
(2013) 08 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 417 of 2007

State of Himachal Pradesh

APPELLANT

Vs

Devinder Singh and Another

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1670 : (2013) 3 ShimLC 1570

Hon'ble Judges : Dharam Chand Chaudhary, J; Dev Darshan Sood, J

Bench : Division Bench

Advocate : V.S. Chauhan, A.A.G. with Mr. Vikram Thakur, Deputy A.G, for the Appellant; J.R. Poswal, for the Respondent

Judgement

Dev Darshan Sood, J.—State has challenged the acquittal of the respondents, who were charged for offences, punishable under Sections 498A and 306 read with Section 34 of the Indian Penal Code. Accused Devinder Singh, A-1 for short, and accused Piar Devi, A-2 for short, are "Devar" and mother-in-law, respectively of deceased Kiran Devi. Prosecution case, in brief, is that Kiran Devi, who was married to DW-3 Rajinder Singh, was being harassed by A-1 and A-2. She committed suicide by jumping into Govind Sagar Lake somewhere between 5.9.2000 and 7.9.2000. Learned trial Court has acquitted both the accused holding that the offences, as charged, were not established by the prosecution evidence.

2. Learned Additional Advocate General urges that the evidence of three witnesses, namely PW-3 Lekh Ram, PW-5 Sheela Devi and PW-8 Smt. Hakam Devi, father, sister and mother/respectively of deceased Kiran Devi, is conclusive, especially when read with presumption u/s 113A of the Evidence Act, as "the death had occurred in an unnatural way, within the statutory period of presumption of seven years.

3. We are not re-appreciating the evidence, as considered by the learned trial Court, but we are adverting to the evidence of three witnesses named above to

ascertain as to whether any offence has been committed by the accused persons as they are the very witnesses on whom the prosecution relies.

4. Adverting to the evidence of PW-3 Lekh Ram, he states that out of his five daughters, deceased! Kiran Bala was the youngest, who was married to DW-3 Rajinder Singh in the year 1999 according to Hindu rites and customs. He states that he had gifted ample dowry according to his status. DW-3 Rajinder Kumar, his son-in-law, was working in some factory in Punjab. According to him, A-1 and A-2 used to harass her for bringing insufficient dowry. He states, in general terms, that whenever deceased came home to visit him, she used to complain about the harassment being meted out to her by the accused persons taunting her that they (parents of deceased) had not given sufficient dowry in the marriage. He then says that he had been advising her daughter to adjust at the house of her in-laws like a dutiful Hindu bride. He further states that he and his wife PW-8 Smt. Hakmi Devi had not been keeping good health because of their old age and their other daughter PW-5 Smt. Sheela Devi, whose husband was working in a foreign country, was residing with them at their house. She (PW5) visited the house of the accused thrice and informed this witness that the accused never Welcomed her visit. A male baby was born to the deceased after 10 months of the marriage and at that time his another son-in-law PW-4 Amar Singh had visited the house of the accused. On his return he told him that the accused persons had raised two demands, one for giving more dowry and another for giving land to Rajinder Singh, husband of the deceased and if these demands were not met, then nobody from the family of deceased should visit them. He says that dead body of his daughter was found on the third day, after she had gone missing and the same was fished out of Govind Sagar Lake. He states that he and his wife had not visited the place where the dead body of his daughter was found. He was cross-examined at length. He states that he knows DW-4 Kesar Singh, who is his nephew in relation and resides in the same village and that sister of DW-4 Kesar Singh is married to A-1. DW-2 Lekh Ram is father of A-1, who belongs to a well to do family and is financially well off. He denies the suggestion that A-1 was a member of BJP Party. He also denies the fact that Devinder A-1 had formed an organization to protest against dowry. He admits that his son-in-law DW-3 Rajinder Singh had visited his house several times before the death of his daughter Kiran Devi.

5. PW-4 Amar Singh, brother-in-law of the deceased, says that sufficient dowry was given in marriage by his father-in-law at the time of wedding of the deceased and at that time he was working in the private sector at Amritsar. In August, 2009, he had gone to the house of the accused, after the deceased delivered a male child and that when he was taking meals in the kitchen, the accused persons started passing remarks that Kiran does not know how to cook meals and her sister should not visit their house. He further states that they asked the parents of the deceased to bring a gold chain for the newly born child and also to transfer land in favour of DW-3 Rajinder Singh, husband of the deceased. He states that he had disclosed these facts to the parents of the

deceased. In cross-examination, he says that he was not informed by anybody that Kiran had delivered a male child. He further says that he was associated in investigation and his statement u/s 161 Cr.P.C. was recorded by the police, wherein he had not stated that his wife had sent him to the house of Kiran to enquire about her well being, as she had delivered a baby. He denies having made this portion of statement before the police. He further states that before the marriage of the deceased, PW-5 Smt. Sheela Devi had been residing in the house of her parents. He denies the suggestion that after Kiran's marriage, mother-in-law of DW-3 Rajinder Singh wanted him to stay with them as their "Ghar Jawai".

6. We are now adverting to the statement of PW-5 Smt. Sheela Devi, sister of the deceased, who also states in general terms that the accused were harassing the deceased for bringing insufficient dowry. In cross-examination she admits that she knows DW-4 Kesar Singh, whose daughter is married to Devinder Singh A-1. She says that she cannot disclose the nature and manner of harassment or cruelty to which the deceased was subjected to by the accused persons.

7. PW-8 Hakmi Devi, mother of the deceased also states in general terms that after the marriage of deceased, her brother-in-law (A-1) and mother-in-law (A2) used to find fault with the work of the deceased and that she was beaten up and ultimately killed by them.

8. From the evidence considered above, we find that prima-facie it does not establish that the alleged cruelty was of such a nature which would have compelled the deceased to commit suicide or to end her life. The allegations have been made in general terms without proving any specific instance. We say so by taking into consideration the evidence led by the defence. Ext. DA is a letter written by the deceased to her husband DW-3 Rajinder Singh wherein the deceased had expressed her fervent desire to live with him, stating that she had been missing him for long time. We do not find even a whisper of complaint in this letter that she was being harassed or subjected to cruelty by the accused.

9. We are now adverting to the evidence of the defence. We note that DW-2 Lakh Ram says that one of his daughters was married to Kesar Singh. He says that father of deceased had visited his house twice or thrice alongwith his wife. After the marriage, the deceased stayed at their house for 7-8 days as she had opened a tailoring centre at Dudian and she returned to the house after three months. He further says that DW-3 Rajinder Singh used to visit his wife, (the deceased) to enquire about her well being. We find that ceremony of "Guntrala" (ceremony after the birth of a child) was held on 5.9.2000 at the house of in-laws of the deceased, which was celebrated with pomp and show and on that day he had handed over 10 kgs of sweets to DW-4 Kesar Singh for being distributed at the house of the parents of the deceased. He then talks about the missing of his daughter-in-law and thereafter finding her dead body in Govind Sagar Lake.

10. DW-5 Munshi Ram says that he is Up Pardhan of Gram Panchayat, Dari-Bahri

and village Karwin is part of said Panchayat. A1 and A2 are known to him as they are from his village. In the year 1998-99, he was running an organization under the name of Yuvak Mandal of which he was the President and A1 was a Member. According to him, this organization was formed to protest against the evils of dowry. He says that he was a member of marriage party of DW-3 Rajinder Singh, husband of the deceased and at that point of time, the parents of the deceased had displayed the dowry articles at the marriage venue when A1 had refused to accept them. Accused Devinder was employed as a teacher on PTA basis and bears a good moral character. He further says that parents of the deceased and villagers had also come to the spot and they did not utter even a single word against the accused. The dead body was found on 7.9.2000 and the police was informed accordingly. Parents of Kiran reached on 7.9.2000, but they did not make any complaint at that time to anyone suspecting any foul play. From the evidence above discussed, we find no incriminating circumstance against the accused to conclude that the deceased was subjected to cruelty which compelled her to commit suicide. It is only after such cruelty is established that the presumption u/s 113A of the Evidence Act, can be raised against the accused, calling upon them to explain the unnatural death of the deceased. Such evidence, however, is completely missing in the case in hand. In these facts and circumstances on record, we find that there is no merit in this appeal which is accordingly dismissed. The bail bonds furnished by the accused and sureties are discharged.