

(2015) 06 SHI CK 0091
In the High Court Of Himachal Pradesh
Case No : Cri. Appeal No. 19 of 2013

Jagjit Chand and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 306, 34, 498-A

Citation : (2015) CriLJ 3893 : (2015) 3 DMC 863

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Anoop Chitkara, for the Appellant; M.A. Khan, Additional Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J—This appeal is instituted against judgment dated 31.12.2012/14.1.2013 rendered by learned Additional Sessions Judge(I) Kangra at Dharamshala (HP) in Sessions Case No. 11-J/2010, whereby appellants-accused (hereinafter referred to as "accused" for convenience sake), who were charged with and tried for offence punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code, were convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of six months for the offence under Section 306 IPC, and to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 3,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of three months for offence under Section 498-A, IPC. Case of the prosecution, in a nutshell, is that on 29.12.2009 at about 12.35 am, Vandana Kumari, deceased, was brought by accused Dinesh Kumar to CHC Fatehpur. Accused Dinesh Kumar informed Ved Parkash that his daughter was seriously ill and had been brought to CHC Fatehpur. She was declared dead by the concerned Doctor. Statement of PW-1 Ved Parkash was recorded under

Section 154, Cr.P.C. Deceased Vandana Kumari was married to Dinesh Kumar in the year 2005. Two children were born. Vandana Kumari (deceased) was repeatedly harassed by her husband Dinesh Kumar, father in law Jagjit Chand and mother in law Ashana Devi alias Archana Devi for bringing insufficient dowry and they used to harass her physically and mentally. On account of repeated harassment by the accused, deceased Vandana Kumari was in physical and mental stress and she consumed some poisonous substance and resultantly died. I.O. got post-mortem conducted. Photographs of dead body were taken. I.O. prepared the spot-map. Challan was put up in the Court after completing all the codal formalities.

2. Prosecution examined a number of witnesses to prove its case against the accused. Accused were also examined under Section 313, Cr.P.C.. They denied the allegations levelled against them. They were convicted and sentenced by the learned trial Court as noticed above. Hence, this appeal.

3. Mr. Anoop Chitkara, Advocate, has vehemently argued that the prosecution has failed to prove its case against the accused.

4. Mr. M.A. Khan, Additional Advocate General, has supported the judgment dated 31.12.2012/14.1.2013.

5. I have heard the learned counsel for the parties and also gone through the record carefully.

6. PW-1 Ved Parkash deposed that his daughter was married to accused Dinesh Kumar in the year 2005. She had two children. Behaviour of accused Dinesh Kumar, Jagjit Chand (father-in-law) and Ashana Devi (mother-in-law) was normal with his daughter for two years after the marriage. Thereafter, accused persons demanded Rs. 1,00,000/- from his daughter. They wanted to purchase land. He could not meet the demand of the accused. Jagjit Chand tried to outrage modesty of his daughter in the state of intoxication and this was brought to the notice of Ved Parkash by the deceased. He received a telephonic message on 29.12.2009 at 1.15 am from Dinesh Kumar that his daughter was seriously ill. His statement was recorded under Section 154, Cr.P.C. vide Ext. PW-1/A. In his cross-examination, he has admitted that his daughter was taken to the hospital at the time of delivery by her in-laws. Deceased was doing M.A. at the time of her marriage and completed post-graduation after her marriage. Dinesh Kumar was a qualified person and both of them were educated and unemployed. He also admitted that deceased and Dinesh Kumar used to visit his house. He admitted that Dinesh Kumar purchased land in 2008 for Rs. 4.00 Lakh. Accused used to demand money from his daughter.

7. PW-2 Bharat Bhushan is the brother of deceased. According to him, Dinesh Kumar, Jagjit Chand and Ashana Devi used to demand Rs. 1.00 Lakh from his sister to purchase land. His father was not in a position to meet the demand. When they could not meet the demand of accused persons, they started torturing his sister. His sister told him that Jagjit Chand had a bad eye on her. His

sister told him that Jagjit Chand had tried to outrage her modesty 1 1/2 years ago. Father of deceased visited the house of accused and apprised them of the incident. In his examination-in-chief, he testified that his statement was recorded on 5.1.2010. He was declared hostile. In his cross-examination by the learned Public Prosecutor, he has admitted that his statement was recorded on 29.12.2009. In his cross-examination by the learned Advocate of the accused, he admitted that his sister had visited their house one month prior to her death. His brother-in-law accompanied her to the house. He also admitted that the accused Dinesh Kumar purchased land in 2008 for Rs. 4.00 Lakh. He also admitted that his sister used to visit their house after birth of children. He also admitted that accused used to do tuition work. His sister used to work as an agent for collecting money for the post-office.

8. PW-3 Subhash Chand testified that Ved Parkash, father of deceased told him and Krishan Chand, Pardhan of village about maltreatment by the accused persons. They tried to make father of deceased understand that the matter being matrimonial could be amicably settled. Father of deceased told him that once Jagjit Chand had outraged the modesty of his daughter in the state of intoxication. In his cross-examination, he has admitted that his statement was recorded after seven days. He also admitted that he had not visited the police station voluntarily to record his statement.

9. PW-4 Rajinder Soga and PW-5 Tarsem Kumar are formal witnesses.

10. PW-6 Dr. Shiv Darshan Singh deposed that death occurred due to consumption of poison by the patient. Postmortem report is Ext. PW-6/A. FSL report is Ext. PX.

11. PW-7 Tilak Raj, PW-8 Bishan Das, PW-9 Gurdeep Singh and PW-10 Kuldeep Singh, are formal witnesses.

12. PW-11 Dr. Satnam Singh deposed that he was posted at CHC Fatehpur as Medical Officer. On 29.12.2009, at about 12.30 am, police moved an application Ext. PW-11/A for medical examination of Vandana Kumari (deceased). He examined Vandana Kumari. She was brought to hospital on alleged consumption of poisonous substance about 1 1/2 hours back.

13. PW-12 Parkash Chand is a formal witness.

14. PW-13 ASI Suresh Kumar deposed that he along with other police officials went to the hospital and moved an application Ext. PW-11/A for medical examination of the patient and obtained MLC Ext. PW-11/B. As per opinion of medical officer, Ext. PW-11/C, the patient was not fit for making statement under Section 154, Cr.P.C. Statement of father of the deceased was recorded vide Ext. PW-1/A and sent to the Police Station Jawali. He also moved an application for conducting post-mortem of the body of the deceased. He also recorded statements of witnesses. In his cross-examination, he has admitted that deceased was taken to the hospital by accused. Accused Dinesh Kumar informed

the parents of the deceased over the telephone and requested them to come to the hospital.

15. Case of the prosecution, precisely, is that the marriage between the accused Dinesh Kumar and Vandana Kumari (deceased) was solemnized in the year 2005. Accused were demanding Rs. 1.00 Lakh to purchase land. It has come in the statement of PW-1 Shri Ved Parkash and PW-2 Bharat Bhushan that land was purchased by Dinesh Kumar in the year 2008 for Rs. 4.00 Lakh. Relation between the parties, as per PW-1, remained normal for two years. Dinesh Kumar used to visit the house of his in-laws. He also visited PW-1 Ved Parkash in the hospital. His daughter had completed MA after her marriage. PW-2 Bharat Bhushan also admitted that his sister had visited the house one month prior to her death. His brother-in-law had also accompanied her. PW-3 Subhash Chand's statement does not inspire confidence for the simple reason that incident took place on 29.12.2009 and his statement was recorded seven days thereafter. The statement is required to be recorded promptly. Neither father nor brother of the deceased have lodged any complaint either with the Panchayat or to the police about alleged demand of dowry by the accused persons. The alleged incident whereby father-in-law of the deceased outraged her modesty, has happened 1 1/2 years back. Deceased was taken to hospital by the accused. Accused has telephoned his father-in-law (PW-1 Ved Parkash) to come to the hospital.

16. The alleged incidents as discussed herein above would not constitute mental or physical cruelty to the deceased due to lack of evidence and the same being not in close proximity to the death of deceased. The acts of the accused have not led to the abetment of suicide by the deceased. Accordingly, the present appeal is allowed. Judgment dated 31.12.2012/14.1.2013 rendered by learned Additional Sessions Judge(I) Kangra at Dharamshala (HP) in Sessions Case No. 11-J/2010, is set aside. Accused are acquitted of the offence under Sections 498-A and 306 IPC. Fine amount, if any deposited by the accused, be also refunded to them. Bail bonds of the accused are discharged.