

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on : 20.11.2018

Date of decision : 14.12.2018

1. CRA-S No. 1783-SB of 2002 (O&M)

Brahmjeet

.... Appellant

versus

The State of Haryana

.... Respondent

2. CRA-D No. 567-DB of 2003

State of Haryana

... Appellant

versus

Brahmjeet

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Sudhir Sharma and Mr. Ram Krishan Rana, Advocates,
for the appellant in CRA-S No. 1783-SB of 2002 and for
respondent in CRA-D No. 567-DB of 2003.

Mr. S. S. Pannu, Deputy Advocate General, Haryana.

Rajiv Sharma, J.

1. This judgment will dispose of two appeals bearing CRA-S No. 1783-SB of 2002 and CRA-D No. 567-DB of 2003, as the same arise out of common judgment and order.

2. These appeals are instituted against the judgment and order dated 28.10.2002 rendered by Additional Sessions Judge (Adhoc), Faridabad, in Session Case No. 44 of 22.12.2001/11.12.2001, whereby accused Brahmjeet, Birbal Singh, Smt. Santo Devi, Sonia, Ranjeet, Inderjeet, Jagdish and Km. Maya, were charged with and tried for the offence under Sections 304-B and 406 IPC.

3. Appellant Brahmjeet was convicted and sentenced under Section 498-A IPC to undergo rigorous imprisonment for three years and to pay fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year. The other accused were acquitted.

4. Appellant Brahmjeet has challenged his conviction by way of filing CRA-S No. 1783-SB of 2002 – Brahmjeet vs The State of Haryana.

5. State of Haryana has filed CRA-D No. 567-DB of 2003- State of Haryana vs Brahmjeet, against the acquittal of appellant Brahmjeet under Sections 304-B and 406 IPC.

6. The case of the prosecution in a nutshell is that PW1/A Kali Charan lodged a complaint with the police that his daughter Swami Pyari @ Babli was married with Brahmjeet on 18.6.1997 at Agra according to Hindu rites and ceremonies. She was serving in State Bank of Bikaner and Jaipur as Cashier before her marriage. Brahmjeet was working in State Bank of Patiala, Palwal. She told him that she was maltreated by the accused, who were not satisfied with the dowry. They were demanding Tata-Sumo and ₹ 50,000/-. On 2.10.1998, she came from Kota. The panchayat was convened on 25.10.1998. The panchayat tried to persuade accused to live amicably. The panchayat again met on 8.2.2000. Later on, he received two letters from the deceased. On 26.5.2000 at about 9.00 P.M., he received a telephonic call that his daughter had met with an accident. He reached Palwal at 2.00 A.M. during the intervening night of 26/27.5.2000. The dead-body of his daughter was hanging in a room. Appellant was not present. Application, Ex. PA, was made by Kali Charan to SI Bijender Singh. Thereafter, FIR, Ex.PA/2, was recorded by ASI Ram Rattan. The body was sent for post-mortem examination. The post-mortem was performed on 27.5.2000 by board of

doctors, namely, Dr. B. S. Sharma, Dr. Ramesh Arora and Dr. Kalpana Kulshershat. Dupatta was used for hanging by the deceased. The investigation was completed and the challan was put up after completion of all the codal formalities.

7. The prosecution examined 14 witnesses in support of its case. The statements of the accused were recorded under Section 313 Cr.P.C. 10 witnesses were examined in defence by the accused. They denied the case of the prosecution. All the accused, except appellant Brahmjeet, were acquitted. The appellant was convicted and sentenced under Section 498-A IPC, however, acquitted for the charges under Sections 304-B and 406 IPC. Against the order of acquittal of the appellant under Section 304-B and 406 IPC, the State has preferred an appeal, whereas against his conviction, the appellant has also filed an appeal.

8. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case against his client. Learned counsel appearing for the State vehemently argued that the prosecution has proved the charges against Brahmjeet under Sections, 304-B and 406 IPC as well, but he has wrongly been acquitted by the trial Court.

9. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

10. The prosecution examined Dr. B. S. Sharma as PW1. He conducted the post-mortem examination along with his team. The cause of death was asphyxia as a result of hanging. The injury was ante-mortem and sufficient to cause death in ordinary course of nature. He proved post-mortem report, Ex. PA.

11. PW1/A Kali Charan is the father of Swami Pyari @ Babli (deceased). He testified that his daughter was married with Brahmjeet on 18.6.1997 at Agra. Her daughter was serving as Cashier in State Bank of Bikaner and Jaipur before her marriage. His son-in-law appellant Brahmjeet was working in the Palwal Branch of State Bank of Patiala. After marriage, his daughter went to her in-law's house at Palwal. On her return to Agra, she told him that she was maltreated by all the accused. They were not satisfied with the dowry. They were demanding Tata-sumo car and a sum of ₹ 50,000/-. The matter was taken up with the panchayat on 25.10.1998. Thereafter, another panchayat was also convened. He received a telephonic call on 26.5.2000 that his daughter had met with an accident. He rushed to Palwal. He saw her daughter hanging. He identified hand-writing of his daughter on Ex.P1 to Ex.P4. The dead-body was taken to Agra. He had denied the suggestion that letters, Ex.P1 and Ex.P2, were not written by his daughter Babli. He deposed that Ex.DD/1 was her suicide note. According to him, it was not genuine and it might have been fabricated by someone. He was called for further cross-examination. He deposed that Ex.P1 and Ex.P2 appear to be in the handwriting of his daughter Swami Pyari but did not say definitely that these were in her handwriting. He also made similar statement with regard to Ex.P3 and Ex.P4.

12. PW5 Smt. Sohna Devi is the mother of deceased. She testified that there was no demand of dowry. She was living happy married life. She died by hanging. She was declared hostile and cross-examined by the Public Prosecutor.

13. Similarly PW6 Smt. Kampuri Devi, aunt of the deceased, has also not supported the case of the prosecution. According to her, since she

was posted at a distance place and could not get any child, she was depressed. She was declared hostile.

14. PW7 Hitender, brother of the deceased, has also not supported the case of the prosecution. According to him, she was not maltreated for bringing insufficient dowry.

15. PW12 Surrender Kumar Sharma testified that he had seen Smt. Swami Pyari writing and signing but he could not say whether letters, Ex.P3 and Ex.P4, were in the hand writing of the deceased.

16. The deceased had also written a suicide note, Ex.DD/1. It is evident from Ex.P1 to Ex.P4 that she was harassed by Brahmjeet. He was not speaking to her. The deceased was trying to persuade him to maintain married life. She has quoted specific instances whereby the acts of Brahmjeet had caused mental cruelty to her. Her telephone was disconnected by appellant Brahmjeet. She wanted to live with him. She was told that her status in the family would be of a keep or a maid. First letter was written by her to her parents on 12.12.1999. Brahmjeet had soft corner for his *Bhabhi*. According to the tone and tenor of the letter, Brahmjeet was having extra-marital affairs with his sister-in-law. Thus, the prosecution has duly proved that Brahmjeet had caused mental cruelty/ harassment to the deceased by his acts. She was harassed by him as per Ex.P1 to Ex.P4. Kali Charan, father of the deceased, has admitted in his examination-in-chief that Ex.P1 to Ex.P4 were written by her daughter. However, after lengthy cross-examination, he deposed that hand writing and signatures appeared to be of his daughter. He otherwise recognised the hand writing of his daughter. It is a case where the witnesses apparently have been won over by the accused. The mother of the deceased, PW5 Smt. Sohna Devi has not supported the

case of the prosecution. Similarly, PW6 Smt. Kampuri, aunt and PW7 Hitender brother of the deceased have also not supported the case of the prosecution.

17. Now as far as Section 304-B IPC is concerned, the prosecution has not led any cogent evidence to support its case. Kali Charan has supported the case of the prosecution that the accused were demanding dowry. The deceased's mother Smt. Sohna Devi has not supported the case of the prosecution. Similarly PW6 Smt. Kampuri Devi and PW7 Hitender have also deposed that the accused have not demanded dowry. Thus, acquittal of accused under Section 304-B IPC was recorded after correct appraisal of ocular and documentary evidence.

18. Accordingly, the appeal filed by the appellant as well as by the State are dismissed. The judgment and order of the trial court are upheld. Appellant Brahmjeet is on bail. The order of his suspension of sentence is revoked. He is ordered to surrender before the trial Court to undergo his remaining sentence awarded to him by the trial Court vide judgment and order dated 28.10.2002.

(Rajiv Sharma)
Judge

14.12.2018
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No