
(2010) 04 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 8 of 1998

State of Himachal Pradesh

APPELLANT

Vs

Lekh Raj and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2011) 2 Crimes 697 : (2011) 1 ShimLC 114

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—A challenge has been laid by the State to the judgment of acquittal dated 25.6.1997 passed by the learned Additional Sessions Judge (1), Kangra at Dharamshala in Sessions case No. 8-J/97, under Sections 498-A and 306 of the Indian Penal Code.

2. Case of the prosecution, in a nutshell, is that one Smt. Darshana Devi was married to Tilak Raj. Tilak Raj was serving as a Constable in Border Security Force. MHC of Police Station, Nurpur received a telephonic message to the effect that Darshana Devi has been admitted in Civil Hospital, Nurpur on 24.11.1996 as a case of poisoning. Head Constable No. 496 and Constable Shiv Sarup rushed to Civil Hospital, Nurpur. PW-14 ASI Daya Nand also reached the spot along with Constable Vinod Kumar. Darshana Devi died on 24.11.1996 at 10.00 A.M. Brother of the deceased Subhash Chand made statement, u/s 154 of the Code of Criminal Procedure vide Ex.PW-2/A. According to him, his sister Darshana Devi was married to one Tilak Raj. Darshana Devi had come to her matrimonial home and she narrated to her mother PW-6 Keshna Devi that she was maltreated by mother-in-law, Achhari Devi, brother-in-law (Jeth) Lekh Raj and sister-in-law Asha Devi. She had further narrated that she was chided for bringing dowry articles of inferior quality and a sum of Rs. 25,000/- was also demanded. PW-2

Subhash Chand consoled his sister and told her that he will discuss the matter with her in-laws. FIR was registered vide Ex.PW-10/A on 25.11.1996. PW-1 Dr. Parveen Bhardwaj issued Medico Legal Certificate (MLC) Ex.PW-1/A. He noticed no injury marks on the body of the deceased. Post-mortem was conducted by PW-1 Dr. Parveen Bhardwaj. Copy of the post-mortem report is Ex.PW-1/F. Viscera was sent to Forensic Science Laboratory, Himachal Pradesh at Junga. Copy of the report of Forensic Science Laboratory is Ex.PW-1/G. PW-1 Dr. Parveen Bhardwaj opined that Darshana Devi died of Aluminium Phosphide poisoning. The final opinion is Ex.PW-1/K.

3. Prosecution has mainly relied upon the statements of PW-2 Subhash Chand, brother of the deceased, PW-3 Joginder Kumar, another brother of the deceased, PW-4 Neelam Kumari, sister-in-law of deceased and PW-6 Keshna Devi, mother of the deceased. According to the testimony of these witnesses, Darshana Devi was maltreated by the Respondents. Respondents were examined u/s 313 of the Code of Criminal Procedure. They have stated that they have been implicated falsely and pleaded their innocence. Learned Additional Sessions Judge acquitted the Respondents.

4. Learned Additional Advocate General has vehemently argued that the prosecution has proved its case against the Respondents and the learned trial court has misread the evidence led by the prosecution.

5. Mr. Ashok Chaudhary has supported the judgment of the learned trial court.

6. We have heard the Learned Counsel for the parties and perused the record carefully.

7. Darshana Devi was married to Sh. Tilak Raj. She was admitted in Civil Hospital, Nurpur on 24.11.1996. She died on the same day. PW-2 Subhash Chand is the brother of the deceased. His statement was recorded u/s 154 of the Code of Criminal Procedure. According to him, his sister was maltreated by the Respondents. They used to remind his sister that she has brought dowry items of inferior quality. They also demanded Rs. 25,000/- from Darshana Devi. He used to console his sister.

8. However, he has admitted that he never brought these facts to the notice of Respondents or Tilak Raj, husband of Darshana Devi (deceased). PW-3 Joginder Kumar is also brother of the deceased. He has also admitted that the matter was not reported to the Local Panchyat. PW-4 Neelam Kumari is sister-in-law of deceased Darshana Devi. She has also admitted that no complaint was ever lodged with any authority against the Respondents. PW-6 Keshna Devi has deposed that her daughter was maltreated by the Respondents. Respondents used to demand Rs. 25,000/-. She has also deposed that no complaint was ever lodged against the Respondents. It has not come in the evidence of these witnesses in what manner Darshana Devi was subjected to cruelty. Their statements are only to the effect that Respondents used to complain about the poor quality of the dowry articles and they used to demand Rs. 25,000/- from

the deceased.

9. Now, we have to advert to the manner in which the final opinion has been given by PW-1 Dr. Parveen Bhardwaj, who has issued MLC Ex.PW-1/A and also issued post-mortem report Ex.PW-1/F and final opinion Ex.PW-1/K. According to his final opinion, Darshana Devi died after consuming Aluminium Phosphide. Aluminium Phosphide (Celphos) is used as a fumigant to control insects and rodents in food grains and fields. Symptoms of Aluminium Phosphide are burning pain in the mouth, throat and stomach, vomiting mixed with blood, dyspnoea, rapid pulse, subnormal temperature, loss of co-ordination, convulsions of a clonic nature and death. Following are the postmortem appearance in case of poisoning by Aluminium Phosphide as per Modi's Medical Jurisprudence and Toxicology, Twenty Second Edition (pp 197). "The tongue, mouth and oesophagus are oedematous and corroded. The mucous membrane of the stomach is corrugated, loosened or hardened and is stained red or velvety". The intestines are inflamed. PW-1 Dr. Parveen Bhardwaj has not noticed any vomiting mixed with blood. According to him, stomach contained only liquid with bad odour and small intestines and large intestines were normal. However, as per Modi's Medical Jurisprudence and Toxicology, the stomach was supposed to be corrugated, loosened or hardened and was supposed to be stained red or velvety. The intestines get inflamed after the consumption of Aluminium Phosphide. In fact, as per report of the Forensic Science Laboratory, no traces of poisoning were recorded on the samples sent to the Laboratory. PW-1 Dr. Parveen Bhardwaj had written letter to Chemical Examiner on 26.4.1997 requesting him to re-examine the viscera for Aluminium Phosphide poisoning. According to Scientific Officer (Chem./Toxi.) State Forensic Science Laboratory order dated 7.5.1997 Ex.PW-1/J:

- (a) The poisons may be eliminated by vomiting and diarrhea,
- (b) Whole poison can disappear from lungs by evaporation or oxidation,
- (c) The poisons after absorption may be detoxified and eliminated from the system, and
- (d) As far as the case of Aluminium Phosphide poison is concerned, it acts as a gaseous poison by liberating Phosphine gas and with the passage of time it becomes very difficult to detect this poison due to its gaseous nature.

10. In view of above discussion, it is clear that the opinion given by PW-1 Dr. Parveen Bhardwaj is contrary to the medical jurisprudence.

11. Consequently, in view of the above discussion, interference with the judgment of the trial court, is not warranted by us. Hence, the appeal is dismissed. Bail bonds furnished by the Respondents/accused stand discharged.