
(2005) 10 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No's. 220-DB of 2002

Jai Bhagwan and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2006) 1 RCR(Criminal) 149

Hon'ble Judges : Pritam Pal, J;Mehtab S. Gill, J

Bench : Division Bench

Advocate : R.S. Malik and Mr. Rahul Dhanotia, for the Appellant; S.K. Garg, Narwana, A.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Pritam Pal, J.—Appellants Jai Bhagwan, Smt. Shashi and Smt. Reshma, have filed Criminal Appeal No. 220-DB of 2002, against judgment dated March 2, 2002 and order of sentence dated March 5, 2002 passed by the learned Additional Sessions Judge, Sonapat, whereby they were convicted under Sections 304-B/498-A of the I.P.C., and sentenced to undergo R.I for 14 years u/s 304-B of IPC. They were further sentenced to undergo R.I. for two years and to pay a fine of Rs. 3,000/- each for the offence punishable u/s 498-A of I.P.C. and in default of payment of fine, they were ordered to undergo further R.I. for six months.

2. Appellant Lilu alias Ram Lal has filed another Criminal Appeal bearing No. 571-DB of 2003 against the aforesaid judgment and order of sentence dated May 31, 2003, whereby he was convicted u/s 304-B/498-A of I.P.C. and sentenced to undergo R.I. for 14 years for the offence punishable u/s 304-B of I.P.C. He was further sentenced to undergo R.I. for 2 years and a fine of Rs. 3,000/- for the offence punishable u/s 498-A of I.P.C. and in default of payment of fine, he was ordered to undergo further R.I. for six months. All the sentences were, however, ordered to run concurrently.

3. Since both the aforesaid appeals arise out of one and the same judgment passed in Session Case No. 5 of 2000, therefore, they are being disposed of by this common judgment.

4. In nut-shell, the facts culminating to the commencement of these appeals, may be recapitulated thus:

5. Smt. Kiran, since deceased (20 years), daughter of Babu Ram (complainant), was married to Appellant Lilu alias Ram Lal (hereinafter referred to as Lilu Appellant) on March 10, 1995. Out of this wed-lock, a daughter was born, whose name is Priti. After her marriage, Lilu, the husband, Jai Bhagwan, brother-in-law, Smt. Shashi wife of Jai Bhagwan, sister-in-law and Smt. Reshma wife of Rameshwar, another sister-in-law of Kiran, used to harass Smt. Kiran on account of money for bitora (heap of cow dung cakes). All the Appellants used to ask her to bring money from her parental house. Complainant Babu Ram, father of Kiran, had once or twice given her Rs. 500/400/-. In the year 1999, Kiran had come to her parental house at Panipat on the occasion of `BHAIYA DOOJ". At that time, she told that all the four Appellants were harassing her, for bringing the money, but the complainant had shown his inability to fulfil the demand of money by the Appellants because he was a patient of tuberculosis (TB) and as such, was not having any source of income. Thereafter, she went to her matrimonial house situated in village Garhi Jhinhara.

6. It was on November 17, 1999, that one Mr. Anand of Rohtak, a relative of complainant Babu Ram informed him (Babu Ram) that his daughter Kiran was admitted at P.G.I. Rohtak in an injured/burnt condition. On receipt of this information, he rushed to Post Graduate Institute of Medical Sciences, Rohtak (P.G.I.), where he saw his daughter in an unconscious condition. She ultimately breathed her last on November 19, 1999. Before that, an intimation (Ex. PJ) regarding her admission in the hospital was also sent to the Police Station, Gannaur on November 17, 1999 vide wireless message. On that date, ASI Ram Mehar (P.W.-10) had also reached P.G.I. and sought the opinion of the doctor vide an application (Ex. PK) and the doctor vide his opinion (Ex. PK/1) found her unfit to make a statement. Thus, on receipt of a second message from the P.G.I. regarding death of Kiran, ASI Ram Mehar again went to P.G.I., Rohtak and there, he recorded the statement (Ex. PG) of Babu Ram, complainant, father of Kiran deceased, in the above narration of facts, then ASI Ram Mehar made his endorsement (Ex. PG/1) thereon and sent the same to Police Station, Gannaur, for registration of the case, on the basis of which, a formal F.I.R. Ex. (PG/2) was recorded by Raj Kumar, MHC u/s 304-B/34 of IPC on November 20, 1999 at 2.30 a.m. The ASI, who is the Investigating Officer in this case prepared inquest report (Ex. PB). After that, he sent the dead-body for post mortem examination, along-with his request (Ex. PB/1). The dead-body was post mortemed by Dr. Neelam Thapar (P.W.-2). The Investigating Officer, then visited the place of occurrence and took into possession a bottle smelling of kerosene, piece of burnt salwar, and other burnt clothes i.e. Pant, quilt etc. vide recovery memo Ex. PH,

after preparing a parcel sealed with the seal bearing impression "RM". ASI Ram Mehar, then prepared rough site plan (Ex. PL) of the place of occurrence with correct marginal notes in his hand. He also got prepared scaled site plan (Ex. PA). After completion of necessary investigation and effecting the arrest of the Appellants, report u/s 173 Code of Criminal Procedure was prepared by Mohinder Singh, the then S.I./S.H.O., Police Station, Gannaur.

7. All the Appellants were charge-sheeted for the commission of offences punishable under Sections 498-A and 304-B of I.P.C., by the learned trial Court, vide its order dated February 7, 2002, to which they pleaded not guilty and claimed trial.

8. The prosecution, in order to substantiate its case, examined as many as 10 witnesses; namely, P.W.-1 Constable Inder Pal, he prepared the scaled site plan Ex. PA of the place of occurrence; P.W.-2 Dr. Neelam Thapar, Medical Officer, Government Hospital, Rohtak, she being a member of the 'Board of Doctors', had conducted the post mortem examination on the dead-body of deceased Kiran, vide post mortem report Ex. PC; P.W.-3 Dr. S.P. Chug, Casualty Medical Officer, PGIMS, Rohtak (hereinafter referred to as PGI), he had conducted the medico- legal examination regarding burn injuries on the person of Kiran, vide his report Ex. PD, in which he mentioned 95% burns; P.W.-4 Constable Chandan Singh, he placed on the file his affidavit Ex. PE, to prove link evidence; P.W.-5 Head Constable Raj Kumar, he also placed on the file his affidavit Ex. PF regarding handing over the case property to the Forensic Science Laboratory; P.W.-6 Babu Ram, complainant, he is father of the deceased; P.W.-7 Smt. Indro, she is mother of the deceased; P.W.-8 and P.W.-9, Ram Kumar and Wazir Singh, they both are the witnesses to the recoveries i.e. bottle of kerosene, salwar, pant and quilt. However, they resiled from their earlier statements made before the police and P.W.-10 ASI Ram Mehar, he is an Investigating Officer in this case. His role has already been discussed in the earlier part of this judgment.

After tendering into evidence the report of Forensic Science Laboratory Ex. PM (two leaves), the prosecution closed its evidence.

9. In their statements recorded u/s 313 of the Code of Criminal Procedure, the Appellants denied all the incriminating evidence appearing against them, in toto. In their defence, they examined three witnesses, namely D.W.-1 D.S.P. Raj Pal Singh; P.W.-2 Rameshwar son of Shadi Lal, he is elder brother of Lilu and husband of Smt. Reshma, Appellants and D.W.-3 Ran Singh, a Clerk in the office of District Food & Supplies Controller, Gannaur.

10. The learned trial Court after appraising the entire evidence and hearing the learned Counsel for the parties, convicted and sentenced the Appellants, as indicated in the opening part of this judgment. This is how feeling aggrieved, they have come up in their respective appeals.

11. We have heard learned Counsel for the parties and with their assistance have gone through the file carefully.

12. The common arguments put-forth on behalf of the Appellants are that in this case, there was no occasion or any reason for harassing Kiran, since deceased, on account of any demand of dowry. As mentioned in the F.I.R., there was a demand of cost of bitora (a heap of cow dung cakes) meant for fuel. It was further argued that after the occurrence, the victim was taken to P.G.I. at Rohtak and there, she was admitted at about 2.10 p.m. on November 17, 1999. At that time, she was conscious, but her statement was not recorded by the police for the reasons best known to it. According to the learned Counsel for the Appellants, no cogent evidence has been brought on the file to show as to whether the death of Kiran (deceased) was homicidal, accidental or suicidal. In fact, the alleged demand of money for bitora, as stated above, was very petty and even otherwise, making of such demands which did not pertain to the demand of dowry, could not have been taken as a harassment of the deceased. At the fag end of his arguments, Mr. R.S. Malik, learned Counsel appearing on behalf of Appellants, namely, Jai Bhagwan, Smt. Shashi and Smt. Reshma, submitted that in fact, they all were residing separately from Appellant Lilu, husband of deceased Kiran. In that behalf, he also made a reference to their respective ration cards Exs. D-1 and D-2, proved in the statement of DW-3 Ran Singh, a Clerk in the office of District Food & Supplies Controller, Gannaur. At the same time, Mr. Rahul Dhanotia, learned Counsel appearing on behalf of Appellant Lilu argued that complainant Babu Ram, while appearing in the learned trial Court as P.W.-6 had not levelled any specific allegations of beatings against him (Lilu, husband of the deceased). At the last leg of his argument, Mr. Dhanotia also made reference to the statements of P.W.-8 Ram Kumar and P.W.-9 Wazir Singh, who did not support the recovery memo Ex. PH prepared in respect of taking into possession of pant Ex. P-1, salwar Ex. P-2, bottle Ex. P-3 and quilt Ex. P-4. After putting-forth the aforesaid points of arguments, learned Counsel for the Appellants contended for acquittal of all the Appellants.

13. On the other hand, Mr. S.K. Garg, Narwana, learned Additional Advocate General, appearing on behalf of the State of Haryana, has repelled the aforesaid points of arguments raised on behalf of the Appellants by their respective counsel and then argued that in the instant case, the prosecution has proved its case beyond any reasonable doubt against all the Appellants. He then also made reference to the statements of the accused/Appellants recorded u/s 313 Code of Criminal Procedure, wherein they have failed to explain as to how a bride of 20 years, died in their house within five years of her marriage. In such a situation, he then contended that a presumption should be drawn u/s 113-B of the Evidence Act that it were the Appellants and none else, who are liable for committing dowry death.

14. We have given our thoughtful consideration to the rival contentions raised on behalf of the learned Counsel for the parties and find that the points raised on behalf of the Appellants are devoid of any merits for the reasons given hereinafter:

15. At the first place, it is pertinent to mention that the factum of marriage of Kiran having been solemnized with Lilu Appellant on March 10, 1995, is not denied. Similarly, the occurrence having taken place on November 17, 1999 at the house of the Appellants, is also an admitted fact. Further, it is also an admitted fact that Kiran, who had sustained about 95% burns during the occurrence, ultimately died on November 19, 1999 i.e. within a period of less than five years of her marriage.

17. Now the controversy centers around the question as to whether the deceased was subjected to cruelty for or in connection with demand of dowry by Appellant Lilu, her husband and his relatives. In this regard, there are two star-witnesses in this case, namely, P.W.-6 Babu Ram, complainant and P.W.-7 Smt. Indro mother of the deceased. According to Babu Ram, after the marriage, his daughter Kiran used to visit her parental house and on every visit, she used to take Rs. 500/1000/- for satisfying the demand of Appellants Jai Bhagwan, Smt. Shashi and Smt. Reshma, inasmuch as they all were harassing her by making the said demand of money on the pretext that her husband Lilu was not doing anything and as such, they required money. He further stated that on the occasion of festival of Bhaiya Dooj in the year 1999, his daughter Kiran, had come to his house. At that time, there was swelling on her face. On enquiry made by him, she had told to her mother that Appellant Jai Bhagwan, elder brother of Lilu (husband of the deceased) and sisters-in-law, namely, Smt. Shashi and Smt. Reshma (wives of elder brothers of Lilu, Appellant) had given beatings to her. He further stated that his daughter had further told him that she was asked to come back only after taking the money for bitora and costs of her living. On that occasion, complainant Babu Ram, who was suffering from TB for the last about 15 years could not pay any money to his daughter and thus, she had returned to her in-laws' house empty handed. It was after about a week i.e. on November 17, 1999, he received a telephonic message through his relative Anand of Rohtak that his daughter Kiran was admitted in PGI at Rohtak due to burns. Similarly, P.W.-7 Smt. Indro, who is mother of the deceased deposed that after the marriage, Kiran had gone to her matrimonial home. However, her costs of living was not being borne at her in-laws' house. As and when she would come to her parental house, she used to tell about her beatings at the hands of the Appellants. She further stated that in the last, her daughter had gone to her matrimonial home on the occasion of Bhaiya Dooj. At that time, she was assured that she would be given a sum of Rs. 1,500/- after 15th of that month, but within eight days thereafter, a message was received that her daughter Kiran was admitted in the PGI at Rohtak. There-upon, she along with P.W.-6 Babu Ram rushed to PGI Rohtak and saw that her daughter was totally burnt and as such, she could not tell anything, being unable to speak. In her cross-examination, she has again categorically stated that Lilu, husband of her daughter also used to give beatings to her, but still they had not reported the matter to the police regarding beatings, hoping that the matter would be settled amicably. She further stated that since her husband was ill, therefore, she visited the house of

Lilu 20 times to advise him, but to no avail. At one time, Lilu had also quarrelled with her (mother of the deceased). Still, she had not lodged any report against the Appellant. Thus, a perusal of the statements of the aforesaid two material witnesses goes a long way to show that they are in unison of all the material points, which constitute the commission of offences punishable under Sections 498-A and 304-B of the Indian Penal Code.

18. From the evidence discussed above, it is established that Kiran deceased had visited her parental house at Panipat from her in-laws' house about eight days prior to the date of occurrence. At that time, she had categorically stated to her parents that the Appellants were harassing her on account of bringing money and costs of bitora as well as costs of her living. No doubt, the above demands raised by the Appellants from the deceased were of petty nature, but still could not be fulfilled by her parents inasmuch as Babu Ram, father of the deceased was a patient of TB for the last about 15 years and as such, he had no permanent source of income. However, mother of the deceased had given assurance that a sum of Rs. 1,500/- would be given to her after some days and as such, on the occasion of Bhaiya Dooj in the year 1999, she (Kiran) had to go back to her in-laws' house empty handed. It is, thereafter, that within eight days of her going back, she sustained 95% burns at her in-laws' house. Admittedly, none of the Appellants has uttered a word in their respective statements recorded u/s 313 of Code of Criminal Procedure, as to how and in what circumstances, the said occurrence of bride burning had taken place in their house. No doubt, the Appellants have examined three D.Ws. namely, D.W.-1 D.S.P. Raj Pal Singh, DW-2 Rameshwar and D.W.-3 Ran Singh, but they are not of any help to either of the Appellants inasmuch D.W.-1 Raj Pal Singh, who was posted as D.S.P. at Gannaur at the time of occurrence, has categorically stated that he had verified the investigation of this case carried out by P.W.- 10 ASI Ram Mehar and the same was found to be correct. He has further stated that nothing was brought to his notice regarding separate living of rest of the Appellants from Appellant Lilu (husband of the deceased). D.W.-2 Rameshwar, is the husband of Smt. Reshma Appellant and D.W.-3 Ran Singh is a Clerk of the office of District Food & Supplies Controller, who proved ration cards Ex. D-1 and D-2. The statements of these two defence witnesses regarding separate living of the Appellants from Lilu Appellant do not inspire confidence inasmuch as a perusal of these ration cards indicates that they were got prepared only after the occurrence of this case, in that there is no date of issuance of these two ration cards. First entry of taking the ration is of the month of November, 1999, prior to the said date, there is no entry of taking any ration on the said ration cards. All this again indicates that there was no such ration card in existence prior to the occurrence of this case. Not only that, there is also over-writing in Ex. D-2 with regard to house number with which house number 272 has been made to appear as 273. In this view of the matter, no credence can be attached to these documents on the basis of which Appellants, namely, Jai Bhagwan, Smt. Shashi and Smt. Reshma claimed to have their separate residence and kitchen from

Appellant Lilu. At this place, it is also pertinent to mention that P.W.-6 Babu Ram had categorically stated in his cross-examination that there were 4/5 rooms of all the brothers and Lilu, their brother, was not having any separate room. All this again goes a long way to show that in fact, all the Appellants were residing together when Kiran deceased, a young bride of 20 years had sustained 95% burn injuries, as proved by P.W.-3 Dr. S.P. Chug vide his report Ex. PD. No doubt, in this case, P.W.-8 Ram Kumar and P.W.-9 Wazir Singh, who are the witnesses to the recovery memo Ex. PH prepared in respect of kerosene bottle and salwar etc. have not supported the case of the prosecution as they had turned hostile, but in the given facts and circumstances, as discussed above, their statements are hardly fatal to the prosecution case. At this place, it is pertinent to mention that in the report Ex. PM of Forensic Science Laboratory, kerosene residues were detected in the bottle Ex. P-3 and salwar Ex. P-2 of Kiran deceased.

19. Before parting with this judgment, we must observe here that while investigating this case, approach of the Investigating Officer (P.W.-10) ASI Ram Mehar, was very casual inasmuch as he had received the information regarding admission of Kiran in the PGI at Rohtak on November 17, 1999 at about 3.00 p.m. Thereafter, he reached PGI at Rohtak at about 5.30 p.m. He then sought the opinion of the doctor, whereupon, Kiran was found unfit to make her statement as per opinion Ex. PK/1, but thereafter, he did not make any effort to contact her relatives from parental side. The Investigating Officer then went back to his Police Station, Ganaur and did not turn up, till he received the information regarding death of Kiran on November 19, 1999. All this shows that the investigation in this case in a very casual manner and as such, formal FIR Ex. PG/2 could be recorded only on November 20, 1999 at 2.30 a.m. However, in such like cases of dowry deaths, the prosecution case cannot be thrown to winds because of the laxity on the part of the Investigating Officer.

20. In the totality of the circumstances, as discussed above, no interference is called for in the judgment of conviction passed against the Appellants. Hence, the same is hereby maintained. However, taking into account long illness of Lilu Appellant in jail during trial, several minor children of the Appellants as shown in their respective ration cards and also minor daughter, namely, Priti of the deceased, who is also in their custody, we feel that reduction of substantive sentence from 14 years to 7 years R.I. u/s 304-B of I.P.C., would meet the ends of justice. We order accordingly. Rest of the sentences awarded by the learned trial Court shall remain intact.

In the result, both the appeals i.e. Criminal Appeal No. 220-DB of 2002 and Criminal Appeal No. 571-DB of 2003, are partly allowed in the terms of sentence u/s 304-B of I.P.C., as indicated above.

Appeals partly allowed.