

(2009) 02 P&H CK 0236

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 1387 of 2001

Hari Ram

APPELLANT

Vs

Satbir Singh

RESPONDENT

Date of Decision: Feb. 25, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304B

Citation: (2009) 30 CriminalCC 969

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: R.S. Sangwan for Mr. K.S. Godara, for the Appellant; Naveen Malik, AAG, Haryana, for the Respondent

Final Decision: Dismissed

Judgement

Sham Sunder, J.

This revision petition is directed against the judgment dated 03.02.2001, rendered by the Court of Session Judge, Hisar, vide which it acquitted the accused, for the offences, punishable under Sections 304B and 201 of the Indian Penal Code.

2. The facts, in brief, are that on 10.07.1997 Hari Ram, PW4, father of Saroj, deceased, moved written application Ex.PD to the Superintendent of Police, Hisar, containing the allegations that her daughter Saroj was married five years earlier to that date, with Satbir Singh, accused. It was stated that she was being harassed, right from the very beginning of her marriage, on the ground, that she had brought less dowry. It was further stated that she was asked to bring more dowry. Sukhi Ram, accused, father-in-law, mother-in-law and Kamlesh, sister-in-law of Saroj, also used to harass her, in connection with the demand of dowry. It was further stated that a year prior to her death, the accused turned her out of her matrimonial home, with a threat that, in case, she did not bring dowry from her parents, she would be killed. However, the dowry could not be given by the complainant. She stayed at her

parental house for seven months. It was further stated by the complainant, that about five months, prior to the lodging of report, Dharampal and Rohtash, brothers-in-law (sister's husbands) of Satbir, Chiranji Lal and his wife, residents of village Dhansu, came to his house and assured that Saroj would be looked after decently in her in-laws house. On their assurance, Saroj was sent to her in-laws house.

3. It was further stated by the complainant, that the marriage of his brother was to be performed on 09.07.1997 and a week prior to that, i.e. on 02.07.1997 he went to village Kharar, at the matrimonial home of Saroj, in order to bring her. The members of in-laws family of Saroj, told him that they would send his daughter at the time of marriage, but she did not come.

4. It was further stated that on 09.07.1997, the complainant went to the in-laws' house of Saroj, to inquire, as to why Saroj had not come. When he reached and asked from the members of the in-laws family of Saroj about the whereabouts of her daughter, they told him that she (Saroj) had been killed by them. They also told him that, whatever, they wanted to do, they could do. The complainant was also informed by the residents of the village that the accused had killed Saroj six days earlier and she was also cremated. It was further stated that the complainant came from the house of in-laws of Saroj at 12.00 noon and on the same day, at about 3.00 P.M., the accused in consultation with Rohtash, Chiranji Lal and his wife had killed Saroj and she was cremated without informing him. On the basis of the complaint ExPD, the FIR was registered. Nar Singh, Assistant Sub Inspector, went to the spot on 12.07.1997. He also visited the cremation ground and collected the ashes and the remains of the bones of the deceased, from the pyre. The same were put in a gunny bag. The bag was duly sealed, and taken into possession. The site plan of the place of occurrence was prepared. The statements of the witnesses were recorded. The accused were arrested. After the completion of investigation, they were challaned.

5. On their appearance, in the Committing Court, the accused were supplied the copies of all the documents, relied upon by the prosecution. After the case was received by commitment, charge under Sections 304B and 201 of the Indian Penal Code, was framed against the accused, to which they pleaded not guilty, and claimed judicial trial.

6. The prosecution, in support of its case, examined Satbir Singh, Constable, PW1, and Devender Singh, Moharrir Head Constable PW2, who tendered their affidavits Ex. PI and P2 respectively, Girish Kumar, Constable PW3, who prepared the scaled site plan Ex.PC of the place of occurrence, Hari Ram, PW4, father of the deceased and the first informant, Nar Singh, Assistant Sub Inspector PW5, the Investigating Officer and Prem Kumar PW6, uncle of the deceased. Reports, Ex.PG, and PG/1 of the Forensic Science Laboratory, were tendered by the Public Prosecutor into evidence and thereafter, he closed the prosecution evidence.

7. The statements of the accused, u/s 313 of the Code of Criminal Procedure, were recorded. They were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. It was stated that the marriage of Satbir with Saroj took place in the month of February, 1990. It was further stated that Saroj was leading a happy married life. It was further stated that a day prior to her death, which occurred on 04.07.1997, she was suffering from Diarrhoea and was treated by Dr. Gulshan Kumar, Registered Medical Practitioner, in their village. The medicines and injections were given. Her condition, however, did not improve. Saroj was referred to Civil Hospital, Hisar. It was further stated by them that while she was being taken to Hisar, she died on the way. Immediately thereafter, Hari Ram, father of the deceased and other relatives were informed. They attended the cremation of Saroj. On account of greed, the instant case was got registered. It was denied that Saroj was ever harassed, in connection with the demand of dowry.

8. In their defence, the accused examined Narain-Dass, Clerk, S.P. Office, Hisar as DW1. Thereafter, the accused closed the defence evidence.

9. After hearing the Counsel for the parties, the trial Court acquitted the accused, as stated above.

10. Feeling aggrieved, against the judgment of trial Court, the instant revision-petition was filed by the complainant/revision-petitioner.

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 Indian Penal Code, the prosecution was required to prove beyond doubt, that a married woman died within seven years of her marriage, otherwise, than under normal circumstances, and soon before her death, she was subjected to cruelty, in connection with the demand of dowry. The trial Court came to the conclusion, that Saroj died within seven years of her marriage, with Satbir. However, the trial Court, after due scrutiny of the statements of Hari Ram, PW4, and Prem Kumar, PW6, came to the conclusion that no specific allegation, against the accused, was made, as to on which date, in which month, and the year, Saroj was harassed in connection with the demand of dowry. The trial Court, after due scrutiny of the evidence, on record, also came to the conclusion that even no specific allegation, was made by both these witnesses, as to the articles, which were demanded in dowry. The trial Court was also right, in coming to the conclusion that, as per the statement of Hari Ram, PW4, he had gone to the matrimonial home of Saroj, on 04.07.1997, to bring his daughter to attend the marriage of his brother because the marriage was fixed for 09.07.1997, but in the application Ex.PD, a contrary version was given by him (Hari Ram) to the effect that she was turned out of her matrimonial home by the accused about five months ago. The trial Court, thus, was right in coming to the conclusion that, no

reliable evidence, was produced by the prosecution to prove that Saroj was harassed, in connection with the demand of dowry soon before her death. The trial Court was, also, right in coming to the conclusion, that one of the ingredients, for constituting the offence, punishable u/s 304-B of the Indian Penal Code, was not proved, against the accused.

13. Not only this, the trial Court, was also right in coming to the conclusion, that the death of Saroj was not otherwise than under normal circumstances, as there was no medical opinion, to the effect, that it was either a suicidal death, or death occurred, on account of burn injuries, or administration of poisonous substance. The cremation of Saroj took place, in the presence of Hari Ram, as he stated in Ex.DA that he had seen the dead body of Saroj, in burning condition, in cremation ground of Kharar. Had he not been present at the time of the cremation of the dead body of Saroj, it would not have been possible for him to make such a statement. Had, he been having any doubt, about the natural death of Saroj, he would have been the last person, to allow the cremation thereof, by the accused. In those circumstances, he would have certainly, stopped them, from cremating the dead body of Saroj, and in the first instance, would have insisted upon conducting the post-mortem examination thereof. The trial Court was, thus, right in holding that the explanation furnished by the accused that Saroj was suffering from Diarrhoea and could not recover from the same, resulting into her death was correct. The trial Court was also right in holding that the death of Saroj was an unexpected event, and it required inquiry, but without any cogent evidence, on the record, as to the cause of death, it was not possible to conclude, that the death of Saroj was otherwise than under natural circumstances. The trial Court was, thus, right in coming to the conclusion that this ingredient for constituting the offence, punishable u/s 304-B of the Indian Penal Code was also not proved.

13-A. Since the cremation of Saroj took place in the presence of Hari Ram, complainant, the trial Court held that it could not be said that the accused concealed the evidence or gave wrong information with regard to the facts and circumstances, leading to the death of Saroj, so (sic) to screen themselves. The trial Court was, thus, right in coming to the conclusion that no offence u/s 201 of the Indian Penal Code was made out.

14. In view of the findings of fact returned by the trial Courts, the revisional Court has a limited jurisdiction. In its revisional jurisdiction, the Court cannot re-evaluate and re-appreciate the evidence, produced by the prosecution, until and unless it comes to the conclusion, that the findings arrived at, by the trial Court, are perverse, illegal, or erroneous on account of the mis-reading of evidence, produced by the prosecution. In the instant case, the findings recorded by the trial Court, are neither perverse nor illegal. It was held in Mahendra Pratap Singh Vs. Sarju Singh and Another, in which reliance was placed on D. Stephens Vs. Nosibolla, as under:-

only two grounds are mentioned by this court as entitling the High court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the court of Sessions ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is mis-appreciation of evidence. Again, in [Logendra Nath Jha and Others Vs. Shri Polailal Biswas](#), this Court points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is "perverse" or "lacking in true correct perspective". It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because, however, much the High Court may caution the Subordinate Court, it is always difficult to re-weigh the evidence ignoring the opinion of the High Court. Again in [K. Chinnaswamy Reddy Vs. State of Andhra Pradesh](#), it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances, in which the Court may interfere with an acquittal, in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court. As stated not one of these points which have been laid down by this Court, was covered in the present case. In fact on reading the judgment of the High Court, it is apparent to us that the learned Judge has reweighed the evidence from his own point of view and reached inferences contrary to those of the Sessions Judge on almost every point. This we do not conceive to be his duty in dealing in revision with an acquittal when Government has not chosen to file an appeal against it. In other words learned Judge in the High court has not attended to the rules laid down by the Court and has acted in breach of them. The principle of law, laid down, in the aforesaid authorities, is fully applicable to the facts and circumstances of the case. The findings arrived at by the trial Court are neither illegal, nor perverse nor erroneous, on account of the mis-reading of evidence. Under these circumstances, the revisional Court cannot interfere with the findings of acquittal, arrived at, by the trial Court.

15. For the reasons recorded above, the revision-petition, being devoid of merit is dismissed.