

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-S-881-SB-2010

Surender and another

... Appellants

Versus

State of Haryana

... Respondent

2. CRA-D-1135-DB-2010

Rohtash

... Appellant

Versus

State of Haryana and others

... Respondents

Reserved on : 08.05.2019
Date of decision : 14.05.2019

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

Present: Mr.N.S.Shekhawat, Advocate
for the appellants in CRA-S-881-SB-2010
and for respondents No.2 to 4 in CRA-D-1135-DB-2010.

Mr.Jagjit Beniwal, Advocate
for the appellant in CRA-D-1135-DB-2010.

Mrs.Shubra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the
aforesaid appeals, therefore, these are taken up together and disposed of by
a common judgment.

2. These appeals have been instituted against the judgment and

order dated 10.03.2010 and 12.03.2010 rendered by the Additional Sessions Judge, Bhiwani, in Sessions Trial No.47 of 2008. Both the appellants in CRA-S-881-SB-2010 along with co-accused Neelam were charged with and tried for offences punishable under Sections 304-B and in the alternative under Section 302 read with Section 34 and 498-A read with Section 34 of the Indian Penal Code (in short 'IPC'). The appellants were convicted and sentenced to undergo rigorous imprisonment for a period of seven years each for offence punishable under Section 304-B IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of three years each and to pay a fine of Rs.1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days for offence punishable under Sections 498-A/34 IPC. Both the sentences were ordered to run concurrently. However, co-accused Neelam was acquitted.

3. Rohtash, father of the deceased (appellant) has filed appeal bearing No.CRA-D-1135-DB-2010 against acquittal of co-accused Neelam and for enhancement of sentence of appellants Surender and Santro.

4. The case of the prosecution, in a nutshell, is that on 14.01.2008 Ms.Payal Mittal, Judicial Magistrate Ist Class, Rohtak, had recorded the statement of Rekha wife of Surender to the effect that she was married on 06.04.2007. Her husband was serving in Army. He had come on leave. Her husband and her sister-in-law asked her to bring Rs.2 lacs otherwise she would be killed. Her brother had come to give *Sidha* of Sakrant. She was put on fire. She was not attended for 30/45 minutes. The daughter of her *bua* came on the spot. On the basis of this complaint, the case under Section 498-A/304-B/34 IPC was registered. FIR was registered. Accused Surender

was arrested. Rekha was admitted in the PGIMS, Rohtak. Investigation was completed. Challan was put up after completing all the codal formalities.

5. Prosecution examined a number of witnesses. The statement of accused were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The accused examined Mukesh as DW-1 in their defence. The appellants were convicted and sentenced as noticed hereinabove.

6. Learned counsel appearing for the appellants in CRA-S-881-SB-2010 have vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the judgment and order dated 10.03.2010 and 12.03.2010.

8. Learned counsel for the appellant Rohtash in CRA-D-1135-DB-2010 has argued that co-accused Neelam be convicted and sentenced and sentence awarded to the appellants Surender and Santro be enhanced.

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

10. PW-1 Dr.Sandhaya Gupta testified that she was posted at General Hospital, Bhiwani. She medico legally examined Rekha wife of Surender. She was semi conscious. She had suffered 100% burns. Clothes were charred and blackened. Smell of kerosene was present. Epidermis was peeled off. She advised urgent Surgeon call. She proved MLR Ex.PA. She sent ruqa Ex.PA/1 to Incharge, Police Post GH Bhiwani for information and necessary action.

11. PW-7 Dr.Viney Kumar led his evidence by filing affidavit

Ex.PF/1. He along with Dr.S.S.Malik had conducted the post-mortem examination. The cause of death was due to injuries described, i.e. extensive burns and complications thereof. All the injuries were ante-mortem in nature and sufficient to cause death in due course of life. The time between death and post-mortem examination was between 6 to 36 hours.

12. PW-2 Rohtash is father of the deceased. She testified that name of his daughter was Rekha. The marriage of Rekha was solemnized with Surender on 06.11.2006. The marriage was solemnized in a decent manner. Sufficient dowry was given. The demand of dowry was made by Surender, Bani Singh father-in-law, Santra mother-in-law, Guddi, Urmila and Neelam sisters-in-law (*nanad*). They used to demand Rs.2 lacs in cash. He assured his daughter. He and his brother Shamsher visited the house of accused. He requested the family of appellants not to raise demand of dowry as he was poor person. On 13.01.2008 his son Satish and his nephew Jogender visited the house of the accused to give *Sidha* of *Sakrant*. There was some dispute qua demand of dowry. His son and nephew requested the accused to send Rekha with them but the accused refused to send Rekha with them. They reached at the house. They disclosed the factum of dispute. They also told that there was demand of Rs.2 lacs. He discussed the matter with his brother Shamsher Singh. They received a telephonic message regarding burning of his daughter Rekha. He reached the hospital. His daughter died due to burn injuries. In his cross-examination, he deposed that Rajesh was middle man in the marriage of his daughter. The name of wife of Rajesh was Mukesh. She was daughter of his real sister. The name of his real sister was Ram Murti. The telephonic message was received at about 08.00 P.M. They

reached hospital in a private vehicle. They stayed in the PGIMS Rohtak till the death of Rekha.

13. PW-3 Satish is brother of the deceased. He had corroborated the statement of PW-2 Rohtash. He had categorically deposed that the appellant's family were raising demand of Rs.2 lacs as dowry. His father had assured that they were poor person and were not in position to give Rs.2 lacs. He along with his cousin Jogender went to the house of accused to give *Sidha* on the occasion of Sakrant. They reached at about 11.00 A.M. The accused were present in the house. There was dispute of demanding Rs.2 lacs. They requested to meet their sister. Their sister told them that accused were demanding of Rs.2 lacs. In case demand was not fulfilled, they would kill her. They requested the accused to send her with them. Accused refused. He disclosed the matter to his father. Thereafter they received message regarding burning of his sister. They reached the Civil Hospital, Bhiwani. Thereafter she was referred to PGIMS Rohtak. According to him, his sister was put on fire as they could not fulfill the demand of dowry.

14. PW-8 Ms.Payal Mittal is a material witness. She recorded the statement of Rekha under Section 164 Cr.P.C. on request made by the police. The statement is Ex.PG. She obtained certificate of doctor regarding fitness of patient during the period of making statement, i.e. Ex.PG.

15. PW-9 Miya Singh deposed that he went to the police post GH, Bhiwani and collected MLR Ex.PA of Rekha. He went to PGIMS, Rohtak. He moved application Ex.PJ before the Medical Officer, PGIMS, Rohtak. Doctor had declared Rekha fit to make statement. He had gone to the

residence of Ms. Payal Mittal, JMIC, Rohtak, and moved an application Ex.PK for recording statement of Rekha. Statement of Rekha was recorded vide Ex.PG. He made endorsement Ex.PG/1 separately after receiving statement Ex.PG. The same was sent to the police station through Constable Lilu Ram. He recorded statements of Rohtash, Satish and Joginder under Sections 161 Cr.P.C. on 14.01.2008. He interrogated accused Surender. He made disclosure statement Ex.PL. Site plan Ex.PM was prepared. Surender got recovered one jerrycan and one match box. These were taken into police possession. In his cross-examination, he deposed that the Magistrate reduced into writing statement of Rekha within 15 minutes. The persons from in-laws side and also from the parents were present near Smt. Rekha.

16. DW-1 Mukesh had deposed that the deceased was daughter of her real maternal uncle Rohtash. She was married to Surender. She used to meet Rekha daily. About 2 years ago, she was present in her house. She heard the noise from the house of accused. She went there. She found Rekha lying in burnt condition. None was present in the house of accused at that time and Surender was away to some house in the street. Santro was in her house at that time to deliver her the fruits and sweets. They went to the house of Surender. Surender extinguished the fire by his hands. He also received burn injuries. She and other family members of accused took Rekha to the General Hospital, Bhiwani. Thereafter she was referred to PGIMS, Rohtak. In her cross-examination, she categorically admitted that one day prior to Sakrant, Satish and Jogender had come to house of the accused with certain gifts to deliver Rekha.

17. PW-2 Rohtash and PW-3 Satish have proved that the appellants

used to demand dowry from the deceased. Satish, brother of deceased, along with his cousin had visited the matrimonial home of Rekha on 13.01.2008. Rekha told that the appellants were demanding dowry. PW-3 Satish asked the accused to permit her sister to go with them. Their request was turned down. This incident was narrated by PW-3 Satish to his father PW-2 Rohtash. In the evening they received a telephonic message about burn injuries received by Rekha. She was initially taken to General Hospital, Bhiwani and thereafter she was referred to PGIMS, Rohtak. The police visited the hospital. PW-9 Miya Singh submitted an application before the doctor whether Rekha was fit to make statement. He certified the same. Thereafter he went to the house of PW-8 Ms. Payal Mittal, JMIC, Rohtak. She accompanied him. Statement of Rekha was recorded under Section 164 Cr.P.C. after completing all the codal formalities. The statement is Ex.PG. In the statement, Rekha had categorically deposed that her in-laws family members were demanding dowry. According to PW-1 Dr. Sandhya Gupta, deceased Rekha had received 100% burn injuries. The cause of death was extensive burns and complications thereof. All the injuries were ante-mortem in nature and sufficient to cause death in due course of life. PW-1 Dr. Sandhya Gupta has categorically stated in her examination-in-chief that clothes were charred and blackened. Smell of kerosene was present. The time between death and post-mortem examination was between 6 to 36 hours. Rekha died on 20.01.2008. Statement of DW-1 Mukesh does not inspire confidence. Initially she had stated that nobody was present in the house. Thereafter she stated that Surrender extinguished the fire. It is not believable that nobody was present in the house when Rekha was put on

fire. Nobody had attended her about 30/45 minutes. She was not taken to the hospital by her husband. She was taken to the hospital by her brother-in-law. The appellants had caused cruelty and harassment to Rekha for bringing insufficient dowry. The demand of dowry was raised immediately before the death. The doctor had given certificate on Ex.PJ that patient was fit to make statement. The dying declaration is corroborated by PW-2 Rohtash and PW-3 Satish. Rekha was apprehensive that if the demand was not made she would be killed. This fact has been disclosed by her brother to her father. Neelam has been given benefit of doubt.

18. Accordingly there is no merit in the appeal bearing No.CRA-S-881-SB-2010 filed by Surender and Santro and the same is dismissed.

19. The learned trial Court has correctly appreciated oral as well as documentary evidence while acquitting accused Neelam. The sentence imposed upon respondents No.2 & 3 is sufficient in view of the facts and circumstances of the case.

20. Accordingly there is no merit in the appeal filed by Rohtas (CRA-D-1135-DB-2010) and the same is also dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 14, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No