

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-1104-DB of 2011

Date of Decision : October 25, 2016

Kamla Devi @ Kalan

....Appellant

VERSUS

State of Haryana

....Respondent

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

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. G.S. Sandhu, Advocate
for the appellant.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

The appellants, namely, Kamla Devi @ Kalan and her son Kuldeep @ Kala were tried for committing offences punishable under Sections 498-A and 304-B read with Section 34 IPC. Vide judgment and order dated 20.10.2011, learned Additional Sessions Judge, Sonapat convicted both of them for the offence under Section 498-A read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo simple imprisonment for one month. They were also convicted under Section 304-B read with Section 34 IPC and sentenced to undergo rigorous imprisonment for life. Both the substantive sentences were ordered to run concurrently.

Aggrieved of their conviction and sentence, Kamla Devi @

Kalan filed the present appeal whereas her son Kuldeep @ Kala filed

Criminal Appeal No.D-1169-DB of 2011. As both the appeals arise out of the same judgment of conviction and sentence passed by the trial Court, they are being disposed of by a common judgment.

According to the prosecution, on 4.5.2009 at 6.15 p.m. complainant Ishwar Singh submitted application Ex.PA before ASI Zile Singh stating therein that he had three daughters and one son. The marriage of his daughter Monika was solemnized with accused Kuldeep son of Kartara, resident of village Bad Khalsa, Police Station Rai, District Sonapat according to Hindu rites. After the marriage, his daughter came to his house and told his wife Smt. Shakuntala @ Guddi, elder brother Jai Parkash and sister-in-law Jiwani that her in-laws were not happy with the dowry given by them. They were taunting her that she belonged to family of poor/beggars. Her mother-in-law Kamla Devi @ Kalan and husband Kuldeep used to taunt her and demanding car in dowry. When his son-in-law Kuldeep came to his house, the complainant made him understand and sent his daughter Monika with him. After that the complainant and his elder brother Jai Parkash went to the in-laws' house of his daughter. He requested Kuldeep and his mother Kamla Devi @ Kalan that they were poor people and as he has other daughters, he was not in a position to give the car. The complainant made two accused as well as his daughter understand. In the month of March, 2009 his daughter came to his house and stayed with him for 15/20 days. She told her mother that she was pregnant. She also told her father, mother, uncle and aunt that her husband and mother-in-law were torturing her by making her stand in the sun. She also told him several

times on telephone that if she did not bring the car from her parents, she would be similarly treated. On 4.5.2009 at about 11/12 o'clock, the complainant was informed on telephone that his daughter had died due to burn injuries. On this, the complainant, his wife, his elder brother Jai Parkash, brother-in-law Pyare Lal, respectables of the village and relatives went to the in-laws' house of his daughter at Badkhalsa where they saw her dead body and came to know that his daughter had been killed by burning. They also learnt, on verification, that his pregnant daughter Monika had been killed by her husband Kuldeep and mother-in-law Kamla Devi, who were greedy persons, by burning her.

Further case of the prosecution is that on 4.5.2009, ASI Zile Singh was present at village Jakhauli on VIP duty where he received information through telephone about Monika wife of Kuldeep having died by burning. Accordingly, he reached the spot in village Bad Khalsa where other police officials were found present. Many persons were also present at the place of occurrence. He called photographer to the spot who photographed the dead body as well as the spot. FSL team was also called at the spot, which inspected the place of occurrence. In the meantime, the parents and family members of deceased Monika reached the spot. Complainant Ishwar Singh then submitted complaint Ex.PA and as it revealed commission of offences under Sections 498-A, 304-B and 34 IPC, ASI Zile Singh, after making endorsement Ex.PH, sent the same through Constable Harmail to Police Station Rai where on its basis FIR No.188 dated 4.5.2009 (Ex.PD) for the aforementioned offences was registered by ASI Raj Singh on 4.5.2009 at 7.05 p.m. at Police Station

Rai. Special report was sent through Constable Rajesh Kumar which was received by the Ilqa Magistrate on 4.5.2009 at 11.50 p.m.

During investigation of the case ASI Zile Singh prepared rough site plan Ex.PI. He collected the burnt soil and clothes of the deceased, pieces of bangles, pieces of carpet and plastic canny which were taken into police possession vide memo Ex.PB. Inquest proceedings Ex.PF were also conducted. The dead body was sent to the mortuary. On 5.5.2009 Dr. Sunil Gambhir, District Forensic Expert, Department of Forensic Medicine, General Hospital, Sector 6, Panchkula conducted post mortem on the dead body of Monika and observed as follows :-

"As per police inquest report, the cause of death in this was "Jala kar marna byan hua hai"

That the length of the body was 159 cm, I noted the following findings on post-mortem examination of the dead body:-

The dead body was found to be wrapped in a white sheet of cloth and jute bori, body was naked except few remnants of burnt cloth which could be identified as :

- (a) A whitish colour remnant of braissere.
- (b) Other remnants of cloth could not be identified.
- (c) Seven glass bangles present around left wrist.

Body cooled to room temperature. Rigor mortis absent. The body was emitting foul smell. There were dermo-epidermal burns to deep burns present all over the body except the lower lateral part of the legs. Burns

were present approx.98%. No line of demarcation seen. No cherry red colour discoloration of tissues. The scalp hairs showed singeing of hair. Both eyes closed. Mouth open. Tongue protruding out and clenched between teeth. Facial features distorted, unidentifiable. Chest tensed, abdomen distended. On dissection, the uterus contained a foetus. The length of the foetus was 44 cm., weight was 1.9 kg. Weight of the foetus without placenta was 1.7 kg. Head circumference was 29 cm. The chest circumference was 25 cm. Sex of the foetus was identified to be male. Testies was present in the scrotum. Ossification centres were present in the talus, but not present in the end of femur. Heat ruptures were present over the body. On dissection trachea does not contain soot particles. The abdominal organs were preserved and sent for chemical visceral examination. Uterus was enlarged in size and was approximately 26 cms. x 28 cm. Meconium was seen at the end of the large intestine.

Injuries : A contusion of size 3.5 cm. x 2.5cm present over the left parietal region, 3.5 cm. from midline, 8.5 cm. from left mastoid process, on dissection there was echchymosis underneath.

That in my opinion, it was dead body of a pregnant female individual having a male foetus of 8-9 months of intra-uterine life. The cause of death was to be given after receipt of chemical analysis of viscera report. However, the burns were postmortem in nature."

The doctor further opined, after perusing the FSL report Ex.PD, that the cause of death was head injury, which was ante-mortem in nature.

During further investigation, the police arrested the two accused. Scaled site plan was prepared by Inderpal, Draftsman, who visited the spot on 18.6.2009. On 3.7.2009 the case property was sent to the Forensic Science Laboratory, Madhuban. After completion of investigation, report under Section 173 Cr.P.C. was presented before the Ilqa Magistrate. The case was committed to the Court of Sessions, where the accused were charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined complainant Ishwar Singh as PW1, Shakuntala wife of Ishwar Singh as PW2 and Deepak son of Ishwar Singh as PW3. All of them testified about solemnizing of the marriage of deceased Monika with accused Kuldeep on 15.3.2008 and deceased Monika narrating about her harassment at the hands of her mother-in-law and her husband regarding demand of car and taunting her for not bringing sufficient dowry besides making her stand in the sun. They also testified that they had gone to the in-laws house of Monika to persuade her in-laws to mend their ways and not to demand dowry or harass her on account thereof. They also testified about going to the in-laws house of Monika on receiving a telephone call that she had been burnt. They further stated that they saw the dead body of her daughter under a tree of Jamun and the tree was also having burnt marks.

PW4 Lajpat, Photographer proved photographs Ex.P1 to Ex.P6 of the dead body which he had taken at the instance of the police.

PW5 SI Raj Singh testified that on 4.5.2009 when he was posted as ASI at Police Station Rai, he registered formal FIR Ex.PD after receiving ruqa through Constable Harmail. He also sent the special report in this case through Constable Rajesh Kumar.

PW6 Constable Rajesh Kumar testified that on 4.5.2009, he delivered the special report of the case to the Ilaqa Magistrate and other superior officers.

PW7 Dr. Sunil Ghambhir tendered in evidence his affidavit Ex.PE and proved the post mortem report Ex.PE/1.

PW8 Constable Surinder Kumar testified that on 3.7.2009 MHC Ramesh Chander handed over one parcel containing burnt earth, one parcel containing burnt clothes, one parcel containing burnt pieces of mat, one parcel containing piece of bangles, one parcel containing canny alongwith sample seal, alongwith one envelope and one parcel containing viscera, one parcel containing bones and one parcel containing clothes to him for depositing the same to FSL, Madhuban, which he delivered on the same day and handed over the receipt to the MHC.

PW9 Inspector Nar Singh testified that on 11.7.2009, after completion of the investigation in this case, he submitted the report under Section 173 Cr.P.C.

PW10 HC Ramesh Kumar tendered in evidence his affidavit Ex.PW10/A. In the said affidavit he stated that on 4.5.2009 he was posted as MHC at Police Station Rai. On 4.5.2009 ASI Zile Singh had

deposited with him a parcel of burnt soil and parcel of clothes of deceased Monika, parcel of broken bangles, parcel of canny of kerosene. On 9.5.2009 ASI Zile Singh also deposited with him one parcel containing viscera, one envelope containing papers of Monika, one parcel of clothes, one parcel of bones of Monika. On 3.7.2009 all these parcels were sent through Constable Surender to FSL, Madhuban, who deposited them on the same day and handed over the receipt to him.

PW11 Inderpal, Draftsman proved scaled site plan Ex.PG, which he had prepared at the instance of ASI Zile Singh after going to the spot in village Bad Khalsa.

PW12 Zile Singh, who by then stood promoted as SI at Police Station Rai stated about various steps taken by him during the investigation of the case.

PW13 ASI Ranbir Singh testified that on 4.5.2009, he was posted as ASI/FPE in FSL team at Sonapat and on that day he reached village Bad Khalsa where he minutely inspected the place of occurrence and prepared report Ex.PW13/A in that regard.

The prosecution also tendered in evidence report Ex.PD of the Forensic Science Laboratory, Madhuban, Karnal, Haryana.

When examined under Section 313 Cr.P.C., accused Kuldeep denied the prosecution allegations and stated that he was innocent. The allegations against him were totally false and fictitious. According to him, the deceased was happily living in village Bad Khalsa with him and she used to put pressure upon him to shift to the city. However, he was

not in a position to shift to the city because he was the only son of his parents. He had contacted the parents of the deceased about her unnecessary demand, upon which her parents also not supported her and due to that she went under depression and committed suicide. To the similar effect was the stand taken by accused Kamla Devi during her examination under Section 313 Cr.P.C.

In their defence, the two accused examined two witnesses.

DW1 Om Parkash, who claimed to be the neighbour of the accused testified that the in-laws of Monika used to give respect to her and kept her with dignity. They never raised demand of dowry nor harassed her on account of dowry. No family member of accused Kuldeep was present at the time of occurrence.

DW2 Bal Kishan, another neighbour of accused Kuldeep also testified on the same and similar lines as DW1 Om Parkash.

After hearing learned counsel for the parties and on going through the evidence, the trial Court came to the conclusion that it stood established beyond reasonable doubt that the death of Monika took place within seven years of her marriage otherwise than under normal circumstances and she was subjected to cruelty in connection with dowry soon before her death. Accordingly, both the accused were convicted and sentenced, as mentioned above.

Both the convicts filed separate appeals, as mentioned above against their conviction and sentences. Notice of the appeals was served on the State and the record of the trial Court requisitioned.

Learned counsel for the appellants has submitted that though the prosecution has examined father, mother and brother of deceased Monika as PW1, PW2 and PW3, respectively in support of its case, yet it has not been able to make out commission of offences under Sections 498-A and 304-B IPC by the appellants. It has also not been proved by the prosecution that deceased Monika was subjected to cruelty soon before her death. Further, DW1 Om Parkash and DW2 Bal Kishan, who happened to be residing in the neighbourhood of the accused have testified in unison that no demand of dowry was ever raised by the accused. It has also been submitted that the deceased did not like residing in the village and wanted her husband Kuldeep to shift to the city but as he was the only son of his parents, he was not in a position to shift to the city. This resulted in the deceased going into depression and finally committing suicide. Prayer has, accordingly, been made for accepting the appeals, setting aside the impugned judgment of conviction and sentence and acquitting the two convicts of the charges against them.

Per contra, learned State counsel has submitted that the deceased had died within seven years of her marriage and cause of death was injury on the head which was ante-mortem in nature. The burns found on the dead body were found to be postmortem in nature. Soon before her death the deceased was subjected to cruelty in connection with demand of dowry and, therefore, both the accused have rightly been convicted for the offences under Sections 498-A and 304-B IPC.

From the testimonies of PW1 Ishwar Singh, PW2 Shakuntala and PW3 Deepak, who happened to be the father, mother and brother, respectively of deceased Monika, it stands established that the marriage of deceased Monika was solemnized with accused Kuldeep on 15.3.2008. Soon after her marriage, the deceased had been apprising her parents and family members about her mother-in-law Kamla Devi and her husband Kuldeep harassing and taunting her for not bringing sufficient dowry. In fact demand for a car was also raised and when the same was not met, she used to be treated with cruelty by them by making her stand in the scorching sun. She was also taunted that she had come from family of beggars. Further, on a number of occasions they had insulted her. However, her relatives persuaded her in-laws not to insist upon their demand for a car as they were not in a position to do so. The deceased even used to inform her parents and family members on telephone about demand of car and her being harassed on account of non-fulfilment of such a demand. Merely because there are some petty contradictions about the period for which the deceased stayed in her parents house is not sufficient to reject the testimonies of PW1 Ishwar Singh, PW2 Shakuntala and PW3 Deepak. PW2 Shakuntla did testify that they had been sending their daughter in a happy and cordial atmosphere and she also went to her maternal home in a good mood. However, at the same time, she also testified that her daughter Monika went to her matrimonial home about 1½ months prior to her death. Further, when Monika went with her husband to her matrimonial home before her death she had stated to her that her mother-in-law used to demand car.

Thus, it is not sufficient to hold that the deceased had not been taunted for not bringing a car in dowry or harassed on account of non-fulfilment of the demand for dowry by making her stand in the scorching sun. Therefore, it stands proved on record that the death of Monika had taken place within seven years of her marriage and during the said period she used to be subjected to cruelty in connection with dowry and, that too, soon before her death.

Next arises the question as to whether the death of Monika had taken place otherwise than under normal circumstances. While conducting postmortem PW7 Dr. Sunil Gambhir noticed that there were deep burns present all over the body except lateral part of the legs. Burns present were approximately 98%. No line of demarcation was seen. At the same time, there was one contusion of size 3.5cm. x 2.5cm. found present over the left parietal region, 3.5 cm. from mid-line and 8.5 cms. from left mastoid process. Though the cause of death was to be given after receipt of report of chemical analysis of viscera, he opined that the burns were postmortem in nature. After receipt of report Ex.PD from the Forensic Science Laboratory, the doctor further opined that the cause of death was head injury which was ante-mortem in nature. Apparently, the deceased had first received an injury on her left parietal region which was in the nature of contusion. The said injury which was ante-mortem had resulted in her death. Once the deceased had died on account of receiving of an injury over her left parietal region, it cannot be said that she would have put herself on fire. On the other hand, not the deceased but the person who would be living in the matrimonial

home of the deceased would have put her on fire. Even otherwise, by no stretch of imagination, it can be said that the deceased had committed suicide. On the other hand, it seemed to be the act of the accused in first giving a blow over her left parietal region and after she succumbed to the said injury, she was put on fire. The testimonies of near relatives of the deceased that Monika had died on account of receiving burn injuries was just an impression as the body had 98% burns and it would not have been possible for them to notice that the deceased had first been hit over her left parietal region, which resulted in her death and it was only, thereafter, that she was set on fire. The burn injuries were found to be postmortem in nature, meaning thereby that they did not result in her death, rather her death was caused on account of the assault launched on her by those who were there in her matrimonial home. It is the case of the appellants in their statements under Section 313 Cr.P.C. that accused Kuldeep was the lone son of his parents and he and his mother Kamla were the other residents in her matrimonial home. Therefore, it also stands proved beyond reasonable doubt that the death of Monika had taken place otherwise than under normal circumstance.

Both the appellants are in custody for the last more than seven years. The trial Court after observing that the two convicts sacrificed the victim with cruelty and harshness to satisfy their lust for dowry held that they did not deserve any leniency and, accordingly, sentenced them to undergo rigorous imprisonment for life for the offence under Section 304-B read with Section 34 IPC. In the considered opinion of this Court, the said sentence of imprisonment is too harsh

considering the fact that the conviction of the convicts for the offence under Section 304-B IPC is based upon presumption. Ends of justice would be suitably met if the same is reduced to twelve years.

Resultantly, the conviction of the appellants under Section 498-A read with Section 34 IPC and under Section 304-B read with Section 34 IPC is upheld. The sentence of life imprisonment imposed upon the appellants for the offence under Section 304-B read with Section 34 IPC is reduced to rigorous imprisonment for twelve years each. The sentence of imprisonment and fine imposed upon the appellants for the offence under Section 498-A read with Section 34 IPC, alongwith its default clause, is maintained. Both the substantive sentences of imprisonment shall run concurrently.

Criminal Appeal No.D-1104-DB of 2011 filed by Kamla Devi @ Kalan and Criminal Appeal No.D-1169-DB of 2011 filed by Kuldeep @ Kala are, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

October 25, 2016
satish

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO