
(2003) 07 P&H CK 0186

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 282-SB of 1990

Dharam Pal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 25, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Penal Code, 1860 (IPC) - Section 107, 206, 304B, 306, 366

Citation: (2003) 6 CriminalCC 480 : (2003) 4 RCR(Criminal) 334

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Advocate: R.N. Sharma, for the Appellant; Sanjeev Sheokand, AAG, Haryana, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Virender Singh, J.

Dharam Pal son of Basau Ram, the appellant herein, stands convicted under Sections 366/498-A IPC vide impugned judgment dated 19.7.1990 passed by the learned Additional Sessions Judge, Hisar and has been sentenced to undergo R I for five years and to pay a fine of Rs.500/- u/s 306 IPC, in default of payment of fine to further undergo R I for six months. He has been sentenced to undergo R I for a period of two years and to pay a fine of Rs.300/- u/s 498-A IPC, in default of payment of fine to further undergo R I for a period of six months. However, both the sentences were ordered to run concurrently.

2. It is worth mentioning here that the appellant was initially charged u/s 304-B IPC but he stands acquitted for the same and instead has been convicted u/s 306 IPC. Banaspati wife of the appellant is the deceased in this case. She died of unnatural death after six and half years of her marriage. The present case was registered

against the appellant on the statement Ex. PA of Rajbir son of Wazir Chand PW2.

3. In short, the case of the prosecution as set out in the statement of Rajbir is that Banaspati was married to appellant and in the said marriage, certain dowry articles were given in the shape of furniture, clothes and ornaments etc. and that the muklawa was performed after two years of marriage and at that time Wazir Chand PW3 had also given utensils and other ornaments to Banaspati. It is then the case of the prosecution that at that time the appellant and Banaspati (since deceased) were residing at village Sisai and thereafter they had shifted to Bhim Nagar Colony, Hansi. There the appellant started harassing her for bringing inadequate dowry and whenever Banaspati used to come to her parents house at village Puthi Mangalkhan, she had been telling that the appellant was harassing her on account of insufficient dowry. She also complained about the beatings given to her by the appellant. It is then the case of the prosecution that about one and half years prior to the death, the appellant had allegedly given severe beating to her and turned her out of his house and then for sometime Banaspati stayed with her parents but on account of assurance from the side of the appellant and interference of certain persons, she was sent back. The allegation further is that the appellant had even sold all the ornaments of Banaspati. Two days prior to the alleged date of occurrence, the appellant had made a demand of Rs.2000/- from Wazir Chand PW3 and at that time, Rajbir PW2 was also present. However, the case of the prosecution is that the appellant had demanded the same amount for his own expenses. Wazir Chand and Rajbir and assured the appellant that after arranging the money, the same would be sent to him on 2.5.1989 and when on 2.5.1989 PW2 Rajbir went to inform his sister that the said amount could not be arranged by them, it was not liked by the appellant and he on this account started bating Banaspati. Because of this altercation, Banaspati consumed insecticide which was available in the house and became unconscious. She ultimately died in the Civil Hospital, Hansi. On the statement of Rajbir PW2, the formal FIR Ex.PA/2 was recorded.

4. The police immediately swung into action and completed other formalities. The appellant was arrested in the present case and after thorough investigation, the appellant was sent for trial. A charge under Sections 304B/498-A IPC was framed against the appellant.

5. The prosecution in support of its case examined as many as ten witnesses. The star witnesses of the prosecution case are Rajbir PW2, the real brother of the deceased and Wazir Chand PW3, the father of the deceased who have reiterated the allegation of the First Information Report. Dr. R.P. Singla PW4 had initially examined Banaspati in Medical Hospital, Hisar and sent the ruqa about her death also. Dr. Anup Singh PW5 had conducted the post mortem, who had found two injuries on the person of the deceased. The opinion about the cause of death according to Dr. Anup Singh was that the deceased had consumed carbonate compound group of insecticides (poison). Dr. Jagmohan Mittal PW9 is another material witness who on

2.5.1989 while posted as Medical Officer, General Hospital, Hansi had admitted Banaspati as a patient suffering from consumption of alleged organo phosphorus poisoning. SI Harmesh Singh PW10 is the Investigating Officer of this case. He had investigated the case entirely and thereafter submitted the report u/s 173 Cr. P.C. to the concerned Investigating Officer (Inspector Avtar Singh PW1).

6. The defence of the appellant as emerges from the statement recorded u/s 313 Cr. P.C. is of total denial. The stand taken is that on 2.5.1989 when the appellant was away to his fields, his father Basau and his brother Raj Kumar were present in the house (Bhim Nagar Colony, Hansi). They were sitting outside the house and Banaspati his wife was preparing the meals in the house. She called Raj Kumar and said that she felt giddy and she put the iron pan on the ground saying that she was not in a position to prepare the meals and incidently, she fell down on ironpan. She was immediately taken to Civil Hospital and was admitted there. It is then the case of the appellant that he also came to the hospital. The parents of the deceased were also duty informed and they had also reached there is about 1.00 P.M. in the night. The other allegations were denied by the appellant. In defence, the appellant produced three witnesses, namely, Head Constable Kishan Lai as DW1, Pat Ram son of Ramji Lal as DW2 and Raj Kumar son of Basau Ram of village Sisai as DW3.

7. The trial Court after considering the entire evidence acquitted the appellant of the charge u/s 304-B IPC and instead convicted him u/s 306/498-A IPC. Aggrieved by the judgment of conviction and sentence, the appellant has preferred the present appeal.

8. I have heard Mr. R.N. Sharma, learned counsel for the appellant and Mr. Sanjeev Sheokand, learned Assistant Advocate General, Haryana and with their assistance have also gone through the entire record of the case.

9. Mr. Sharma at the very outset has submitted that the charge u/s 306 IPC is not proved in this case. Developing his arguments, he has submitted that even if the allegations are taken to be true, the case of the appellant does not fall within the mischief of Section 306 IPC as there is no abetment in this case as defined u/s 107 IPC. He then submitted that even if the deceased had felt humiliated and insulted in front of her brother Rajbir because the appellant had allegedly given her beatings, this act of the appellant by itself would not come within the definition of abetment and as such the conviction of the appellant for the said charge is untenable. In support of his arguments, Mr. Sharma has relied upon the judgment of Andhra Pradesh High Court rendered in Bura Manohar v. State of A.P., 2003 (1) RCR (Cri) 367.

10. It is then submitted by the learned counsel for the appellant that in case the conviction of the appellant is liable to be maintained u/s 306/498-A IPC, then in that eventuality, the appellant deserves leniency towards the quantum of sentence. In this regard, learned counsel has contended that the appellant by now has

undergone 16 months of substantive sentence as he remained in custody for a considerable period during the trial and ultimately his substantive sentences was suspended by this Court on 16.8.1990. He then contends that the occurrence relates to the year 1989 and the appellant by now has already suffered ordeal of protracted trial of long 14 years and as such he deserves a lenient view.

11. On the other hand, the learned State counsel submits that Section 306 IPC is proved to the hilt as the appellant had been harassing his wife right from the very beginning of the marriage for one reason or the other. Ultimately, she was compelled to take the ultimate step of finishing herself. It is then contended that even on the point of quantum of sentence, the appellant does not deserve any leniency.

12. After hearing the rival contentions of both the sides, I am of the view that so far as Section 206 IPC is concerned, it is proved beyond the shadow of any doubt. I have gone through the statements of Rajbir PW2, the brother of the deceased and Wazir Chand PW3, the father of the deceased minutely and also scanned the impugned judgment as well. Rajbir PW2 has categorically stated that when the appellant was giving beatings to his sister, he had also tried to rescue his sister, but the appellant pushed him aside and took his sister inside the room. Banaspati was also given injuries by the appellant as is clear from the post mortem report, the present case does not speak of any single act. There has been constant torture and harassment of Smt. Banaspati by the appellant right from the very beginning. No doubt, the immediate cause was that the appellant had demanded Rs.2000/- from the parents of the deceased and when they were not in a position to meet the demand of the appellant, Banaspati was beaten and tortured and on account of that she was so fed up with the behaviour meted out at the hands of the appellant that she went to the extent of committing suicide by consuming insecticide available in the house. The prosecution witnesses have also stated that Banaspati remained with her parents for about one and half years because she was harassed by the appellant and thereafter, she was sent with the appellant on the assurance of the parents and brother-in-law (sister's husband) of the appellant. I am of the considered view that even if the prosecution has not been able to prove the charge u/s 304-B IPC, it can be safely said that the appellant being the husband has abetted his wife Banaspati to commit suicide and therefore, he is liable to be convicted under Sections 306 IPC and 498A IPC. The arguments in this regard are thus repelled. The conviction as recorded by the learned trial Court u/s IPC is hereby maintained.

13. So far as quantum of sentence is concerned, I find force in the arguments advanced by the learned counsel for the appellant. The present case relates to the year 1989. Admittedly, the appellant remained in custody for about 16 months during the pendency of the trial and his sentence was suspended by this Court after he earned conviction. He has also suffered the ordeal of protracted trial of 14 years.

14. After giving my careful thought to all the circumstances, especially keeping in view the time elapsed in hearing the present appeal after its admission in the year 1990 i.e. after 13 years, I am of the considered view that the ends of justice would be adequately met if the sentence of the appellant is reduced to the period already undergone by him. My view in this respect is strengthened by a latest judgment of the Hon"ble Apex Court rendered in Mohd. Hussain and others v. State of Andhra Pradesh, AIR 2002 SCW 3759 and two judgments of this Court rendered in Jagjit Singh and others v. State of Punjab, Criminal Appeal No.448-SB of 1987 decided on 7.9.1999 and Jai Kishan v. State of Chandigarh, Criminal Appeal No.582-SB of 1987 decided on 8.9.1999.

No other point has been urged before me.

15. Resultantly, the present appeal stands dismissed except with the modification in the quantum of sentence as indicated above.

16. Let the intimation of this judgment be sent to the learned trial Court at once.