

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2938-SB-2009

Date of decision: August 14, 2015

Leela Ram and another

..... Appellants

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL

Present: Mr. Rahul Wats, Advocate and
Mr. Rakesh Gupta, Advocate
for the appellants.

Mr. Premjit Singh, Additional AG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

M. JEYAPPAUL, J. (ORAL)

1. It is the case of the prosecution that the first accused Leela Ram being the husband and the second accused Sheela Devi being the mother-in-law committed cruelty in connection with their demand of dowry from Sunita Rani (deceased) and as a result of which, Sunita Rani jumped into Bhakhra canal on 24.06.2008 and committed suicide. The fact remains that both the accused were charge-sheeted not only Section 304-B, IPC but also Section 306, IPC, though the conviction and sentence was recorded only for the offence under Section 304-B, IPC.

2. PW-1 Jagiro was the complainant who is stated to be the mother of deceased Sunita Rani. She being the mother of deceased Sunita Rani deposed supporting her version in the FIR that both the accused having not

been satisfied with the dowry brought by Sunita Rani, taunted and tortured her daughter. To satisfy them, a sum of ₹ 12,000/- was paid in the month of August 2007, thereafter a sum of ₹ 7,000/- was paid to the accused in connection with demand of dowry. On 23.06.2008, Sunita Rani telephonically contacted PW-1 Jagiro, her mother and informed her that her life was in danger as there was a threat to eliminate her by the accused. As there was no male member at home, she could not go over the matrimonial home of her daughter. On the next day morning at about 10.30 AM, PW-1 and PW-4 were informed that Sunita Rani had jumped into the Bhakhra canal near Samana. The dead body was found from Tohana near Khanauri on 29.06.2008.

3. PW-2 Surjit Singh was the brother-in-law of the deceased Sunita Rani. He deposed that the deceased informed him, when he visited the matrimonial home of Sunita Rani, that she was beaten by the accused for having brought insufficient dowry. PW-3 Veero is the wife of Walaity Ram who is the brother of the father of the deceased Sunita Rani. She deposed that there was a telephone call from the deceased not only on 23.06.2008 but also on 24.06.2008 but the call was attended by her husband. She deposed that it was a case of murder committed by the accused.

4. PW-4 Malook Chand father of the deceased has virtually supported the version of PW-1.

5. PW-5 Dr. S.S. Oberoi conducted post-mortem examination on the dead body of Sunita Rani. He opined that Sunita Rani had died due to drowning but he had noted the injury on the parietal region of the head. Even during the course of chief-examination, he has stated that such injury could have been caused by some hard object during the process of drowning.

6. The accused have set up a plea under Section 313 Cr.P.C. that a false case was foisted on them, inspite of fact that Sunita Rani who was not interested in her marriage with accused Leela Ram committed suicide by jumping into the Bhakhra canal.

7. On the side of accused, two witnesses were examined to speak to the fact that there was no custom in the community of the deceased Sunita Rani to give or take dowry.

8. The trial Court held that since the charge under Section 306, IPC was an alternative charge in case Section 304-B, IPC was not made out, there was no need to examine the case for the charge under Section 306, IPC. Accordingly, both the accused were convicted and sentenced under Section 304-B, IPC.

9. Learned counsel appearing for the appellants would vehemently submit that the family of both the parties belong to the lower middle class family. There is no substantial evidence to establish that there was a demand of dowry. The evidence adduced by the prosecution is shaky. Learned counsel for the appellants have drawn the attention of this Court to the evidence, referred to above, to submit that the prosecution has failed to establish with the evidence of PW-1, PW-2 and PW-4 that there was actually a demand of dowry which resulted in cruelty and harassment. Therefore, it is submitted that the trial Court wrongly recorded conviction as against the accused under Section 304-B, IPC.

10. The prosecution has projected through the evidence of PW-1, PW-2 and PW-4 that the accused consistently demanded dowry from Sunita Rani and committed cruelty on her and as a result of which, she ended her life by jumping into Bhakhra canal. PW-1 of course has deposed that a sum

of ₹ 12,000/- was paid to the 2nd accused Sheela Devi in the presence of one Balkar Singh but unfortunately, the Investigating Officer has chosen not to associate Balkar Singh during the course of investigation. Resultantly, his statement under Section 161 Cr.P.C. could not be recorded. Ultimately, he was not examined before the trial Court. Non-examination of independent witness who was allegedly present at the time when a sum of ₹ 12,000/- was paid, has caused dent to the prosecution case as it is the case of the prosecution, a sum of ₹ 12,000/- was paid by PW-1 to the accused in the presence of one Balkar Singh.

11. It is the consistent version of PW-1, PW-2 and PW-4 that the deceased made a telephone call to the mobile phone of Walaity Ram, the husband of PW-3 Veero Devi. Firstly, I found that Walaity Ram was not at all examined by the prosecution to speak to the fact that he in fact received a call on 23.06.2008 from the deceased Sunita Rani. The call details were never requisitioned and produced before the Court to substantiate the plea of the prosecution that in fact the deceased Sunita Rani was afraid of her elimination as there was imminent threats from the accused. No reason has been assigned as to why Walaity Ram was not examined and why the call details were not produced before the Court. To say the least, the Investigating Officer has not thought it fit to examine Walaity Ram under Section 161 Cr.P.C. Non-examination of Walaity Ram who allegedly received the call from the deceased Sunita Rani on the previous day and the non-production of call details have in fact created a doubt in the case of the prosecution as regards the charge that the accused committed cruelty by demanding dowry.

12. Of course, learned AAG, Punjab for the State would submit that PW-3 Veero has deposed that Walaity Ram had received the respective calls from the deceased not only on 23.06.2008 but also on 24.06.2008.

13. It is to be noted that it is nobody's case that the deceased made a call to her family on 24.06.2008. In other words, PW-3 has come out with a new story during the course of her testimony that there was infact a call enumerated from the deceased Sunita Rani on 24.06.2008 also. She had gone a step ahead and deposed that it was a case of murder committed by the accused. In my considered view, the above evidence of PW-3 would go to show that she was the most interested witness in this case. In other words, the testimony of such a witness cannot be safely relied upon.

14. Of course, PW-2 Surjit Singh brother-in-law of the deceased spoke to the fact that he had been to the matrimonial house of the deceased where he was informed by the deceased that she was beaten for having brought insufficient dowry.

15. Firstly, I feel that PW-2 was also an interested witness in this case. That apart it will be totally unsafe to rely upon the evidence of PW-2 in the absence of call details and corroboration from Walaity Ram.

16. In the above facts and circumstances, I am of the considered view that the prosecution has failed to establish that the accused committed cruelty by demanding dowry from Sunita Rani.

17. Now the Court will have to see what offence actually has been committed by the accused. The fact remains that Sunita Rani, as per the admitted position and also in the background of the medical evidence available on record, committed suicide by jumping into the Bhakhra canal.

In fact, PW-5 Dr. S.S. Oberoi has opined that Sunita Rani had died due to

drowning. The injury found on the parietal region of the head can be attributed to some hard object which might have come in contact with that portion of the body of the deceased during the process of drowning. Therefore, it has been established by the prosecution that Sunita Rani had committed suicide.

18. The Court will have to see whether Leela Ram and Sheela Devi contributed to the suicide committed by Sunita Rani.

19. It is very much relevant to refer to Section 113-A of the Indian Evidence Act, 1872 which speaks of presumption that can be raised as against the accused. When the question arises whether the commission of suicide by the wife was abetted by her husband or any of his relatives, the Court will have to see whether such suicide was committed within a period of seven years from the date of marriage of the woman. If some cruelty had been committed, then the Court can raise presumption that the suicide was committed only on account of abetment made by the husband and his relatives.

20. There is no dispute to the fact that both the accused have resided under one roof along with deceased Sunita Rani and due to their acts of cruelty, Sunita Rani had chosen to jump into the Bhakhra canal and end her life.

21. It is a case where there is no acceptable evidence to establish that cruelty had been committed by the accused by demanding dowry but there is reliable evidence to show that the accused had committed cruelty in the matrimonial home which resulted in commission of suicide by Sunita Rani.

22. In view of above, the judgment of conviction and sentence passed by trial Court under Section 304-B stands set aside. They are

convicted only under Section 306, IPC. It is brought to the notice of the Court that the first accused has undergone more than six years and five months and the second accused Sheela Devi has undergone more than one year and six months. Therefore, they are sentenced to the above mentioned period already undergone by them for offence under Section 306, IPC. With the above modification in the matter of conviction and sentence, the bail bonds executed by Sheela Devi shall stand discharged and accused Leela Ram be set at liberty forthwith, if his custody is not required in connection with any other case. The appeal is partly allowed.

(M. JEYAPPAUL)
JUDGE

August 14, 2015
Dinesh Bansal