

BIJA & ORS.

v.

STATE OF HARYANA  
(Crl. A. No. 344 of 2007)

JANUARY 10, 2008

[C.K. THAKKER AND D.K. JAIN, JJ.]

*Penal Code, 1860 – ss. 302 r/w s. 34 – Murder – Prosecution case that marital discorrd between wife and first husband – On intervention and pressure by Panchayat, second marriage of wife with first husband's brother by karewa marriage though in-laws and former husband not in favour – Second husband also unhappy with wife – Few months thereafter, death of wife in matrimonial home – Conviction of in-laws, former husband and second husband u/s 302 r/w s. 34 by courts below – Correctness of – Held: Death was homicidal in nature and was caused by asphyxia due to smothering – Second husband had direct, immediate and proximate grievance – Hence, his conviction u/s. 302 upheld – However, insufficient evidence as to common intention on part of in-laws and former husband to kill deceased, hence, their conviction by aid of s. 34 set aside.*

**According to the prosecution case, S-wife was unhappy at her matrimonial home. It is alleged that RS-husband was not happy with S due to several circumstances and as such became indifferent to S and abandoned her. Thereafter, on intervention of Panchayat, J, brother of RS was compelled to marry S by Karewa marriage by exchange of garlands though her first husband and his parents were not in favour of the second marriage. J was also unhappy with S. Few months later, S died. It is alleged that J-husband of S, RS-former husband of S and father-in-law and mother-in-law, accused nos 1 and 4 caused death of S by closing her mouth and nose and by smothering. Accused were**

A charged under sections 498 A, 304 B read with s. 34 and  
section 302 read with s. 34. Sister of S who was married  
to the brother of RS, deposed that S was suffering from  
epilepsy and died due to that. Trial Court held that the  
case of dowry demand was not made out and acquitted  
B the accused under section 498 A, 304 B read with s. 34  
IPC. However, on being satisfied that the accused killed  
S in furtherance of common intention, convicted the  
accused under section 302 read with section 304 IPC.  
High Court upheld the order. Accused filed appeal before  
C this Court. Accused nos. 1, 2 and 4, RS and parents-in-  
law were enlarged on bail except J.

Appellants-accused contended that the courts below  
erred in convicting them; that when no case was proved  
by the prosecution against them for offences punishable  
D under sections 304B and 498A read with section 34 IPC,  
they ought to have been granted benefit of doubt and  
could not have been convicted under section 302 read  
with section 34 IPC; that there was sufficient evidence on  
record in the form of substantive evidence of DW1-real  
E sister of S; that the deceased was suffering from Epilepsy  
and the said ailment was responsible for her death; that  
finding of dead body from the house of the accused does  
not necessarily connect the appellants with the offence;  
and that there was no evidence to invoke section 34 IPC.

F Respondent-State contended that the order of  
conviction by the trial Court and upheld by the High Court  
was correct; that from the evidence of prosecution  
witnesses it was clearly established that there was motive  
on the part of the accused to kill deceased S; that during  
G the night time of May 1 and 2, 1998, she was all alone in  
the house at the ground floor and all the accused persons  
were on the roof; that taking advantage of the situation,  
all the accused killed the deceased by pressing her nose  
and mouth; that the death due to asphyxia by smothering  
H was clearly established by medical evidence on record;

that the conduct of the appellants also went a long way in proving mens rea and the case against them; that though there was no electric connection, electric wire was put near the dead body of deceased S to give an impression to police that death was caused due to electrocution; that DW 1, sister of deceased S, was married to real brother of RS and J and son of accused no 1 and 4 and was staying with her husband and as such was expected to support the defence and courts below rightly discarded her evidence; and that since all the appellants had common intention to kill deceased S, the Courts below were right in ordering conviction of all of them under Section 302 read with Section 34, IPC.

Partly allowing the appeal, the Court

HELD: 1.1 From the evidence of prosecution witnesses and the findings recorded by both the Courts in the light of evidence of PW9-Doctor, it was proved beyond reasonable doubt that the cause of death of S was asphyxia due to smothering. An impression was sought to be created by the accused that cause of death was electrocution but from the evidence of PW10-Inspector, the possibility was ruled out. It was also established from medical evidence that the death was not due to ailment of Epilepsy as put forward by the defence case. Therefore, both the Courts were right in coming to the conclusion that death of S was homicidal in nature and the cause of death was Asphyxia due to smothering. [Para 13] [487-G; 488-A, B]

1.2 The Courts below were right in not relying upon the deposition of DW1-sister of deceased S and in observing that she was under pressure as she was staying at matrimonial home and with a view to protect her, she deposed in favour of her in-laws as she wanted to save them. It could not be said that by drawing such inference, the trial Court or the High Court had committed any error. [Para 14] [488-C, D]

A 1.3 There was motive on the part of the accused in  
doing away with S. Though both the Courts had not  
believed the case of demand of dowry and cruelty towards  
deceased S for non-payment of sufficient dowry by the  
parents of deceased S in view of the circumstance that  
B another sister of S married to one of the brothers of RS  
had not stated anything as to demand of dowry by the  
accused persons and she was living at the matrimonial  
home peacefully. It has come on record that S was not  
good-looking lady. Moreover, though her marriage was  
C performed with RS along with her sister, for about 10  
years, she could not conceive and could not bear a child.  
RS was totally indifferent and abandoned her. PW2-father  
of deceased S, made complaint to Panchayat and finally,  
the Panchayat practically forced the family members of  
D the accused to accept S and keep her in their family. It  
was because of the compulsion and pressure of  
Panchayat that accused had to agree to marriage between  
J and S. Thus, there was every reason for the accused to  
be unhappy with deceased S. J, who was the present  
E husband, had grievance against S. He had to marry S who  
was neither beautiful nor able to bear child. The marriage  
was subsisting. After S married J, he was unhappy as she  
could not conceive. Presumably because of that, he was  
also indifferent towards her. On the intervening night of  
F 1st and 2nd May, 1998, S was alone in her room on the  
ground floor and J was on the roof along with other family  
members and the dead body of deceased S was found in  
the morning of May 2, 1998 from the house of the accused.  
Direct, immediate and proximate grievance at the relevant  
G time was for accused J. Hence, his conviction and  
sentence for an offence punishable under Section 302 IPC  
by the trial Court and confirmed by High Court cannot be  
said to be contrary to law or otherwise unlawful, and is  
confirmed. [Paras 15, 16 and 17] [488-E, F, G; 489-A, B, C,  
D, E, F, G]

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1.4 There was no evidence that accused Nos. 1 and 4- parents of the accused No.3-J and accused No.2-RS, former husband of the deceased had common intention to kill deceased S and they were parties in killing the deceased. In view of the fact that accused Nos. 1, 2 and 4 could not be said to be directly connected with the death of S, in absence of clear evidence to that effect, the Courts below could not have convicted them by invoking Section 34 IPC. So-called extra judicial confession by accused No.4-mother in law before GS and AS was not proved. Thus, the conviction and sentence of accused Nos. 1-father-in-law, accused No.4-mother-in-law and accused No.2-former husband of deceased S by the aid of Section 34, IPC is set aside and they are to be acquitted. [Paras 16 and 17] [489-C, E, F; 490-B, C]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 344 of 2007.

From the final Judgment and Order dated 6.7.2006 of the High Court of Punjab and Haryana at Chandigarh in CrI. A. No. 435-DB/2003.

R.S. Dhull and Debasis Misra for the Appellants.

Naresh Bakshi and T.V. George for the Respondent.

The Judgment of the Court was delivered by

**C.K. THAKKER, J.** 1. The present appeal is directed against the judgment and order of conviction and sentence recorded by the Additional Sessions Judge-I, Kaithal dated May 17, 2001 in Sessions Trial No. 52 of 1999 and confirmed by the High Court of Punjab & Haryana on July 6, 2006 in Criminal Appeal No. 435-DB of 2003. By the aforesaid orders, all the appellants were convicted for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code (IPC) and ordered to undergo rigorous imprisonment for life and to pay fine of Rs.2000/- by each of them. Default sentence was also ordered.

A 2. The case of the prosecution was that Smt. Santro  
(deceased) was the daughter of PW2-Lakhmi Chand. Lakhmi  
Chand was having another daughter named Shero. Both the  
sisters (daughters of Lakhmi Chand) were married to two sons  
of Bija—accused No.1. Whereas deceased Santro married to  
B accused No.2—Raghbir Singh, Shero (sister of deceased  
Santro) married to Subhash Singh, another son of Bija-accused  
No.1 and brother of Raghbir Singh-accused No.2. According to  
the prosecution, though the marriage of both the sisters was  
solemnized in 1988, deceased Santro was unhappy at her  
C matrimonial home. It was alleged that accused Raghbir Singh-  
husband of Santro was not happy with his wife. Santro was not  
beautiful, she had not brought sufficient dowry with her and also  
that she could not conceive and bear a child in spite of the fact  
that substantial period of about 7-8 years after marriage had  
D elapsed. In view of the above facts, accused Raghbir Singh  
became almost indifferent to Santro and nearly abandoned her.  
The Panchayat was informed and several meetings were held  
and ultimately, due to intervention of the Panchayat, after about  
ten years of the marriage and 5-6 months prior to the incident  
which took place in May, 1998, Santro again got married to  
E Jagdish-accused No.3 (younger brother of Raghbir Singh) who  
was bachelor at the relevant time, by exchanging garlands  
(*Jaimala*). It was the case of the prosecution that the accused  
were not in favour of the second marriage of Santro with Jagdish,  
but they had to agree and the marriage was performed due to  
F intervention and pressure by the Panchayat. That was said to  
be the motive on the part of the accused for causing death of  
deceased Santro.

G 3. According to the prosecution version, in the night  
intervening May 1<sup>st</sup> & 2<sup>nd</sup>, 1998, Santro died in the house of her  
in-laws. The allegation was that, all the four accused, namely,  
Jagdish-husband of Santro, Raghbir Singh-former husband of  
Santro, Bija and Sona Devi — father-in-law and mother-in-law  
respectively of Santro caused her death by closing her mouth  
and nose and by smothering her.  
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4. According to PW2-Lakhmi Chand (father of deceased Santro), he was at his agricultural field in the night of May 1, 1998. There he received a message that his daughter was killed by all the four accused persons. He immediately went to his house from the field and accompanied by PW3-Sher Singh (Sarpanch of the village) and PW4-Ganga Singh (brother-in-law of PW2 Lakhmi Chand and maternal uncle of deceased Santro) went to the house of the accused and found dead body of his daughter Santro lying near the door of the room. An electric wire was hanging over the dead body of his daughter. PW2-Lakhmi Chand along with Sher Singh, Ganga Singh and others, then went to the Police Station, Rajound and lodged First Information Report (FIR) with the police. After usual investigation, charge sheet was submitted. It appears that initially the case was registered against the accused for offences punishable under Sections 498A, 304B read with Section 34, IPC. But, since the Court was satisfied that *prima facie* there was sufficient material to frame charge against the accused for an offence punishable under Section 302 read with Section 34, IPC, the charge was amended and all the four accused were also charged for an offence punishable under Section 302 read with Section 34, IPC in addition to offences punishable under Sections 498A and 304B read with Section 34, IPC.

5. The prosecution, in order to prove guilt of the accused, examined as many as 12 witnesses including PW2-Lakhmi Chand (father of deceased), PW3-Sher Singh (Sarpanch of the village) and PW4-Ganga Singh (maternal uncle of deceased Santro). It was stated in the FIR that deceased Santro was killed by all the accused in furtherance of common intention by giving electric current to her, as electric wire was lying near the dead body of Santro, but during the course of investigation, it was found that there was no electric connection in the house of the accused and medical evidence also revealed that death of deceased Santro was caused due to asphyxia by smothering and accordingly, the case was considered on that basis.

6. After appreciating the evidence on record, the trial Court

A came to the conclusion that it was clearly established by the prosecution, particularly from the evidence of PW2-Lakhmi Chand (father of deceased Santro) and PW4-Ganga Singh (maternal uncle of deceased Santro) that the deceased was not happy at the matrimonial home. Several circumstances were

B responsible which made accused unhappy with Santro and her life miserable. They were, *inter alia*, narrated by the prosecution witnesses, as Santro not being very beautiful, she did not bring sufficient amount of dowry with her and could not give birth to a child. It has also come in evidence that attitude of accused

C Raghbir Singh-former husband of deceased Santro, was totally indifferent and he had almost abandoned her. Several complaints were made to the Panchayat and the Panchayat insisted that the family of the accused must do something to do justice to Santro as there was no fault on the part of deceased

D Santro for which she was not treated properly. At the intervention of the Panchayat in October, 1997, therefore, the family of the accused had to agree to marry one of his sons (accused Jagdish) with deceased Santro by *Karewa* marriage. It is clear from the prosecution evidence that none of the family members of the accused liked the marriage of Santro with Jagdish-younger

E brother of Raghbir Singh-former husband of Santro. Once again Santro could not conceive and accused Jagdish and other family members of the accused got disturbed. From the prosecution evidence, it is clear that in the intervening night between May 1 and 2, 1998, all the family members except deceased Santro

F were sleeping on the roof of the house of the accused and Santro alone was in her room at the ground floor. According to the prosecution, when the family members of the accused came in the morning of May 2, 1998, Santro was found dead in her room. Since no outsider was present in the house and as the accused

G persons were unhappy with Santro and they had motive and reason to kill Santro, all of them jointly committed the murder of Santro. Then with a view to mislead the investigating agency, they had put an electric wire near the dead body of Santro. From the evidence of PW10-Inspector Gulzar Singh, however, it was

H proved that there was no electric connection in the house of the

accused and the possibility of death of Santro by electrocution was thus ruled out. The case was also put forward by the defence under Section 313 of the Code of Criminal Procedure, 1973 as also by examining DW1—Shero—real sister of deceased and wife of Subhash Singh—brother of accused Raghbir Singh and Jagdish that deceased Santro was suffering from Epilepsy and she died due to that ailment. But from the evidence of PW9—Dr. B.B. Kakkar, it was clearly established that the cause of death was neither electrocution nor Epilepsy but asphyxia due to smothering.

7. The trial Court held that both the sisters—Shero and Santro got married to two brothers on one and the same day. Both the sisters were then sent to matrimonial home. It was, therefore, not possible to believe that there was dowry demand from one sister *i.e.* deceased, and not from the other sister *i.e.* Shero. Again, no sufficient evidence was led by the prosecution to prove demand of dowry and death of deceased Santro on that account. Accordingly, the trial Court acquitted all the accused for offences punishable under Sections 498A and 304B read with Section 34, IPC. But the trial Court was satisfied that all the accused killed Santro in furtherance of common intention and accordingly, it convicted them for an offence punishable under Section 302 read with Section 34, IPC.

8. The High Court again considered the evidence on record and submissions made by the parties and held that the trial Court did not commit any error of fact or of law in convicting the accused for an offence punishable under Section 302 read with Section 34, IPC and dismissed the appeal.

9. On January 12, 2007, notice was issued by this Court on Special Leave Petition as well as on bail application. On March 12, 2007, leave was granted and hearing of the appeal was expedited. On May 16, 2007, accused Nos. 1, 2 & 4 (parent-in-laws and former husband of the deceased) were enlarged on bail but the bail application of Jagdish (husband of Santro) was rejected. The matter is now placed before us for final

A hearing.

10. We have heard learned counsel for the parties.

11. The learned counsel for appellants contended that both the Courts committed grave error in convicting the appellants. It was submitted that when no case was proved by the prosecution against them for offences punishable under Sections 304B and 498A read with Section 34, IPC, they ought to have been granted benefit of doubt and could not have been convicted under Section 302 read with Section 34, IPC. Once it was held that it could not be said that death of Santro was caused due to demand of dowry, there was no other reason to kill her. It was also submitted that there was sufficient evidence on record in the form of substantive evidence of DW1-Shero (real sister of Santro) that the deceased was suffering from Epilepsy and the said ailment was responsible for her death and the appellants cannot be convicted for any offence. It was urged that finding of dead body from the house of the accused does not necessarily connect the appellants with the crime in question. Finally, it was submitted that there was no evidence to invoke Section 34, IPC as there was no common intention on the part of the accused in committing the crime and both the Courts were in error in invoking the said provision. On all these grounds, it was submitted that both the orders are liable to be set aside.

12. The learned Government Pleader, on the other hand, supported the order of conviction recorded by the trial Court and confirmed by the High Court. According to him, the case was of circumstantial evidence and the chain of circumstances was full, complete and unbroken. From the evidence of prosecution witnesses, PW2-Lakhmi Chand, PW3-Sher Singh and PW4-Ganga Singh, it was clearly established that there was motive on the part of the accused to kill deceased Santro. It has come on record that Santro was not beautiful, she did not bring sufficient dowry and finally she could not bear a child. It has also come on record that a complaint was made to village Panchayat and several meetings were held. The Panchayat

intervened and finally the deceased Santro had to be accommodated in the family and accused Jagdish was compelled to marry her by a *karewa* marriage exchanging garlands. But the said act was not approved by any of the accused persons and had to agree to the marriage due to intervention by the Panchayat which was the root cause of trouble. This is also clear from the fact that during the night time of May 1 & 2, 1998, she was all alone in the house at the ground floor and all the accused persons were on the roof. According to the learned Government Advocate, taking advantage of the situation, all the accused killed the deceased by pressing her nose and mouth. The death due to asphyxia by smothering was clearly established by medical evidence on record. The counsel also submitted that the conduct of the appellants also went a long way in proving *mens rea* and the case against them. Though there was no electric connection, electric wire was put near the dead body of deceased Santro to give an impression to police that death was caused due to electrocution. It was because of the investigating officer's efforts that the falsehood had come to light and it was established that there was no electric connection and death was not due to electrocution but due to asphyxia by smothering. Regarding evidence of Shero-sister of deceased, it was submitted that though she was sister of deceased Santro, she was married to real brother of Raghbir Singh and Jagdish and son of Bija and Sona Devi. Shero was staying with her husband. Obviously, in the circumstances, she was expected to support the defence. Her evidence was, hence, rightly discarded by both the Courts. Since all the appellants had common intention to kill deceased Santro, the Courts below were right in ordering conviction of all of them under Section 302 read with Section 34, IPC and no interference is called for. The appeal, therefore, deserves to be dismissed.

13. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. From the evidence of prosecution witnesses and the findings recorded by both the Courts in the light of evidence of PW9-Dr. Kakkar, it

A was proved beyond reasonable doubt that the cause of death of Santro was asphyxia due to smothering. An impression was sought to be created by the accused that cause of death was electrocution but from the evidence of PW10-Inspector Gulzar Singh, the possibility was ruled out. It was also established from  
B medical evidence that the death was not due to ailment of Epilepsy. Both the Courts, in our opinion, therefore, were right in coming to the conclusion that death of Santro was homicidal in nature and the cause of death was Asphyxia due to smothering.

C 14. The Courts below were right in not relying upon the deposition of DW1-Shero and in observing that she was under pressure as she was staying at matrimonial home and with a view to protect her, she deposed in favour of her in-laws as she wanted to save them. In our opinion, it could not be said that by  
D drawing such inference, the trial Court or the High Court had committed any error. This is coupled with the fact that a show was made by the accused persons to mislead the police and investigating agency by placing electric wire near the dead body of deceased Santro and also putting forward a ground of death  
E as ailment of Epilepsy, ruled out by medical evidence.

15. There was motive on the part of the accused in doing away with Santro. Though both the Courts had not believed the case of demand of dowry and cruelty towards deceased Santro for non-payment of sufficient dowry by the parents of deceased  
F Santro in view of the circumstance that another sister Shero married to one of the brothers of Raghbir Singh had not stated anything as to demand of dowry by the accused persons and she was living at the matrimonial home peacefully, it has come on record that Santro was not good-looking lady. Moreover,  
G though her marriage was performed with Raghbir Singh in 1988 along with Shero, for about 10 years *i.e.* upto 1997, she could not conceive and could not bear a child. Raghbir Singh was totally indifferent and abandoned her. So much so that complaints were made by PW2-Lakhmi Chand (father of deceased Santro)  
H to Panchayat and Panchayat had to intervene. In 1997, finally,

the Panchayat practically forced the family members of the accused to accept Santro and keep her in their family and it was because of the compulsion and pressure of Panchayat that accused had to agree to marriage between Jagdish and Santro. Thus, there was every reason for the accused to be unhappy with deceased Santro. This is further clear from the fact that on the intervening night of 1<sup>st</sup> and 2<sup>nd</sup> May, 1998, she was alone in her room on the ground floor and the dead body of deceased Santro was found in the morning of May 2, 1998 from the house of the accused.

16. But, there is no evidence that parents of the accused No.3-Jagdish *i.e.* accused Nos. 1 & 4 and former husband of the deceased-accused No.2-Raghubir Singh had common intention to kill deceased Santro and they were parties in killing the deceased. It is no doubt true that Jagdish, who was the present husband, had grievance against Santro. He had to marry Santro who was neither beautiful nor able to bear child. The marriage was subsisting. After Santro married to Jagdish in 1997, he was unhappy as she could not conceive. Presumably because of that, he was also indifferent towards her and in the intervening night of May 1 & 2, 1998, he was not along with her in the company of his wife in the room where she was sleeping but was on the roof along with other family members. But, in view of the fact that accused Nos. 1, 2 & 4 could not be said to be directly connected with the death of Santro, in absence of clear evidence to that effect, the Courts below could not have convicted them by invoking Section 34, IPC. So-called extra judicial confession by Smt. Sona Devi, accused No.4 before Gaje Singh and Amar Singh has not been proved. Direct, immediate and proximate grievance at the relevant time was for accused Jagdish. Hence, his conviction for an offence punishable under Section 302, IPC recorded by the trial Court and confirmed by the High Court cannot be said to be contrary to law or otherwise unlawful. But there was no sufficient evidence as to common intention on the part of the other accused in absence of requisite material on record. In our considered

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A opinion, therefore, Section 34, IPC could not have been invoked by the Courts below. To that extent, therefore, both the judgments deserve to be set aside.

B 17. For the foregoing reasons, the appeal deserves to be partly allowed as indicated above and is so allowed. The judgment and order of conviction and sentence recorded against accused No.3-Jagdish (husband of deceased Santro) for an offence punishable under Section 302, IPC is confirmed. Conviction and sentence of accused Nos. 1-Bija, father-in-law, accused No.4-Sona Devi, mother-in-law and accused No.2-Raghubir Singh-former husband of deceased Santro by the aid of Section 34, IPC is set aside and they are ordered to be acquitted.

C 18. Ordered accordingly.

D N.J.

Appeal partly allowed.