
(2015) 02 P&H CK 0358
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 326-DB of 2010

Kashmiri Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 120-B, 302, 304-B

Citation : (2015) 02 P&H CK 0358

Hon'ble Judges : Muttaci Jeyapaul, J; Darshan Singh, J

Bench : Division Bench

Advocate : Radhey Shyam Sharma, for the Appellant; Tanisha Peshawaria, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Darshan Singh, J.—The present appeal has been filed against the judgment dated 8.2.2010 passed by the then learned Sessions Judge, Fatehabad vide which appellant Kashmiri Lal has been held guilty and convicted for the offence punishable under Section 304-B of Indian Penal Code (hereinafter referred to as "IPC") and the order on the quantum of sentence dated 9.2.2010, vide which he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/-. In default of payment of fine, he was further ordered to undergo rigorous imprisonment for a period of 3 1/2 years.

2. The brief facts of the prosecution case are that appellant Kashmiri Lal, the husband of deceased Suman, on 13.11.2008 made the statement Ex. P1 to the police alleging therein that on yesterday evening, after taking their food, he and his wife Suman went to sleep on separate cots. At about 4.00 A.M. when he heard the noise of weeping of his son Avtar, he woke up and found that his wife was lying under the cot in unconscious condition. He got his parents and neighbours woke up. Dr. Vinod was called from the village. He examined her

and declared that she had died. On the statement of appellant Kashmiri Lal Ex. P1, PW.1 Assistant Sub Inspector Randhir Singh made his endorsement Ex. P2 and sent the same to the Police Station on the basis of which DDR No. 76 dated 13.11.2008 was recorded. The copy thereof is Ex. P3. Thereafter, Assistant Sub Inspector Randhir Singh carried out the inquest proceedings and prepared the inquest report Ex. P4. He moved an application to the Medical Officer, Government Hospital, Fatehabad for conducting the post mortem examination on the dead body of deceased Suman. Upon his application, the doctor conducted the post mortem examination on the dead body of deceased Suman. After conducting the post mortem examination, the dead body of Suman was handed over to her father Madan Lal vide memo Ex. P6.

3. On 14.11.2008, complainant Madan Lal PW.5, father of the deceased Suman, moved an application Ex. P11 to PW.7 Sub Inspector Yogesh Kumar alleging therein that appellant Kashmiri Lal, his mother Krishna alias Guddi and sister Banto, in furtherance of their common intention had been harassing and torturing the deceased on account of bringing inadequate dowry and due to non-fulfillment of their demands. Even the panchayat was convened wherein they admitted their fault and assured not to harass the deceased in future. After some time, they again started raising the demand of dowry and in furtherance of their common intention gave beatings to the deceased. The deceased had telephonically informed the complainant that the accused/appellant had again started harassing her and stated that they could not save enough money by doing labour work in Gujarat and she should bring money from her father for the treatment of his father Diwan Chand. The complainant asked that he would come after one or two days and then will have talk with the accused. But on 13.11.2008, he received the call on the mobile phone of his son from appellant Kashmiri Lal that Suman has died as a result of heart attack. The complainant along with his relatives and respectables reached at village Bahbalpur and on careful examination of the dead body, he found that there was bleeding from her mouth and there was black sign on her neck. He suspected that his daughter was killed by pressing her neck. On this application of complainant Madan Lal, formal FIR Ex. P16 was recorded and investigation was initiated.

4. PW.7 Sub Inspector Yogesh Kumar inspected the spot and prepared the rough site plan Ex. P17. He also recorded the statements of the witnesses. He arrested appellant Kashmiri Lal and his mother Krishna Devi. On interrogation, the appellant suffered the disclosure statement Ex. P7. On completion of all the formalities of investigation, the report under Section 173 Cr.P.C. was presented in the Court against appellant Kashmiri Lal and his mother Krishna Devi. However, accused Banto could not be arrested.

5. Appellant Kashmiri Lal and his mother Krishna Devi were charge sheeted for the offence punishable under Sections 120-B and 304-B IPC by the learned trial Court vide order dated 24.2.2009, to which they pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined as many as nine witnesses. Thereafter, the prosecution has closed its evidence.

7. When examined under Section 313 Cr.P.C. the accused pleaded false implication and did not adduce any evidence in their defence.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, appellant Kashmiri Lal was held guilty and convicted for the offence punishable under Section 304-B IPC and was sentenced to imprisonment for life, as mentioned in the earlier part of the judgment. However, he was acquitted of the offence punishable under Section 120-B IPC. Krishna Devi, the mother of appellant Kashmiri Lal, died during the pendency of the case and proceedings qua her were dropped by the learned trial Court vide order dated 28.1.2010.

9. Aggrieved from the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10. I have heard Mr. Radhey Sham Sharma, Advocate, counsel for the appellant, Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana for the State of Haryana and have meticulously examined the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that the appellant has been falsely implicated in this case. There is no specific allegation as to what article was demanded in dowry by the appellant. The marriage was more than six years old. Both the parties belong to the poor labour class. Madan Lal complainant has admitted that there was no demand of dowry at the time of engagement as well as at the time of marriage. Whatever was given by him to his daughter at the time of marriage, was given with his sweet will. So there can be no question of the deceased being harassed and tortured soon before her death by the appellant for the demand of dowry.

12. He further contended that infact it was the appellant, who was assaulted by the complainant and his family members. He even moved the complaints to the police but the matter was compromised. Thus, he contended that no offence punishable under Section 304-B IPC is made out against the appellant.

13. In the alternative, learned counsel for the appellant contended that the appellant has no criminal background. He is not a previous convict. He has small children. There is nobody else in the family to look after them. He is in jail for the last more than six years. The sentence awarded by the learned trial Court is very harsh and disproportionate. He further contended that even a fine of Rs. 10,000/- has been imposed, whereas there is no provision for imposing the fine under Section 304-B IPC. Thus, he pleaded for the lenient view in the matter of sentence.

14. On the other hand, learned State counsel contended that all the ingredients of Section 304-B IPC are made out against the appellant from the evidence on the record. The occurrence had taken place within seven years of the marriage.

Suman had died otherwise than under normal circumstances. It is also established that soon before her death, she was subjected to cruelty on account of the demand of dowry. Thus, she pleaded that there is no legal infirmity in the conviction and sentence of the appellant.

15. We have duly considered the aforesaid contentions.

16. In order to bring home the charge, the prosecution was required to establish that the death of Suman had been caused otherwise than under normal circumstances. Secondly, the death had occurred within seven years of her marriage. Thirdly, she was subjected to cruelty or harassment by the accused soon before her death. Fourthly, such cruelty or harassment was in connection with the demand of dowry. There is enough evidence on record to establish that Suman had died otherwise than normal circumstances.

17. PW.8 Dr. Pardeep Kumar had conducted the post mortem examination on the dead body of deceased Suman and found the following injuries on her body:

"1. Two abrasions of size 1/2 x 1/4 cms present on the lower lip. On dissection, blood was present in tissue.

2. Multiple bruises present on front and left lateral of neck (mid) present of shape ill-defined sizes 7 x 3 cm to 3 x 2.5 cm. On dissection, blood was present in underlying tissue. Trachea and larynx congested, haematoma present in carotid sheath and other vessels and muscles."

18. As per his opinion, the cause of death in this case was asphyxia as a result of constriction of neck, which was ante-mortem in nature and sufficient to cause death in the ordinary course of nature. In the cross-examination, he deposed that there was no bleeding in the nostrils and mouth of the dead body. He further deposed that generally, if there is strangulation, blood oozes from the mouth and nostrils of the victim. The aforesaid medical evidence shows that the deceased had injuries on her body. On dissection, blood was found present in underlying tissues of the neck. Trachea and larynx were congested. Haematoma was present in carotid sheath and other vessels.

19. PW.1 Assistant Sub Inspector Randhir Singh has prepared the inquest proceedings Ex. P4. Even in the inquest proceedings, the signs of abrasion on the neck of the deceased are categorically mentioned.

20. Madan Lal, the father of the deceased, while appearing in the witness box as PW.5 has categorically deposed that he along with his relatives and panchayat of village Hindalwala went to village Bahbalpur and saw the dead body of Suman lying on the cot in her room. There was black sign in her neck and the blood was oozing from her mouth. Admittedly, the accused/appellant was very much present in the house and was even sleeping in that very room. But he has not come forward with any explanation in his statement under Section 313 Cr.P.C. as to under what circumstances deceased Suman suffered the death. In reply to question No. 7 in his statement under Section 313 Cr.P.C., wherein the medical

evidence was put to him with respect to the cause of death of Suman, his simple reply was that the same is incorrect without giving any satisfactory explanation. So the presumption under Section 106 of the Indian Evidence Act, 1872 arises against the appellant.

21. After the completion of investigation, the police had filed the report under Section 173 Cr.P.C. for the offences punishable under Sections 304-B/120-B IPC. The accused/appellant along with his mother Krishna Devi, who died during the pendency of the trial, was also charge sheeted by the learned trial Court for the offences punishable under Sections 120-B and 304-B IPC. The prosecution has not agitated at any stage of the case that the appellant should have been charge sheeted for the offence punishable under Section 302 IPC nor any appeal has been filed by the prosecution before this Court that instead of Section 304-B IPC, Section 302 IPC was attracted. So we are to confine the case as set up by the prosecution and the offences for which the appellant was charge sheeted.

22. The medical evidence on record clearly establishes that the death of Suman is neither natural nor accidental. She has died as a result of injuries. The cause of death was asphyxia due to constriction of her neck. So it is established that the deceased Suman has died otherwise than under normal circumstances.

23. There is no dispute to the fact that the marriage between appellant-Kashmiri Lal and deceased Suman was solemnized on 26.9.2002. The present occurrence had taken place in the night intervening 12/13.11.2008. So Suman has died within seven years of her marriage.

24. There is also sufficient evidence on record to establish that the deceased was subjected to cruelty and harassment in connection with the demand of dowry soon before her death.

25. PW.5 Madan Lal, the father of the deceased, has categorically deposed that Kashmiri Lal, husband, Krishna, mother-in-law and Banto, sister-in-law of Suman were not happy with the dowry given in the marriage of his daughter. On this account, they used to tease and harass his daughter Suman. She used to tell him this fact whenever she came to their house. Kashmiri Lal used to beat Suman at the instigation of Banto Bai and Krishna. He showed his helplessness to fulfill the demand of the accused. He convened the panchayat to settle the matter. In the panchayat, accused admitted their fault and assured not to harass his daughter in future. The accused had again started demanding the money as dowry, upon which Kashmiri Lal after beating the deceased Suman thrown her out of the matrimonial home. He filed an application in the Nodal Cell, Fatehabad. Later on, the panchayat was convened on 24.4.2007 and compromise was effected. After some time, all the accused persons again started harassing his daughter and used to beat her. He further deposed that Kashmiri Lal along with the deceased Suman had gone to Gujarat for labour work. When they returned back, Kashmiri Lal again demanded money from his daughter and started harassing her. His daughter made a telephonic call to him and told this fact. He brought the matter

to the notice of Subhash Chand and the panchayat, upon which he told that they would go with him in two/three days to the house of the accused. On the basis of application Ex. P11, moved by complainant Madan Lal, the FIR was registered. There are specific allegations in application Ex. P11 that the appellant started harassing the deceased and also asked to bring money from her father to give treatment to his father Diwan Chand as they were not having enough money.

26. PW.9 Subhash Chand, Sarpanch of village Hindalwal i.e. the parental village of deceased Suman has also corroborated the version of PW.5 Madan Lal. He also deposed that after six months of the marriage, Kashmiri Lal, husband, mother-in-law and sister-in-law Banto had started harassing Suman for not bringing sufficient dowry. The accused persons asked Suman to bring more dowry and they used to beat her in this regard. Thereafter, panchayat of respectables was convened two/three times and in those panchayats, she had also participated. Thereafter, he deposed that compromise was effected between the parties. He further deposed that on 11.8.2008, Suman made a telephonic call to her father Madan Lal and made a complaint to him regarding the beating and harassment given to her by her husband and other family members for the demand of dowry. Then Madan Lal came to him and asked him to accompany him with the panchayat. He told him that he had some work in his relations and he would go after two/three days. The copies of applications Ex. P12, Ex. P13, Ex. P14 and Ex. P15 show that even in the year 2007, the relations between the appellant and his wife were not cordial.

27. In the cross-examination PW.5 Madan Lal has stated that whatever things had been given by him to his daughter at the time of marriage, same were given by him with his sweet will. He also deposed that nothing was demanded by the accused at the time of engagement and marriage. However, he categorically deposed that they started demanding dowry after one month of the marriage. Mere this fact that there was no demand of dowry at the time of engagement and marriage is no guarantee that there can be no subsequent demand of dowry. The demand made even after the marriage also falls within the definition of marriage.

28. In case Ashok Kumar Vs. State of Haryana, AIR 2010 SC 2839 : (2010) CriLJ 4402 : (2010) 2 DMC 291 : (2010) 7 JT 460 : (2010) 12 SCC 350 : (2011) 1 SCC(Cri) 266 : (2010) AIRSCW 4651 , the Hon"ble Apex Court has laid down that definition of dowry covers all the demands made at the time, before and even after the marriage provided the same were in connection with marriage. In case Bachni Devi and Another Vs. State of Haryana, AIR 2011 SC 1098 : (2011) CriLJ 1634 : (2011) 1 Crimes 289 : (2011) 1 DMC 494 : (2011) 1 JCC 418 : (2011) 2 JT 1 : (2011) 1 RCR(Criminal) 868 : (2011) 2 SCALE 265 : (2011) 4 SCC 427 : (2011) 2 SCC(Cri) 280 : (2011) 2 SCR 627 : (2011) 1 UJ 468 : (2011) AIRSCW 1209 : (2011) 1 Supreme 751 , the accused demanded the motorcycle to start the milk vending business. The Hon"ble Apex Court held that the demands for property or valuable security directly or indirectly, has a nexus with

the marriage will constitute the demand of dowry. The demand for dowry before the marriage, at the time of marriage or even after the marriage is an offence. In case *Balkar Singh Vs. State of Punjab*, (2011) 2 RCR(Criminal) 266 , the demand was of a buffalo and Rs. 1,00,000/- for going abroad. The Hon'ble Apex Court held that the demand of money cannot be excluded from the definition of dowry.

29. In the instant case also, the accused has raised the demand of money. He asked his wife (deceased Suman) to bring money from her parents as he had not enough money for the treatment of his father. The said money was not being demanded by appellant-Kashmiri Lal as a loan. So certainly, the demand of money raised by the appellant from his wife had the direct nexus with the marriage of the appellant with deceased Suman and would fall within the definition of dowry even though the demand was raised after the marriage. This demand of money was raised by the appellant after the appellant and his wife had returned from Gujarat where they had gone to do the labour work. So the harassment of the deceased on account of the demand of aforesaid money was soon before her death.

30. In order to prove the harassment and cruelty on account of demand of dowry, it is not necessary to establish that the demand of any particular item had been made. To support this view, reference can be made to the case *Devi Lal Vs. State of Rajasthan*, AIR 2008 SC 332 : (2007) 2 DMC 743 : (2007) 12 JT 114 : (2007) 12 SCALE 265 : (2007) 11 SCR 219 : (2007) AIRSCW 6871 . In case *Jarnail Singh alias Titu and others Vs. State of Haryana*, (2008) 1 RCR(Criminal) 925 , the demand of Rs. 1,00,000/-for the business of the husband was held to be the demand of dowry. These authorities are fully applicable to the facts of the present case and the contentions raised by the learned counsel for the appellant that there are no allegations of any specific demand and the allegations are of general nature do not carry any substance. Mere this fact that the demand of money has been raised after more than six years of the marriage is not sufficient to discard the prosecution version based on cogent evidence.

31. The Hon'ble Apex Court in case *State of Himachal Pradesh Vs. Nikku Ram and others*, AIR 1996 SC 67 : AIR 1995 SC 67 : (1995) CriLJ 4184 : (1996) 1 DMC 131 : (1995) 5 SCALE 94 : (1995) 6 SCC 219 : (1995) 3 SCR 177 Supp has laid down that even if the demand is long after the marriage the same could constitute dowry, if other requirements of the section are satisfied. Thus, it is also established from the evidence on record that deceased Suman was treated with cruelty and was subjected to harassment soon before her death in connection with the demand of dowry. All the ingredients of the offence punishable under Section 304-B IPC stand fulfilled. So we do not find any legal infirmity in the conviction of the appellant recorded by the learned trial Court for the offence punishable under Section 304-B IPC.

32. We found substance in the plea of the counsel for the appellant for the reduction of sentence. The appellant belongs to the labour class. He has two children. As per the cross-examination of PW.5 Madan Lal recorded on

10.6.2009, eldest son of the appellant was five years of age and younger was only 2 1/2 years at the time of occurrence. Now they would be about 11 and 8 1/2 years of age, respectively. Both the children are residing with the accused party.

33. Learned Counsel for the appellant has contended that the father of the appellant had also died. His mother had died during the pendency of the trial. So there is no close family member to look after the children. This plea of the learned counsel for the appellant also finds support from the copy of the order of learned Sessions Judge, Fatehabad dated 15.12.2008 which shows that the deceased accused Krishna, mother of the appellant, was allowed interim bail on account of the death of her husband Diwan Chand who died on 14.12.2008. The co-accused Krishna had died during the pendency of the trial. So both the parents of the appellant had already died. He is in jail. His wife had already died. So there is no close relation to look after his children. This fact is not disputed that the appellant has no criminal background and even as per the police papers, he is not a previous convict. So the ends of justice will suffice even if the sentence awarded to the appellant is reduced.

34. The learned trial Court has also imposed a fine of Rs. 10,000/- in addition to the substantive sentence. The Hon''ble Apex Court in case Arun Garg Vs. State of Punjab and Another, (2004) 5 CTC 150 : (2004) 2 DMC 570 : (2004) 8 JT 124 : (2004) 8 SCALE 273 : (2004) 8 SCC 251 : (2005) 1 UJ 235 has laid down that no fine can be imposed in case of conviction for the offence punishable under Section 304-B IPC. So the sentence of fine imposed by the learned trial Court is liable to be set aside.

35. Thus, keeping in view our aforesaid discussion, we do not find any legal infirmity or impropriety in the conviction of the appellant recorded under Section 304-B IPC. Thus, the appeal of the appellant against conviction is hereby dismissed. However, the order on quantum of sentence is hereby modified. The appellant is sentenced to undergo rigorous imprisonment for a period of ten years and the sentence of fine, imposed by the learned trial Court, is hereby set aside.