. Both the accused were convicted for the offence under Section 302-B, I.P.C. Admittedly, the marriage between Maninder Singh (A-I) and Kuljeet Kaur took place on 26.9.1990. According to PW-1, the father of Kuljeet Kaur, his daughter Kuljeet Kaur came back 2/3 days after her marriage and she told him that the husband and his family members were not happy with her as she had not been given adequate dowry. Thereafter, his daughter went to Faizabad. It is also in his evidence that in the last week of April, 1991, his

daughter Kuljeet Kaur again came back to his house and expressed her unwillingness to go back to the matrimonial home on the ground that both the accused are having illicit relations and that they are torturing her for not bringing sufficient dowry. Here it may be mentioned that there is no acceptable evidence to show that the 2nd accused Mrs. Kiran Chopra had any relations with Maninder Singh. The prosecution failed to place any evidence on record to show how the second accused was related to the 1st accused. There is also no acceptable evidence to show that the 1st accused and the 2nd accused had illicit relations with each other. Even according to PW-4, his son-in-law, the 1st accused was a Contractor and he was working with the husband of the 2nd accused and he and his wife Kuljeet Kaur, deceased, stayed for some time in the house of Iqbal Inder Singh, the husband of the 2nd accused. They left the house and starting living separately. In the absence of any positive and concrete evidence to show that the 2nd accused was in any way related to the 1st accused or having any illicit relations with the 1st accused, it cannot be stated that she was interested or responsible for harassing the daughter of the complainant for not bringing sufficient dowry. According to PW-4, his daughter was kidnapped by the accused-appellants on 2.4.1991. His evidence shows that in his absence on that day, both the accused alongwith Gurmit Kaur came to his house in the village and took away Kuljeet Kaur forcibly in a car. According to him, his younger daughter was a witness to the fact of taking away Kuljeet Kaur by the accused forcibly. The younger daughter of the complainant was examined as PW-6. According to her on 2.4.1991 at about noon, when she and Kuljeet Kaur were alone in the house, the accused and Gurmit kaur came to their village in a car and Maninder Singh (A-1) came inside the house followed by Kiran Chopra (A-2) and Gurmit Kaur. Maninder Singh then caught her and Kiran Chopra pushed her (PW-6) aside and in the meantime Kuljeet Kaur raised an alarm, but nobody came there since their house was away from the village Abadi and all the three accused put Kuljeet Kaur forcibly in the car and drove away and after the abduction of her sister they came to know about 5/6 days after the occurrence that she had died. In the cross-examination, she admitted that she had not seen Kiran Chopra prior to the occurrence. It is also in her evidence that she did not reveal this incident to anybody in the village till her father came to the house. It is also in her evidence that her uncle came to the house before the arrival of her father. First she gave the name of her uncle Iqbal Singh and later she changed and stated that his name was Karam Singh. It is in the evidence of PW-4 and PW-6 that PW-4 came to know about the incident on 2.4.1991, but PW-4 had not given the report to the police till 17.4.1991. No reasonable and acceptable explanation was offered by PW-4 for the delay in reporting the matter to the police. If really his daughter came from her matrimonial home to her parental house in the last week of March, 1991 and when she revealed to PW-4 that she was being harassed by her husband and others for bringing- sufficient dowry and further told that she overheard the accused talking to each other that they would finish her, the natural, conduct of PW-4 would be to lodge a report with the police itself on 2.4.1991 when she was allegedly taken away by the accused. It is not as though PW-4 is an illiterate person or a rustic villager. He is a retired Inspector of Police.

11. The omission on the part of PW-4 in not giving the report to the police immediately after he came to know that his daughter was forcibly taken away by his son-in-law and two other women and that when his daughter told him that his son-in-law is having illicit relations with the second accused, shows that he is concealing the truth; otherwise in the normal course he would have reported the matter to the police. This omission or failure on the part of PW-4 in not giving the report to the police immediately gives rise to any amount of doubt or suspicion about the incident or kidnapping or forcibly taking away of Kuljeet Kaur by the accused and Gurmit Kaur. The prosecution also placed reliance on the evidence of PW-5 to show that he saw Kuljeet Kaur being taken away by the accused. According to his evidence on 2.4.1991 he was returning to his village from Habowal after making purchases and when he was taking a turn at about 2.15 p.m. he saw a car coming from the Baloke road and since there was rush in the bazar, it was slowed down and Maninder Singh was sitting by the side of the driver and Kuljeet Kaur was weeping and he tried to contact Kuljeet Kaur by stopping the car to find out as to what the matter was, but it sped away and he went back to his house. He further deposed that after some time he went to the house of the complainant where only Jaswinder Kaur was sitting on the rear seat flanked by two other ladies on the either side and Kuljeet Kaur was present. After some time Tirlok Singh came and he told about everything and told him that Kuljeet Kaur complained to him that Maninder Singh and his family members were maltreating her and they were not happy with the dowry given

to her. If this versions of PW-5 is to be believed, then it is clear that the relations between the daughter of PW-4 and his son-in-law (A-1) were not cordial and when Tirlok Singh came to know that his daughter was taken away forcibly by his son-in-law and when the deceased complained to him that her husband was having illicit relations with Kiran Chopra (A-2) the natural conduct of PW-4 would be to report the matter immediately to the police for which he failed. But strangely, PW-4 is a retired Inspector of Police and did not give any report to the police. This conduct of PW-4 as already observed, does not inspire confidence. Further, the evidence of PW-5 clearly shows that he was set up as a witness. He has not disclosed this incident to any one. If he really thought that Kuljeet Kaur was being taken away forcibly, nothing prevented him to tell this incident to any other person. He also did not give any advice/suggestion to PW-4 to lodge a complaint with the police. He did not even disclose the incident to any other person in the village.

12. After careful reading of evidence of PW-4, PW-5 and PW-6, I am unable to place reliance on their evidence in regard to the incident of kidnapping. Further, the prosecution also failed to place on record any evidence to show that the deceased came to the house of PW-4 and started living with him in the last week of March, 1991 and she was kidnapped from the house of her father forcibly by the accused on 2.4.1991. I am, therefore, of the opinion that both the accused are entitled to be acquitted of the charge under Section 364, I.P.C. The conviction and sentence imposed by the learned Additional Sessions Judge under Section 364, I.P.C. are, therefore, set aside.

13. The accused-appellants have also been convicted for offence under Section 498-A, I.P.C. by the learned Additional Sessions Judge. There is no acceptable evidence to show that the accused harassed or tortured the deceased for bringing insufficient dowry. When the daughter of PW-4 came back to the house of her father from the matrimonial home on the ground that she was being ill-treated by her husband and other members of her husband's family and desired not to go back to her matrimonial home, there would have been a complaint either by her or by PW-4. No such thing happened. Further, no efforts to reconcile or mediation took place. For the purpose of proving harassment, the prosecution examined PW-7A Bhupinder Singh who is sister's husband of the deceased. According to him, Kuljeet Kaur met him 3/4 days after her marriage at his residence and she started weeping and told him that her father-in-law, mother-in-law and her husband Maninder Singh and his brother were harassing her for having brought insufficient dowry and asking her to bring more money from her parents and Maninder Singh was also with her at that time and then he talked to Maninder Singh and his family members and asked them to behave properly. He further stated that the deceased came to him 10 days, thereafter, alone and state that the attitude of her husband towards her was not good and she did not want to go with him as she feared that she would be killed and thereafter the deceased went to Faizabad with her husband. But this has not been stated by him in his statement recorded under 161, Cr.P.C. which is marked as Exhibit D-D. In his cross-examination, he specifically stated that he had no links with the deceased Kuljeet Kaur after she left for Faizabad. Thus, there is no evidence to show that the said cruelty was meted out by the deceased immediately after her marriage which took place in September, 1990. His evidence does not show that any demand of dowry or torturing or ill-treatment was meted out by the deceased immediately prior to her death. I am unable to place any reliance on the testimony of PW-7A Bhupinder Singh. The prosecution failed to adduce any concrete and cogent evidence in regard to the harassment or cruelty said to have been meted out by the deceased at the hands of her husband or any member of his family. The evidence on record clearly shows that she left for Faizabad with her husband and had been staying there with him since her marriage. In the absence of any cogent and acceptable evidence in regard to the alleged harassment and cruel treatment, I am of the opinion that the accused are entitled to be acquitted for the offence under Section 498-A, I.P.C.

14. The accused-appellants were also convicted by the learned Additional Sessions Judge for the offence under Section 304-B, I.P.C. According to the prosecution, the deceased died on 6.4.1991, but according to the accused she died with a natural death on 7.4.1991. As already observed, the learned Additional Sessions Judge acquitted the accused for the offence under Section 302, I.P.C., but convicted the accused for the offence under Section 304-B, I.P.C. There is no dispute of the fact that the deceased died within 7 months

of her marriage. The learned Public Prosecutor contended that presumption under Section 113-B of the Evidence Act has to be raised that the death of the deceased was dowry death. It is useful to extract Section 113-B of the Evidence Act which reads as follows :

'When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such persons to cruelty or harassment for, or in connection with any demand for dowry, the Court shall presume that such persons had caused the dowry death.'

15. To attract Section 113-B of the Evidence Act, it is necessary for the prosecution to prove that the woman who was caused to death was subjected to cruelty soon before her death and if the harassment or cruelty is made long before her death, the presumption will not be available. Therefore, where in a case of dowry death, if it is proved that the woman was subjected to cruelty immediately before her death, the presumption that the person who had so subjected her to such cruelty had caused her death. In this context, it is useful to refer to the decision of the Apex Court in *State v. Iqbal Singh*, AIR 1991 S.C. 1532= II (1991) DMC1 (SC). As already held, there is no evidence that the deceased was subjected to cruelty immediately prior to her death. Therefore, the presumption under Section 113-B of the Evidence Act cannot be raised. To attract Section 304-B, I.P.C. the essential ingredients are : (i) the death of a woman should be caused by any burns or bodily injury or occurs otherwise than under normal circumstances; (ii) such death should occur within 7 years of her marriage; (iii) the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; (iv) cruelty or harassment should be in connection with the demand of dowry as held by the Supreme Court in *Shanti v. State*, AIR 1991 S.C. 1226=I (1991) DMC 187 (SC). It has also been held in *Akula Ravinder v. State*, 1991 S.C.C. CrI. 990=II (1991) DMC 537 (SC) that in order to prove dowry death, death must occur otherwise than under normal circumstances and this fact must be established. When the woman was not subjected to cruelty or harassment by her husband or relatives of her husband, it does not amount to dowry death falling under Section 304-B, I.P.C.

16. Further the evidence on record does not show that the death of the deceased was caused otherwise than under normal circumstances. In order to prove that the death of the victim was under unnatural circumstances, the prosecution examined PW-7 Iqbal Singh to whom the accused are stated to have made an extra-judicial confession. Iqbal Singh PW7 deposed that Maninder Singh (A-1) told him that he had murdered his wife Kuljeet Kaur and since he served in Police Force he should help him and he also told him that he had illicit relations with Kiran Chopra. According to him, Maninder Singh (A-1) further told him that Gurmit Kaur and Kiran Chopra (A-2) caught hold of Kuljeet Kaur by her arms and then he strangled her by putting the Chunnii around her neck and he also told him that they had done all this on 6.4.1991 and then she was cremated on 7.4.1991 in the morning at about 8/9 a.m. He further stated that thereafter he took Maninder Singh and Kiran Chopra accused to Ludhiana and met Subhash Batra and asked them to narrate everything to him which they did and thereafter the accused were handed over to the police. In the cross-examination, it has been brought out that he was not related to Maninder Singh and Kiran Chopra and that he never knew Kiran Chopra at all where she was married and where she was living. It is also clear from his evidence that he does not in any way related to either the accused or the deceased or PW-4, Subash Batra to whom the accused are alleged to have made a confessional statement was not examined. Neither PW-7 was residing at Faizabad nor he is the resident of the village of PW-4. No explanation by the prosecution was forthcoming why the accused went to PW-7 and made a confessional statement. The evidence of PW-7 appears to be unnatural. After a careful scrutiny of the evidence of PW-7, I am of the opinion that no reliance can be placed on his testimony. Further, the so-called confessional statement is said to have been made after PW-4 gave a complaint to the police on 17.4.1991.

17. Further, the evidence adduced by the accused in defence clearly goes to show that the deceased met a natural death. According to DW-1 who is Senior Medical Officer in District Hospital, Faizabad, he examined Kuljeet Kaur deceased on 7.4.1991 who was suffering from ectopic gestation and he advised immediate hospitalization of Kuljeet Kaur. Further, according to him, the ectopic gestation was due to abnormality. He

had also issued a certificate exhibited as DW1/A. The evidence of DW-2 shows that the Bhog ceremony for the death of Kuljeet Kaur took place on 12.4.1991. He also issued a certificate Exhibit DW-2/A showing that Akhandpath ceremony had been held after the death of Kuljeet Kaur. The evidence of DW-3 clearly shows that a telegram was issued to PW-4 on 7.4.1991 intimating the death of the deceased to him. Exhibit D-2 is the telegram which shows that an intimation was given by accused No. 1 that Kuljeet Kaur expired and the telegram was given at 10.40 p.m. on 7.4.1991. Apart from that, the accused also produced Exhibit DW-5/1 to show that the tickets have been purchased from Faizabad to Ludhiana on 9.4.1991. DW-5 is a Railway Booking Clerk who produced Exhibits DW-5/1 and DW-5/2. Thus, the evidence produced by the accused clearly shows that the deceased died because of the ailment on 7.4.1991 and intimation of her death was given to the parents of the deceased on the same very day. The evidence of DW-6 shows that the 1st accused Maninder Singh sworn an affidavit on 2.4.1991 at Faizabad. Therefore, the case of the prosecution that A-I came to the house of PW-4 on 2.4.1991 is falsified by the evidence of DW-4/A and DW-6/1. Thus, it is clear that the accused produced evidence to show that they did not come to the village on 2.4.1991 and they had not forcibly taken away the deceased from the house of PW-4 and there is also evidence to show that the deceased died on 7.4.1991 due to an ailment.

18. In this view of the matter, I am of the opinion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt.

19. In view of my foregoing discussion, I am of the opinion that the accused are entitled to be acquitted of the charges framed against them.

20. I, accordingly, allow both the appeals, the conviction and sentences imposed on the accused-appellants by the learned Additional Sessions Judge, Chandigarh are hereby set aside and they are acquitted of the charges framed against them. The 1st accused, who is appellant in Criminal Appeal No. 374-SB of 1996 is in jail. He is directed to be released forthwith if not required to be detained in any other case. The bail bonds of the 2nd accused Kiran Chopra, who is appellant in Criminal Appeal No. 339-SB of 1996, stand cancelled.

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