

(2010) 08 UK CK 0003
In the Uttarakhand High Court
Case No : Criminal Appeal No. 23 of 2010

Chandan Singh Mehra

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 207, 313, 374
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 107, 304B, 306, 498A

Citation : (2010) 08 UK CK 0003

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : K.S. Bora, for the Appellant; M.A. Khan, Brief Holder, for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973, (for short Code of Criminal Procedure) is directed against the judgment and order dated 08.02.2010, passed by learned Sessions Judge, Champawat, in Sessions Trial No. 03 of 2008, whereby Appellant Chandan Singh has been convicted u/s 306 of Indian Penal Code, 1860 (for short IPC), and sentenced to rigorous imprisonment for a period of 10 years and also directed to pay fine of Rs. 5,000/-.

2. Heard learned Counsel for the parties and perused lower court record.

3. Prosecution story in brief is that PW1 Jagannath Singh, complainant, is resident of Kulial Gaon, Patwari Circle Saal, District Champawat. He got his daughter Kamla married to accused/Appellant Chandan Singh Mehra in February 2006. Since the marriage was against the wishes of parents of accused/Appellant Chandan Singh Mehra, he (Chandan Singh Mehra) started living with his wife in Village Kulial Gaon. Out of the wed-lock one daughter born. On 4th of August 2007, accused/Appellant Chandan Singh expressed the desire that he wanted to stay independently with his wife and daughter at Tanakpur. The complainant

Jagananth Singh allowed the three to stay in his house built at Tanakpur. The complainant sent his wife to make arrangements for his daughter and son-in-law and the grand-child, at Tanakpur. After making necessary arrangements complainant's wife came back to the village, and accused/Appellant Chandan Singh, his wife Kamla (deceased) and the daughter started living at Tanakpur. On 16.08.2007, the complainant Jagannath Singh received telephonic information that his daughter Kamla has committed suicide. He immediately rushed for Tanakpur and reached there by night. However, by then police had already taken dead body of the deceased and prepared inquest report (Ex. A3) and got post-mortem examination done. According to the prosecution story, complainant went to the police station to get lodged First Information Report against accused/Appellant Chandan Singh but the police advised him to get into compromise with accused as in their view it was a case of suicide by hanging. Complainant Jagannath Singh went from pillar to post and finally moved an application in September 2007, u/s 156(3) Code of Criminal Procedure. On said application, under orders of the Magistrate, the case was registered by the police at police station Tanakpur as court case No. 1 of 2007, relating to Offences punishable u/s 498A, 306 IPC and one punishable u/s 3/4 of Dowry Prohibition Act, 1961. In said application, u/s 156(3) Code of Criminal Procedure, (Ex.A1) the complainant Jagannath Singh alleged that his son-in-law Chandan Singh (Appellant) used to drink alcohol and beat his wife Kamla Devi. He also alleged that he had earlier demanded Rs. 50,000/- through his elder uncle-in-law (TAO). It is also alleged by the complainant that his daughter was subjected to cruelty and she has been murdered. It is stated in the report (Ex. A1) that even a mobile phone of his daughter was snatched and sold by the Appellant. And when she went to make a call to her parents from PCO (public call office), she was dragged back to the house and beaten. The crime was finally investigated by P.W.15, Sub-Inspector Naresh Chand, who on completion of investigation submitted charge sheet (Ex.A13) for trial of accused Chandan Singh u/s 306 I.P.C.

4. The Chief Judicial Magistrate, Champawat, on receipt of the charge sheet, after giving necessary copies to the accused as required u/s 207 Code of Criminal Procedure, appears to have committed the case to the court of sessions for trial. Learned Sessions Judge, on 28.01.2008, after hearing the parties, framed charge of offence punishable u/s 306 IPC to which accused Chandan Singh pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W.1 Jagananth Singh (complainant and father of the deceased), P.W.2 Usha, a neighbour (declared hostile), P.W.3 Meera, another neighbour, P.W.4 Ranjeet Singh, also a neighbour, P.W.5 Ram Dutt Sharma, witness of inquest report, P.W.6 Smt. Munni Devi (declared hostile), P.W.7 Constable Bhoopai Ram Arya, P.W.8 Dr. D.S. Nagi, P.W.9 Dr. Naresh Chandra, both members of the team of Doctors who conducted post-mortem examination, P.W.10 Jankiz Devi mother of the deceased, P.W.11 Sub-Inspector K.R. Tamta, who partly investigated the crime, P.W.12 Sub-Inspector Dhirdendra Kumar, who took dead body of the deceased in his possession and got prepared inquest report (Ex. A3), P.W.13 Constable

VimlaRawat also witness of the inquest report, P.VV.14 Harish Chandra Sati, Dy. Superintendent of Police who also investigated the crime for sometime to see if the offence alleged to have been committed is covered u/s 304B IPC, and P.W.15 Sub-Inspector Naresh Chand, who concluded investigation in respect of charge of offence punishable u/s 306 I.P.C. Oral and documentary evidence was put to the accused u/s 313 Code of Criminal Procedure , in reply to which he stated that he did not abet the deceased to commit the suicide. He also pleaded that he has been falsely implicated. However, no evidence in defence was adduced. The trial court after hearing the parties found accused Chandan Singh guilty of charge of offence punishable u/s 306 I.P.C. After hearing on sentence, the trial court sentenced the convict to rigorous imprisonment for a period of 10 years and also directed him to pay fine of Rs. 5,000/- in default of payment of which the convict was directed to undergo rigorous imprisonment for a further period of one year. Aggrieved by said judgment and order dated 08.02.2010, passed by Sessions Judge, Champawat, in Sessions Trial No. 03 of 2008, this appeal is preferred by the convict (in jail).

5. Before further discussion, this Court thinks it just and proper to mention the ante-mortem injuries recorded by Dr. D.S. Negi (P.W.8) and Dr. Naresh Chand (P.W.9) who prepared the post-mortem examination report (Ex. A8). The ante-mortem injuries found by the two doctors, on the body of Kamla (deceased) are reproduced below:

(i) Ligature mark present on neck above hyoid cartilage going upward and backward obliquely upto both mastoid processes. Length of ligature mark 21cm. Breadth of ligature mark 2.5cm Neck circumference 30cm.

(ii) Abrasion 0.5cmx0.3cm present back of left wrist.

The medical officers found rigor mortis present. Eyes closed. Mouth open. Tongue protruded between teeth. On internal examination membranes and brain were found congested, pleurae and larynx and lungs were also found congested. Uterus was empty, semi digested food was found in the stomach. In the small intestine digested food and gases, and in the large intestine faecal matter and gases were present. The team of medical officers opined that the deceased had died due to asphyxia as a result of ante-mortem hanging.

6. The above facts proved by the two medical officers indicates that it is a case of suicide by hanging. Now, this Court has to see whether the accused/Appellant Chandan Singh (husband of the deceased) had abetted the commission of suicide by his wife Kamla.

7. P.W.1 Jagannath Singh (complainant), father of the deceased has stated before the trial court that his daughter Kamla got married to accused Chandan Singh in a Temple in February 2006. Thereafter, the two got their marriage registered as "court marriage". The witness has further told that since parents of Chandan Singh (accused/

Appellant) were against the marriage, they did not participate in it and Chandan Singh Started living with Kamia in the house of the complainant. P.W1 Jagannath Singh further states that out of the wed-lock one daughter named Kajal was born. According to this witness, on 04.08.2007, keeping in mind wishes of his son-in-law Chandan Singh, he (complainant) made necessary arrangements at Tanakpur for the stay of his daughter, son-in-law and grand-daughter, in the house built by him. He (PW1) further told that on 08.08.2007, his wife returned back from Tanakpur to Kulial Gaon after making necessary Arrangements. Thereafter, on 16.08.2007, at about 10 a.m., he got telephonic information that his daughter Kamla is unwell and needs to be attended immediately. On receiving further information about death of his daughter, he rushed to Tanakpur and reached there by night. P.W.1 Jagannath further told that by the time he reached, post-mortem examination on the body of Kamla had already been got done by the police. The witness further narrates that he went to Police Station Tanakpur to get lodged FIR but the Station Officer asked him to get the matter amicably settled as it is a matter of suicide. The witness states that when his report was not registered at police station, he moved an application u/s 156(3) Code of Criminal Procedure .,(Ex. A1) and gave it in the court on the basis of which the case crime No. was registered and investigated. He further told the court that his daughter did not commit Suicide but she has been murdered. It is also alleged by the witness that his son-in-law phandan Singh demanded Rs. 50,000/- to purchase a vehicle. He has alleged that his Son-in-law was drunkard and used to treat his wife with cruelty.

8. P.W.2 Usha, a neighbour of the deceased has stated that Kamla Devi (deceased) and her husband Chandan Singh (accused) used to live in the house of father of Kamla. However, this witness stated that she did not see Chandan Singh drinking liquor. The witness was got declared hostile. However, P.W3 Meera Devi, another neighbour of the deceased Stated that on 15.08.2007, accused Chandan Singh and his wife Kamla quarreled. She has further stated that she herself witnessed the quarrel as other women had also come there. This witness has stated that on the next day morning she saw the dead body of Kamla hanging in the room. She further narrated that on the request of police she herself helped in taking down the dead body at the spot. In her cross-examination she further disclosed that the quarrel took place after Chandan Singh came in the drunken state and stopped his wife Kamla from going to P.C.O., and dragged her to her house. P.W.4 Ranjeet Singh also Corroborates the prosecution story and told that on 16.08.2007 at about 4:00a.m.,Munni Devi (P.W6) woke him and asked for telephone number of Kamla's father. According to this witness, he inquired as to what had happened, and came to know of the incident. The Witness further told that when he went to room of Kamla, he saw her dead body hanging from a ceiling fan . P.W.4 Ranjeet Singh is also witness in the inquest report. P.W.5 Ram butt Sharma is a witness in whose presence dead body of the deceased was taken by the police and inquest report (Ex. A3) was prepared. P.W.6 Munni Devi is aunt (MAUSI) of Kamla (deceased). She used to

live behind the house where Kamla is said to have committed suicide. This witness has corroborated the prosecution story to the extent that accused Chandan Singh sold mobile phone of Kamla (deceased) and this led to dispute between them. However, she stated that behavior of accused Chandan Singh was not bad with his wife. But she admitted that accused Chandan Singh was a drunkard. This witness was got declared hostile by the prosecution.

9. P.W.10 Janki Devi mother of the deceased has also narrated the prosecution Story and stated that her daughter and accused Chandan Singh wanted to get married with each other. But after father of accused demanded one lac rupees, the demand was turned down. On this, Chandan Singh and Kamla got married in a Temple. In her statement she has also stated that when Kamla and her husband used to live with complainant and his wife (P.W.10) the accused started drinking liquor and used to hurl abuses at her. He also used to beat Kamla. Janki Devi (P.W.10) mother of the deceased further states that in July 2007, when Kajal (daughter of the deceased and accused) was only one month old, accused Chandan Singh started insisting to take his wife and daughter to Tanakpur. She has also stated about harassment of her daughter at the hands of the accused Chandan Singh.

10. For the further appreciation of oral evidence adduced by the witnesses mentioned above the contents of diary left by the deceased are being reproduced below:

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The above contents in the diary of deceased further corroborate the cruelty committed by the accused Chandan Singh against his wife after getting drunk.

11. Learned Counsel for the Appellant drew attention of this Court to the cases of Kishori Lal Vs. State of M.P., , Mahendra Singh v. State of M.P. 1995 SCC (cri.) 1157, Sohan Raj Sharma v. State of Haryana AIR 2008 SCW 3202 and Netai

Dutta v. State of West Bengal AIR 2005 SCW 1326, and argued that neither the accused Chandan Singh has aided the commission of suicide, nor instigated the act committed by deceased as such from the evidence on record, the charge of offence punishable u/s 306 IPC cannot be said to have been proved. No doubt abetment of an offence is defined u/s 107 IPC, which requires aiding or instigation on the part of the accused. However, that is only half part of the provision contained in the section. There are three independent clauses mentioned in Section 107 I.P.C. Under Clause (3) even illegal omission is also covered to constitute the abetment of an offence. It has been proved by the prosecution that the husband(Appellant) and wife (deceased) were living together. They quarreled. Thereafter, the wife hanged herself from the ceiling fan. The accused Chandan Singh did not make any effort to stop her from hanging nor tried to loose noose of knot before his wife died. At 1 a.m., in the night he immediately informed his neighbours that his wife committed suicide but he did not appear bothered to save her while she was doing so. From the evidence of the witnesses it is proved that the hanging was done in the bedroom of the couple. The room was not bolted or locked by the deceased. Therefore, the above mentioned case laws in the present case do not help the Appellant as the facts in the present case are not similar to the cases referred on behalf of the Appellant.

12. In the above circumstances, having reassessed the evidence on record, this Court is of the view that the trial court has rightly held accused Chandan Singh guilty of charge of offence punishable u/s 306 I.P.C. However, on the sentence the trial court has awarded maximum sentence provided in the penal section. Considering the facts and circumstances of the case, this Court is of the view that punishment of rigorous imprisonment for a period of seven years would met the ends of justice.

13. Accordingly the appeal on the part of the point of conviction is dismissed. However, on the point of sentence the appeal is partly allowed. The Appellant Chandan Singh is sentenced to rigorous imprisonment for a period of 7 years and also directed to pay fine of Rs. 5,000/-. With the above modification in the sentence, this appeal Stands disposed of. Appellant is in jail. A copy of this judgment be sent to Superintendent of Jail where the Appellant is serving out the sentence. Lower court record be sent back.