

Criminal Appeal No.S-218-SB of 2014

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH**

...

Criminal Appeal No.S-218-SB of 2014

Date of Decision: 25.01.2017

Mangat Singh @ Manjit Singh and others

... Appellants

VERSUS

State of Punjab

...Respondent

CORAM : HON'BLE Ms. JUSTICE RITU BAHRI.

Present: Mr. G.S. Ghuman, Advocate,
for the appellants.

Mr. A.P.S. Gill, A.A.G Punjab.

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RITU BAHRI, J.

This appeal has been filed by the appellants against the judgment of conviction and order of sentence order dated 11.12.2013 passed by the learned Additional Sessions Judge, Sangrur, vide they were convicted and sentenced to undergo rigorous imprisonment under Section s 306/498-A of the Indian Penal Code (hereinafter referred to as 'the Code) substantially for a period of six years.

It is necessary to mention here that the appellants have expired during the pendency of the appeal and the present appeal is being heard on the application filed by son of appellant No. 1-Mangat Singh @ Manjit Singh, which was allowed by this Court on 11.07.2016, as the claim of family pension will be decided after finalization of this appeal.

Criminal Appeal No.S-218-SB of 2014

Brief facts of the case are that on 11.03.2013, a wireless message was received from SHO, P.S. City, Dhruvi regarding the hospitalization of Jasbir Kaur due to burn injuries. On reaching there, it was found that Jasbir Kaur was referred to Rajindra Hospital and when ASI Sarabjit Singh was on the way to Rajindra Hospital, Patiala, he was informed telephonically by complainant Harwinder Singh that Jasbir Kaur had been referred to Government Hospital, Sector 32, Chandigarh and when ASI Sarabjit Singh reached the hospital, he found that Jasbir Kaur was not fit to make the statement and thus the statement of Harwinder Singh (brother of Jasbir Kaur) was recorded to the effect that his sister was married to Mangat Singh-appellant No. 1 on 08.12.2002 and in-laws of his sister were not happy regarding the dowry and they used to harass his sister. The husband of his sister used to give beatings to Jasbir Kaur while raising demand of dowry. Number of Panchayats were convened and 15 days prior to the occurrence, appellants gave beating to his sister while raising demands of dowry and Jasbir Kaur was brought to the village Bhasaur by his mother Ranjit Kaur. After Gurdev Singh and Mangat Singh apologized about 07 days prior to the occurrence, she was sent back. On the fateful day, complainant received message regarding suffering of burn injuries by Jasbir Kaur and regarding her treatment.

Investigation was conducted and the accused were arrested. After completion of investigation, challan was presented against the accused persons in the Court.

After presentation of the challan and complying with the provisions of Section 207 Cr.P.C and on finding that Section 306 IPC is exclusively triable by Court of Sessions, the learned Area Magistrate

Criminal Appeal No.S-218-SB of 2014

committed the case for trial. Thereafter, finding a prima facie against the accused, they were charge sheeted under Sections 306/498 of the Code, to which they pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined 06 witnesses and thereafter, the evidence of the prosecution was closed.

The statements of the accused were recorded under Section 313 Cr.P.C but they denied the allegations levelled against them.

The Court below convicted and sentenced the accused on the sole dying declaration (Ex PW6/E) of Jasbir Kaur, which was being recorded by the then learned Judicial Magistrate 1st Class, Panchkula, as all the star witnesses turned hostile.

Learned counsel for the appellants contends that the dying declaration (Ex PW6/E) without corroboration of independent witnesses is nothing in the law and thus, the appellants are liable to be acquitted.

Learned counsel has further argued that from the perusal of the dying declaration (Ex PW6/E) or the FIR or in the entire evidence produced by the prosecution on record, no offence is made out against the accused. Learned counsel submits that Jasbir Kaur married to appellant No. 1 ten years back and after ten years, it cannot be said that the deceased committed suicide due to demand of dowry or harassment by the accused.

Learned counsel further argued that father-in-law and mother-in-law of Jasbir Kaur were residing separately from the deceased since long. The prosecution has miserably failed to prove its case against the accused as all the witnesses have turned hostile and no docor or I.O have been examined.

On the other hand, learned State counsel submits that once

Criminal Appeal No.S-218-SB of 2014

there is dying declaration (Ex PW6/E) on record which was being recorded by learned Magistrate, the accused have rightly been convicted by the trial Court. Learned State counsel further argued that even though the prosecution witnesses have turned hostile, the dying declaration was sufficient enough to convict the accused who raised the demand of dowry and panchayats were also convened in this regard. Further Jasbir Kaur was beaten by the accused 07 days prior to the incident for bringing less dowry, as stated by brother of the deceased.

Heard learned counsel for the parties.

After going through the judgment passed by the Court below, it seems that the accused were convicted on the sole dying declaration (Ex PW6/E) given by Jasbir Kaur and the statement of the brother of the victim on which the F.I.R was registered.

Reference at this stage can be made to dying declaration (Ex PW6/E) given by the deceased which was in narrative form wherein she stated that initially her two daughters died and the accused used to harass her parents and used to beat her. She poured kerosene oil on herself as her husband and mother-in-law used to harass her. The accused told her to pour kerosene oil on herself and on their saying, she put herself on fire with the help of gas lighter by pouring kerosene oil on herself. She stated that now the property of her husband be given to her son. She further stated that a quarrel took place as the accused used to taunt her that her parents have a inverter in their house and why she is not bringing inverter in the matrimonial home.

Now reference can be made to statement of the brother of the deceased i.e Mr. Harminder Singh-P.W.2 wherein he stated that the accused

Criminal Appeal No.S-218-SB of 2014

used to harass his sister and the husband of his sister used to beat the deceased under the influence of liquor. Many Panchayats were convened to settle the dispute. He further stated that her sister told him in the hospital that the accused used to beat her on the pretext of demand of Rs.2 lakhs in lieu of the vehicle.

The question for consideration before this Court that can the accused be convicted under Section 306 IPC on the sole dying declaration (Ex PW6/E) of the deceased, as all the star witnesses turned hostile and the prosecution had failed to brought on record any evidence that the accused demanded Rs.2 lacs and the panchayats were convened to settle the dispute.

Jasbir Kaur (since deceased) was married to appellant No. 1 about 11 years back. The husband of the deceased was working in the Army and his service shall be completed upto 15 years nearby and he was to take retirement after completing 15 years and have a good record in the army. In the past 11 years, Jasbir Kaur has not lodged any complaint regarding the harassment/demand of dowry by the accused.

The dying declaration (Ex PW6/E) given by the deceased nowhere indicates any demand of dowry and it only states that a quarrel took place as the accused used to taunt her that her parents have a inverter in their house and why she is not bringing inverter in the matrimonial home. The dying declaration (Ex PW6/E) further states that she poured kerosene oil on herself on the asking of the accused who used to beat/harass her.

It cannot be said that the accused poured kerosene oil on herself on the taunt with regard to inverter. It seems that since her husband was in Army, she was frustrated. Further the prosecution has not examined any Panchayat Members to show that the accused used to harass the deceased

Criminal Appeal No.S-218-SB of 2014

and panchayats were convened to settle the dispute. It is not probable that after 11 years of marriage, the accused raised demand of dowry. Further the prosecution has failed to prove that the accused ever demanded Rs.2 lacs from the parents of the deceased. The present case is not a case of dowry death or the deceased having been instigated into committing suicide for her failure to satisfy the dowry demands of the accused. Further the prosecution has not been able to prove that the deceased was subjected to cruelty on demand of Rs.2 lacs by the accused. Thus, no offence under Section 498/A and 306 of the Code is made out against the accused.

For ready reference, this Court quote here the provision of Sections 498-A/306 of the Code, which reads as under:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—
(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

Section 306 of the IPC reads as under:-

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Criminal Appeal No.S-218-SB of 2014

Learned counsel for the appellants has made reference to the judgment of Hon'ble the Supreme Court of India in a case of ***Ghusabhai Raisangbhai Chorasiya and others vs. State of Gujarat, 2015(2) RCR (Crl) 70*** wherein the wife committed suicide as her husband had developed extra marital relationship with another woman. Hon'ble the Supreme Court acquitted the accused and held them not guilty of the offence under Sections 306/498-A IPC. It was held that it cannot be hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. In para 16, 20 and 21, it has been observed as under:-

16. This Court in Girdhar Shankar Tawade V. State of Maharashtra, 2002(4) RCR (Criminal) 589: 2002(5) SCC 177, examining the scope of 498A, has observed thus:

“The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of “cruelty” in terms of Section 498-A.”

20. Coming to the facts of the present case, it is seen that the factum of

Criminal Appeal No.S-218-SB of 2014

*divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the 'Holi' festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in *Pinakin Mahipatray Rawal (supra)*, but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant no.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498A which includes cruelty to drive a woman to commit suicide, would not be attracted.*

21. Presently, adverting to the involvement of the other accused persons, that is, appellant nos. 1, 3 and 4, we find that there is no allegation of any kind of physical torture. The evidence brought on record against them with regard to cruelty is absolutely sketchy and not convincing. It has been alleged that the mother-in-law used to rob her money which she earned as wages. The said fact has really not been established. As far as appellant no. 4, Jesuben, is concerned, there is only one singular allegation that at one public place, i.e. in a 'mela', she had threatened the deceased that she would be divorced by her husband. On the basis of the said evidence, it is difficult to sustain the conviction under Sections 306 and 498A IPC. Once we are holding that the accused-appellants are not guilty of the offence under Section 306 and 498A IPC, the conviction under Section 201 IPC is also not sustainable. “

Criminal Appeal No.S-218-SB of 2014

Reference has further been made to a judgment of Hon'ble the Supreme Court of India in a case of ***Ram Mani and others vs. State of M.P., passed in Crl. Appeal No. 2461 of 2009, decided on 06.04.2016*** wherein Hon'ble the Supreme Court has acquitted the accused on the ground that both the Courts have failed to appreciate evidence on record and held no good reason to sustain order of Appellate court with regard to finding of guilt recorded under Sections 498-A/306 IPC. In para 4 and 5, it has been observed as under:-

"4. The High Court after adverting to the rival legal submissions urged on behalf of the parties, examined the correctness of the finding of the guilt recorded for the charge under Section 498-A and 306 of the I.P.C. The Appellate Court in exercise of its appellate jurisdiction was required to re-appreciate the evidence on record. The Appellate Court has examined the correctness of the finding of guilt on the charges under Sections 498-A and 306 of the I.P.C. The High Court has noticed that the appellants are acquitted for the charge under Section 304-B of the guilt by placing reliance upon the judgment of this Court in the case of **Hira Lal v. State (NCT) of Delhi (reported in AIR 2003 SC 2865)**. In the said case the charge under Section 304-B was framed but no charge under Section 306 was framed. The accused being guilty under Section 304-B was not proved, even though it is not proved it was held in the said case that no charges were framed against the accused under Section 306 read with 498-A but proved. The cruelty is essential to be proved under both Sections 498-A and 306. The finding of conviction can be recorded under Section 498-A and the said ratio can be

Criminal Appeal No.S-218-SB of 2014

applied to the fact and situation for recording the concurrent finding of guilt for the charge under Sections 498-A and 306. The correctness of the same is questioned by the appellants in this case. The finding recorded by the trial Court on the aforesaid terms has yet to be examined. The evidence of PWs. 1 and 2 is only the evidence with regard to the demand of dowry made by the husband, the appellant herein, demanding the dowry of scooter but given Luna. That was not acceded to. Therefore, it amounts to cruelty. The said evidence is accepted by the trial Court for recording the finding under Section 498-A and for the reasons stated that the cruelty under Sections 306 and 498-A is common. Therefore, the finding and reasons recorded for holding the charge is proved. 5. We have very carefully gone through the finding and reasons both by the trial Court and the Appellate Court. We have examined the correctness of the same. After going through the same, we find that both the Courts also have failed to appreciate the evidence on record to be applied to the situation, particularly, that the charge under Section 304-B is not proved against the appellants."

In the facts of the present case, the case set up by the prosecution as is evident from the statement made by the accused Gurdev Singh, Mangat Singh and Surjeet Kaur is that they had maltreated deceased- Jasbir Kaur on the pretext of demand of dowry in the shape of Rs.2 lacs for the purpose of buying a vehicle. This fact is evident from the statements made by the accused under Section 313 Cr.P.C. Further the prosecution witnesses i.e P.W1 to P.W.5 turned hostile. This would only lead to a conclusion that allegation of demand of Rs.2 lacs cannot be read against the

Criminal Appeal No.S-218-SB of 2014

accused. The Court was only relying upon the dying declaration (P.W.6/E), which has been duly proved by Kanwal Kumar, the Deputy Magistrate Panchkula, who appeared as P.W.6. He deposed that on 13.03.2013, he recorded the statement of Jasbir Kaur on the request of ASI Sarabjit Singh vide Ex PW6/A. He further deposed that at 3.30 P.M on the same day at Command Hospital, Panchkula, he recorded her statement after verifying her witness vide endorsement Ex PW6/C. The concerned Medical Officer declared her fit for making statement vide Ex PW6/D. He proved the said statement of Jasbir Kaur as Ex PW6/F.

Reference at this stage can now be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Umakant and another v. State of Chhatisgarh, 2014(7) SCC 405*** wherein bride died within 1 ½ years of marriage as she sustained burn injuries. The accused were acquitted of the charges framed against them. In para 19, 20, 21, 22 and 25, it has been observed as under:-

19. In spite of all the importance attached and the sanctity given to the piece of dying declaration, Courts have to be very careful while analyzing the truthfulness, genuineness of the dying declaration and should come to a proper conclusion that the dying declaration is not a product of prompting or tutoring.

20. The legal position about the admissibility of a dying declaration is settled by this Court in several judgments. This Court in Atbir v. Government of NCT of Delhi - 2010 (9) SCC 1, taking into consideration the earlier judgments of this Court in Paniben v. State of Gujarat - 1992 (2) SCC 474 and another judgment of this Court in Panneerselvam v. State of Tamilnadu - 2008 (17) SCC 190 has given certain guidelines while considering a dying declaration:

1. Dying declaration can be the sole basis of conviction if it inspires full confidence of the Court.

Criminal Appeal No.S-218-SB of 2014

2. *The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*

3. *Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*

4. *It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborative. The rule requiring corroboration is merely a rule of prudence.*

5. *Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.*

6. *A dying declaration which suffers from infirmities, such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.*

7. *Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.*

8. *Even if it is a brief statement, it is not to be discarded.*

9. *When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*

10. *If after careful scrutiny the Court is satisfied that it is free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.*

21. *In the light of the above legal position that governs the consideration of a dying declaration, the factual matrix has to be scrutinised. As already extracted above, in the dying declaration Ex.P-13, the deceased stated before the Magistrate that the appellants demanded dowry and that the appellants set fire to her and she asked her brother-in-law to rescue her, but he had chosen not to do so, and further on hearing her cries, the neighbours came*

Criminal Appeal No.S-218-SB of 2014

and extinguished the fire and admitted her in the hospital. After she was admitted in the hospital, her parents came and she informed them about the incident. The deceased is said to have stated that when she was pregnant she was beaten up by the accused and because of which the child died in the womb. At that time, she had taken treatment in Revival Hospital]. This statement is found in Ex.P-23, FIR written by K.B. Singh (P.W.23), and not in Ex.P13 dying declaration.

22. When we look at the dying declaration, it is not inspiring confidence in the mind of this Court and throws serious doubt that the same is a product of tutoring by the family members of the deceased for the reason that, the sister of the deceased who was present when the deceased was admitted in the hospital had signed in Ex.P-2 wherein it is stated that it was an accident and nobody has burnt the deceased, but later she turned around and stated that unless she signed on that, they were told that the deceased would not be treated, and the High Court has taken this fact into consideration, whereas in the dying declaration, the deceased has stated that when her parents came to the hospital on 06.08.2003, she informed to the parents for the first time and she had not mentioned that she informed her sister or anybody before that, but according to the sister of the deceased, on 02.08.2003, she was aware of this, which shows that the evidence of the witness is not reliable and clouded with doubt.

25. The burden of proof in criminal law is beyond all reasonable doubt. The prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is also rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted. After considering the evidence and the judgments of the Courts below, we are of the considered opinion that the evidence available on record and the dying declaration does not inspire confidence in the mind of this Court to make it the basis for

Criminal Appeal No.S-218-SB of 2014

the conviction of the appellants. Apart from this, the High Court basing on the same dying declaration, ought not to have convicted the appellants under Section 302 IPC, when they were acquitted under Section 304-B and 498-B IPC and Sections 3 and 4 of the Dowry Prohibition Act by the High Court.”

In the facts of the present case, the deceased in her dying declaration (PW6/E) had stated that a quarrel took place as the accused used to taunt her that her parents have a inverter in their house and why she is not bringing inverter in the matrimonial home. After a gap of 11 years of marriage, even if a minor quarrel took place, it cannot be said that it would drive the wife to commit suicide. The husband of the deceased was working in the Army and he used to visit the house in leave period. It seems that the deceased was frustrated living alone from her husband. Further the dying declaration is in narrative form and the prosecution has miserably failed to lead any evidence to show that there was a demand of Rs.2 lacs by the accused for purchase of vehicle. The quarrel which immediately took place before the death of Jasbir Kaur could not be said to be cruelty as defined under Section 498-A IPC.

As per guidelines laid down by Hon'ble the Supreme in ***Uma Kant's case (supra)***, the dying declaration does not inspire the confidence of this Court and it cannot be made the basis of the conviction. The dying declaration (Ex PW6/E) in the present case was in narrative form wherein she stated that initially her two daughters died and the accused used to harass her parents and used to beat her. She poured kerosene oil on herself as her husband and mother-in-law used to harass her. The accused told her to pour kerosene oil on herself and on their saying, she put herself on fire with the help of gas lighter by pouring kerosene oil on herself. She stated

Criminal Appeal No.S-218-SB of 2014

that now the property of her husband be given to her son. She further stated that a quarrel took place as the accused used to taunt her that her parents have a inverter in their house and why she is not bringing inverter in the matrimonial home.

Thus, as per dying declaration, immediate cause of the death of the deceased that her in-laws had taunted her that why she didn't bring inverted in their house. After a gap of 11 years, when the deceased was blessed with a son, this taunt made by the in-laws would not amount to cruelty. Further, the case of the prosecution was that there was a demand of Rs. 2 lacs, which was not substantiated by any evidence. All the prosecution witnesses turned hostile. Further the husband of the deceased was working in Army and he used to visit the house in leave period. It seems that the deceased was frustrated as she was living alone from her husband. In the absence of any cruelty, the dying declaration in itself cannot be made basis for conviction of the accused. There is no evidence on record to show that the deceased was subjected to cruelty.

In *Ghusabhai Raisangbhai Chorasiya's case (supra)* Hon'ble the Supreme Court acquitted the accused who had developed extra marital relationship with another women and held him and his parents not guilty of the offence under Sections 306/498-A IPC. It was held that it cannot be hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide.

In view of the discussions made above, the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge is liable to be interfered and accordingly, it is set aside.

The accused persons are acquitted from the charges by giving

Criminal Appeal No.S-218-SB of 2014

them benefit of doubt .

The appeal stands allowed.

25.01.2017

G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>