

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

CRA-D-53-DB of 2007

Reserved on : 27.02.2020

Date of decision : 17.03.2020

Anil 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. J.S. Bedi, Senior Advocate, with
Mr. Sunil Sihag, Advocate,
for the appellants.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 06.01.2007 and order dated 08.01.2007, rendered by learned Additional Sessions Judge (I), Bhiwani, in Sessions Trial No. 101 of 2005 dated 19.08.2005. Appellants Anil Kumar and Bala Devi were charged with and tried for the offences punishable under Sections 498-A and 304-B of the Indian Penal Code (for short, 'IPC'), both read with Section 34 IPC. In the alternative, they were also charged with and tried for the offence punishable under

Section 302 read with Section 34 IPC. The appellants were convicted and sentenced to undergo imprisonment for life under Section 302 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹ 5,000/- (Rupees Five Thousand) under Section 498-A IPC, and in default of payment of fine to undergo further rigorous imprisonment for a period of nine months. Both the sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that Umed Singh had lodged the report Ex.P1 on 15.04.2005 to the effect that he had two sons and one daughter, namely Sunil, aged 23 years. She was married with Anil on 09.07.2000. According to him, he had given sufficient dowry. However, the in-laws of his daughter were not satisfied with the dowry. They used to demand more dowry. His daughter made a telephone call on 21.03.2005 and called him. He sent his son Ravinder to village Ghasola. Ravinder came back and told that they were demanding ₹ 50,000/-. On 15.04.2005, he was informed that his daughter had hanged herself. He and his son Ravinder as well as respectable persons of village Ghasola went there. His daughter was lying on the bed. His daughter was harassed for bringing insufficient dowry. She was killed by her in-laws. The police visited the spot and prepared the inquest report. The dead body was sent for post-mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

3. It would be necessary at this stage to take note of the fact that during the examination of PW.1 Umed Singh on 28.11.2005, the prosecution moved an application under Section 319 Cr.P.C. for summoning

of Rambir to face trial with two co-accused. The application was dismissed on 01.12.2005. The prosecution examined as many as five witnesses and four more PWs on 19.05.2006, including complainant Umed Singh as PW.8, despite his examination-in-chief having been concluded on 28.11.2005 as PW.1. When Umed Singh was re-examined as PW.8 on 19.05.2006, he did not support the case of the prosecution. The learned trial court passed the following order on 19.05.2006 :-

“Present : Shri Nirmal Parkash, PP for the State
assisted by Shri Bijender Singh Advocate
for the complainant.

Accused Anil in custody and accused Bala Devi
on bail with their counsel Shri Mahavir
Singh, Advocate.

While taking up the case after lunch break, it has transpired that complainant Umed who has today been examined as PW.8 already stood examined as PW.1 on 28.11.2005 on which date during his examination-in-chief he had fully supported the prosecution case. His examination-in-chief could not, therefore, have been recorded again today and only his cross-examination which stood deferred vide order dated 28.11.2005 could have been recorded in view of an application under Section 319 Cr.P.C having been moved by the learned Public Prosecutor for summoning accused Rambir who had earlier been placed in column No.2 by the police during the investigation of the case. The said application was dismissed by my learned predecessor vide his order dated 1.12.2005 and for this reason also there was no occasion for recording fresh examination-in-chief of this witness and only his cross-examination should have been completed. In this view of the matter, the application moved by the learned Public Prosecutor for being permitted to examine the

remaining PWs stands allowed and the remaining PWs are thus ordered to be summoned for 4.8.2006.

Sd/-
Addl. Sessions Judge,
Bhiwani 19.5.2006”

The prosecution thereafter examined the remaining witnesses in support of its case.

4. We are also of the view that once the application under Section 319 Cr.P.C. for summoning Rambir was dismissed, there was no occasion for the trial court to re-examine PW.1 Umed Singh as PW.8. We uphold the order of the learned trial court passed on 19.05.2006.

5. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. They also examined two witnesses in their defence. They were convicted and sentenced, as noticed here-in-above. Hence, this appeal.

6. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment of conviction and order of sentence passed by the learned trial court.

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

8. PW.1 Umed Singh deposed that his daughter Smt. Sunil was married with Anil on 09.07.2000, according to Hindu rites and ceremonies. Sufficient dowry was given in the marriage. Accused used to harass his daughter for bringing insufficient dowry. They used to ask for motor-cycle. In the month of November, 2004, he had sent a sum of ₹ 20,000/- through his son Ravinder to the in-laws of Smt. Sunil. However, they were still

harassing her. On 21.03.2005, his daughter sent a message to him that the accused were still harassing her for the demand of dowry. He again sent his son Ravinder to village Ghasola. His son came back and told him that the accused were demanding ₹ 50,000/- in cash. He telephonically informed the accused that he will send ₹ 50,000/- to them after harvesting the crops. On 15.04.2005, four persons of village Ghasola came to him and told that his daughter had committed suicide by hanging herself. He went to the matrimonial house of his daughter. He saw that the dead body of his daughter was lying on a bed. He reported the matter to the police thinking that she had committed suicide due to harassment.

9. PW.5 ASI Kanwar Singh deposed that both the accused had surrendered in the Court on 23.04.2005. After taking permission from the Court, they were interrogated by SI Kuldeep Singh. They made disclosure statements Ex.P5 and Ex.P6, on the basis of which, dowry articles were taken into possession vide recovery memo Ex.P7.

10. PW.6 Kanwar Pal Singh, Draftsman, prepared the scaled site plan Ex.P8.

11. PW.7 Kuldeep Singh SI deposed that accused Anil and Bala Devi had surrendered in the court at Dadri on 23.04.2005. He moved an application in the court to join them in the investigation. They made disclosure statements Ex.P5 and Ex.P6. They were arrested. Dowry articles were taken into possession.

12. Statement of PW.1 Umed Singh was again recorded on 19.05.2006 as PW.8, which is required to be ignored, in view of rejection of an application under Section 319 Cr.P.C. preferred by the prosecution for

summoning Rambir as co-accused. Statement of PW.1 Umed Singh was recorded on 28.11.2005 and there was no occasion for the trial court to again record his statement after the dismissal of application under Section 319 Cr.P.C., on 19.05.2006.

13. PW.9 Ravinder testified that his sister Sunil was married with Anil on 09.07.2000. The accused did not demand any dowry. His sister was not subjected to cruelty by the accused. He was declared hostile and was cross-examined by the learned Public Prosecutor. He denied the contents of his statement Ex.P9. He also denied that he had visited his sister's house on 21.03.2005. He was confronted with portion A to A1 of his statement Ex.P9, wherein it was so recorded. He also denied the suggestion that his father made a telephonic message to the accused persons that they would send the money. He was confronted with portion B to B1 of his statement Ex.P9, wherein it was so recorded. In his cross-examination by the learned defence counsel, he deposed that Anil was serving in the Army. He had come on leave and had to join his duties on the next day of the occurrence.

14. PW.10 Ram Kumar deposed that marriage of Sunil was solemnized on 09.07.2000 with Anil. Sufficient dowry was given. The accused persons never demanded any dowry and never harassed Sunil. He was also declared hostile and was cross-examined by the learned Public Prosecutor. He denied the contents of his statement Ex.P10. He was confronted with portion A to A of his statement Ex.P10.

15. PW.13 Vijay Kumar had taken the photographs Ex.P20 to Ex.P27.

16. PW.14 Raghbir Singh deposed that Sunil deceased was wife of

son of his brother-in-law. The dowry articles were recovered by the police in his presence vide recovery memo Ex.P7.

17. PW.15 SI Rajesh Kumar deposed that he was posted as SHO at Police Station Sadar Dadri on 15.04.2005. Complainant Umed Singh met him at Bus Stand of village Ram Nagar. He recorded his statement Ex.P1, which led to registration of FIR Ex.P2. He visited the place of occurrence. He completed the inquest proceedings. He sent the dead body to General Hospital Dadri along with application Ex.P17 for post-mortem examination. He also prepared rough site plan Ex.P37 with correct marginal notes. He had taken into possession one rope from the place of occurrence, which was taken into possession vide memo Ex.P38. In his cross-examination, he deposed that he had recorded the statements under Section 174 Cr.P.C and also under Section 161 Cr.P.C. He reached the spot at about 6.45 PM. Many persons of the village of complainant Umed had gathered there. The accused were not present there.

18. PW.11 Dr. S.K. Dhatarwal conducted the post-mortem examination on 16.04.2005. He noticed a ligature mark. He found following injuries on the body of the deceased :-

- “1. There was a reddish brown contused abrasion of size 7 x 3 cm on right side of face, 3 cm below right pinna with ecchymosis.
2. There was a reddish brown contused abrasion of size 5 x 2 cm on center of chin with underlying ecchymosis.
3. There was a reddish brown contused abrasion of size 3 x 1 cm on left side of forehead, 2 cm below eye brow with ecchymosis.

4. There was a reddish brown contused abrasion of size 5 x 2 cm on left side of face, 3 cm above angle of mouth with underlying ecchymosis.”

The cause of death, in his opinion, was strangulation by ligature.

19. DW.1 Nafe Singh deposed that his house was at a distance of 5-6 houses from the house of accused Anil. Anil accused owned a tractor. On 15.06.2005 at about 6.00 AM, he had gone to the house of the accused for transporting the cattle fodder from his fields to his house by the tractor of the accused. When he entered the house of the accused, he saw the wife of Anil hanging with a rope. Bijender was with him at that time. Thereafter, he raised alarm addressing the mother of Anil and Anil accused. Anil came from the *chobara* of his house. He and Bijender untied the rope and put the deceased on a bed.

20. DW.2 Bijender testified that the house of accused Anil was 100 yards away from his house. On 15.06.2005 at about 6.00 AM, he was passing in front of the house of accused Anil. Nafe Singh met him. He and Nafe Singh entered the house of accused Anil. They saw that wife of Anil was hanging with the help of a rope. Nafe Singh raised alarm. Both the accused came. They untied the rope and put the deceased on a bed.

21. The column No.4 of the inquest report Ex.P18 was signed by Umed Singh and his son Ravinder. The Chemical Examiner report is Ex.P19. According to it, poison was not detected in the exhibits.

22. The dead body was recovered from the house of the appellants. They have to explain the circumstances, in which Smt. Sunil died. It is not a case of hanging. PW.11 Dr. S.K. Dhattarwal categorically opined that the cause of death was strangulation by ligature. He had noticed ligature marks.

PW.1 Umed Singh is father of the deceased. He categorically deposed that the appellants used to ask for dowry. In the month of November, 2004, he had sent a sum of ₹ 20,000/- through his son Ravinder and assured the appellants to send ₹ 50,000/- after harvesting the crops. The appellants had made disclosure statements Ex.P5 and Ex.P6, on the basis of which dowry articles were recovered. PW.9 Ravinder and PW.10 Ram Kumar did not support the case of the prosecution, when they appeared in the court. However, in their statements made before the police vide Ex.P9 and Ex.P10, they had deposed the manner in which the appellants were harassing the deceased.

23. Statements of DW.1 Nafe Singh and DW.2 Bijender do not inspire confidence. There was no occasion for Nafe Singh to take the tractor of the appellants for transporting the cattle fodder. According to both of them, they had untied the rope. The death has been caused by strangulation and not by hanging. Appellant Anil Kumar in his statement under Section 313 Cr.P.C. deposed that he was serving in CISF and was posted at Farka. He was sleeping with his wife on the first floor of his house in a room. She came down and hanged herself with a rope. When his mother saw her in hanging posture, she started crying. He came down. The neighbours also gathered. They removed the rope and put the deceased on a sofa. The defence taken by appellant Bala Devi was that her son was sleeping with his wife on the first floor. She came down and hanged herself. She raised alarm, when she saw her hanging. Her son came down. The neighbours came. The parents of her daughter-in-law were informed. They had cut and transported the grain crop. Due to that reason, her daughter-in-law received some

abrasions on her face. DW.1 Nafe Singh and DW.2 Bijender testified that they entered the house of the appellants and saw the wife of Anil hanging with a rope. They raised alarm. Then the appellants came there. The version of the appellants is contrary to the evidence brought on record by the prosecution.

24. PW.15 SI Rajesh Kumar, the Investigating Officer, categorically deposed that when he visited the house of the appellants, the appellants were not present in the house. In normal circumstances, they were supposed to be at home. In case, Smt. Sunil had hung herself, the police should have been informed. The statement of Umed Singh, recorded on 19.05.2006, could not be taken into consideration, since his examination-in-chief had earlier been concluded on 28.11.2005. Even if his statement recorded on 19.05.2006 is considered, he deposed that his daughter had died due to illness, but the fact of the matter is that as per the statement of PW.11 Dr. S.K. Dhattarwal, she had died due to strangulation. The doctor had noticed following ligature mark on her body :-

“There was a transverse ligature mark on neck completely encircling it, 1.5 cm wide, situated at level of thyroid cartilage 5 cm below centre of chin in front, 3 cm below angle of mandible on right side, 3.5 cm below angle of mandible on left side and 8 cm below occipital protuberance on back, mark was reddish brown in colour, underlying tissues showed ecchymosis and cartilages were fractured.”

In his cross-examination, PW.11 Dr. S.K. Dhattarwal, categorically deposed that the death was due to strangulation and not due to hanging. He also deposed that the abrasions were not possible by household pursuits.

25. The dead body was lying in the house for more than 12 hours,

but no information was sent to the police. It was for the appellants to explain the circumstances of death of Smt. Sunil in their house, as required under Section 106 of the Indian Evidence Act.

26. The prosecution has proved its case against the appellants beyond reasonable doubt. There is no reason for us to interfere with the well reasoned judgment of the learned trial court.

27. Accordingly, the appeal is dismissed. The conviction and sentence of appellants Anil Kumar and Bala Devi are upheld. They are on bail. Their bail bonds and surety bonds are cancelled. They are directed to surrender before the concerned Chief Judicial Magistrate to undergo remaining part of their sentences.

(**RAJIV SHARMA**)
JUDGE

March 17, 2020
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No