

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

CRA-D-646-DB of 2003

Reserved on : 01.07.2019

Date of decision : 03.07.2019

Harish alias Devi Parshad and another

.... Appellants

Versus

State of Haryana

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sunil Panwar, Advocate,
for the appellants.

Mr. Gagandeep Singh Wasu, Addl. A.G., Haryana.

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RAJIV SHARMA, J.

1. This appeal is instituted against judgment dated 10.06.2003 and order dated 11.06.2003, rendered by learned Sessions Judge, Gurgaon, in Sessions Case No. 25 of 21.12.1999, whereby appellants Harish alias Devi Parshad and Vidya Devi, who were charged with and tried for the offences punishable under Sections 304-B and 498-A IPC, were convicted and sentenced to undergo imprisonment for life for offence under Section 304-B IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹ 5,000/- each,

and in default of payment of fine, to further undergo rigorous imprisonment for six months each, for offence under Section 498-A IPC. Co-accused Durga Parshad died during the pendency of trial. The substantive sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that Madhu Bala daughter of PW.8 Lal Singh was married to accused Harish on 15.01.1996. Sufficient dowry was given at the time of the marriage. However, after about one year of the solemnisation of marriage, the accused raised new demand of dowry. They demanded a moped and refrigerator. The demand was also raised by them from Madhu Bala, about 3-4 months prior to her death. She brought this fact to the notice of members of her family. PW.7 Parmod, brother of Madhu Bala, and his father Lal Singh (PW.8) went to the accused a number of times in order to persuade them not to insist on the fulfillment of the dowry demand. PW.7 Parmod received information on 14.08.1999 at about 11.30 AM that Madhu Bala had met with an accident. He rushed to the house of the accused. He saw Madhu Bala lying dead on the first floor of the house in burnt condition. He informed his parents, who reached there. Thereafter, he left his parents at the spot and left for the police station. He met the police at Bawla Chowk, Tauru. He made statement Ex.PF before PW.9 SI Amar Nath. FIR Ex.PE was registered. The rough site plan Ex.PM was prepared by SI Amar Nath. The inquest report Ex.PB was prepared. The body was sent for post mortem examination. PW.1 Dr. Bhavnish Arora conducted the post mortem examination on the body of the deceased. According to his opinion, the death was on account of asphyxia and shock due to burns which were sufficient to cause death in the

ordinary course of nature. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The appellants were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated. They examined three witnesses in support of their defence.

4. The appellants were convicted and sentenced, as noticed herein-above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against his clients. Learned counsel appearing on behalf of the State has supported the judgment and order of the learned Court below.

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

7. PW.1 Dr. Bhavnish Arora conducted the post mortem examination on 15.08.1999. He noticed the following injuries on the body of the deceased :-

- (1) Deep burns present over the face and neck with hair over the head completely burnt and hair over the occipital and temporal part singed over the occipital part and over the temporal regions. Deposition of carbonaceous material in the hair.
- (2) Deep burns over anterior side chest and abdomen, with a slight area over left shoulder under a whitish steep spared i.e. 18%.
- (3) Deep burns over the back except a small patch over left scapular region spared where bright red post mortem staining was appreciable.

- (4) Deep burns over both the forearms, the skin was completely charred with gross destruction of subcutaneous tissue and muscles. The anterior part of right arm was slightly spared and showed (marbling of veins, the interior part of left arm) second degree burns and posterior part of arms and forearms both sides showed deep burns.
- (5) Deep burns over the perineum.
- (6) Deep burns over the anterior side left leg and thigh.
- (7) Deep burns over the posterior side left leg and thigh.
- (8) Deep burns over anterior side right leg and thigh but dorsum of right foot was spared and also contained lower border of salwar maroonish printed un-burnt.
- (9) Deep burns over the posterior side right leg and thigh, sole of right foot was slightly spared.

Total burns were 99 percent. These were spread over the entire body. In his opinion, the cause of death was asphyxia and shock due to burns, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. He proved the post mortem report Ex.PA. The duration between injuries and death was within few minutes and between death and post-mortem was within 12 to 24 hours.

8. PW.7 Parmod is the material witness. According to him, deceased Madhu Bala was his sister. She was married with Harish on 15.01.1996 according to Hindu rites. She gave birth to one son. After one year of the marriage, his sister was harassed on account of bringing insufficient dowry. She was harassed by her husband Harish, mother-in-law Vidya Devi and father-in-law Durga Parshad. He had visited the house of the accused many times to persuade them not to demand more dowry. 3-4 months prior to death of Madhu Bala, all the accused demanded refrigerator

and moped. Madhu Bala told them about this demand. They were unable to meet the demand. On 14.08.1999 at about 11.30 AM, he received information in the factory that his sister had met with an accident. He went to the house of the accused. He saw that his sister was lying dead in burnt condition on the first floor of the house. He informed his parents and left them at the spot. He went to the police station to lodge the report. His statement is Ex.PF. In his cross-examination, he deposed that he had not reported the matter to the police when the accused started harassing Madhu Bala after one year of the marriage. He had also not lodged any report with regard to demand of refrigerator and moped. The matter was also not brought to the notice of the Panchayat. On the first floor of the house of the accused, there were two rooms, one kitchen and one tin shed. On the ground floor, there were four rooms, kitchen and one tin shed. His sister and Harish used to stay on the first floor. Volunteered, the kitchen was common. He had taken a buffalo on credit from one Islam, few days earlier to the incident.

9. PW.8 Lal Singh corroborated the statement of PW.7 Parmod. He testified that on 14.08.1999, his son Parmod had informed him about the death of Madhu Bala. He along with his wife and other villagers went to the house of the accused. In his cross-examination, he deposed that he had visited the house of the accused 15 days and one month prior to the day of occurrence, in order to persuade the accused. He had started visiting the house of the accused three months prior to the date of occurrence.

10. PW.9 Amar Nath deposed that PW.7 Parmod had made statement Ex.PF before him, on the basis of which FIR was registered. He

visited the spot and prepared inquest report Ex.PB. He recorded statements of the witnesses. Accused Harish was arrested on 20.08.1999 and Vidya Devi was arrested on 01.09.1999. In his cross-examination, he admitted that during investigation, it came to his notice that the door was opened from outside as it was slightly hooked from inside. He denied the suggestion that during investigation, it transpired that there was no demand of dowry.

11. DW.1 Manak Chand deposed that Durga Parshad had applied for ration card on 04.10.1998. Ration card was supplied to him. It comprised three units, namely Durga Parshad, Vidyawati and Ambika Parshad. However, in cross-examination, he could not disclose the date on which the ration cards were issued.

12. DW.2 Islam testified that Lal Singh was known to him. One month prior to the death of Madhu Bala, she along with Devi Parshad came to him and bought a buffalo for her father Lal Singh for ₹ 10,000/-. No payment was made. He asked Madhu Bala but she said that she could not arrange the money.

13. DW.3 Sanjeev proved cash memo Ex.DX. However, in his cross-examination, he deposed that Ex.DX did not bear any stamp. It was only signed by him.

14. The marriage between appellant Harish and Madhu Bala was solemnised on 15.01.1996. It has come in the statement of PW.7 Parmod that the appellants had started harassing and maltreating his sister Madhu Bala to bring more dowry. They had already given sufficient dowry. He was informed about the death of his sister on 14.08.1999. He went to the police station and his statement was recorded vide Ex.PF. PW.8 Lal Singh is the

father of the deceased. He has corroborated the statement of PW.7 Parmod. The post mortem report is Ex.PA. As per the statement of PW.1 Dr. Bhavnish Arora, the cause of death was asphyxia and shock due to burns, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. The duration between injuries and death was within few minutes and between death and post-mortem was within 12 to 24 hours. He had noticed many burn injuries on the body of the deceased. Burns were to the extent of 99 percent. As per the Forensic Science Laboratory, Haryana, report Ex.PN, kerosene residues were detected in exhibit-1, i.e. some burnt and partially burnt pieces of clothes comprising of a brown coloured lady's 'salwar', a green coloured 'chunni' and an 'underwear' stated to be clothes of deceased Madhubala.

15. Learned counsel appearing on behalf of the appellants has argued that the deceased was under depression, since her family could not pay a sum of ₹ 10,000/- to DW.2 Islam, from whom a buffalo was bought. We have gone through the statement of DW.2 Islam. There was no occasion for Madhu Bala to visit Islam to buy buffalo. PW.7 Parmod has admitted in his cross-examination that a buffalo was purchased from Islam on credit, but he has denied the suggestion that Islam used to demand money and he had refused. He voluntarily stated that some amount was already paid by his father and remaining was to be paid in instalments.

16. The appellants have not placed on record any medical evidence that deceased Madhu Bala was suffering from any ailment and she was under treatment.

17. Learned counsel appearing on behalf of the appellants has also

argued that the appellants' family was living separately. He has relied upon the statement of DW.1 Manak Chand. In his cross-examination, DW.1 Manak Chand could not give the date when the ration cards were issued.

18. The appellants were not present at the time, when the dead body was identified. They were also not present at the time of post mortem examination. This conduct of the appellants was unusual. The death had occurred in the house of the appellants and they have to explain the circumstances which were within their specific knowledge, under Section 106 of the Indian Evidence Act. The age of the son of the deceased was two years. Thus, there was no occasion for her to commit suicide. According to the inquest report Ex.PB also, the dead body was identified by Lal Singh and Lakhi Ram. Appellant Harish was arrested on 20.08.1999 and appellant Vidya Devi was arrested on 01.09.1999. They were also not present at the time of post mortem examination. In case, they were innocent, they should not have fled from the house. It has come on record that there was constant demand of dowry by the appellants, three-four months prior to the occurrence. The family members of the deceased used to visit the house of the appellants to persuade them not to raise demand of dowry. The deceased was only 20-21 years old. The appellants were residing in the same house. Thus, it is not a case of suicide, as argued by learned counsel appearing on behalf of the appellants. There is no merit in the contention of learned counsel for the appellants that door was broken, since it was slightly hooked from inside. In case, Madhu Bala wanted to commit suicide, she would have properly locked the door from inside. She was tortured immediately before her death on account of inability of her family members to fulfill the dowry

demand raised by the appellants. The death has occurred within seven years of the marriage. The deceased was being harassed by the appellants with a view to force her to meet their unlawful demand of dowry.

19. Accordingly, the prosecution has proved its case against the appellants beyond reasonable doubt. There is no merit in this appeal and same is dismissed. Appellants Harish alias Devi Parshad and Vidya Devi are on bail. Their bail bonds and surety bonds are cancelled. They are directed to surrender before the concerned Chief Judicial Magistrate forthwith to undergo remaining part of their sentence.

(**RAJIV SHARMA**)
JUDGE

July 03, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes