
(2012) 07 SHI CK 0174
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 101 of 2006

State of Himachal Pradesh

APPELLANT

Vs

Daulat Singh, Taro Devi, Tehal Singh and Amit Singh

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 302, 34, 498A

Citation : (2012) 07 SHI CK 0174

Hon'ble Judges : Sanjay Karol, J; R.B. Misra, J

Bench : Division Bench

Advocate : R.K. Sharma, A.A.G. with Mr. J.S. Guleria, A.A.G, for the Appellant;
Ramakant Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Justice Sanjay Karol, Judge.

1. For an offence, which is alleged to have been committed on 27.8.2003, accused were put to trial. In terms of judgment dated 5.12.2005 passed by learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala, in Sessions Case No. 32-K/VII/05-04 titled as State of H.P. vs. Daulat Singh & Ors., accused stand acquitted of the charged offence. It is the case of prosecution that H.H.C. Puran Singh (PW 13) received an information on telephone that a lady had been murdered in Village Dagla. He made entry (Ext.PW-13/A) in the rojnamcha, and passed on the information to the Investigating Officer ASI Dev Raj (PW-20), who proceeded to the village and found large number of villagers assembled there. Independently Sh. Sanjeev Kumar (PW-17) cousin of Smt. Vijay Kumari (deceased) also received an information on telephone that his cousin sister i.e. Smt. Vijay Kumari had been murdered in Village Dagla. Immediately on telephone, he passed on the aforesaid information to the father of the deceased Sh. Chuni Lal. Sh. Chuni Lal along with his son Sh. Kuldeep Singh (PW-2) and Sh. Parveen Singh (PW-3) also rushed to the village. In the

village, ASI Dev Raj (PW-20) recorded statement (Ext.PW-18/A) of Sh. Chuni Lal u/s 154 Cr.PC. Allegedly accused had caused mental and physical cruelty to the deceased and hand of the accused was suspected in the death. Said statement was sent to Police Station, Nurpur, where Sh. Krishan Gopal (PW-18) recorded F.I.R. No. 255/2003 dated 27.8.2003 (Ext.PW-18/B) under Sections 498A, 302, 34 IPC. Thereafter police was taken to the place known as Bahi-Di-Gori in a nallah, which was at a distance of 5-6 kms. from the village, where dead body of the deceased was found hanging from a tree. The spot was got photographed from Sh. Chamel Singh (PW-12). Dead body along with the personal articles of the deceased were taken into possession by the police in the presence of Sh. Ravinder Singh (PW-4) and Sh. Vakeel Singh (not examined). Dead body was sent for post mortem to the Civil Hospital at Nurpur, where Dr. Subhash Thakur (PW-1) conducted post mortem and issued report (Ext.PW-1/C) and opinion (Ext.PW-1/G) after examining the opinion given by an expert of the Forensic Science Laboratory. The accused were arrested by ASI Dev Raj (PW-20). Accused Amit Singh and Tehal Singh made disclosure statement (Ext.PW-6/A) that they had murdered the deceased and could lead the police to the place of crime. The matter was investigated by Inspector R. P. Jaswal (PW-19) and ASI Dev Raj (PW-20). This was so done in the presence of witnesses Sh. Kuldeep Singh (PW-6) and Sh. Chamel Singh (PW-12). The spot was got identified by the accused and police prepared a sketch plan (Ext.PW-19/A). Police also recorded statements of various relatives and neighbours.

2. Investigation revealed that deceased Vijay Kumari, daughter of Sh. Chuni Lal and sister-in-law of Sh. Kuldeep Singh (PW-2) was married to accused No.1 Tehal Singh sometime in the year 2002. All the accused persons i.e. Daulat Singh (accused No.1), his wife Taro Devi (accused No.2), sons Tehal Singh (accused No.3) and Amit Singh (accused No.4) murdered the deceased for having brought insufficient dowry. On several occasions demands of money were made by them and on two occasions the same were met by the complainant party when a sum of Rs. 20,000/- and Rs. 13000/- was paid to the accused. 5-6 months prior to the incident, deceased was again physically assaulted by the accused, which forced her to leave the matrimonial house and stay with her parents. After some time, accused requested the complainant to send her back with the assurance that henceforth she would be treated properly. Accordingly, deceased came back but however on 27.8.2003, accused again quarrelled with her and also murdered her. Investigation revealed complicity of the accused to the alleged crime. Consequently, challan was presented in the Court for trial.

3. Accused were charged for having committed offences punishable under Sections 498A & 302 both read with Section 34 IPC, to which they did not plead guilty and claimed trial.

4. In order to prove its case prosecution examined as many as 20 witnesses and the statements of the accused u/s 313 Cr.PC were also recorded, in which they took-up a defence of false implication.

5. The Court below, after carefully scrutinizing the material placed on record by the prosecution, acquitted the accused of the charged offence. Hence, the present appeal.

6. We have heard Sh. R. K. Sharma, learned Senior Additional Advocate General, assisted by Sh. J. S. Guleria, Assistant Advocate General, on behalf of the State as also Sh. Ramakant Sharma, Advocate, on behalf of the accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence placed on record by the prosecution. Having minutely examined the record, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is well reasoned and is based on complete and proper appreciation of evidence (documentary and ocular) placed on record. There is neither any illegality/infirmity nor any perversity in the same.

7. The fact that deceased was married to accused Tehal Singh is not in dispute. Marriage took place about 2-3 years prior to the incident. That the dead body of the deceased was got recovered from the forest, which was at a distance of 5-6 kms. from the village where the accused reside, stands established on record through the testimony of the Investigating Officer. The dead body was recovered in the evening of 27th August, 2003. The same was sent for post mortem, which was conducted in the morning of 28th August, 2003. Dr. Subhash Thakur (PW-1) has opined that there was a faint brown ligature mark, fourteen C.M. long three C.M. wide, without any pattern of rope which was encircling the neck above the thyroid and cartilae, running from left side angle of mandible towards right side mastoid process, was oblique in the direction and there was no ligature mark present on the back of neck. As per medical evidence on record, no evidence of violence was found on the body of the deceased. The Doctor, based on the opinion given by the Medical Experts, opined that cause of death "cannot be due to pressing of mouth and nose". Thus, medical evidence does not conclusively establish that deceased was murdered.

8. To prove the fact that accused treated the deceased with cruelty and after hatching conspiracy murdered her, prosecution has heavily relied upon the testimonies of Sh. Kuldeep Singh (PW-2), brother of the deceased, Sh. Parveen Singh (PW-3), brother-in-law of the deceased, neighbour Ravinder Singh (PW-4), Sh. Ramesh Chand (PW-5), Sh. Kulwant Singh (PW-6), Sh. Harbans Lal (PW-9), Sh. Chanchal Singh (PW-10), Smt. Bimla Devi (PW-11), Sh. Chamel Singh (PW-12) and Sh. Sanjeev Kumar (PW-17). Original complainant Chuni Lal expired during trial. As such, his statement could not be recorded.

9. Police witnesses i.e. Inspector R. P. Jaswal (PW-19) and ASI Dev Raj (PW-20), who carried out the investigation admit that villagers, including the complainant had taken them to the spot where dead body was lying. PW-20 admits that villagers suspected hands of the accused in the death of the deceased and, as such, there was threat to the life and property of the accused. Police force had to be summoned to give protection to the accused persons.

10. Smt. Bimla Devi (PW-11) has simply deposed that on 27.8.2003, deceased took her daughter from the Anganwari Centre and at that time behaviour of the deceased was normal. Beyond this, she does not state anything.

11. Through the testimony of PW-5, who is neighbour of the deceased, prosecution has tried to establish that on 27.8.2003 quarrel took place between the accused and the deceased. Now unfortunately this witness did not support the prosecution in Court. He was declared hostile and extensively cross-examined by the Public Prosecutor. In spite of the same, nothing fruitful could come out in his testimony. It cannot be said that he has suppressed the truth from the Court. In fact there is unrebutted testimony of this witness to the effect that none of the accused ever maltreated or harassed the deceased. This witness admits that at about 12.30 noon, he had seen the deceased coming from the Anganwari Centre. At about 3.00 P.M., she along with Tehal Singh, Daulat Singh, Kulwant, Ramesh, Mango and Munshi were raising a "danga" (retaining wall) to save the village land when they heard cries of children to the effect that deceased had hanged herself. Thereafter all of them proceeded to the spot and found that deceased had died and on the asking of Daulat Singh and Beer Singh, police was informed. This only shows that prior to the arrival of the police and the complainant party people had already been to the spot of crime. It remains unprotected and all had access to the same.

12. We find that even Sh. Parveen Singh (PW-3), who is the real brother-in-law of the deceased and Sh. Harbans Lal (PW-9) who is the real brother-in-law of accused Daulat Singh, have not supported the prosecution case at all. Other independent witnesses to the disclosure statement and recovery of the articles and the identification of the spot by the accused have also not supported the prosecution in Court. It is so evident from the testimonies of Sh. Kulwant Singh (PW-6) and Sh. Chamel Singh (PW-12). These witnesses were cross-examined by the Public Prosecutor and nothing fruitful could come out from the same. We find the prosecution case with regard to the disclosure statement to be weak. PW-9 himself admits that no opinion with regard to homicidal death was taken by him on record and Sh. Kulwant Singh (PW-6) in his unrebutted testimony has deposed that after the accused were arrested, police never brought them back to the village. Now this totally shatters the prosecution case with regard to the accused leading the police to the spot of crime. According to the police accused were arrested, taken to the police station and later on led the police to the spot of crime.

13. According to us, prosecution case essentially rests upon the testimonies of crucial witnesses Sh. Kuldeep Singh (PW-2) and Sh. Parveen Singh (PW-3). Significantly Sh. Parveen Singh (PW-3) has not supported the prosecution case on certain aspects. He was declared hostile and cross examined by the learned Public Prosecutor. That apart, we find that these witnesses have admitted that they only suspected the accused to be involved in the alleged crime.

14. Sh. Kuldeep Singh (PW-2), in his examination-in-chief, states that after the

marriage, accused mentally and physically caused cruelty to the deceased. Also accused Tehal Singh demanded Rs. 50,000/- for paying tax of the truck. Such demand was met by him. Again a demand of Rs. 30,000/- was made, out of which Rs. 13,000/- was paid to accused Tehal Singh. Thereafter another demand of Rs. 15,000/- was made which was refused. Deceased used to complain to him about the atrocities and cruelties and the accused torturing her for having brought insufficient dowry. Six months prior to the incident, he had brought the deceased back home, where she stayed for some time. Moreover, one month prior to the incident, accused Tehal Singh came to take the deceased but she refused to accompany him. But after 6-7 days, accused Daulat Singh came and after assuring that they would improve their behaviour took the deceased back to the matrimonial home. However, on 27.8.2003, he learnt about the death of the deceased. Significantly, in his cross-examination, this witness admits that neither at the time of engagement nor marriage, dowry articles were demanded by the accused persons. He admits that both Tehal Singh and the deceased used to visit him. This shows that there is no prior history of dowry demand. He states that with regard to maltreatment and dowry demand, in writing he had reported the matter to the police at Police Post Gangath. But then there is nothing on record to substantiate this fact. We are of the view that this witness is not completely reliable and trustworthy. He has made improvements in his statement. In his cross-examination, he admits that "I am stating the fact about approaching the police of PP Gangth and Pardhan of GP Dagla for the first time in the court today. Police did not record the dates on which I had made the payment of Rs.20,000/- to Tehal Singh. The police was recording my statement as per my version. Pertaining to the payment of Rs.20,000/- made to Tehal Singh I can give its proof. It is correct that I had stated before the police that I have suspicion that my sister has been killed by the accused persons". Now if this witness had proof of payments then why is it that he did not place the same on record to corroborate his version in the Court. This was the most crucial piece of evidence which would have prima facie established complicity of the accused to the alleged crime. Otherwise we find the allegations of dowry demands to be general in nature, vague and unspecific with regard to time and place. Now there is nothing to show that accused owned any truck. His version that police did not correctly record his statement stands falsified by the version of the Investigating Officer.

15. We further find that Sh. Parveen Singh (PW-3), who is a close relative of PW-2 has not supported this witness with regard to demands of money. No doubt, Sh. Parveen Singh (PW-3) was declared hostile and cross-examined by the Public Prosecutor, but it was not on the issue of demand of money. Sh. Parveen Singh (PW-3) also has deposed that "it is correct to suggest that we have suspicion that Vijay Kumari might have murdered by the accused self-stated that I have confidence that the accused persons killed Vijay Kumari. It is correct to suggest that when police recorded my statement I show suspicion against the accused persons about the death of Vijay Kumari".

16. Thus, in our considered view, these two witnesses have neither corroborated nor proved/established the prosecution version with regard to the cruelties, mental or physical or dowry demand allegedly made by the accused. Suspicion alone cannot be a ground for conviction. Prosecution has to establish its case, beyond reasonable doubt, by leading clear, cogent, convincing, reliable and trustworthy piece of evidence. In the instant case, we find the same to be lacking.

17. None has seen the accused murdering the deceased. Deceased was lastly seen leaving the Anganwari Centre at about 12 in the noon. It is not that at that time, anyone of the accused persons were in her company. Also dead body was found at a distance of 5-6 kms. from the village, which was recovered on the very same day. Even in the jungle, none had seen the accused and the deceased together. There is no link evidence to establish the fact that accused were present anywhere near the spot. The witnesses have admitted that no incriminating material was found from the house or custody of the accused. What was the weapon of offence used by the accused to murder the deceased has not been disclosed by the police and medical evidence does not substantiate the fact that deceased was murdered. Accused were arrested on mere suspicion. Police has not placed on record the written complaint allegedly made by the relatives of the deceased. Also matter was not taken-up by PW-2 with the concerned Panchayat. Prosecution has not been able to establish that accused were required to pay tax for plying the truck for which the alleged demand was made. The accused have had the advantage of having been acquitted by the Court below. Keeping in view the principles laid down in Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., and State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, , it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the persons has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.