
(2005) 03 P&H CK 0186

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No's. 508-DB and 645-DB of 1996

Ombir and Sita Ram and another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 31-03-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 304B

Citation : (2005) 3 RCR(Criminal) 634

Hon'ble Judges : Baldev Singh, J;Amar Dutt, J

Bench : Division Bench

Advocate : Vinod Ghai, for the Appellant; Rajesh Bhardwaj, Assistant Advocate General, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Baldev Singh, J.—This judgment would dispose of two Criminal Appeals; CRA No. 538-DB of 1996 filed by Ombir son of Harphul and CRA No. 645-DB of 1996 filed by Sita Ram son of Harphul and Smt. Kalawati wife of Harphul, all residents of village Umrawat, Police Station Sadar Bhiwani, District Bhiwani. Ombir and Smt. Kalawati (Appellants) were convicted for the offence punishable under Sections 304-B, 498-A and 201 of the Indian Penal Code, while Sita Ram (Appellant) was convicted for the offence punishable u/s 201 of the Indian Penal Code, vide impugned judgment dated 11.9.1996 passed by Sh. J.D. Chandna, the then Additional Sessions Judge (1st), Bhiwani. Smt. Santra, who was also tried along with them was acquitted of these charges. Ombir (Appellant) was sentenced to undergo imprisonment for life u/s 304-B IPC and was sentenced to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 2000/- and in case of default of payment of fine to further undergo R.I. for 9 months u/s 498-A IPC. He was also sentenced to undergo R.I. for 3 years and to pay fine of Rs. 1000/- and in case of default of payment of fine to undergo R.I. for 9 months u/s 201 IPC. All the sentences were ordered to run concurrently. Smt. Kalawati was sentenced to undergo simple imprisonment for 7 years u/s 304-B IPC and was

sentenced to undergo simple imprisonment for 2 years and to pay fine of Rs. 1000/- and in case of default of payment of fine to further undergo S.I. for 6 months u/s 498-A IPC. She was also sentenced to undergo S.I. for 2 years and to pay fine of Rs. 1000/- and in case of default of payment of fine to undergo S.I. for 6 months u/s 201 IPC. All the sentences were ordered to run concurrently. Sita Ram (Appellant) was sentenced to undergo R.I. for 3 years and to pay fine of Rs. 5000/- and in default of payment of fine, to undergo further R.I. for 9 months u/s 201 IPC. These sentences were passed vide impugned sentence order dated 14.9.1996.

2. The facts of the prosecution case are that Bala daughter of P.W. Om Parkash son of Chandgi Ram resident of village Mandhana, Tehsil Bhawani Khera, District Bhiwani was married with Ombir (Appellant) on 14.3.1994. She died at about 4 A.M. on 6.3.1995 at the house of her in-laws. Sita Ram (Appellant) is the elder brother of Ombir, husband of deceased Bala. Smt. Kalawati is the mother-in-law of the deceased Bala. Om Parkash gave an application on 8.3.1995 for registration of a case against the Appellants and others and on its basis case under FIR No. 101 dated 8.3.1995 under Sections 304-B, 498-A, 406, 201 read with Section 34 IPC was registered at Police Station Sadar Bhiwani. It was alleged by Om Parkash in his application that he had spent about Rs. 3 lacs on the marriage of his daughter Bala. A sum of Rs. 25,000/- was given in cash at the time of "lagan" ceremony, an amount of Rs. 25,000/- was given at the time of "gorwa" ceremony and another sum of Rs. 25,000 was given at the time of "vidai" ceremony. Furniture like tables, double bed, sofa, almirah, cooler, black and white T.V., table fan and ceiling fan, sewing machine, dressing-table, wrist watch, wall clock and clothes worth Rs. 10,000/- were also given in the marriage. Besides utensils and ornaments worth 15 tolas of gold were also given. Silver ornaments weighing about 500 grams were also given. "Mukhlawa" ceremony was also performed simultaneously with the marriage. When Bala went to her in-laws' house, her mother-in-law (Smt. Kalawati- Appellant) and her sister-in-law (Smt. Santra, who has been acquitted) asked her to bring fridge, coloured TV set and VCR. Bala stayed at her in-laws' house for about 10 days. When she returned to her parents' house, she disclosed them about the demand made by her mother-in-law and sister-in-law. P.W. Om Parkash, father of Bala did not take this matter seriously. Then one month later when Ombir (Appellant) came to village Mandhana to take Bala along with him to her in-laws house, P.W. Om Parkash had a talk with him about the demand of dowry. Then Ombir (Appellant) said that now a days fridge, coloured TV set and VCR were common articles in dowry and these things were not given to him. P.W. Om Parkash consoled Ombir (Appellant) and sent Bala with him. Their behaviour did not change towards Bala during her stay of about 2 months in her in-laws' house. During the period of ten months, Bala came three or four times to her parents house. About 1-1/2 months prior to the occurrence, P.W. Ram Avtar, cousin brother of Bala went to enquire about her at her in-laws' house. He saw injury marks on the body of Bala. She told him that her mother-in-law, her husband,

her husband's elder brother Sita Ram (all Appellants) and her sister-in-law who is married in Kakroli (Smt. Santra - who has been acquitted) daily gave her beating. P.W. Ram Avtar on his returning to village Mandhana narrated the woeful tale to P.W. Om Parkash, father of Bala. He kept Avtar on his returning to village Mandhana narrated the woeful tale to P.W. Om Parkash, father of Bala. He kept quiet and did not take action with a view to keep good relations with her-in-laws. Then after about 10 days, Bala was again beaten up and she was made to board a bus bound for village Mandhana. She came to her parents' house while weeping. P.W. Om Parkash and his wife made up their mind not to send Bala back to her in-laws house. Then on 26.2.1995 at about 5 P.M., Ombir (Appellant) and his sister Smt. Santra and her husband came to village Mandhana to take with them Bala. They promised that they would keep and maintain Bala properly and they be forgiven for their past conduct. Trusting them P.W. Om Parkash sent Bala with them in their vehicle. Thereafter, no news about her well being was received. Then on 7.3.1995, P.W. Ram Avtar over-heard conversation of some persons who were assembled before a booth in village Umrawat that a daughter-in-law had been killed in village Umrawat. P.W. Ram Avtar came back to village Mandhana and narrated this matter to P.W. Om Parkash, father of deceased Bala. P.Ws Om Parkash, Ram Avtar and others then in the morning of 8.3.1995 reached the house of in-laws of Bala to enquire about her well-being. Her in-laws did not give any satisfactory response. The neighbour told them that Bala had died suddenly at about 4 a.m. on 6.3.1995. No intimation was given about her cremation to her parents. P.W. Om Parkash in his application grieved that his daughter had been killed by her in-laws on account of dowry and action be taken against them.

3. P.W. 8 Narain Singh, then posted as ASI in Police Station Bhiwani was present near bus stand of village Kaunt. He received application from P.W. Om Parkash, which is Exh. PB. He made his endorsement Exh. PB/1 and got the case registered. Exh. PB/2 is the copy of the FIR. He then along with other police officials accompanied P.W. Om Parkash and others and reached village Umrawat. He prepared the site plan of the house of Harphul, father-in-law of deceased Bala, which is Exh. PL. P.W. Om Parkash, Sarpanch Radha Krishan and others then led the Police party to the cremation ground where Bala was alleged to have been cremated. He picked up ash and pieces of bones from the place of her cremation. These were sealed into a parcel. Recovery memo Exh. PC was prepared. Site plan Exh. PM was also prepared.

4. Further investigation was conducted by ASI Amrik Singh, the then SHO of Police Station Sadar Bhiwani. He arrested the Appellants and Smt. Santra (who has been acquitted) on 15.3.1995. He interrogated them and recorded their disclosure statements about the place of cremation of Bala. He recorded the statements of the prosecution witnesses and on completion of the investigation, prepared final report u/s 173 Code of Criminal Procedure.

5. The case was committed to the court of Session for trial. Charge was framed

against the Appellants and their co-accused Smt. Santra for the offences punishable under Sections 304-B, 498-A and 201 IPC. They did not plead guilty to the charge and claimed trial.

6. The prosecution at the trial had examined eight witnesses, namely; P.W. 1 Kanwarpal Parmar, draftsman, P.W. 2 Om Parkash, P.W.3 Constable Bhim Singh, P.W. 4 Constable Jagpal Singh, P.W. 5 Head Constable Ved Singh, P.W.6 Ram Avtar, P.W. 7 Inspector Amrik Singh and P.W. 8 ASI Narain Singh.

7. The prosecution also produced some documents and report of the Forensic Science Laboratory.

8. Statements of the Appellants were recorded u/s 313 Code of Criminal Procedure on the conclusion of the prosecution evidence. Ombir Appellant stated that on 6.3.1995 he was irrigating the fields. Krishan, his uncle's son, came there at about 9 A.M. and told him that Bala was feeling ache in her stomach. He came back to the house. The family members were there. Her neighbours Rajender, Sri Bhagwan and Bishal were also there. An Ambassador car of Ram Kumar bearing number DHD-4276 was brought. Bala was being put in the car for taking her to the hospital, when she breathed her last. She was taken back inside the house as she had died. He took the same car to inform the parents of Bala about her death. He found Rajesh son of Bala's father's elder brother and informed him about her death. Rajesh went to the fields and brought Bala's father from there. Then six persons from her parents village came with him to his house at village Umrawat. About 250 persons were present in connection with condolence. The aforesaid six persons including the father of Bala satisfied them through Misri and others and dead body of Bala was then cremated. Relations of Bala from parents village sat for about half an hour after cremation and they went back. Ombir (Appellant) explained in his statement that he got treatment for Bala 15 days prior to her death from Dr. (Mrs.) Chugh. The doctor had advised that the pregnancy of Bala should be terminated, otherwise, it would prove dangerous to her life. Her pregnancy was then got terminated and she was discharged the same evening. She was still under treatment of Dr. (Mrs.) Chugh and because of this ailment she suddenly died on 6.3.1995.

9. Sita Ram (Appellant) in his statement recorded u/s 313 Code of Criminal Procedure furnished the explanation that he lived as "ghar jamai" at his father-in-law's house at village Ajitpur. He did not live with the other Appellants at village Umrawat. He never coerced Bala in connection with any dowry. Bala died and her parents and other relations from village Mandhana had come and after they were satisfied, she was cremated on 6.3.1995.

10. In her statement recorded u/s 313 Code of Criminal Procedure Smt. Kalawati (Appellant) denied the prosecution allegations and complained of her false implicity in the case. She stated that she is innocent. She is hard of hearing and has weak vision due to old age.

11. The Appellants had examined two witnesses, namely; D.W. 1 Jai Singh and

D.W. 2 Mange Ram, in their defence.

12. Arguments of the Learned Counsel for the Appellants and of the Assistant Advocate General, Haryana were heard and the record of the case was perused with their help.

13. The trial court for the just decision of the case had framed the following points:

- a) Did Smt. Bala die otherwise than in normal circumstances within seven years of her marriage with Ombir accused ?
- b) Were any demands of dowry made ? If so, what were the specific demands and by which of the accused ?
- c) Was Bala subjected to cruelty soon before her death in connection with demand of dowry ? If so, any whom ?
- d) Did Bala suffer from any such ailment which could result in her death ?
- e) Was any treatment given to Smt. Bala in respect of any such ailment within reasonable period from the date of her death ?
- f) Did accused persons conduct themselves in a bona fide way after the death of Smt. Bala?
- g) Did the parental side of Smt. Bala join the cremation of Smt. Bala after being satisfied with the circumstances of her death ?
- h) Is the F.I.R. delayed and not reliable ?
- i) Was dead body of Smt. Bala cremated stealthily to screen themselves from punishment ? If so by whom ?

14. The prosecution case rests mainly on the testimonies of P.W. 2 Om Parkash (father of deceased Bala) and P.W. 6 Ram Avtar (cousin brother of deceased Bala) regarding the demand of dowry by the Appellants and subjecting Bala to harassment in connection with it and ultimately committing her death on 6.3.1995. P.W. 2 Om Parkash in his deposition recorded in the trial court gave the same version which is contained in his application Exh. PB, on the basis of which this case was registered against the Appellants. The salient facts which are borne out from the statement are that Bala was married with Ombir (Appellant) on 14.3.1994. Her death took place on 6.3.1995 otherwise than in normal circumstances. Rs. 3 lacs were spent on her marriage. Rs. 25,000/- were given at the time of lagan ceremony, Rs. 25,000/- were given at the time of gorwa ceremony and another sum of Rs. 25,000/- was given at the time of vidai ceremony. Besides that, furniture, utensils, ornaments, clothes, black and white TV set, etc. were given in the marriage. Bala stayed for about 10 days at her in-laws house after she was taken there after marriage and muklawa ceremony. Her mother-in-law and sister-in-law demanded coloured TV, fridge and VCR. Then Ombir (Appellant) came after about one month at the parents house of Bala. He

also raised the demand of coloured TV, fridge and VCR. P.W. Om Parkash assured him that he would give these articles after harvesting the crop. Bala was taken by him to this house. She stayed there for about 2/3 months. She was harassed by the Appellants, in connection with the demand of dowry. She visited her parents house 5/6 times. P.W. Ram Avtar, cousin brother of Bala also visited her in-laws house and he found that Bala was being given beating by the members of her in-laws family. Then Bala was badly beaten up and was made to board a bus bound for village Mandhana where her parents lived. Then about a fortnight before the death of Bala, Ombir (Appellant) along with his sister and her husband came to the parents house of Bala and assured them that Bala would be kept properly and she was sent with them. Then on 7.3.1995, P.W. Ram Avtar heard conversation of the people assembled in front of a booth of village Umrawat about the death of a daughter-in-law at village Umrawat. He and Om Parkash became suspicious. They reached the Appellants' house on 8.3.1995 and then they learnt that Bala had died on 6.3.1995 and she was cremated at village Umrawat without informing them about her death. There is an impress of truth in the statements of P.W. 2 Om Parkash and PM6 Ram Avtar. Their testimonies cannot be discarded on the theory that these are of relation witnesses and do not inspire confidence. The trial court rightly relied upon their testimonies to convict the Appellants. The demand of dowry and the harassment caused to the deceased in connection with the demand of dowry are well proved from their statements.

15. In this case, reliance has to be placed on ocular evidence and on circumstances attending to this case. No post mortem examination was conducted on the dead body of Bala. She was cremated clandestinely. No intimation was given to her parents. The trial court after a thorough discussion of the evidence on the file came to the conclusion that none from the side of the parents of Bala participated in her cremation at village Umrawat. The defence version was discarded including that P.W. Om Parkash, father of the deceased along with others came from village Mandhana and Bala was then cremated after they were satisfied about her natural death. The ashes and bones were sent to the Forensic Science Laboratory. The report Exh. PN is also not of any help in coming to any conclusion. It reads that, "no opinion regarding species of origin, sex and age of burnt bones in Exhibit-1 could be given as the bones were too fragmentary." So this report is also of no help to know the real cause of the death of Bala, who died within a period of one year of her marriage.

16. Statement of C.W.-1 Dr. (Mrs.) Renu Chugh, a private medical practitioner, Bhiwani was recorded by the trial court. According to her, her prescription slip is Mark-X. She had given treatment to Bala-deceased as an outdoor patient. She was having 2-1/2 months pregnancy on 24.1.1995. The history was that she had aborted four days prior to coming to her nursing home. She was having bleeding off and on and was having pain in the abdomen. According to Dr. Chugh, she advised her D & C i.e. Dilatation and Curettage. She refused to get it done at that time. She then came on 25.1.1995 for the said purpose and Dilatation and

Curettage was done on 25.1.1995. Various medicines were prescribed to her for 7 days. Dr. (Mrs.) Renu Chugh could not say that whether Bala came to her for further treatment or not. A direct question was put to her as under:

Que.: Could any complication from this D & C with the prescribed medicines lead to death of the patient ? If so, what would have been the symptoms thereof ?

Her answer was as under:

Ans.: - Any complication arising out of the D & C can be noticed within 7 days of the D & C and at the most within four weeks and but not later than that.

17. Her deposition shows that the complications which could be there after D & C are excessive bleeding per vagina, infection in the uterus or perforation of the uterus.

18. Her definite opinion about the extremity of the complications resulting in death was within 24 hours or within 7 days or the maximum period within one month from date of "D & C". "D & C" was done in this case on 25.1.1995. She died on 6.3.1995. So, her death could not take place due to the complications of "D & C".

Bala was not taken for treatment to any other doctor besides Dr. (Mrs.) Renu Chugh. She was not taken to any hospital even after she breathed her last while being taken to the hospital in the car. In fact, she did not suffer from any ailment which could result into her death. Her death occurred otherwise than in normal circumstances within a year of her marriage. The onus is on the accused to explain about her death which was otherwise than in normal circumstances. The prosecution in this case has proved that soon before her death, she was subjected to cruelty/harassment. So the presumption u/s 113-B of the Indian Evidence Act will operate. The expression "soon before" has not been defined. It is a relative term and would depend upon circumstances of each case. The expression "soon before" has been interpreted in the case of Hira Lal and Ors. v. State (Government of N.C.T.) Delhi, 2003 (3) RCR (Cr.) 830. It would imply that interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. It was observed that if alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence. In this case the cruelty persisted to 26.2.1995 when the Appellant Ombir with his sister and her husband came to village Mandhana and took Bala to her in-laws house on the assurance that again they would not harass her in connection with dowry and her death occurred in this case on 6.3.1995. A case was established and conviction recorded by the trial court both under Sections 498-A and 304-B IPC is legally justified.

19. Death of Bala occurred within one year of her marriage with Ombir (Appellant). She died otherwise than in normal circumstances, having been

subject to harassment and cruelty in connection with the demand of dowry. The Appellants have failed to prove that she was suffering from any ailment which could result in her death. The post-death conduct of the Appellant is also not bona fide. She was cremated in a clandestine manner. No intimation was given to parents. They did not attend her cremation. Evidence of D.W. 2 Mange Ram was rightly discarded by the trial court. In the absence of post mortem report, the exact cause of death could not be ascertained. The report of the Forensic Science laboratory is also of no help in coming to know about the cause of her death. The circumstances which have been discussed above established the guilt of the Appellants for causing the death" of Bala.

20. Sita Ram (Appellant) has been convicted u/s 201 IPC. He was admittedly present at the time of cremation of Bala in a clandestine manner. He also did not give any intimation either to the police or to the parents of Bala regarding her dowry death. He acted with co-accused Ombir and Kalawati for causing the disappearance of the evidence of the offence by cremating Bala, knowing well that offence of dowry death has been committed. We do not find any infirmity in the finding recorded by the trial court recording the conviction for offence u/s 201 IPC on the part of Sita Ram (Appellant).

21. No discernible flaw has been found in the impugned judgment of conviction. The sentences awarded to the Appellants commensurate with the offence committed by them. The impugned judgment of conviction and sentence order are, therefore, maintained. The appeals fail and the same are dismissed.

Appeals dismissed.