
(2011) 07 SHI CK 0191

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 116 of 2002

State of Himachal Pradesh

APPELLANT

Vs

Kuldip Singh and Another

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)
Penal Code, 1860 (IPC) — Section 304, 306, 34, 498A

Citation : (2011) 07 SHI CK 0191

Hon'ble Judges : V.K. Sharma, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The present appeal has come up for consideration after leave to appeal has been granted u/s 378(3) Code of Criminal Procedure, in reference to the impugned judgment dated 20.10.2001, passed by the learned Sessions Judge, Hamirpur, H.P, in Sessions Trial No. 08 of 1999, acquitting the accused-Respondents for the offences under Sections 498A, 306 and 304B read with Section 34 IPC, in reference to F.I.R No. 34 of 1998, dated 21.4.1998.

2. The prosecution case, in brief, is that Sushma Devi was married to accused Kuldip Singh in the year 1995, according to Hindu rites and customs. Initially for a couple of months, both carried their married life happily, however, whenever, Sushma (victim-deceased) came to the house of her parents she made complaint that she was beaten by accused Kuldip Singh on the pretext that she was not obeying the commands of her husband. In November, 1996, when Sushma came to her parents house she remained there for two months. At that time accused Kuldip Singh, his uncle Janki Dass and Phufa (father's sister's husband) Raghubir Chand came to the house of PW-1 and on apology by Kuldip Singh they took the responsibility that the victim will not be beaten in future, then Sushma/victim was sent to her in laws house. Again in January, 1998, Sushma/victim came to her parents house where she complained that accused Kuldip Singh and

his mother Bhagi Devi , had beaten her. At that time the victim had shown beatings on her body. On 17.4.1998, on the eve of "Mundan Ceremony" of the daughter of Sushma, no body was invited from her parental house. Only Sushma telephoned about the ceremony and her brother attended the same and on return he told that the accused had given beatings to Sushma on 16.4.1998. on 20.4.1998, PW-1 Prithi Chand received a telephonic information that the victim was serious and was being taken to Tauni Devi Hospital. PW-1 visited hospital, but did not find Sushma there, thereafter he went to the house of accused at about 9.00 PM and noticed that Sushma was lying dead on the charpai. PW-1/ Prithi Chand informed Pradhan of the village, who in turn informed the police. Police reached at the spot on 21.4.1998, at about 1.30 AM and recorded statement of PW-1 Ex.PW-1/A. On 27.4.1998, supplementary statement of PW-1 was recorded by the police. PW-1 made complaint on 21.4.98 that he had suspicion that Sushma was done away to death by the accused persons, or the accused had given something to eat to the deceased, on account of which Sushma had died. Postmortem examination of the victim was conducted by PW-8, Dr. Raj Kumar, who however, on examination did not notice any external injury on the person of victim. Ex.PW-8/C, i.e FSL report also does not indicate any consumption of poisonous material by the victim. On investigation, the accused-Respondents were charged for the aforesaid offences.

3. In order to prove its case, the prosecution has examined as many as 16 prosecution witnesses, whereas, the accused-Respondents through their statements u/s 313 Code of Criminal Procedure have denied the prosecution case.

4. PW-1 in his endeavour to support the prosecution case has stated that he filed affidavit Ex.DA, dated 7.9.1998, before the Executive Magistrate, Hamirpur, stating that the FIR was lodged by him in reference to some doubtful and suspicious information, whereas there was no trouble to Sushma/victim in her matrimonial house. As per the contents of the affidavit of PW-1, dated 7.9.98, Sushma died due to her own death. PW-1 in his cross examination has stated that when beatings were given to Sushma in November, 1996 and January, 1998, she was not medically examined. PW-1 has further stated that one Bhumi Dev, a military personnel took out Sushma/victim from the well. PW-1 has also stated in cross examination that on the day Sushma died, accused had put a lintel of a verandah on the well of water, supported with bamboo even around the well. PW-1 had however denied that while taking water from the well, Sushma, slipped and fell into the well. PW-2/Suresh Kumari, the mother of the victim Sushma Devi, in her endeavour to support the prosecution case has stated that when Sushma came to her house in the end of 1996, she remained there for about two months and disclosed that her husband Kuldip Singh at the instance of his mother Bhagi Devi used to beat her and also used to demand Scooter from her parents. PW-2 has further stated that victim/Sushma disclosed that she was beaten by the accused, signs of beatings were noticed on the body of victim. PW-2 like PW-1 has very categorically stated in cross examination that whenever Sushma came to her parents house, she was accompanied by Kuldip Singh/

(husband of the victim). But, PW-1 Prithi Chand, has not stated anything about the demand of dowry. Whereas, PW-2 has very casually stated that scooter was demanded by the accused from the parents of victim. Both PW-1 and PW-2 have very categorically stated that there was no medical examination of the alleged beatings.

5. PW-3/Kehar Singh, the Vice President of Darogan Panchayat, has acknowledged the marriage of victim with Kuldeep Singh in the year 1995 by Hindu rites and ceremonies. Whenever victim came to her parents house, PW-3 was called by PW-1 to his house along with accused Kuldeep Singh, at that time Sushma refused to accompany the accused on the pretext that she was beaten by him. Accused apologized and assured not to repeat such act in future. Janki Dass and Raghubir took responsibility of safety of Sushma/victim. On 20.4.1998, PW-3 was apprised of by PW-1 that Sushma was admitted in Tauni Devi hospital and PW-3 was asked to accompany PW-1. When they reached Tauni Devi hospital, Sushma Devi was not found there and on coming to the house of PW-1, PW-3 found Sushma dead and her body was lying on a charpai. PW-3 has stated in cross examination that accused Kuldeep Singh used to visit the house of Prithi Chand.

6. PW-3, though had endeavoured to support the prosecution case, had not stated anything about the demand of dowry by the parents of the accused. PW-4, Maya Devi, an independent witness has very categorically stated that Sushma was having a bucket in order to fetch water when she met her. The moment PW-4 reached, she heard cries that Sushma had fallen in the well and PW-4 noticed many villagers were assembled there and two boys were trying to take out Sushma from the well. When they could not succeed, Bhumi Dev took out Sushma from the well. At that time water was coming from the mouth of Sushma and her clothes were changed, which were taken into possession vide memo Ext. PW-4/A. PW-4 has further stated in cross examination that the victim/Sushma was living happily in her in laws house. She was incharge of all the household affairs, as her mother-in-law was having low blood pressure and she used to remain ill. PW-4 has very categorically stated in cross examination that the place around the well had become slippery because the accused had put lintel which was over hanging. PW-4 further stated that the victim tried to take water from the well, as lintel was supported with bamboo sticks. The fact that Sushma had fallen into the well came to her notice when she visited the spot.

7. PW-5 Shakti Chand, resident of village Patnoun, has stated that on 22.4.1998, he took out one bucket and one chappal from the well at the instance of police. The bucket and chappal were taken in possession by the police vide memo Ex.PW-5/A. PW-5 has further reiterated in cross examination that Sushma was residing in the house of accused Kuldeep Singh happily and the victim was incharge of entire household affairs as her mother-in-law used to remain ill because of low blood pressure. PW-5 has very categorically stated in cross examination that on account of the newly constructed lintel, there was mud

around the well and area had become slippery. When PW-5 reached on the spot, he noticed that Sushma had fallen into the well while taking water from the well.

8. PW-6 Janki Dass, has not supported the prosecution case to its expectation, as such he was declared hostile. PW-7, PW-9 and P Ws-10 to 13 are the official witnesses, who have endeavoured to support the prosecution case to the extent role assigned to them in their official capacity. However, nothing substantial could be brought out from their testimonies.

9. PW-14, Bhumi Dev, went to the spot on 20.4.98 and noticed that two persons were trying to take out a woman from the well. When they were unable to rescue the victim, PW-14 jumped into the well. In the first attempt he could find nothing in the well, then he again took dive and took out body of a woman. The water level of the well was about 7 feet and the rest of the well about 11 feet was without water. PW-14 has stated in cross examination that several persons of the village had gathered near the well and pedalest of the well was slippery. All the persons were talking that a woman had slipped inside the well. After taking out the body of the victim, PW-14 called a taxi. However, accused Kuldip Singh had already summoned a taxi. PW-8 Dr. R.K. Kanwar, who examined the victim has indicated that the victim had died due to asphyxia owing to drowning. PW-9 Rajiv Kumar in his endeavour to support the prosecution case has not specifically stated about the demand of dowry. PW-9 has stated in cross examination that through out the years 1996 to 1998, he remained at his house and victim/ Sushma stayed in his house continuously for three months. PW-9 has very categorically stated in his cross examination that the victim visited his house after marriage about 15-16 times till her death . However, no specific complaint was ever lodged to any villager or to the police or to any person of the village, except two vague allegations of beatings of November, 1996 and January, 1998, for that too no specific medical examination of victim was got conducted.

10. On analysis of the prosecution witnesses and materials on record, we noticed that none of the independent witnesses of locality has come forward to indicate that Sushma was given maltreatment or was beaten. Even two independent witnesses, PW-4 and PW-5, have very categorically stated that Sushma was residing happily in her in laws house and she was incharge of all the household affairs as her mother-in-law was used to remain ill due to low blood pressure. As per testimonies of two independent witnesses, PW-4 and PW-5, the place near the well in which the victim has drowned was slippery, due to which the victim had fallen into the well.

11. The prosecution has not been able to prove the demand of dowry and has also not been able to prove cruelty meted to the victim in the hands of the accused-Respondents, as such, the demand of dowry and the cruelty as provided u/s 498A, is not complete. The prosecution has also not been able to prove on the basis of material on record and prosecution evidence that victim/Sushma had committed suicide. As PW-1 has filed an affidavit in the year 1998, before the Executive Magistrate that on suspicion he had made complaint, whereas the

victim had died of her own death. PW-4 and PW-5, i.e two independent witnesses have also come out stating that the victim had died by falling into the well accidentally, as such, the ingredients of Section 306 IPC are not proved. Though the victim had died within seven years of her marriage, however, ingredients of Section 304B are also not attracted.

12. In the facts and circumstances of the case, in our considered view the prosecution has not been able to prove its case beyond reasonable doubt. Prosecution has also failed to bring home guilt to the accused. Accordingly, the appeal is dismissed being devoid of any merit. Bail bonds furnished by the accused are cancelled and surety discharged.