
(2008) 09 P&H CK 0203

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 129-SB of 1994

Billu

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: Sept. 19, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 428
- Evidence Act, 1872 - Section 113B, 114
- Penal Code, 1860 (IPC) - Section 302, 304B

Citation: (2009) 4 RCR(Criminal) 620

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: Naveen Batra, for the Appellant; S.S. Bhullar, DAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Sham Sunder, J.

This appeal is directed against the judgment of conviction and the order of sentence dated 17.01.1994, rendered by the Court of Additional Sessions Judge, Amritsar, vide which it convicted the accused (now appellant), for the offence, punishable u/s 304-B of the Indian Penal Code (hereinafter referred to be as the "IPC" only) and sentenced him to undergo RI for a period of seven years, and to pay a fine of Rs. 200/-, in default of payment of fine to undergo further rigorous imprisonment, for a period of one month.

2. The facts, in brief, are that Geeta (now deceased) was married to Billu, accused about two years and 5 months prior to 03.01.1993. Billu, accused, was not satisfied with the dowry, which was given at the time of her marriage, by her parents. On account of that reason, he used to maltreat her. He demanded more dowry, in the shape of gold chain, television etc., but the parents of Geeta were unable to fulfill his demand. Geeta, deceased, used to narrate her tale and woes to her parents, from time to time. She also used to tell them that the accused was not satisfied with the dowry, given at the time of

her marriage, and used to beat her, on account of that reason. She also told her parents, with regard to the specific demand of gold chain, ring, TV etc. made by Billu, accused, her husband.

3. It was further stated that on 02.01.1993, at about 3.45 PM, Ajit Kumar, complainant, went to see his sister Geeta and when he reached the house of her in-laws, he saw the accused beating her, in the courtyard, along with her parents and others. They also dragged Geeta, inside the room. She was administered poison there by him. She came outside the room and informed him (Ajit Kumar) that she had been administered poison by Billu, accused. Ajit Ram wanted to take Geeta to some hospital, but he was not allowed to do so by the accused. Thereafter, Ajit Kumar, came back, and informed his parents about the incident.

4. It was further stated that on 03.01.1993, in the morning, Ajit Kumar, complainant, along with his father Ram Bharose and uncle Gobind Ram went to Dialpur. There they came to know that Geeta had died and was taken to a hospital, at Amritsar. They reached that hospital, at Amritsar and saw the dead body of Geeta in the mortuary. Statement Ex.PA was made by Ajit Kumar, complainant before Joginder Singh, ASI. Endorsement Ex. PA/1 was appended thereon, and FIR Ex. PA/2 was recorded. The Pathologist and the Chemical Examiner opined that the cause of death of Geeta was organic phosphorus poison, which was sufficient to cause death, in the ordinary course of nature. The accused was arrested. The statements of the witnesses were recorded. After the completion of investigation, the accused was challaned.

5. On his appearance, in the Court, the accused was supplied the copies of documents, relied upon by the prosecution. Charge u/s 304-B of the IPC, was framed against the accused, to which he pleaded not guilty and claimed judicial trial.

6. The prosecution, in support of its case, examined Ajit Kumar, complainant, (PW-1), the first informant, Ram Bharose, (PW-2), Dr. Didar Singh, (PW-3), Rishi Ram, Draftsman, (PW-4), Joginder Singh, ASI, (PW-5), Dr. Nirmal Dass, (PW-6), Dr. Mirdu Manjri, (PW-7), Arjun Kumar, MHC, (PW-8) and Gurbhej Singh, Constable (PW-9). Thereafter, the Additional Public Prosecutor for the State, closed the prosecution evidence.

7. The statement of the accused, u/s 313 of the Code of Criminal Procedure, was recorded. He was put all the incriminating circumstances, appearing against him, in the prosecution evidence. He pleaded false implication. It was stated by him, that his father died about two years ago. It was further stated by him that after the death of his father, his mother Champa Wati left the village and started living with his eldest brother, Om Parkash, alias Krishan Lal, at Amritsar. It was further stated by him that soon thereafter, his brother Papoo also left the village along with his family, in search of livelihood, and started working at the brick kiln in village Baulian and settled there. It was further stated by him that Geeta, his wife, was left alone, in the ancestral house, in village Dialgarh. His in-laws were residing at Verka. It was further stated by him, that Geeta wanted that he

should sell his house and shift to Verka, where her parents were residing. It was further stated by him, that he did not agree to sell the same, and, on account of this reason, there was continuous dispute between them. It was further stated by him that on 02.01.1993, in the morning, there was a dispute, over the sale of the house, at Dialgarh, and shifting to Verka. It was further stated by him that he left his house to attend his daily work as Barber. At about noon-time, when he came back to take his lunch in the house, he found Geeta lying unconscious in the house. It was further stated by him, that he called some villagers, from the village, and brought her to the hospital at Amritsar. She was admitted, in the hospital, at about 4/5 PM, and died at about 7 PM. It was also stated by him, that he informed her parents, about the serious condition of Geeta and her admission, in the hospital. However, her parents after due deliberations, implicated him, in the instant case on 03.01.1993.

8. In defence, the accused examined Devi Dayal, DW-1, Roop Lal, DW-2, and Billo Devi, DW3. Thereafter, he closed the defence evidence.

9. After hearing the Additional Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused, as stated hereinbefore.

10. Feeling aggrieved, against the judgment of conviction, and the order of sentence, rendered by the trial Court, the instant appeal, was filed by the appellant.

11. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

12. For constituting the offence, punishable u/s 304-B of the IPC, the prosecution was required to prove that the death of a married woman took place, within seven years of her marriage, otherwise than under normal circumstances, and that soon before her death, she was maltreated in connection with the demand of dowry by the husband or his relatives. Once these ingredients are proved, then statutory presumption u/s 113-B, arises that the accused committed the offence u/s 304-B IPC. In the instant case, it is proved from the statements of Ajit Kumar, complainant, PW-1, brother of the deceased, and Ram Bharose, PW2, father of the deceased that she (Geeta) was married to the accused, about two years, and five months, prior to the occurrence. It was also proved from the statement of Dr. Nirmal Dass, PW6, who conducted postmortem, on the dead body of Geeta Rani, aged about 23 years, female, that the cause of her death was organic phosphorus poisoning, which was sufficient to cause death, in the ordinary course of nature. This opinion was given by her on the basis of report of the Pathologist and report Ex. PK/3 of the Chemical Examiner to Government Punjab. It is evident from the report Ex. PK/3 that an organo phosphorus group of insecticide was detected in the contents of exhibits 1, II and No. III. No poison was detected in the contents of exhibit IV. Exhibits I, II and III contained pieces of small intestine, liver spleen Kidney and blood of Geeta Rani, deceased. It means that the death of Geeta Rani took place within seven

years of her marriage, otherwise than under normal circumstances, in the house of her in-laws. The aforesaid two ingredients were, thus, proved.

13. The Counsel for the appellant, however, submitted that the deceased was not maltreated in connection with the demand of dowry by the accused, at all, much less soon before her death. He further submitted that, thus, the third ingredient for constituting the offence u/s 304-B IPC, was not proved. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. Ajit Kumar, complainant (PW-1) in his statement, in clearcut terms, stated that the dowry was given, at the time of marriage of his sister according to their status. He further stated that the accused was not satisfied with the dowry given at the time of the marriage of his sister. He further stated that accused (Billu) demanded dowry, in the shape of gold chain, TV etc. He further stated that on account of nonfulfillment of the demand, raised by the accused, he used to beat his sister continuously. According to him, his sister came to their house 3/4 months, prior to the occurrence. They sent the deceased with the accused and at that time, also gave a gas cylinder to her. He also stated that on 02.01.1993, when he went to the house of his sister, to meet her, he saw the accused beating his sister in the Courtyard. Ram Bharose, PW-2 father of the deceased, also stated that the accused was not satisfied with the dowry, given at the time of the marriage of her daughter, Geeta Rani, with Billu, accused. Billu, accused used to demand gold ring, TV etc. but he could not fulfill the demand. He further stated that he had promised to give TV instead of gold chain, at the time of Lohri festival, but his daughter died prior to that. He also deposed that his son Ajit Kumar had gone to meet his daughter, in the house of her in-laws on 02.01.1993 and saw that the accused and others were beating her. No doubt Ajit Kumar, PW1, tried to improve his statement, to the effect, that the poison was given in his presence to his sister when he had gone to meet her. He probably wanted to convert the case into one u/s 302 of the IPC. However, his statement, to this extent, is not reliable. Even if, this portion of his statement, is discarded, his remaining statement can be believed that the accused used to beat and maltreat Geeta Rani, in connection with the demand of dowry, referred to above. The maxim falsus in UNO falsus in omnibus, is not applicable to this part of the Country. If the Court comes to the conclusion that a witness has made embellishment, in his statement, for whatever the reason may be, then that part of his statement, can be discarded, and the other part of his statement, if found reliable, can be acted upon. It is for the Court to sift the grain from the chaff. The demand of dowry, referred to above, and treatment of deceased Geeta Rani, with cruelty, in connection therewith, continued up to her death. She could repose faith in her brother and father, in respect of the incidents, which took place in the house of her in-laws, relating to her treatment with cruelty, in connection with the demand of dowry. Normally, a married woman, does not want to make such incidents public, so as to ensure that her family life is not disturbed. In [Kans Raj Vs. State of Punjab and Others](#), it was held that cruelty or harassment, by the husband, soon before her death u/s 304-B of the Act, is a relative term which is required to be considered under specific circumstances of each case, and no strait jacket formula can be laid down, by fixing any time limit. The expression is pregnant with the idea of

proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114 of Illustration (a) of the Evidence Act. The demand of dowry, referred to above, by the accused continuously, and maltreatment of Geeta in connection with the same soon before her death, were proved. The third ingredient for constituting the offence, u/s 304-B IPC, was, thus, duly proved. The submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

14. It was next submitted by the Counsel for the appellant, that there was delay, in lodging the FIR, which remained unexplained and, as such, the possibility of concoction of story, false implication of the accused, and introduction of false witnesses, could not be ruled out. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The incident took place on 02.01.1993 and the FIR, in this case, was got registered on 03.01.1993. As soon as the complainant came to know about the death of Geeta Rani, he did not waste even a single minute in making statement Ex.PA before the Investigating Officer, on the basis whereof, FIR Ex.PA/2 was registered. One could imagine the condition of mind of the complainant, the brother of the deceased, on hearing the news of her untimely death. It takes time for a person, on hearing the news of his near relation, to compose himself. He must be puzzled and perplexed on hearing the news of the untimely death of his sister Geeta. It, therefore, could not be expected of him, to act mechanically, in lodging the FIR. The first information report was lodged with due promptitude. Even if, there was some delay, in lodging the same, the same stood explained, from the circumstances, referred to above. Even otherwise, mere delay, in lodging the FIR, in itself is not sufficient to disbelieve the evidence of the prosecution witnesses. In the face of un-explained delay, the Court is put on guard to scrutinize the evidence of the prosecution witnesses, carefully and cautiously. After careful and cautious scrutiny, if the Court comes to the conclusion, that the same is reliable, then no reason can be coined, to hold that the prosecution case was doubtful. The evidence of the prosecution witnesses is reliable. Delay, if any, in lodging the FIR, stood duly explained. The submission of the Counsel for the appellant, therefore, being without merit, must fail, and the same stands rejected.

15. It was next submitted by the Counsel for the appellant, that the defence version, was wrongly discarded by the trial Court. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. Devi Dayal, a neighbour of the accused, while appearing in the witness box as DW1, stated that the wife of the accused used to quarrel with her husband that he should sell the house, and shift to Verka, where her parents were residing, and that this was the only bone of contention. He further stated that she was never treated with cruelty, in connection with the demand of dowry much less soon before her death, by the accused. Roop Lal, DW-2, Sarpanch of the Gram Panchayat, stated that he knew the accused. He stated that the accused never demanded dowry, in his presence, from the parents of the deceased. Billu Devi, DW-3, neighbour of the accused, also stated that the bone of the contention, was that the

deceased wanted the accused to shift to Verka, where his in-laws were residing, after selling the house at Dialpur. She further stated that the deceased was never maltreated by the accused, in connection with the demand of dowry. The evidence of these defence witnesses was rightly disbelieved by the trial Court. There is nothing, in their statements, that they appeared before the Investigating Officer, and got recorded their statements, to the effect, that the accused never maltreated the deceased, in connection with the demand of dowry, much less soon before her death. They did not move any application, before any higher authority, to the effect, that the accused was falsely implicated, in the instant case, and the bone of contention was that his wife was asking him, to shift to Verka where his in-laws were residing, after the sale of his house at Dialgarh, but he did not agree. They slept over the matter, for a considerable period of time and, ultimately, came to the Court, to depose that the deceased was never maltreated, by the accused, in connection with the demand of dowry. The deceased was a young lady of 23 years of age. She had one child at that time. Had she been not maltreated in connection with the demand of dowry continuously by the accused, there would have been no reason, on her part, to take poison to end her life, in the house of her in-laws, at that young age. The defence witnesses, being neighbours of the accused, came to depose, in his favour, out of sympathy, to save him, from the clutches of law. In the face of cogent, convincing and trustworthy evidence produced by the prosecution, defence evidence paled into insignificance. The submission of the Counsel for the appellant, to the effect that the defence evidence was arbitrarily discarded by the trial Court, does not appear to be correct. After reappraisal of the evidence of the defence witnesses, this Court also agrees with the conclusion arrived at, by the trial Court, disbelieving and discarding the same. The submission of the Counsel for appellant, being without merit, must fail, and the same stands rejected.

16. No other point, was urged, by the Counsel for the parties.

17. In view of the above discussion, it is held that the judgment of conviction, and the order of sentence, rendered by the trial Court, are based on the correct appreciation of evidence, and law, on the point. The same do not warrant any interference. The same are liable to be upheld.

18. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment of conviction and the order of sentence dated 17.01.1994, are upheld. If the appellant is on bail, his bail bonds shall stand cancelled. The Chief Judicial Magistrate shall take necessary steps, in accordance with the provisions of law, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Code of Criminal Procedure. The compliance report be sent immediate thereafter.