
(2008) 07 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 688-SB of 1995

Kashmiri Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 313
Dowry Prohibition Act, 1961 — Section 2
Penal Code, 1860 (IPC) — Section 107, 109, 304B, 306, 498A

Citation : (2008) 4 RCR(Criminal) 497

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : Sanjay Jain, Amicus curiae, for the Appellant; Tarunveer Vashisht, Additional Advocate General, for the Respondent

Judgement

Harbans Lal, J.—This appeal is directed against the judgment/order of sentence dated 3.11.1995 rendered by the Court of learned

Additional Sessions Judge Kurukshetra, whereby he convicted and sentenced Kashmiri Lal accused- appellant to undergo rigorous imprisonment

for 7 years and to pay a fine of Rs. 1,000/- and in default of payment of the same, to further undergo rigorous imprisonment for one year u/s 306

of IPC.

2. The minimal facts of the prosecution case are that at the time of marriage of Satya Rani (since deceased), her father Hargobind complainant

gave dowry beyond his means. After marriage, Satya Rani along with accused started residing at Kurukshetra. About 4-5 months later, when

Hargobind came to Kurukshetra, he told that brother of the accused had broken the key of the almirah of his daughter. The accused and his

brother used to harass her. The accused wanted money to run the shop. To keep

alive his daughter's married life, he gave Rs. 5,000/- to the accused on 11.8.1990 after withdrawing the same from the bank. Whenever he visited Kurukshetra, his daughter used to complain about ill treatment and beatings being meted out to her by the accused as she had refused to fulfill his demands. A female baby Seema was born from their wedlock. The complainant's wife had given Rs. 1,000/- and Rs. 4,000/- on two different occasions to the accused. The accused came to Kaithal and put forth demand of Rs. 20,000/- or Rs. 25,000/- to run the shop, which he refused to pay as he was financially hard up and was living on Pensionary benefits. On 26.4.1993, she was given beatings by her husband with a bludgeon in relation to which he lodged report with the police. She ended up her life on 30.4.1993 when she was overrun by a running train along with her daughter Seema. He could not come to Kurukshetra as he had become unconscious on hearing the news of his daughter's death and was lying hospitalized. He regained consciousness after 4-5 days whereafter he lodged report, Exh.P1/A with the police at Kurukshetra. On the basis of the same, the case registered. The accused was put under arrest. The autopsy on the dead bodies of Satya Rani and Seema was performed. After completion of investigation, the charge-sheet was laid in the Court of learned Illaqa Magistrate.

3. On commitment to the Court of Sessions, the accused was charged under Sections 304-8 and 498A of IPC, to which he did not plead guilty and claimed trial.

4. To bring home guilt against the accused, the prosecution examined PW-1 Sanjay Kumar, Photographer but he was given up as the photographs were not on the judicial file. Further, the prosecution examined PW-2 Isham Singh, Draftsman, PW-3 Dr. S.N. Bansal, PW-4 Krishan Lal

(retired) driver of Indian Railways, PW-5 Raj Kumar, PW-6 Om Parkash, PW-7 Hargobind, father of the deceased, PW-8 Krishna Wanti, PW-

9 Dr. D.S. Saini, PW-10 Dr. Tej Pal Nagar, PW-11 Surinder Kumar, PW-12 Waryam Singh Ahlmad, PW-13 Dhanna Ram SI, PW-14

Sureshta Rani, PW-15 Gurdeep Singh SI and closed its evidence by giving up PWs Ramesh Kumar and Sanjay Kumar being unnecessary.

5. When examined u/s 313 of the Code of Criminal Procedure, the accused denied all the incriminating circumstances appearing in the prosecution

evidence against him. He has put forth that he has been falsely framed in this case because he was the sole surviving heir of the deceased, who met

an accidental death as she was overrun by a train when she was escorting her daughter to school on the fateful day.

6. After hearing the learned Public Prosecutor for the State, the learned defence counsel and examining the evidence on record, the learned trial

Court convicted and sentenced the accused as noticed at the outset. Feeling aggrieved with his conviction/sentence, he has preferred this appeal.

7. I have heard the learned counsel for the parties, beside perusing the record with due care and circumspection.

8. Mr. Sanjay Jain, Advocate, appearing as amicus curiae behalf of the appellant, urged with a good deal of force that as is borne out from the

evidence of Hargobind, PW-7, father of the deceased as well as his wife Krishna Wanti, PW-8, mother of the deceased, on 30.4.1993, i.e. the

day of occurrence, Satya Rani deceased was escorting her female child to school when she was killed in the accident. It is own case of the

prosecution that the death was accidental and not suicidal and the deceased was serving as a Clerk in the Forest Department and if it was so, she

might have left some suicidal note before putting an end to her life by jumping in front of the running train. In the absence of such evidence

particularly when as per above referred evidence of the parents of the deceased, it was accidental death, the learned trial Court was not justified in

record in conviction u/s 306 of IPC. He further pressed into service that Hargobind (sic) in his evidence has made an effort to voice the grievance

that the deceased was being maltreated and tormented by her husband on account of her failure to arrange money being demanded by him and

being fed up she committed suicide, but on viewing his entire evidence in the background of observations made by the Apex Court in re:

Appasaheb and another v. State of Maharashtra, 2007 (1) RCR (Cri) 747, the alleged demands of money for running the shop does not fall within

the definition of 'dowry'.

9. The next argument is that as observed in re: Devassia @ Roy v. State of Kerala, 2006 (4) RCR (Cri) 399, the husband must be guilty of

intending that the deceased must commit suicide to make out an offence u/s 306 of IPC but here in this case the prosecution evidence falls short of

establishing such intention of the appellant.

10. Per contra, Mr. Vashisht on behalf of the State contended that on appraising the evidence of Hargobind, his wife Krishna Wanti, Sureshta

Rani, P. Ws, it transpires that the accused from time to time had coerced the deceased to fetch money from her parents apart from snatching her

salary, which forced her to put an end to her life by committing suicide.

11. I have given a deep and thoughtful consideration to the rival contentions. Hargobind (sic) has stated as under :

Satya Rani used to be harassed by the accused and his brothers. The accused started putting of demand for money for running his shop. Once I

paid i.e. on 11.8.1990 a sum of Rs. 5,000/- to the accused after withdrawing the same from the Bank. The said amount was paid to the accused

to run the shop. This amount was given by me on the demand of the accused. Whenever I visited at Kurukshetra, the accused used to pester me to

give more money. He used to give beatings to Satya Rani when she did not fulfill his demand for money. One female issue was born from the loins

of the accused. Her name is Seema Rani. Earlier my wife had paid the accused Rs. 1,000/- on one occasion and Rs. 4,000/- on another occasion.

A month prior to the demise of Satya Rani came to Kaithal and put his demand for Rs. 20,000/- or Rs. 25,000/- to run the shop. I did not pay any

amount on that occasion because I was financially hard up.

Krishna Wanti PW says in the following terms :

The accused was unemployed and I do not know why he used to harass Satya Rani. He used to compel Satya to bring money from her parents

so that he could start some business. Whenever Satya Rani came to our house, she complained of harassment. On 11.8.1990 my husband on the

demand of the accused gave him Rs. 5,000/- after withdrawing the amount from the Bank. I remember the date of payment because there is entry

in the pass-book of the bank which I have brought today. The accused had taken Rs. 5,000/- once and put up demand for Rs. 10,000/- later on

which we did not fulfill. He never put up demand for any other money nor we paid him money again. The accused had put up demand a month or

so before the demise of Satya Rani (deceased).

Sureshta Rani PW-14 speaks as under :-

During this period, the accused used to give beatings to Satya Rani and his demand was for money for running a shop. Once Satya Rani brought a sum of Rs. 10,000/- from her parents and paid this amount to the accused in my presence. The accused used to forcibly snatch the salary of deceased Satya Rani after giving her beatings. Satya Rani used to remain perturbed because of these happenings.

12. In re: Appasaheb and another (supra), the accused (husband) had started asking the deceased (wife) to bring Rs. 1,000/- to Rs. 1,200/- from her parents to meet the household expenses and also for purchasing manure. Whenever she went to her parental house, she used to tell her parents that her husband and mother-in-law were harassing her and used to occasionally beat her. Their Lordships of the Apex Court held that "a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for 'dowry' as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304B of IPC viz, demand for dowry is not established, the conviction of the appellants cannot be sustained.

13. Harking back to the facts of the case in hand, the sum and substance of the statements of Hargobind as well as his wife Krishna Wanti, P. Ws is that the accused used to demand money for running the shop. In view of the above extracted observations, the alleged demand cannot be enveloped within the ambit of 'dowry'. It has been manifested in plain words by Hargobind, his evidence that "on 30.4.1993 (referring to the date of occurrence) Satya Rani was killed in the accident when she was escorting her female child to school." Krishna Wanti (sic) has testified that "On 30.4.1993, the accused was in jail. Satya Rani wanted to divorce and was going to leave her daughter to the school when she met with an accident." This evidence proprio-vigore goes a long way in establishing that the deceased indeed met with an accident along with her daughter. This evidence wipes out the allegations of suicide. Had she resorted to commit suicide, she being an educated lady, might have left some suicide note

behind containing the reasons for taking such a drastic step. The above referred evidence demolishes the case of alleged suicide.

14. At this juncture, Mr. Vashisht argued that as is being evidenced by Exh. PW12/B, the photostat copy of the complaint purportedly made by

the deceased on 26.4.1993, i.e. about 3 days before the occurrence, the deceased was assaulted by the accused and she reported the matter to

the police apprehending danger to her life and this act of the accused of giving beatings to the deceased might have goaded her to commit suicide.

This contention merits rejection.

15. Needless to say, there was clear-cut interval of 3 days in between 26th April, 1993 and the date of occurrence i.e. 30.4.1993. If the deceased

had taken decision to commit suicide, her passions for this act might have cooled down during this interregnum. Now it is to be noticed as to what

has to be established by the prosecution to earn conviction u/s 306 of IPC. The accused will be guilty of abetment in case of suicide if the cruelty

meted out to the deceased had the effect of inducing her to end her life by committing suicide. He will not be guilty of the same if the victim was

hypersensitive to ordinary discord and differences in domestic life. It is not enough that the husband treated the deceased with cruelty. There must

be proof of direct or indirect acts of incitement to the commission of suicide. The abetment involves mental process of instigating a person or

intentionally aiding that person in doing of a thing. Section 107 of IPC defines abetment of a thing. The offence of abetment is a separate and

distinct offence. A person abets the doing of thing when (i) he instigates any person to do that thing; or (ii) engages with one or more other persons

in any conspiracy for the doing of that thing; (iii) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to

complete abetment as a crime. The word, "instigate" literally means to provoke, incite, urge or bring about by persuasion to do any thing.

Abetment may be by instigation, conspiracy or intentional aid, as provided in the 3 clauses of Section 107 *ibid*. Section 109 of IPC provides if the

act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be

punished with the punishment for the original offence. The offence for the abetment of which a person is charged with, the abetment is normally

linked with proved offence. [See Sohan Raj Sharma v. State of Haryana, [2008 (2) RCR (Crl.) 810 : 2008 (2) RAJ 272].

16. In the instant case, Krishna Wanti PW, none else but mother of the deceased, has stated in unequivocal terms that on 30.4.1993 the accused

was in jail. This piece of evidence further negates the offence of Section 306 of IPC for the obvious reason that he being in jail on the fateful day,

by no stretch of imagination, could be expected to instigate or abet the deceased to commit suicide. Thus, there is no cogent, clear and convincing

evidence leading to the conclusion that the accused-appellant had brought about the situation to such a boil, which forced the deceased to commit

suicide. Hence, on the given evidence, the offence u/s 306 of IPC is not made out.

17. In Each. PW12/B, the complaint made by the deceased to the police about 3 days prior to her death, it has been mentioned that on 26.4.1993

at 8.30 A.M, her husband Kashmiri Lal without any rhyme or reason caused injuries to her by giving beatings and as its consequence she could not

attend her official duty and she being a crippled lady, apprehends danger to her life and necessary protection be provided to her. Her father

Hargobind (sic) has also made solemn affirmation that on 24.4.1993, Satya Rani was given some beatings by the accused with the Lathies and a

report was lodged with the police. Krishna Wanti, PW has also stated in candid terms that on 26.4.1993, I visited Kurukshetra and went to the

house of the accused where I found bandages on the arm of my daughter. I also saw bruises at the buttocks because of the beatings given by the

accused. This fact was told to me by the deceased and the landlady. On that date, the accused was behind the bars u/s 107/151, Cr.P.C. and I

returned to Kaithal. This evidence corroborates the allegations in Exh. PW 12/B.

Section 498A of IPC reads as under :

498-A. Husband or relative of husband of a woman subjecting her to cruelty. -

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a

term which may extend to three years and shall also be liable to fine.

Explanation. - For the purpose of this section, ""cruelty"" means -

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for

any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

18. To bring home the charge u/s 498A ibid, the willful act or conduct ought to be the proximate cause. The given evidence is capable of giving

rise with reasonable amount of definiteness and certainty to the conclusion that it is a case of mental as well as physical cruelty as defined in Section

498A of IPC and consequently, the accused-appellant is hereby convicted u/s 498A of IPC and acquitted of offence u/s 306 of IPC. The

appellant has been facing the agony of trial since 1993. Evidently, this incident is 15 years old. Sequelly, he is sentenced to the imprisonment

already undergone (1 month and 11 days) and to pay a fine of Rs. 15,000/- and in default of payment of the same, he will undergo rigorous

imprisonment for 3 months. The difference of fine shall be deposited within three months from today. On deposit of the same, a sum of Rs.

10,000/- will be disbursed to the complainant-Hargobind or his next kin by the learned trial Court.