

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-1503-SB of 2013 (O&M)
Date of decision: 19.08.2015

Harbans and others Appellants

Versus

State of Haryana Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

Present: Mr. S.S. Walia, Advocate
for the appellants.

Mr. S.S. Pannu, DAG, Haryana.

R.P. NAGRATH, J.

The appellants faced trial of the charge under Section 302 read with Section 34 of Indian Penal Code (IPC) or in the alternative for the offence under Section 304-B read with Section 34 IPC. The second charge against them was under Section 498-A IPC. Appellants no. 1 and 2 (A-1 and A-2) are parents of appellant No. 3 (A-3). Learned trial Court acquitted the appellants under Section 302 IPC but convicted them under Sections 304-B and 498-A read with Section 34 IPC and awarded them the sentence to undergo rigorous imprisonment for ten years under Section 304-B read with Section 34 IPC. The trial Court observed and rightly so, that the sentence having been awarded for the graver offence there was no need to pass separate sentence under Section 498-A IPC.

2. As per custody certificates placed on record by learned State counsel, Harbans (A-1) has undergone actual sentence of 1 year 11 months and 25 days of imprisonment with total period of 2 years, 5 months and 7 days with remissions before his sentence was suspended by this Court. Murti (A-2) has undergone about 3 years of imprisonment. A-3 who is still in custody has undergone 3 years 10 months and 29 days of actual imprisonment with total period of more than 5 years and 8 months of imprisonment by including the remissions.

3. FIR was registered on the statement of PW-1 Sukhpal, the mother of Santosh (deceased). The complainant is *Anganwari* worker in her village. Santosh was married with A-3 about 15 months before the occurrence. The couple was having a love affair and the marriage was solemnized with the consent of both the families.

4. It is the prosecution story that for two months after the marriage behaviour of appellants was nice towards the deceased but thereafter, they started beating her. The persons named in FIR having physically tortured the girl are parents of the boy, his sister Reshma and her husband, brother of A-3 apart from A-3 himself. Four months after the marriage the deceased had come to her parents. She was having an injury on her abdomen for which she was got medically treated. After that A-3 came and the deceased was sent alongwith him. One month thereafter, in-laws of the deceased again turned her out by giving her beating. The girl came to her parents but with the intervention of Sohan Singh *sarpanch* she was sent back.

5. It was further stated that in-laws of the girl were demanding motorcycle and more dowry. Even A-3 used to demand amount of ₹ 2000/- and ₹ 4000/-. Certain articles were given to deceased on the birth of her child. Those articles were trunk, clothes, *pajeb*, ear-rings and nose pin but Reshma sister of A-3 was also making demand of some gifts on the occasion of birth of the child. Even sometime before the occurrence, complainant went for round of the village in connection with polio eradication programme. During the course of her duty, the complainant also went to the house of her daughter but she was pushed away from the house and her daughter was also beaten in her presence. Thereafter, the deceased had not come to her parents. PW-1 mother of the deceased stated in her cross-examination that distance between her house and the in-laws house of the deceased is about 1 km. only.

6. On 04.07.2011, a message was received from mobile phone of A-3 that daughter of the complainant had consumed poisonous spray. It was suspected that A-3 and his family members as mentioned above have administered poison to the deceased.

7. The police received information about serious condition of the victim, who was admitted in Civil Hospital, Odhan. The police party headed by PW-5 ASI Jagdish Parshad reached the hospital. He moved application Ex. PH to the doctor for his opinion about fitness of the victim to make the statement. The doctor gave opinion Ex. PH/1, declaring the victim to be unfit to make the statement. As per this endorsement made by the doctor, the victim was referred to General Hospital, Sirsa. Santosh had died in the hospital there at 09.40 p.m. on 04.07.2011 itself.

8. The police party headed by Inspector Hira Singh, SHO of the Police Station Odhan went to General Hospital Sirsa on 05.07.2011 where the complainant made her statement which was sent to the police station and FIR Ex. PA/2 was recorded on its basis.

9. A-3 was arrested on 07.07.2011 and he produced a bottle containing half liter of spray having the label of 'Midas Touch'. This was sealed with seal bearing impression 'JP'. The victim had vomited in the hospital. Her gastric lavage bearing seal of the doctor was collected for which *panchnama* is Ex. PO. On 08.07.2011, the police party also took into possession certain articles as per list Ex. PP stated to be given by mother of deceased on birth of the child.

10. As per report of the Chemical Examiner, the viscera containing lungs, liver, spleen, kidney, brain etc. was found positive for organo-phosphorous compound, a group of insecticides. Vide another report Ex. PN of the Chemical Examiner, the contents of gastric lavage was also found containing the similar poisonous substance. The doctor ultimately found the cause of death to be poisoning caused by organo-phosphorous compound, a group of insecticide. The postmortem report Ex. PB and the aforesaid opinion was proved by examining PW-3 Dr. Rahul Garg.

11. Initially when the victim was taken to the Civil Hospital, Odhan she was medically examined by PW-6 Dr. Sonmeet Sohal. Ex. PL is the medicolegal report. This doctor proved the opinion Ex. PH/1 declaring Santosh to be unfit to make the statement. History of patient as per MLR Ex. PL was alleged consumption of poison

and gastric lavage was done for which sample was taken and sealed.

12. The case was committed to the Sessions Court. The prosecution examined 8 witnesses including the two doctors as referred to above. Bhaga Ram, Sarvan, Hanuman Singh and Laxman Ram were given up as unnecessary.

13. During their examination under Section 313 Cr.P.C. the appellants denied all the incriminating circumstances appearing in the prosecution evidence against them.

14. A very detailed defence plea was taken by Karta Ram (A-3) in consonance with whatever circumstances appeared in the cross-examination of both parents of the deceased. The relevant portion of defence plea which would be a subject matter of discussion is that the deceased was having an intimacy with A-3. Parents of the deceased, however, wanted to perform her marriage with Jai Chand. Learning this, the deceased came to the house of A-3 and eloped with him. A-3 and his wife went to the house of his uncle at Abohar where they spent one night. However, on the next day PW-2 accompanied by certain persons came to Abohar and took the girl alongwith him. The deceased told her parents that she would not marry with Jai Chand but only with A-3, otherwise she would commit suicide. Due to this reason both the parents of deceased stated before the *panchayat* that Santosh has died for them and they would not see her face in future. In view of the above, a simple marriage was solemnized by exchange of garlands between the deceased and A-3. Immediately thereafter, the parents of A-3 separated him in residence. The deceased never visited her

parents after the marriage till her death and even her parents never came to meet her. A male child was born to Santosh from the wedlock but her parents never came to meet the child. It was stated that no dowry articles were given.

15. It was further pleaded by A-3 that he was working in the fields when he got information from his mother that the deceased was vomiting. A-3 and his father (A-1) took the victim to Civil Hospital Odhan and then shifted her to Sirsa. Parents of the deceased also reached General Hospital, Sirsa. It was thus pleaded that Santosh had died of depression because her parents had never come to see her after the *panchayat*. The parents of deceased have falsely implicated them because this was inter-caste marriage for which parents of the girl wanted to teach him a lesson. Even the male child remained in custody of A-2, mother of A-3 while in jail as an inmate. Similar plea was raised by the other two appellants.

16. In defence, the appellants examined DW-1 Hanuman and DW-2 Sarvan Kumar.

17. Learned trial Court convicted and sentenced the appellants as aforesaid.

18. I have heard learned counsel for appellants, the State counsel and gone through the record meticulously with their able assistance.

19. Learned counsel for appellants has challenged the conviction of appellants on the grounds *inter alia*;

- (i) That it was love marriage of A-3 with the deceased and admittedly no dowry was given;
- (ii) that the important ingredient of offence under

Section 304-B IPC that soon before her death the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand of dowry, has not been proved;

- (iii) that A-1 and A-2 had separated A-3 and his wife for residence and mess; and
- (iv) that parents of the deceased never came to meet her after the marriage and on that account the deceased remained under acute depression.

20. On the other hand, learned State counsel supported the findings of conviction. It was contended that though it was inter-caste marriage of the couple who had a love affair, the parents of the deceased had ultimately consented to the matrimonial alliance. It was further contended that just about two months thereafter the appellants started treating the deceased with cruelty and she was also turned out of house on few occasions. There was also the demand of dowry including a motorcycle by A-3.

21. For bringing home the charge under Section 304-B IPC, following ingredients should be proved:-

- i. That death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances;
- ii. that death has taken place within 7 years of marriage; and
- iii. that soon before her death, the woman was subjected to cruelty or harassment by her

husband or any relative of her husband for, or in connection with, any demand for dowry.

22. There could not be any challenge to first two ingredients of the offence. Death of Santosh took place just after 15 months of the marriage under the mysterious circumstances.

23. It is quite apparent that Santosh developed an affair with A-3 before her marriage. Her parents were against this alliance but Santosh was adamant to solemnize marriage with A-3. It can also not be disputed that no dowry was given in marriage except a very small amount of *shagun*. But the question would be whether parents of the deceased had severed all connections with their daughter or that was only a temporary phase at the time of marriage of the deceased with A-3, and thereafter her parents ultimately reconciled.

24. PW-1 mother of the deceased in cross-examination stated that they are *Meghwal* by caste whereas accused party are *swami/bairagi*. They never performed marriage of their child out of caste except that of Santosh (deceased). PW-1 admitted that Santosh was engaged to one Jai Chand of village Fatehgarh about 2-3 months of her marriage with A-3 but Santosh had eloped with A-3. The couple had gone to the house of Atma Ram, uncle of A-3 at Abohar. Father of the girl (PW-2) accompanied by few acquaintances went to Abohar and brought the girl back. A *panchayat* was held and those members of *panchayat* advised Santosh to marry with Jai Chand with whom engagement ceremony was already held. Santosh, however, insisted to marry A-3 only and no other person, else she will die. PW-1, however, clarified that

since Santosh had eloped with A-3, therefore, her marriage could not have been performed with any other boy.

25. PW-1 also admitted that this marriage was solemnized by only the exchange of garlands. Ex. DA is photograph of the couple exchanging garlands. PW-1 also stated that since she was quite upset at that time that she had asked her daughter not to enter the parents' house in future.

26. PW-2 father of the deceased, however, denied that the deceased was engaged to Jai Chand but it is admitted by him that he performed the marriage of his younger daughter Priyanka with said Jai Chand. That marriage ceremony was solemnized by the maternal grandfather of Priyanka. This contradiction seems to have appeared because of anger of the parents on account of marriage of their daughter out of caste but there is absolutely nothing for suggesting that they had debarred Santosh and her husband to come their house after the marriage or that she never came to meet them as would be seen while discussing statements of PW-1 and PW-2.

27. PW-2 in cross-examination stated that marriage was solemnized with the exchange of garlands and they blessed Santosh by placing their hands on her head. The relatives gave *shagun* of ₹ 20/-, ₹ 50 and ₹ 100/- etc. but nothing else was given to Santosh at the time of *Doli (Vidai)*. PW-2 even stated in cross-examination that there was no demand of dowry raised by the accused at the time of marriage.

28. From the above discussion, it is quite apparent that Santosh deceased entered into matrimonial alliance with A-3

against the wishes of her parents, but it is proved that PW-1 and PW-2 reconciled with this marriage and assented to it ultimately. The statements of PW-1 and PW-2 on proper analysis do suggest that the parents had not severed all connections with their daughter, rather she had been coming to them in difficult times. PW-2 also stated in cross-examination that they went to the photo-studio at Odhan for the photograph of A-3 and the deceased with her parents, just about 2 or 3 days of the marriage. This statement could not be possibly assailed by appellants because PW-2 had brought and shown the said photograph while being examined in the Court.

29. The core question would be whether the victim was subjected to cruelty or harassment by the appellants for or in connection with demand of dowry soon before her death.

30. The term 'soon before the death' should in the present case be considered upto the time when the girl last visited her parents i.e. December, 2010 after birth of the child. There is positive evidence about certain demands made by A-3 on the birth of child or otherwise for a motorcycle. However, there being gap of 7 months between December, 2010 upto 04.07.2011, the date of occurrence, may somewhat benefit A-1 and A-2, parents of A-3 under the aforesaid circumstances.

31. PW-1 categorically stated that 4 months after the marriage her daughter came to them. According to PW-1, Santosh was having injury on her abdomen and she was got treated. Thereafter, A-3 came to their house and took back his wife. PW-1 further stated that after one month again Santosh had come to

them. She was sent back with the help of Sohan Singh *sarpanch*. PW-1 also stated about the physical torture of the deceased by the appellants and other family members.

32. It was contended by learned counsel for appellants that there is no medical record of treatment of the deceased when she allegedly came to her parents' house with injury on the abdomen. I am of the view that it is not possible to keep record of the hospital in respect of treatment of the girl for an incident statedly taking place about 11 months before her death. The parents would not complain of such an incident to the police especially when marriage of the girl with A-3 was solemnized of her own choice and such a complaint could disturb the married life of their daughter.

33. The relevant portion of statement of PW-1 is that after birth of a male child to Santosh, she was sent to her matrimonial home by her parents. At that time, the deceased was gifted certain items like a box, pair of ear-rings, nose pin, utensils, bedding and some clothes. PW-1 further stated that A-3 was also frequently demanding ₹ 2000/- or ₹ 4000/-. PW-1 then stated about her visit to her daughter's house during pulse-polio programme when she was pushed out of house and her daughter was given severe beating.

34. PW-2 stated that accused persons used to beat his daughter on certain occasions and turn her out of matrimonial home on account of demand of dowry. They sent back their daughter to matrimonial home through Sohan Singh *sarpanch*. He categorically stated that Santosh was turned out of house twice or thrice. PW-2 in cross-examination stated that motorcycle was

demanded by A-3 about one or two months after birth of the child.

35. PW-1 and PW-2 have been extensively cross-examined but there is nothing to challenge the above evidence appearing in the testimony of PW-1 and PW-2 or to say that the deceased never came to her parents after the marriage.

36. PW-1 in cross-examination denied the suggestion that A-3 never demanded motorcycle from them. She also stated that they used to pay the amount of ₹ 2000/- or ₹ 4000/- on the demand of A-3. PW-1 also stated in cross-examination that from the date of marriage till the death of Santosh, the deceased had come and stayed with her parents for two months. Even PW-2 stated that they used to give ₹ 2000/- or ₹ 3000/- of their own will but the amount used to be demanded by A-3. PW-2 categorically denied the suggestion that they never allowed Santosh to enter their home after the marriage.

37. Recovery of certain articles may be gift items given on the birth of child was made from the house of appellants on 08.07.2011. List of articles Ex. PP prepared by the investigating officer. The list comprises of general household articles like clothes, utensils, blanket, *dari* but is also includes silver *pajeb*, nose pin, ear-rings. This would fortify the statements of parents of the deceased about giving of these items at the time of birth of the child. The contention of appellants that the male child was born to Santosh at her matrimonial home cannot be possibly accepted against the sworn testimony of PW-1 and PW-2.

38. PW-1 in cross-examination stated that aforesaid articles were taken by her daughter to her matrimonial home after one

month of the birth of child. PW-1 and her husband did not go to leave their daughter to the house of accused persons, but that was obvious for the reasons. Otherwise, the house of appellants is at a distance of 1 km. from the house of parents of the deceased. She also stated that Santosh was taken by A-3 after birth of the child. PW-1 in cross-examination denied the suggestion that Santosh gave birth to the child at her matrimonial home, but stated that the deceased was at her parents' house at that time. She also stated that the delivery was done in Odhan hospital. No suggestion was even put to PW-2 that Santosh was not at her matrimonial home on the birth of child.

39. Despite examining two defence witnesses of village of the parties, the above evidence of prosecution that the deceased gave birth to the child at her parents' house and she was given items as mentioned in the list Ex. PP, could not be rebutted or controverted. DW-1 Hanuman simply stated that he never heard about any demand of dowry raised by A-3 or his family members. In cross-examination the witness stated that he had given 34 acres of land to A-1 and his son Lal Chand i.e. brother of A-3 for cultivation on 1/5th share of produce. A-3 is labourer in the fields. DW-1 could not deny that the child was born to Santosh at her parents' house. DW-1 stated that he cannot say where the male child was born to Santosh. Even he does not know if any articles were given by parents of deceased at the time of birth of the child.

40. Another defence witness is DW-2 Sarvan Kumar of the same village. DW-2 rather stated that he does not know anything about the case, though he was present at the time of postmortem of

dead body of the girl.

41. From the above discussion, proposition put forward by prosecution is worth believing that the girl had been coming to her parents, though she came in all for about two months after the marriage and even at the time of birth of the male child in December, 2010. The plea raised in defence that Santosh never visited her parents is absolutely wrong. So it was for husband of the deceased to explain the circumstances how Santosh committed suicide by consuming poison because of the positive evidence of his demanding some cash amount and also a motorcycle. When the girl had died under mysterious circumstances and had not met her parents for seven months, it is not possible to suspect testimony of PW-1 and PW-2 about the girl being harassed especially by A-3. The prosecution case, however, cannot be said to be beyond suspicion against A-1 and A-2 in the absence of some positive evidence of their harassing the girl, though it is stated that girl used to come and state about being harassed by A-1 and A-2 also and other family members who were not challaned.

42. Otherwise, the stand of appellants that A-3 and his wife were separated in residence by A-1 and A-2 is not borne out from the record.

43. There are positive exculpatory circumstances in favour of A-1 and A-2. There was no external mark of injury on the person of deceased as stated by PW-3 Dr. Rahul Garg. PW-5 ASI Jagdish Parshad in cross-examination stated that Santosh was admitted in the hospital at Odhan by A-3 her husband and on the advise of doctor A-3 shifted her to General Hospital, Sirsa. PW-6 Medical

Officer of Civil Hospital, Odhan admitted in cross-examination that A-1 father-in-law of Santosh brought the patient in hospital. Even in MLR, the name of A-1 father-in-law of the victim is mentioned. PW-7 Ravi Khundia, Inspector who investigated the case from 07.07.2011 onwards and arrested the accused persons in cross-examination admitted that Santosh was taken to Civil Hospital, Odhan by A-1 and A-3 for treatment and these accused persons had in fact shifted the victim to General Hospital, Sirsa.

44. In view of the aforesaid discussion I allow the instant appeal qua Harbans (A-1) and Murti (A-2). Their conviction is set aside and they stand acquitted of the offence under Section 304-B and 498-A IPC. The appeal is dismissed on merits qua Karta Ram (A-3). In view of the facts and circumstances of the case as discussed above, the sentence of imprisonment to Karta Ram (A-3) is reduced from 10 years to 7 years of rigorous imprisonment.

August 19, 2015
jk

(R.P. NAGRATH)
JUDGE