

(2007) 03 P&H CK 0165

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 415-SB of 1994

Devi Chand and Others

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision: March 29, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 201, 304, 304B, 34, 498A

Citation: (2007) 4 RCR(Criminal) 63

Hon'ble Judges: H.S. Bhalla, J

Bench: Single Bench

Advocate: O.P. Kamboj, for the Appellant; Deepak Girotra, Assistant Advocate General, Haryana, for the Respondent

Final Decision: Allowed

Judgement

H.S. Bhalla, J.

This appeal is directed against the judgment dated 16/17.8.1994 passed by Additional Sessions Judge, Yamuna Nagar, whereby he convicted Appellants, namely, Tara Chand, Devi Chand, Sona Devi and Lomas under Sections 304-B read with Section 34 of the Indian Penal Code and 201/34 of the Indian Penal Code. All the Appellants were sentenced to undergo rigorous imprisonment for seven years each u/s 304-B read with Section 34 of the Indian Penal Code. Further all the Appellants were sentenced to undergo rigorous imprisonment for three years each u/s 201/34 of the Indian Penal Code and they were ordered to pay fine of Rs. 200/- each; in default thereof, they were further directed to undergo rigorous imprisonment for six months each. The sentences awarded were ordered to run concurrently. However, accused, namely, Rameshwar Dass, Naresh Kumar, Kailash Chand and Maya Ram were acquitted of the charges framed against them.

2. The facts required to be noticed for the disposal of this appeal are that on the statement made by Phool Singh in Police Station Sadar Yamuna Nagar on 31.8.1992, the present case was registered, wherein he has stated that his daughter Santosh Devi was married with Tara Chand accused in the month of February 5 or 5-1/2 years back and sufficient dowry was given in the marriage. After 2 or 2-1/2 years of marriage, her husband Tara Chand, father-in-law Devi Chand, mother-in-law Sona Devi and brother-in-law Lomas started quarrelling with Santosh Devi regarding dowry. Santosh Devi sent a message to her father Phool Singh to meet her, as she was being harassed by the aforementioned accused. At this, Phool Singh went to her house and asked the abovesaid accused not to harass Santosh Devi. Devi Chand accused demanded a sum of Rs. 5,000/- from Phool Singh to get Tara Chand confirmed in service, but Phool Singh gave only Rs. 2000/- to Devi Chand after borrowing the same from his brother Chamela Ram and expressed his helplessness regarding the balance amount. After receiving this amount, Santosh was kept well for 2/3 months. Again they started beating Santosh Devi. Ten months prior to 10.6.1993, Tara Chand and Santosh came to the house of Phool Singh in village Harauli on the occasion of Rakhi. Santosh Devi told her father that her father-in-law Devi Chand was demanding a television. At this, Phool Singh told Tara Chand that he will purchase a television for him after selling the paddy crop. On the date of occurrence, thereafter on 30.8.1992 at 6.30 A.M. Chamela Ram went to the house of Santosh Devi at village Isharpur and he found that Devi Chand, Sona Devi and Lomas were quarrelling with Santosh Devi. Thereafter, Chamela Ram went to Tara Chand son of Sadhu Ram, who was the middleman of the marriage and told him about it. At 12.00 (noon) he came to village Harauli and told about the occurrence to Phool Singh PW. At about 2.00 or 2.30 P.M., Phool Singh and Chamela Ram P Ws were making a plan for going to village Isharpur, when a person came to them and told that Santosh Devi had died. Hence, both of them reached village Isharpur along with other villagers in a tractor trolley. They came to know that Santosh Devi had committed suicide by jumping in front of a running train on account of harassment caused to her by the accused above named on account of demand of dowry. In spite of objections raised by Tara Chand and Kartar Singh, the dead body of Santosh was cremated by the accused. It is alleged that the dead body of Santosh was taken away from Railway Station, Kalanaur by Maya Ram accused on his Jhota Buggi.

3. On 31.8.1992, Sub Inspector Jagdish Ram took into possession some burnt bones and ashes from the cremation ground vide recovery memo Ex. PF/1. Dowry articles of Santosh Devi were also taken into possession vide recovery memo Ex. PF. The burnt bones and ash were sealed into a parcel with the seal 'JR' and were sent to the Forensic Science Laboratory for examination. Vide report Ex. PA, these bones and ash were found to be of human body. After completion of the investigation, accused were sent up for trial.

4. Accused, namely, Devi Chand, Tara Chand, Lomas and Sona Devi-were charge sheeted u/s 498-A read with Section 34 of the Indian Penal Code and 304-B read

with Section 34 of the Indian Penal Code. Further they were charge-sheeted u/s 201 read with Section 34 of the Indian Penal Code. Accused did not plead guilty and claimed trial.

5. Prosecution, in order to prove its case, examined as many as seven witnesses, namely, Parmeshwari Chand, (PW-1), the driver of the passenger train; Raghbir Chand Sharma, (PW-2) the Guard of the train; Phool Singh (PW-3) complainant; Sub Inspector Piare Lal (PW-4), who had partially investigated the case; Chamela Ram (PW-5), the brother of Phool Singh complainant; Jai Dayal (PW-6) and Sub Inspector Jagdish Ram (PW-7), the Investigating Officer of the case and closed its evidence.

6. In their statements recorded u/s 313 of the Code of Criminal Procedure, they denied all the prosecution allegations levelled against them. They pleaded that they have been falsely implicated in the present case. Tara Chand, husband of the deceased alleged that Santosh died due to accident, while she was crossing the railway track. It is admitted that the dead body was brought from the railway station. He has further alleged that he never demanded any dowry. He never harassed the deceased for demand of dowry. Out of their wedlock, two children were born. His wife Santosh used to remain ill and she used to go to village Mandauli for taking medicines. Village Mandauli is situated across the railway line. He came to know from the villagers that while his wife was crossing the railway line and was going to take medicines, all of a sudden, she was run over by a train. He has further prayed that he and his wife are living separately from the rest of the family members. In defence, they examined Subhash Chander (DW-1), Ajmer Singh (DW-2) and Chandan Singh (DW-3) and thereafter closed their defence evidence.

7. I have heard the learned Counsel for the parties and have also gone through the record of the case carefully.

8. Before I proceed further in the matter, I would like to observe that for the fault of the husband, the other relations cannot be involved for the demand of dowry, particularly when general accusations are levelled against them. The overacts attributed to persons other than the husband are required to be proved beyond reasonable doubt. On account of the conjectures and implications, such relations cannot be held guilty for the offence relating to dowry deaths. It has come to the notice number of times that a tendency has developed for roping in all relations of the husband side and this practice is require to be discouraged. The desire to seek conviction for maximum people have led the parents of the deceased for making effort involving other relations and ultimately, this weakens the entire case of the prosecution even against the real accused. In the instant case, a demand of Rs. 6000/- for getting the service of the husband confirmed and a television has been made by father-in-law Devi Chand, who has now crossed over the age of 75 years. On account of general and vague allegations, the whole members of the family have been dragged in the litigation and they are facing mental agony for the last 15 years. No allegations have been levelled against mother-in-law Sona Devi and

brother-in-law Lomas with regard to demand of dowry.

Regarding father-in-law Devi Chand, nothing is to be gained from dowry articles and even if television set is given, the husband would keep in his own room and not at a common place as is normally seen in such types of cases and in this manner, he cannot be beneficiary when the articles demanded are to be used specifically by the husband. The mother-in-law, brother-in-law and father-in-law cannot be convicted on the basis of general and vague allegations. There are general allegations of demand of dowry and harassment against the aforementioned accused. Moreover, it has been established on the record that husband is living separately from the rest of the members of the family and in this way, none of them would be beneficiary of any of the goods that might have come to the accused or his family. There is no evidence available on the file to indicate any date, time, month or year as to when the aforementioned demands of Television and cash were made. In such like circumstances, no case is made out against Appellants, namely, Devi Chand, father-in-law, Sona Devi, mother-in-law and Lomas, brother-in law. Accordingly, they are acquitted of the charges framed against them.

9. Learned Counsel for the Appellants has vehemently contended that it has not been established on the record that Santosh deceased had committed suicide and that it was a case of accident only. Santosh was going to village Mandauli to take medicine from Dr. Subahsh Chander (DW-1) and that the railway line falls in between and when she was crossing the railway line, she was knocked down by the train. The learned defence counsel has contended that the evidence of the witnesses have to be examined minutely with care and caution as it is the tendency on the part of the relatives to exaggerate the story by adding more facts. Learned Counsel has further contended that defence version is more probable than the prosecution version, which was made up by the complainant party with due deliberations and confabulations in order to rope in the whole members of the family, since there was a delay in lodging the First Information Report.

I have given my attention and consideration to the submissions made by the learned Counsel for the parties and at this stage, I would like to find out whether the evidence put forward by the prosecution satisfies necessary ingredients of an offence, if so, its effect ? In order to convict the accused for an offence u/s 304-B of the Indian Penal Code, the following essentials 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 her marriage;
3. Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
4. Such cruelty or harassment must be for or in connection with demand of dowry.

10. It is only when the aforementioned ingredients are established by acceptable evidence such death shall be called "dowry death" and such husband or his relative shall be deemed to have caused her death. It may be pointed out that punishment for the offence of dowry death u/s 304-B is of not less than 7 years, which may extend to imprisonment for life. Unlike u/s 498-A IPC, husband or relative of husband of a woman subjecting her to cruelty shall be liable for imprisonment for a term which may extend to three years and shall also liable to fine. In a criminal case, normally accused can be punished for an offence on the basis of evidence, may be direct or circumstantial or both. But in the case of an offence u/s 304-B IPC an exception is made by deeming provision as to nature of death as "dowry death" and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. The entire evidence is to be scrutinized with greater care having regard to the gravity of the offence prescribed for the said offence.

11. In scrutinizing the evidence and in arriving at a conclusion as to whether all the above mentioned ingredients of the offence are proved by the prosecution, I would like to peep through the evidence put forward by the prosecution firstly in order to deal with the point of delay in lodging the First Information Report. Phool Singh (PW-3) father of the deceased and complainant of the case and Chamela Ram (PW-5), brother of the complainant had come to village Isharpur at 2.00 P.M. and at that time they had come to know that Santosh had committed suicide. They did not go to the police station to lodge the report. They went home and after due deliberations, FIR was lodged on the next day at 10.00 A.M. and copy of the report was sent to the Ilaqa Magistrate at about 5.30 P.M. This long delay in lodging the same clearly spells out that this case was got registered after due deliberations and a cooked up story was framed. The learned Additional Sessions Judge has observed that in the present case Santosh committed suicide in the absence of her parents and it was natural for them to think twice as to whether the report was to be lodged because the two children of the deceased were alive and the question of their lives was also to be seen. In such like circumstances, they took time to lodge the matter with the police. The explanation furnished by the prosecution in not lodging the report early is plausible in the facts and circumstances of the case. Therefore the contention raised by the learned defence counsel in lodging the report belatedly does not hold any ground.

12. Phool Singh (PW-3) has deposed that his daughter was kept quite well for 2 or 2-1/2 years after marriage. Thereafter, there used to be quarrel between them regarding dowry. Devi Chand and Sona Devi used to quarrel with Santosh as to what she had brought in dowry. Santosh Devi had sent him a message that she was being harassed. Then he went there and asked them not to behave like that. Then Devi Chand accused demanded Rs. 5,000/- from him to get Tara Chand confirmed, but he paid Rs. 2,000/- by borrowing the same from Chamela Ram. Thereafter, they lived

well for 2-3 months. Again his daughter told him that Devi Chand was demanding a television. He promised his son-in-law that he will purchase the same after selling the paddy crop. He had asked his brother Chamela Ram to meet his daughter off and on. On 30.8.1992, his brother Chamela Ram went there and found that Devi Chand and Sona Devi were quarrelling with Santosh. He then went to Tara Chand, who was the middleman. Chamela Ram told him at about 12.00 noon that Santosh was being harassed. They were thinking of going to Santosh Devi but at about 2 or 2.30 P.M. a person came there and told that Santosh was dead. They could not see the dead body of Santosh as she had already been cremated. On the next day, he lodged the report Ex. PE with the Police on 2.8.1992, police took into possession the dowry articles vide recovery memo Ex. PF. Chamela Ram (PW-5), who is the brother of Phool Singh, complainant, has deposed that he had paid Rs. 2000/- to his brother. His brother Phool Singh, after taking this amount, had gone to the accused and paid this amount to Devi Chand. He has further deposed that after three months, they again demanded a television set. They gave beatings to Santosh. On 30.8.1992 he went to the house of accused and found that Tara Chand and Sona Devi were fighting with Santosh. Devi Chand and Lomas accused were also present there. After seeing him, Tara Chand accused went away on his motor cycle. Santosh told him that she was beaten by all the four accused as she had not brought the television. Thereafter, he went to Tara Chand, who was the middleman and Kartar Singh was also standing there. He told them the whole story. After telling them to make the accused understand, he went to his village harauli and told the whole story to Phool Singh. He and Phool Singh were planning to go to Santosh, but they received information of her death. When they went to village Isharpur, the dead body of Santosh had already been cremated. He has further deposed that Santosh committed suicide as she was harassed by the accused. After going through the statements of these two witnesses, it is clearly established on the record that Santosh was being harassed on account of the demand of dowry. She was also beaten on the day of occurrence in the presence of Chamela Ram. The testimony of these two witnesses stood like a rock and was not shattered even during the lengthy cross-examination conducted by the learned defence counsel, but nothing of importance could be elicited in favour of the defence.

13. It is worth mentioning that demand of dowry on the part of the father-in-law, mother-in-law and brother-in-law has not been proved in the former part of my judgment since they have nothing to do with the dowry articles. The dowry articles are to be used specifically by the husband for which he could be held liable and on account of non-fulfillment of the demand raised by him, he used to pester the deceased by beating her and that was the reason that Sunita took an extreme step in order to eliminate her life by jumping before a running train resulting in her death. The death took place within seven years of the marriage on account of mal treatment and persistent demand of dowry. It is not a case of accident, but it is a case of suicide as is apparent from the testimony of Parmeshwari Chand (PW-1),

who has categorically deposed that Santosh had first crossed the lines and thereafter he was told by his assistant that lady had returned and was run over by the train. The testimony of this witness clearly spells out that once Santosh had crossed the railway lines, the accident could not take place, but when she returned and was run over, it was a case of suicide.

14. So far as the defence version put forward by the accused, I am of the view that it is an after thought and does not appeal to reasoning at all, inasmuch as, no body would allow a young married woman to go to the doctor alone for the purpose of taking medicines that too in the other village by crossing the railway line when the other members of the family are very much available in the house.

15. Seen from every angle, I am of the view that prosecution has been able to prove its case beyond reasonable doubt qua Appellant No. 2 Tara Chand, the husband of the deceased. Appeal qua him fails and is dismissed. The conviction and sentence recorded by the learned Additional Sessions Judge under Sections 304/34 and 201/34 of the Indian Penal Code is affirmed. The Appellant, if on bail, is ordered to be taken into custody to serve out the sentence awarded by the learned trial Court. The sentence of imprisonment already undergone by him shall be set off out of the sentence awarded by the learned trial Court.

16. Criminal Appeal is partly allowed in the manner indicated above.