
(2013) 05 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 277 of 2008-B

State of Himachal Pradesh

APPELLANT

Vs

Jeet Singh and Others

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (2013) 05 SHI CK 0028

Hon'ble Judges : Surinder Singh, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : P.M. Negi, Deputy A.G. and Mr. J.S. Rana, Assistant A.G, for the Appellant; Himmat Negi, Advocate, Vice and Mr. Ajay Sharma, for the Respondent

Judgement

Rajiv Sharma, J.—State has filed this appeal against the judgment, dated 27.12.2007, rendered by the learned Additional Sessions Judge (1), Kangra at Dharamshala, H.P., in Sessions Case No. 46-J/06, whereby the respondents, who were charged with and tried for offences punishable under Sections 498-A, 306 read with Section 34 of the Indian Penal Code, have been acquitted. One Milkhi Ram, who was also accused in the case, has died during the pendency of the trial. Case of the prosecution, in a nut-shell, is that on 05.07.2003 at about 11 a.m., complainant i.e. PW-1 Piare Lal came to know about the death of his daughter Babli. He visited Jawali hospital. He reported the matter to the police vide statement Ex. PW1/A. On the basis of statement Ex.- PW1/A, the FIR was registered vide Ex.-PW10/A. The matter was investigated by the police. Photographs of the body of the deceased were taken. The inquest papers of the deceased Ex.-PW15/G and Ex. PW15/H were prepared. The dead body was sent for post mortem examination. The post mortem was conducted by PW-7, Dr. B.M. Gupta. The post mortem report is Ex.-PW7/A. The site plan was also prepared. The viscera of the deceased alongwith her blood sample was sent for chemical examination. The report of FSL, Junga is Ex.-PA. The challan was put up after completion of all the codal formalities.

2. The prosecution has examined 15 PWs to prove the case. The accused were also examined u/s 313 of the Criminal Procedure Code. They have denied all the prosecution allegations and pleaded innocence. The trial Court acquitted the respondents-accused on 27.12.2007. Hence this appeal.

3. Mr. P.M. Negi, learned Deputy Advocate General has vehemently argued that the prosecution has proved the case against the accused persons. According to him, the prosecution has fully proved that deceased Babli was maltreated and there was persistent demand of dowry by the respondents.

4. Mr. Himmat Negi, learned counsel for the respondents has supported the judgment of acquittal, dated 27.12.2007.

5. We have heard the learned counsel for the parties and gone through the records carefully.

6. PW-1 Piare Lal is the father of the deceased. According to him, he has solemnized the marriage of his daughter with accused Jeet Singh 7 years back. The accused kept the deceased decently for one year. However, after one year, the accused, brother-in-law of the deceased, father-in-law and mother-in-law of the deceased used to beat and harass her for bringing insufficient dowry including T.V. and fridge. His nephew had gone to extend invitation to his daughter on the occasion of his marriage. However, he was not permitted to enter the house. He has given one watch and golden ring to his son-in-law, but he has returned the watch by saying that he wanted automatic watch and the golden ring has been returned by him by saying that it was not of the required weight and quality. He has given a new automatic watch and new golden ring. In his cross-examination, he has admitted that he has not disclosed in his statement Ex.-PW1/A that the wrist watch and the golden ring had been returned by the accused to him and he had given him automatic watch and a golden ring. He has also deposed in his cross-examination that he has not lodged any report before the police or before any Court regarding the harassment and beatings given by the accused persons to his daughter. He was residing outside. He came to know about the harassment meted out to his daughter from his wife, PW-2 Smt. Suno Devi. He did not remember the exact year, month and date when the accused started harassing and beating his daughter for bringing insufficient dowry. He also admitted that his daughter has not disclosed to him about the specific demand being raised by her in-laws. He also admitted that his son-in-law was running a hardware shop.

7. PW-2 Smt. Suno Devi is the mother of deceased Babli Devi. She has supported the version of PW-1. She also deposed that her daughter was treated nicely for about one year. However, thereafter her in-laws started raising demand for dowry. She has visited their house. Accused abused her, more specifically accused Sita Devi. The deceased was given beatings and was turned out from the matrimonial house on the festival of holi. She has spent the night in the house of her aunt. The marriage of the deceased with accused Jeet Singh was

arranged by her sister Asha Devi (PW-3). According to her, in the house of her sister, a local Panchayat was convened in which the accused has also been summoned. Accused Jeet Singh was with them in the Panchayat. However, the other accused remained outside the Courtyard and kept on abusing them. In her cross-examination, she specifically deposed that her daughter Babli has told her that the accused were forcing her to bring T.V. and Refrigerator. She did not know the names of other persons who were members of the local Panchayat convened in the house of her brother-in-law. Her brother-in-law, Inder Singh was also member of that Panchayat. She also admitted that no application was filed against the accused in any Court or before any officer. She has denied the suggestion that the respondents had not demanded dowry.

8. PW-3 is Asha Devi. She had arranged the marriage of the deceased with accused Jeet Singh. According to her, whenever Babli used to watch T.V. in the house of the accused, accused used to ask her to bring T.V. from her father's house. Accused Jeet Singh has told her brother-in-law that his watch and ring presented to him at the time of marriage were not up to the mark and therefore, her brother-in-law has to give new ring and watch to accused Jeet Singh. On the holi festival, prior to her death, the deceased had been turned out from the matrimonial house by the accused after giving her beatings. According to her, the local Panchayat was convened. Out of the accused persons, only accused Jeet Singh has attended the local Panchayat. Accused Jeet Singh has undertaken not to beat the deceased in future and asked for compromise. She has also deposed in her cross-examination that she has never reported the matter against the accused persons to the police or any other authority. According to her 25 persons attended the local Panchayat.

9. PW-4, Desh Raj was declared hostile. PW-5 Sh. Ashok Kumar is the uncle of deceased Babli. He also deposed that the accused has maintained deceased Babli Devi nicely for 1-1/2 years. They used to harass and beat her for bringing insufficient dowry. The deceased used to visit their house and at that time, she used to apprise them about the beatings and harassment meted out to her by the accused. She further stated that about five six months prior to the death of deceased, the accused had given beating to deceased Babli Devi on the occasion of holi festival and has turned her out from the matrimonial home. She has to spent night with her Aunt. According to him, a local Panchayat was convened in which local persons including he and Mahinder Singh were present. Mother and brother of deceased Babli were also present in that Panchayat. In local Panchayat, deceased Babli has told them that during the previous night she has been turned out from her house by the accused after giving beatings. In his cross-examination, he could not give the exact date of the convening of local Panchayat. He was asked to be present in the local Panchayat by his brother-in-law. He has taken 10-12 people of the village to attend that Panchayat. His brother-in-law has also associated 10-12 people of his village in that Panchayat. He did not know the names of those persons.

10. PW-6 Smt. Jeewna Devi has deposed that deceased was her niece. She was looked after for one year and thereafter the accused started harassing and beating her. The deceased used to come to her house at times. She used to tell them about the harassment and beatings given to her by the accused. They used to console her. In the year 2003, before the death of deceased, the accused had quarreled with the deceased during holi festival. The deceased has to spent night in the house of Inder Singh. Asha Kumari is the wife of Inder Singh. Sh. Inder Singh came to their house and told them that previous night the accused persons had given beatings to deceased Babli and had turned her out from the house and she has to spent night in his house. The accused persons used to demand T.V., fridge and other dowry articles. In her cross-examination, she has admitted that no report was lodged with the police or Gram Panchayat. However, she has categorically testified that they had convened local Panchayat (biradari) in the house of the accused. In her cross-examination, she has deposed that in the biradari Panchayat, there were 25-30 people, including her, her husband, Inder Singh, his wife, mother and father of the deceased.

11. PW-13 Sh. Mohinder Singh is the Ward Panch of the Gram Panchayat. He was told by Piare Lal, father of the deceased that she was being harassed and beaten up by the accused. He assured him that he would prevail upon the accused persons and make them understand. He also deposed that in the year 2003 during holi festival, Inder has told her that deceased Babli had been beaten up previous night and steps for settlement were to be taken in the house of Inder Singh. He was also requested to join the proceedings. He has asked Babli deceased what has happened, on which she has told that she has been beaten up by her family members. She has specifically named her husband, father-in-law and mother-in-law. He inquired from accused Jeet Singh about the incident. He told him that he has committed the mistake. He assured them that in future he will not harass and beat his wife. He has also given this assurance on behalf of other family members.

12. The post mortem was conducted by respondent No. 7, Dr. B.M. Gupta, Medical Officer. He issued post mortem report Ex. PW7/A. According to his opinion, the death was caused due to consumption of phosphate poison. This opinion was given by PW-7 on the basis of Ex.-PA.

13. What emerges from the evidence discussed hereinabove is that the deceased Babli was looked after by the respondent nicely for about 1-1/2 year. Thereafter, there was persistent demand raised by the accused for more dowry, including T.V. and fridge. PW-1 Piare Lal was told about the demand of dowry by his wife PW-2 Smt. Suno Devi. The deceased Babli has told PW-2 about the demand raised by her in-laws. PW-1 Piare Lal has categorically stated that he has gifted one watch and golden ring to his son-in-law. However, the same was returned to him. Thereafter, he gifted an automatic watch and new golden ring to Jeet Singh. The statement of PW-1 has been corroborated by PW-3 Asha Devi, who is Aunt of deceased Babli. The deceased was given beatings on the night of holi. She was

turned out from the house. She has to spent night with her Aunt PW-3, Asha Devi. This was a serious matter. In normal circumstances, a married woman would not leave her matrimonial home unless and until the circumstances are so created that she has to leave the matrimonial home.

14. It has come in the statement of PW-2 Smt. Suno Devi, PW-3 Smt. Asha Devi, PW-5 Sh. Ashok Kumar and PW-6 Smt. Jeewna Devi that biradari Panchayat was convened to settle the matter. Accused Jeet Singh has joined the meeting. Other accused were also present, but have not participated in the deliberations. Accused Jeet Singh has undertaken not to beat his wife and also assured the Panchayat that he will tell his family members not to harass Babli. The convening of the Panchayat was necessitated since there was persistent demand of dowry and Babli was being beaten up.

15. Learned trial Court has mis-read the evidence. Though there is some exaggeration in the statements of PW-1, PW-2, but that will not weaken the case of the prosecution. Some minor improvements are bound to happen in the statement recorded in Ex. PW1/A and the statement made by PW-1 in the Court. FIR is not an encyclopedia. Every minutest detail is not required to be given in FIR.

16. In the instant case, the basic facts were narrated in Ex. PW1/A. There was reference of dowry. It was not expected from PW-1 to disclose in the statement that he has given new automatic watch and golden ring to his son-in-law when these items were returned to him by his son-in-law. The prosecution has proved by leading tangible evidence that the Panchayat was convened. There is bound to be some variations in the statements of witnesses about the number of persons, who have attended the Panchayat. Two witnesses, namely, PW-3 Asha Devi and PW-6 Smt. Jeewna Devi being women were not supposed to know the names of each and every members of the Panchayat.

17. The convening of the Panchayat has also come in the Statement of PW-13 Shri Mohinder Singh. He has inquired from the deceased the details of the treatment being meted out to her. She has disclosed that she was beaten up by the accused. Accused Jeet Singh has assured that he would mend his ways. He has also given assurance on behalf of other family members. In these circumstances, Babli has returned back to the matrimonial home. It is duly established from post mortem report that Babli died due to phosphate poisoning. PW-7 has given his final opinion, as noticed above, on the basis of FSL report Ex.-PA.

18. It is not necessary that in all the cases the parents and relations should lodge complaint with the police or Panchayat. We can take judicial notice that the parents have the tendency to keep the matter under wraps in order to avoid social stigma. Merely that the complaint has neither been lodged with the police nor before the Panchayat, will not dilute the case of the prosecution. Though, it has come in the statement of PW-13 that the matter in fact was reported to him

and he has tried to settle the matter amicably. The acts of accused have definitely caused cruelty to Babli, which led her to commit suicide.

19. The other fact which has weighed with the learned trial Court acquitting the respondents is that they belong to wealthy family. This could not be one of the grounds of acquittal. There is no guarantee that the persons who are wealthy would not raise demand for dowry. The father of the deceased was a Riksha puller and has given dowry according to his capacity and has also gifted new watch and golden ring as demanded by his son-in-law. In order to determine cruelty, the entire sequence of events spread over the entire period has to be taken into consideration.

20. Mr. Himmat Negi, learned counsel for the respondents has also argued that most of the witnesses are closely related and their statements cannot be taken into consideration. It is settled law that the statements of close relations can be taken into consideration, if these are consistent, natural and inspire confidence, though their statements are to be scrutinized meticulously, with care.

21. Their Lordships of the Hon''ble Supreme Court in M.C. Ali and Another Vs. State of Kerala, have held that relationship is not a factor to affect credibility of a witness. Their Lordships have held as under:

51. On the basis of the law as settled by this Court in a number of judgments which are noticed by the High Court, it is held that relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person leaving a way for the real accused to escape. PW2 is not only related to PW5 but he was also seriously injured. The High Court reiterates that the presence of PW2 at the scene of occurrence is not disputed due to the registration of the counter case. With regard to the non explanation of the injury on the accused, it is stated that PW9 and PW10 spoke about the same. The injuries were also explained by PW10, the doctor, who stated that the injuries in Ex. P.23 and P.24 certificates can be caused otherwise than by assault, i.e., by a fall or by a road transport accident.

22. Their Lordships of the Hon''ble Supreme Court in Dharnidhar Vs. State of U.P. and Others, have held that there is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before court. Their Lordships have held as under:

11. The arguments raised on behalf of the appellants, in fact, can be discussed together inasmuch as they are based upon somewhat common submissions. There is no doubt that PW1 and PW2, both are related to the deceased. The contention raised before us is that both of them are interested witnesses and have not stated true facts before the Court and thus, their statements should be entirely disbelieved. We are unable to find any merit in this contention. It has come on record that Pyare Lal was pursuing a case in which members of the family of the accused persons were involved in a murder. There was apparently some anger and rift between the families. According to the story of the

prosecution, they had come prepared to kill Bahadur Singh as well as Pyare Lal as they were carrying guns, sphere etc. The deceased were attacked by the accused in the presence of their brothers, who could not intervene and save them because of the fear of the gun fire and the manner in which the incident occurred. It was but natural for the prosecution to produce PW1 and PW2 as the main eye witnesses as they had actually seen the occurrence and they have been believed by the trial Court, as well as by the High Court. Even before us, no serious attempt has been made and infact, nothing appears from the record to show that these two witnesses were not present on the site.

12. There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of Jayabalan Vs. U.T. of Pondicherry, this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under:

23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

24. From a perusal of the record, we find that the evidence of PWs 1 to 4 is clear and categorical in reference to the frequent quarrels between the deceased and the appellant. They have clearly and consistently supported the prosecution version with regard to the beating and the ill-treatment meted out to the deceased by the appellant on several occasions which compelled the deceased to leave the appellant's house and take shelter in her parental house with an intention to live there permanently. PWs 1 to 4 have unequivocally stated that the deceased feared threat to her life from the appellant. The aforesaid version narrated by the prosecution witnesses, viz. PWs 1 to 4 also finds corroboration from the facts stated in the complaint.

23. Their Lordships of the Hon"ble Supreme court in Myladimmal Surendran and Others Vs. State of Kerala, have held that testimony of wife could not be discarded on the basis that she was an interested witness. Their Lordships have further held that if such a wide proposition is accepted, evidence of all witnesses who were relatives of a victim of a violent crime would be rendered unacceptable. Their Lordships have held as under:

35. In our opinion, the evidence given by the wife of the deceased in this case was unimpeachable. It could not be discarded, as stated by the learned senior counsel on the basis that she was an interested witness. If such a wide proposition was to be accepted the evidence of all the witnesses who were relatives of a victim of a violent crime would be rendered unacceptable. Merely because PW1 happens to be the wife of the deceased would not justify her being branded as an interested witnesses.

36. The evidence of the wife is followed by the consistent evidence given by PW2 and PW3. This is further corroborated by the dying declaration made by the injured within minutes of being assaulted. In such circumstances, it would be difficult to accept the submissions of the learned senior counsel that the evidence of the eye-witnesses ought to be disbelieved. In our opinion, the High Court rightly rejected the submission, which was also reiterated before us, that the evidence of PW2 and PW3 should be rejected on the ground that they were chance as well as the partisan witnesses.

37. We may at this stage notice the observations made by this Court in the case of State of Rajasthan Vs. Smt. Kalki and Another, which is as under:-

True, it is she is the wife of the deceased, but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be "interested" in the instant case PW1 had no interest in protecting the real culprit, and falsely implicating the respondents.

24. The prosecution, on the basis of the evidence discussed hereinabove, has not proved the case against the accused u/s 306 of the Indian Penal Code, but has proved the case u/s 498-A of the Indian Penal Code. There was persistent demand of dowry by the accused. The acts of the respondents of demanding dowry and giving beatings to her for not bringing sufficient dowry has subjected the deceased Babli with cruelty. This willful conduct of the respondents has led Babli to end her life by consuming phosphate. The accused are guilty of committing an offence punishable u/s 498-A of the Indian Penal Code. Accordingly, in view of the observations and analysis made hereinabove, the appeal is partly allowed. The accused are convicted u/s 498-A of the Indian Penal Code. Respondents-accused be produced in person on 29th May, 2013, for being heard on the quantum of sentence.