

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-2355-SB of 2003
Date of Decision: August 26, 2015

Desh Raj

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sarabjit Singh, Advocate
for the appellant.

Mr.Anmol Malik, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 02.12.2003 and order of sentence dated 03.12.2003 passed by learned Addl. Sessions Judge, Faridabad, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 498-A IPC and he was further convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹4,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 1¼ year under Section 306 IPC. Both the sentences were ordered to run concurrently. However, co-accused

Mahesh, Dhara and Urmila were found innocent and acquitted of the charges framed against them.

The brief facts of the prosecution case are that Gajraj Singh filed a written complaint by stating that his daughter Mamta was married with accused Desh Raj about 6-7 years back. They spent on her marriage as per their status but the accused and other members of his family were not happy with the dowry given to her, so they used to raise demand for more dowry. Since that demand could not be fulfilled, so Mamta remained at her parental house for six months. After intervention of the panchayat, she was taken by her in-laws but after six months, the old behaviour of the accused against continued, which ultimately led to her death on 17.09.1998. On the basis of this complaint, formal FIR was registered. After completion of the investigation and after receiving of the report from the chemical examiner, the accused were arrested and challan was presented against accused-appellant and co-accused Mahesh, Dharma and Urmila.

On presentation of challan against accused-appellant and co-accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant and co-accused were charge-sheeted under Sections 498-A and 306 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Gajraj, father of the deceased, who deposed as per prosecution version.

PW-2 Bhanwarpal, brother of the deceased, also deposed as per prosecution version. PW-3 Dr.Sudhir Khurana, Medical Officer, who conducted post mortem examination on the dead body of Mamta, deposed that he noticed two injuries that were abraided contusions, the sub-mustroid and sub-mendible region and abrasion on right knee and also an abraided contusion on the neck. He also deposed that after seeing the report of the chemical examiner, he gave opinion Ex.PC/1 that the person had died due to poisoning due to aluminium phosphide (Celphos). In the cross-examination, he stated that possibility of abrasions on the knee by a fall on hard surface cannot be ruled out and possibility of the abrasions on the face and neck by a fall cannot be ruled out. PW-4 Head Constable Jaswant Singh, mainly deposed regarding handing over of inquest report along the post-mortem and FSL report to ASI Laxmi Narain. PW-5 Anoj Kumar, Draftsman, deposed regarding preparing of scaled site plan Ex.PG. PW-6 Ranbir Singh, retired Constable, is a formal witness, who tendered into evidence his affidavit Ex.PH. PW-7 Inspector Suresh Kumar deposed that on 17.09.1998, he was posted as SI in Police Station City Ballabhgarh. On that day, he was present at Ambedkar Chowk. Accused Desh Raj came there and made a statement Ex.PI. Thereafter, he went and conducted inquest proceedings on the dead body of Mamta which is Ex.PE. The dead body was identified by accused Desh Raj and Gajraj, father of Mamta deceased. He also recorded statement of Gajraj, Ex.PJ correctly and without any addition and omission. He further deposed that DDR was entered in the DDR

register which is Ex.PJ/1. He also deposed that formal FIR was recorded by SI Jeet Ram. PW-8 Meena, Steno to SDM, Ballabhgarh, proved the enquiry report Ex.PM. PW-9 SI Laxmi Narain, is the investigating officer, who deposed regarding investigation conducted by him in the present case.

At the close of prosecution evidence, the accused-appellant and co-accused were examined under Section 313 Cr.P.C. and they denied the correctness of the evidence and pleaded themselves as innocent. Accused-appellant Desh Raj further pleaded that his wife Mamta and he resided separately in Ballabhgarh. His family members used to reside in Vrindavan. On 17.09.1998, he had gone to his duty and when he came back, he found the main door of his house locked from inside. Thereafter, he entered his house after jumping the wall of adjoining house and saw that Mamta was lying on the bed. He further stated that he informed his father-in-law and thereafter, he reported the matter to the police. He further pleaded that Gajraj Singh, father of Mamta had given statement to the police and made accusation against him later on in order to black mail and under misguidance of his relations a false case has been foisted on him. He also pleaded that he ever demanded any dowry.

In defence, accused-appellant examined DW-1 Harchand, Clerk, DFSO, Ballabhgarh, who mainly brought the summoned record i.e ration card register and deposed that Desh Raj and his wife are entered as ration card holders. DW-2 Jagdish Parsad Sharma mainly deposed that he know Keshav Dev and his wife and they are residing

in Vrindavan for the last about 12 years. DW-3 Krishan Kumar Arora, Municipal Councilor, also deposed that Keshav Dev and his wife were residing at Vrindavan for the last about 8-10 years. DW-4 Ramesh Chand Aggarwal deposed that Keshav Dev resides at Vrindavan and works at his shop as a painter. DW-5 M.L.Aggarwal, Officer, Bank of Baroda, Vrindavan, brought the summoned record relating to bank account of Keshav Dev. DW-6 Vinod Kumar Shukla, also brought the record of bank account of Keshav Dev at Bank of Baroda, Vrindavan.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant and acquitted co-accused as stated above.

At the time of arguments, learned counsel for the appellant argued that the occurrence took place on 17.09.1998 and the FIR was got registered on 09.10.1999 by making application by Gajraj, complainant. He next argued that there is no cogent evidence on record to prove abetment. In the FIR, there are no allegations regarding demand of dowry or demand of ₹50,000/-. This material improvement has been made by the complainant and brother of the deceased first time while appearing in the Court. He further argued that no application was ever given to any authority regarding maltreatment, demand of dowry or harassment of the deceased Mamta. He next contended that there is nothing in the first statement got recorded by complainant Gajraj on the day of occurrence regarding any allegation or abetment. Learned counsel for the appellant also contended that after the report of chemical examiner

showing that deceased had died due to consuming of aluminium phosphide (celphos), the application was given to the police. No allegation was levelled and there is nothing in the evidence on record that panchayat was convened nor any panchayat member or independent witness has been examined. The matter was reported by the accused himself to the police along with Gajraj, who requested the police to investigate regarding the cause of death at the time of occurrence. He further argued that conduct of the husband is to be seen in these circumstances. The appellant has also informed Gajraj. So many people were present at the time occurrence but none of the person levelled any allegation against the present accused. Learned counsel for the appellant also argued that Mamta died after 9 years of the marriage. It is admitted case that no issue was born from the loins of Mamta and present accused and Mamta was getting treatment. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by PW-1 Gajraj, complainant and PW-2 Bhanwarpal, brother of the deceased. Their statements have been duly supported and corroborated by the report of chemical examiner and post mortem report. He further argued that the judgment of conviction and order of sentence passed by learned Sessions Judge, Faridabad are correct and as per law. Learned State counsel, therefore, argued that there being no merit in the appeal, the

same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely.

From the record, I find that present appellant has been convicted under Sections 498-A and 306 IPC. Till the date of occurrence, there is no document to prove any maltreatment or harassment or demand of dowry etc. by the accused from the deceased. This fact has been duly proved by bringing defence evidence that Mamta and Desh Raj were residing together in one room house. The occurrence is of 17.09.1998 and on that day, statement of the complainant Gajraj, father of the complainant and present accused Desh Raj have been recorded by the police. There was no allegation in the statement of Gajraj on that day regarding any harassment or maltreatment or regarding any demand of dowry by accused-appellant Desh Raj. Rather, the matter was reported to the police by Deshraj and after recording their statement, entry in the DDR register has been made. The accused himself in his statement has stated that cause of death of Mamta be investigated. The accused-appellant also informed the complainant regarding death of Mamta. Therefore, the conduct of the accused-appellant in this case, itself creates reasonable doubt in the prosecution version.

Further, I find that no FIR was got registered on 17.09.1998. First time, the application was given after about one year by complainant Gajraj after receiving report of chemical examiner and only general and vague allegations of maltreatment and demand of

dowry have been levelled. During the evidence, complainant Gajraj PW-1 and PW-2 Bhanwarpal, brother of the deceased, alleged that accused was asking for motorcycle or ₹50,000/-. Even after one year when the application was filed for registration of FIR, these allegations are not levelled. Otherwise also, the marriage between accused and Mamta took place in the year 1990 and the occurrence took place in September 1998 i.e. after more than eight years of the marriage. There is nothing on the record that any panchayat was ever convened or any person from the village or any panchayat member came to say that accused-appellant was maltreating Mamta. No application was ever given to the police or to any other authority. Rather, the report of SDM, Ballabgarh, which is Ex.PM and relied upon by the prosecution, goes in favour of the accused and states that allegations are not true and it is a simple case of suicide, which may be due to depression for having no child born from the loins of the parties.

I have gone through the entry in the DDR register Ex.PJ/1 which was recorded on the date of occurrence and also statement of Gajraj. Nowhere any allegation was levelled by complainant to the police regarding any maltreatment or harassment or demand of dowry etc. So, from the evidence on record, I find that the version regarding demand of dowry or maltreatment etc. has come when the application has been filed for registration of the FIR after one year of the occurrence.

Keeping in view the above discussion, I find that a reasonable doubt exists in the prosecution version and the

prosecution has failed to lead cogent evidence beyond reasonable doubt to prove any abetment by the accused-appellant much less immediate before the occurrence. The prosecution has also failed to lead any cogent evidence to prove harassment or maltreatment of the deceased by accused-appellant Desh Raj. Therefore, the benefit of doubt is always to go to the accused and hence giving benefit of doubt, the accused-appellant is acquitted of the charges framed against him. The judgment of conviction dated 02.12.2003 and order of sentence dated 03.12.2003 passed by learned Addl. Sessions Judge, Faridabad, are set aside. Since, the appellant Desh Raj is on bail, his bail bonds stands discharged.

Resultantly, the present appeal stands allowed.

August 26, 2015
Vgulati

(INDERJIT SINGH)
JUDGE