

# Nishan Singh vs The State Of Haryana on 18 November, 2010

**Author: Jitendra Chauhan**

**Bench: Jitendra Chauhan**

Crl.Appeal No.1254-SB of 2000

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IN THE HON'BLE HIGH COURT PUNJAB AND HARYANA

Crl.Appeal No.1254-SB of 2000

Date of decision 18.11.2010

Nishan Singh

.....Appellant

Versus

The State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Bipin Ghai, Sr.Advocate with  
Mr. Sandeep Gehlawat, Advocate  
for the appellant.

Mr. Kshitij Sharma, AAG for Haryana.

JITENDRA CHAUHAN, J.

Nishan Singh (appellant) has preferred this appeal against the judgment of conviction and sentence dated 21.11.2000. The appellant was convicted under Section 304 B and 498 A of the Indian Penal Code. He was sentenced to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of `4000/- for offence under Section 304 B of Indian Penal Code or in default of payment of fine to further undergo Rigorous Imprisonment for 2 years. He was further sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of `1000/- for offence under Section 498 A of the Indian Penal Code or in default of payment of fine to further undergo Rigorous Imprisonment for six months. However, all the sentences were ordered to run concurrently.

In brief facts of the case, are that FIR Ex.PB was recorded on the statement of Smt. Raj Kaur victim recorded by Judicial Magistrate on 10.4.1998.

In her statement Ex.PB Smt. Raj Kaur stated that on 9.04.1998 at about 3:00-4:00 p.m.Baksha Singh, Jassa Singh, Amir Singh all brothers of her husband and her husband Nishan Singh poured kerosene oil upon her from the stove. Ranjit Kaur, Paramjit Kaur, Raminder Kaur and Harbans Kaur were present there and caught hold of her and sprinkled kerosene oil upon her. Thereafter, her

husband Nishan Singh set fire by lighting match stick. She further stated that they used to demand dowry from her. Sometimes they demanded car and sometimes scooter. Her husband picked up stove lying in the room, opened the same and poured Kerosene oil upon her. Chanan Singh uncle of Harbans Kaur asked all of them to burn her. She stated that her relations with her husband were not cordial and he did not behave with her properly. Her mother-in-law Pritam Kaur tried to rescue her by putting clothes and water to extinguish the fire. She was brought to the hospital by her father and brother. She stated that till about one year of her marriage she did not tell anything to her parents with the hope that the better senses might prevail upon her in-laws. In the end, she stated that she is not willing to go to her in-laws' house. This statement was handed over to the ASI, Sh. Chand Ram, who sent it to the Police Station for registration of case. On this statement FIR No.216 dated 10.04.1998 was registered. Smt. Raj Kaur died on 14.04.1998 in the hospital.

After completion of investigation a report under Section 173 Cr.P.C. was submitted to the illaqa Magistrate against Nishan Singh only. During investigation Baksha Singh, Jassa Singh, Amir Singh sons of Davinder Singh, Chanan Singh, Ranjit Kaur, Harjit Singh, Paramjit Kaur, Ravinder Kaur and Harbans kaur were found to be innocent.

The complainant was not satisfied with the investigation and approached this Court vide Criminal Writ Petition No.620 of 1998. This Court vide order dated 7.05.1998 directed the Superintendent of Police to supervise the investigation or to depute a Gazetted Officer for supervision of the investigation.

Finding prima facie case against Nishan Singh, the learned trial Court framed charge against him under Sections 302/304B/498A of the Indian Penal Code.

After recording the statement of two prosecution witnesses, the prosecution approached the trial Court with an application under Section 319 Cr.P.C. for summoning of 8 more accused who were declared innocent by the Police. But the same was subsequently dismissed as withdrawn on 11.8.1999.

In order to prove its case the prosecution examined Dr. Parveen Garg, PW-4, to prove that Smt. Raj Kaur suffered 90 per cent burns and that he declared the patient fit to make a statement. Dr. Subhash Juneja, PW-5, conducted the postmortem examination on 15.04.1998 and opined that the cause of death was due to extensive burns which were ante mortem and sufficient to cause death in the ordinary course of nature. Parminder Singh PW-2 proved site plan Ex.PD of the place of occurrence. Chanan Singh alias Gurcharan Singh PW-6 is the father of the victim who was declared hostile and allowed to be cross- examined. Satnam Singh (appellant-7) is the brother of Smt. Raj Kaur also did not support the case of the prosecution and was declared hostile. Pritam Kaur, PW-8, is mother of Nishan Singh accused she was also declared hostile and was also cross-examined. ASI, Ranbir Singh was examined as PW-9, to prove that on receipt of ruqqa Ex.PE, he moved an application before J.M.I.C., Karnal at his residence and took him to Hospital for recording the statement of Smt. Raj Kaur. He proved a copy of statement Ex.PB/1 and formal FIR Ex.PB/3. Jagdish Chand, Junior Engineer, Irrigation Department was examined as PW-10.

In this statement under Section 313 Cr.P.C. the accused pleaded that he was innocent. He further stated that he was earlier married to Jasbir Kaur, who died of cancer, leaving behind two daughters, one aged 6 years, another four years at the time of her death. He had disclosed this fact to the parents of his second wife, however, she was never informed about this fact by her parents. She only came to know about this fact after she started staying with the appellant as his wife. She was highly annoyed because of the responsibility of bringing up his two daughters from his earlier wife, which fell upon her inexperienced shoulders. She also gave birth to a daughter.

A cousin sister of his wife was to be married prior to 9-4-1998 and at the time of marriage Raj Kaur was left by appellant at her parental house for two days. He came back to his Dera after attending the said marriage. Raj Kaur did not come to his Dera for more than 20 days and was brought back by her brother, Sahab Singh, on the day of occurrence itself, in a hired van at about 2-30 p.m. on 9-4-1998. The husband abused her and when Satnam Singh intervened the husband gave him fist and slap blows. Raj Kaur went inside the house in a highly agitated state of mind and came out of the room after setting herself on fire after pouring kerosene oil on herself. The husband, his brother and his mother extinguished the fire. Her brother left immediately in the same van, for his house. The husband and his mother etc. took Raj Kaur to Assandh to the hospital of Dr. Sharma where she was given First Aid. Jagtar Singh r/o village Rohar met Raj kaur in the hospital and he made enquiries from her as to how she sustained burn injuries. She told him the story as narrated above. Then her father Chanan Singh and brother Satnam Singh also came to the hospital and she told her father as to how and why she had set herself on fire. Thereafter Chanan Singh advised her not to make such a statement before any authority, otherwise she would be prosecuted for committing suicide. Chanan Singh was highly annoyed with the husband and his family, so, he advised Raj Kaur to make statement involving her husband and his family and uncle Chanan Singh, Sarpanch for causing her burn injuries. The statement recorded by Magistrate was also as a result of prompting by her father. She was not in fit state of mind at the time of recording her statement and the statement was recorded at the behest of her father. It was stated by the complainant that the deceased had been found with great difficulty as in Jat sikhs there are more men than women. There was no question of demand of dowry by any member of his family and no such demand was ever made or any harassment was ever made to Raj Kaur. He further stated that Chanan Singh is a truck dealer and has been challaned in various cases. The entire family indulges in various crimes and because of Chanan Singh, the present shape has been given to the case. It is stated that the present case is false and fabricated.

In defence Jagtar Singh was examined as PW-1.

The learned trial Court convicted and sentenced the appellant has referred to above this appeal is preferred.

The testimonies of Chanan Singh alias Gurcharan Singh PW- 6, father of the deceased, Satnam Singh, PW-7, brother of the deceased and Pritam Kaur, PW-9, mother of the accused are very much relevant. PW-6 Chanan Singh alias Gurcharan Singh states that Nishan Singh gave slap blows to his daughter in the presence of his son Satnam Singh PW-7. The accused felt offended because the deceased overstayed at her parental house without permission of her husband Nishan Singh

accused. Chanan Singh alias Gurcharan Singh, PW-6, further stated that his daughter was never beaten up or harassed by the accused on account of dowry articles from them at any stage after marriage. Similarly Satnam Singh PW-7 brother of deceased deposed that Raj Kaur, his sister did not go to her in-laws house for about 20 days and he went to leave her sister to the house of Nishan Singh accused. On reaching there Nishan Singh accused abused Satnam Singh, PW-7, and also gave him the fist and slap blows and do not want to keep his sister at his house. Satnam Singh PW-7 further stated that his sister Raj Kaur got annoyed, went inside the house and after pouring kerosene oil on her, set herself on fire. This version is further corroborated and supported by Pritam Kaur mother of the accused while appearing as PW-8.

In cross-examination Chanan Singh alias Gurcharan Singh PW-6 admitted that he advised his daughter not to state as to what actually happened before any authority otherwise she would be prosecuted for committing suicide. This witness told his daughter that she should name Nishan Singh, his brothers, their wives and his uncle Chanan Singh as the persons who had set her on fire to take revenge from them.

Mr. Ghai, learned counsel appearing for the appellants has submitted that in fact, it is not a case of dowry death. The alleged dying declaration Ex.PB was recorded at the instigation of the Chanan Singh alias Gurcharan Singh, PW-6, who had twisted to the real facts and the appellant and his family members were not responsible for the death of Smt. Raj Kaur. He has also referred to the statements of Chanan Singh, PW 6, and Satnam Singh, PW-7, that the accused gave slap blows to Satnam Singh, PW 7, who is brother of the victim upon which Raj Kaur felt insulted and went inside the house poured kerosene oil on her and set herself on fire. There is not an iota of evidence that there was any demand of dowry. He has further submitted that Chanan Singh alias Gurcharan Singh, PW-6, father of the deceased as well as Satnam Singh, PW-7, brother of the deceased has supported defence version taken by the accused appellant.

It is further submitted that, in the instant case there is no corroboration to the dying declaration Ex.PB, though recorded by a Judicial Officer. It is proved on record that the dying declaration is the result of tutoring by Chanan Singh alias Gurcharan Singh PW-6 and by Satnam Singh PW-7 who were present before and at the time of recording of the dying declaration Ex.PB. Except the dying declaration Ex.PB there is no other evidence against the appellant to constitute offence under Section 304 B IPC. There is oral dying declaration made by the deceased before her father Chanan Singh alias Gurcharan Singh, PW-6, and his brother Satnam Singh PW-7 and Jagtar Singh, DW-1 in which she has stated that as Nishan Singh accused insulted Smt. Raj Kaur in the presence of her brother and gave slap and fist blows to Satnam Singh PW-7, as a result thereof, she set herself on fire.

It is further contended no lady would like the insult of his real brother at the hands of her husband or her in-laws. Therefore, the demand was annoyed with the act of appellant Nishan Singh. Even Chanan Singh alias Gurcharan Singh PW-6 felt offended and prompted Raj Kaur deceased to make allegations of dowry against Nishan Singh appellant and her in-laws to take revenge from them. Thus no reliance could be placed on the dying declaration Ex.PB which is the result of tutoring by her father and brother before making thereof. The evidence of PW-6 and PW-7 proves that the

occurrence has not taken place as alleged in the dying declaration. It was the father and brother of Smt. Raj Kaur who twisted to the real facts and suppressed the genesis of the crime. There was no demand of dowry soon before death. So these allegations do not constitute an offence under Section 304 B of the Indian Penal Code.

The learned State counsel argued that if the case is not covered under the ambit of Section 304 B IPC then it is a clear case of 306 of the Indian Penal Code. It was accused Nishan Singh who has abetted, Smt. Raj Kaur to commit suicide.

On analysis of the statements of the complainant Chanan Singh alias Gurcharan Singh, PW-6, Chanan Singh alias Gurcharan Singh father of the deceased, Satnam Singh, PW-7 and Pritam Kaur, PW-8, the case of the prosecution with regard to the demand of dowry is not established beyond reasonable doubt and case under Section 304 B is not made out.

In Prem Kanwar V. State of Rajasthan, 2009(1) RCR (Criminal)850 (SC) it was held that to constitute an offence under Section 304 B, the following ingredients must be satisfied:-

- (1) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.
- (2) Such death must have occurred within 7 years of the marriage. (3) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband and any relative of her death.

Such cruelty or harassment must be in connection with the demand of dowry.

In State of Punjab Vs. Savitiri Devi 1983 Criminal Law Journal 1093 wherein it has been held as under:-

"The dying declaration is undoubtedly admissible under Section 32 and not being a statement on oath so that its truth could be tested by cross-examination, the Courts have to apply the strict scrutiny of the closest circumspection of the statement before acting upon i.e. while great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person yet the Court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of imagination of the dying person. The Court must be satisfied that the deceased was in a fit be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailant and that he was making the statement without any influence or rancor. Once the Court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration."

Thus the offence is converted to under Section 306 of the Indian Penal Code read with Section 498-A, IPC. The appellant Nishan Singh remained in custody for two years and eight months during trial and after conviction. The appellant has three grown up daughters. The accused was earlier married and from his previous marriage there are two daughters and from the womb of Smt. Raj Kaur the accused has one daughter. The counsel for the appellant submits that there is no body to look after these girls. The appellant is facing prosecution in this case for the last 12 years. The accused is the only bread-winner of his three daughters. The sending of accused to jail again will be hard step. So the sentence of the accused is reduced to the period already undergone, however, the amount of fine is enhanced to `15,000/- besides the already paid if any which the accused shall deposit within 4 months in the Court of concerned Chief Judicial Magistrate. The fine if realized shall be adjusted as cost of litigation. If the appellant fails to deposit the amount of `15000/- within stipulated period, this appeal will be deemed to be dismissed.

With this modification in the offence and reduction in this sentence this appeal fails and is dismissed on merits.

November 18, 2000  
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(JITENDRA CHAUHAN)  
JUDGE

Whether to be referred to Reporter: Yes