
(2015) 08 P&H CK 0178
In the Punjab And Haryana At Chandigarh
Case No : CRA-S-1557-SB-2002

Hari Ram and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 319
Penal Code, 1860 (IPC) — Section 201, 304-B, 498A, 498-A

Citation : (2015) 08 P&H CK 0178

Hon'ble Judges : Jitendra Chauhan, J.

Bench : Single Bench

Advocate : Sagar Aggarwal, Advocate for Ashit Malik, Advocate, for the Appellant; Arun Luthra, AAG, for the Respondent

Judgement

Jitendra Chauhan, J.—This appeal has been filed for setting aside the judgment of conviction and order of sentence dated 07.09.2002 passed by the learned Additional Sessions Judge (Adhoc), Karnal whereby the appellants have been convicted and sentenced as under:-

The sentences were ordered to run concurrently.

2. Brief facts of the case in hand, as recorded in the opening para of the impugned judgment, are reproduced as under:-

"2. The allegations of the prosecution as made out from the FIR recorded on the basis of application of complainant Jagdish Chander, the father of Pinki Devi (since deceased) dated 31.03.1999 are as follows: Pinki was married to accused Hari Ram resident of Ram Pura on 18.11.1998. For one month after marriage she lived in her matrimonial house happily. Thereafter the members of the family of her in-laws started harassing her about which she had informed him when he went to see her. He had already purchased all the articles and in few days they were to be given. But on 28.03.1999 it was learnt that she has died. When the complainant along with his brother Rajender Kumar, brother in law Balbir Singh

(wife's brother) and his sister's husband Baldev Singh reached there in the courtyard of accused's house and found Pinky dead there. They could not know the cause of her death. Despite their forbidding the accused cremated her dead body. But it was learnt on 31.03.1999 that actually Pinki has been killed and did not die of her own. Pinki was harassed by her mother in law, husband's elder brother (Jeth) and wife of husband's elder brother (Jethani). So inquiry be made and action be taken in the matter.

3. Dhoop Singh ASI Incharge police post Bhadso to whom the said application was handed over by the applicant sent the same with his endorsement to the police station Indri where on that basis formal FIR in this case under Section 304-B and 201 of Indian Penal Code was registered the same day. Thereafter investigation was taken in hand. The said ASI Dhoop Singh visited the spot and got the place of occurrence photographed. He also took into possession from the cremation ground sample of burnt bones and ashes of Smt. Pinki (since deceased) vide recovery memo (Ex. PF) after putting the same in a sealed parcel. Rough site plan of the place of occurrence and that of cremation ground were prepared. Statements of witnesses were recorded. The said ASI arrested the accused Hari Ram on 04.04.1999. The remaining investigation was then handed over to Om Parkash S.I./SHO and the same was completed by next SI/SHO Mohinder Singh, and then challan against accused Hari Ram was prepared and put up in the Court for his trial."

3. Initially, charge was framed on 05.10.1999 against accused-Hari Ram under Section 304-B and 201 of Indian Penal Code. Thereafter, on the basis of the complainant's statement in Court the remaining accused were summoned and charged under the same sections. All the accused pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined PW1 Assa Ram Head Constable, PW2 Virender Singh ASI, PW3 Jagdish Chander complainant, PW4 Karambir Photographer, PW5 Rajinder, PW6 Mohinder Kumar Inspector and PW7 Dhoop ASI.

5. When examined under Section 313 Cr.P.C. all the five accused denied the allegations and pleaded false implication. In their statements, the accused admitted that the marriage of deceased Pinki D/o. Jagdish Chander, (complainant) with accused Hari Ram took place on 18.11.1998 and that at time she was residing with her uncle Rajinder at Budia and so her marriage was also performed by her uncle.

6. In defence, the accused examined Dharam Singh, Inspector Food and Supply as DW1, Satpal as DW2, Ajay Singal, IPS, Deputy Director DRI as DW3, Sant Lal Phogat, DSP (HAP) as DW4 and Ranjit Singh, Senior Assistant, Crime Branch, Punjab and Haryana High Court, Chandigarh as DW5.

7. After hearing the learned counsel for the parties and appraisal of the evidence brought on record, the learned trial Court convicted and sentenced the accused-

appellants, as detailed at the outset of this judgment. It is mentioned her that the co-accused, summoned under Section 319 Cr.P.C. and tried along with the present appellants, were acquitted.

8. Feeling aggrieved against the same, the appellants have filed this appeal, which was admitted on 04.10.2002. The sentence of appellants was suspended on the same day.

9. The learned counsel for the appellants contends that there is an inordinate delay of three days in the lodging of FIR which has not been explained by the prosecution. Further, there is no mention of any demand of dowry in the FIR. The letter allegedly written by the deceased wherein, the demand of dowry by the accused was mentioned was produced by the complainant at belated stage. No offence under Section 201 IPC is made out against appellant Hari Ram as the parents, uncle and the relatives of the deceased were informed about the death of Pinki and the family members of the deceased attended the cremation without raising any objection.

10. On the other hand, the learned State counsel has vehemently argued that the prosecution has been able to prove its case against the appellants beyond the shadow of reasonable doubt and prays for dismissal of the appeal.

11. I have heard the learned counsel for the parties and perused the record carefully.

12. So far as the delay in lodging the first information report is concerned, admittedly, the death in the instant case took place on 28.03.1999, whereas the first information report Ex. PB/1 was recorded on 31.03.1999, however, the prosecution has not successfully explained this delay of three days although as per stand of the appellants, the news regarding the incident had been sent to the complainant's family on the same day itself. It is clear from the testimony of PW3, Jagdish Chander, PW5, Rajinder and DW2, Satpal that the complainant had reached the house of the accused on 29.03.1999. It has come in the testimony of complainant Jagdish Chander, PW3 and his brother Rajinder PW5 that when they reached the house of the accused at their Village Rampura, all the preparations for cremation of the deadbody had already been made and despite their protest the dead body was cremated. They further deposed that on 29.3.1999 both of them went to the police station Indri, but the SHO Om Parkash did not record their versions. Though there is mark "B" an application on record that they had made complaint against the said SHO to the higher authorities, but this will not improve the case of the prosecution as this fact is not find mentioned in the first information report. The conduct of PW5, Rajinder Singh, who joined his duty on 30.03.1999, got his leave sanctioned from the military authorities and thereafter, reached the police post Bhadso, on 31.03.1999 and his brother Jagdish Chander, the complainant went to the police post separately. There they submitted an application to ASI Doop Singh, Incharge Police Post where upon, the present FIR came to be registered. It is

alleged that when no action was taken by the police, the complainant approached the Superintendent of Police and the DIG on 09.04.1999 and ultimately filed a petition before this Court on 20.04.1999 Ex. DD seeking direction to the police to take appropriate action in the matter. This petition was disposed of vide order dated 21.04.1999 Ex. PE. By that time the FIR had already been registered. The conduct of PW5, Rajinder Singh going back to his military duty without informing the police about the incident cannot be said to be the normal conduct of a family member, particularly the brother whose sister was no more. It was his foremost duty to first inform the police about the unnatural death of the deceased and then to go elsewhere. Admittedly, some other relatives were also present, but nobody was sent to call the police. Thus, it emerges that they were satisfied that there was no foul in the death of deceased. Later on they made up their mind to book the husband and his family members in dowry death case. Thus from the above facts, it is clear that the delay was not properly explained and the delay was used to give twist to the real facts and to exaggerate the version. So, while deciding this appeal, the effect of delay in lodging the first information report is to be kept in mind.

13. The conviction and sentence of the appellant accused under section 201 of the Indian Penal Code is under serious challenge by the learned counsel for the appellant accused.

14. Section 201 of the Indian Penal Code reads as under:

"Causing disappearance of evidence of offence, or giving false information to screen offender--

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

If a capital offence.--shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life.--and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years" imprisonment.--and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

15. The relevant para of Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator), , be read as under:-

"In order to establish the charge under Section 201 , Indian Penal Code, it is essential to prove that an offence has been committed-mere suspicion that it has been committed is not sufficient, that the accused knew or had reason to believe that such offence had been committed and with the requisite-knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false. It was essential in these circumstances for the prosecution to establish affirmatively that the death of Jaspal was caused by the administration of potassium cyanide by some person (the appellant having been acquitted of this charge) and that she had reason to believe that it was so caused and with that knowledge she took part in the concealment and "disposal of the dead body. There is no evidence whatsoever this point. The following facts, that Jaspal died, that his body was found in a trunk and was discovered from a well and that the appellant took part in the disposal of the body do not establish the cause of his death or the manner and circumstances in which it came about. As already stated, there is no direct evidence to prove that potassium cyanide was administered to him by any person. The best evidence this question would have been that of the doctor who performed the postmortem examination. That evidence does not prove that Jaspal died as a result of administration of potassium cyanide. The other hand, the doctor was of the opinion that there were no positive postmortem signs which could suggest poisoning. He stated that potassium cyanide being corrosive poison, would produce hyperemia, softening and ulceration of the gastro-intestinal track and that in this case he did not notice any such signs. He further said that potassium cyanide corrodes the lips and the mouth, and none of these signs was the body. This evidence (1) [1952] S.C.R., 1091 therefore instead of proving that death was caused by administration of potassium cyanide, to the extent it. goes, negatives that fact."

It has been held that to establish an offence under Section 201 of the Code firstly, it must be proved that an offence has been committed; secondly, the accused knew or has reason to believe that such offence has been committed; and, thirdly, the accused caused evidence of such offence to disappear with the intention of screening the offender from legal punishment.

16. In this case, there is no post mortem examination. It is not proved that it was dowry death or it was unnatural death other than normal circumstances or it was suicide. When it is not proved that any offence has been committed with the body of the deceased, there is no question of causing disappearance of evidence. Therefore, no offence under section 201 of the Code is made out against the accused appellant No. 1 Hari Ram.

17. On knowing the death of Pinki, PW2, Jagdish Chander went to the matrimonial home of the deceased, but did not strongly protest for the post

mortem examination before the cremation. The version that her in laws did not pay any heed to their request not to cremate the dead body without post mortem examination, appears to be an after thought and cannot be believed in view of their post cremation conduct. In his application Ex. PG dated 31.3.1999, it is mentioned that on that day they came to know that the girl did not die but she had been killed. Moreover, if some one see with naked eye the application Ex. PG, the date "27.03.1999" has been changed to "28.03.1999" by over writing. At the end of Ex. PB, after the prayer lines, it is added that her mother in-law, husband, jeth and jethani, who were residing together along with younger sister in-law used to harass her. These lines appears to have been inserted after due deliberations after completing the Ex. PB.

18. The most important evidence on record is the letter Ex. PC, written by the deceased Pinki herself. The learned counsel for the appellants has stressed that Ex. PC cannot be relied upon as it is a forged document which does not find mentioned in the first information report nor in the police investigation. This contention has some force as this letter was sent by post. Its cover Ex. PC/1 bears the stamp of issuing post office of Ladwa dated 02.01.1999 as well as the stamp of the post office Subana (Ambala) where it was received on 05.01.1999. This letter was addressed to Jasbir wife of Rajinder Kumar Saini, resident of Budiana. The letter dated 30.12.1998 saw the light of the day for the first time on 23.05.2000 in the examination in chief of PW2, Jagdish Chander, who asserted to be in his possession. Further no effort was made by the prosecution to examine any witness in order to prove that the writing and signature on the letter Ex. PC were that of the deceased with her own hand. No specimen handwriting nor specimen signatures have been brought on record for comparison from the handwriting expert. Thus, the learned trial Court has wrongly held that this un rebutted evidence cannot be disbelieved. In the opinion of this Court, this letter Ex. PC cannot be used against the accused appellants, as its authenticity is under cloud. The learned trial Court has legally erred in relying upon letter Ex. PC.

19. If letter Ex. PC is ignored, this court is left with the testimony of PW 3, Jagdish Chander and PW5, Rajinder, the father and uncle of the deceased respectively. Keeping in view the conduct of these witnesses, their testimony cannot be fully accepted. As already held, there is delay in lodging the first information, which had been used to exaggerate the version with due deliberations and consultations. Their testimony prove that offence under section 498-A of the Code is established against the husband only, as has been held by the trial court. Thus, the conviction and sentence of accused appellant Hari Ram under section 498-A of the Code is affirmed and is maintained. No offence under section 201 of the Code is made out against the husband appellant Hari Ram.

20. When this court scrutinized the evidence against Bhagwanti appellant No. 2, this Court comes to the conclusion that the prosecution case is not proved against her under section 498-A of the Code beyond reasonable doubt. It is the

general tendency of the parents of a deceased daughter to rope in all the family members of the husband's family. There is delay in lodging the first information report. There are chances of false implication of appellant No. 2 Bhagwanti. The husband has already been convicted under section 498-A of the Code by the trial Court and this conviction has been affirmed in this judgment. The appellant No. 2 being not the beneficiary of alleged demand of dowry as she not get any benefit out of the dowry, if any, received by her co-accused. Accordingly, the present appeal qua appellant No. 2 Bhagwanti is allowed, her conviction and sentence under section 498A of the Code is set aside and she is acquitted of the charge framed against her by giving her the benefit of doubt.

21. However, the conviction and sentence of Hari Ram appellant No. 1, under Section 498A of the Indian Penal Code is affirmed, whereas the conviction under Section 201 of the Code is set aside. Except for setting aside of conviction and sentence of appellant-Hari Ram under section 201 of the Code, the appeal of appellant Hari Ram fails and is, hereby, dismissed.

22. Allowed to the extent indicated above.