

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: 13.04.2023

Date of decision: 19.04.2023

1. CRA-AD-67-2021

Nishu

...Appellant

Versus

Manish Mathur & ors.

...Respondents

2. CRA-AD-30-2022

Dharambir

...Appellant

Versus

Manish Mathur & anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present : Mr. Satyendra Chauhan, Advocate, for
Mr. P.S. Khurana, Advocate,
for the appellant.

SUKHVINDER KAUR J.

1. This order shall dispose of two appeals i.e. CRA-AD-67-2021 and CRA-AD-30-2022. Both of these appeals have arisen out of the judgment dated 13.01.2021 passed by learned Additional Sessions Judge, Sonipat, in Session Trial No.289 of 2019, pertaining to FIR No.715, dated 26.12.2018, registered under Sections 304-B, 498-A read with Section 34 IPC at Police Station Sadar, Sonipat.

2. The facts as per record are that a complaint Ex.PW9/A was moved at instance of Dharambir to the Superintendent of Police, Sonipat, disclosing therein that he had two daughters namely Kajal and Nishu, who were married with Manish and Parveen respectively on 16.04.2017. At the

time of the marriage, he gave sufficient dowry articles beyond his capacity. But even then their husbands and mother-in-law Krishna were not satisfied with the dowry articles. They used to taunt his daughters by saying that they had come from a poor family and they did not bring sufficient dowry. Their grand maternal mother used to ask to treat Kajal and Nishu with cruelty to pressurize them to bring more dowry. His daughters had disclosed regarding this demand of dowry to him several times and panchayat was also convened in this regard. He also tried to make the accused understand that he was not having the capacity to give motor cycle. On 14/15.10.2018, the accused gave merciless beatings to Kajal and Nishu. Kajal was given injuries by Manish and Parveen on her private parts. Kajal was caught hold by hair by Krishna, who threw her on the ground. They had also given beatings to Nishu. After 2-3 days, due to inflicting of these injuries, the condition of Kajal deteriorated and she was brought to hospital at Gohana where she gave birth to a child. After delivery, her condition further deteriorated and then she was brought to PGI Khanpur where Kajal expired. Kajal had died due to inflicting of injuries by the accused. After 5-6 days, Nishu also gave birth to a child and returned to her parental home. It was prayed that action be taken against the accused persons.

3. On the basis of this information, police proceedings Ex.PW13/B were recorded and report was sent to the police station on the basis of which a formal FIR No. 715, dated 26.12.2018, under Sections 304-B, 498-A read with Section 34 IPC at Police Station Sadar, Sonipat, was registered against the accused person.

4. Thereafter, investigating officer visited Bhagat Phool Singh Government Medical College, Khanpur, on receipt of information and

collected death rukka Ex.PW1/A. The complainant met him, who moved an application Ex.PW1/B. The investigating officer recorded the police proceedings Ex.PW1/C on the application and prepared inquest report Ex.PW1/E. The Investigating officer moved the application Ex.PW1/F for getting conducting the post mortem. The investigating officer ASI Subhash collected the inquest proceedings under Section 174 Cr.P.C Ex.PW1/E. Rough site plan Ex.PW15/B was prepared. On 16.03.2019, accused Manish was arrested and he made his disclosure statement Ex.PW1/A. In pursuance to the same, he got the place of occurrence demarcated as per memo Ex.PW15/C. On 01.04.2019, the accused Vinod was also arrested, who suffered disclosure statement Ex.PW12/A. On 04.04.2019, accused Omvati was also arrested and she also suffered the disclosure statement Ex.PW2/A. Statements of the witnesses were recorded and after completion of investigation, report under Section 173 Cr.P.C was filed in the Court.

5. Copies of final report under Section 173 Cr.P.C along with accompanying documents were supplied free of costs as envisaged under Section 207 Cr.P.C and thereafter, the case was committed to the Court of Sessions.

6. On finding prima facie case against the accused, they were chargesheeted under Sections 304-B, 498-A IPC and in the alternate charge under Section 302 IPC read with Section 34 IPC to which they pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution examined PW-1 ASI Sunil Kumar, who has deposed regarding receipt of death rukka Ex.PW1/A from PGIMS, Khanpur. He had also recorded the police proceedings Ex.PW1/C over the application Ex.PW1/B, moved by Dharambir. He has

also deposed that he has prepared inquest report Ex.PW1/E, got the post-mortem conducted on dead body of Kajal and after conducting post mortem, the report Ex.PW1/G along with case property was collected.

8. PW2 ASI Darshana deposed that on 04.04.2019 ASI Subhash interrogated the accused Omvati in her presence, who suffered disclosure statement Ex.PW2/A.

9. PW3 Dr. Vijay Kaushik is a formal witness, who deposed that on 17.10.2018, he had issued verification letter Ex.PW3/A regarding verification of BAMS degree of Dr. Anita and has proved copy of degree Ex.PW3/B.

10. PW-4 Dr. Anita has deposed that on 17.10.2018 at about 10.00 PM, Kajal wife of Manish Mathur, R/o Kakroi was brought by her parents in her hospital. At that time, she was having pregnancy of nine months with complaint of vomiting. At about 12.30 A.M (night) she gave birth to a baby girl through normal delivery. She was feeling weakness at that time. She had referred the patient to BPS, GMC Khanpur due to continuous bleeding and proved the referral certificate Ex.PW4/B.

11. PW-5 Dr. Vijayata deposed that on 18.10.2018 at about 11.45 A.M, Kajal wife of Manish reported as a referred case, from Sajni Hospital, Gohana, after delivery of female baby at 12.30 AM through normal delivery, in shock, due to excessive bleeding per vaginum during delivery. On her examination large wound hematoma 5X6 cm in left vaginal wall at the site of episiotomy was noticed, stitches were removed and one fist of clot was removed. Suddenly she developed one episode of generalized tonic clonic seizures with frothing mouth. She was resuscitated but could not survive despite best efforts. She was declared dead at 12.53

PM. She proved the treatment record of Kajal wife of Manish as Ex.PW5/A.

12. PW-6 ASI Balraj, PW-7 Ct. Rajbir SPO and PW-8 Constable Krishan Kumar are formal witnesses, who have tendered in their evidence their affidavits Ex.PW6/A, Ex.PW7/A and Ex.PW8/A regarding non-tempering of the case property during the period the same remained in their possession.

13. PW-9 Dharambir has deposed as per the facts enumerated in complaint Ex.PW9/A.

14. PW-10 Nishu daughter of Dharambir has also corroborated his statement and has deposed on similar lines.

15. PW-11 ASI Jaiveer Singh has deposed that on 16.03.2019 ASI Subhash interrogated accused Munish Mathur, who had suffered disclosure statement Ex.PW11/A and got demarcated the place of occurrence as per demarcation memo Ex.PW11/B.

16. PW-13 ASI Satpal deposed that on 26.12.2018, the complainant Dharambir came to the police station and moved an application Ex.PW9/A on the basis of which he registered the FIR Ex.PW13/A and made his endorsement Ex.PW13/B.

17. PW-14 Inspector Wazir Singh has deposed regarding preparation of final report under Section 173 Cr.P.C against the accused.

18. PW-15 ASI Subhash deposed that on 26.12.2018, when the investigation of the case was entrusted to him, he collected the inquest proceedings under Section 174 Cr.P.C. Ex.PW1/E of deceased Kajal, from ASI Sunil and other relevant documents were also taken into police possession, as per memo Ex.PW1/H. He also got verified degree of Dr.

Anita, who was running Sajni Hospital, Gohana, which was found to be genuine and in this regard the Principal issued the certificate Ex.PW3/A. Then after visiting BPS, GMC Khanpur, he collected the relevant documents regarding the treatment of Kajal and Dr. Vijayata Sangwan made her report Ex.PW15/A. He has also deposed regarding the other investigation proceedings.

19. PW-16 Dr. Pawan Mittal has deposed that he along with Dr. Manoj Somani conducted the post mortem of dead body of Kajal on the police application and then prepared the post mortem report Ex.PW1/G. After the perusal of the chemical examination Ex.Px and Histopathology report Ex.Py, he has stated that cause of death of Kajal in this case was blunt trauma to the genitalia, causing excessive blood loss and shock during delivery, which was ante mortem in nature. The trauma is sufficient to cause death in ordinary course of nature.

20. After closing of the prosecution evidence, the statements of accused under Section 313 Cr.P.C were recorded in which they pleaded their false implication.

21. In the defence evidence, the counsel for accused tendered the document Ex.DW-1/A.

22. After concluding the trial, trial court acquitted the accused persons.

23. Aggrieved by the said decision, Nishu has preferred appeal bearing CRA-AD No.67 of 2021 and Dharambir has filed CRA-AD No.30 of 2022, against the judgment of the acquittal of the accused persons.

24. We have heard learned counsel for the appellants and have also perused the record.

25. Learned counsel appearing for the appellants has vehemently argued that the trial Court was swayed with the assumption that it has come in the medical evidence that it was a natural death and the prosecution has failed to prove that death of Kajal was under unnatural circumstances, which is contrary to the record as well as the evidence on record. Dr. Anita while stepping into witness box as PW-4 has stated that Kajal gave birth to a baby girl through normal delivery. He has further argued that from the testimony of doctor, who conducted the post mortem of Kajal, it is clear that there was a large wound hematoma 5x6 cm in left vaginal wall and stitches were removed and one fist of the clot was removed. So from the prosecution evidence, it is duly proved on record that cruelty and harassment was suffered by the deceased Kajal at the hands of the accused persons for demand of dowry. Death of the Kajal was in unnatural manner and it had occurred at the matrimonial house within seven years of marriage. So presumption of guilt is duly established on record against the accused which has not been rebutted by way of cogent evidence. He has also argued that from the disclosure statements of Munish and Vinod also their guilt is proved. He has contended that as the guilt of the accused has been duly proved on record so they may be convicted as per law and the present appeal may be accepted.

26. It is well settled law that while hearing appeals against acquittal, the judgments of acquittal should not be interfered with lightly and Courts have to be extremely careful while hearing such appeals. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319**, the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that

of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is re-enforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of “caution” was also added by the Hon’ble Apex Court that the paramount consideration of the Court was to do substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence.

27. In the instant case, the accused have been chargesheeted under Sections 498-A and 304-B IPC. So it was incumbent upon the prosecution to prove the essential ingredients for constituting the above-said offences i.e. i) That the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; ii) Such death must have occurred within seven years of her marriage; iii) So before her death, the woman must have been subjected to cruelty or harassment by the husband or by relative of her husband; iv) Such cruelty or harassment must have for or in connection with demand of dowry; v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

28. So to bring the offence within ambit of Section 304-B, it is essential that death must be unnatural and should have taken place within seven years of the marriage and the cruelty or harassment meted out should be in connection with demand of dowry.

29. Now advertent to the facts of the present case, it is not disputed that deceased Kajal was married with Munish on 16.04.2017 and she expired on 17.10.2018 i.e. within the seven years of her marriage. But it is to be seen that whether she had died a natural death or whether she had died

under unnatural circumstances. To clinch this issue, the medical evidence is of utmost importance in the present case. The perusal of testimony of PW-4 Dr. Anita, who is running Sajni Nursing Home, Gohana, reveals that she has deposed that on 17.10.2018 at about 12.30 P.M. (in the night) Kajal sired a baby girl through normal delivery. She referred the patient to Bhagat Phool Singh Government Medical College, Khanpur due to continuous bleeding as per referral certificate Ex.PW-4/B. In her cross-examination, she has categorically stated that no external or internal injury was present on the body of Kajal.

30. The next material witness of the prosecution is PW-5 Dr. Vijayata, Associate Professor at Bhagat Phool Singh Government Medical College, Khanpur, who treated Kajal after being referred to this hospital. She has stated that on 18.10.2018, she was posted as consultant on labour room duty. On that day, at about 11.45 AM Kajal wife of Manish reported as referred case from Sajni Hosptial, Gohana, after delivery of female baby at 12.30 A.M through normal delivery, in shock due to excessive bleeding per vaginum during delivery. On examination large wound hematoma 5x6 cm in left vaginal wall at the site of episiotomy was noticed, stitches were removed and one fist of clot was removed. Suddenly, she developed one episode of generalised tonic clonic seizures with frothing mouth. She was resuscitated but could not be saved despite best efforts. In her cross-examination also she has specifically stated that no external mark of injury was noticed except the vaginal, which was surgical.

31. PW-16 Pawan Mittal, who conducted post mortem on dead body of Kajal has deposed that he found the following injuries on her person:-

1. Right labia majora was showing diffuse swelling and distension. On dissection, underlying tissues showed deep and marked ecchymosis involving deep perineal muscles. On gently abducting the thighs, copious fresh blood flow out of the introitus. On further examination of the genitalia, an irregular deep lacerated wound of 6 cm x 5 cm was present involving whole right side of the vestibule, mucosal aspect of the labia, hymenal tissues, urethral opening and gland ducts. The margins were ragged and markedly ecchymosed. The underlying muscles were contused and crushed. On dissection of the external and internal genitalia and anorectal region as en bloc mass, the wound was found to be further penetrating inside through the vaginal orifice involving the anterior and posterior vaginal walls causing an almost subtotal and multiple transmural perforations of vaginal walls and significant ecchymoses with hematoma formation. In the anatomically related surrounding muscles and ligaments. Multiple loose to applied surgical sutures were present randomly around the perforations in situ. The ring of tissue surrounding external as was diffusely ecchymosed, ragged and showed multiple superficial tears. The serosa and muscularis layers of the pelvic colon were diffusely ecchymosed along with hematoma formation which was further extending down up to the rectum. The right posterior surface of the broad ligament showed multiple punctuate grape like hematomas and ecchymoses over an area of 6 cm x 5 cm. The right lateral surface of the dome of the bladder was diffusely ecchymosed along with hematoma formation. Diffuse purplish ecchymoses of 7 cm x 5 cm was present over lateral surfaces of fundus of the uterus and adjacent proximal fallopian tube which was more significant over the left as compared to the right. On dissection, the underlying myometrium layers showed marked hemorrhagic infiltration of blood. Uterovesical folds were diffusely ecchymosed.

2. An incised wound viz. Episiotomy of 3.5 cm x 0.2 cm x 0.4 cm was present in the perineum region, extending from posterior labial commissure, going slightly right lateral and obliquely downwards, ending 2 cm above anal verge. The margins were regular and clean cut.

32. In the cross-examination, he has deposed that blunt trauma was natural after delivery of the baby. It cannot be said that there was some injury caused to Kajal (since deceased) on her abdomen and private part leading to excessive bleeding as he has not observed any external mark of injury on her abdomen or other part of the body. He further stated that Kajal has expired naturally as she has expired due to excessive bleeding and the complications of disseminated intra-vascular coagulation, eclampsia (fits/seizure) and shock.

33. After considering the above-said medical evidence, the trial Court has rightly observed that Kajal gave birth to a baby girl on the intervening night of 17/18.10.2018 and at that time due to surgical invasions some excessive bleeding caused trauma, due to which she expired. From the medical evidence on record, it is very clear that no external mark of injury was present on the body of Kajal and as observed above, PW-5 Dr. Vijayata was very categorical in stating during her cross-examination that no external or internal injury was noticed except the vaginal, which was surgical.

34. So from the medical evidence on record it transpires that Kajal did not die an unnatural death and she had died due to excessive bleeding and complications of disseminated intra-vascular coagulation, eclampsia (fits/seizure) and shock, during the child birth.

35. Now it is also to be seen that whether Kajal was treated with

cruelty in connection with the demand of dowry soon before her death by the accused persons. In order to prove the factum of cruelty, prosecution has examined PW-9 Dharambir, the father of the deceased Kajal, who has stated that accused used to taunt Kajal that she belonged to a poor family and had not brought sufficient dowry and motor cycle and she had defamed them in the society. Accused Omvati used to instigate the other accused persons to give beatings to the deceased. He has also stated that on 14/15.10.2018 Kajal was beaten by the accused persons when she was pregnant. Manish and Parveen gave leg blows on her abdomen and private part. Due to these injuries, the condition of Kajal deteriorated and she expired. The statement to the similar effect has been made by PW-10 Nishu, who is sister of deceased Kajal.

36. A perusal of cross-examination of PW-9 Dharambir reveals that he has admitted during his cross-examination that he had not seen the alleged incident which took place on 14/15.10.2018. He has also admitted that he had given only some household articles in the marriage of her daughters. His father and brother Anand Sadhu financed the marriage of his daughters. PW-10 Nishu has also admitted in her cross-examination that as her father was not in position to solemnize their marriage, so her grand father and uncle had financed their marriages. So once poor financial condition of the complainant was in the knowledge of the accused persons, then there was no occasion for them to harass the deceased, for bringing more dowry.

37. This fact has been again admitted by PW-9 Dharambir and PW-10 Nisha during their cross-examination that Kajal was brought to the hospital by her in-laws and the delivery expenses were also borne by them.

The trial Court has also rightly pointed out that the complainant has categorically stated that at the time of delivery they were happy as his daughter had sired a baby girl. The complainant had moved application Ex.PW9/A to the police on 18.10.2018, in which he had specifically stated that Kajal had sired a baby at Sajni Hospital, Gohana. It was a normal delivery and mother and child were healthy. However, on that day, the condition of Kajal deteriorated and she was got admitted at Bhagat Phool Singh Government Medical College, Khanpur where she expired. He has specifically stated that nobody had played any foul role in her death and they did not want to conduct any police proceedings against any person. On the basis of said application only DDR was lodged and no FIR was registered against any person. Even otherwise, the trial Court has rightly pointed out that during the inquest proceedings of the even day, none of the complainant party had deposed regarding any demand of dowry by accused from the complainant party and treating the deceased Kajal with cruelty in connection with the demand of dowry. It has also come in the evidence that during cremation of Kajal, the complainant party was also present and no complaint regarding demand of dowry or dowry death was filed against the accused persons.

38. PW-10 Nishu, who is sister of deceased Kajal was also got married with Parveen, the real brother of Munish Mathur on the same day when marriage of Kajal was solemnized with Munish. From the evidence on record, it transpires that after delivery of baby girl by Kajal and after she expired, Nishu also gave birth to a child at her matrimonial house and delivery expenses were borne by her in-laws. After delivery of the child, Nishu left her matrimonial house and went to her parental house.

Subsequently, application Ex.PW9/A was moved by the complainant on 15.11.2018 i.e. nearly one month after the expiry of Kajal and delivery of Nishu. Trial Court has rightly pointed out that this inordinate delay in moving of the application suggests that it is an after thought and as such, it does not inspire confidence.

39. PW-9 Dharambir has also deposed that the accused party had demanded a motor cycle from the complainant party, but he is belied by PW-10 Nishu when she admitted in her cross-examination that her in-laws had two motor-cycles prior to her marriage and they also owned a tractor, as such, there was no occasion for the accused persons to demand motor cycle from the complainant party. It appears that only vague allegations regarding demand of dowry and harassment for the same, have been levelled. No specific date, time and place has been mentioned either in the application Ex.PW9/A or in the statement of the complainant, when he appeared in the witness box as PW-9, as to when the demand of dowry was made by the complainant party. It is well settled proposition of law that general and vague allegations of demand of dowry are not sufficient to make out a case punishable under Section 498-A IPC.

40. As already observed, when it has clearly come in the medical evidence that no external mark of injury was found on the body of Kajal, then this version regarding giving of beatings to Kajal on 14/15.10.2018 by accused Munish and Parveen stands falsified. Rather it has been sufficiently proved from the medical evidence on record that Kajal died a natural death due to excessive bleeding after complication during her child birth.

41. Trial Court has also rightly observed that so far as the accused Omvati is concerned, there is no specific allegation against her that she had

ever treated Kajal with cruelty in connection with demand of dowry. Moreover, she was not likely to be benefited if any more dowry articles had been brought by Kajal. Therefore, there was no occasion for her to harass Kajal for this purpose.

42. Trial Court has further rightly held that it was a natural death and was not a homicidal death. So charge under Section 302 of IPC is also not proved.

43. The trial Court has thus, rightly reached at the conclusion that the prosecution could not prove its case beyond the shadow of reasonable doubt against the accused and the accused have been rightly acquitted by the trial Court.

44. In view of the above, both these appeals being bereft of any merits stand dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

19.04.2023
monika