

(2013) 05 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 277 of 2004

Nirmala Alias Malaru and Another

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1424

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Divya Sood, vice Mr. Anoop Chitkara, for the Appellant; Pramod Thakur and Ms. Meenakshi Sharma, Additional Advocate Generals and Mr. Neeraj K. Sharma, D.A.G., for the Respondent

Judgement

Rajiv Sharma, J.—This appeal is directed against the judgment, dated 25.06.2004, passed by the learned Additional Sessions Judge (1), Hamirpur, H.P., in Sessions Case No. 30/2001, whereby the appellants, who were charged with and tried for offences under Sections 498-A, 306 read with Section 34 of the Indian Penal Code, have been convicted. Case of the prosecution, in a nut-shell, is that a telephonic message was received at Police Station, Hamirpur on 11.11.2000 at about 9:15 a.m., whereby an information contained in rapat roznamcha Ex. PW7/A was given to the Police Station. According to the information, the Medical Officer, Hamirpur informed that one dead body of Seema Devi, aged 24 years has been brought to the hospital. On this information, Balwant Singh, Sub Inspector (PW-11) alongwith Lady Constable Anjana Devi immediately left for Zonal Hospital, Hamirpur, where he recorded the statement of Brahm Dev (PW-1) father of the deceased Seema Devi Ex. PW1/A u/s 154 Cr.P.C. on the basis of which FIR Ex. PW10/A was registered. According to the contents of Ex. PW1/A, Seema Kumari, aged 26 years was married with Surinder Kumar accused, son of Shri Prem Dass as per Hindu Rites and Ceremony about 11/2 years back. His daughter was living with them for the reason that she was continuously harassed by her mother-in-law Malaru alias Nirmla Devi and father-in-law Prem Dass. They used to harass his daughter. His

daughter told him that at the time of marriage of Surinder Kumar some loan was taken and they used to ask his daughter to bring money from her parents to repay the loan. His son-in-law used to ask his daughter to bring more money from her parents and he himself had gone to Jalandhar in search of job. His son-in-law Surinder Kumar came after about a year from Jalandhar on 25.10.2000 and on 28.10.2000, he took Seema Devi alongwith the children to village Shasan. On 11.11.2000 at about 8 a.m., he received a telephonic message from Joginder Singh, elder brother of his son in-law accused Surinder Kumar and when they reached hospital, by that time, his daughter had expired. One Suhru Ram resident of Shasan told him that on the previous night at about 10:00 p.m., he heard some shrieks of his daughter Seema Kumari as she was crying for help from the house of Prem Dass accused. At that time, music was on. He further stated that father-in-law, mother-in-law and husband of Seema Kumari used to quarrel with her and for that reason, she has committed suicide after consuming some poison. Investigating Officer got the dead body photographed. These photographs are Ex. PW11/D-1 to Ex. PW11/D-3 and negatives are Ex. PW11/D-4. The Investigating Officer has completed the inquest reports Ex. PW1/B and Ex. PW1/C. A letter Ex. PW1/D stated to have been written by accused Prem Dass, father-in-law of deceased and addressed to the father of the deceased Seema Kumari was taken into possession vide seizure memo Ex. PW2/A. The dead body of Seema Kumari deceased was sent for post mortem to Zonal Hospital, Hamirpur with a written request Ex. PW11/A for post mortem. PW-6, Dr. R.S. Dhatwalia conducted the post mortem on the dead body and issued post mortem report Ex. PW6/A, According to the report of Chemical Examiner Ex. P-1, the viscera of the deceased was found containing contents of aluminum phosphate. According to PW-6, Dr. R.S. Dhatwalia, deceased Seema Devi died due to cardio respiratory failure and the cause of cardio respiratory failure was due to aluminum phosphate poisoning.

2. The accused Prem Dass, who has written letter Ex. PW1/D addressed to the father of the deceased Brahm Dev (PW-1) was brought before the Court of Additional Chief Judicial Magistrate, Hamirpur, for taking his specimen handwriting in order to establish that letter Ex. PW1/D was in fact written by accused Prem Dass. He refused to do so. Thereafter, the learned Additional Chief Judicial Magistrate, Hamirpur, passed the order Ex. -PA. The investigation was completed and the challan was put up against the accused after completing all the codal formalities.

3. The prosecution has examined 12 witnesses. The statements of the accused were also recorded u/s 313 Cr.P.C. They have not admitted any of the incriminating circumstances appearing against them. According to them, they were innocent and they were falsely implicated.

4. It would be pertinent to state at this stage that one of the accused Prem Dass has died during the pendency of this criminal appeal. His name was ordered to be deleted.

5. Learned Additional Sessions Judge-1, Kangra at Dharamshala, Camp at Hamirpur, H.P. has convicted the accused under Sections 498-A, 306 read with Section 34 of the Indian Penal Code. Accused Surinder Kumar and Prem Dass were sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs. 5,000/- each and accused Nirmla Devi was sentenced u/s 498-A, I.P.C. to undergo rigorous imprisonment for one year and to pay fine, of Rs. 5,000/- and in default of payment of fine by each of the accused, were ordered to undergo rigorous imprisonment for three months. Accused Prem Dass and accused Surinder Kumar were sentenced to undergo rigorous imprisonment for a period of four years u/s 306 of the Indian Penal Code and to pay fine of Rs. 10,000/- each and accused Nirmla Devi was sentenced to undergo rigorous imprisonment for a period of two years u/s 306 and to pay a fine of Rs. 10,000/- and in default of payment of fine, each of the accused were ordered to undergo rigorous imprisonment for a period of six months.

6. Ms. Divya Sood, learned vice Counsel for the appellants has vehemently argued that the prosecution has failed to prove its case against the appellants. According to her, the appellants have neither caused any cruelty nor aided, instigated or abetted the suicide of Seema Devi. According to her, her clients have never raised any demand of dowry. She lastly contended that there is no physical violence administered to Seema Devi.

7. Mr. Pramod Thakur, learned Additional Advocate General has supported the judgment of the learned trial Court.

8. I have heard the learned Counsel for the parties and gone through the records carefully.

9. PW-1 Brahm Dev is father of Seema Devi. According to him, she was married to Surinder Kumar in the year 1997 as per the Hindu rites. He further testified that whenever his daughter used to come to his house, she told him as well as his wife that her mother-in-law and husband maltreated her on the pretext of bringing insufficient dowry. They used to demand dowry from them. Once accused Surinder came to his house and took Rs. 5,000/- from his wife on the pretext that he had to return the debts, which was procured by him at the time of his marriage. He also deposed that once the father of Surinder Kumar, Prem Dass had also taken Rs. 1000/- from him on the pretext that he was going to celebrate some religious ceremony in his house as his money has been stolen by the elder daughter in law. On 11.11.2000, the elder brother of Joginder Singh gave a telephonic message to him that his daughter Seema Devi had died in the hospital. When he went to the house of the accused, Suhoru Ram told him that on the night of 11.11.2000, he had heard the cries of Seema Devi, who was calling bachao bachao. According to him, at the time the deck was switched on in high volume. Accused persons used to quarrel with his daughter and they maltreated and harassed her and she was compelled to commit suicide by consuming the poison. According to him, Ex. PW1/D was taken into possession by the police. In his cross-examination, he has denied the suggestion that the

letter Ex. PW1/D was manipulated. According to him, he had handed over the letter on the same day of the death of his daughter. In his cross-examination, he has admitted that he has never reported the matter either to the police or to the Panchayat. He also admitted that the distance between his house and that of the accused was 15/16 kms. He also stated in his cross-examination that after the marriage of Surinder and his daughter Seema Kumari used to visit his house once or twice in a month regularly. He also admitted that he never inquired from the accused including Surender Kumar for maltreating his daughter. He also admitted that Surinder Kumar was going to Jalandhar for doing job. He volunteered that he has given this money to clear the debts. He has also admitted that his daughter used to remain under depression. He also deposed that it was due to family dispute between Prem Dass, Surinder and deceased.

10. PW-2 Sh. Rajesh Kumar is the brother of deceased Seema Devi. According to him, she was married in the year 1997. He testified that whenever, the deceased used to visit their house, she used to complain that accused maltreated and harassed her on the pretext of not bringing money from their house, as they wanted to pay the debts procured by them at the time of marriage of Surinder Kumar. On two-three occasions, on the demand of the accused, they had also paid money to them. According to him, on 11.11.2000, they received a telephonic message from the house of the accused that Seema was seriously ill. He firstly visited hospital and thereafter Janiyari. At Janiyari, Sohru Ram and Inderjit and neighbours of the accused told him that in the previous night, the accused switched on the deck with high volume and they also heard the cries of his sister Seema Devi, who was saying bachao bachao. He also deposed in examination-in-chief that letter Ex. PW1/D written by accused Prem Singh to his father Brahm Dev. In his cross-examination, he has deposed that the letter was received after two and half years of the marriage. He did not know, who has scribed the letter. According to him, they have given sufficient dowry as per their capacity. The money was also given to the accused. At one time, his mother has given Rs. 4,000/- to accused Prem Singh in his presence. He initially deposed that except the above said amount, no amount was given, but later on stated that Rs. 1,000/- more was paid by his mother to Prem Singh on the pretext that his money was stolen by his elder daughter-in-law. He also admitted that no complaint was made to the Panchayat or to the police or even to their biradari against the ill-treatment by the accused person.

11. PW-3 is the mother of deceased Seema Devi. According to her, the father-in-law of her daughter started ill-treating her daughter by demanding money by saying that he had spent Rs. 70,000/- in the marriage of his son and he told her daughter that she should recover this amount from them. They used to meet the demands of accused. Her daughter usually told her that accused maltreated her for bringing insufficient dowry and taunting her that nothing had been given in dowry in her marriage by her parents. The accused also demanded Rs. 5,000/- from her on the pretext that he wanted to re-pay the debt incurred by him at the time of his marriage. Rs. 1000/- were taken by Prem Lal accused for chamarkha

of his mother. The accused told her daughter that she should come to his house only when she brings money from them. In her cross-examination, she has deposed that she gave Rs. 5,000/- to accused Surinder after two years of the marriage.

12. PW-4 Smt. Bimla Devi has deposed that she went to the house of accused to see Seema Devi and to inquire about her welfare. The accused Prem Dass was present and abusing to Seema Devi. When she inquired from the wife of Prem Dass, she told her that Seema Devi deserve such acts and abusing.

13. PW-6 Dr. R.S. Dhatwalia has conducted the post mortem on the dead body of Smt. Seema Devi and issued post mortem report Ex. PW6/A. According to his final opinion, the deceased died because of cardio respiratory failure and the same was subject to report to be given by the chemical examiner. Later on, the Chemical Examiner's report, dated 19.03.2001, revealed that the deceased had consumed aluminum phosphate poison. He has given his final opinion after the perusal of the chemical examiner report Ex. -P1.

14. PW-8 Sh. Inderjit Singh and PW-9 Sh. Dhani Ram were declared hostile. PW-11, Sub Inspector Balwant Singh has carried out the investigation. He received a telephonic message in the Police Station on 11.11.2000 vide Ex. PW7/A. He prepared the inquest report Ex. PW1/B, Ex. PW1/C and made an application Ex. PW11/A for conducting post mortem of the dead body of the deceased. He took into possession letter Ex. PW1/D vide seizure memo Ex. PW2/A. He further testified that it has come in the investigation that the accused were maltreating and ill-treating the deceased Seema Devi and abetted her to commit suicide. In his cross-examination, he has deposed that signatures of accused Prem Dass were not taken. However, volunteered that accused Prem Dass had admitted the handwriting in letter Ex. PW1/D. These are the material witnesses produced by the prosecution.

15. It is evident from the statement of PW-1 Brahm Dev, PW-2 Rajesh Kumar, PW-3 Barfi Devi and PW-4 Bimla Devi that the accused were maltreating deceased Seema Devi. There was persistent demand of dowry by the accused. The family of Seema Devi has given a sum of Rs. 6,000/- to the accused. A sum of Rs. 5,000/- was taken by accused Surinder Kumar on the pretext that he has spend this money on the marriage. A sum of Rs. 1000/- was taken by Prem Dass to perform some religious ceremony.

16. It has come on record that Seema Devi was living with her parents for the last one year and it was on 30.10.2000 that accused Surinder Kumar has come to his house to take Seema Devi with him. Seema Devi has committed suicide on 11.11.2000 by consuming aluminum phosphate. The cause of the death is consumption of aluminum phosphate by the deceased. Accused Prem Dass has written a letter Ex. PW1/D to PW-1 forcing him to transfer the land in the name of his son. He has also pressurized that if that is not done, he would face the consequences. He has also asked PW-1 not to transfer the land in the name of

his daughter.

17. Prem Dass was produced before the learned Additional Chief Judicial Magistrate for obtaining his specimen handwriting. However, he refused to do so. The order was passed by the learned Additional Chief Judicial Magistrate, Hamirpur vide Ex. PA.

18. The deceased used to tell her parents that there was persistent demand of dowry by the accused. It has also come on record that she used to remain under depression. The cause of depression was that Seema Devi was subjected to maltreatment. She was forced to live with her parents for a period of one year.

19. The learned trial Court has correctly raised presumption u/s 113-A of the Indian Evidence Act against the accused. The accused have not rebutted the same. It has come in the statement of PW-4 Smt. Bimla Devi that accused Nirmla Devi was also harassing the deceased Seema.

20. There are no major contradictions in the statements of PW1, PW-2 and PW-3. PW1 to PW-3 are closely related and their statements are required to be scrutinized minutely with care. Their statements are natural and cannot be discarded only on the ground that they are closely related. The learned trial Court has correctly relied upon u/s 73 of the Indian Evidence Act to compare the signatures of accused Prem Dass obtained on the charge-sheet vis-?-vis letter Ex. PW1/D.

21. The prosecution in the present case has proved the cruelty caused to deceased Seema Devi by the accused and they have failed to rebut the presumption u/s 113-A of the Evidence Act. It is not necessary that in case of demand for dowry, the matter should be reported to the police or the Panchayat. There is tendency in the Indian set up to wrap this issue to avoid social stigma. Not only a sum of Rs. 5,000/- and Rs. 1,000/- have been paid to the respondent, but a letter was written by Prem Dass to PW-1 to transfer the land in favour of his son and not in favour of his daughter. The respondents have abetted, instigated and aided the commission of suicide of Seema Devi.

22. It is not necessary in every case of cruelty that it should be physical violence. It can be mental cruelty also. The entire period has to be taken into consideration from the date of the marriage till the date of suicide. In the instant case, there was persistent demand of dowry raised by the respondents. The deceased was forced to live with her parents.

23. Now as far as the registration of FIR is concerned, the same is not supposed to be an encyclopedia. Each and every minutest detail is not required to be given in FIR. The mental state of the father is also to be taken into consideration at the time of registration of FIR. In the instant case, it has come in the statement of PW1/A that the accused used to harass his daughter and his daughter has told him that loan was raised by her husband at the time of marriage and he used to ask money from her parents to repay the same. The prosecution has proved the

case against the accused beyond reasonable doubt. Accordingly, this Court will not interfere with the well reasoned judgment of the trial Court. Accordingly, there is no merit in this appeal and the same is dismissed.