

(2015) 08 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal S- No. 1761-SB of 2003 (O&M) and Criminal Revision No. 2198 of 2003

Ramesh Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 397, 401, 401 (3), 401(3)
Evidence Act, 1872 — Section 113B, 113-B
Penal Code, 1860 (IPC) — Section 304B, 304-B, 306, 34, 498A

Citation : (2015) 08 P&H CK 0048

Hon'ble Judges : Lisa Gill, J

Bench : Single Bench

Advocate : H.S. Gill, Senior Advocate and K.B.S. Mann, for the Appellant; Vivek Saini, AAG, Advocates for the Respondent

Judgement

Lisa Gill, J—This judgment shall decide Criminal Appeal S- No. 1761- SB of 2003 and Criminal Revision No. 2198 of 2003.

2. Criminal Appeal S- No. 1761-SB of 2003 has been preferred by Ramesh Kumar son of Rajpal impugning the judgment and order dated 01.09.2003 passed by learned Additional District and Sessions Judge (Adhoc), Jhajjar whereby he has been convicted for the offence punishable under Section 304B IPC and sentenced to undergo rigorous imprisonment for 7 years besides pay a fine of Rs. 5000/- in default of which to undergo further rigorous imprisonment for six months; and also for the offence punishable under Section 498A IPC and sentenced to undergo rigorous imprisonment for 3 years besides pay a fine of Rs. 1000/- in default of which to undergo further rigorous imprisonment for one month.

3. Criminal Revision No. 2198 of 2003 has been preferred by Amir Singh father of the deceased praying for setting aside acquittal of respondent No. 3 - Chander Kanta therein and enhancement of sentence awarded to accused Ramesh Kumar.

4. Prosecution was set in motion on the statement Ex. PA of the complainant

Amir Singh father of the deceased Sunita. He revealed that he was a retired police personnel having five daughters. All of them were married. His youngest daughter Sunita aged 26/27 years was married to Ramesh Kumar - appellant resident of Arya Nagar, Jhajjar on 11.12.1999 according to Hindu rites and rituals. His daughter Sunita was appointed as a teacher in District Ambala but she wished to be transferred to District Jhajjar. Complainant helped his daughter in this respect and she was ultimately transferred to Jhajjar. Complainant disclosed that whenever they used to visit their daughter at her matrimonial home, appellant - Ramesh Kumar never allowed them to talk to her alone and did not allow her to go to her parental home. Whenever she asked Ramesh Kumar to go to her paternal home at Matanhail he used to beat her. His daughter Sunita complained in this regard to him and his wife Sama Kaur. Complainant visited Jhajjar to make Ramesh Kumar and his family understand and to treat Sunita well but Ramesh Kumar paid no heed and continued beating his daughter. He received a telephonic message from Rajpal father-in-law of Sunita on 06.03.2001 at 10.30 a.m. that his daughter had hanged herself and had died. Complainant alongwith his adopted son Devender Singh, who was called from Delhi telephonically alongwith some other persons of the village went to the matrimonial house of Sunita. The matter was reported and on the basis of their statement recorded by SI Parkash Chander PW 10 formal FIR Ex. PA/2 was initially registered under Section 306 IPC.

5. SI Parkash Chander proceeded to the spot. He arranged a photographer. Photographs of the dead body were taken. Dead body was lying in the courtyard of the house in front of bath room on a cot. Ligation marks were present on the neck. There was a stool lying on the bed inside the room indicating that hanging had took place with ceiling fan. Inquest report Ex. PH was prepared and the body was sent to Civil Hospital, Jhajjar for post mortem. Rough site plan Ex. PJ was prepared. Post Mortem Report Ex. PC was received.

6. PW2 Dr. Gulshan Arora, Medical Officer, Civil Hospital, Jhajjar who conducted the post mortem on the deceased observed presence of ligation mark of 26 cm, in circumference and 1.5 cm in width was present on the neck passing obliquely backward and towards the mastoid process. It was yellowish brown dry, hard and parchment like situated about the level of thyroid cartilage. A gap in the ligation mark 5 cm just above the left mastoid process was noticed. Uterus was found enlarged and was of the size of about six weeks. Pregnancy of six weeks was detected. Cause of death was asphyxia as a result of hanging which was ante mortem in nature.

7. Supplementary statement Ex. PB of the complainant was recorded on 08.03.2001. He stated that he was perplexed due to the death of his young daughter on 06.03.2001. He revealed that things were fine till few days of Sunita's marriage but after few days Sunita came home and told her mother that her mother-in-law Chander Kanta was asking for a Refrigerator and a scooter. They replied that they had not given any such articles to any of their

other daughters who were married and in any case they did not have capacity to give these articles. Thereafter when Sunita returned to her matrimonial home, she was subjected to physical and mental abuse on account of bringing less dowry. Therefore, Sunita on being fed up of this routine and everyday harassment has committed suicide, especially as demand of dowry was not fulfilled. She was troubled by the appellant and his mother on account of bringing less dowry.

8. On completion of investigation charge was framed against the accused for the offences punishable under Sections 498A, 304B and 34 IPC. Prosecution examined 10 witnesses.

9. Accused while denying incriminating evidence put to them pleaded innocence and false implication in their statements under Section 313 Cr.P.C. Accused - Ramesh Kumar stated that there was never any demand of dowry nor any harassment caused to his wife. Their engagement took place on 14.09.1999 with a mere shagun of Rs. 11/- Amir Singh father of Sunita attended the marriage and paid Rs. 101/- as kanyadan. His father i.e. father-in-law of the deceased took an insurance policy to the tune of Rs. 50,000/- in favour of accused Ramesh Kumar's on 28.09.1999 i.e. before the marriage and Sunita was reflected as nominee. Deceased was appointed as a teacher at Ambala on 04.11.2000 and then transferred to Jhajjar in June, 2001. Accused - Ramesh Kumar was employed at Delhi and deceased wanted to accompany him but due to lack of accommodation he could not take her along and she was feeling upset over that. Four days after the marriage i.e. on 15.12.1999 Sunita who had accompanied him to Delhi fell ill suddenly and was taken to private Health Centre Mehrauli where she gave a history of loss of sleep, restlessness and loss of appetite. On the day of occurrence he was at Delhi and returned on hearing the news. Parents of the deceased were informed immediately but false report has been filed for extracting money from them. Similar was the defence taken by Chander Kanta. Two witnesses were examined in defence. DW1 Dr. Gopal Bhagat posted at Primary Health Centre, Mehrauli and DW2 Pankaj Singh Jakhar, Assistant in the office of Life Insurance Corporation of India in Bahadurgarh were examined.

10. Learned trial Court on appreciation of the evidence on record found the evidence to be deficient in respect to Chander Kanta, hence, giving her benefit of doubt acquitted her of the charges against her. However, it concluded that the prosecution had proved its case beyond reasonable doubt qua appellant - Ramesh Kumar thereby convicting and sentencing him as detailed above.

11. Aggrieved therefrom CRA S- No. 1761-SB of 2003 has been preferred by Ramesh Kumar challenging his conviction and sentence. CRR No. 2198 of 2003 has been filed by the complainant Amir Singh praying for enhancement of the sentence imposed upon Ramesh Kumar as well as setting aside acquittal of Chander Kanta.

12. Learned counsel for the appellant submits that evidence on record does not

justify conviction of the accused for the offence punishable under Section 304B and 498A IPC. Ingredients of Section 304B IPC are not present in this case. Complainant Amir Singh never disclosed any such demand of dowry at the very outset when he recorded his statement Ex. PA. It is only in his supplementary statement recorded on 08.03.2001 that he made a mention of demand of dowry. It is clearly an afterthought. There is nothing to show that deceased was ill treated and harassed on account of bringing less dowry soon before her death. Infact deceased who was a Government employee was posted at Jhajjar but wished to join her husband at Delhi. Due to lack of accommodation, he could not take her along, therefore, she was upset on this account and committed suicide. It is vehemently argued that she was actually suffering from anxiety and depression as is proved by testimony of Dr. Gopal Bhagat DW1. Therefore, there is no justification for convicting the accused for the offence punishable under Sections 304B and 498A IPC.

13. Learned counsel for the State as well as the complainant while refuting the above said pleas submit that there is overwhelming evidence on record to prove the culpability of appellant - Ramesh Kumar. Learned counsel for the complainant further submits that there is sufficient evidence to show the complicity of the mother-in-law Chander Kanta who has been wrongly acquitted by the trial Court. It is also prayed that a very lenient view has been taken while sentencing the present appellant. Sentence imposed upon him deserves to be enhanced keeping in view the fact that complainant has lost his young girl within less than 1 1/2 years of marriage. Deceased was an educated girl, gainfully employed as an teacher. While referring to the medical evidence, it is submitted that she was pregnant at the time of her death and there is no question of her committing suicide in normal circumstances. It shows that she was driven to take this extreme steps of taking not only her own life but the life which was growing inside her. Learned counsel for the complainant, therefore, prays for conviction of mother-in-law Chander Kanta and enhancement of the sentence imposed upon appellant Ramesh Kumar.

14. I have heard learned counsel for the parties and gone through the record carefully.

15. The essential ingredients, which are necessary for constituting an offence punishable under Section 304-B IPC, are that:

- 1) Death of the bride has taken place within seven years of marriage.
- 2) Death is unnatural i.e. otherwise than under normal circumstances.
- 3) Deceased was subjected to cruelty or harassment by her husband or his relatives for or in connection with any demand for dowry.
- 4) Such cruelty or harassment was soon before her death.

16. There is no quarrel that death of Sunita has taken place within seven years of marriage in an unnatural manner at her matrimonial home. Question to be

decided is whether she was subjected to cruelty or harassment on account of any demand of dowry soon before her death.

17. Much stress has been laid by learned counsel for the appellant - Ramesh Kumar on the initial statement Ex. PA dated 06.03.2001 made by the complainant Amir Singh to say that no mention of demand of dowry is reflected in the statement. It is averred that the complainant has tried to falsely implicate the appellant by making a supplementary statement Ex. PB by introducing the demand of dowry i.e. refrigerator and scooter. A perusal of statement Ex.PA reveals that the complainant has stated at the outset that his daughter was subjected to ill-treatment at the hands of her husband and in-laws. They were not even allowed to meet her alone when they went to visit her. It is in the supplementary statement that the complainant reveals that after few days of the manage, deceased revealed about the demand of refrigerator and scooter. The complainant had told his daughter Sunita that he had earlier also married his other daughters and had never given such articles and did not even have the capacity to give them. It is after this that she was subjected to ill-treatment/ physical abuse at their hands.

18. In his statement before the Court, PW1 Amir Singh complainant has explained this by saying that his statement Ex. PA recorded by the police was never read over to him but his signatures were obtained thereon. After post mortem was conducted and the body was cremated he came to know that his statement was not recorded correctly. Thereafter, he approached the Deputy Commissioner of Police and it is on his direction that his supplementary statement EX. PB was recorded. Demand of dowry is specifically proved by the complainant PW1 and PW9 Sama Kaur mother of the deceased.

19. Keeping in view the fact that death of Sunita took place on 06.03.2001 and marriage had taken place on 11.12.1999, it cannot be said that the demand had not been made soon before her death. Similarly, the argument that no such complaint etc. had been made earlier from the girl's side can be of no avail to the defence. Once the prosecution is able to establish that death of Sunita was unnatural within seven years of marriage and she was subjected to cruelty or harassment by the accused soon before her death in connection with demand of dowry, presumption under Section 113B of the Evidence Act is bound to arise. Credibility and truthfulness of the witnesses especially the parents and the brother of the deceased in this case cannot be doubted on the pleas sought to be raised. In the very initial statement, maltreatment of the deceased has clearly been set out. The reason why the demand of dowry is not reflected has been clearly explained by the complainant. Therefore to hold in this situation that non-mentioning of the demand of dowry in Ex.PA would entitle the appellant to acquittal is clearly unjustified.

20. Another relevant factor in this case is that the defence has sought to raise contradictory pleas namely that on one hand the deceased was unwell by trying to rely upon the evidence of DW1 Dr. Gopal Bhagat and on the other hand it is

submitted that she wanted to live with her husband at Delhi but as he was not able to accommodate her there she committed suicide on this count.

21. It is to be noted that the deceased was an educated young girl duly employed as a Government teacher. She had sought her transfer from Ambala to Jhajjar i.e. the place of matrimonial home. In case she had any intention to reside only with her husband and not at her matrimonial home she would not have sought her transfer.

22. Furthermore evidence of DW1 Dr. Gopal Bhagat does not prove that the deceased was suffering from depression and that too of the nature wherein she would have committed suicide. DW1 Dr. Gopal Bhagat has stated that the problem of deceased mentioned in the slip Ex. D1 pertains to a psychiatric problem but he did not have any diploma or specialization for psychiatry treatment except having worked in Psychiatric department in the Hindu Rao Hospital for approximately one year. He has admitted that he only relied upon the history as allegedly revealed by the patient to reach his diagnosis. It is allegedly on the patient's revelation that he has mentioned the symptoms. He never referred her to any expert. He even mentions that as he had not suggested any change in the medicine it reflected that she responded to the treatment suggested by him.

23. It is, thus, clear that DW1 is not an expert or specialist in these matters. There is nothing on record to suggest that deceased was suffering from such problems at any point of time before her marriage. Thus, it cannot be concluded that she was suffering from anxiety or depression on the basis of the above said singular evidence. It is pertinent to note that even if it is accepted that she had gone to Dr. Gopal Bhagat for treatment, this fact by itself would actually reflect that she was conscious enough to take medicine and consult the doctor for a problem which she might have, thus, there is no reason why she would commit suicide until and unless there were such circumstances as stated by the complainant.

24. Similarly, appellant cannot take any benefit of the insurance policy which was obtained by his father in the name of the appellant and the deceased had been made the nominee. This is so for the reason that there is no allegation of any cruelty or demand of dowry qua the father-in-law. Complainant has not raised any aspersion against him, therefore, if he has obtained an insurance policy in the name of his son with the deceased as nominee it cannot be a circumstance to prove that the appellant did not subject her to cruelty on account of demand of dowry.

25. An extremely relevant fact, in this case, is that there is no evidence on record to show that the appellant had taken any accommodation on rent at Mehrauli. It has come on evidence that he was infact a daily commuter. Distance between Jhajjar and Mehrauli is about 54 kms. Thus, the need or desire and subsequent demand for a scooter for daily commuting is probable.

26. In the present case, the complainant has not named anybody else except the appellant and his mother in his complaint. It is an admitted fact that father-in-law of the deceased as well as her four sister-in-laws have not been roped in.

27. Argument on behalf of the appellant that his conviction is unsustainable as the co-accused has been acquitted on the basis of the same evidence is not acceptable. It has been held by the Hon"ble Supreme Court in *Israr Vs. State of U.P.*, AIR 2005 SC 249 : (2004) 10 JT 526 : (2004) 10 SCALE 237 : (2005) 9 SCC 616 : (2004) AIRSCW 6916 : (2004) 8 Supreme 718 that acquittal of one of the co-accused would not lead to rejection of the entire evidence qua the other accused as well. Other accused can be convicted on the basis of the same evidence if found credible qua them.

28. Keeping in view the peculiar facts and circumstances of this case, I do not find any ground for setting aside the conviction of the appellant - Ramesh Kumar. In the absence of any evidence to show that the young girl was suffering from an illness and that too a serious illness which might egg her to take her own life as well as the presence of specific evidence on record proved by the prosecution to show that she was indeed subjected to harassment and cruelty on account of demand of dowry soon before her death, the appellant has been rightly convicted for the offence as charged. Death of the bride took place in the matrimonial home in an unnatural manner within one year and 3 months of the marriage. Appellant has not been able to rebut the presumption raised against him under Section 113-B of the Evidence Act.

29. However, I find no merit in the argument raised by learned counsel for the complainant praying for setting aside the acquittal of Chander Kanta and enhancement of sentence imposed upon Ramesh Kumar. It has rightly been held by the learned trial Court that the evidence on record points out to physical abuse by the appellant Ramesh Kumar and not at the hands of the mother-in-law. Demand of dowry by the mother-in-law has been rightly held to be not proved on record by the trial Court.

30. Prayer for conviction of Chander Kanta is not made out in view of the specific bar in Section 401(3) Cr.P.C. It has been reiterated by the Hon"ble Supreme Court in *Kumar Vs. Karnataka Industrial Corporation Bank Ltd. and Another*, (2013) 2 AD 569 : (2013) 1 JCC 731 : (2013) 1 JT 208 : (2013) 2 RCR(Criminal) 530 : (2012) 12 SCALE 695 that:

" The revisional jurisdiction of a High Court is conferred by the provisions of Section 397 read with Section 401 of the Code of Criminal Procedure. While Section 397 empowers the High court to call for the record of any proceeding before any inferior criminal court within its jurisdiction to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order and such power extends to suspension of execution of any sentence or order and also to release the accused on bail, under Section 401 (3) Criminal Procedure Code there is an express bar in the High Courts to convert a finding of acquittal into

one of conviction. While the revisional power under the Code would undoubtedly vest in the High Court the jurisdiction to set aside an order of acquittal the same would not extend to permit the conviction of the accused. The High Court may, however, order a retrial or a rehearing of the case, as may be, if so justified."

31. Learned counsel for the complainant is unable to point out any perversity, infirmity or illegality in the acquittal of Chander Kanta. It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible cannot be a ground for reversing a judgment of acquittal. There is no such strong or compelling reason pointed out by the learned counsel for the complainant which would warrant inference by this Court to order a retrial or re-hearing of the case.

32. Consequently, CRA S- No. 1761-SB of 2003 and Criminal Revision No. 2198 of 2003 are dismissed.