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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-2342-SB-2003 (O&M)  
Date of decision : 13.09.2017

Ramesh Kumar and another

... Appellant(s)

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. D.S. Pheruman, Advocate,  
for the appellant(s).

Mr. N.K.Banka, DAG, Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 08/09.12.2003, passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Gurdaspur, vide which the appellants were convicted and sentenced as under:-

|              |                 |                 |            |                  |
|--------------|-----------------|-----------------|------------|------------------|
| Ramesh Kumar | Section 306 IPC | RI for 05 years | Rs.2,000/- | RI for 06 months |
|              | Section 498-A   | RI for 02 years | Rs.1,000/- | RI for 02 months |
| Maya Devi    | Section 306 IPC | RI for 02 years | Rs.200/-   | RI for 02 moths  |
|              | Section 498-A   | RI for 01 year  | Rs.200/-   | RI for 01 month  |

However, both the substantive sentences were ordered to run concurrently.

Briefly stated the case of the prosecution as noticed in the judgment passed by the trial Court is as under:-

*“2. The brief facts of the prosecution case are that Parkash Singh resident of village Gaunspura is doing the business of selling clothes. He has five brothers and three sisters. He married his sister Sowarani to Tarsem Singh resident of village Bhalowali. The marriage between the two did not persist for long and Sowarani was re-married to Romesh Kumar son of Ishar Dass. A daughter was also born out of the wed lock. Now nearly eight years have passed since their marriage. Even the daughter born from the wed lock is six year old. At the time of marriage no dowry was given. Sometime after the marriage accused Romesh Kumar started taunting Sowarani for not bringing any dowry. Maya Devi mother of Romesh Kumar, Gulzari Lal and Roop Lal brothers of the Romesh Kumar also started taunting Sowarani that she has not brought any dowry at the time of marriage. They also used to beat her sister. About 5/6 months back the accused had beaten up Sowarani and sent her back to her home. The respectables of the village Sarpanch Hansa Singh, member Panchayat Piara Lal took Sowarani back to the matrimonial house. 5/6 days prior to the suicide he had gone to meet his sister. Sowarani told him that the accused still taunt her for bringing less dowry. He used to tell that they are poor persons and not in a position to give dowry. Then the accused used to harass his sister Sowarani. Due to continuous harassment and maltreatment, on 7.10.2000 at about 6.00 PM in the evening she consumed some poisonous substance and committed suicide. He received this message today in the morning at 7.00 AM. He alongwith his brother Balkar Singh and other respectables of the village went to the village of her in-laws where they told that Sowarani has consumed some poison substance and committed suicide. The statement of complainant Parkash Singh was recorded by the police and the same is Ex.PA.”*

On the presentation of challan, copies of documents as required under Section 207 Cr.P.C were supplied to the accused free of cost.

During investigation, accused Roop Lal and Gulzari Lal were found innocent, whereas, challan was presented against accused-appellants.

Vide order dated 02.07.2002, accused Gulzari Lal and Roop Lal were also summoned under Section 319 Cr.P.C.

Thereafter, charges were framed under Sections 306 and 498-A IPC against all the four accused, to which they pleaded not guilty and claimed trial.

In order to prove, its case, the prosecution examined PW1-Constable Jagir Singh; PW-2 Hansa Singh; PW-3 Parkash Singh; PW-4 Sain Dass; PW-5 Dr. Vijay Kumar; PW-6 ASI Sharam Singh; PW-7 SI Bachitter Singh; PW-8 HC Jasbir Singh; PW-9 Jagir Singh, Draftsman; and PW-10 Constable Harjit Singh; and thereafter, closed its evidence.

The statements of accused were recorded under Section 313 Cr.P.C in which all the incriminating circumstances appearing in the prosecution evidence were put to them, which they denied and pleaded false implication. In defence, accused examined DW-1 Captain Sat Pal; DW-2 Dalbir Singh; DW-3 HC Sabar Singh Bihari; and DW-4 Rajinder Kumar.

After hearing the rival contentions and appraisal of the evidence on record, the trial Court vide impugned judgment, acquitted accused Roop Lal and Gulzari Lal; whereas, accused-appellants Ramesh Kumar and Maya Devi were convicted and sentenced the accused as narrated above.

Feeling aggrieved, the accused-appellants filed the instant appeal, which was admitted by this Court on 18.12.2003. However, during the pendency of the present appeal, appellant No.2, Maya Devi. Died and vide order dated 03.08.2016, the instant appeal qua her has been abated.

Learned counsel for the appellant contends that the appellant has been convicted by learned trial Court mainly on the statement of three witnesses, namely, Sat Pal, Ex.A; Ram Lubhaya, Ex.C; and Surta, Ex.D, recorded under Section 161 Cr.P.C. These statements were recorded during investigation by the police cannot be read as part of evidence as the said persons did not appear in the witness box to prove the same. The finding returned by learned trial Court is contrary to record. He further contends that the prosecution has failed to prove its case with regard to any dispute between the deceased and the appellant. Learned trial Court failed to take into consideration the statements of defence witnesses as well.

On the other hand, learned State counsel submits that learned trial Court has passed a well-reasoned order and the instant appeal deserves to be dismissed. The appellant is the husband of the deceased and it is for him to explain as to how the deceased died.

I have heard learned counsel for the parties and have gone through the case file.

Certain facts are not in dispute. Deceased Sowarani was earlier married to one Tarsem Singh about 16-17 years back. The marriage between the two did not survive and she was re-married to the appellant

about eight years prior to the alleged incident. A daughter was born out of the wedlock who was six-year old at the time of death. On 7.10.2000, at about 6.00 p.m., the deceased consumed some poisonous substance and committed suicide.

It is the case of the prosecution that due to continuous harassment and maltreatment allegedly meted out to the deceased on account of demand of dowry, she had ended her life on 7.10.2000. To prove the charge levelled against the appellant, the prosecution was required to prove the ingredients of the offences punishable under Sections 498-A and 306 IPC. The evidence led on record is indeed not sufficient to prove that the appellant abetted the commission of suicide by Sowarani Devi or had ever maltreated or harassed her at any point of time. It is settled position of law that the prosecution has to prove its case by leading cogent and convincing evidence beyond shadow of reasonable doubt. In the instant case, the prosecution has laid much reliance on the statements of Sat Pal, Ex.A; Ram Lubhaya, Ex.C; and Surta, Ex.D, recorded under Section 161 Cr.P.C. Intriguingly, none of these material witnesses was examined by the prosecution. These were the best witnesses to project and prove the case of the prosecution. The appellant has been deprived of his valuable right to cross-examine these witnesses. Withholding of the best evidence by the prosecution is a circumstance in favour of the accused. Though, the statements of the aforesaid witnesses have been exhibited on record but mere exhibition of a document does not accord credence to them. The statements

recorded under Section 161 Cr.P.C. are hit by Section 162 Cr.P.C. and such statements can only be used for contradiction by the accused under Section 145 of the Indian Evidence Act, 1872 (for short, 'the Evidence Act') and not for corroboration by the prosecution under Section 157 of the Evidence Act. As such, the statements Ex.A, Ex.C and Ex.D cannot be taken into consideration by the Court. Learned trial Court erred in placing implicit reliance on the statements Ex.A, Ex.C and Ex.D.

Furthermore, there is nothing on record to establish the fact that the deceased was being harassed on account of demand of dowry. The allegations lack specificity. No complaint whatsoever, was made to any authority or the elders of the family with regard to any harassment or cruelty meted out to the deceased at the hands of the appellant prior to the death of Sowarani Devi. No one from the brotherhood appeared to support the case of the prosecution. On the other hand, statement of DW1, Captain Sat Pal, to the effect that there was no dispute/quarrel between the deceased and the appellant or that there was no harassment to the deceased, lends support to the defence version that the deceased was treated nicely and she had committed suicide on account of mental infirmity. The prosecution cannot be allowed the benefit of the presumption under Section 113A of the Evidence Act, since the deceased had not committed suicide within a period of seven years from the date of her marriage. Admittedly, the marriage had taken place eight years prior to the alleged incident.

As per Section 107 IPC, a person abets the doing of a

thing, who **firstly**, instigates any person to do that thing; or **secondly**, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or **thirdly**, **intentionally** aids, by any act or illegal omission, the doing of that thing.

In the instant case, the ingredients of the offences under Sections 306 and 498-A IPC are not proved on record by the prosecution. There is no evidence on record to conclusively establish the role played by the accused in commission of the alleged offence.

In view of the above discussion, this Court has no hesitation to hold that the quality of evidence led by the prosecution is insufficient to bring home guilt against the accused-appellant beyond shadow of reasonable doubt. Consequently, giving benefit of doubt, the present appeal is allowed; the impugned judgment and order passed by the trial Court are set aside; and appellant Ramesh Kumar is acquitted of the charges framed against him. He is stated to be on bail. His bail bonds and surety bonds stand discharged.

**September 13, 2017**

*atulsethi*

**(JITENDRA CHAUHAN)**  
**JUDGE**

|                                    |               |
|------------------------------------|---------------|
| <b>Whether speaking/reasoned :</b> | <b>Yes/No</b> |
| <b>Whether reportable :</b>        | <b>Yes/No</b> |