

(2009) 03 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No.433-SB of 1996

Sehnsi Ram and Other

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 34

Citation : (2010) 6 RCR(Criminal) 1035

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Advocate : K.S. Dadwal, for the Appellant; P.S. Sullar, DAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Sham Sunder, J.—This appeal is directed against the judgment of conviction dated 06.06.1996, and the order of sentence dated 07.06.1996, rendered by the Court of Additional Sessions Judge, Hisar, vide which it convicted and sentenced the accused (now appellants), as under:-

Crl. Appeal No.433-SB of 1996

Names of the accused (now appellants)

The offence for which conviction was recorded.

Sentence awarded

1

Zile Singh

U/S 201 read with Section 34 IPC

Rigorous imprisonment for three years. Fine of Rs.200/-. In default of payment of fine to undergo simple imprisonment for three months.

2.

Bhani

U/S 498-A read with Section 34 IPC

Rigorous imprisonment for three years. Fine of Rs.200/-. In default of payment of fine to undergo rigorous imprisonment for three months.

3.

Bhani

U/S 304-B read with Section 34 IPC

Rigorous imprisonment for seven years. Fine of Rs.500/-. In default of payment of fine to undergo rigorous imprisonment for six months.

4.

Bhani

U/S 201 read with Section 34 IPC

Rigorous imprisonment for three years. Fine of Rs.200/-. In default of payment of fine to undergo rigorous imprisonment for three months.

5.

Sehnsi Ram, Balbir alias Kala and Banarsi

U/S 498-A read with Section 34 IPC

Rigorous imprisonment for three years each. Fine of Rs.200/- each. In default of payment of fine to undergo rigorous imprisonment for three months each.

6.

Sehnsi Ram, Balbir alias Kala and Banarsi

U/S 304-B read with Section 34 IPC

Rigorous imprisonment for ten years each. Fine of Rs.500/- each. In default of payment of fine to undergo rigorous imprisonment for six months each.

7.

Sehnsi Ram, Balbir alias Kala and Banarsi

U/S 201 read with Section 34 IPC

Rigorous imprisonment for three years each. Fine of Rs.200/- each. In default of payment of fine to undergo rigorous imprisonment for three months each.

The substantive sentences of the accused were ordered to run concurrently.

2. The facts, in brief, are that, an application from the Superintendent of Police,

Hisar, was received in Police Station, Tohana, containing the allegations that Raj Bala daughter of Jagar Ram, complainant, was murdered on 03.09.1994. It was further alleged therein that Raj Bala was married about five years earlier to 03.09.1994, to Balbir son of Sehnsi Ram, according to Hindu religious rites and ceremonies. The complainant spent the amount according to his capacity, in the marriage of Raj Bala. After sometime of the marriage, the accused started raising demand of dowry. Raj Bala also made a complaint to the complainant, that her in-laws were demanding dowry and expressed her apprehension that they would kill her at any time, in case, the dowry was not given. The complainant went to the house of the accused, and asked them, either to keep his daughter properly or to seek divorce through the Court. Sehnsi, father-in-law of Raj Bala assured that she (Raj Bala) would be treated decently. It was further stated that Raj Bala also expressed apprehension and danger to her life, at the hands of Banarsi Dass, her brother-in-law, who used to taunt her for bringing insufficient dowry. The complainant got a message to the effect that his daughter had been killed in the fields of Lila Ram. On receipt of this message, he reached village Bhimewala and convened a panchayat. It was further stated that the accused confessed their guilt, before the Panchayat, and begged pardon. On seeing the dead body of her daughter, the complainant became unconscious. It was further stated that the dead body of Raj Bala, daughter of the complainant, was cremated even despite protest by Mahabir, his son. Under these circumstances, the dead body of Raj Bala could not be subjected to post-mortem examination. On the basis of the aforesaid application, an FIR was registered. During the course of investigation, the site plan was prepared. The ashes of the dead body were collected. The accused were arrested. After the completion of investigation, the accused were challaned.

3. On their appearance, in the Committing Court, the accused were supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, in the Court of Sessions, charge under Sections 304-B, 498-A and 201 of the Indian Penal Code, was framed against the accused, to which they pleaded not guilty, and claimed judicial trial.

4. The prosecution, in support of its case, examined Ranbir Singh, Constable, (PW-1), Rajinder Singh, Patwari Halqa, Tohana, (PW-2), Jagar Ram, complainant, (PW-3), Mahabir, (PW-4), Baru Ram, (PW-5), Harish Chander, Assistant Sub Inspector, (PW-6), Balwan Singh, Head Constable, (PW-7), and Balbir Singh, Sub Inspector, (PW-8). The Public Prosecutor for the State, after tendering into evidence, the report of the Forensic Science Laboratory Ex.PJ, closed the same.

5. The statements of the accused, u/s 313 Cr.P.C., were recorded, and they were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication, at the instance of the father of the deceased. Accused Sehnsi Ram, Bani and Balbir stated in their statements u/s 313 of the Code of Criminal Procedure that Jagar Ram, father of Raj Bala (since deceased) wanted to extract money from them and when they

refused to meet his demand, they were involved in this case. It was further stated by them that Raj Bala died a natural death.

5-A. Banarsi Dass, accused, in his statement u/s 313 of the Code of Criminal Procedure, stated that he being the relative of Balbir, was involved in this case

5-B. Zile Singh, accused, however, stated in his statement u/s 313 of the Code of Criminal Procedure that he was not present in the village at the time of the alleged occurrence.

6. The accused, however, did not lead any evidence in their defence.

7. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused, as stated hereinbefore.

8. Feeling aggrieved, against the judgment of conviction, and the order of sentence, rendered by the trial Court, the instant appeal, was filed by the appellants.

9. I have heard the learned Counsel for the parties, and have gone through the evidence and record, of the case, carefully.

10. The Counsel for the appellants, at the very outset, submitted that Raj Bala died a natural death. He further submitted that the cremation of the dead body of Raj Bala, took place in the presence of Jagar Ram, complainant, (PW-3), Mahabir son of Jagar Ram, complainant, (PW-4), Deva and Ratna, brothers of Jagar Ram, complainant, but no objection was raised by them, as the death was natural, that the dead body be not cremated and the post-mortem, on the same be got conducted. He further submitted that no demand of dowry was, ever made by the accused, from the parents of Raj Bala, or from Raj Bala, at any point of time. He further submitted that Raj Bala was never subjected to cruelty in connection with the demand of dowry much less soon before her death. He further submitted that the application Ex.PC was moved by Jagar Ram, father of Raj Bala, deceased, after 14 days of the alleged occurrence and the FIR was registered on 26.09.1994 i.e. 26 days after the alleged occurrence. He further submitted that even no member of the panchayat which was allegedly convened by the father of the deceased, on the date of her death, was examined. He further submitted that even Deva and Ratna, brothers of Jagar Ram, complainant, the most material witnesses, were given up as unnecessary, by the Public Prosecutor for the State. He further submitted that even the date of marriage of Raj Bala was not proved and, as such, the prosecution failed to establish that Raj Bala died within seven years of her marriage. He further submitted that the ingredients required for constituting the offences, punishable under Sections 304-B, 201 and 498-A of the Indian Penal Code were not constituted. He further submitted that the Court below was wrong in recording conviction and awarding sentence.

11. On the other hand, the Counsel for the respondent, submitted that it was not

a natural death. He further submitted that the dead body of Raj Bala was cremated by the accused without intimation to her parents and even the same was not got subjected to post-mortem examination, which clearly showed that the death occurred otherwise than under normal circumstances. He further submitted that sufficient evidence was led with regard to the date of marriage and it was proved that the death of Raj Bala took place within seven years of her marriage. He further submitted that even sufficient evidence was led to prove that Raj Bala was subjected to cruelty in connection with the demand of dowry, soon before her death. He further submitted that the Court below, was, thus, right in recording conviction and awarding sentence.

12. For constituting the offence, punishable u/s 304-B of the Indian Penal Code, the prosecution was required to prove, beyond doubt, that the death of a married woman took place, within seven years of her marriage, otherwise, than under normal circumstances, and soon before her death, she was subjected to cruelty, in connection with the demand of dowry. No doubt, the exact date of marriage of Raj Bala was not proved. However, Jagar Ram, complainant, (PW- 3), father and Mahabir, (PW-4), brother of Raj Bala (since deceased) stated that she was married six years, before the alleged occurrence. There is nothing, on the record, to disbelieve their statements, on this point. It was, thus, proved that Raj Bala died within six years of her marriage.

13. Now, let us see; as to whether, the other two ingredients i.e. she died within seven years of her marriage, otherwise than under normal circumstances, and that she was subjected to cruelty, in connection with the demand of dowry, soon before her death, were proved by the prosecution or not. Jagar Ram, complainant, (PW-3), father of Raj Bala, stated that he gave dowry, at the time of marriage, according to his capacity. He further stated that after about three years of the marriage, his daughter told him, that her husband, father-in-law and mother-in-law, had started harassing her, in connection with the demand of dowry, including television. He further stated that then he went with his son Mahabir and brothers Deva and Ratna, to the house of the accused, who assured him to keep his daughter properly. He further stated that he told them (accused) that either to keep his daughter properly or to seek divorce through Court. CrI. Appeal No.433-SB of 1996 --10-- He further stated that his daughter came after three months of the aforesaid incident, and told him, that she could not live in the house of her in-laws unless, their demand of dowry was fulfilled. He further stated that he sent his daughter back to the house of her in-laws. It was further stated by him that after about two months thereof when he went to the house of the in-laws of his daughter with customary gifts on the eve of Teej, she again complained to him, about the behaviour of the accused. Mahabir (PW-4) also made almost the same statement. No date and the month when the demand of dowry was made by the accused, was given by both these witnesses. Even no specific details of the articles of dowry or cash, which were demanded by the accused, from Raj Bala or from them, were given by them in their statements. The evidence of both these witnesses is not reliable as it is not

corroborated by any independent evidence. Even, if it is assumed, for the sake of arguments, that the accused allegedly demanded dowry including television that was about three years after the marriage. Thereafter the accused never raised demand of any dowry either from Raj Bala or from her parents. Raj Bala died after six years of her marriage. If any alleged demand of dowry was made after three years of her marriage, that could not be said to be demand falling within the purview of soon before her death. In *M. Srinivasulu Vs. State of A.P.*, it was held that expression soon before death is very much relevant when Section 304-B of the Indian Penal Code, and Section 113-B of Evidence Act, are pressed into service. The expression soon before would normally imply that the 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. There was no live link, between the alleged demand of dowry, without any specific details thereof, made three years before the death of the deceased, and her death. In the instant case, it may be stated here, that the prosecution miserably failed to prove that Raj Bala was subjected to cruelty, in connection with the demand of dowry. Secondly even if, it is assumed, that such demand was made and the deceased was subjected to cruelty in connection therewith, that could not be said to be soon before death. The two ingredients required for constituting the offence, punishable u/s 304-B of the Indian Penal Code, therefore, were not fulfilled. The trial Court was wrong in coming to the conclusion, that the demand of dowry was made by the accused. The trial Court was also wrong, in coming to the conclusion that the deceased (Raj Bala) was subjected to cruelty in connection with the said demand, soon before her death. The findings of the trial Court, in this regard, being incorrect, are liable to be set aside.

14. The next question, that arises for consideration, is, as to whether, the death of the deceased took place otherwise than under normal circumstances. Admittedly, the post mortem on the dead body of the deceased was not got conducted. Jagar Ram, complainant, (PW-3), and Mahabir, (PW-4) stated that on 03.09.1994 Banarsi Dass came to their house and told that Raj Bala had died after consuming some poisonous substance. They further stated that thereafter they went to village Bhimewala alongwith Deva and Ratna, brothers of Jagar Ram. They further stated that the dead body of Raj Bala was lying inside the house of the accused. Jagar Ram, complainant, (PW-3) stated that, on seeing the dead body of his daughter, he became unconscious. Mahabir, (PW-4), brother of the deceased, stated that he got busy in looking after his father. It was further stated by him, that the accused including Zile Singh, then took the dead body of his sister, for cremation in spite of protest. As stated above, Deva and Ratna, brothers of Jagar Ram, complainant, who were present alongwith him and Mahabir, at the time when the dead body was found in the house of the accused, were not examined. Had the death of Raj Bala, deceased, taken place otherwise than under a normal circumstances, Jagar Ram, complainant, Mahabir, Deva and

Ratna, close relatives of Raj Bala, deceased, would not have allowed the accused to cremate the dead body of Raj Bala, without getting the post-mortem conducted, on the same. The story set up by Mahabir, (PW-4) that he raised protest, but the accused, did not pay heed to the same, and cremated the dead body of his sister, is nothing, but a tissue of lies. Even if, it is assumed, that such a protest was raised by Mahabir and the accused did not pay any heed to the same, he could immediately inform the Police or the respectables of the village that the accused were going to cremate the dead body but they wanted the post mortem of the dead body to be conducted. No such steps were taken by them, as they were satisfied that the death of Raj Bala, occurred under normal circumstances. They were also sure that the death of Raj Bala was natural and not on account of consumption of poison. As stated above, the material witnesses namely Deva and Ratna, brothers of Jagar Ram, complainant, were not examined and given up as unnecessary. Had the death of Raj Bala taken place, otherwise than under normal circumstances, they would have come forward to depose, in that manner. The trial Court was, thus, wrong in coming to the conclusion that the death of Raj Bala took place otherwise than under normal circumstances. The findings of the trial Court in this regard, being incorrect, are liable to be set aside.

15. The application Ex. PC was moved on 17.09.1994, whereas, the alleged occurrence took place on 03.09.1994. On the basis of this application, the FIR was registered on 26.09.1994. There was, therefore, delay of 14 days in moving the application Ex.PC and 23 days in the registration of case. This delay was not explained, by the prosecution witnesses. Since, Jagar Ram, complainant, (PW-3), Mahabir, (PW-4), Deva and Ratana, close relatives of the deceased, were very much present in the house of the accused, at the relevant time, and were also present at the time of cremation of the dead body of Raj Bala, in case, her dead body was cremated by the accused forcibly without paying heed to their protest and without getting the post-mortem examination conducted done, and they entertained a belief that the accused were responsible for causing the death of Raj Bala, deceased, they would have certainly gone to the Police Station immediately after the alleged occurrence. It, thus, appears that the application moved after 14 days of the alleged occurrence, after due deliberations and consultations, with some ulterior motive. The unexplained delay of 14 days in moving the application Ex.PC and 23 days in lodging the FIR, thus, resulted into the false implication of the accused, concoction of story, and introduction of false witnesses. In *Thulia Kali Vs. The State of Tamil Nadu*, , it was held that the FIR in a criminal case, is an extremely vital and valuable piece of evidence, for the purpose of corroborating the oral evidence, adduced at the trial. The importance of the report, can hardly be over estimated, from the standpoint of the accused. The object of insisting upon prompt lodging of the report, with the Police, in respect of commission of an offence, is to obtain early information, regarding the circumstances, in which the crime was committed, the names of the actual culprits, and the part played by them, as well as the names of the eye

witnesses, present at the scene of occurrence. Delay in lodging the first information report, quite often results in embellishment, which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, and exaggerated account of the prosecution story, as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of first information report, should be satisfactorily explained. In that case, there was a delay of about 20 hours, in lodging the FIR, though the Police Station was only at a distance of two miles. Hence this circumstance was taken, as the one, to raise considerable doubt, regarding the veracity of the case, and it was held that it was not safe to base conviction. The trial Court failed to take into consideration this aspect of the matter, and, thus, fell into a grave error in recording conviction and awarding sentence.

16. Two material witnesses namely Deva and Ratna, who could throw light with regard to the correct position, were not examined. On the other hand, they were given up as unnecessary by the prosecution. It is, no doubt, true that the prosecution was not required to examine all the witnesses even if, their evidence was not material. However, it is the duty of the prosecution to produce, in the Court, all the witnesses, whose evidence is material to unfold its evidence. Had these witnesses been given up as won over, the matter would have been different. The prosecution, thus, withheld the best evidence, in its possession, and an adverse inference can be drawn that had these witnesses been examined they would have not supported the case of the prosecution. In *Masalti Vs. State of U.P.*, it was held that it is, undoubtedly, the duty of the prosecution, to lay before the Court, all material witnesses, available to it, whose evidence is necessary for unfolding its case, but it would be unsound to lay down it, as a general rule, that every witness, must be examined, even though his evidence, may not be very material or, even if, it is known that he has been won over or terrorized. On account of non-examination of the aforesaid material witnesses, a great prejudice was caused to the accused.

16-A. No doubt, Jagar Ram, complainant, (PW-3) stated that when he went to the house of the accused, on receipt of the message, that his daughter had died, on account of consumption of poison, he convened a panchayat of village Bhimewala, to which the accused belonged. He further stated that in the presence of the panchayat, Sehnsi Ram, Kala alias Balbir, Bhani, and Banarsi Dass, accused confessed that they had killed his daughter Raj Bala. Similar statement was made by Mahabir, (PW-4). The evidence of both these witnesses, in this regard, does not appear to correct. It could not be expected of the accused, who had allegedly caused the death of Raj Bala, to confess their guilt before her father and brother as also in the presence of entire Panchayat. None of the members of the panchayat, present at the relevant time was examined, to prove that such an alleged confession was made by the accused. No explanation was also furnished by the prosecution, as to what prevented, it from examining those members before whom the accused allegedly confessed their guilt. Such

story was apparently concocted by Jagar Ram, (PW-3) and Mahabir, (PW- 4), just with a view to strengthen the, otherwise a weak case of the prosecution. Had any member of the panchayat, which was convened, been examined as a witness, to prove this factum, the matter would have been different. In the absence of any independent corroboration to the statements of Jagar Ram, (PW-3) and Mahabir, (PW-4) on this point, their evidence is held to be un trustworthy. It is, therefore, held that no such confession was made by the accused before Jagar Ram, (PW-3) and Mahabir, (PW-4), in the presence of the members of the panchayat, which was convened.

17. No other point, was urged, by the Counsel for the parties.

18. In view of the above, it is held that the judgment of conviction and the order of sentence, rendered by the Court of Additional Sessions Judge, Hisar, are not based on the correct appreciation of evidence, and law on the point. The trial Court did not take into consideration the aforesaid infirmities and lacunae, in the prosecution evidence, and, thus, fell into a grave error in recording conviction and awarding sentence. The judgment of conviction and the order of sentence are, thus, liable to be set aside.

19. For the reasons recorded, hereinbefore, the appeal is accepted. The judgment of conviction dated 06.06.1996, and the order of sentence dated 07.06.1996, are set aside. The appellants shall stand acquitted of the charge, framed against them. If, they are on bail, they shall stand discharged of their bail bonds. If, they are in custody, they shall be set at liberty, at once, if not required in any other case.

20. The Chief Judicial Magistrate, shall comply with the judgment.