

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-181-DB-2015
Reserved on : 24.05.2019
Date of decision : 29.05.2019

Deepak Kumar and another

... Appellants

Versus

State of Haryana

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr.P.S. Hundal, Senior Advocate with
Mr.Premjit Singh Hundal, Advocate
for the appellants.

Mr.Apoorv Garg, DAG, Haryana.

RAJIV SHARMA, J.

This appeal is instituted against judgment dated 06.01.2015 and order dated 08.01.2015 rendered by Additional Sessions Judge, Yamuna Nagar, in Sessions Case No.52 of 2011 whereby the appellants along with co-accused Naresh Kumar were charged with and tried for offence punishable under Section 306 and 304-B of the Indian Penal Code (in short "IPC") or in alternative Section 302 read with section 34 IPC. The appellants were convicted and sentenced to undergo imprisonment for life for offence punishable under Section 304-B read with Section 34 IPC. However co-accused Naresh Kumar was acquitted.

2. The case of the prosecution, in a nutshell, is that on 03.08.2011 on receipt of information regarding death of Indu Bala due to hanging, SI

Joginder Singh along with other police personnel reached the spot. Complainant Krishan Lal, father of the deceased, got his statement recorded to the effect that he had performed the marriage of his daughter Indu Bala with accused Deepak on 28.07.2010 according to Hindu rites. One child was born on 08.06.2011. In-laws of his daughter used to maltreat and harass her on the demand of dowry. It was disclosed to him by his daughter that she was being harassed and maltreated by her husband, brother-in-law and mother-in-law. On 03.08.2011 he received a telephonic message on his mobile phone that his daughter has been murdered by her in-laws. He reached the matrimonial house of his daughter. He found the dead body of India Bala lying in the *verandah* of the house. The body was sent for post-mortem examination. Investigation was carried out. Challan was put up after completing all the codal formalities.

3. Prosecution examined a number of witnesses. The statements of accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The accused examined Harvinder Singh as DW-1 in their defence. The appellants were convicted and sentenced as noticed hereinabove whereas co-accused Naresh was acquitted.

4. Learned counsel appearing for the appellants has vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the judgment dated 06.01.2015 and order dated 08.01.2015.

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

7. PW-13 Dr.Udit Panwar had conducted the post-mortem examination. He proved post-mortem report Ex.PW13/C. The cause of death was asphyxia caused by hanging which was ante mortem in nature and sufficient to cause death in ordinary course of life. In his cross-examination, he deposed that no injury was present on the dead body except ligature mark on the neck.

8. PW-2 Sunny Jagga had taken photographs Ex.P1 to Ex.P4 on the spot.

9. PW-5 ASI Prem Singh has deposed that he remained associated in the investigation conducted by SI Jogidner Singh. Accused Shakuntla was interrogated. She made disclosure statement Ex.PA. It was attested by him and Lady Constable Jaswinder Kaur. Accused Shakuntla disclosed in her statement Ex.PA that deceased Indu Bala intended to meet her parents which was not liked by their family and the accused Shakuntla and her son advised Indu Bala not to visit her parental house and due to this reason, an altercation started in the house. She further disclosed that due to this reason, Indu Bala was in depression and on 03.08.2011 accused Shakuntla was away from the house and when she came back, she saw Indu Bala hanging from a ceiling fan. In his cross-examination he deposed that Police Post Gandhi Nagar was situated in thickly populated area.

10. PW-6 HC Anil Kumar deposed that on 03.08.2011 SI Joginder Singh received a telephonic message that a lady had committed suicide by hanging herself. He reached the spot. He met the complainant Krishan Lal. Statement Ex.PB of the complainant was recorded. Accused Deepak made disclosure statement Ex.PC. Accused Deepak disclosed in his statement Ex.PC that deceased Indu Bala intended to meet her parents which was not

liked by their family. Accused Deepak and his brother advised Indu Bala not to visit her parental house. Due to this reason, an altercation took place. Indu Bala was in depression. On 03.08.2011 accused Deepak was away from the house. When he came back, he saw Indu Bala hanging from a ceiling fan and committed suicide. Accused Naresh Kumar made disclosure statement Ex.PD. He disclosed that Indu Bala intended to meet her parents which was not liked by their family. Thereafter an altercation took place. Due to this reason, Indu Bala was in depression and had committed suicide.

11. PW-9 HC Rajesh Kumar deposed that he joined investigation with SI Joginder Singh. He along with SI Joginder Singh went to the house of accused Deepak where his father Ranjit Singh had handed over a diary maintained by Indu Bala to the Investigating Officer.

12. PW-10 Dr. Kanta Malik, Senior Scientific Officer deposed that letter Ex.PH was received. She examined the handwriting of letter Ex.PH as well as diary Ex.P5. She prepared her report Ex.PJ.

13. PW-12 ASI Sher Pal has deposed that SI Joginder Singh inspected the spot. Krishan Lal, father of Indu Bala, was present at the spot. He made statement to the Investigating Officer. SI Joginder Singh took into possession a *chunni* and a hand written suicide note from the spot. Chunni is Ex.P6. Suicide note is Ex.PH. The dead body was taken to Civil Hospital, Yamuna Nagar.

14. PW-14 SI Joginder Singh has deposed that he received a telephonic message. He reached the spot. He recorded the statement of complainant Krishan Lal Ex.PB. Thereafter the dead body was sent for post-mortem examination. He prepared site plan Ex.PM. A *chunni* white and red colour was lying on the bed in the eastern room of the house of accused

Deepak. Krishan Lal stated that with that *chunni* Indu Bala hanged herself on a ceiling fan. *Chunni* and suicide note were converted into a sealed parcel and sealed with seal 'AK'. The body was sent for post-mortem examination. Accused made disclosure statements. In his cross-examination, he deposed that *chunni* and suicide note were lying on the bed of deceased. These were taken into possession. Initially he got registered case under Section 304-B IPC by believing the version made by complainant Krishan Lal. He picked up suicide note Ex.PH from the spot in the presence of the complainant.

15. PW-15 Krishan Lal is complainant. He deposed that the marriage of his daughter Indu Bala was solemnized with accused Deepak on 28.07.2010. Thereafter a son was born. Accused persons started demanding Rs.1 lac from her. Thereafter accused persons continued their demand of Rs.1 lac. This fact was narrated by his daughter to him. On 03.08.2011 at about 07.30 P.M., he received a telephonic call from the neighbour of his daughter that his daughter had been killed by her in-laws. Thereafter he made telephonic call to his brother Kundan Lal., He along with his brother and other friends reached the spot. He found the dead body of his daughter lying in the *verandah* of her matrimonial house. His daughter was killed by Naresh Kumar, Deepak and Shakuntala Rani by strangulating her throat with the help of rope, due to non fulfillment of their demands. Police recorded his statement. In his cross-examination, he deposed that the marriage of his daughter and Deepak was arranged marriage. The marriage of his daughter was solemnized with the accused in Gurudwara Mata Sundari situtaed at Kansapur Road, Shivpuri Colony, Yamuna Nagar. He called the police. Police reached the spot after about half an hour, i.e. about

8.10 P.M. *Chunni* and suicide note were not taken into possession by the police. However, he was present at that time outside the room. He was recalled for further cross-examination. He deposed that he was present in *fera (lawan)* ceremony of his daughter.

16. PW-16 Kundan Lal has deposed that his niece Indu Bala was married with accused Deepak on 28.07.2010 as per Hindu rites. Accused persons used to demand dowry from his niece. They used to maltreat and torture his niece. This fact was told to him by his brother. His brother gave telephonic message to him at about 7.30 P.M. on the same day of incident. He along with his brother reached at the spot. He saw the dead body of Indu Bala lying in the *verandah* of her matrimonial house.

17. PW-17 Krishan Lal has deposed that marriage of Indu Bala was performed with Deepak. Accused persons were demanding Rs.1 lac as dowry. This fact was disclosed by Indu Bala to him whenever she visited his home. On 03.08.2011 Indu Bala was hanged to death by accused persons for demand of dowry. He received a telephonic message at 7.30 P.M. Thereafter he reached the spot. The dead body of Indu Bala was lying in *verandah*.

18. DW-1 Harvinder Singh has only deposed about the factum of marriage.

19. The report of handwriting expert is Ex.PJ. According to her, the person who wrote red enclosed standard writings stamped and marked A1 to A23 also wrote the red enclosed questioned writings similarly stamped and marked Q1. According to FSL report Ex.PN, neither blood nor saliva/skin was detected on exhibit-1 (*chunni*).

20. The cause of death, as per post-mortem report, was asphyxia caused by hanging which was ante mortem in nature and sufficient to cause

death in ordinary course of life. It has come in the statement of complainant PW-15 Krishan Lal (father of deceased), PW-16 Kundan Lal (uncle of deceased) and PW-17 Krishan Lal that accused used to demand dowry. This fact was told to them by the deceased. A telephonic message was received on 03.08.2011 at about 7.30 P.M. that Indu Bala died. PW-15 Krishan Lal, PW-16 Kundan Lal and PW-17 Krishan Lal reached the matrimonial house of Indu Bala. They saw dead body lying in the *verandah*. Body was sent for post-mortem examination.

21. The case set up by the appellants is that deceased had committed suicide as per Ex.PH. The handwriting on Ex.PH was compared with the handwriting of diary by PW-10 Dr.Kanta Malik and the report is Ex.PJ. We have seen the suicide note Ex.PH and handwriting in the diary in vernacular. It is apparent that the handwriting of author of Ex.PH is different from handwriting in diary. In Ex.PH in vernacular it is written very close. The diary is written by giving space. Though the Court ordinarily does not doubt the veracity of the handwriting experts but since in the present case it appears from the naked eye that authors of Ex.PH and diary are different, we have no alternative but to discard the report Ex.PJ.

22. The case of the appellants is also that marriage was love marriage. The parents of deceased never participated in the marriage. The defence taken by appellants under Section 313 Cr.P.C. is that Indu Bala was insisting to visit her parental house. It was objected by her in-laws. She went under depression. It is evident from the contents of Ex.PH at the bottom (whatever is written) that she would never go back to her parental home even though she dies. We also notice that the words towards the end are also of different handwriting on Ex.PH. Thus the defence taken by the

appellants is not probablised. Even if hypothetically Ex.PH is taken into consideration, she has specifically mentioned that she would not go to the parental house even if she dies. According to the appellants, appellant Deepak was away to attend his work. Her mother was not present in the house. She had gone to the market. According to them, deceased had committed suicide. She was not even taken to hospital for treatment of depression. It is also not disclosed by them that who had brought her down from the ceiling fan and who had removed her body to *verandah*. If she had been brought down in verandah to ascertain whether she had died or not, if that was so, doctor was to be summoned or she was to be taken to hospital for treatment. The appellants neither summoned the doctor nor she was taken to hospital. The doctor had seen ligature mark on her neck of 9”. The signs of hanging are distinct from strangulation. We have seen the FSL report. According to FSL report Ex.PN, no blood or saliva /skin was detected on exhibit-1 (*chunni*). In case of hanging, there is dribbling of saliva. The neck was not elongated. It is the case where she was strangulated. She had not committed suicide as projected by the appellants. Difference between hanging and strangulation has been explained by Modi in his 'Medical Jurisprudence and Toxicology' in tabulated form as under :

	Hanging	Strangulation
1	Mostly suicidal	Mostly homicidal
2	Face-Usually pale and petechiae rare.	Face-Congested, livid and marked with petechiae.
3	Saliva-Dribbling out of the mouth down on the chin and chest.	Salvia- No such dribbling.
4	Neck-Stretched and elongated in fresh bodies.	Neck-Not so.
5	External signs of asphyxia, usually not well marked.	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).

6	Ligature mark-Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.
7	Abrasions and ecchymoses round about the edges of the ligature mark, rare.	Abrasions and ecchymoses round about the edges of the ligature mark, common.
8	Subcutaneous tissues under the mark-White, hard and glistening.	Subcutaneous tissues under the mark- Ecchymosed.
9	Injury to the muscles of the neck- Rare.	Injury to the muscles of the neck- Common.
10	Carotid arteries, internal coats ruptured in violent cases of a long drop.	Carotid arteries, internal coats ordinarily ruptured.
11	Fracture of the larynx and trachea- Very rare and may be found that too in judicial hanging.	Fracture of the larynx trachea and hyoid bone.
12	Fracture-dislocation of the cervical vertebrae-Common in judicial hanging.	Fracture-dislocation of the cervical vertebrae- Rare.
13	Scratches, abrasions and bruises on the face, neck and other parts of the body- Usually not present.	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body-Usually present.
14	No evidence of sexual assault.	Sometimes evidence of sexual assault.
15	Emphysematous bullae on the surface of the lungs-Not present.	Emphysematous bullae on the surface of the lungs-May be present.

23. Learned counsel for the appellants has vehemently argued that it is not dowry death. According to them, prosecution has not proved that there was demand of dowry immediately preceding to death of Indu Bala. The trial Court has framed charge under Section 304B IPC or in the alternative under Section 302 IPC. The charges framed against the appellants are duly proved.

24. Accordingly there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 29, 2019.
Davinder Kumar

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