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SUPREME COURT CASES

(2010) 15 SCC

6. The reason assigned by the trial court is equally untenable. The two witnesses being related to the complainant or the accused already before the court, being “teachers and well-known persons” can be no ground to reject the petition under Section 319 of the Code for summoning some other persons as well for facing the trial.

7. We are, therefore, constrained to interfere in the matter. The orders passed by the High Court and the Magistrate are set aside and the matter is remitted to the Magistrate to consider the petition under Section 319 of the Code afresh and pass an appropriate order on it, in accordance with law.

8. In the result the appeal is allowed but with no order as to costs.

(2010) 15 Supreme Court Cases 116

(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.)

RAJBIR ALIAS RAJU AND ANOTHER . . . Petitioners;

Versus

STATE OF HARYANA . . . Respondent.

SLP (Crl.) No. 9507 of 2010[†] with Crl. MP No. 23051 of 2010,
decided on November 22, 2010

A. Penal Code, 1860 — Ss. 302 and 304-B — Dowry death — Adding of S. 302 to charge of S. 304-B — Direction for — Supreme Court directing all trial courts in India, to ordinarily add S. 302 to charge of S. 304-B, so that death sentences can be imposed in such heinous and barbaric crimes against women — Copy of instant order to be sent to Registrars General/Registrars of all High Courts, who would circulate it to all trial courts — Crimes Against Women and Children — Dowry death — Criminal Trial — Death Sentence — Generally (Para 7)

B. Penal Code, 1860 — S. 304-B — Sentence — Reduction of — Impropriety of — Dowry death — Petitioner husband found guilty of murdering his four months pregnant wife, barely six months after their marriage — Petitioner was awarded life sentence under S. 304-B by trial court — However, High Court reduced his sentence to 10 yrs’ RI — Sustainability — Held, instant case is of a barbaric and brutal murder, which is borne out by injuries sustained by victim wife, indicating that victim’s head was repeatedly struck and she was also throttled — Hence, reduction of sentence by High Court, not proper — Therefore, notice issued to petitioner husband, as to why his sentence be not enhanced to life sentence, as awarded by trial court (Paras 3 to 5)

Satya Narayan Tiwari v. State of U.P., (2010) 13 SCC 689 : (2011) 2 SCC (Cri) 393;
Sukhdev Singh v. State of Punjab, (2010) 13 SCC 656 : (2011) 2 SCC (Cri) 374, *relied on*

Y-D/47007/SR

[†] From the Judgment and Order dated 21-1-2010 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 505 of 2001

RAJBIR v. STATE OF HARYANA

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Advocates who appeared in this case :
A.P. Mohanty, Advocate, for the Petitioners.

<i>a</i>	Chronological list of cases cited	<i>on page(s)</i>
	1. (2010) 13 SCC 689 : (2011) 2 SCC (Cri) 393, <i>Satya Narayan Tiwari v. State of U.P.</i>	117h
	2. (2010) 13 SCC 656 : (2011) 2 SCC (Cri) 374, <i>Sukhdev Singh v. State of Punjab</i>	118a

ORDER

b 1. Delay of 158 days in filing the special leave petition is condoned.
2. Petitioner 1, Rajbir (husband), was found guilty of murdering his pregnant wife Sunita for demanding cash amount barely 6 months after their marriage. He was awarded life sentence under Section 304-B IPC, apart from sentences under other sections. The Punjab and Haryana High Court has reduced the sentence to 10 years' rigorous imprisonment. Petitioner 2, (mother of Rajbir), was awarded two years' rigorous imprisonment.

c 3. We fail to see why the High Court has reduced the sentence of Petitioner 1 Rajbir. It appears to be a case of barbaric and brutal murder. This is borne out by the injuries which are in the evidence of the doctor, PW 2, which are as follows:

d "1. A diffused contusion reddish in colour on right side of face extending between left half of both lips and up to right pinna and from the zygomatic area to right angle mandible. On dissection underlying tissue was found ecchymosed.

2. On right side of neck, a diffused contusion 3.5 cm x 2.5 cm situated 2.5 cm posterior inferior to right angle of mandible. On dissection underlying area was ecchymosed.

e 3. A contusion of size 7.5 cm x 5 cm over left side of neck just below angle of mandible. Underlying area on dissection was ecchymosed.

4. Multiple reddish contusions of various sizes from 0.5 cm x 0.5 cm to 1 cm x 0.5 cm on both lips including an area of 6 cm x 4 cm. On dissection, underlying area was ecchymosed.

f 5. A laceration of size 1.5 cm x 1 cm present inside the lower lip corresponding to lower incisor tooth and all of the neck on both sides below thyroid bone was found ecchymosed on dissection.

Scalp and skull were healthy. Uterus contained a male foetus of four months.

g Cause of death in our opinion was due to smothering and throttling which was ante-mortem in nature and was sufficient to cause death in ordinary course of nature."

The above injuries, prima facie, indicate that the deceased Sunita's head was repeatedly struck and she was also throttled.

h 4. We have recently held in *Satya Narayan Tiwari v. State of U.P.*¹, that this Court is going to take a serious view in the matters of crimes against women and give harsh punishment. This view was reiterated by us in another

1 (2010) 13 SCC 689 : (2011) 2 SCC (Cri) 393

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special leave petition in *Sukhdev Singh v. State of Punjab*² and we issued notice to the petitioner as to why his life sentence be not enhanced to death sentence.

5. Issue notice to Petitioner 1 why his sentence be not enhanced to life sentence as awarded by the trial court.

6. As regards Petitioner 2 (mother of Petitioner 1), it is alleged that she is about 80 years of age. Issue notice to the respondent State regarding Petitioner 2. In the meantime, Petitioner 2 only is ordered to be released on bail to the satisfaction of the trial court in connection with case arising from FIR No. 279 of 1998 dated 4-9-1998, PS Sadar Rohtak.

7. We further direct all the trial courts in India to ordinarily add Section 302 to the charge of Section 304-B, so that death sentences can be imposed in such heinous and barbaric crimes against women. Copy of this order be sent to the Registrars General/Registrars of all High Courts, which will circulate it to all trial courts.

(2010) 15 Supreme Court Cases 118

(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.)

GIAN SINGH .. Petitioner;

Versus

STATE OF PUNJAB AND ANOTHER .. Respondents.

SLP (Cri.) No. 8989 of 2010[†], decided on November 23, 2010

Criminal Procedure Code, 1973 — S. 320 — Non-compoundable offences cannot be permitted by court to be compounded — Offence of conspiracy under S. 120-B IPC being a non-compoundable and separate offence, cannot be permitted to be compounded — Two-Judge Benches of Supreme Court in three earlier decisions viz. *B.S. Joshi*, (2003) 4 SCC 675, *Nikhil Merchant*, (2008) 9 SCC 677 and *Manoj Sharma*, (2008) 16 SCC 1, indirectly permitted compounding of non-compoundable offences — Although in last two decisions Katju, J. was a member as in the present case but a Judge should always be open to correct his mistakes — These decisions require reconsideration and hence matter directed to be placed before a larger Bench — Penal Code, 1860, S. 120-B r/w S. 420

B.S. Joshi v. State of Haryana, (2003) 4 SCC 675 : 2003 SCC (Cri) 848; *Nikhil Merchant v. CBI*, (2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858; *Manoj Sharma v. State*, (2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145, *doubted*

[**Ed.**: The law on this issue has been comprehensively settled in *Gian Singh v. State of Punjab*, (2012) 10 SCC 303 by a three-Judge Bench, and the situations in which *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675: 2003 SCC (Cri) 848; *Nikhil Merchant v. CBI*, (2008) 9 SCC 677: (2008) 3 SCC (Cri) 858; *Manoj Sharma v. State*, (2008) 16 SCC 1: (2010) 4 SCC (Cri) 145 are applicable have been clarified and the said three cases have been affirmed by the three-Judge Bench in *Gian Singh v. State of Punjab*, (2012) 10 SCC 303.]

R-D/47025/SR

² (2010) 13 SCC 656 : (2011) 2 SCC (Cri) 374

[†] From the Order and Judgment dated 17-9-2010 of the High Court of Punjab and Haryana at Chandigarh in CRM No. M-27367 of 2010