(2009) 1 ILR (P&H) 851

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 176-SB of 1998

Jagdish and Another	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision: Jan. 16, 2009

Acts Referred:

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

Citation: (2009) 1 ILR (P&H) 851

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: R.S. Sihota and B.R. Rana, for the Appellant; Adarsh Jain, Yashpal Thakur and K.S. Godara, D.A.G., for the Respondent

Final Decision: Allowed

Judgement

Harbans Lal, J.
This appeal is directed against the judgment/order or sentence dated 17th February, 1998 passed by the Court of learned Sessions Judge, Faridabad whereby he convicted and sentenced the accused Jagdish and his mother Khajani to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500 each and in default of the same, the defaulter to undergo six months rigorous imprisonment u/s 498A of IPC and acquitted them of the charge u/s 304B of IPC.

2. To shorn of all unnecessary details, the facts of the prosecution case are that Rekha, daughter of Harchandi PW4 was married with Jagdish accused on 1st March, 1994 at Village Sallagarh (Palwal) as per Hindu rites and ceremonies. On her marriage, an amount of Rs. 1 lac was spent. After about 10/12 days of the marriage, the accused visited Harchandi''s house and complained of giving lesser dowry. They put forth the demand of one scooter besides Rs. 50,000 as cash amount. They threatened that if their demand was not fulfilled, they will desert Rekha. At that time, Rekha was at her parental

house. She stayed there for about six months, during which, harchandi''s son visited the house of the accused to persuade them to bring Rekha to their house. They reiterated their demand and picked up a quarrel with him. He returned home. About six months later, Jagdish accused visited his in-laws'' house and felt sorry for putting forward an unreasonable demand of dowry and requested to send Rekha along with him. By acceding his request, Rekha was sent with him. Thereafter, Rekha was not sent to her parental house. Her father visited the house of the accused to meet Rekha about two days prior to ''Bhaiya Dooj''. Rekha informed him that the accused have been harassing her on account of not meeting their afore-mentioned demand. On this, her father made a request to the accused to send her with him as she wanted to meet her mother and other members of the family. The accused promised to send her on ''Bhaiya Dooj'' Jagdish further promised that he would himself take her to her parental house. The accused did not live up to his promise. After 7/8 days of ''Bhaiya Dooj'', father of Rekha visited her in-laws'' house and enquired as to why she was not sent home. On the aforesaid occasion, the accused voluntarily told that Rekha would not be sent unless their afore-referred demand is not fulfilled. So much so, he was asked to go out of their house. On 8th December, 1994, Jagdish visited his in-laws'' house at about 8.00 or 8.15 p.m., and told that Rekha was admitted in Government Hospital, Palwal and her condition was serious. Harchandi along with his son Ramesh, his wife Kishni, Parmal and Sumer visited the aforesaid hospital and found Rekha in burnt condition. The doctor advised them to take her to Safdarjung Hospital, Delhi as still she was alive. They removed her to the said hospital. From there, she was referred to Ram Manohar Lohiya Hospital, where she was got admitted. In the way, on inquiry, she disclosed to her parents that her mother-in-law and husband has burnt her by sprinkling kerosene oil on account of non-fulfilment of demand of dowry. The Sub-Divisional Magistrate recorded the dying declaration Ex.PJ of Rekha. Ultimately, on 9th December, 1994 at 11:52 A.M., she succumbed to the burn injuries. On the basis of Ex.PG, the statement of Harchandi, FIR was registered. The accused were arrested. After completion of the investigation, the charge-sheet was laid in the Court of learned Sub-Divisional Judicial Magistrate, Palwal, who committed the case to the Court of Sessions for trial of the accused.

3. The accused were charged u/s 304-B of IPC to which they did not plead guilty and claimed trial. To bring home guilt against the accused, the prosecution examined PW1 Dr. Banwari Lal, PW2 Anoj Kumar Constable, PW3 Suresh Kumar, PW4 Harchandi complainant, PW5 RakeshNagpal Administrative Officer, PW6 Ramesh son of Harchandi, PW7 Ved Ram Constable, PW8 Ram Kumar ASI, PW9 Ram Niwas ASI, PW10 Dr. Yashoda Rani, PW11 Ranbir Singh Sub Inspector and closed its evidence by giving up Navin Kumar, Kishni, Jai Narain Head Constable, Shiv Ram and Chander Bhan P Ws being unnecessary.

4. When examined u/s 313 of Code of Criminal Procedure , both the accused denied all the incriminating circumstances appearing in the prosecution evidence against them and pleaded false implication. They did not lead evidence in defence. After hearing the

learned Public Prosecutor for the State, the learned defence counsel and examining the evidence on record, the learned trial Court convicted and sentenced both the accused u/s 498-A of IPC. Feeling aggrieved with their convition and sentence, they have preferred this appeal.

5. I have heard the learned Counsel for the parties, besides perusing the record with due care and circumspection.

6. Mr. R.S. Sihota, Senior Advocate on behalf of the Appellants urged with great elopquence that at no point of time, any complaint of harassment of the deceased by the accused-Appellants has been made, nor such act was alleged during her treatment.

7. To controvert this submission, Mr. K.S. Godara, learned Deputy Advocate General on behalf of the State pressed into service that the conviction has been rightly recorded on the given evidence, which call for no interference.

8. I have given a deep and thoughtful consideration to the rival submissions.

9. As a matter of fact, the conviction has been recorded on the basis of Ex.PJ, the dying declaration of the deceased. She has stated that my mother-in-law used to harass me for dowry. My husband also used to harass me occasionally. In an answer to the question, as to how she caught fire, she replied that "on 8th December, 1994 in the evening, when I was preparing tea on burning stove, my clothes (suit, salwar) caught fire and from my clothes, I also caught fire and on my shrieking, my mother-in-law extinguished the fire and that my husband was not present in the house." This evidence clearly wipes out the prosecution story. Explicitly, she has nowhere stated that due to non-fulfilment of demand in question she was set ablaze by her mother-in-law, rather, it was her mother-in-law, who had put off the fire to save her. Suresh Kumar PW3 has deposed that "I do not know anything about this case. Nothing happened in my presence. I was called in the Police Station and was made to sign on blank papers. The police didnot visit the spot in my presence." As alleged, he was recovery witness. On being cross-examined by the learned Public Prosecutor, he did not budge even an inch from his firm stand. Thus, his evidence too, in no manner, advances the cause of the prosecution. Of course, Harchandi PW4 father of the deceased has testified that "After about 10/12 days of the marriage, both the accused visited my house and complained against giving inadequate dowry and put forward demand of one scooter and Rs. 50,000 and also threatened to leave my daughter, if their demand was not fulfilled." As surfaces in his cross-examination "When Jagdish (the accused) visited our house after six months, then he had come on scooter and took Rekha along with him on the scooter." It is inferrable from this evidence that Jagdish accused was having scooter." Towards the end of his cross-examination, he has deposed that "we were with Rekha till her death." That being so, the possibility of her having been tutorised by her father and other members of the family to say that her mother-in-law and her husband were harassing her for having brought insufficient dowry cannot be ruled out. Rakesh Nagpal PW5 is the scribe of the dying declaration Ex.PJ. He

has deposed that Rekha was declared fit by the Doctor to make statement. To the utter dismay of the prosecution, Ex.PJ does not bear the opinion of the Doctor that she was in a fit state of mind and she remained fit throughout, when her statement was being recorded. In the absence of such evidence, it is very difficult to say that she was in a fit state of mind when she was recording her statement. To add further to it, the name of the doctor who declared her fit has neither been disclosed by Rakesh Nagpal (sic), nor such Doctor has been examined. In the absence of his evidence, it cannot be said with absolute certitude that really some doctor had declared her fit to make statement. In re: Panchddeo Singh v. State of Bihar 2002(1) R.C.R. (Cri) 126 it has been held that "it is necessary to have the certificate of the Doctor regarding the fit state of mind of the deceased to make the declaration. The Magistrate recording his own satisfaction about the fit mental condition of the declarant was not acceptable, particularly when the doctor was available." Here in this case, it is pertinent to point out here that Rakesh Nagpal was posted as Sub-Divisional Magistrate, New Delhi at the material time. It implies that the dying declaration was not recorded by the Judicial Magistrate. A meticulous perusal of Ex.PJ would reveal that even Mr. Rakesh Nagpal has not recorded any certificate to the effect that the declarant remained fit all through, when her statement was being recorded.

10. The law regarding dying declaration has been summed up by the Apex Court in re: Ramilaben Hasmukhbahi Khristi v. State of Gujarat 2002(3) R.C.R. (Cri) 786 (S.C.) as under:

(i) Maker of dying declaration is not subjected to cross-examination. It is for Court to see that dying declaration inspires full confidence.

(ii) Court should satisfy that there was no possibility of tutoring, prompting.

(iii) Court should be satisfied that the deceased was in a fit state of mind to make the statement.

(iv) Certificate of Doctor that victim was conscious is not sufficient. There should be certificate by Doctor that victim was in a fit state of mind. Magistrate recording his own satisfaction about the fit mental condition of the declarant was not acceptable particularly when the doctor was available.

(v) Dying declaration be recorded by Executive Magistrate or police officer where the condition of deceased was so precarious that no other alternative was left.

(vi) Dying declaration may be in the form of question and answer and the answers be written in the words of the person making the declaration. But Court cannot be too technical.

11. Harking back to the instant case, there is no evidence to the effect that the condition of the deceased was precarious and the Judicial Magistrate was not available and that being so, the investigator was left with no alternative except to get the statement recorded

through the Sub Divisional Magistrate. If the accused-Appellants had been maltreating, ill-treating or harassing the deceased to force her parents to meet their stated demand, she in all human probabilities, would have made specific mention thereof in her dying declaration Ex.PJ, which is quite vague and equivocal. There are no specific allegations in Ex.PJ. Her father Harchandi PW has made material improvements by stating that the accused were impelling the deceased to fetch a scooter apart from Rs. 50,000 in cash from her parents. Thus, this dying declaration as well as the oral evidence fail to inspire confidence. The complainant party had enough time to tutor and prompt the deceased. There being no certificate at the foot Ex.PJ by the attending Doctor that she remained in a fit state of mind, when her statement was being recorded, it would be too risky to rely upon it. From the above- referred law regarding dying declaration , it is abundantly clear that there should be certificate by the Doctor that victim was in a fit state of mind. Here in this case, merely the words "fit for statement" have been written as per Ex.PH/ 1. Thus, it does not satisfy the requirements of law.

12. Cruelty means any wilful conduct, which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman; or (ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Section 498A I.P.C. was introduced with the avowed object to combat the menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives as rule by the Apex Court in re: Onkar Nath Mishra v. State (N.C.T. of Delhi) 2008 (1) R.C.R. (Cri) 337 (S.C.). This provision should not be used as a device to achieve oblique motives.

13. As per the dying declaration, the deceased had caught fire from the burning stove and was saved by her mother-in-law, i.e., the accused Khajani. It is not the case in the dying declaration that it was the wilful conduct of the Appellants which had driven the deceased to commit suicide. It is significant to note that as per Ex.PJ, it is not even a case of suicide rather of catching fire accidentally.

14. In view of the above discussion, this appeal succeeds and is accepted, setting aside the impugned judgment/order of sentence. The Appellants are hereby acquitted of the charged offence. At the asking of the parties, it is placed on record that as per the marriage registration certificate shown at the bar, the accused-Appellant Jagdish has entered into marriage with the sister of the deceased on 13th February, 2005 and they are living happily.