
(2013) 08 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 262 of 2006 with Criminal Appeal No. 343 of 2006

Gurdial Chand and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1694

Hon'ble Judges : Dharam Chand Chaudhary, J; Dev Darshan Sood, J

Bench : Division Bench

Advocate : N.K. Thakur, with Ms. Ishita Bhandari and Mr. Ashok Chaudhary, A.A.G. with Mr. R.P. Singh, Assistant A.G, for the Appellant; Ashok Chaudhary, Additional Advocate General with Mr. R.P. Singh, Assistant Advocate General for the Respondent in Criminal Appeal No. 262 of 2006, Mr. N.K. Thakur with Ms. Ishita Bhandari, Advocate in Criminal Appeal No. 343 of 2006, for the Respondent

Judgement

Dev Darshan Sood, J.—Both these appeals are disposed of by this judgment as they arise out of the same judgment of the learned Additional Sessions Judge, Fast Track Court, Una, convicting the appellants-accused for offences punishable u/s. 498A of the Indian Penal Code (for short "IPC"). The State has challenged their acquittal u/s 306 IPC (Cr. Appeal No. 343 of 2006), while the appellants have challenged their conviction u/s 498A IPC (Cr. Appeal No. 262 of 2006). The case of the prosecution in a nutshell is that deceased Saroj wife of first accused Gurdial Chand, was maltreated by all the three accused, as a result of which, she ended her life by consuming phosphate poison in the early hours of 11.10.2003. She was driven to take this extreme step because of the cruel treatment meted out to her by the accused for bringing insufficient dowry. It is urged that the deceased was instrumental in fixing the marriage of the daughter of the second accused Jagat Ram, which marriage did not prove to be successful; this was a further cause for harassment and maltreatment. All the three accused were harbouring a grudge against her, as she alleged that the first accused Gurdial Chand was having illicit relations with the third accused Rachna Devi, who was his "Bhabhi". The learned trial Court on the evidence of the prosecution

convicted all the three accused for offence u/s 498A IPC sentencing them to undergo rigorous imprisonment for a period of two years with fine of Rs. 2,000/- each and in default of payment of fine to further undergo simple imprisonment for two months. The accused were acquitted for offence punishable u/s 306 read with Section 34 IPC.

2. We are not reappraising the evidence in the manner in which the learned trial Court has considered, but test the conclusion on each of the circumstances. PW-1 Piaray Lal is father of the deceased and PW-11 Ram Asri is her mother. PW-1 Piaray Lal states in general terms that the accused used to trouble and harass the deceased for bringing less dowry. Adverting to the evidence of PW-11 Ram Asri, she corroborates this part of the statement of PW-1 Piaray Lal and further states that she had paid a sum of Rs. 40,000/- to the deceased so that the accused could purchase land. It is undisputed fact before us that both these witnesses had been called to the house of the deceased on 11.10.2003, post mortem was conducted when they were there and they were also present at the time of cremation. They did not utter a single word about any allegation of the nature as alleged by the prosecution when they reached the village of the deceased at the time of post mortem or cremation. In fact we note that PW-11 Ram Asri states in cross-examination that the police had reached the house of the deceased before they reached there. Sh. Ram Pal, Master (PW-5) was called by the police. She then states that she along with her husband and another family members were interrogated by the police; her statement was recorded in the village on 12.10.2003. We also find from the statements of other witnesses that the statements regarding maltreatment are very general in nature without any specific instance of maltreatment.

3. PW-2 Paramjit elder brother of the deceased again states in general terms what PW-1 Piaray Lal and PW-11 Ram Asri state. He was also present at the house of the accused. What was stated by the accused was that she died on account of some pain in her stomach. He states that he suspected some foul play but he did not disclose anything to the police as to what he had actually suspected. PW-3 Ram Krishan is cousin of PW-1 Piaray Lal, who only states that he suspected some foul play that the accused were maltreating the deceased.

4. PW-4 Shamsheer Singh is Pradhan of Gram Panchayat Batuhi. In cross-examination, he states that the police had recovered a strip of Diclowin Plus tablets containing 8 tablets in his presence. In cross-examination, he states that he knows all the accused present in the Court. The deceased had never complained to him during her lifetime about any maltreatment nor the parents of the deceased had made any such complaint. He states that he knows all the residents of the village and no villager had ever made any complaint regarding maltreatment of deceased Saroj.

5. PW-5 Ram Pal Lath states that his land adjoins the house of the accused and when he used to visit his fields he had heard the accused abusing deceased Saroj. He had also seen the accused beating the deceased Saroj. It is because of

this maltreatment that she consumed poison and died. In cross-examination, he states that he had seen accused Jagat Ram, Gurdial Chand and Rachna Devi beating up the deceased Saroj, but when confronted with his statement u/s 161 Cr.P.C., he could not say as to why this fact was not recorded. He admits that FIR No. 88 dated 10.5.1980 u/s 307 IPC was registered against him but he had been acquitted in the case. He shows his ignorance about the fact as to whether the deceased was maltreated in village Ghandawal. PW-6 Harbhagwan Singh states that he knows PW-1 Piaray Lal and that he was responsible for settling the marriage of the deceased with the accused Gurdial Chand. He was declared hostile. In cross-examination, he denies that he was ever informed by PW-1 Piaray Lal or PW-11 Ram Asri that accused Gurdial Chand was maltreating Saroj on account of his illicit relation with his Bhabhi. He denies that the deceased was being maltreated. He then admits that he had visited the accused 2-3 times and advised them to live happily. In cross-examination by the defence, he says that deceased Saroj was living happily with her in-laws.

6. PW-10 Subhash Chand, brother of the deceased, who again states that relations between the deceased and accused had become strained because of illicit relations of the first accused with the third accused and that they were advised not to quarrel with each other. In cross-examination, he says that he had not accompanied his family members to the house of the deceased. He also says that he made no efforts to have the matter with respect to the maltreatment of the deceased sorted out in the Panchayat or clear the allegations that the deceased had not brought sufficient dowry. According to him, the first accused was having illicit relations with the third accused. He did not file any application with any authority or with the police at any point of time.

7. We now advert to the statement of PW-9 Dr. G. Upadhaya. He along with Dr. Ashok performed post mortem of the deceased. According to his opinion, the deceased had died due to poisoning. According to the viscera report sent to the Forensic Science Laboratory, Junga, phosphite poisoning was the cause of the death. This is the entirety of the evidence which we have to consider.

8. We now advert to Ext. PA, which is the report lodged by PW-1 Piaray Lal, father of the deceased with the police on 12.10.2003 at 12.30 P.M. at village Saloh. PW-10 Subhash Chand states that after 4-5 months of the marriage of the deceased, she was treated well but thereafter all the three accused, namely, Gurdial Chand, Jagat Ram and Rachna Devi started torturing and harassing her. He also states that the deceased was responsible for arranging marriage of the daughter of Jagat Ram accused at village Saloh, but the marriage did not prove to be successful and this is the reason why the accused had maltreated the deceased. There is no word regarding any demand for dowry or that the first accused was having illicit relations with the third accused. We have considered this for the reason that between the death of the deceased and the lodging of the report, the accused had ample time to contemplate and to state to the police about the true facts but they have changed the entire version which makes it

difficult to accept the evidence of the prosecution that the deceased was objecting to the illicit relation of the first accused with the third accused and for demand of dowry. The witnesses do not dispute that the father and mother of the deceased were present at the funeral and before that at the time of post mortem. We also find from the inquest report Ext. PE that the cause of death given by the first accused is that he had returned home on the previous night on 10.10.2003 at about 1.30 a.m. He and his wife was having dinner and went to home around 1.30 a.m./2 a.m. In the morning of 11.10.2003, the deceased complained of some stomach pain and consumed one tablet. She started having loose motions and vomiting. He and the second accused Jagat Ram immediately rushed to the house of Dr. Kamal Kishore but he was not present there. Thereafter they went to the house of Sita Ram in Panoh to borrow a Van to take the deceased Saroj to the hospital but she died on the way. We find that this Sita Ram has not been examined. We note that this substantial piece of evidence could have been corroborated but was not done so by the prosecution.

9. We reiterate that the statement made for the first time in the Court with respect to demand of dowry cannot be accepted. This Court has held in *Subhash Chand v. State of H.P.*, Latest HLJ 2009 (2) (H.P)1076 that such evidence is not worthy of credence. We also note that there is no evidence on record that the marriage was arranged by the deceased with the son of second accused and thereafter she was maltreated by the accused. We also find that there is no evidence whatsoever that any demand of dowry was made by the accused. We also note that there is no explanation put forth as to why on that date, PW-1 Piaray Lal, PW-2 Paramjit, PW-3 Ram Krishan and PW-11 Ram Asri, were present immediately after the death of Saroj and were there also at the time of cremation, they had not made any complaint to the police. Subsequently, when the complaint is made, the cause for maltreatment is attributed to the failed marriage of the daughter of accused Jagat Ram, which marriage was arranged by the deceased. In these circumstances, we do not find that the judgment of the learned trial Court can be sustained. We, therefore, quash and set-aside the judgment of the learned trial Court. Bail bonds furnished by the accused stand cancelled. Fine amount, if any, deposited by the accused shall be refunded to them forthwith. For the reasons we have considered herein above, we do not find any merit in the appeal preferred by the State convicting the accused for offences punishable u/s 498A IPC. Criminal Appeal No. 262 of 2006 is allowed and Criminal Appeal No. 343 of 2006 is dismissed.