
(2010) 12 P&H CK 0379
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 526-SB-2001

Naresh Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 306, 406, 498A

Citation : (2011) 1 RCR(Criminal) 453

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : A.P. Bhandari, for the Appellant; Sukhvinder Singh Nara, D.A.G.
Haryana, for the Respondent

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—The accused was convicted for an offence punishable u/s 306 of the Indian Penal Code and was sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs. 2,000/-. He was also convicted for an offence punishable u/s 498-A IPC and was sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs. 1,000/-. In default of payment of fine, he has been directed to further undergo rigorous imprisonment of one year u/s 306 IPC and six months u/s 498-A IPC. Hence, the Appellant has preferred the present appeal.

2. The brief case of the prosecution is as follows:

a) PW-7 Phool Chand is the father of the deceased Sona Devi. She was married to the accused Naresh in the year 1990. The accused left her in the lurch as she demanded maintenance expenses from the accused way back in the year 1992. Sona Devi had remained at her parental house for about one year. The complaint was lodged as against the accused for the offences punishable under Sections 406 and 498-A IPC in the year 1992. A panchayat was convened. In the said panchayat, the accused agreed to pay a sum of Rs. 400/- per month as

maintenance allowance to Sona Devi. He had also promised that he would not demand any dowry in future. The copy of the compromise entered into between the accused and PW-7 was marked as Ex.PD. After the settlement, Sona Devi was sent to her matrimonial home. The accused again started harassing the deceased Sona Devi and demanded dowry.

b) Two months prior to her death, Sona Devi came down to her parental home and demanded a sum of Rs. 10,000/- for the construction of the house by her husband. PW-7 gave only a sum of Rs. 4,000/- to Sona Devi. On 28.6.1998, the accused again demanded a sum of Rs. 25,000/- from PW-7 for the purchase of a three wheeler. PW-7 arranged this amount through PW-5 Kulwant Singh.

c) PW-3 Darshan Singh, the driver of the train No. 1 SU which was running from Saharanpur to Ambala via Jagadhari stated that a woman came in front of the train at about 6: 00 AM on 22.7.1998. Consequently, she was run over by the train.

d) Mr. Sohan Lal, the Station Master of Jagadhari Railway Station (PW-2), forwarded the written memo Ex.PB submitted by PW-3 forwarded the same to the Station House Officer/ASI Harbans Lal (PW-9) who having reached the spot conducted inquest proceedings u/s 174 Cr.P.C.

e) Dr. M.L. Kamra (PW-10) conducted the post mortem examination on the dead body of Sona Devi as per the request made by PW-9. He found lacerated wounds on the right side of the forehead, a lacerated wound on the left side of scalp and a fracture on scalp bone. He opined in his post mortem examination report Ex.PG that the deceased died due to the above multiple injuries which was sufficient to cause death in the normal course of nature.

f) PW-9 arrested the accused, examined the witnesses, recorded their statements, and laid final report as against the accused for the offences under Sections 306 and 498-A IPC.

3. The trial Court having relied upon the evidence of PW-7, the father of the deceased, PW-8, the paternal uncle of the deceased, PW-5 who allegedly lent a sum of Rs. 25,000/- to PW-7, PW-6 who allegedly participated in the panchayat which was held in 1992, and the evidence of PW-3, the driver of the train, returned the verdict of conviction as against the accused for the offences punishable under Sections 306 and 498-A IPC.

4. The learned Counsel appearing for the accused/Appellant would submit that the driver of the train has come out with three versions before the Court. Therefore, his evidence does not inspire confidence. PW-5 has come out with a self contradictory version as to the amount lent by him to PW-7 for handing over the same to the accused. The evidence of PW-6 who allegedly participated in the panchayat which was held in the year 1992 does not connect the alleged demand of dowry just before the death of the deceased. Even the evidence of PW-7 would not go to show that there was really a demand of dowry by the accused. The

evidence of PW-8 cannot be relied upon by the Court as it is found to be hearsay evidence. Therefore, it is his submission that trial Court has wrongly convicted the accused when there is no material to establish beyond reasonable doubt that the accused committed the aforesaid offences.

5. The learned public prosecutor for the State would submit that the driver of the train (PW-3) has cogently spoken to the suicide committed by the deceased by falling in front of the running train. The evidence of PW-7, the father of the deceased, would go to establish that there was a demand of a sum of Rs. 10,000/- and thereafter another demand of a sum of Rs. 25,000/- by the accused for the construction of the house and also for purchasing of a three wheeler respectively. The evidence of PW-5, PW-6, and PW-8 lend corroboration to the evidence on record. Therefore, it is his submission that the trial Court has rightly returned the verdict of conviction as against the accused.

6. The evidence of Dr. M.L. Kamra (PW-10) would establish that Sona Devi who sustained multiple injuries all over her body died due to those injuries which were sufficient to cause death in the normal course of nature. PW-3, the driver of the train, has spoken to the fact that Sona Devi run over by the train and as a result of which she died.

7. The Court will have to decide as to whether there was any demand of dowry and torture meted out to the deceased Sona Devi in order to compel her to commit suicide. As rightly pointed out by the learned Counsel appearing for the accused/Appellant, the evidence of PW-3, the important witness in this case, has come out with three versions before the trial Court. He has deposed that the deceased Sona Devi came in front of the train and was run over by the train. During the course of cross examination, he fumbled and stated that the deceased was crossing the railway track at the time when the accident took place. It is his further version that the deceased Sona Devi came in front of the train all of a sudden. The final version of PW-3 is that Sona Devi could not cross the railway track and ultimately she was run over by the train. It is not ascertain from the evidence of PW-3 who was an eye witness to the occurrence whether the deceased Sona Devi committed suicide or the train accidentally run over her. On the basis of the evidence of PW-3, the Court cannot come to a definite conclusion that Sona Devi committed suicide.

8. PW-7 is the father of the victim lady Sona Devi. His evidence would disclose that there was a criminal complaint lodged way back in the year 1992 as against the accused under Sections 406 and 498-A IPC. The accused had also filed a complaint as against PW-7 for the commission of theft. Of course, the said complaint lodged by PW-7 entered into a compromise as evidenced by Ex.PD. The accused, infact, under Ex.PD agreed to pay a sum of Rs. 400 per month as maintenance allowance to Sona Devi. He also undertook that he would not demand any dowry in future. It is to be noted that the said compromise took place about six years prior to the occurrence. The Court will have to see as to whether there was really a demand of dowry by the accused from PW-7 prior to

her death.

9. PW-7 has come out with a version in general terms that after one month of the said compromise, the accused again started harassing her, demanding dowry. The fact remains that the accused and the deceased were blessed with two children after the compromise was clinched between them.

10. PW-7 has come out with two instances of demand made by the accused to him. The first instance described by him would go to show that it was only the deceased who placed a demand of Rs. 10,000/- for the purpose of construction of the house by the accused. Infact, PW-7 gave a sum of Rs. 4,000/-, acceding to such a demand. Thereafter, the accused made a demand of Rs. 25,000/- from him for the purchase of a three wheeler and the said demand was also met by PW-7. These demands cannot be related to the marriage solemnised between the accused and the deceased. The demands for construction of the house and purchasing of a three wheeler after about eight long years from the date of marriage cannot be strictly construed as a demand of dowry. Further, there is no reason for the accused to harass the deceased when both of his demands were almost met by PW-7.

11. PW-5 whose land was cultivated by PW-7 would depose that he lent a sum of Rs. 25,000/- to PW-7 for the purpose of meeting the demand made by the accused. But during the course of cross examination, he would state that out of the sale of the trees grown by PW-7 in the lands of PW-5, there was a profit of Rs. 32,000/-. PW-7 was entitled to a sum of Rs. 16,000/- towards his share of profit. He only lent a sum of Rs. 9,000/- and not Rs. 25,000/- to PW-7. Therefore, the version of PW-7 that he borrowed a sum of Rs. 25,000/- from PW-5 for handing over the same to the accused is found to be shaky. The evidence of PW-6 relates to the panchayat which was held about six years prior to the occurrence. Therefore, the evidence of PW-6 would not advance the case of the prosecution. PW-8, as rightly pointed out by the learned Counsel appearing for the accused/Appellant, has come out with only hearsay evidence, after referring to the panchayat that was held in 1992 to solve the matrimonial dispute between the accused and the deceased.

12. The above discussion embarked upon by this Court would go to show that the prosecution failed to establish that Sona Devi committed suicide, inasmuch as PW-3 has come out with a totally self contradictory version before the Court. A demand made by the accused from his father-inlaw for constructing a house and also for purchasing a three wheeler cannot be construed as a demand of dowry in relation to the marriage that was performed about eight years prior to the occurrence. No presumption would arise from the earlier compromise (Ex.PD) that was clinched about six years prior to the occurrence that the accused persisted his demand and harassed the deceased which compelled to end her life by committing suicide. The evidence of PW-5 also throws some doubt as to the amount of Rs. 25,000/- allegedly paid by PW-7 for the purpose of handing over the same to the accused, acceding to his demand. For all these reasons, I find

that the prosecution could not establish beyond reasonable doubt either the demand of dowry or the abetment which occasioned the suicide of Sona Devi. The trial Court has failed to advert to the aforesaid material contradiction found in the materials produced by the prosecution.

13. In view of the above, the judgment of conviction recorded by the trial Court under Sections 306 and 498-A IPC and the sentence imposed thereunder is set aside and the accused is acquitted of the charges under Sections 306 and 498-A IPC. Accordingly, the appeal is allowed. The fine amount, if any, paid by the Appellant shall be returned to him. The bail bond executed by the Appellant shall stand annulled.