

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-2579-SB of 2012

Date of Decision : January 07, 2015

Rajesh Kumar

.....Appellant

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Bipan Ghai, Senior Advocate with
Mr. Vishavjit S. Virk, Advocate
for the appellant.

Mr. Randhir Singh, Additional Advocate General, Haryana.

Mr. Vishal Malik, Advocate
for the complainant.

T.P.S. MANN, J.

The appellant, namely, Rajesh Kumar was tried for committing the offences punishable under Sections 498-A and 304-B IPC. Vide judgment and order dated 12/16.7.2012, learned Sessions Judge, Rohtak convicted him under Section 304-B IPC and sentenced him to undergo rigorous imprisonment for ten years. He was also convicted under Section 498-A IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months. Both the sentences were ordered to run concurrently. The period of detention already undergone by him in the case was ordered to be set off against the substantive sentence.

The case of the prosecution is that on 12.3.2007, complainant Raj Kumar, alongwith his uncle Jai Narain and others appeared before SI Kartar Singh, SHO, Police Station, Sampla and submitted a complaint against the appellant and his family members. He stated therein that his daughter Anju was married to the appellant on 25.11.2003. In the marriage, he had given dowry beyond his status. After few days of the marriage, the in-laws of his daughter started harassing her as they were not satisfied with the dowry. They raised demand for more dowry by asking her to bring Rs.1,50,000/- from her parents for purchase of a car. When his daughter had come to his house, the appellant also came there and repeated the demand of money. The complainant gave a sum of Rs.50,000/- to the appellant and promised to pay the balance amount after arranging it, but could not do so. The appellant and his family members again started beating and harassing his daughter on that count. His daughter had been informing him on telephone that she would be killed by her in-laws. He could not fulfill their demands which kept on increasing day by day. Ultimately on 1.3.2007 at about 1.30 p.m., he learnt about the death of his daughter. He suspected that his daughter had been murdered by her in-laws for or in connection with demand of dowry.

On finding that the accused had committed offences under Sections 498-A and 304 IPC, SI Kartar Singh forwarded the complaint to the Police Station, on the basis of which FIR No.57 dated 12.3.2007 for the aforementioned offences was registered at Police Station, Sampla.

During investigation, inquest proceedings on the dead body of Anju were conducted. The dead body was, thereafter, sent to PGIMS, Rohtak for post-mortem. Rough site plan of the place of occurrence was prepared. The appellant was arrested on 6.4.2007. Smt. Harnandi, mother of the deceased produced two letters written by her deceased daughter which were taken into possession. However, their contents were not believed by the Investigating Officer as one Tirath Ram, brother-in-law of the deceased and named in the letter had already died about 5/6 months prior to the occurrence. The remaining accused, i.e. Zile Singh (father-in-law), Lado (mother-in-law), Kamlesh (sister-in-law) and Sanju @ Sanjiv (sister-in-law's son) were found innocent and their names were placed in column No.2 in the report under Section 173 Cr.P.C. On completion of investigation, final report was presented against the appellant. The case was, thereafter, committed to the Court of Sessions where the appellant was charged for the aforementioned offences to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Raj Kumar as PW1. After he was partly examined, the prosecution moved an application under Section 319 Cr.P.C. to summon Zile Singh, Lado, Kamlesh and Sanju @ Sanjiv as additional accused but the same was dismissed by the trial Court vide order dated 5.12.2008. The statement of PW1 Raj Kumar was, thereafter, completed which was followed by the prosecution examining PW2 Constable Dharmender, PW3 EASI Ram Parkash, PW4 EHC Siri Bhagwan, PW5 SI Samunder Singh,

PW6 Dr. Virender Baswana, PW7 SI Mehtab Singh, PW8 Dr. Joginder Singh, PW9 Constable Anil Kumar, PW10 Harnandi, PW11 Kaptan, PW12 Dr. Kamal Kishor, PW13 HC Sumit Kumar, PW14 Inspector Kartar Singh and PW15 Dr. Naresh Dahiya.

When examined under Section 313 Cr.P.C., the appellant denied the circumstances appearing against him in the prosecution evidence and stated as under :-

"I am innocent. I am army personnel and at the relevant time, I was on my duty at the place of my posting and had no contact with the deceased immediately preceding the occurrence. To my information, my wife Anju, inadvertently, took a pesticide taking the same as medicine. There was no quarrel between me and her and we were enjoying reasonably good marital relations. The case is after thought. Initially, the parents of the deceased were also satisfied and had made candid statements to the police explaining my absence and absence of my parents and the inadvertent mistake of the deceased. Later on, they developed misunderstanding and lodged this false case."

In his defence, the appellant examined DW1 Naib Subedar Ramesh Kumar and DW2 Sanjiv Kumar.

The trial Court believed the prosecution case and convicted and sentenced the appellant, as mentioned above.

Learned counsel for the appellant has submitted that there is an inordinate delay of 12 days in the lodging of the report with the police. There is no explanation regarding the same. In fact, the said delay has been used by the complainant party for making deliberations and consultations so as to falsely implicate the appellant.

It is the case of the prosecution that deceased Anju had died on 1.3.2007. It was only on 12.3.2007 that complainant Raj Kumar, alongwith his relatives submitted a written complaint before the Station House Officer, Police Station, Sampla and on its basis the FIR came to be registered. In his written complaint, Raj Kumar had stated about learning the death of his daughter on 1.3.2007 at 1.30 p.m. He did not furnish any explanation for not approaching the police soon after learning about death of his daughter. Even in his testimony before the trial Court as PW1, he had stated that he came to know on 1.3.2007 about his daughter being admitted in PGIMS, Rohtak as she was ill and when he came to PGIMS on that information, he found his daughter dead. He suspected about his daughter having been killed by the accused for not bringing dowry to their satisfaction and it was only on 12.3.2007 that he handed over the written complaint to the Station House Officer. Thus, it is clearly established that the FIR has been lodged after considerable long period of time, i.e. 12 days after the incident and there is no explanation, at all, available on the file as to why the FIR could not be lodged earlier.

Learned counsel for the appellant has submitted that neither PW1 Raj Kumar, father nor PW10 Harnandi, mother of the deceased made

any mention of date, month and year of the alleged harassment of the deceased on account of dowry. In fact, the prosecution has not been able to establish that soon before her death the deceased had been subjected to cruelty or harassment by the accused. It is also submitted that the two letters Ex.P3 and Ex.P3/A said to have been written by the deceased and produced by PW10 Harnandi were not even referred to by PW1 Raj Kumar in his written complaint submitted to the police, more so, when according to PW10 Harnandi herself, these two letter were found by her on 2.3.2007, i.e. ten days before the written complaint submitted by her husband to the police.

Perusal of the statements of PW1 Raj Kumar and PW10 Harnandi shows that no date, month or year of the alleged harassment of the deceased on account of demand of dowry had been mentioned. On the other hand, it was testified that after the marriage of his daughter Anju with the appellant on 25.11.2003, the appellant and his family members had started harassing her for bringing less dowry. No mention has been made as to when the demand for a car or Rs.1,50,000/- for buying a car had been made by the accused. Even, it was not mentioned that as to when PW1 Raj Kumar had given a sum of Rs.50,000/- to the accused for the said purpose. In any case, it has not been established by the prosecution that soon before her death Anju was subjected to cruelty and harassment on account of the dowry.

Coming to the two letters Ex.P3 and Ex.P3/A, said to have been written by deceased Anju and received by her mother Smt.

Harnandi, it has been claimed by the prosecution that they had come to the notice of Smt. Harnandi on 2.3.2007 when she was going through the old clothes of her deceased daughter and, thereafter, those letters were shown to the police on 3.3.2007. Despite the same, no mention of those letters was made by PW1 Raj Kumar, father of the deceased while submitting complaint, that too, in his own hand, which was presented by him before the police on 12.3.2007. PW11 Kaptan, who is a neighbour of complainant Raj Kumar deposed before the trial Court that on 12.3.2007, mother of the deceased Anju had shown him two letters and accordingly he, alongwith 6/7 persons went to Police Station, Sampla and handed over those letters to the Station House Officer. If those letters were in existence on 2.3.2007, PW1 Raj Kumar ought to have made reference about them in his written complaint submitted to the police. It appears that those two letters were procured at a subsequent stage. Even otherwise, it has not been shown as to how those letters had reached the hands of Smt. Harnandi. Admittedly, those two letters are written on a lined paper and not on an inland letter. In such a situation, they would have reached Smt. Harnandi only in envelopes. Said envelopes, which would have contained the stamps of the post-offices have also not been produced by the prosecution. It may also be mentioned here that the two letters were not sent to the Forensic Science Laboratory, Madhuban for comparison. PW14 ASI Katrar Singh who by then had retired as Inspector admitted in his cross-examination that both the letters were never sent to the laboratory for the reason that no admitted handwriting of the deceased was provided to him by the complainant. Under these

circumstances no reliance can be placed upon the letters Ex.P3 and Ex.P3/A.

Learned counsel for the appellant has further submitted that PW15 Dr. Naresh Dahiya who had conducted autopsy on the dead body of Anju had given the cause of death due to ingestion of celphos poisoning which was detected in the samples as per the Forensic Science Laboratory report Ex.P23 and, thus, the death of Anju had taken place otherwise than under normal circumstances.

However, on perusal of the material on the record it is made out that merely because the death of Anju had taken place otherwise than under normal circumstances is not sufficient to uphold the conviction of the appellant. During his examination under Section 313 Cr.P.C., the appellant had pleaded that he was an army personnel and at the relevant time, he was on duty at the place of his posting and had no contact with the deceased immediately preceding the occurrence. He also stated that there have been no quarrel between him and his wife and they were enjoying reasonably good marital relations. DW1 Naib Subedar Ramesh Kumar, Delhi Cantt. had deposed that the appellant was employed in army at Delhi Cantt. and on 1.3.2007 he had left the place after 1.00 p.m. and he was on leave on 2.3.2007 and 3.3.2007. He proved the leave record of the appellant by tendering the same as Ex.D2. In his testimony as PW14 ASI Kartar Singh admitted that during the investigation it was verified by the villagers before him that the appellant and his wife were having a quarrel over the issue of appellant taking his wife alongwith him at the

place of his service and when the appellant told her that he was not in a position as he was not entitled to family accommodation that Anju committed suicide out of reaction. He also admitted it to be correct that no credible evidence had come in his investigation regarding taking of dowry. He also testified that no fact came to his notice from any villager that the appellant ever harassed Anju on account of demand of dowry. However, he went on to add that the parents of Anju had made statements against the appellant qua the harassment and demand of dowry and had also produced the two letters in this regard. Meaning thereby that he just relied upon their versions so as to finally submitted report under Section 173 Cr.P.C. against the appellant.

In view of the above, this Court is of the view that the prosecution has not been able to establish its case against the appellant beyond reasonable doubt. Under these circumstances, the conviction and sentence of the appellant, as awarded by the trial Court, cannot be sustained.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set aside and the appellant is acquitted of the charges against him.

January 07, 2015
satish

(T.P.S. MANN)
JUDGE