

Lekh Ram and Brij Lal

Vs

State of Punjab

Criminal Appeal No. 241 of 1979

(Kuldip Singh, Yogeshwar Dayal Jj)

06.04.1992

JUDGMENT

YOGESHWAR DAYAL, J. -

1. This is an appeal against the judgment of the Punjab and Haryana High Court dated May 23, 1978 upholding the conviction of Brij Lal aged 36 years, teacher and Shri Lekh Ram aged 65 years under Sections 302/34 IPC for the murder of Sukhcharanjit Kaur, wife of appellant Brij Lal.
2. The learned Additional Sessions Judge had convicted the aforesaid two appellants but had acquitted Smt Shanti Devi and Rani for the same charge.
3. It appears that on an application (Ex. P.A.) to the Chief Minister of Punjab regarding the murder of Smt Sukhcharanjit Kaur during the night between August 8 and 9, 1974 an FIR was recorded by SHO Jaitu on August 22, 1974. The complaint inter alia stated that "a deputation of about 70 persons want to wait upon your honour to explain the causes of the murder of Sukhcharanjit Kaur at the hands of her husband Brij Lal, his two sisters, brother and mother and other family members". It was also recited in the complaint that the deceased was married to Brij Lal about 1-1/2 years back. Brij Lal, her husband, used to torture her for transferring her bank balance of Rs. 25,000 standing in her name and that her father had not given a scooter in dowry.
4. That on her refusal to accede to his illegal designs, on the night of August 8 and 9, 1974 Brij Lal, his two sisters, Shanti and Rani and his mother Kishen Bai and her younger brother Paramjit Singh had murdered her by strangulation of her neck.
5. That on receipt of information of her death when womenfolk reached Jaitu the deceased was dead. When the body was being taken to the cremation ground, on the way when her face was seen by the womenfolk her eyes and tongue were bulging out and were in an indifferent manner. Even on the insistence of the womenfolk Brij Lal did not accede to their wish and hurriedly burnt her in the cremation ground.
6. That the matter was reported to the police but nothing has been done so far in the matter. Grave and manifest injustice has been done. It is also submitted that this has been done with a view to grab her dowry and bank balance standing in her name in the bank. The culprits should not have gone unpunished. It was requested that the case be registered and the persons be arrested and challaned in court. It was also prayed that the local police be further directed to take possession of the dowry articles which were given in her marriage and the same may be ordered to be returned to the complainant, and that the dowry (which amount is not clear) be returned to the complainant.

7. It appears that this complaint was forwarded to SSP who directed the case to be registered and accordingly the case was registered and the prosecution put up for trial not only Brij Lal and his two sisters but also his father.

8. During trial the prosecution relied on the statement of Raj Singh, father of the deceased (PW 1); Harbans Singh, brother of the deceased (PW 3); and Smt Kushalya Devi, sister of the deceased (PW 2). The prosecution also examined Bhan Chand and Kishan Lal, alleged eyewitnesses to the murder, as PWs 4 and 5 respectively. Gyani Mohinder Singh, SI, Police Lines, Faridkot (PW 7) was examined as the Investigating Officer. Gyani Mohinder Singh stated that he received the complaint Ex. P.A. from SSP's office which bore the endorsement of the Chief Minister and the SSP and the investigation was started by him on the same day. He visited the place of occurrence and got the rough site plan prepared and the statements of Bhan Chand and Kishan Lal were recorded on August 23, 1974 and the statement of Harbans Singh was recorded on August 24, 1974. Letters Exs. P.B., P.C. and P.D. along with their postal covers were brought by the father of the deceased Shri Raj Singh on August 30, 1974. He stated that he was transferred during the course of investigation and the remaining investigation was done by the SP (Headquarters), ASI Rajinder Kumar and SI Jaswant Singh. The accused were also arrested by him on September 3, 1974. The Investigation Officer in the cross-examination admitted that the police station is about 2 furlongs from the house of the accused. He also stated that he interrogated the person employed at the machine of Balbir Singh, namely - Soma (DW 3). He did not interrogate Balbir Singh. He entered his machine premises also. A wooden ladder was lying there. He did not take it into possession. Nothing was mentioned about the ladder in the zimni. He had interrogated the accused Brij Lal and Lekh Ram on August 26, 1974. On September 10, 1974 he had questioned Dr. Brij Lal. He also admitted having interrogated persons living in the neighbourhood. He stated on oath that to his knowledge no one had reported the incident in question in the police station. He also stated that Ajaib Singh, ASI was posted in the police station in those days but he did not interrogate Ajaib Singh ASI in this regard.

9. We are purposely mentioning the role of the investigation to see the sequence as to how the investigation was conducted and how the prosecution case defeated itself.

10. The complainant Raj Singh examined himself as PW 1. He is a labourer, aged 52 years and lives at Village Rajan Majra. As per his statement the marriage of his daughter Sukhcharanjit Kaur to accused Brij Lal, son of accused Lekh Ram was celebrated on January 9, 1973. Sukhcharanjit Kaur had been adopted by his Masi (maternal aunt of the witness) Devki. Not only his Devki Masi had adopted the deceased, she had also adopted both his sons Harbans Singh and Amarjit Singh who also live with the Masi at Village Upli. Even his wife Maya Wanti, at the time of the incident, was staying with his Masi.

11. The witness also admitted that the whole expenditure of deceased's marriage was borne by his Masi and his Masi had spent about Rs. 40,000 over the dowry. He also stated that he has another daughter Surjit Kaur whose marriage he celebrated to Jai Gopal son of Sant Ram but he did not know whether the father of Jai Gopal, namely Sant Ram is the real brother of Bhan Chand, PW 4. In his examination-in-chief the witness deposed that six months after the marriage Brij Lal and other members of his family started ill-treatment of his daughter and they started saying that he had not given a motor cycle in the dowry. He also stated that about Rs. 20,000 were lying deposited in the name of the deceased but at the time of her marriage, that amount was withdrawn and was spent on her marriage. He stated that Brij Lal was under the impression that another sum of Rs. 25,000 was lying deposited in the name of the deceased and they had been pressing her to transfer that amount in the name of Brij Lal. As a matter of fact the deceased did not have any amount in the bank. He

also stated that the accused used to grab salary of his daughter and put her to hard work such as chopping of fodder.

12. The witness went on to depose that on August 8 or 9, 1974. Subedar Kishan Singh (maternal uncle of the husband, Brij Lal) and Shri Pyare Lal (sister's husband of Brij Lal) went in a car to Village Upli, where his wife was also staying with his Masi. Both his sons Harbans Singh and Amarjit Singh also live in that village with the Masi. Pyare Lal and Subedar Kishan Singh informed his Masi and wife that the deceased was seriously ill and was having fits and that she had desired her brother Harbans Singh and mother to come to her and no one else. Thereupon his Masi, his wife and his son Harbans Singh came to Jaitu to the house of the accused. His son Harbans Singh came to him on the morning of August 10, 1974 and told him about these facts. He also stated that Harbans Singh told him that his mother and his Masi had found the deceased lying dead with her tongue bulging out and eyes also popping out indicating an unnatural death. He also further stated that Harbans Singh had asked the accused not to cremate her but despite his insistence they burnt her away in the cremation ground. He then went on to say that he accompanied Harbans Singh to Village Upli and consulted some knowledgeable persons to decide upon the proper course of action. He then reached Jaitu on August 11, 1974 and went to the police station; Ajaib Singh, ASI, was present in the police station but he did not pay any heed to him. He then came to Faridkot and met some officers there but no one heard him. Then he returned to Village Upli and collected some persons including Sarpanch Gadar Singh, Gurbachan Singh etc., Some persons of their own also accompanied them. A truck full of persons went to Chandigarh and they could manage the interview with the Chief Minister and then presented the application Ex. P.A. on which the FIR was recorded.

13. It will be noticed that this witness gave his occupation as labourer. Both of his sons are adopted out and live with the Masi of the witness. The deceased was also adopted by the Masi of the witness and the Masi performed her marriage. Even his wife does not live with him. In any case, at the time of incident she was living with his Masi.

14. PW 2, Kushalya Devi is also known as Guddi. She merely proves the letters Exs. P.B., P.C. and P.D. We will deal with these letters a little later. These letters were received by the witness from her deceased sister. She admitted that Ex. D.B. which is a letter dated April 19, 1974 was written by the deceased to her mother. She also admitted that the letter Ex. D.A. was written by her to the accused Brij Lal. She stated that she had been mostly writing to her sister at her school address and wrote very few letters to Brij Lal. She admitted that she has another sister Surjit Kaur who is married to Jai Gopal, son of Santa Ram and that Bhan Chand is Sant Ram's brother who is present outside the Court. She also admitted that Brij Lal's nankas (ED. : Mother's parents and relatives) are in village Salabat Pura and Kishan Singh is the maternal uncle of Brij Lal but she did not know Kishan Lal's brother. The only thing which the sister deposed, apart from the above, was that the deceased had told her that her in-laws had forbidden her to write any letter to her father and that is why she had been writing letters mostly to her. She did not depose about any ill-treatment or demand for dowry by any of the two appellants.

15. Harbans Singh (PW 3) is the brother of the deceased. He deposed about Kishan Singh and Pyare Lal coming to his Village Upli and stated that he is also adopted by his father's Masi. Pyare Lal and Kishan Singh told them that the deceased was slightly ill and that she had desired Harbans Singh and his mother to visit her, and accordingly he along with his mother accompanied them. They reached the house of the accused around 12.30 p.m. when they found some womenfolk and men sitting in the house. The dead body of his sister was lying on the floor. He immediately started weeping and was in a state of mental agony. It struck him that his sister could not have died so

suddenly. He wanted to see her face but the accused, present in court, and some women sitting at their house forbade him to do so, but he lifted the cloth from her face and saw that her eyes were bulging out and her tongue was protruding out. Her belly was also swollen. There were bluish marks on her neck. He told that his mother also saw these symptoms and he told his mother that it was not a natural death. He then charged the accused of having killed his sister and asked them not to remove her dead body. The persons sitting there then removed the dead body. He further deposed that on the way to cremation ground, the dead body of his sister was placed by the accused and their companions on the ground and they also managed to reach there and raised a hue and cry. They were, however, pushed back and then the accused forcibly burnt away the dead body. They said, when the dead body was being taken to cremation ground he and his mother returned from there. They then caught a bus reached Upli at about 6.30 p.m. The next morning he went to the village of his father and informed him about the happenings. His father came to Jaitu, village of the accused. His statement was subsequently recorded by the police. He also stated that the accused used to maltreat his sister. They had been pestering her for some more money from the father. They had also been asking her to get some land which stood in his name transferred to sister's name.

16. We may mention, as it appears from the correspondence, that the deceased was most unhappy with her brother, PW 3. However, we find that she does not talk about any demand of scooter or transfer of any bank account of the deceased in the name of the husband. In fact he mentions about the accused pestering the deceased for bringing the money from the father and the land from the brother. In cross-examination this witness admitted that the deceased used to visit Upli, (that is the place where the grandmother lives) off and on, after the marriage. He also used to go to Jaitu to bring her and also to leave her back. Husband of the deceased was posted as a school teacher in the same village. He also admitted that the house of the deceased is about 1 furlong from the bus stand at Jaitu but he showed ignorance where the police station is. In the cross-examination he tried to say that he did not know that one has to pass from in front of the police station when one goes from the house of the accused to the bus stand and, therefore, could not say where the same is situated. He then stated that the accused had put down the dead body of his sister at a distance of 100 karms from their house. He admitted that he was a matriculate but did not see the signboard of police station outside the police station. He also denied knowing whether a constable was on duty outside the police station. He admitted that there were about 20 persons sitting in the house of the accused when they reached there, out of whom 7 were womenfolk. He was confronted with his police statement that when he wanted to see the face of his sister, the accused were present there and along with others forbade him to do so, which was not mentioned there. It was also not mentioned in the police statement that there were marks on the neck of the deceased but he merely mentioned in the police statement that his sister had been strangled. It was also not mentioned in the police statement that some persons there had caught hold of him

17. In cross-examination the witness went on to say that the dead body had been removed from the house within 10 minutes of their reaching there. Eight or ten persons had taken the dead body to the cremation ground and he had been caught hold of at the house of the accused by 4 or 5 persons and that he did not receive any injury marks at that time. He even denied the suggestion that he brought the dead body to the cremation ground and that he even lifted the dead body on his shoulders. He then stated that his mother and grandmother had accompanied him upto the place where the dead body was put on the ground. They all kept raising an alarm that the dead body was being forcibly taken to the cremation ground and that she had been done to death but no one came to their help. He also went on to state that at the time when the dead body was put down on the ground and the pitcher was broken, he had been caught hold of till the dead body had been burnt away. He was detained there for about one hour. After his release he did not talk to anyone on the way. He did not

think of going to police station out of fear of the accused. He did not give any telegram to any authority. It was stated that the accused used to maltreat his sister but nobody was named who maltreated her. He denied the suggestion that he had helped the accused persons in collecting the last remains of the deceased. He denied that he went to Haridwar to perform any ceremony following his sister's death.

18. It is thus clear that in one breath witness denied having gone to the cremation ground at the time of the cremation of his sister and on the other breath he is saying that he went to the cremation ground and tried to stop the cremation but failed. He never went to the police station to inform anybody.

19. Then we have the evidence of two alleged eyewitnesses - one is Bhan Chand (PW 4) aged 65 years and the other Kishan Lal (PW 5) aged 26 years, shopkeeper. We do not get any assistance from the investigating officer how he came into contact with these two witnesses when he recorded their statements on August 23, 1974. Bhan Chand, though he called himself a cultivator, stated that he is an unemployed person and was going to the house of Balbir Singh in connection with search of a job. A job was available in a cinema and Balbir Singh being a member of the Municipal Corporation he wanted to use his influence to get him the job. He had learnt about the job two days earlier and he was in search of Balbir Singh but he was not available. He purports to have been going in search of Balbir Singh at about 10 or 10.30 p.m. at night. At his (Balbir's) house he learnt that Balbir had gone to his wheat atta machine. He accordingly proceeded to wheat atta machine of Balbir Singh. When he covered a short distance from the house of Balbir Singh, (PW 5) Kishan Lal met him. Kishan Lal (PW 5) also started walking along with Bhan Chand. They both reached wheat atta machine of Balbir Singh. The electric light was on at the machine but the employee, who worked at the machine was inside. He enquired from the employee whether Balbir Singh was there but was told that Balbir Singh had not come there. When they were about to return from there they heard two shrieks emanating from the house of the accused Brij Lal which adjoins the machine of Balbir Singh. A ladder was lying there and placing it along the wall he ascended the wall of the house of the accused and got on to the adjoining roof of Balbir Singh's building. At that time Kishan Lal was standing on the ladder and they saw that Brij Lal's father, Lekh Ram was holding the legs of the deceased while the two girls whose names he did not know - and the witness pointed out towards Shanti and Rani - were holding her arms and the accused Brij Lal pressing her neck with his hands. He asked the accused to desist but they asked him to get away. Even he asked Kishan Lal to get away from there without involving themselves in the affairs of the accused and without talking to anyone. After several days Thanedar questioned him regarding the incident and took down his statement. He also deposed that since accused Brij Lal was strangulating the deceased he at once knew that he had killed her.

20. This witness was cross-examined and he admitted that the police station is just 200 or 300 karms from the house of the accused. He had not visited the cremation ground. His own house is 100 yards from the house of the accused and Balbir Singh's house is about 200 karms from his house. He stated that he is out of job, though the defence is raised that he was already employed as chowkidar in the cinema much before the incident but the witness deposed that he got the job at the cinema about one month after the incident. A person who could work as chowkidar and was in search of a job as chowkidar, one fails to understand what prevented him from going to the police station. He has been passing the house of the accused occasionally. He admitted in cross-examination that he knew both accused Brij Lal and Lekh Ram by their names before the occurrence. Even after the incident he told nobody about the same. Bhan Chand, PW 4 admitted that he knew that Jai Gopal, son of Sant Ram is married to deceased's sister. Even then he did not convey the information either

to Jai Gopal or the girl's father. He had to admit that Sant Ram is a collateral and his son is married to sister of the deceased.

21. The other eyewitness is Kishan Lal (PW 5). He happens to be a shopkeeper. He recited the incident in the manner as Bhan Chand had recited. He admitted that he had gone to the cremation ground when the dead body was taken there for cremation. He also admitted that 15-20 persons had gone there, besides some ladies, and the cremation was done around 4.00 p.m. No one on the way tried to detain the dead body or raise an alarm that the deceased had been murdered. He denied the suggestion that he is deposing falsely due to enmity with Pt. Laj Ram. He admitted that his house is close to the house of Pt. Laj Ram and Balbir Chand is the son of Pt. Laj Ram. He did not know whether Balbir Chand's wife is the daughter of the maternal uncle of Brij Lal. He admitted that the house of the accused was 200 karms from the police station and the cremation ground is about 250 karms from the police station. He also admitted that one has to pass from in front of the police station while going from the house of the accused to the cremation ground. There is a large board of the police station outside the police station building and a sentry on duty always stands there. The way from the house of the accused to the bus stand also passes from in front of the police station. He admitted that at the time of the incident Bhan Chand was employed in the cinema as chowkidar. He also admitted that he sells beedis at his shop but did not have beedis at his shop at that time and had gone to purchase the beedis at Daulat Ram's shop. His shop is 200 karms from his house. Some other shops also fall on the way selling beedis but he did not purchase the beedis from any of those shops. In answer to court question he stated that those shops were lying closed.

22. On further cross-examination regarding the wheat atta machine he stated that the outer gate of it was lying closed and they had got it opened by the servant after calling out to him. The machine was then working but he did not notice if anyone else was also present at the machine, besides the servant. He also admitted that he did not go to the police station to make a report nor did he talk to anyone till his statement was recorded. He had been passing from in front of the house of the accused while going out to answer the call of nature. On the next day also he passed by that house and found several persons assembled at the house of the accused. He did not talk to anyone of them. He did not know any of the persons from the parental side of the deceased.

23. One thing is clear from his statement that no protest was made by anyone at the time of cremation or during the procession to the cremation ground as per his version.

24. It will be seen from the circumstances that it was not safe for the High Court to rely on this type of chance witnesses, particularly when PW 4 knew the paternal side of the deceased.

25. PW 6, Shri Gadar Singh, had merely accompanied the deceased's father to the Chief Minister and is a signatory to the recovery memo of Exs. P and P-1. We have already dealt with Gyani Mohinder, Investigating Officer.

26. The next evidence is the three letters which PW 2, Kushalya Devi, who is also known as Guddi, gave to her father.

27. The first letter out of these three letters is Ex. P. D. which is dated March 11, 1974. It is a letter written by the deceased to her sister Kushalya Devi who is also known as Guddi. This letter specially mentions that they have no differences with each other i. e. husband and wife. This letter makes complaint against her brother, Harbans Singh for his treatment to her and that he came to her quite empty-handed without any article to offer and on that account she felt ashamed as no brother

happens to come without offer of any gift, particularly when she has just been married. She also makes a complaint that he has no sense how to talk. She also makes a complaint about the treatment of Harbans and Bibiji towards her after her wedding and she tells her sister Guddi not to say anything to her brother or anyone else about the receipt of this letter including her brother Pala. Then she complained about the attitude of Harbans. She advised that he should talk to his brother-in-law very politely, she even does not mind his adverse attitude towards her. She also stated that her husband was very happy on his visit to her. She is very keen to visit her sister's place but wants to visit her for at least 10 days. She also advised the sister that whosoever comes over to her should talk respectfully to Jijaji i. e. Brij Lal. She apparently was insulted by her brother but she did not mind it. In fact she states in so many words :

"I keep your memory every time in my heart and feel quite impartness (sic) whenever I daply (sic deeply) come to your memory with a view to have consideration that how my brothers and sister have dropped my love. We are supposed to sacrifice every thing for comfort and prosperity and amongst brother and sister money is nothing. Love is only the material thing in the world. You are wise enough and have sufficient sense to understand. When I have to go to make water alone that I am left with no alternative but to cool down my mind with a bitter weep. I have forgotten the passage of my village from where it was hard for me to go out."

28. It may be noticed that in this letter there is no complaint against her husband or any of her in-laws and the complaint, if any, is only against her brother and sister.

29. The next letter in point of time is dated June 5, 1974 and that again was from the deceased to her sister Guddi. This letter is Ex. P. C. This again is about the desire of the deceased to visit Guddi either on Friday or Saturday or on 8th and even suggests that her Jijaji i. e. accused Brij Lal would be accompanying her and requests the sister to make proper arrangement for tea for him; requests Harbans to talk properly with her husband and they should request Jijaji to forgive them for their behaviour.

30. Then we come to the last letter which is dated June 29, 1974 again from the deceased to Guddi, Ex. P. B. In this letter again there is a complaint about her brother Harbans. Letter records Harbans having visited deceased's place, (sic) at his behaviour and the fact that he did not know how to talk. In this letter there is a request that this letter should not be brought to the notice of Harbans and her brother-in-law Balbir (husband of Guddi). There is no complaint against accused persons.

31. This is the entire evidence against the accused persons. The defence thought it fit to examine two more letters Ext. D. B. and D. A. Ex. D. B. is dated June 19, 1974 and is addressed by the deceased to her mother. We would like this letter to be quoted in extenso :

"Respected Mother,

I bow my head in your sacred feet. I am sorry to respond to your letter with a short delay of two days. I wish to be excused for the delay. Since I have gone from here, I attractingly thought of you. It is not a secret that how nicely I am pulling over here. I would have come just in accordance with your desirability but now I intend to come to you after a week, as I am under treatment. I had also paid Rs. 5 as fee for the Lady Doctor at Barnala in her residence. I had explained everything to her. I was informed that there is no necessity for operation there is swelling inside which will be rectified

with medicines and injections. I had also told doctor that primarily I was suggested by the doctor to operate the operation. I was again told that this disease will be rectified by use of medicines. I was also feeling pain while I left for from here. I am feeling very severe pain in an my bachi. The injection faced very warm the pills and capsule are used to be taken in a day. I am also feeling very hotness in use of these capsule pills and injections. I was also informed by aunti that her daughter-in-law (niece) was also suffering such like pain. There resides a wise old lady at Barnala. I intend to get myself examined by her. On April 18, 1974 I have got myself examined by that wise old lady. She has also informed swelling inside. She has also advised me to attend her regularly for a week's time and also suggested medicine, that medicine is to be used for about twelve days mixing it with desi ghee. I will use the medicine when I will come to you. The old lady was astonished to see how clearly I bore such severe pain, she has also informed that it will take Rs. 50 as cost of medicines and you will be set quite alright. She has suggested me to avoid lifting heavy weight. She is very old lady. It will take five days more as you suggested so reply my letter soon, whether this treatment is good or not. The local lady doctor who had suggested for her operations, in my case is not faceable (sic traceable) not I would have had operation in your absence. I am very anxious about the examine (sic examination) of Bibi. No doubt I am sitting over here but I attached my attention with you.

I am awaiting for the time on which I could reach you. The exams of Kaka has been finalised on 17th. Rely soon. Give my love to Kaka. I bow my head to sacred feet of Bibi Ji. Also pay my love to elder and younger Bibi. Tell me if anybody has gone to Kot. You should please reply to my letter very soon in the alternative, I will be in worry. Be conscious of your health and also be careful for the health of Bibi Ji. Take proper labour for cutting the harvest and try not to engage in this work. I again write you to be very careful in replying my letter. I am very sad while writing you a letter. I cannot disclose my position in this letter. I wish to be excused if I have done anything wrong in writing.

Your daughter

Sukhcharanjit Kaur

I have also obtained a chit from the lady doctor in case I could any relief from this Desi medicine that I will start allopathic treatment in accordance with your consent. As we all were with a operation to start the Desi Treatment."

32. This letter talks about some illness which the deceased was having for some time and was trying various treatments. There is no complaint that she was not being allowed to take treatment or that the illness was due to any torture or overwork that she was made to do by the accused or other in-laws. In fact, in the opening itself it is mentioned "it is not a secret that how nicely I am putting over here."

33. Another letter is Ex. D. A. This letter purports to be written by the sister of the deceased, Guddi PW 2, to the accused Brij Lal. We cannot decipher the exact date of the letter but a very fact that a sister-in-law is taking courage to write to her brother-in-law shows the relationship. In fact, this letter addressed by the sister to both "Jijaji and Sister" shows that there was no such secrecy between the husband and the wife. She also apologises for not being able to personally see her off and then

recapitulated the time when Brij Lal came to her house and how happy they were. It also recounts how wise and gentle her Jijaji was. She even mentions that everybody says that their son-in-law is capable and wise chap. She also mentions about sending some pills for her sister. She also mentions that her mother desires that both the accused Brij Lal and her sister should come and spend 10 days during the holidays with them. She sends greetings to her sister, Jijaji and all members of the family and also conveys regards on behalf of all their family members, including Harbans, brother Pappi, her daughters and her husband.

34. Defence also examined Soma as DW 3, who is the servant working at the atta machine of Balbir Singh. This witness stated that he had been working at the machine for four years and that wheat atta machine adjoins the house of the accused. He also stated that he knows Kishan Lal and Bhan Chand. He stated that he learnt about the death early next morning when he came to the chakki to unlock the same. He denied about the visit to the chakki by Kishan Lal or Bhan Chand in his presence on the preceding evening or any other evening on those days. He in fact stated that no employee sleeps at the chakki premises to guard the grains. He also stated that Thanedar came to the chakki and no ladder was lying there. He also stated that no ladder was lying there when the Thanedar visited the place.

35. The defence also examined Dr. Brij Lal, Private Medical Practitioner, to whom the deceased was taken at about 12 o'clock in the night who declared her dead.

36. The High Court appears to have attached much importance to the failure of the accused to inform the father of the deceased about her death. It will be noticed that even the marriage of the deceased was not performed by the father. She had been adopted out and was living in the village of her father's Masi. Even two of her brothers had been adopted out. This shows the economic condition of the father who was working as a labourer. Two senior relations of the accused, namely - his real brother-in-law and another person were sent to convey the illness of the deceased to the deceased's mother, grandmother and brothers. What more does one expect. The brother was not a child. He was about 36 years old and was working as a Medical Practitioner. It is normal that even when a death occurs the information about the death is not straight away given but quite often information about the serious condition/illness is given. The idea is to avoid giving a sudden shock. There is no attempt to hide the death from the relations. Father of the deceased calls himself to be a labourer. As we have noticed earlier, both the brothers of deceased, mother, grandmother, sister, brother-in-law, who were at the house of the grandmother were informed. Whosoever could accompany came in the car. Mother, grandmother and brother came in the car. The other family members, could have been sent by the girl's relations to the father but no adverse inference of guilt can be drawn for not having informed the father, who lives further away.

37. Again the learned Judges of the High Court have been carried away by the so-called letters, P. B., P. C. and P. D. We have already dealt with them in extenso and are surprised that the Judges were misled as if these letters talk about torture to the deceased or any demand of dowry or demand of scooter. It will be noticed that the father in the complaint makes general reference to the ill-treatment and demand for scooter and the alleged demand of transfer of deceased's account in favour of the accused, knowing fully well that he is merely a labourer. He never performed the marriage. The daughter never stayed with him during her career and he would know nothing about the demands of the appellant. The brother (Harbans) on the other hand mentions another demand that the accused wanted that his land should be transferred to deceased's name and he should give money. He never talks about demand of scooter and transfer of the amount from the deceased's account. There is no father and son totally differ. The sister of the deceased Kushalya (PW 2) never

deposed either about torture or ill-treatment of deceased and/or demand of any dowry. If there was any such thing Kushalya (PW 2) would have certainly deposed about it.

38. The High Court again was impressed by the statement made by two eyewitnesses. As we have noticed earlier the Investigating Officer threw no light how he came into contact with Bhan Chand and Kishan Lal and how they got the statement of Soma, DW 3. It is not understood why Bhan Chand would go in search of Balbir Singh at night at about 10 or 10.30 p. m. particularly in the light of the statement of DW 3. Again it is not understood, as stated by Kishan Lal that if Bhan Chand was already employed, why would he go to chakki in search of a person who is a Municipal Councillor to get him the job. The versions conflict. Again Bhan Chand deliberately shows ignorance about his close contact with the family of sister of the deceased. The very fact that he knew about the deceased he should have informed anyone or the relations of the deceased particularly when he knew the next day that she had died. He never went for cremation.

39. Again the story of Harbans Singh that when he saw the face of the deceased her eyes were bulging out and her tongue was protruding out and that he resisted about the cremation being done early and that nearly 10 minutes after their arrival there, the dead body was removed for cremation is totally false. FIR was made after Harbans (PW 3) had met his father. It is clearly admitted by Kishan Lal, PW 5, that no such thing has happened in the cremation ground. No body tried to detain the dead body and the cremation was done at 4.00 p. m. in the evening.

40. Ordinarily, this court does not go into the questions of fact nor goes through the evidence minutely when both the courts below have given concurrent judgments. It appears that the learned Judges of the High Court have over-emphasised the appellants' not having been sent any messenger to Raj Singh before and after the cremation of the deceased; again the observation which persuades us to go into the facts is the observation of the High Court that the defence having taken the lady to Dr. Brij Lal was a crude attempt to make out a case of natural death and the anxiety of the appellant to get her treated. The High Court observed thus :

"However, this has exposed the guilty mind of the accused to light and no doubt is left that Sukhcharanjit Kaur died in unnatural circumstances at the hands of the accused. It was for them to produce satisfactory evidence to get out of the noose because her death had taken place at the dead of the night at the house of the accused and the burden was on them to explain the circumstances in which she had died."

41. It appears to us that the whole approach of the High Court was erroneous. Every member of the family of the deceased, with whom she had been living before her marriage, had been informed. Even the brother, mother and the Masi (who had performed the marriage of the deceased) were conveyed the information and they were even present in the village before cremation and they visited the house of the appellant and attended the cremation. so no inference could be raised against the appellants for their failure to inform the father about the death of the deceased.

42. Another suspicious circumstance relied upon by the High Court is that the deceased was prohibited from writing letters to her father. As we have observed, there is no evidence of love lost between the father and the deceased. The father himself is a labourer. We do not know even if he is educated. Why would the in-laws prohibit the deceased from writing to her father only when the deceased was regularly writing letters to her mother and the sister in the neighbouring village.

43. The entire prosecution case about demand for dowry made by the appellant, as is mentioned in

the FIR, is not supported by the brother of the deceased, Harbans Singh. The alleged demand by the father and the brother are totally conflicting. There is no corroboration of their versions at all. The allegation in the FIR that the accused husband wanted money lying in the account of his wife was not substantiated but the version was changed to show that appellant did not know that the amount had already been withdrawn by the deceased before her marriage.

44. The deceased may have been married only a year back before the incident, but deceased was a 36 year old lady and who according to her own letters was under treatment. From her own letters the nature of the illness is not clear. At the same time, there is no reliable evidence whatsoever of any torture and much less about the demand for dowry. The father did not have a penny to spare. Three of the children had been adopted out. The whole story of Harbans Singh, PW 3, as to what transpired at the house of the deceased or in the cremation is belied by Kishan Lal, PW 5. What the brother noticed in the house also does not figure in the FIR. Apparently, the FIR was recorded much after the incident and with due deliberations between father and brother but the FIR is silent. Nobody raised any objection to the cremation. The mother who was present at the time of cremation and at the house of the deceased never came in the witness box to support her son.

45. It is also clear from the correspondence itself that the deceased had no particular liking for her brother, Harbans Singh.

46. It appears from the judgment of the High Court that it placed the burden on the accused to prove his innocence. This is a fallacious approach. The burden in the absence of presumption of law never shifted to the accused. It was for the prosecution to establish the guilt. Appellant 2, was not even named in the FIR. No allegation was made against him for torture or demand for dowry.

47. The defence in this case was two-fold. One was that the deceased who suffered from fits died as a result thereof and the second was that there was demand from the father of the deceased that whatever dowry was given at the time of marriage should be returned to them after the death of the daughter which the accused party declined. From her letter to her mother, it is clear that the deceased was having some illness which she had not spelt out in her letter but she was under treatment. She was not satisfied with the earlier treatment and had changed to another treatment. So far as the second part is concerned, it appears that one way to recover back dowry given at the time of marriage by the Masi was to pressurise the accused party by initiating criminal proceedings against them.

48. We are not concerned with the truthfulness or otherwise of the defence but the prosecution has failed to prove ill-treatment or torture of the deceased before her death and or any demand of further dowry and thus the prosecution has failed to establish its own case.

49. We are thus constrained to allow the appeal, set aside the judgments of the courts below and acquit the appellants.

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