



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

104

CRA-D-813-DB-2004
Date of Decision: 01.09.2025

VIJAY KUMAR AND OTHERS

... Appellants

VERSUS

THE STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.
HON'BLE MR. JUSTICE H.S. GREWAL.

Present: Mr. Vinod Ghai, Sr. Advocate with
Ms. Kashish Sahni and Mr. Arnav Ghai,
Advocates for the appellants.

Mr. Amit Rana, Sr. DAG, Punjab.

H.S. GREWAL, J.

This appeal has been filed by the appellants against the judgment of conviction and order of sentence dated 15.09.2004 passed by the then Addl. Sessions Judge, Moga, vide which the appellants have been convicted in case FIR No.44 dated 02.09.1999, under Sections 302, 149 and 304-B of IPC. Police Station Badhni Kalan, District Moga and have been sentenced as under:

1. Accused Vijay Kumar and Bhim Sain are sentenced under Section 302 IPC and accused Bal Kishan, Kamala Jain and Raj Bala are sentenced under Section 302 read with Section 149 IPC to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default to pay fine, to undergo further rigorous imprisonment for six months each.

2. All the five accused are sentenced under Section 304-B of IPC to undergo rigorous imprisonment for seven years.

The case of the prosecution is that complainant Naresh Pal got recorded his statement before ASI Gurdev Singh to the effect that he belongs to village Mullanpur Dakha. He has nine siblings i.e. two brothers and seven sisters. Six of them were married and one was unmarried. He and his brother Ramesh Kumar were running separate shops at Mullanpur Dakha; whereas their younger brother Jagdish Kumar was running grocery shop in Ludhina. Their sister Kavita Rani was married to Vijay Kumar son of Ram Kumar, resident of Badhni Kalan about four years ago. At the time of her marriage, her in-laws had raised demand of huge dowry, which was fulfilled beyond their (complainant's) capacity. The in-laws of Kavita Rani raised a demand of petti-bed and one soda machine, which was also fulfilled, but despite the same, all accused persons started beating Kavita Rani and also started raising demand of cash amount on the pretext that they had to run a shop. Kavita Rani went on bearing all this and usually she used to tell her parents about this. But every time, her parents made her understand and sent her to her matrimonial home. Even thereafter, Kavita Rani was beaten by the appellants, and she was sent to her parental home with a further demand of bringing Rs.20,000/-. On this, Vijay Kumar, complainant assured her that he would arrange the money within few days and pay the same to her in-laws personally by visiting Badhni Kalan. After some time, he visited Badhni Kalan and paid an amount of Rs.20,000/- to Vijay Kumar in the presence of his family members. But few days thereafter, Kavita Rani told the complainant on telephone that her husband and all his family members were harassing and beating her and were asking her to bring Rs.1,00,000/-. On

01.09.1999, complainant Naresh Pal and his brother Rajinder Kumar came to Badhni Kalan and in their presence itself, accused persons threatened Kavita Rani by saying that she would be allowed to stay in matrimonial home only if she would bring Rs.1,00,000/-; whereupon the complainant and his brother told the accused persons that they are poor persons and cannot arrange such a huge amount. By saying so, they came out of the house. At about 09.00/09.30 P.M., they went again to the house of Kavita's in-laws and saw that Kavita Rani's mother-in-law Kamala Jain and sister-in-law Raj Bala had caught hold of her by her arms, her Dewar, Bal Kishan had caught hold of her by hair, Vijay Kumar and his elder brother Bhim Sain had put electric wire around her neck and were pulling it from both the sides. The complainant and his brother raised hue and cry, but nobody came to rescue her. Vijay Kumar and his brother left Kavita Rani and ran after them in order to assault them. By that time, Kavita Rani had fallen on the ground. The complainant and his brother came back to Mullanpur Dakha to tell their family about the incident. Thereafter, in the morning of 02.09.1999, they alongwith their relatives and panchayat went to the house of in-laws of Kavita Rani but they saw that dead body of Kavita Rani was lying in the courtyard of the house. He further submits that all the accused persons in connivance with each other have killed her sister by strangulation. He thus prayed that legal action be taken against the accused persons.

Based on the above complaint, FIR was registered and investigation swung into motion. During investigation, appellant Vijay Kumar was found guilty and remaining appellants were found innocent. After completion of investigation, challan was presented only against appellant Vijay Kumar.

Firstly, on 08.12.1999, charge was framed against appellant Vijay Kumar under various offences; after summoning of remaining appellants as additional accused under Section 319 of Cr.P.C., charge was amended and all the appellants were charge-sheeted for commission of offences punishable under Sections 302/304-B/306 read with Section 34 of IPC. However, once again, the charge came to be amended on 30.05.2002 where the offence punishable under Section 306 of IPC was withdrawn. However, a defect came to be noticed in the wording of charge sheet dated 30.05.2002 and once again charge was amended and all the appellants were again charge-sheeted on 30.08.2004 for commission of offences punishable under Sections 302 IPC, 302 read with Section 149 IPC and Section 304-B IPC, to which the appellants pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW1- Dr. S.P. Bansal, SMO. Incharge Civil Hospital Moga, PW2- Dr. Naresh Kumar, Medical Officer, Civil Hospital Moga who had conducted postmortem examination on the dead body of Kavita Rani, PW3- ASI Gurcharan Singh, SHO Police Station Badhni Kalan at the relevant time, PW4- HC Gurdarshan Singh, MHC of Police Station Badhni Kalan at the relevant time, PW5- Naresh Pal complainant-cum-eye witness of the occurrence, PW6- Rajinder Kumar another eye witness of the occurrence, PW7- Gursewak Singh, Draftsman, PW8- C. Resham Singh, PW9- C. Jagjit Singh, PW10- ASI Gurdev Singh, the Investigating Officer. Prosecutors who had conducted the trial from time to time had given up Dr. V.J.S. Dhillon, Dr. Kulwinder Kaur, Ramesh Kumar, Amar Nath, Subhash Chadner, PHG Pohla Singh and DSP Laskar Singh being unnecessary. Documents led in prosecution evidence are Ex. PA an application moved by

Investigating Officer to SMO Civil Hospital, Moga, Ex.PA/1 endorsement thereon for assigning task to Dr. V.J.S. Dhillon, Dr. (Mrs.) Kulwinder Kaur and Dr. Naresh Aggarwal which was desired in the application, Ex. PB copy of postmortem report relating to Kavita Rani, Ex.PB/1 pictorial diagrams thereon. Ex.PC affidavit of MHG Gurdarshan Singh at Police Station Badhni Kalan at the relevant time, Ex.PD statement of Naresh Pal complainant got recorded before ASI Gurdev Singh, the Investigating Officer, Ex.PD/1 endorsement of police action thereon, Ex.PD/2 copy of FIR, Ex.PE inquest report, Ex.PF recovery memo of electric wire, Ex.PG scaled site plan of place of occurrence, Ex.PH affidavit of C. Rasham Singh, Ex.PJ affidavit of C. Jagjit Singh, Ex.PK rough site plan of place of occurrence and Ex.PL recovery memo regarding clothes and ornaments worn on the person of Kavita Rani- deceased.

After closure of prosecution evidence, statements of the appellants under Section 313 of Cr.P.C. were recorded wherein all evidences and incriminating materials were put to them. They denied the version of prosecution as well as evidence led against them. They, accordingly, pleaded their innocence. Accused-appellant Vijay Kumar, in his statement under Section 313 of Cr.P.C, stated that he and his wife were residing separately from the remaining accused-appellants and also they had separate kitchen. They never demanded any dowry since they were themselves financially sound and whereas Kavita Rani belonged to a poor family. She was suffering from various ailments for which she had been getting treatment from various doctors. She gave birth to a dead child in the nursing home of Dr. Rani Bansal at Moga, where she remained admitted from 21.01.1998 to 22.02.1998. Thereafter, a lump was developed in her chest, for which she was being treated by Dr. Rani

Bansal. He further stated that in the month of August 1999, she got complications due to insertion of Copper-T, for which she got treatment from Civil Hospital, Moga. He further stated that upon their application, the case was reinvestigated by DSP Laskar Singh, who found his co-accused as innocent and the story of demand of dowry and cruelty to be false. DSP Laskar Singh also found that the deceased was suffering from distresses and out of frustration, she had committed suicide by hanging herself.

In order to rebut the prosecution case, the appellants examined Dr. Sadhu Ram Mittal as DW1, Dr. Rani Bansal as DW2, Dr. Suman Gupta as DW3 and Dr. Paramjit Singh as DW4. The documents Ex.PX- certificate of a private Nursing Home, Ex.DA- copy of outdoor ticket etc., Ex.DB- another certificate of Private Nursing Home and scan application, Ex.DC- prescription slip of medicines for deceased Kavita Rani, Ex.DD- a certificate of Private Nursing Home issued under the hand of Dr. Rani Bansal, Ex.DE, Ex.DF and Ex.DG- extracts from register of outdoor patients, Ex.DH- copy of enquiry report given by DSP Kuldeep Singh, Special Investigation Cell, Crime Wing, Punjab, Chandigarh dated 27.03.2000 and Ex.DH/1- a prescription slip were also produced by the appellants in their defence evidence.

After considering and appreciating the evidences led and documents produced on record by both sides, the learned trial Court found the appellants as guilty and passed the impugned judgment of conviction and order of sentence dated 15.09.2004, convicting and sentencing the appellants in the manner as stated above. The said impugned judgment is under challenge herein before us.

At the outset, it would be apposite to mention herein that the appellants Bhim Sain and Kamala Jain had died during pendency of the instant appeal and as such, the appeal stands abated qua them.

Learned Senior Counsel for the appellants has argued that the trial Court has erred in appreciating the evidence of prosecution and not appreciating the cogent and convincing defence evidence led by and on behalf of the appellants. It also overlooked the inquiry report of DSP, which had found the version of prosecution qua demand of dowry and harassment as false. It also overlooked the medical evidence led in defence, which indicates that the deceased was already suffering from various diseases and had been undergoing medical treatment since long. It was the case of defence that due to severe ailments and their long medical treatment, the deceased was frustrated, due to which she committed suicide. The version of defence was duly justified and corroborated by the depositions of various doctors, who had treated the deceased, but the same was also not appreciated and overlooked by the trial Court. He further argued that the depositions of complainant as PW5 and his brother as PW6 are not creditworthy since their alleged conduct was suspicious and not admissible. Hence, the impugned judgment passed by the trial Court is based on surmises and conjecture and suffers from non-appreciation of settled propositions of law. Therefore, the same is liable to be set aside and the appellants deserve to be acquitted of the charges framed against them.

On the other hand, learned State Counsel opposed the contentions raised by learned Senior Counsel for the appellants and vehemently argued that the judgment in question is well reasoned, justified and based on correct appreciation of evidence, law and facts. There is no infirmity, illegality or

perversity in the same. The defence could not cause even a single dent on the well-proven case of the prosecution, which is otherwise supported and corroborated by the medical evidence and the depositions of the eye witnesses of the occurrence. The appellants have rightly been convicted and sentenced by the trial Court. Hence, the impugned judgment is liable to be upheld and the appeal deserves dismissal.

We have heard learned counsel for the respective parties and have gone through the evidence, documents and other material available on record with their able assistance.

The main contention of the learned Sr. Counsel for the appellants is that it was a clear-cut case of suicide and the entire medical evidence also makes out a case of suicide and as such, the appellants are innocent, as no case of abetment for suicide has been proved by the prosecution. He refers to the statement of PW2 Dr. Naresh Kumar, who was a member of the Board of Doctors, who had conducted postmortem on the dead body of Kavita Rani. He observed the following in the postmortem report: -

“Regiour mortis was present in all the four limbs. Post mortem staining was present on the back. Body was wearing salwar, kameej, brazier, yellow metalled ear-rings and koka in the ears of both the sides. Nose ring, one panjebhan on both the ankles, chutkian on both the small toes. Froth was present in the nostrils. Sign of tickling saliva was present on the left side of the mouth in the dry form, pupils were dilated, teeth were clenched, tongue in between the teeth was bitten.

Ligature mark 0.5 to 0.75 cm wide was present on the left side of neck running from front of the neck, going obliquely upward and backward upto the middle of the neck on the back side. The position of the ligature mark about 7 to 8 cms, below the

angle of mandible was bruised dark brown in colour. The ligature mark was present above the thyroid cartilage. Three small abrasions were present at the ligature mark. On dissection of ligature mark, tissue under it was dry and white. Underlying muscles were normal. On dissection of posterior side of neck, there was dislocation of upper cervical vertebrae C2 to C3.

On opening cranial cavity, brain membranes were congested. No bone injury was seen on skull region.

1. Abrasion 1 X 1¼ cms on front of lower leg just above the medial malleolus.”

In the statement of PW2, it was specifically stated that the Board of Doctors had opined that cause of death was asphyxia as a result of hanging, which was sufficient to cause death in ordinary course of nature. The time lapse between injury and death was stated to be almost immediate and between death and postmortem was within 24 hours. Even after examining the statements of complainant Naresh Pal PW5 and Rajinder Kumar PW6, it is evident that they have specifically deposed that they had seen the appellants-accused persons committing murder of Kavita Rani. They have described that Kamala Jain and Raj Bala were holding Kavita Rani from her arms; and Bhim Sain and Vijay Kumar were strangulating her with the help of an electric wire and Bal Kishan had caught hold of Kavita Rani by her hair.

The conduct of both Naresh Pal and Rajinder Kumar (PW5 and PW6 respectively) is suspicious since they made no attempt to save their sister from the hands of appellants. Moreover, they stated that at about 08:00/09:00 P.M., they saw the appellants strangulating their sister. Since the appellants threatened them and Bhim Sain raised a *lalkara* that they should not be spared and by saying so, the appellants ran towards them (PW5 and PW6) after leaving

Kavita Rani, who had fallen on the ground. On this, they ran from there to save their lives and came back to Mullanpur Dakha and collected their relatives and member of their *Biradari*. They told them about the incident and on the next morning at about 08:30 A.M., they all went back to the matrimonial house of Kavita Rani at village Badhni Kalan, where they saw the dead body of Kavita Rani lying in the courtyard. Therefore, it is highly suspicious that even after witnessing the occurrence they reached back to Mullanpur Dakha and told everybody about the incident and despite the same, they did not come back immediately; rather they waited till next morning and then went to village Badhni Kalan and noticed that the dead body of Kavita Rani was lying on the floor. This itself puts doubt on their presence at the alleged time of occurrence. It is evident that both these witnesses are planted as firstly their presence is unnatural and secondly their conduct is highly improbable.

Now coming to the medical evidence, which points out to the death being caused by hanging and not by strangulation. Since the ligature mark 0.5 to 0.75 cm wide was present on the left side of back running from front of neck and going obliquely upwards and backwards upto the middle of neck on the back side and the ligature mark was also present above the thyroid cartilage. Apparently and undisputedly, the said injury could only be caused by hanging and not by strangulating, as has been opined by the Board of Doctors also.

In light of the above, we find that in the case in hand, the death of Kavita Rani-deceased was caused by hanging and not in the manner as described by complainant Naresh Pal (PW5) and his brother Rajinder Kumar (PW6). Therefore, it is much likely that it was a case of suicide committed by

the deceased. On the other hand, the prosecution has not led any cogent and convincing evidence to make out a case for abetment of suicide.

Therefore, in light of the above, we hold that the impugned judgment of conviction and order of sentence dated 15.09.2004 passed by the then Additional Sessions Judge, Moga suffer from illegality and perversity and thus the same are not sustainable in the eyes of law. Hence, we set aside the same and the appellants Vijay Kumar, Bal Kishan and Raj Bala are hereby acquitted of the charges framed against them. Their bail/surety bonds, if any, also stand discharged.

LCR be sent back to the quarter concerned after necessary compliance.

Appeal stands allowed accordingly.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

(MANJARI NEHRU KAUL)
JUDGE

(H.S. GREWAL)
JUDGE

SEPT. 01, 2025.

Rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No