
(2017) 02 RAJ CK 0102
In the Rajasthan High Court
Case No : 632 of 2009

Jagdish

APPELLANT

Vs

State of Rajasthan through P.P.

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 201](#),
[Section 498-A](#), [Section 1767-30](#)

Citation : (2017) 02 RAJ CK 0102

Hon'ble Judges : Kanwaljit Singh Ahluwalia, Prakash Gupta

Bench : DIVISION BENCH

Advocate : Himmat Singh, Mukesh Choudhary, Mahesh Singh, Aladeen Khan

Judgement

1. As per prosecution case, on 27.06.2004 the marriage of Chhaya, niece of Jabar Singh (PW-4) was solemnized with Jagdish S/o Ramesh Singh, resident of Madaripura, Police Station Kanchanpur, District Dholpur. Amar Singh, father of Chhaya had died 20/22-years ago, hence, Chhaya was brought up by Jabar Singh (PW-4), complainant.

2. Chhaya had succeeded to the estate of her father Amar Singh. Amar Singh was also having land which was being looked after by complainant Jabar Singh(PW-4). Prosecution has set out a case that Devendra Singh (PW-7) son of Jabar Singh (PW-4) was adopted by Amar Singh father of Chhaya. Chhaya within seven-years of marriage on 06.07.2006 died in her matrimonial home.

3. Jabar Singh (PW-4), complainant made a grievance that accused-appellant-Jagdish had cremated his wife Chhaya without informing him and other relatives of the deceased. Therefore, Jabar Singh (PW-4) presented a written-report (Exhibit-P/8) before Sub Inspector - Mumtaz Ahamad (PW-11), who was then posted as A.S.I. Police Station, Kanchanpur.

4. On the basis of said written-report (Exhibit-P/8), a formal First Information

Report (Exhibit-P/9) bearing No.118/2006 was registered at Police Station Kanchanpur, District Dholpur for offences punishable under Sections 304-B and 201 of Indian Penal Code.

5. The Investigating Agency, after conclusion of investigation, submitted charge-sheet against present appellant for offences punishable under Sections 304-B, 498-A and 201 I.P.C. A report of investigation was presented in the Court of concerned Magistrate. The appellant, along with the report of investigation was committed to the Court of Sessions and the trial was entrusted to the Court of Additional District & Sessions Judge, (Fast Track), No.2, Dholpur.

6. The said Court, vide its impugned judgment dated 22.05.2009 held appellant - Jagdish guilty of offences punishable under Sections 304-B, 498-A and 201 of Indian Penal Code.

7. The co-accused of the appellant, namely Balveer Singh @ Babloo, Kumari Sangeeta, Smt. Bitoli and Ramesh Singh were acquitted by the trial Court.

8. Having convicted the present appellant for the above said offences, the trial Judge, vide a separate order of even date, sentenced the appellant as under :-
"For offence under Section 498-A I.P.C. : The appellant was sentenced to undergo three years rigorous imprisonment, to pay a fine of Rs.500/- and in default of payment of fine to further undergo one month additional imprisonment.

"For offence under Section 304-B I.P.C. : The appellant was sentenced to undergo life imprisonment, to pay a fine of Rs.2000/- and in default of payment of fine to further undergo three months additional imprisonment.

"For offence under Section 201 I.P.C. : The appellant was sentenced to undergo three years rigorous imprisonment, to pay a fine of Rs.500/- and in default of payment of fine to further undergo one month additional imprisonment.

The trial Court further ordered that all the sentences awarded upon the appellant shall run concurrently."

9. Aggrieved against his conviction and sentence, the present appellant has preferred present appeal in order to challenge the impugned judgment and has prayed that the conviction recorded and the sentence awarded by the trial Court, be set aside.

10. In the written-report (Exhibit-P/8), complainant - Jabar Singh (PW-4) averred that his brother - Amar Singh had died 22-years ago, therefore, he had married his niece Chhaya, daughter of Amar Singh with Jagdish about three years ago. Ramavtar (PW-1) and Rajendra Singh acted as go-between for solemnization of the marriage between Chhaya deceased and Jagdish accused-appellant. In the written report, allegations were also levelled against younger brother, sister, mother and father of the accused/husband of the deceased. In the report, complainant stated that Sangeeta, nanad and Babloo, devar used to harass deceased by raising demand of dowry and they were also pressurizing

deceased that land on the name of her father be got transferred on their name. Complainant stated that as and when his niece used to come to visit them, she used to tell the tales of the harassment inflicted by the family of the husband. The complainant further stated that on 06.07.2006 his daughter-in-law - Sunita (PW-8) had gone to her parental house to attend a marriage. The Village of Sunita is near to Madaripura, Village of in-laws of Chhaya. Sunita on 06.07.2006 at around 01:30 P.M. informed him that in-laws of Chhaya after killing her in the morning at 06:00 A.M. have cremated her. Thus, a grievance was made that the accused had cremated - Chhaya without giving any information to her relatives.

11. The present appellant was arrested and sent for trial. His father - Ramesh Singh, mother - Smt. Bitoli and sister - Sangeeta were declared as proclaimed offenders. His brother Balveer Singh @ Babloo was also not arrested and, thus, subsequently two separate chargesheets were filed, against them. Thereafter all the charge-sheets filed at various stages were clubbed. Therefore, as per the available record, statement of the witnesses were recorded on two separate dates. They have been also made part of the paper book. One set of statements were recorded when only appellant was before the trial Court and subsequent statements were recorded when other co-accused were arrested and after clubbing of separate charge-sheets, trial had proceeded afresh.

12. Since the statement recorded earlier will be previous statements, we shall rely upon subsequent statements of the witnesses recorded in the trial Court when all accused put to trial were present.

13. The prosecution, in order to secure conviction of the appellant, examined as many as twelve witnesses. Thereafter, statement of the accused was recorded under Section 313 Cr.P.C., wherein he accepted the marriage, but denied all other allegations. The accused further stated that the land belonging to the father of Chhaya was being cultivated by Jabar Singh (PW-4). Chhaya was demanding return of the land to her which was on the name of her father. The accused further stated that he was cooperating with his wife. It was further stated that complainant has falsely implicated present appellant so that he cannot demand share of the land, which had accrued to his wife.

14. The accused Jagdish himself appeared as D.W. 1. and stated that his wife had given birth to a child on 23.02.2006. After fifteen-days or a month of delivery, her condition deteriorated. She was administered "desi treatment". It was further stated that no record of the treatment provided to deceased - Chhaya, was retained.

15. Ramavtar (PW-1), who acted as go-between for solemnization of the alliance deposed in court that at his behest Chhaya was married with Jagdish, present appellant. This witness is a father-inlaw of Devendra Singh (PW-7), brother of the deceased. This witness (PW-1) in opening line of his examination-in-chief has testified that "VERNACULAR MATTER OMITTED" This witness in the Court deposed that after delivery of the child, Chhaya got pregnancy complications. She died

natural death. He was called by Jagdish. Deadbody was cremated in his presence. The witness further stated that cremation was also attended by Taya of the deceased.

16. We reproduce here following lines from the examination-in-chief of Ramavtar (PW-1):- "VERNACULAR MATTER OMITTED"

17. Gopal Singh (PW-2), being neighbour of the accused, stated that due to pregnancy complications, Chhaya died and the family members of Chhaya had attended the cremation. The exact words stated by this witness are that "VERNACULAR MATTER OMITTED" Lastly, this witness was declared hostile to the prosecution.

18. Kalyan Singh (PW-3) was also declared hostile. This witness also stated that Chhaya was married with Jagdish two-&-half years ago. Chhaya gave birth to a child and thereafter, she had died. This witness in cross-examination, admitted that when Chhaya died, her cremation was attended by her family members. This witness, being neighbour of the accused, in cross-examination stated as under :- "VERNACULAR MATTER OMITTED"

19. Jabar Singh (PW-4) in the Court deposed that the accused and his family members used to harass Chhaya. This witness further deposed that the in-laws of Chhaya were demanding that he should transfer the land belonging to his younger brother Amar Singh, father of Chhaya on the name of Jagdish. This witness stated that they learnt that Chhaya was burnt by her in-laws.

20. Shyamveer Singh (PW-5), being maternal uncle of Chhaya, in the Court deposed that after one month of the marriage of Chhaya, on the eve of "Raksha-Bandhan" he had gone to meet his sister, then Chhaya while weeping had disclosed that she is being harassed by her in-laws.

21. Devendra Singh (PW-7), is real son of Jabar Singh. It is alleged that he was adopted by Jabar Singh (PW-4). This witness (PW- 7) has also deposed in the Court that the present appellant also used to harass his wife.

22. To similar effect is the statement made by Smt. Sunita (PW- 8) wife of Virendra Singh, younger brother of Devendra Singh (PW-7).

23. After registration of the case, the same was investigated by Dashrath Singh (PW-10), who was then posted as Circle Officer, Bari.

24. Mr. Himmat Singh, learned counsel appearing for the accused-appellant, has contended that this Court should not ignore the testimony of Ramavtar (PW-1), father-in-law of the brother of deceased - Chhaya. Counsel has further contended that Gopal Singh (PW-2) and Kalyan Singh (PW-3), being neighbours of the accused, have specifically stated that they had attended the cremation of Chhaya and the said cremation was also attended by the relatives of the deceased.

25. In the alternative, counsel for the appellant has contended that appellant

Jagdish vide arrest memo (Ex.P-17) was arrested on 14.07.2006 and he is in custody since then. According to counsel for the appellant - Jagdish has undergone actual sentence of ten years and about five months.

26. It is contended before us that even if we uphold the conviction of appellant for offence under Section 304-B IPC, the sentence of life imprisonment awarded is too excessive. Counsel for the appellant has urged that we should not ignore that legislature in its wisdom has prescribed minimum sentence of seven years. Counsel for the appellant has submitted that no aggravating circumstances were available with the trial court to award maximum sentence.

27. To counter the arguments raised, Mr. Aladeen Khan, learned Public Prosecutor, has submitted that deceased died an unnatural death in her matrimonial home. Since the appellant had not informed relations of the deceased regarding death of Chhaya and themselves proceeded to cremate her, we should draw an adverse presumption against the appellant.

28. We have given due consideration to rival submissions advanced before us.

29. Dead body of Chhaya was not subjected to postmortem. There is no medical evidence available with us to infer that deceased had died unnatural death. Prosecution has examined no witness to say that in his presence, injuries were caused to deceased Chhaya or she was administered poison. There is no evidence available with us to arrive at a finding that death of Chhaya was homicidal or suicidal. The only circumstance relied by the prosecution to infer that Chhaya had died an unnatural death, is assertion made by Jabar Singh (PW-4), Devendra Singh (PW-7) and Sunita (Pw-8) to the effect that the family of the appellant had not relayed information regarding death of Chhaya and she was cremated without informing them.

30. Chhaya, deceased is daughter of Amar Singh, younger brother of Jabar Singh (PW-4). It has come in evidence that land had fallen to the share of Amar Singh and he was holder of land in his own right. Chhaya was the only child of Amar Singh. When Chhaya was a toddler, Amar Singh had died, therefore, Chhaya is only natural legal heir to the land and the estate left by Amar Singh. Prosecution witnesses have made an attempt to demonstrate that Devendra Singh (PW-7) son of Jabar Singh (PW-4) was adopted by Amar Singh when he was one or two years old. Counsel for the appellant has contended that neither registered adoption deed has been brought on record nor proved, nor witnesses have deposed that any such ceremony was performed by Amar Singh in his lifetime.

31. It has come in evidence that the appellant was pressurizing deceased Chhaya to transfer the land on his name, which was in possession of Jabar Singh (PW-4) and Devendra Singh (PW-7). Thus, it can be safely said that Jabar Singh (PW-4) and Devendra Singh (PW-7) are interested witnesses to retain ownership and possession over the land, which vested in Chhaya, after death of her father Amar Singh.

32. We may note here that the deceased at the time of death had left a son born from the loins of accused-appellant - Jagdish.

33. To us Ramavtar (PW-1) is the most independent person. He is not related to the accused. He claim himself to be father-in-law of Devendra Singh (PW-7), who was allegedly taken into adoption by Jabar Singh (PW-4). This witness has stated that his daughter Sunita was married with Devendra Singh, however, his daughter Sunita (PW-8) has deposed that she was married with Virendra Singh younger brother of Devendra Singh (PW-7). According to Sunita, Devendra Singh (PW-7) is her Jeth.

34. Devendra Singh (PW-7) is real son of Jabar Singh. He was allegedly taken into adoption by Amar Singh. Thus, the entire land belonging to Chhaya, due to the alleged adoption has to fall to the share of Devendra Singh (PW-7) and Jabar Singh (PW-4). This witness in the Court deposed that "VERNACULAR MATTER OMITTED"

35. Be that as it may, Ramavtar (Pw-1) is closely related to Jabar Singh (PW-4) and he is his Samdhi. This fact is also accepted by Jabar Singh (PW-4).

36. The witness (PW-7) further admitted that the entire land belonging to Amar Singh, father of Chhaya, who had died, had to fall to the share of Chhaya.

37. Counsel appearing for the accused-appellant has rightly canvassed that by creating adoption in favour of Devendra Singh (PW- 7), Jabar Singh (PW-4) and Devendra Singh (PW-7) wanted to retain the land of Amar Singh to which Chhaya had to succeed by way of natural succession.

38. Ramavtar (PW-1) in the Court specifically stated that the cremation was attended by him and uncle of deceased Chhaya (Ladkika-tau). Jabar Singh (PW-4) in fact is uncle/taya of Chhaya. Thus, as per deposition of Ramavtar (PW-1) Jabar Singh had attended the cremation of Chhaya. Gopal Singh (PW-2) and Kalyan Singh (PW-3) neighbours have also testified that family members of Chhaya had attended the cremation. Even though Ramavtar (PW-1), Gopal Singh (PW-2) and Kalyan Singh (PW-3) have been declared hostile to the prosecution, their evidence cannot be ignored. Thus, the story given by the prosecution witnesses, namely Jabar Singh (PW-4) and Devendra Singh (PW-7), who are interested witnesses fall on the ground. Their assertion that they were not informed about death of Chhaya is to be discarded. Once information regarding death of Chhaya was relayed and the cremation was attended by Jabar Singh (PW-4) and Devendra Singh (PW-7), there is nothing with the prosecution to demonstrate that the deceased - Chhaya had died an unnatural death. No presumption to this effect can be drawn against the accused-appellant. An unnatural death is an essential ingredient for invoking Section 304-B I.P.C. Since in the present case, the prosecution has failed to prove that the deceased had died an unnatural, we cannot assume same by drawing inferences. Hence, conviction of the appellant for offence punishable under Section 304-B I.P.C. cannot be sustained.

39. Consequently, we accept present appeal, set aside the conviction pronounced and sentence awarded by the trial Court upon the appellant and acquit him of the charges.

40. Keeping, however, in view the provisions of Section 437-A of the Code of Criminal Procedure, appellant - Jagdish is directed to forthwith furnish a personal bond in the sum of Rs.20,000/- [Rupees Twenty Thousand Only] and a surety bond of the like amount, before the trial Court. The bonds, so furnished shall be effective for a period of six-months. The bonds shall contain an undertaking that in the event of filing of Special Leave Petition against the judgment or on grant of leave, the appellant, on receipt of notice thereof, shall appear before the Hon''ble Apex Court.