

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Appeal No.S-723-SB of 2004

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Date of decision:23.9.2015

Tilak Raj

...Appellant

v.

State of Haryana

...Respondent

....

(2) Criminal Revision No.917 of 2004

.....

Rajinder Kumar

...Petitioner

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. C.L. Verma, Advocate with Mr. Aditya Dassaur, Advocate for the appellant in Criminal Appeal No.S-723-SB of 2004.

Mr. Angel Sharma, Advocate for the revision petitioner in Cr. Revision No.917 of 2004.

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

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Inderjit Singh, J.

This judgment will dispose of above mentioned criminal appeal and criminal revision as these arise out of the same judgment and order

dated 3.3.2004 passed by Additional Sessions Judge, Ambala, whereby accused-appellant Tilak Raj has been held guilty and convicted for the offences under Sections 498-A and 306 of the Indian Penal Code (hereinafter referred to as 'IPC'). However, all the accused have been acquitted for the offence under Section 406 read with Section 34 IPC. Accused Chaman Lal, Asha Rani, Surender Kumar and Sunita Kumari have also been acquitted for the offences under Sections 304-B and 498-A IPC read with Section 34 IPC. Accused-appellant has also been acquitted for the offence under Section 304-B IPC. Appellant-Tilak Raj has been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for two months for the offence under Section 306 IPC. He has also been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.200/- and in default of payment of fine to further undergo simple imprisonment for one month for the offence under Section 498-A IPC. However, both the sentences have been ordered to run concurrently.

The revision petition has been filed by complainant-Rajinder Kumar against the acquittal of all the accused for the offence under Section 304-B IPC.

The brief facts of the prosecution case are that challan was presented against Chaman Lal, Asha Rani, Tilak Raj, Surender Kumar and Sunita Kumari. Tilak Raj is husband of the deceased, namely, Manju. Chaman Lal and Asha Rani are parents-in-law of the deceased and Surender

Kumar and Sunita Kumari are Jeth and Jethani of the deceased. As per the prosecution version, on 12.4.2001, after receiving a medical 'Ruqa', ASI Jiya Lal visited PGI, Chandigarh, where complainant-Rajinder Kumar got recorded his statement. He stated that his parents had married his sister Manju alias Suman with Tilak Raj, according to Hindu rites and ceremonies. At the time of marriage, dowry was given by his parents more than their status. A few days after the marriage, mother-in-law Asha Rani; Father-in-law Chaman Lal; brother-in-law (Jeth) Surender Kumar; sister-in-law (Jethani) Sunita Kumari and husband Tilak Raj of his sister Manju, started taunting her for not bringing car and scooter in dowry. His sister kept on telling them that the dowry was given by her parents more than their status. They were not in a position to give car and scooter in the dowry. Because of this reason, the above said persons kept on harassing her. His sister visited her parental house at Village Bagrian and narrated all this to all the family members. After some time, a panchayat from Village Sohana visited their village and assured his parents and other family members that Manju would not be harassed in future and thereafter, she was taken to the house of her in-laws. After a few days, all the above said persons started pressing Manju for bringing car and scooter. His sister informed them on telephone several times that her parents-in-law, brother-in-law (Jeth), sister-in-law (Jethani) and husband were threatening to kill her by setting her on fire, after pouring kerosene on her body, in case the car and scooter were not brought by her from her parents.

In the morning of that day, the accused set her on fire after

pouring kerosene on her body, as a result of which, burn injuries were suffered by her. Thereafter, she was taken to C.H.C. Mullana and from there, she was referred to PGI, Chandigarh, where she succumbed to the injuries suffered by her. Information regarding Manju was given to them by some resident of Village Sohana. Thereafter, a case for the offences under Sections 406, 498-A, 304-B read with Section 34 IPC was registered at Police Station, Mullana. All the accused were arrested and after necessary investigation, challan was presented.

On presentation of challan, the trial Court finding *prima facie* case against the accused framed charges for the offences under Sections 406, 498-A and 304-B read with Section 34 IPC, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Raghunath Singh, who mainly deposed regarding the disclosure statement Ex.PA. Whatever was deposed by this witness regarding the occurrence is inadmissible in evidence as the confession of the accused was made before the Police and is hit by Section 25 of the Evidence Act. PW-2 Rajinder Kumar-complainant deposed as per the prosecution version. He stated that they are three brothers and two sisters. Manju was married to Tilak Raj on 28.3.1998. The marriage was simple and they had given the dowry as per their capacity. He also stated that accused demanded money from them for sending Tilak Raj abroad and they made arrangement and paid Rs.50,000/- to the accused persons. Even after receiving the money, the accused again started harassing Manju for demand of dowry. Tilak Raj had gone abroad

and returned after one and a half years. Beatings were given to Manju by her Jeth and Jethani and husband etc. PW-3 ASI Ram Kumar is a formal witness, who stated that on receipt of 'Ruqa', 'Rapat' was written by him in the original DDR register and proved the copy of the same as Ex.PF. PW-4 Dr. Balbir Singh, SMO deposed that he conducted post-mortem examination on the dead body of Manju alias Suman and he gave the cause of death in the case due to cardio respiration failure, because of the 100% burns, which were sufficient to cause death in ordinary course of nature. PW-5 Dr. Tarun Parshad deposed regarding admission of Manju in C.H.C. Mullana in an injured condition. He deposed regarding conducting medico-legal examination and also stated that Manju was having 100% burns. He proved the MLR. PW-6 Constable Sushil Kumar is a formal witness, who mainly deposed regarding delivery of special report. PW-7 SI Phul Singh mainly deposed that he prepared report under Section 173 Cr.P.C. PW-8 ASI Dharam Pal mainly deposed regarding recording of formal FIR on receiving of 'Ruqa' Ex.PB. PW-9 Constable Ram Saran mainly deposed regarding preparing of scaled site plan. PW-10 Janak Rani mother of the deceased deposed as per the prosecution version. PW-11 ASI Jiya Lal is the Investigating Officer, who deposed regarding conducting the investigation in the present case.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution but they denied the correctness of the evidence and pleaded themselves as innocent. Accused Tilak Raj also stated that it is a

false case against him and all the members of his family, including his elder brother, his wife and his parents. His elder brother Surender and his wife and their three children are living separate from him and his parents. They have got a separate ration card and are living separately with a separate mess and separate business. He and his parents have a separate ration card and are living separately. He was in employment in Saudi Arabia at the time of his marriage. His marriage with Manju was performed with some understanding that he will take his wife to the place of his posting after his marriage, but he could not take her for two years, in spite of best efforts made by him for her accommodation. His wife and her parents were feeling very much annoyed as his wife was living all alone in the matrimonial home and was doing hard jobs of cooking meals, collecting fodder and doing odd works in the family. She was very much depressed and dejected on this account. On the day of occurrence, he was in the fields along with his co-accused. His Bhabhi had gone to prepare cow dung cakes. He received information in the fields that his wife had burnt herself due to the above reasons. He immediately removed her to C.H. for treatment and got her medically examined and on the reference of the doctors, he took her to the PGI. His co-accused also reached there for treatment. He also informed the parents of Manju regarding the above occurrence and they reached there. However, no report was recorded in the PGI and after consultations and deliberations, a false story of dowry death was cooked up against him and his family in the police station. He or his co-accused never demanded any car or scooter or never demanded any amount of Rs.50,000/- for his going

abroad, nor any such payment was ever made to any of them. The witnesses have made false statements in order to black mail him and his family members. They have turned a case of suicide into a case of dowry death. They are all innocent. The Police investigated this case and none from Village Sohana, which is a very big village, came forward to depose against them. No Panchayat was ever convened in the village. The Police has fabricated false evidence and inducted false witnesses in this case. They are innocent. They never maltreated the deceased for any reason.

In defence, the accused examined DW-1 Pardeep Kumar, who deposed that he was the Sarpanch of the village since April 2001. He was on visiting terms to the house of the accused persons. At the time of the marriage of accused Tilak Raj with Manju alias Suman, he was in the employment in Saudi Arabia. He had visited India for the purpose of celebration of his marriage. After his marriage, Tilak Raj had remained in Saudi Arabia for two years. During this period, he had visited his native village Sohana twice. Manju was residing in the house of her parents-in-law. She had been visiting his family. At the time of her visit to his house, Manju used to say that her husband was not taking her along with him to Saudi Arabia. She also used to say that she had to do lot of work in the house of her parents-in-law. Manju had never complained against her in-laws to him. He also stated that at the time of death, Manju was residing jointly with her parents-in-law Chaman Lal and Asha Rani. Surender Kumar and his wife Sunita Kumari were residing separately from Chaman Lal. However, they were residing in the same building, which was having a

common outer gate. Surender Kumar and his wife Sunita and their children were having a ration-card, separate from Chaman Lal and Asha Rani.

After going through the evidence on record, the learned trial Court vide its impugned judgment and order convicted and sentenced the accused-appellant Tilak Raj for the offences as mentioned above and acquitted the other accused for the charges framed against them. Aggrieved against the judgment, the present appeal has been filed by appellant-Tilak Raj. Criminal revision petition has been filed by complainant-Rajinder Kumar against the acquittal of the accused as mentioned above.

At the time of arguments, learned counsel for the appellant-Tilak Raj argued that the prosecution has failed to prove the guilt of the accused by leading cogent evidence. There are vague allegations. No dowry demand regarding car and scooter was made. He also argued that otherwise also, it looks improbable that two vehicles at a time would be demanded. He further argued that no particular instance has been given in the FIR regarding any harassment etc. Learned counsel for the appellant further argued that the witnesses have made material improvements regarding demand of Rs.50,000/- and payment regarding the same.

On the other hand, learned Assistant Advocate General, Haryana appearing for the respondent-State argued that no medical evidence regarding depression has been produced. The husband had come back from Saudi Arabia. It is for the accused to explain as to why his wife committed suicide.

Learned counsel for the complainant-revision petitioner also

argued that the revision petition filed by the revision petitioner be accepted and all the accused be convicted for the offence under Section 304-B IPC. He also argued that the trial Court has wrongly ignored the evidence regarding demand of dowry etc. He argued that respondents No.2 to 6 impleaded in the revision petition be convicted for the offence under Section 304-B IPC.

After hearing learned counsel for the parties and after going through the record, I find that in the present case two star witnesses of the prosecution are PW-2 Rajinder Kumar and PW-10 Janak Rani mother of the deceased. A perusal of the statement of PW-2 Rajinder Kumar shows that only general and vague allegations have been levelled. No particular instance had been given regarding the demand of dowry. A general allegation was levelled that the accused were demanding car and scooter. The allegation regarding demand of Rs.50,000/- and regarding payment of that amount is a material improvement made by PW-2 Rajinder Kumar. Even a perusal of the statement of Rajinder Kumar nowhere gives the particular when and where the Panchayat was convened and what was decided in that panchayat. No person from the Panchayat had been examined to support the allegation of harassment etc. PW-2 in cross-examination when confronted with his statement Ex.PA regarding this demand of Rs.50,000/- for sending Tilak Raj abroad and giving of that money, was not found mention in the statement which means that the witness has made material improvement regarding this demand of Rs.50,000/- etc. It is in the cross-examination of PW-2 that husband of the

deceased was in Saudi Arabia and was a Carpenter. He also stated in cross-examination that mother of the deceased had told them that the accused persons raised a demand of dowry i.e. scooter and car and used to maltreat and torture her. He also stated that they went to the in-laws of deceased Manju alias Suman with the Panchayat on two different occasions. He did not remember the month when they convened a Panchayat and took the same to the house of the accused. All these statements are not supported and corroborated by cogent evidence nor any specific incident or particulars have been given. Otherwise also, when the husband of the deceased was doing the work of Carpenter in the foreign country and earning sufficient amount, it also looks improbable that he would raise the demand of scooter or car.

As regards other accused Surender Kumar and Sunita Kumari, there is no cogent evidence on record regarding any harassment or maltreatment. Similarly, regarding Chaman Lal and Asha Rani parents-in-law, there are no specific particulars regarding any maltreatment or harassment by them. The trial Court has correctly reached to the conclusion after appreciating the evidence that demand of dowry is not proved nor the prosecution has led any cogent evidence regarding the other accused Chaman Lal, Asha Rani, Surender Kumar and Sunita Kumari for harassing the deceased. It is in the evidence of DW-1 that Tilak Raj husband of the deceased was residing in the village at the time of occurrence and he had already come back from Saudi Arabia. PW-2 Rajinder Kumar has also admitted in cross examination that his sister had never written a letter to

them regarding the maltreatment or harassment on the demand of dowry etc. A perusal of the statement of PW-10 Janak Rani also shows that general allegations were levelled regarding demand of car and scooter. She has also not given any particular instance regarding any harassment or torture on account of demand of dowry. PW-10 Janak Rani also stated regarding the demand of Rs.50,000/- which was made by them. PW-10 made contradictory statement that her daughter used to write letters and they received three-four letters written by her daughter in this respect. But the letters were destroyed/thrown by them after reading, which clearly shows that if any letter was received by the complainant party making any complaint against any in-laws etc., then it must have been in their possession. As already discussed, though PW-10 is also alleging regarding convening of Panchayat, but no Panchayat member had been examined to support and corroborate the prosecution version. There is nothing on the record that ever any complaint was made to the Police authorities or to any higher authority. It is admitted by PW-10 in cross-examination that her daughter used to complain them that her husband had gone abroad leaving her all alone in the house. She also told that she had to work all odd jobs in the matrimonial home.

In view of the evidence produced on the record, the prosecution has failed to prove that Manju alias Suman was harassed and maltreated on the ground of demand of dowry. Therefore, the learned trial Court has correctly acquitted the accused for the offence under Section 304-B IPC.

As already discussed, there are no particular instance against

accused Chaman Lal, Asha Rani, Surender Kumar and Sunita Kumari and only general and vague allegations have been levelled, which are not supported and corroborated by any cogent and independent evidence. Therefore, Chaman Lal, Asha Rani, Surender Kumar and Sunita Kumari have been rightly acquitted by the trial Court.

Therefore, finding no merit in Criminal Revision No.917 of 2004, the same is dismissed.

As regards the appeal i.e. Criminal Appeal No.S-723-SB of 2004 filed by Tilak Raj, husband of the deceased, I find that he had come back from Saudi Arabia and at the time of occurrence was residing in the village. The marriage had taken place in the year 1998 and the occurrence had taken place about three years after the marriage. Appellant Tilak Raj is the husband of deceased Manju, who died in the matrimonial house within seven years of the marriage and both the PWs are levelling allegations regarding the harassment and maltreatment against the husband and other family members consistently.

As regards the other family members, it is settled law that the prosecution has to prove specific particulars and role of other relatives of the husband. Therefore, as no particular instance showing the involvement of other family members has been proved, therefore, benefit has been given to them by the trial Court, but the appellant is the husband and his wife Manju died due to 100% burn injuries almost about three years after the marriage i.e. within seven years of the marriage, therefore, the presumption under Section 113-A of the Evidence Act is to be rebutted by him by leading

cogent evidence. But the appellant has not produced any cogent evidence on record to rebut the presumption. The defence version that Manju was under depression as no child was born etc. has not been proved by bringing any cogent evidence on record. Neither husband nor any other person had come to the witness box to depose that she had committed suicide due to other reasons like depression etc. Therefore, from the evidence on record, I find that the appellant has failed to rebut the presumption under Section 113-A of the Evidence Act specially in view of the oral statements of PW-2 Rajinder Kumar and PW-10 Janak Rani, who were alleging the harassment and maltreatment to the deceased by the appellant. The appellant being husband also cannot escape the liability by saying that no particular instance had been given. The benefit can be given to the relatives of the husband, but not to the husband on this ground. Manju alias Suman committed the suicide in the matrimonial house i.e. house of the accused-appellant and there is allegation regarding maltreatment and harassment by the present appellant. Therefore, the appellant is to rebut the presumption under Section 113-A of the Evidence Act by leading cogent evidence.

The findings given by the learned trial Court convicting the appellant for the offence under Section 306 read with Section 498-A IPC are correct as per evidence and law and do not require any interference from this Court.

At the time of arguments, learned counsel for the appellant prayed for taking a lenient view and reduction of the sentence in the alternative. I have heard learned counsel for the appellant.

From the record, I find that the FIR in the present case had been registered in the year 2001 and the appellant had already suffered for more than 14 years from the long criminal proceedings. He has already undergone three years, six months and nine days actual sentence of imprisonment and has also earned remission of one year and sixteen days. It is stated that he is the only bread earner of the family and is a poor person.

Therefore, keeping in view the facts and circumstances of the present case, the sentence for the offence under Section 306 IPC is reduced from rigorous imprisonment of seven years to rigorous imprisonment of five years. The remaining sentence of fine and sentence under the other offences and in default of fine will remain the same. Both the sentences shall run concurrently.

With the above modification in the sentence of imprisonment, the appeal filed by appellant-Tilak Raj is dismissed.

As the sentence of the appellant has been suspended and he is on bail, his bail/surety bonds stand cancelled. He is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

September 23, 2015.

hsp

(Inderjit Singh)
Judge