

# Sher Singh Alias Partapa vs State Of Haryana on 16 December, 2010

**Author: Jitendra Chauhan**

**Bench: Jitendra Chauhan**

Criminal Appeal No.894-SB of 2000 and another

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Criminal Appeal No.894-SB of 2000  
Date of Decision : December 16, 2010

Sher Singh alias Partapa

.....Appellant

Versus

State of Haryana

.....Respondent

AND

Criminal Appeal No.943-SB of 2000

Davinder Singh and others

.....Appellants

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rahul Rathore, Advocate,  
for the appellants.

Mr. Pradeep Virk, DAG, Haryana.

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JITENDRA CHAUHAN, J.

1. This judgment of mine shall dispose of two appeals, namely, CRA Nos.894-SB and 943-SB of 2000, having arisen out of the same incident. However, the facts are being derived from CRA No.CRA No.894- SB of 2000.

2. The present appeal has been directed against the judgment and order dated 28/30.08.2000 (hereinafter referred to as 'impugned judgment') Criminal Appeal No.894-SB of 2000 and another 2 passed by the learned Sessions Judge, Karnal (hereinafter referred to as 'trial Court'), whereby the accused-appellants have been convicted for the commission of offence punishable under Sections 304-B and 498-A IPC. The learned trial Court sentenced the appellants to undergo rigorous imprisonment for a period of seven years each under Section 304-B IPC. The appellants have been further sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5000/- each or in default, to further undergo rigorous imprisonment for a period of six months each under Section 498-A IPC. However, both the sentences were ordered to run concurrently.

3. Briefly stated, facts of the present case, as emanating from the statement of complainant, Angrez Singh, PW4, are that the deceased, Harjinder Kaur, real sister of Sukhwant Singh, PW7, was married with the accused, Sher Singh, on 22.2.1997 and sufficient dowry was given at the time of marriage. Two months prior to the occurrence, she along with her brothers, Sukhwant Singh and Jaswant Singh, visited the house of the complainant Angrej Singh, uncle of the deceased and told him that accused Sher Singh; his father Jarnail Singh; his mother Sukhvinder Kaur and his brother Devinder Singh, had been harassing and maltreating her and had been demanding motor cycle and fridge, and sought advise of the complainant in this regard. The complainant, Angrez Singh, told the deceased that the motor cycle and fridge would be provided at the time of the marriage of her brothers and she was thereafter sent to her matrimonial home.

4. On 7.2.1998, Rajwant Singh informed the complainant, Angrez Singh, that Harjinder Kaur had died at her matrimonial home in Village Criminal Appeal No.894-SB of 2000 and another 3 Danoli. Thereafter, the complainant, Sukhwant Singh and Jaswant Singh (brothers of the deceased) along with other respectables of the Village visited the matrimonial home of the deceased and found that Harjinder Kaur was lying dead in the house. On enquiry, it was found that due to the harassment meted out to her by the accused for demand of dowry, she had consumed poison. Report Ex.PE, of the Chemical Examiner confirmed the consuming of aluminium phosphide.

5. The complainant then reported the matter to the Police on 8.2.1998 at about 10.00-10.30 a.m. on the basis of which, formal FIR, Ex.PF, was recorded at Police Station, Assandh, investigations were conducted and upon presentation of the challan against the accused- appellants, the case was committed to the Court of Sessions.

6. The accused were charge-sheeted for the commission of offence punishable under Sections 304-B and 498-A IPC, to which they pleaded not guilty and claimed trial.

7. In order to substantiate its case against the accused, the prosecution examined as many as eight witnesses, namely, HC Jagbir Singh as PW1; Constable Surinder Kumar as PW2; Dr. Y.P. Singh, as PW3; Angrez Singh, complainant, as PW4; Mewa Singh as PW5; Rajwant Singh as PW6; Sukhwant

Singh, brother of the deceased, as PW7; and ASI Mohinderpal, Investigating Officer, as PW8.

8. The accused were examined under Section 313 Cr.P.C. wherein all the incriminating circumstances and evidence appearing against them were put to them to which the accused persons denied and pleaded false implication. The accused did not examine any witness in their defence.

9. After hearing learned counsel for both the parties and Criminal Appeal No.894-SB of 2000 and another 4 considering material/evidence on record, the learned trial Court has convicted and sentenced the appellants for the offence and term as indicated at the outset of this judgment.

10. The learned counsel for the appellant has submitted that in the instant case, there is unexplained delay of more than 20 hours in lodging the the FIR. As per the statement of complainant, the FIR was recorded on 8.2.1998, at 11.00 a.m. Learned counsel has submitted that the complainant reached Village Danoli, the matrimonial home of the deceased after the receipt of information regarding the death of Harjinder Kaur, deceased, on 7.2.1998 at 11.00 p.m. However, the FIR came into existence on 8.2.1998 at 10.00 a.m. i.e., after a delay of more than 20 hours though the Police had reached the Village on the same day.

11. The learned counsel has further submitted that once there is a positive finding of the fact and the demand of motorcycle is not proved, the judgment of conviction and order of sentence ought not to have been passed.

12. The learned counsel has further submitted that the accused- appellants, Devinder Singh, brother-in-law; Jarnail Singh, father-in-law; and Sukhvinder Kaur, mother in law; of the deceased, who were residing separately and would not have been beneficiaries in the eventuality of demand having been met.

13. The learned counsel has further submitted that there is no positive proof that any demand with regard to dowry was raised by the appellants soon before the death of the deceased or that she was subject to cruelty or harassment for or in connection with any demand of dowry. On an application of the provisions of Section 113 B of the Evidence Act on the Criminal Appeal No.894-SB of 2000 and another 5 facts of the present case, no inference can be drawn that the deceased, Harjinder Kaur, was subjected to cruelty or harassment with regard to the demand of dowry, soon before her death.

14. Learned counsel has further referred that there is no evidence on record that any meeting has been convened either by the Panchayat or by the relatives of the deceased in connection with the alleged demand of dowry.

15. Learned counsel has further submitted that there are material improvements in the statements of complainant-Angrez Singh, PW4. In his cross-examination, this witness has admitted that he had not stated to the Police that the deceased had come to him two months prior to the date of occurrence. It has further come on record that at the time of betrothal ceremony, there was no demand. This witness has also admitted that after the marriage, he never visited the house of the

accused and he came to know for the first time regarding the demand of dowry two months prior to the death of Harjinder Kaur. He has also admitted that he did not visit the matrimonial house of the deceased. This witness has further admitted that even at the time of marriage, there was no demand of dowry from the accused side.

16. Learned counsel has further submitted that the version that they were not allowed to move out of the Village by the co-villagers of the accused, is not proved on record.

17. Learned counsel has also referred to the statement of Sukhwant Singh, PW7, brother of the deceased that Gurdev Singh his real uncle, was mediator in the marriage and the accused did not demand any article except the motorcycle, which was made 2 1/2 months prior to the death of Harjinder Kaur.

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18. He has further submitted that in fact, the deceased was a hot tempered person. After her marriage with the appellant, Sher Singh, the deceased insisted upon her husband to shave his beard and to live separately from his parents at Karnal. The learned counsel has further submitted that in order to save his matrimonial life, the appellant-Sher Singh, separated from his family but did not agree to the demand of shaving his beard and shifting to Karnal. The learned counsel has further stated that the deceased, Harjinder Kaur, used to doubt the fidelity of her husband, Sher Singh, and suspected that he had an affair with the wife of one of his friends. The learned counsel has further submitted that the parents of the deceased were immediately informed by the accused-Sher Singh and the family members of the deceased were fully satisfied. But later on, on account of instigation, the present FIR was lodged.

19. On the other hand, learned counsel for the State has submitted that the death has taken place with 7 years of the marriage in an unnatural manner in the house of the appellants. The case of the prosecution stands fully established on the basis of the evidence led by the prosecution. There is no delay in lodging the FIR and the case of the prosecution is proved beyond reasonable doubt.

20. I have heard learned counsel for the parties and perused the record.

21. From the record, it is made out that though the appellant reached the matrimonial house of the deceased on 7.2.1998 at 11.00 p.m. but the FIR was lodged on the next day, i.e. 8.2.1998 at 10.00-10.30 a.m. In such like cases, the parents of the victim take time to reconcile to the loss of their child and only after being satisfied about the involvement of the Criminal Appeal No.894-SB of 2000 and another 7 accused, lodge the FIR and it takes time to have such satisfaction. Normally, no eyewitness account is available in the cases of this nature. The long discussion and deliberation takes place among the family members and if time is taken in this process of consultation and arriving at the decision with regard to the same, it is not fatal to the case of the prosecution.

22. The present case is based on the testimonies of two prosecution witnesses i.e. Angrej Singh, PW4 (real uncle of the deceased) and Sukhwant Singh, PW6 (brother of the deceased).

23. As per the deposition of Sukhwant Singh, PW6, the deceased visited her parental home about 2 ½ months prior to the occurrence and disclosed that the accused persons had been used to harassing and torturing her and demanding dowry in the shape of motorcycle and fridge. She told this fact to his uncle Angrej Singh, the complainant. But these witnesses have not stated what was the exact act of appellants Davinder Singh, Jarnail Singh and Sukhvinder Kaur by which the deceased felt harassed and taunted. When a prosecution witness merely uses the word 'harassed' or 'tortured' and does not describe the exact conduct in such situation, Sections 498A and 304 B are not attracted. These appellants have also taken a specific stand that they are maintaining a separate household and residing separately from appellant Sher Singh. In the circumstances, there is no reason for appellants Davinder Singh, Jarnail Singh and Sukhvinder Kaur to harass or demand dowry from the deceased as they would not be beneficiaries in the event of demand being fulfilled. In such type of cases, a tendency has developed for roping all family members of husband. In such circumstances, the statements of Angrej Singh, PW4 (real uncle of Criminal Appeal No.894-SB of 2000 and another 8 the deceased) and Sukhwant Singh, PW6 (brother of the deceased) regarding the demand of dowry as well as maltreatment by appellants Davinder Singh, Jarnail Singh and Sukhvinder Kaur do not seem to fit well in the facts of the present case as they would not have been the beneficiaries in case the demand had been met. The case of the prosecution becomes doubtful qua these appellants.

24. Learned counsel has submitted that appellant Sukhwinder Kaur has since died. This has been duly verified by the counsel for the State. Hence, appeal qua Sukhwinder Kaur stands abated.

25. Admittedly, the deceased died within few months of marriage under unnatural circumstances at her matrimonial home. It is for the accused/appellant Sher Singh @ Partapa to explain that the unnatural death of Harjinder Kaur was not due to cruelty being meted out to her in the matrimonial home. No evidence has been led by appellant/husband showing that death was not due to any cruel treatment meted out to the deceased at her matrimonial home and the death was not an unnatural death. In the instant case, the deceased was continuously subjected to cruelty and harassment by the appellant/husband in connection with demand of dowry. There is a positive proof that the deceased having visited her parental home and shared the fact of demand of motorcycle and fridge, which is duly proved and this demand persisted throughout till the unfortunate occurrence. The demand emanated from husband/appellant, who would have been the main beneficiary, in the event of the demand having been fulfilled.

26. The case of the prosecution is fully established to the extent that there is not much gap between the cruelty/harassment and death.

Criminal Appeal No.894-SB of 2000 and another 9 Keeping in view the evidence produced by the prosecution, the burden is shifted upon appellant/ husband to show that the death of his wife was not due to any cruel treatment at his hands. The death has taken place within few months of marriage under unnatural circumstances i.e. consumption of poisonous substance. On the basis of statements of Angrej Singh, PW4 (real uncle of the deceased) and Sukhwant Singh, PW6 (brother of the deceased), it is established that deceased was being maltreated due to non- fulfillment of demand of dowry. Thus, the prosecution has brought on record sufficient and convincing evidence

on record, on the basis of which, the guilt of appellant Sher Singh is fully proved on record and his conviction under Sections 498-A and 304-B IPC is maintained. The mere fact that the complainant has not visited the matrimonial home of the deceased would not make the case of prosecution doubtful. However, accused/appellants Davinder Singh and Jarnail Singh are given benefit of doubt by way of abundant caution. Learned counsel has submitted that the death of appellant Sukhwinder Kaur has been duly verified by the counsel for the State. Hence, appeal qua Sukhwinder Kaur stands abated.

27. In view of the above, the appeal qua appellants Davinder Singh, and Jarnail Singh is accepted, their conviction and sentence is set aside and they are acquitted of the charges. The appeal qua Sher Singh is dismissed. His bail bonds are cancelled. He shall be taken into custody to undergo remaining part of sentence.

16.12.2010  
atul/mk

(JITENDRA CHAUHAN)  
JUDGE

NOTE:            Whether to be referred to the Reporter? Yes / No