
(2005) 05 P&H CK 0120

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 1019-SB of 1999

Roshan Singh @ Roshan Lal and another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B

Citation : (2006) 1 RCR(Criminal) 12

Hon'ble Judges : K.S. Garewal, J

Bench : Single Bench

Advocate : Jai Vir Yadav, for the Appellant; K.K. Bheniwala, D.A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

K.S. Garewal, J.—Roshan Singh @ Roshan Lal (29) and his mother Kesar (56) were tried by the learned Additional Sessions Judge, Hoshiarpur and vide judgment dated October 12, 1999 they were both found guilty u/s 304-B of the Indian Penal Code for the dowry death of Roshan Singh's wife Seema Rani. The learned trial judge sentenced the two Appellants to rigorous imprisonment for seven years. The Appellants have filed this appeal to challenge their conviction and sentence.

2. Seema Rani deceased was sister of Gurdial Singh (P.W.-4). She was married to Roshan Singh alias Roshan Lal in November 1984. Couple had a son aged 2-1/2 years. At the time of marriage her family had given sufficient dowry but Kesri was not happy with the dowry and provoked her son Roshan Singh against Seema Rani. Roshan Singh started harassing and maltreating Seema Rani and pressurized her to bring a colour television. Seema Rani complained about her maltreatment to her father Ram Sukh (P.W.-5). Seema Rani would also told her family that the accused was demanding a colour television. She had conveyed this demand about 2/3 months before her death. Gurdial Singh and her father Ram Sukh and one Ashok Kumar went to the matrimonial home of Seema Rani

and told the accused about their inability to give anything more.

3. On April 17, 1998 Gurdial Singh again visited his sister Seema Rani. On reaching there he found her sitting on a cot in the verandah. She was not looking well. She told her brother that she had been beaten by her mother-in-law and husband and had taken some medicine due to her maltreatment. Gurdial Singh arranged for conveyance and took Seema Rani to Civil Hospital, Hoshiarpur where she was admitted at 9.00 A.M. Seema Rani expired at 10.40 A.M. The matter was reported to the police and case was registered on the basis of statement of Gurdial Singh (P.W.-4) recorded by ASI Ram Nath (P.W.-8). Investigating Officer started investigation by conducting inquest proceedings. Thereafter dead-body was sent for post mortem examination which was conducted by a board consisting of Dr. Aruna Kumari (P.W.-1) and Dr. Tarsem Lal at 4.15 P.M. at Civil Hospital, Hoshiarpur.

4. The Medical Officers recorded that the body was moderately built and nourished, cyanosis were present on the face, lips and nails. Rigor mortis was present on all limbs. Froth was coming out of nostril and mouth had bad odour. Scalp, skull and vertebrae were healthy and brain was congested. Walls, ribs and cartilage of thorax were healthy. Pleurae and lungs were congested. Pericardium was also congested. Sample of blood was preserved and sent to the Chemical Examiner for analysis. A small piece of small intestine, large intestine, liver, spleen and kidney were preserved and sent for chemical analysis. The deceased was not pregnant.

5. According to the post mortem report the probable time that elapsed between death and post mortem was 12 hours. After the Medical Board received the report of the Chemical Examiner, cause of death was declared to be due to aluminium phosphide poison which was sufficient to cause death in the ordinary course of nature.

6. The Appellants were arrested and sent up for trial. At the trial charges were framed against them u/s 304-B read with Section 34 of the Indian Penal Code to which they pleaded not guilty and claimed trial.

7. Prosecution examined Dr. Aruna Kumari (P.W.-1) as regards post mortem, Dr. J.S. Purewal (P.W.-2) as regards the admission of Seema to Civil Hospital, Draftsman Paramjit Singh (P.W.-3), Gurdial (P.W.-4), Ram Sukh (P.W.-5), Ashok Kumar (P.W.-6), C. Pal Singh (P.W.-7), ASI Ram Nath (P.W.-8) and C. Jai Ram (P.W.-9). The accused were examined without oath u/s 313 Code of Criminal Procedure Both of them admitted the factum of marriage but denied the evidence regarding harassment. Roshan Singh alias Roshan Lal gave the following version of the incident:

I am innocent and I my wife were living happily. I am employed in PAP. P.W. Gurdial had taken loan of Rs. 10,000/- from me through my wife. I had sent my wife to her parents' house to bring money from Gurdial, who refused to return the money and at that time Seema deceased took some poisonous substance

after quarrelling with Gurdial P.W. in order to save her skin. The parents of the deceased got false case registered against me.

When called upon to enter defence Bhajan Lal (D.W.-1) and Pritam Chand (D.W.-2) were examined. This witness testified that both Roshan Lal and Seema Rani had been happily married. Seema Rani had gone to her parents house where she had quarrel with her parents and took poison in her parents house. According to the witnesses the police never visited their mohalla.

8. The learned Additional Sessions Judge found both the Appellants guilty u/s 304-B read with Section 34 of the Indian Penal Code and sentenced them to rigorous imprisonment for seven years each. Feeling aggrieved against their conviction and sentence, the Appellants have filed this appeal. The Appellants remained in custody since their arrest on April 17, 1998 without bail. After conviction they were undergoing sentence and had spent 4 years in custody as under trials and convicts. On April 9, 2002 the Appellants' application for suspension of sentence was allowed and they were admitted to bail.

9. According to the learned Counsel for the Appellants it was a case of suicide simpliciter committed by a housewife who was unable to withstand the pressures of life. The evidence of the prosecution did not reveal that the deceased had been subjected to harassment and cruelty soon before her death in relation to dowry death, therefore, the basic ingredients of Section 304-B or presumption 113-B of the Evidence Act were not present.

10. The evidence regarding dowry demand is indeed very scanty. According to Gurdial and Ram Sukh Seema Rani used to tell them about harassment and that the Appellants were demanding a colour television. She had come to their house about 2/3 months before her death and told them about the demand. Gurdial, Ram Sukh and Ashok Kumar went to matrimonial home and conveyed their inability to give anything more. This is the sum and substance of the evidence led by the prosecution regarding harassment and cruelty.

11. In cross-examination Gurdial (P.W.-4) admitted that Seema Rani had a son about 2-1/2 years old at the time of the death. She had also undergone an abortion and had been left at her parents house after abortion. It was suggested to Gurdial that on account of complications due to abortion Seema Rani felt abdominal pain and generally remained sick and would become irritable.

12. Learned Counsel argued that Seema Rani was driven to suicide because she had developed a depression on account of abortion and complications that followed. Furthermore, the family of the deceased were not affluent and well to do who could afford to give her expensive presents. Brother of the deceased was a fruit seller who conducted his trade from a rehri and did not even possess a shop. His earnings were sufficient to provide him and his family barely two meals a day.

13. In this case evidence is indeed insufficient to hold that the deceased had

been subjected to any type of harassment or cruelty soon before death on April 17, 1998. Seema Rani died on account of intake of aluminium phosphide which is a highly poisonous insecticide and which has a very pungent odour and strong taste. This poison is unlikely to be used to poison a victim by mixing it with some item of food or drink. However, when a person intends to commit suicide she would gulp it down without any difficulty. In the present case Seema Rani committed suicide but it was not as if she was given the poison mixed with any item of food or drink. The only evidence of harassment or cruelty in this case was demand of colour television which demand had been raised 2-1/2 months earlier. This could hardly be termed as a demand for dowry immediately before her death. However, the demand of television can be a form of cruelty punishable u/s 498-A of the Indian Penal Code. Therefore, it is held that Seema Rani had been subjected to cruelty and this had driven her to commit suicide. The presumption u/s 113-A of the Evidence Act would apply in this case and the act of the Appellants would be punishable u/s 306 and not 304-B of the Indian Penal Code. Moreover, Seema Rani having undergone an abortion may have felt depression which may have aggravated for suicidal wish.

14. As a result of the above discussion, it is held that the offence committed by the Appellants was not u/s 304-B I.P.C. but u/s 306 I.P.C. and their conviction is altered to latter section.

15. The Appellants have undergone 4 years, inclusive of undertrial period. Consequently, the sentence imposed on the Appellants is reduced to the period already undergone i.e. 4 years rigorous imprisonment. The appeal is disposed of in the above terms.

Appeal partly allowed.