

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D- 1091-DB of 2014 (O&M)
Date of decision : 20.04.2015

Ram MeharAppellant

Versus

State of Haryana and othersRespondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Gopal Sharma, Advocate
for the appellant.

Mr. Vivek Saini, AAG, Haryana

Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh, Advocate
for respondents No. 2 to 4.

LISA GILL, J.

Respondents – Amit Kumar, Dalbir and Kamlesh have been acquitted by the learned Additional Sessions Judge, Gurgaon vide judgment dated 29.03.2014 of the charges of offences punishable under Sections 498A, 304B, 302 read with Section 34 IPC. Aggrieved therefrom, present appeal has been filed by the appellant/complainant – Ram Mehar.

As per prosecution version, information was received by ASI Chandgi Ram on 12.12.2012 about Neelam wife of Amit – respondent No. 2 having hanged herself. ASI Chandgi Ram along

with police officials reached the spot on which photographs were taken. Inquest proceedings were conducted and the dead body sent to General Hospital, Gurgaon for post mortem examination. Post mortem was conducted by Board of doctors. Post Mortem Report is Ex. PA. Complainant-appellant Ram Mehar disclosed to the police that his cousin Neelam (deceased) was married to Amit son of Dalbir in March 2011 as per Hindu rites and ceremonies. Sufficient dowry was given at the time of marriage. After 2-3 months of marriage, deceased had disclosed that her father-in-law Dalbir, mother-in-law Kamlesh, husband Amit and brother-in-law Shunty alias Sumit used to maltreat her for bringing less dowry. She was asked to bring more dowry or she would not be kept in the matrimonial home. On this, ₹50,000/- was given to her in cash. She was turned out of her matrimonial home again while demanding money and a vehicle. She was sent back to matrimonial home with intervention of respectables and ₹2 lakhs were given to her in-laws. Thereafter, maternal uncle and aunt of Amit started teasing Neelam. They again demanded money but on their refusal the accused used to maltreat the deceased. Ram Mehar received information on 12.12.2012 that Neelam had committed suicide by hanging herself. On inquiry, they have reason to believe that she has either been strangled by the accused or she has committed suicide due to their atrocities. On this statement (Ex. PC), FIR No. 470 dated 13.12.2012 was registered.

During investigation, Ranbir son of Dala Ram, his wife Santosh and Sanjiv son of Dalbir were found innocent. Challan/report

under Section 173 Cr.P.C. was presented against Amit husband of the deceased, Dalbir father-in-law and Kamlesh mother-in-law of the deceased. As per medical evidence, the cause of death of Neelam is asphyxia due to hanging. Charge was framed against the accused under Sections 498A, 304B read with Section 34 IPC and in alternate Section 302/34 IPC. 14 witnesses were examined by the prosecution to prove its case.

Specific stand was taken by the accused husband Amit Kumar, that he was falsely implicated in this case. There was no dispute between him and his wife. She was never harassed or tortured by him or his family members in any manner. She was infact encouraged for pursuing further studies and she completed her JBT course successfully after marriage. She was reluctant in indulging in sexual activity and he had restrained himself due to this reason. Their marriage was not consummated. When they consulted a doctor, his parents and family members of the deceased also came to know about this fact. Family members of the deceased being orthodox started blaming him by calling him impotent (Namard). He had got himself medically examined from a doctor to prove that he is normal. His wife being shy, introvert and a sensitive person was highly embarrassed about their private lives being made public. It is due to this reason that she committed suicide by hanging from the grill in the roof of first floor on 12.12.2012 when she was all alone at home. Similar stand has been taken by the other two accused as well. Evidence in defence was also led.

Learned trial Court on appreciation of evidence on record concluded that the prosecution had failed to prove its case beyond reasonable doubt, consequently acquitting the accused of the charges against them.

Learned counsel for the appellant vehemently contends that there is sufficient and cogent evidence on record to prove the demand of dowry by the accused persons. Ingredients of offence constituting Section 304B IPC are evident from the record. Reference is made to the statement of complainant Ram Mehar (PW2), Kuldeep (PW8) as well as Manjeet (PW11) to urge that acquittal of the accused persons is not made out in the facts and circumstances of the case. Specific instances of demand of dowry have been revealed by these witnesses in their testimony before the Court. Demand of dowry soon before the occurrence is proved on record. Deceased Neelam passed away within one year and nine months of her marriage at her matrimonial home. Accused failed to rebut the presumption under Section 304 IPC against them. Therefore, it is submitted they should be convicted as charged and suitable sentenced.

We have heard learned counsel for the parties and perused the record.

Medical evidence on record reveal the cause of death to be asphyxia due to constricting pressure around the neck, consistent with the ligature material. Dr. Hazari Lal (PW1) has deposed that there was a contused mark, 17 cm x 2.5 cm, seen incompletely

encircling the neck running transversely across the neck anteriorly, 6 cm below chin, running obliquely below right angles of mandibles, towards both ear lobule, 4 cm from right with a gap of 15 cm at back and left lateral surface of neck.

No other mark of injury was detected on the body of the deceased. PW1, Dr. Hazari Lal has specifically opined that it is a case of suicidal hanging. Dribbling saliva was seen in photographs (Exs. P4 to P7). Therefore, possibility of homicidal death is ruled out.

Dr. Deepak Mathur (PW13), who was also the member of the Board conducting post mortem examination, has revealed that hymen of the deceased was intact, which indicates that marriage between the deceased and her husband was not consummated. This fact is extremely material in the facts of this case and lends a great degree of credence and corroboration to the defence version.

Defence has examined (DW7) Upender Technician in R.D. Pathological Lab, Gurgaon and (DW8) Naveen Sharma, Technician from PGI, Chandigarh to show that medical examination of accused Amit was indeed carried out by referring to report regarding semen examination of Amit as well as treatment at PGI, Chandigarh (Mark DW7/A, DW8/B, DW8/C). It is clear from the facts and circumstances that deliberate improvements are sought to be made by the witnesses while deposing before the trial Court. They have been confronted on all material particulars. In this situation, their credibility is suspect. Furthermore, there is no evidence on record to even substantiate the allegations/averments made by them

subsequently. On the other hand, it is admitted that the in-laws of the deceased were well off and comfortable. Deceased had completed her further studies after her marriage. Medical evidence proves that the marriage between the deceased and her husband Amit had not been consummated, thereby lending credibility to the defence version and creating a doubt on the prosecution version.

Perusal of testimony of Ram Mehar (PW2), Kuldeep (PW8) cousin of the deceased and Manjeet (PW11) real brother of the deceased clearly display palpable improvements, which are sought to be made by them in their statements. Ex. PC i.e. the statement made by Ram Mehar (PW2) on the basis of which the FIR was registered does not contain any specific incident or time/date thereof as is sought to be projected in his testimony before the Court. While it is true that the FIR is not a compendium and encyclopedia of the entire facts and circumstances, however, relevant facts, which are in the knowledge of the complainant, necessarily have to be mentioned therein. Mention is made in their testimonies before Court about Panchayats having been convened by them but no specific date or details of the same are forthcoming, neither has any person who was a member of such a Panchayat been examined. It is also an admitted fact that no complaint whatsoever had ever been made by them regarding maltreatment or torture being meted out to the deceased Neelam. Learned trial Court has discussed threadbare the material improvements sought to be made by these witnesses and rightly concluded that in these circumstances this evidence cannot be

relied on to convict the accused.

It is rather startling that the real brother of the deceased, Manjeet (PW11) did not even record his statement till 19.12.2012. He has sought to explain the same by saying that his throat was choked and he could not speak on 13.12.2012, therefore, his statement was not recorded at that time. Furthermore, improvements sought to be made by him upon his statement (Ex.DBB) also reflect an anxiety to build up a particular case. In Ex. DBB, Manjeet has stated that his mother too was mentally disturbed and remained depressed. Similarly statement of Kuldeep also shows an improvement over his previous statement Ex. DAA wherein no specific details had been revealed. In fact this witness Kuldeep has admitted that he had never even visited the matrimonial home of his sister at any point of time. She had never called him directly on his phone. He was not even aware of her telephone number. In this situation, credibility of all these three witnesses is indeed suspect. Thus, it cannot be concluded that demand of dowry is proved on the basis of their statements.

Therefore, no case is made out for interference in the well reasoned and logical judgment dated 29.03.2014. No material evidence has been ignored or misread. It is settled that acquittal of the accused cannot be set aside merely if another view is possible in the facts and circumstances of a case. Learned counsel for the appellant is unable to point out any infirmity or perversity in the impugned judgment, which would warrant inference by this Court.

Consequently, this appeal is dismissed and judgment dated 29.03.2014 is upheld.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

April 20, 2015
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