

(2011) 08 SHI CK 0109

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 473 of 2002

State of Himachal Pradesh

APPELLANT

Vs

Parkash Chand and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

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

Citation : (2011) 08 SHI CK 0109

Hon'ble Judges : R.B. Misra, J;Dev Darshan Sood, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The present Criminal Appeal has come up for consideration after the grant of leave to appeal u/s 378(3) of the Code of Criminal Procedure against the judgment dated 24.4.2002 passed by the learned Sessions Judge, Bilaspur in Sessions Trial No. 22 of 1996, acquitting the Respondents/accused for the offences under Sections 304B and 498A read with Section 34 of the IPC in reference to FIR No. 51/95, dated 24.5.1995, Police Station, Ghumarvin.

2. The case of the prosecution is that Sandhya Devi, deceased was married to accused Prakash Chand on 21.6.1994. The marriage life was quite happy initially for about six months, but one and half month prior to the date of occurrence, Sandhya Devi came to her parents house and made a complaint to her mother that her parents-in-law were harassing her for bringing less dowry and her husband/accused Prakash Chand had been complaining that he was not given gold ring in the marriage. On 21.5.1995 around 2.30 P.M. the deceased accompanied by her husband to the house of PW1 Kartar Singh and after staying their overnight the deceased came to her matrimonial house during the day time. On 23.5.1995 Sunka Ram and Sunder has come to inform PW1 at 10 A.M. that deceased, Sandhya Devi has been admitted in Ghumarwin hospital and PW1 rushed to the hospital, at about 4.45 PM, however, the deceased Sandhya Devi

died and in that reference FIR Ex.PW1/B was recorded. During investigation, eight letters written by deceased Sandhya Devi and four letters of accused were taken into possession vide recovery memo Ex.PW10/C, After the completion of investigation, the accused persons were charged for the aforesaid offences.

3. In order to prove its case, the prosecution has examined, as many as, 10 witnesses whereas, the accused through their statements u/s 313, Code of Criminal Procedure denied the prosecution case.

4. Kartar Singh (PW1) in his endeavour to support the prosecution version, stated in cross-examination that one letter was written by the deceased to the accused. PW1 further, stated in cross-examination that accused persons were demanding dowry from Sandhya, deceased. Again stated that his wife told him that the accused persons were harassing the deceased for dowry. However, he had not made any complaint to the police or any authority about this incident.

5. Smt. Sarbo Devi (PW2), the mother of the deceased in her endeavour tried to support the prosecution case and stated that her daughter told her that her in-laws were harassing her for dowry and stating that insufficient dowry was given to them at the time of marriage. Accused Prakash Chand was demanding gold ring. PW2 has further stated in cross-examination that her daughter, deceased Sandhya was staying with the grand-mother of accused Parkash at village Kasaru whereas, her in laws were residing at village Jadol. Her daughter was fed up with the heavy work, however, PW2 had not made any inquiry from the accused persons about the demand of dowry and such fact was also not disclosed to any of the relatives. On 21/22.5.1995, when her daughter stayed at her house, there was No. talk about the dowry articles.

6. Smt. Savitri Devi (PW3) related to the deceased, has stated in cross-examination that the deceased had told her that she was harassed by her mother-in-law Dr. D.P. Handa (PW4), conducted the post mortem examination of the deceased and No. injury mark of any kind was found on the person of the deceased. PW3 has opined that the deceased had died of cardio-respiratory failure due to aluminum phosphide poison. In cross-examination PW4 has stated that the police has recorded that the deceased was admitted for the treatment of vomiting and loose motion in Ghumarwin hospital. Dr. P.C. Sharma (PW5) has stated that treatment of gastro-enteritis and food poisoning was given to the deceased and the attendants were in haste to remove the body without postmortem from the hospital. PW5 suspected some foul-play and reported the matter to the police. Desh Raj (PW10), ASI investigated the case. On 24.5.1995 he recovered three tablets of Anacin and four tablets without wrapper, eight letters written by deceased Sandhya and four letters of the accused from the house of the accused, which were taken into possession vide memo Ex.PW10/C. PW10 had also stated in-cross-examination that the deceased was admitted in the hospital as a case of vomiting and loose-motion.

7. DW1 Dr. B.R. Sharma, Director of Central Forensic Science Laboratory,

Chandigarh examined Ex.DW-1/A and Ex. DW-1/B and gave report Ex.DW1/C. Dr. B.R. Sharma (DW1) came to the conclusion that the writings in Hindi, English, digits and figures on these documents were written by one and the same person. Prakash Chand (DW2), accused has stated that the name of Sandhya was written as Suman in the card and after marriage both lived peacefully. It is stated by DW2 that Sandhya/deceased was residing with the grand mother of accused, Prakash Chand in village Kasaru as accused Prakash Chand was employed at Parwanoo and used to visit Sandhya Devi twice in a month whereas, the parents of accused were residing separately in village Jadol, where they were also owning the property. DW2 has stated that he has written letters to Sandhya Ex.D1 to D4 and Ex. DB and she has also written letters, Ex.DW2/A, Ex.DW1/B and Ex. DA to him. DW2 has also stated that on 21.5.1995 he had accompanied Sandhya to the house of her grand mother regarding "Barsi Ceremony" and came back together on 22.5.1995. On 23.5.1995, she asked him to take her with him to Pawanoo but he declined on the ground that he had No. room, where she could be kept. However, DW2 promised her to take her with him after fortnight. When DW2 was about to leave, Sandhya, deceased started vomiting, DW2 enquired the reason but she did not disclose anything. In the mean time, the parents of the deceased came there. DW2 also stated them that she wanted to come with him to Parwanoo, however, she was taken to PHC, Ghumarwin where she stood admitted and doctor told to DW2 that Sandhya had consumed some poisonous substance. DW2 has stated in cross-examination that he had sent Shri Sunka Ram and Sunder Ram to inform the parents of the deceased from Ghumarwin hospital. DW2 has denied that deceased Sandhya had consumed poison on account of cruelty.

8. On the critical analysis of the materials on record, we are of the view that none of the prosecution witnesses including PW1 has lodged any complaint of harassment, maltreatment or demand of dowry to the police, panchayat or any other authority or to any person. The letters written by deceased to her husband/accused/Prakash Chand and letters of accused Prakash Chand written to deceased reveal that they were in deep love and the deceased had always been missing the company of her husband. In none of the letters, complaint of any kind was indicated that husband/accused was treating the deceased with any kind of cruelty or demand of dowry was ever made. It appears that the deceased was not taken to the place of the employment of her husband and that might have been cause of annoyance, for taking some poisonous drug. However, the prosecution could not bring anything on record which may indicate that any cruelty or maltreatment was done on the part of the accused in respect of demand of dowry. Only vague narration of the harassment, demand of dowry or demand of gold ring by accused Prakash Chand could not be treated to be cruelty or harassment. It was the accused/husband/ Prakash Chand who himself took the deceased/Sandhya for the treatment to the hospital and he was all along present with the deceased. The persecution in our considered view, has failed to prove that any demand of dowry and harassment was made on the part of the

accused persons.

9. On the analysis of the prosecution evidences and other materials on record, we are of the view that the learned Sessions Judge has rightly arrived at the finding that the prosecution has failed to prove the guilt of the accused persons. In our considered view, none of the act of the accused constitute cruelty as provided u/s 498A, IPC, 1860 and none of the act is proved which may constitute the dowry death as provided u/s 304B, IPC, 1860. In our considered view, the prosecution has failed to bring home the guilt of the accused persons. The criminal appeal being devoid of any merits is dismissed.

10. The bail bonds furnished by the accused/Respondents are hereby discharged.