

Kailash Kaur vs State Of Punjab on 28 April, 1987

Equivalent citations: 1987 AIR 1368, 1987 SCR (2)1221, AIR 1987 SUPREME COURT 1368, 1987 (2) SCC 621, 1987 APLJ(CRI) 184, 1987 CALCRILR 149, 1987 (1) IJR (SC) 673, 1987 (2) UJ (SC) 223, 1987 (2) HINDULR 167, (1987) IJR 281 (SC), (1987) 12 HINDULR 167, (1987) 2 SCJ 516, (1987) 2 CRIMES 418, (1987) PAT LJR 45, (1987) 2 JT 278 (SC)

Author: V. Balakrishna Eradi

Bench: V. Balakrishna Eradi, A.P. Sen

PETITIONER:

KAILASH KAUR

Vs.

RESPONDENT:

STATE OF PUNJAB

DATE OF JUDGMENT 28/04/1987

BENCH:

ERADI, V. BALAKRISHNA (J)

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SEN, A.P. (J)

CITATION:

1987 AIR 1368	1987 SCR (2)1221
1987 SCC (2) 631	JT 1987 (2) 278
1987 SCALE (1)1172	

ACT:

Indian Penal Code, 1860: s. 302--Bride Burning--Gruesome murder of young wife--Barbaric act of pouring kerosene oil and setting her on fire--Duty of the Court to award maximum penalty.

Criminal Dial.

Dowry death--Necessity to award maximum punishment.

HEADNOTE:

The prosecution alleged that on the evening of May 30, 1974 the appellant's daughter caught hold of the deceased, and the appellant poured kerosene oil on her and set her on fire. On hearing deceased's screams the neighbours rushed to

the house and extinguished the flames. Thereafter, she was taken to the hospital where on the basis of questions put by the doctor (P.W. 2), Head Constable (P.W. 7) recorded her statement. She expired on June 1, 1974. It was further alleged that the husband and his parents were unhappy about the quantum of dowry brought by the deceased and she was, therefore being subjected to severe harassment and maltreatment. In a letter written by the deceased to her father she had set out the details of the ill treatment meted to her and expressed grave apprehension that her life was in imminent danger.

The trial court convicted the appellant and her daughter of the offence under s. 302 I.P.C. acting on the dying declaration made by the deceased, the letter written by her to her father and his evidence as to the demands for dowry and the torture inflicted on his daughter. The husband was given benefit of doubt and acquitted.

The High Court confirmed the conviction of the appellant but acquitted the daughter giving her benefit of doubt. Dismissing the appeal, the Court,

HELD: 1.1. The conviction of the appellant by the High Court was fully justified. The dying declaration made by the deceased wherein

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she has given a clear and vivid account of the pouring of kerosene oil over her body and being set on fire by the appellant, has the ring of truth. The testimony of the doctor (P.W. 2) and the Head Constable (P.W. 7) clearly establishes that she was in a fit condition to make the statement. There was, therefore, no reason whatever not to act upon it. [1224D; G]

1.2. In addition, there was also clear circumstantial evidence furnished by the letter written by the deceased to her father and the testimony of the father regarding the demands for dowry and the harassment and torture inflicted on the deceased as part of the endeavour to extract more dowry. [1224F-G]

2. Whenever a case of gruesome murder of a young wife by the barbaric process of pouring kerosene oil over the body and setting her on fire as the culmination of a long process of physical and mental harassment for extraction of more dowry comes before the court and the offence is brought home to the accused beyond reasonable doubt, it is the duty of the court to deal with the case in the most severe and strict manner and award the maximum penalty prescribed by the law in order that it may operate as a deterrent to other persons from committing such anti-social crimes. [1222H; 1223A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 221 of 1978.

From the Judgment and Order dated 30.3.1978 of the Punjab and Haryana High Court in Criminal Appeal No. 252 of 1975.

A.N. Mulla, R.L. Kohli, Harjinder Singh and R.C. Kohli for the Appellants.

R.S. Sodhi for the Respondent.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. This is yet another unfortunate instance of gruesome murder of a young wife by the barbaric process of pouring kerosene oil over the body and setting her on fire as the culmination of a long process of physical and mental harassment for extraction of more dowry. Whenever such cases come before the Court and the offence is brought home to the accused beyond reasonable doubt, it is the duty of the Court to deal with it in most severe and strict manner and award the maximum penalty prescribed by the law in order that it may operate as a deterrent to other persons from committing such anti-social crimes. Amandeep Kaur, deceased, was married to Avtar Singh who figured as the first accused in the case in the Sessions Court. Kailash Kaur, the appellant, is the mother-in-law of the deceased and Mahinder Kaur who figured as the third accused in the case is the sister of Avtar Singh. The husband and his parents were allegedly unhappy about the quantum of dowry brought by the deceased and she was being subjected to severe harassment and maltreatment with a view to extract more dowry from her parents. Exhibit PK is a letter written by the deceased to her father Avtar Singh (P.W. 3) in which she has set out the details of the harassment and maltreatment and expressed her grave apprehension that unless she was immediately taken back to the father's house, her life itself was in imminent danger. On May 30, 1974, in the evening, Kailash Kaur and Mahinder Kaur started quarreling with the deceased and severely abused and threatened her. Thereupon, the deceased went to her room and bolted its door from inside. Sometime later Avtar Singh, husband of the deceased, came to the house and started knocking at the door of the said room with great force because of which the door got unbolted. It would appear that after the door was opened Avtar Singh went away from the house. It is the prosecution case that immediately thereafter Mahinder Kaur caught hold of the deceased and Kailash Kaur (appellant) poured kerosene oil on her and set her on fire. The deceased started screaming on hearing which the people residing in the locality rushed to the house. Avtar Singh, the husband also reached there in the meantime, As she was engulfed in flames, somebody put a blanket on Amandeep Kaur and extinguished the flames. Thereafter she was carried to the Civil Hospital, Hoshiarpur. Dr. Har Parkash Bhatia (P.W. 2), who examined her sent information to the local police station on receipt of which Head Constable Naranjan Singh (P.W. 7), went over to the hospital. The doctor sent everybody other than the Head Constable out of the room where the patient was lying. He told the deceased that he would put her questions about the cause of her death. On the basis of the questions put by the doctor, Head Constable Naranjan Singh (P.W. 7) recorded her statement, on the basis of which formal First Information Report was lodged at Police Station, Hoshiarpur. Amandeep Kaur expired on June 1, 1974.

At the trial the prosecution relied on Ex. PF/3, the dying declaration made by the deceased--Amandeep Kaur, the letter Ex. PK writ-

ten by her to her father Atar Singh (P.W. 3) and the evidence of P.W. 3 wherein he stated that the appellant, her son and daughter were dissatisfied about the quantum of dowry brought by Amandeep Kaur and on that account they had been torturing her. The learned trial Judge acting on the aforesaid evidence convicted Kailash Kaur and Mahinder Kaur of the offence under Section 302 I.P.C.-and acquitted Avtar Singh, the husband, accused giving him the benefit of doubt. Kailash Kaur and Mahinder Kaur carried the matter in appeal before the High Court of Punjab and Haryana. The High Court confirmed the conviction of the appellant--herein namely, Kailash Kaur, but acquitted Mahinder Kaur giving her the benefit of doubt. Aggrieved by the said judgment, the appellant has preferred this appeal before this Court after obtaining special leave.

Notwithstanding the learned and persuasive arguments advanced before us by Shri A.N. Mulla, Senior Counsel appearing on behalf of the appellant, we find absolutely no merit in this appeal. There is no reason whatever not to act upon the dying declaration of the deceased wherein she has given a clear and vivid account of the pouring of kerosene oil over body and her being set on fire by the appellant. She had also implicated Mahinder Kaur as the person who held her while the kerosene oil was being poured on her body by the appellant. We have very grave doubts about the legality, propriety and correctness of the decision of the High Court in so far as it has acquitted Mahinder Kaur by giving her the benefit of doubt. But since the State has not preferred any appeal, we are not called upon to go into that aspect any further.

In addition to the dying declaration there is also clear circumstantial evidence furnished by the father Ex. PK and the testimony of Atar Singh (P.W. 3) father of the deceased regarding the demands for dowry and the harassment and torture inflicted on the deceased by the accused as part of the endeavour to extract more dowry. The dying declaration made by the deceased has the ring of truth and the testimony of the doctor--P.W. 2 and of the Head Constable--P.W. 7 clearly establishes that she was in a fit condition to make the statement. The conviction of the appellant by the High Court was, therefore, fully justified and there is absolutely no ground for interference with the same by this Court. We only express our regret that the Sessions Judge did not treat this as a fit case for awarding the maximum penalty under the law and that no steps were taken by the State Government before the High Court for enhancement of the sentence.

The appeal is accordingly dismissed. The bail bond of the appellant will stand cancelled and she will be taken into custody forthwith to serve out the remaining portion of her sentence.

P.S.S.
missed.

Appeal dis-