
(2013) 06 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 103 of 2006-A

State of Himachal Pradesh

APPELLANT

Vs

Jagdeep Kumar and Others

RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Penal Code, 1860 (IPC) — Section 107, 306, 498A

Citation : (2013) 3 ShimLC 1339 : (2013) 2 ShimLC 920

Hon'ble Judges : Surinder Singh, J; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : D.C. Pathik and Mr. M.A. Khan, A.A.G, for the Appellant; N.S. Chandel, for the Respondent

Final Decision : Disposed Off

Judgement

Surinder Singh, J.—Respondents were acquitted of the offences punishable u/s 498-A and 306 Indian Penal Code by the learned trial Court, as such State felt aggrieved by their acquittal and filed the present appeal. In short, the prosecution case, as emerges from the evidence on record, can be stated thus. Anjana Kumari was daughter of PW13 Joginder Singh, who was working in Abudhabi for the last about 23 years. Beside his daughter Anjana (deceased), he had two other daughters. Anjana Kumari was married to respondent Jagdeep Kumar on 23.11.1999. After the marriage, on 6.12.1999, Joginder Singh father of the deceased left for Abudhabi.

2. On 20.2.2000, Anjana Kumari consumed aluminum phosphide, an insecticide and died.

3. It is alleged that her husband Jagdeep Kumar was undergoing training in ITI Shimla. He demanded Rs. 20,000/- from her father for training, lest deceased would be harassed. Respondents No. 2 and 3 are the sister-in-laws of the deceased, they were allegedly not behaving with the deceased properly. Before her death, PW13 Joginder Singh had talked to the deceased on telephone once.

He had received a letter from Jagdeep (Ext.PW13/A) whereby he indirectly demanded the money.

4. On 21.2.2000, one Hukam Chand informed Joginder Singh about the death of his daughter. On 22.2.2000 he reached his home town. His wife was under shock, unable to speak. Thereafter he rushed to the cremation ground where, about 400 persons were present. Jagdeep Kumar is alleged to have fallen on his feet, saying that he had committed mistake. When he was asked to speak out the truth, respondent Jagdeep Kumar stated that 25% fault was attributable to him and 25% to the deceased. When he was asked as to who was responsible for remaining 50%, he did not respond.

5. After the cremation on 22.2.2000, when he reached home, Lata Kumari daughter of PW13 was also present. She informed that when deceased had come to their house, brother of respondent Jagdeep Kumar rang up in their neighborhood and told Smt. Rattani mother of the deceased to send Anjana Kumari to their house. On this, she told that as per custom, they do not send the daughters on Sunday to the house of their in-laws. Latta Devi further told him that another telephonic message was received from the house of the respondents and told Smt. Rattni Devi to send Anjana Kumari to their house. It was thereafter Archana Devi accompanied by her other daughter Pooja had sent the deceased Anjana to the house of the respondents. Later, they had received a telephonic message from one of the villagers that Anjana Kumari had consumed poison. Thereafter on 23.2.2000, Joginder Singh lodged the FIR Ext. PW13/B. It is also alleged that respondents were forcing Anjana Kumari to bring rupees two lacs which was required for the renovation of their house. Smt. Rattani Devi the mother of the deceased showed inability to spare this much of money, after pacifying her, they sent deceased back to the house of the respondents.

6. During the investigation, police recorded the statements of witnesses and took into possession letter Ext. PW13/A produced by Joginder Singh, aforesaid. It has also come in the evidence of PW13 that the police was not investigating the case properly, he made representation to the Governor and alleged that his daughter Anjana Kumari had died because of the harassment and torture meted out to her by the respondents on account of dowry.

7. It is pertinent to note that before lodging FIR, none of the relatives of the deceased raised any suspicion to any one, including the respondents thus, police had proceeded u/s 174 of the Code of Criminal Procedure and recorded statements of the mother of the deceased and one Shakuntala Devi in the presence of SDO (P) and Ward Panch. It was thereafter, the dead body was consigned to flames.

8. Only after the lodging of the FIR, a new turn was given to the case and the statements of mother of the deceased as well as her sister, including father were recorded and they gave a different touch to the present case and police on their statements prepared challan under Sections 498-A and 306 Indian Penal Code

and presented the same in the Court for the trial of the respondents.

9. Finding a prima facie, case, respondents were charge sheeted to which they pleaded not guilty and claimed trial.

10. To prove its case, prosecution examined its witnesses and respondents were also examined u/s 313 of the Code of Criminal Procedure. The circumstances which were found attendant to them were denied by each of them. They pleaded their innocence and alleged false implication in the case.

11. At the end of the trial, the trial Court did not find legal evidence to convict the respondents, as such they were acquitted.

12. Shri M.A. Khan, learned Additional Advocate General vehemently argued that the learned trial Court did not properly appreciate the evidence led by the prosecution which caused grave prejudice to the prosecution. He also took us to the statement of the prosecution witnesses and ventilated that ingredients of the offence charged stand duly proved and there are grounds to convert the acquittal into conviction.

13. Contra Shri N.S. Chandel, learned counsel for the respondents supported the impugned judgment of acquittal and also submitted that there is no iota of evidence to prove the offences charged. He also pointed out the statements of Smt. Rattni Devi, Lata Devi and Shakuntala Devi, which were recorded by the police at the time of inquest inquiry. According to him, they did neither raise any suspicion nor there was such a story and further that it was on the arrival of the father of the deceased that a different story was concocted and even in letter Ext. PW13/A, no such demand was raised. It is argued that father of Jagdeep Kumar had already died and he treated Joginder Singh as the elder of the family and informed him vide this letter that he was undergoing training in ITI, at Shimla thus, he was in need of money and also that this fact be not revealed to his mother-in-law as she would feel depressed, which according to the learned counsel is nothing but an expression of his own problem even for that there is no evidence that the family of the complainant was compelled to pay anything to him.

14. We have given our thoughtful consideration to the rival contentions of the parties and have reappraised the evidence on record.

15. No doubt, it is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. The Courts are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of society. It is also a matter of common experience that most of these complaints u/s 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. It is also seen that a large number of such complaints are not even bona fide and are filed with oblique motive. At the same time, rapid increase and the number of genuine cases of dowry harassment is also a matter of serious concern. Further, we also

find that suicide cases attributable to some other cause are also given a look either of dowry death or torture/cruelty. But ultimate object of justice is to find out the truth and punish the guilty and protect the innocent on the basis of material adduced before the Court. In this exercise, we have taken pains to scan the evidence dispassionately in the light of the legal provisions.

16. Indisputably, deceased Anjana Kumari had died because of consumption of poison in the house of her in-laws whereas accused Jagdeep Kumar, at the relevant time, was undergoing ITI training at Shimla. What is the cause of suicide, according to the prosecution is referable to the conduct of accused Jagdeep Kumar by writing letter to the father-in-law and raising the demand for money, as stated by her mother as well as sister Latta Devi.

17. We have gone through the provisions of Section 498-A of the Indian Penal Code which reads as under:-

498-A. Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. - For the purposes of this section "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

(b) harassment of the woman where such harassment is with a view to coercing her to any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

18. Cruelty has been defined by the explanation added to the Section itself. The basic ingredients of Section 498A I.P.C. are cruelty and harassment. In the instant case, initially the allegation of demand of dowry is not there, even in the FIR lodged by Joginder Singh, though he has given a fleeting reference at the end of his examination-in-chief. The prosecution has not brought forward any willful conduct of such a nature as was likely to drag Anjana to commit suicide or to cause danger to her life, limb or health, whether physical or mental so as to fall this case within clause (a) of Section 498-A Indian Penal Code but relies upon clause (b) for harassment of the deceased with a view to meet unlawful demand in the shape of money.

Further, PW13 stated that the demand of Rs. 20,000/- was raised for undergoing treatment by accused Jagdeep Kumar and also demanded an amount of Rs. 2 lacs for renovation of his house. In this behalf initial statement of Rattani Devi Ext. D1 is required to be referred to, which was recorded at the very outset when police reached the spot after the death of Anjana Kumari. At that time neither she nor her daughter Latta or Shakuntala had imputed any allegation of such a

nature or even raised any suspicion upon the respondents qua the allegations which were subsequently levied by Joginder Singh on his arrival from Abudhabi and, that too, after the cremation of Anjana Kumari. These statements were recorded by the SDO (P) in the presence of Ward Panch on 21.2.2000. They have admitted their signatures on the aforesaid statements. Even investigating Officer admitted about giving such statements by the aforesaid persons in the manner, referred to above.

19. Joginder Singh stated during the trial that respondent Jagdeep Kumar after touching his feet on the cremation ground informed him that 25% fault was attributable to him and 25% to the deceased but when he was asked about the rest of the 50%, on this, he did not make any reply. Further, he also got suspicious by a reference made by the respondent Jagdeep in his letter Ext. PW13/B whereby he simply stated that he was facing financial problem. But even in that he did not ask to provide money. The cause of suicide by his wife is not, in any way, linked with any demand, as alleged nor there is evidence, physical or mental cruelty, which could drag her to commit suicide. There is no evidence that it was because of non-providing of the money to him, he had tortured the deceased and compelled her to commit suicide.

20. The learned Additional Advocate General has referred to the statement of Smt. Archana Devi wherein she stated that Jagdeep had asked Anjana Kumari to arrange Rs. 2 lacs from her parents. She also told him that the respondent was demanding an amount of Rs. 20,000/- to meet the expenses of his training from her parents and that accused Jagdeep Kumar was not allowing her to sleep with him on the bed, she used to sleep on sofa-set. On this, PW2 aforesaid informed Anjana Kumari telephonically that she would send her husband to advise her husband but on 20.2.2000 during the day time, she came to know that he had consumed poison. Her cross-examination needs attention. She stated that on 14.2.2000 she made a telephone call from the house of Sunita Devi to the house of Pushpa Devi of village Bhundal informing her the sending of her husband but pertinently PW1 Pushpa Devi did not whisper even a single word about it that such a call was ever received on her phone by the deceased. Therefore, this fact cannot be taken as a gospel truth. Further, we also do not find any evidence worth the name proving any abetment attributable to the accused persons for the commission of the offence of suicide by Anjana Kumari so as to attract Section 306 Indian Penal Code.

21. The gravamen of the offence punishable u/s 306, as already stated above, is abetting suicide and Section 107 Indian Penal Code defines abetment as comprising:-

- (a) instigation to commit the offence;
- (b) engaging in conspiracy to commit the offence, and
- (c) aiding the commission of an offence.

22. The abetment thus necessarily means some active suggestion or support to the commission of the offence. The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act and a person is said to instigate another when he actively suggests or stimulates him to the act by any means, or language, direct or indirect, whether it takes the form of express solicitation or of hints insinuation or encouragement. It is also not necessary that the instigation should be only in words and may not be conduct. Direct evidence of any instigation or aid is not necessary.

23. In the instant case, except the aforesaid circumstances which are not of conclusive nature and tendency so as to bring the offence within the ambit of the aforesaid Sections as there is no direct or circumstantial evidence against Pushp Lata and Neelama Devi, including Jagdeep Kumar.

24. Thus, on sifting the evidence, it emerges from the evidence on record that generally as per custom, the daughters are not sent to the houses of in-laws on Sunday but still at the behest of brother of respondent Jagdeep Kumar, she was sent along with Latta Kumari, Pooja her sisters and Shakuntala. Smt. Shakuntala accompanied Anjana Kumari to the house of her in-laws whereas Latta and Pooja returned back to their village. Shakuntala Devi was present in the house of in-laws of the deceased who could have revealed as to how the deceased was received and treated in her house. She was kept away from the prosecution witnesses and not examined. She could have been a material witness to disclose as to what had happened in the house of her in-laws which compelled her to take extreme step to commit suicide. The statement of Shakuntala Devi is Ext. DC which was recorded by SDO (P) in the presence of the Ward Panch she did not impute any allegation on the accused persons. There is also no allegation of passing any taunts or any quarrel inter se the deceased and accused persons.

25. Further, statement of PW6 Dr. Ami Chand a medical practitioner running his shop in village Dharbada is worth noting. He stated that on 20.2.2000 wife of accused Jagdeep Kumar was brought to his clinic by her in-laws around 6.30 p.m. on being asked the persons accompanied and also the deceased Anjana Kumari, they informed that she happened to consume something by mistake. Thereafter she vomited and he advised them to take her to Ghumarwin.

26. In totality of the circumstances, we do not find any evidence worth the name that the accused persons had harassed and tortured deceased Anjana Kumari. As already observed, a different colour was given when her father reached from Abudhabi and there is no explanation as to why mother of the deceased, Shakuntala, Lata and one Rajinder had made statements at the time of initial inquiry u/s 174 of the Code of Criminal Procedure and there is also no explanation to this effect in the subsequent statements as to who had compelled them to make such statements exonerating the accused persons.

27. Thus, the prosecution has failed to prove the case beyond reasonable doubt and the findings of acquittal recorded by the learned trial Court are born out

from the record, therefore, requires no interference. The appeal is without any merit hence dismissed.

28. The respondents are discharged of their bail bonds entered upon by them at any time during the proceedings of this case. The matter stands disposed of. Send down the records.