

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-404-DB of 2003

Date of Decision : April 07, 2015

Jatinder

.....Appellant

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. M.S. Kathuria, Advocate.

Mr. Randhir Singh, Additional A.G., Haryana.

T.P.S. MANN, J.

The appellant, alongwith his brother Sitender Kumar and brother's wife Parmila, was tried for offences under Section 304-B read with Section 34 IPC and Section 498-A read with Section 34 IPC on the allegations that in furtherance of their common intention, they had harassed Smt. Sudesh Kumari by making unlawful demand of dowry, subjected her to cruelty and coercion to meet their unlawful demand of dowry i.e. scooter as a result of which Smt. Sudesh Kumari committed suicide by hanging herself and her unnatural death occurred within seven years of her marriage. Vide judgment and order dated 28.1.2003, the Additional Sessions Judge (Ad hoc), Jhajjar acquitted Sitender Kumar and his wife Parmila of the charges against them. However, the appellant was held guilty under Section 304-B IPC and sentenced to undergo imprisonment for life.

Briefly stated, complainant Ramesh Kumar submitted written complainant Ex.PA before ASI Chander Gupt, Incharge, Police Post, Sector 6, Bahadurgarh on 28.4.2001 at 2.00 a.m. when he came across him at bus stand Sankhol, on the basis of which, FIR No.PH under Sections 304-B/34 IPC was registered at Police Station City, Bahadurgarh, District Jhajjar on 28.4.2001 at 2.15 a.m. against the appellant and his brother and brother's wife. In the complaint Ex.PA, the complainant had stated that he was resident of village Bakheta, Police Station Sampla and an agriculturist by profession. He solemnized the marriage of his sister Sudesh Kumari with the appellant on 4.3.2000. He had given sufficient dowry articles at the time of marriage of his sister. After her marriage, Sudesh Kumari started living at her in-laws' house. Soon thereafter, the appellant, his brother Sitender and brother's wife Parmila started taunting Sudesh Kumari for bringing less dowry and telling her that she belonged to a poor family. Neither she had brought scooter nor sufficient cash in dowry. All the three accused pressurised her time and again to bring scooter from her father or an amount of Rs.25,000/- in cash for buying the scooter. Sudesh Kumari had been telling the accused that she was one of the six sisters and her father was not in a position to provide the scooter. On this, the accused gave beatings to Sudesh Kumari many times. About a month ago, Sudesh Kumari came to the house of the complainant and stated that her husband, Jeth and Jethani were harassing her for bringing the scooter. On this, the complainant, alongwith his uncles Ram Karan and Jagdish and

brothers Satyawar, Ashok and Munshi took Sudesh Kumari to her matrimonial home and tried to convince the appellant and Parmila but they insisted in their demand for a scooter. However, the complainant and others left Sudesh Kumari in her matrimonial home at village Sankhol after consoling her. On 27.4.2001 at about 9.30/10.00 p.m., Jai Singh, father of the appellant, alongwith 3/4 persons of village Sankhol came to the house of the complainant and told him that Sudesh Kumari had committed suicide by strangulating herself. It was also stated that the complainant had given an amount of Rs. 25,000/- in cash to the appellant for purchasing the scooter and after some days, he paid another amount Rs.20,000/- after taking the same on credit. According to the complainant, the accused had killed his sister by strangulating her. Therefore, he sought taking of legal action against them.

During the investigation of the case, ASI Chander Gupta visited the site where dead body of Sudesh Kumari was lying. He prepared inquest and got the dead body photographed. One rope and a Chuni were lying by the side of dead body, which were taken into possession. Rough site plan was prepared. The dead body was sent to Civil Hospital for post-mortem, which was conducted by a medical board consisting of Dr. Kashmir Singh, Dr. Manju Lata and Dr. Subhijoti Parkash. The board found a ligature mark encircling the neck 2 cms. in width. The death, in the opinion of the board, was due to asphyxia as a result of strangulation which was ante-mortem and sufficient to cause death in the ordinary course of nature.

During further investigation, ASI Chander Gupt arrested accused Jitender and Parmila on 28.4.2001. The appellant, who had gone to Imphal to join the duty, was arrested on 24.5.2001. He was brought to Bahadurgarh on 28.5.2001. On the following day, he was interrogated, during which he suffered disclosure statement to the effect that he could point out the place of occurrence. Pursuant to the same, the site of occurrence was demarcated by the appellant.

Upon completion of the investigation, the appellant and his co-accused were challaned. The case was, thereafter, committed to the Court of Sessions where charges under Sections 304-B/34 and 498-A/34 IPC were framed against them, who pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Ramesh as PW1, Ram Karan, neighbour of the complainant as PW2 and Ram Phool, father of the complainant and the deceased as PW3. The medical evidence by way of post-mortem on the dead body of Smt. Sudesh Kumari was brought on record by PW4 Dr. Kashmir Singh, who headed the medical board comprising himself, Dr. Manju Lata and Dr. Subhjyoti Parkash. PW5 Inspector Ram Chander testified that upon completion of the investigation, he had prepared final report under Section 173 Cr.P.C. PW6 Inspector Hardwari Lal testified that on receipt of complaint Ex.PA, which was forwarded by ASI Chander Gupt, he had recorded FIR Ex.PH. PW7 SI Shankar Dayal Singh produced summoned record regarding leaves of

absence of the appellant who had been posted as a Constable in C.R.P.F. at Manipur in the month of March and April 2001. On the basis of the record he stated that the appellant was on leave of absence from 1.3.2001 to 29.4.2001. He proved certificate Ex.P1 issued by Deputy Commandant in that regard. PW8 Constable Ranbir Singh deposed about delivery of the special report. PW9 Constable Dharambir stated that on 29.5.2001, he was present in Police Station City, Bahadurgarh. ASI Jagdish interrogated the appellant, who suffered disclosure statement that he could get the rope recovered. He also offered to identify the place of occurrence. Pursuant to the disclosure statement, the appellant took the police party to the room where the occurrence had taken place. PW10 Constable Jai Chand proved the scaled site plan Ex.PK, which he had prepared at the pointing of Ramesh Kumar. PW11 Surender Kumar. Photographer proved photos Ex.P5 to Ex.P8 which he had taken at the spot. He also proved their negatives Exs.P1 to P4. PW12 ASI Jagdish Chander deposed that on 24.5.2001, he was entrusted with warrants for the arrest of the appellant and, accordingly, he reached his Battalion. He contacted the Second Commanding Officer of the Battalion and showed him the warrants of arrest. The said officer ordered SI Shanker Dayal Singh for producing the appellant. Accordingly, the appellant was brought and arrest was made. Subsequently, he was brought to Police Station Bahadurgarh on 28.5.2001 where he was put in police lock-up. On 29.5.2001, the appellant was interrogated, during which he stated that he could point out the place where one rope and

a Chuni were thrown under the cot and he could point out that place. The appellant took the police party to his house and pointed out the place where the rope and Chuni had been thrown. PW13 ASI Chander Gupta testified that on receiving written complaint Ex.PA from complainant Ramesh Kumar on the night intervening 27/28.4.2001 at 2.00 a.m. he made an endorsement and sent it to Police Station City, Bahadurgarh where FIR Ex.PH was recorded. He then visited the spot. The dead body of Sudesh Kumari was lying there. A photographer was summoned for obtaining the photographs of the dead body. Inquest report was prepared. One rope and a Chuni lying by the side of the dead body were recovered. The dead body was sent to Civil Hospital, Bahadurgarh for postmortem. The two co-accused of the appellant were arrested on 28.4.2001. On the same day, complainant Ramesh Kumar produced before him invitation card Ex.P11 regarding marriage of Sudesh Kumari, which was taken into possession. After completion of the investigation, the appellant and his co-accused were challaned.

When examined under Section 313 Cr.P.C., the appellant and his co-accused stated that it was a false case. The deceased had been insisting upon the appellant to take her to his place of posting but when he failed to take her at the expiry of his leave, she got frustrated and committed suicide. However, no evidence was led in defence.

After hearing learned counsel for the parties and going through the evidence, the trial Court acquitted the co-accused of the appellant of the charges against them. The appellant was, however,

convicted and sentenced, as mentioned above. Hence, the present appeal.

After hearing learned counsel for the appellant as well as the State counsel and minutely going through the evidence with their able assistance, this Court finds that the death of Sudesh Kumari had admittedly taken place about two years after her marriage with the appellant. PW4 Dr. Kashmir Singh, who, alongwith Dr.Manju Lata and Dr.Subhjyoti Parkash had conducted post-mortem on the dead body of Sudesh Kumari has testified that there was a ligature mark encircling the neck which was 2 cms. in width and present in the middle of the neck. It was placed horizontally, anteriorly and laterally over the 2/3 aspect of the neck. Apart from the same, there were two injuries on the dead body, one was a contusion over left ankle joint anteriorly and the other consisted of multiple contusions of brownish black in colour over anterior part of the leg, lower 1/2 and bilateral limbs. The neck, trachea and larynx were congested. Petechial marks were present. Tracheal rings were fractured below the thyroid cartilage. Hyoid bone was intact. In the opinion of the board, the cause of death was due to asphyxia as a result of strangulation which was ante-mortem and sufficient to cause death in normal course of life. Probable time that elapsed between injury and death was within few minutes and between death and post-mortem 12 to 36 hours. Accordingly, it can safely be held that death of Sudesh Kumari had taken place within seven years of her marriage which was otherwise than under normal circumstances.

PW1 complainant Ramesh Kumar and PW3 Ram Phool, brother and father, respectively of deceased Sudesh Kumari have deposed in no uncertain terms that marriage of Sudesh Kumari was solemnized with the appellant on 4.3.1999. Money was spent on giving gifts and dowry articles to Sudesh Kumari. Despite the same, she used to be taunted by her husband and his relatives that she belonged to a poor family and even a scooter was not given at the time of marriage. So much so, that the appellant told her to bring a scooter or an amount of Rs.25,000/- from her parents and if she could not do so, she should not return to the matrimonial home. The complainant, thereafter, gave an amount of Rs.25,000/- to the appellant. Despite the same, the appellant came to the house of the complainant and demanded another amount of Rs.20,000/- which was duly given to him by father of the complainant. 10 days after the payment of the said amount to the appellant, his father Jai Singh, alongwith 3/4 persons of his village, came to the house of the complainant and apprised him that Sudesh Kumari had committed suicide by hanging herself. On receiving this information the complainant, alongwith his father and others, went to the house of the appellant where they found dead body of Sudesh Kumari lying on a cot in a room. There were marks of injuries on the right and left ankles and on the right leg as well as on the front of her neck. The testimonies of these two witnesses have been corroborated by PW2 Ram Karan, who lived in the neighbourhood of Ram Phool father of the deceased. Therefore, the prosecution has been able to establish that the appellant and his

family members had been harassing the deceased on account of bringing inadequate dowry. A demand of scooter or in the alternative for Rs.25,000/- was made by the appellant. Pursuant to the same, Rs.25,000/- was paid to the appellant. This did not satisfy the appellant and his family members. Further demand of Rs.20,000/- was raised which was also met by the brother of the deceased. Therefore, it is established that the deceased used to be maltreated and harassed by the appellant and his family members in connection with marriage. Further, the cruelty and harassment of Sudesh Kumari continued till her death as even 10 days before the incident, there had been a demand for Rs.20,000/- which was made by the appellant. Resultantly, all the ingredients to establish the commission of crime under Section 304-B IPC stand established.

The plea of the defence that the appellant and his family members had never harassed or maltreated the deceased on account of dowry and the reason for the deceased committing suicide was her husband not taking her to his place of posting and instead leaving her behind in the matrimonial home is not proved by bringing on record any evidence. Even no suggestion was put to PW1 Ramesh Kumar, PW2 Ram Karan and PW3 Ram Phool that on account of the appellant not taking his wife Sudesh Kumari to his place of posting led to Sudesh Kumari committing suicide. The only suggestion put to them was that Sudesh Kumari had committed suicide because of some unknown reasons and the appellant and his co-accused had been falsely implicated on the basis of suspicion. Even the said suggestion

was denied by the aforementioned three star witnesses of the prosecution.

The deceased was putting up in her matrimonial home at the time of the occurrence. She had met her death while living in the said house. Her in-laws were under a duty to explain as to under what circumstances Sudesh Kumari had died. Non giving of any explanation would mean that the appellant could not rebut the presumption under Section 106 of the Evidence Act and Section 304-B IPC.

Though it is the plea of the appellant that he had already left for his place of posting in Manipur and only,thereafter,his wife had taken the extreme step of committing suicide yet going by the time which had elapsed between death and the post-mortem i.e. between 12 to 36 hours, possibility cannot be ruled out of the death having taken place at the time when the appellant was still present in his house and had not left for his place of posting. In such a situation, the appellant was required to stay behind and not to leave for his place of posting. While running away from the village so as to report back to his place of posting, the appellant appeared to have a guilty mind.

From the above stated facts, this Court has no other option but to hold that the appellant has been rightly convicted by the trial Court for committing the offence under Section 304-B IPC. As regards the quantum of sentence, learned counsel for the appellant has submitted that the appellant has since been dismissed from defence services and is presently working as a driver. His conviction under

Section 304-B IPC is on account of legal presumption and under such circumstances it was not a case where the appellant should have been sentenced by the trial Court to undergo imprisonment for life. Prayer has, accordingly, been made for reducing the sentence of imprisonment. On the other hand, learned State counsel has submitted that the sentence awarded to the appellant is commensurate with the crime committed by him.

Having heard learned counsel for the parties and keeping in view the facts and circumstances of the case, this Court is of the considered view that the imposition of sentence of life imprisonment upon the appellant by the trial Court was not called for. Ends of justice could have been well met by awarding the minimum sentence of seven years as prescribed for the offence under Section 304-B IPC.

Resultantly, the conviction of the appellant under Section 304-B IPC is upheld. His sentence of imprisonment for life is reduced to rigorous imprisonment for seven years.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

April 07, 2015
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