
(2010) 08 AHC CK 0282

In the Allahabad High Court

Case No : Criminal Appeal No. 1520 of 2001 With Criminal Appeal No. 1521 of 2001

Jaswant Kaur

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

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

Citation : (2010) 08 AHC CK 0282

Hon'ble Judges : B.C.Kandpal, J and Nirmal Yadav, J

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—Both these appeals arise out against the same judgment and order dated 791999, passed by Special Judge (C.B.I.)/Additional Sessions Judge, Nainital in Sessions Trial No. 238 of 1997, hence they are being decided by this common judgment.

2 By the impugned judgment and order the learned Special Judge (CBI)/Additional Sessions Judge, convicted both the accused/appellants Smt. Jaswant Kaur and Rajendra Singh Gulati for an offence U/Ss 304B and 498A I.P.C. and both of them were sentenced to undergo life imprisonment U/S 304B I.P.C. and three years R.I. and a fine of Rs. 1000/ each U/S 498A I.P.C. and in default of payment of fine they were to further undergo three months S.I. However, the sentences were to run concurrently.

3 Brief facts giving rise to these appeals, are that, on 15.11.1994 Preetam Lal Kukreja filed a complaint before District Magistrate, Nainital with the allegations that his daughter Renu Bala aged about 20 years was married with Rajendra Singh Gulati on 11.3.1993. After marriage, Rajendra Singh, husband of Renu Bala and his mother Smt. Jaswant Kaur, started cruel behaviour with Smt. Renu Bala. They also made unlawful demand of cash and other articles in dowry. The further allegation of the complainant is that the accused persons were making demand of scooter and fridge. According to the complainant his daughter also

gave birth to a female child Km. Geetika, who is 8 months old. When the unlawful dowry demand of Rajendra Singh and his mother Smt. Jaswant Kaur was not fulfilled, they on 8.11.1994 at about 2 p.m. administered poison to Smt. Renu Bala, due to which she was admitted in B.D. Pandey Hospital Nainital in serious condition, where she died on 9.11.1994. The complainant received information of the incident on telephone. On 9.11.1994, at about 9.00p.m., he reached Ramgarh and thereafter he went at Patwari Circle Ramgarh to lodge the report, but the Patwari refused to lodge his report, hence he sent the written report, Ext. Ka.1, to the District Magistrate. On the above written complaint, S.D.M. Nainital directed Naib Tehsildar to register the case and investigate. The Naib Tehsildar Nainital, on the basis of the written report, prepared chick F.I.R. Ext. Ka.3, and registered a case crime No. 7/1994, U/Ss 304B and 498A I.P.C. against the accused persons, vide G.D. No. 56 dated 17.11.1994, the copy of the G.D. is Ext. Ka.4.

4 On the death of deceased Smt. Renu Bala in B.D. Pandey Hospital, the inquest on her dead body was conducted by Mahadeo Bhatt, the then Tehsildar. He prepared inquest report, Ext. Ka.6. He also prepared police form No. 13, Ext. Ka.10, sample seal, Ext. Ka.11, sketch dead body, ext. Ka.12, letter to C.M.O. B.D. Pandey Hospital, Nainital, Ext. Ka.9, another letter to C.M.O. Nainital, Ext. Ka.8 and letter to R.I. Police Line Nainital, Ext. Ka.7.

5 The investigation of the incident was conducted by Sri B. Prasad, the then Naib Tehsildar Nainital. On 18.11.1994 he visited the place of occurrence and prepared siteplan, ext. Ka.5. recorded the statements of witnesses and on 19.4.1995 at 5.30 a.m. he arrested Smt. Jaswant Kaur from her house. The another accused Rajendra Singh surrendered before the Court. Thereafter the I.O. sent the viscera of the deceased for chemical examination. The viscera report is Ext. Ka.13 on record. After completing the investigation, the I.O. submitted charge sheet, Ext. Ka.14 against the accused persons.

6 The post mortem on the dead body of the deceased Smt. Renu Bala was conducted by Dr. K.K. Bhatt, Medical Officer, B.D. Pandey, Hospital, Nainital on 9.11.1994 at 1.15 p.m. In the opinion of the doctor rigor mortis was present over the body. The doctor did not find any external injury on the body of the deceased. The doctor could not ascertain the cause of death of the deceased hence he preserved the viscera of the deceased. He prepared post mortem report Ext. Ka.2. He sealed the clothes and other articles found on the dead body and handed over the same to concerning constable.

7 On receipt of charge sheet, the C.J.M. Nainital committed the case to the court of Sessions for trial.

8 The Additional Sessions Judge, Nainital framed charges U/Ss 304B and 498A I.P.C. against both the accused persons. They pleaded not guilty and claimed to be tried.

9 The prosecution in support of its case examined P.W.1, Preetam Lal, P.W.2,

Smt. Gyan Kaur, P.W.3, Dinesh Chandra Pathak, P.W.4, Rajendra Gulati, P.W.5, Chandan Kumar, P.W.6, Dr. K.K. Bhatt, and P.W.7, B. Prasad.

10 The accused persons in their statements U/S 313 Cr.P.C. denied the prosecution allegations and alleged that they got admitted the deceased in the hospital and she died to her natural death. They have been falsely implicated in the case. The accused persons in their defence filed some letters written by deceased Renu Bala and also examined Ram Lal, D.W.1, Sanjay Pandey, D.W.2, and Rajendra Singh Gulati as D.W.3.

11 The learned trial court after hearing learned counsel for the parties and considering the entire evidence available on record, found both the accused guilty of the offences U/S 304B and 498A I.P.C. and sentenced them to undergo life imprisonment U/S 304B I.P.C. and three years R.I. and a fine of Rs. 1000/ each U/S 498A I.P.C. and in default of payment of fine they were to further undergo three months S.I. However, the sentences were to run concurrently.

12 Feeling aggrieved, the accused/appellants have preferred both these appeals.

13 We have heard Sri S.P.S. Panwar, learned Senior Advocate, assisted by Mr. H.C. Pathak and Mr. Sachin Panwar, appearing on behalf of the appellants and Sri S.S. Adhikari, learned A.G.A. and perused the record.

14 First of all learned counsel for the accused/appellants has argued that in this case the first information report was lodged at the police station with inordinate delay, which causes a serious doubt on the prosecution story, and it cannot be ignored that the entire allegation made in the first information report is the result of concoction and afterthought.

15 In this context if we go through the first information report then it reveals that Renu Bala deceased was taken to hospital on 8.11.1994, on account of intake of some poisonous substance, she died in the hospital on 9.11.1994. The first information report reveals that the cause of death was poison. The informant Preetam Lal, who is father of the deceased, has mentioned in the first information report that when he reached Ramgarh (the place where the accused persons reside), then he came to know about the entire incident. He has further mentioned that he and his relative went to Patwari Patti Ramgarh for lodging the first information report, but the Patwari refused to get the report lodged. In order to establish the contents made in the first information report, the prosecution produced P.W.1, Preetam Lal, who has stated in his deposition that on 8th of November, he received the information that the condition of his daughter Renu was serious and again on the same day at about 9.30 p.m. he received the information with regard to the death of his daughter. He has further deposed that on 8.11.1994, he along with his wife reached Ramgarh and he asked the reason of death of Renu, then accused Rajendra told him that he gave Renu poison and on account of intake of poison she died. This witness has further deposed that upto 12.11.1994 he stayed at Ramgarh and the accused persons could not permit him to lodge the first information report, but anyhow he went to Patwari

on 12.11.1994 to lodge the report, but the Patwari refused to lodge the report and then he gave a written report to D.M. and S.S.P. Nainital. This witness in his crossexamination has stated that he along with his brother in law Jaswant Singh went to Ramgarh Patwari on 12.11.1994 and when Patwari refused to lodge report then he went to Haldwani and got the report typed from one Jogendra Lal Advocate. The statement of this witness does not find corroboration with the statement of P.W.2, Smt. Gyan Kaur, who is the mother of deceased Renu Bala. It is important to mention here that the incident in this case has taken place on 8.11.1994, but the written report of this incident was given by the informant on 15.11.1994 and thereafter the report could be lodged at Patti Ramgarh on 17.11.1994. This delay has not been properly explained either in the first information report or in the statements of the witnesses. P.W.1, Preetam Lal although has tried to explain the delay by saying that he was not permitted to lodge the report upto 12th by the accused persons, but thereafter he got the report typed by one Lawyer at Haldwani and then sent it to S.S.P. and D.M. Nainital. The reason for the delay caused in lodging the report has not been satisfactorily explained. The deposition of this witness is seriously contradicted by the statement of P.W.2, Smt. Gyan Kaur, who has clearly stated that after the death of Renu when Preetam Lal and she went to Ramgarh then they stayed over there only one day and after the cremation of Renu they returned to Faridabad on the same day. She has further stated that after 34 days her husband came from Faridabad in order to lodge the report. This does not appeal to reason as to why the report could not be lodged immediately after the occurrence by the informant who came to Ramgarh on 8th and he attended the funeral ceremony and thereafter he had a lot of time to lodge the report, but what prevented him to lodge the report, is best known to the complainant himself.

16 Further it will be important to mention here that P.W.7, B. Prasad is the investigating officer who was posted as Naib Tehsildar at the time of incident. He, in his crossexamination has stated that from 8.11.1994 to 17.11.1994 he along with Tehsildar remained present in Tehsil Nainital. Patti Patwari and Kanoongo were also present during this time at their headquarters. They made the entry with regard to their presence in their daily attendance register, which is being inspected by the Tehsildar as well as the Naib Tehsildar. This witness has further stated that from 8.11.1994 to 17.11.1994 Preetam Lal or any other person had never made any complaint to them with regard to this case. He has also stated that neither Preetam Lal nor anybody else came either to Patwari or Kanoongo or to him in order to make the complaint with regard to this case. Therefore, the inordinate delay in lodging the first information report gives a serious jolt to the prosecution case and this aspect cannot be ignored that the first information report was subsequently lodged after a gap of about seven days of the death of Renu Bala with certain deliberations and afterthought.

17 The second most important aspect in this case is that in the first information report it is mentioned that demand of fridge was being made by the accused persons. This aspect also does not find support by other evidence available on

record. As far as the demand of scooter and fridge made by the accused persons is concerned, the complainant himself has changed the demand at different stages. In the first information report it is stated that the accused used to make a demand of scooter and fridge and on account of the demand of dowry they used to commit cruelty upon Renu Bala. Our attention has been invited by the counsel for the accused/appellants towards a petition U/S 25 of the Guardian and Wards Act filed by Preetam Lal informant before the court of Additional District Judge, Faridabad and in this petition at paragraph 3 the complainant has averred that the accused persons started demanding a sum of Rs. One lac cash and a scooter from his daughter and in view of this they committed cruelty upon Renu Bala. The demand of Rs. One lac is absolutely absent in the first information report. Further the demand of dowry is not established by the prosecution by any cogent and reliable evidence. In order to bring the offence within the purview of Section 304B I.P.C. it is mandatory that when the death of a woman is caused otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

18 Now we have to scrutinize the record as to what is the evidence available on record in order to show that Smt. Renu wife of accused/appellant Rajendra was infact subjected to cruelty in order to demand of dowry or not. In the first information report the complainant has stated that his daughter was being subjected to cruelty on account of demand of scooter and fridge and for that reason they used to commit cruelty upon her, but this demand of dowry made by the accused persons was changed by the complainant at a subsequent stage when he filed the petition before the court of A.D.J. Faridabad for custody of the minor daughter Geeta. The complainant in his cross-examination has stated that subsequently the accused persons started demanding fridge and one lac rupees. The prosecution has also produced P.W.5, Chandan Kumar, who is the brother of deceased Renu Bala. He has also stated that the accused persons used to commit marital rape with Renu Bala, but in the cross-examination this witness has stated that Naib Tehsildar infact did not record his statement at all. P.W.7, B. Prasad investigating officer has stated that Chandan Kumar, brother of the deceased Renu Bala, did not give the statement before him that the accused demanded rupees one lac and scooter. He has also stated that he recorded the statement of Chandan Kumar on 26.5.1995 at Faridabad, Haryana. It is worthy to mention here that Chandan Kumar has stated that when he went to the house of his sister Renu Bala then in the breakfast Renu Bala gave him some butter and at this accused Rajendra committed marital rape with his sister Renu as to why the butter was given to him, but this witness has not stated this thing before the investigating officer.

19 The most important aspect in this case is that some letters written by Renu Bala were produced by the defence before the trial court. One letter written by

Renu Bala to her mother and father is available at page4 and it is exhibited as Ext. Kha.1 and this letter nowhere indicates that Renu Bala had ever been subjected to cruelty by accused persons. Rather this letter indicates that Renu Bala was absolutely satisfied in the house of her inlaws. This letter also indicates that Preetam Lal has also conveyed his good wishes to the accused persons and nothing is there which may suggest that Renu Bala had ever been subjected to cruelty by the accused persons and on account of the demand of dowry she was feeling any sort of discomfort or inconvenience at her inlaws place. Another letter, Ext. Kha.5, is also there on the record which indicates that Renu Bala had sent it from Faridabad to her inlaws and her husband and in that letter there is no indication about demand of dowry or about the cruelty committed upon Renu Bala on account of demand of dowry. Further it appears that Renu Bala has again sent a letter to her husband which indicates that there was a sweet relation between Renu Bala and her husband. There are also other letters Ext. Kha.3 and Kha.6 on record, which further indicate that Renu Bala had absolutely sweet and cordial relations with her husband and inlaws. Therefore, from the perusal of these letters it is quite clear that no demand of dowry was being made by the accused persons and this theory of demand of dowry and committing cruelty towards Renu Bala by the accused persons has been concocted afterward while lodging the F.I.R. by the complainant with inordinate delay. The allegations made by the complainant in the first information report as well as in the statement with regard to the demand of dowry and committing cruelty upon Renu Bala on account of demand of dowry, is not substantiated by any cogent and reliable evidence.

20 The prosecution has further produced P.W.3, Dinesh Chandra Pathak, who is posted in P.H.C. Ramgarh and who is known to the family of accused persons. This witness has stated that when he went to the house of accused/appellants on 8.11.1994 at about 2.30 to 3.00 p.m. then he saw Dr. P.L. Kandwal, who was also posted at P.H.C. Ramgarh, present there and wife of accused Rajendra was lying unconscious. Then the doctor suggested Rajendra accused to take his wife to the District Hospital, Nainital and this witness Dinesh Chandra P.W.3, also accompanied accused Rajendra to District Hospital Nainital, where Renu Bala was admitted by her husband. This witness in his crossexamination has stated that when the condition of the wife of Rajendra was serious then accused Rajendra was quite perturbed and he tried his level best to provide every best treatment to his wife. He has also stated that he is neighbour to the house of accused/appellant Rajendra but he never found that there was some strained relation between the husband and wife. Further the accused/appellants produced D.W.1 Ram Lal, who is having his shop just adjacent to the shop of the accused Rajendra and he is also a resident of the adjacent house of accused/appellant Rajendra and this witness has stated that he had never heard any quarrel between Rajendra and his wife Renu Bala. He has also stated that Rajendra accused tried his level best to provide best treatment to his wife but his wife could not be saved. Further D.W.2, Sanjay Pandey is also a person who is

neighbour of the accused/appellants. He has also stated that Renu Bala was absolutely happy in her inlaws house and there was no quarrel between the husband and wife. He has never seen any strained relation between husband and wife. The accused/appellants have also thus discharged their burden in establishing this aspect that in fact Renu Bala deceased had never been subjected to cruelty on account of demand of dowry and there had been no quarrel between the husband and wife at all till she died. The defence has also established that the accused tried his level best in saving the life of his wife. Hence, under these circumstances it cannot be inferred by any stretch of imagination that the accused/appellants had ever demanded any dowry and subjected the deceased Renu Bala to cruelty in connection with any demand for dowry. It appears that anyhow Renu Bala took the insecticide or any type of poison either intentionally or unintentionally and the same caused her death, but the informant, for the reasons best known to him, after deliberations and concoction, implicated the accused/appellants in the commission of crime. We, therefore, find that the prosecution has utterly failed in establishing the guilt of the accused persons, beyond reasonable doubt. However, the defence has also discharged its burden by establishing that the deceased had never been subjected to cruelty by them on account of demand of dowry.

21 For the reasons stated above, we are of the view that the judgment and order passed by the trial court convicting the accused/appellants U/Ss 304B and 498A I.P.C. and sentencing them to undergo Life Imprisonment U/S 304B I.P.C. and three years R.I. and a fine of Rs. 1000/ U/S 498A I.P.C. and in default of payment of fine to undergo S.I. for three months, is liable to be set aside and both the appeals are liable to be allowed.

22 Both the appeals are allowed. The conviction and sentences awarded to the accused/appellants vide impugned judgment and order are set aside and they are acquitted of the charges U/Ss 304 B and 498A I.P.C. leveled against them.

23 Both the accused/appellants are on bail. Their bails bonds are cancelled and sureties discharged. They need not surrender.

24 Let a copy of this judgment be placed in the file of Criminal Appeal No. 1521/2001.