

(2014) 03 UK CK 0034

Uttarakhand High Court

Case No: Criminal Appeal No. 43/2002

Kotwal Singh

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision: March 19, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 113-B
- Penal Code, 1860 (IPC) - Section 120-B, 201, 302, 304B, 304-B

Citation: (2014) 1 NCC 798**Hon'ble Judges:** Servesesh Kumar Gupta, J**Bench:** Single Bench**Advocate:** Pushpa Joshi, Sr. Advocate assisted by Sangeeta Miyan, Brief Holder, Advocate for the Appellant; V.K. Gemini, Dy. Advocate General (Crl.), Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Servesesh Kumar Gupta, J.

This appeal challenges the judgment and order of conviction dated 11.02.2002, rendered by the Sessions Judge, Pauri Garhwal in Sessions Trial No. 15 of 1996, State vs. Kotwal Singh and others. Appellants, viz. Kotwal Singh Rana is the father-in-law, Pratap Singh is the husband and Smt. Bhagwani Devi is the mother-in-law of deceased Rani Devi. The said trial pertains to crime No. 389 of 1995 pertaining to police station Srinagar, District Pauri Garhwal. The accused persons were tried for the offences under sections 498A, 304B, 120-B and 201 of I.P.C. while an alternative charge of Section 302 IPC was levelled against them by the Trial Judge. The court below has found them guilty for the offences under sections 304-B, 498-A and 201 of I.P.C., but has sentenced them only u/s. 304B. The court below did not consider it necessary to pass any sentence under sections 498-A and 201 I.P.C. separately, as it

appropriately punished the appellants for the offence of section 304-B of I.P.C. The facts, as emerging out from the F.I.R. (Ex.Ka-1), lodged by PW1 Trilok Singh (father of the deceased) on 06.11.1995 at 2.00 pm., are that deceased Rani Devi was married to Pratap Singh in a nearby village just before two months of her death. She was wedded on 3rd/4th of October, 1995. On 05.12.1995, two persons came to the village of informant Trilok Singh and apprised him that his daughter Rani Devi was having abdominal pain and she had been admitted to a local medical center, namely, Khanda Hospital, where the Glucose was being administered to her. Receiving this information, Trilok Singh along with his wife, left their house and reached to that hospital but did not find their daughter anywhere. Somehow, they could get information that their daughter had been placed downward on the road in a DANDI (a wooden-sitting carrier). They immediately rushed to that spot and saw their daughter in an abnormal stage, as her head was hanging back to the DANDI. Smt. Parvati Devi (deceased's mother), on observing her daughter keenly, became unconscious. Trilok Singh asked accused Kotwal Singh (father-in-law of deceased) not to make cremation of the dead body till the post mortem is conducted because he was apprehensive of this mysterious death. Looking to the dreaded face of his daughter, he found that the eyes of dead body were open while the throat/neck was of bluish appearance. The accused was told by the informant to carry deceased to the Srinagar hospital (upgraded hospital) but instead of following the advice of Trilok Singh, accused persons made the cremation of dead body. The report further discloses that ever since the solemnization of marriage, deceased made her family members apprised a number of times regarding the persistent demand of Rs. 30,000/- on the part of accused persons. Within a short span of two months, she was subjected to tormented and cruel behavior with sarcastic and traumatic comments on the question of dowry. On 06.11.1995, she came to her parents' house to fetch a sewing machine which was given to them on 09.11.1995, but even though, the accused persons did not bring any change in their behavior and continued to torture the victim, inasmuch as, she was beaten by her mother-in-law. With these allegations, the first information report could be lodged, Chick report whereof is Ex.Ka-2. During investigation, the officer concerned took samples of soil from the room, adjacent to the kitchen of accused persons. The sample was of plain as well as of another soil, purported to be laced with deceased's vomiting. Its recovery memo is Ex.Ka-9. Both the samples were sent to the Forensic Laboratory for being tested. The report given by the said Laboratory is on record, according to which, on an apparent look, both soils were similar in their nature while on microscopic and chemical examination, one of the soil (purposed to be laced with vomit) was found having the contents of Organo-Chloro Insecticide poison. The investigation culminated into submission of chargesheet against the appellants. Accordingly, learned Sessions Judge levelled the charges.

2. Prosecution has examined several witnesses including the parents, uncle of deceased as well as formal witnesses nay the Investigating Officer.

3. In the statement u/s. 313 Cr.P.C., accused persons have nowhere taken the case of suicide by the deceased. It has been stated by accused Kotwal Singh that when the victim was feeling abdominal pain, then they were bringing her in a DANDI to the local hospital but on way, she breathed her last. So, he sent two persons to extend information in the native village of deceased.

4. Learned Senior counsel on behalf of appellant has argued that had this case been a dowry death one, with a least guilty conscious on the part of accused persons, then there was no reason for them to send two persons in the village of Trilok Singh to inform about the precarious condition of deceased. This contention cannot wipe out the presumption which the Evidence Act draws against the appellants. To draw the finding of guilt against the appellants, the presumption, as envisaged u/s 113-B of the Evidence Act, has also been taken into consideration by the court below. Besides, nowhere it has been disclosed as to who were these two persons, allegedly sent for extending information to PW1 Trilok Singh.

5. It has further been argued that the conducting of post-mortem was denied by the parents of deceased so it was not done, as disclosed by accused Kotwal Singh in his defence. This is not acceptable for the reason that PW1 as well as other prosecution witnesses have categorically stated that they insisted for the post-mortem and inquest but the same was not acted upon by the accused persons and the cremation of dead body was done despite the resistance from the native relatives of deceased. The statement of accused Kotwal Singh u/s. 313 Cr.P.C. is not the evidence, as it has not been tested with any cross-examination. So it is unacceptable, as against the testimony which has been accepted by the court below, for recording the finding of guilt against the accused persons. Learned Trial Judge has specifically written that accused Kotwal Singh has been in the Intelligence Service of the Government, so the most natural conduct on his part would have been to permit cremation only after conducting the inquest and post-mortem of deceased but the same was far-cry, notwithstanding the insistence for autopsy and inquest by the prosecution witnesses. No reason has been offered by the appellants which can be accepted for their failure on these scores.

6. Learned senior counsel has also drawn attention of this Court towards the natural conduct on the part of Trilok Singh, to the effect that leaving his cousins with the dead body, he left for his village with his wife and even did not take trouble to inform about the incident in either of three police-stations which were on his way from the place of incident to his village. This argument does not hold any water for the reason that PW1 has stated in so many words that looking to the abnormal/mortal condition of her daughter, PW2 Parwati Devi felt giddy and almost became unconscious and that made PW1 busy in protecting the life of his wife and to bring her at her native place. Besides, this occurrence happened in acute chilly winters of December where the sun sets very early in the evening and for the remote hilly terrains, the commutation is not that easy so that to quickly go to either

of the police stations to extend information leaving aside all the work.

7. It has also been pointed out that there was no demand of dowry "soon before" death. In this regard, the Hon"ble Apex Court has time and again, clarified the concept of "soon before death". In the case of [The State of Andhra Pradesh Vs. Raj Gopal Asawa and Another](#), it was held that:-

"In case of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence.

The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances".

"Soon before" is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period. No definite period has been indicated and the expression "soon before" is not defined.

8. The above view of the Hon"ble Apex Court was reiterated thereafter in a catena of judgments. In this regard, the other judgments of the Apex Court in the cases of (1) Yashoda v. State 2004(1) UP CrR Page 406 and (2) Pradeep Singh vs. State of Jharkhand reported in 2007 AIR 2154 S.C., may be looked into.

9. Some omissions and discrepancies as well as minor incongruities have been pointed out during the course of arguments but this Court feels that these are of so minor in nature that the same cannot wipe out the entire prosecution case as well as the presumption u/s. 113-B of the Indian Evidence Act against the appellants.

10. For the reasons, as stated hereinabove, the Court finds this appeal to be bereft of any merit. The appeal is, accordingly, dismissed by affirming the judgment under challenge. The conviction and sentence, as awarded by the trial court to each of the appellants, is hereby affirmed. Appellants are on bail. Their bail bonds are cancelled and sureties are discharged. Let they be taken into custody forthwith so as to serve out the sentence as imposed by the trial court against them. Let a copy of this judgment along with LCR be sent to the court concerned for compliance.