

(2016) 05 SHI CK 0051

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 639 of 2008

State of Himachal Pradesh

APPELLANT

Vs

Pinki Devi

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2016) sup HimLR 3133 : (2016) 2 SimLC 946

Hon'ble Judges : Mr. Rajiv Sharma and Mr. Vivek Singh Thakur, JJ.

Bench : Division Bench

Advocate : Mr. M.A. Khan, Additional Advocate General, for the Appellant; Mr. J.R. Poswal, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sharma, J.—By way of the present appeal, the State has put challenge to Judgment dated 27.2.2008 rendered by the learned Additional Sessions Judge-I, Kangra at Dharamshala, HP, in Session Case No. 27-B/2005, whereby respondent-accused (hereinafter referred to as "accused" for convenience sake) was charged with and tried for offences under Sections 306 and 498- A IPC, along with another accused Swarup Singh. Accused Swarup Singh died during the pendency of the trial. Respondent Pinki Devi was acquitted by the learned trial Court.

2. Case of the prosecution, in a nutshell, is that one Neema alias Anita Devi daughter of complainant Sena Devi was married to Swarup Singh resident of village Chobin in June 1998 as per Hindu rites. After their marriage, both were residing together as husband and wife and were having cordial relations for a few years. Thereafter, accused Swarup Singh started beating deceased and started quarrelling with her on small matters. For about two years prior to the death of deceased, accused Swarup Singh had given her beatings about which complainant Sena Devi had made report to the Gram Panchayat Chobin, on which Pradhan, Gram Panchayat, Chobin had prevailed upon the accused Swarup

Singh and his wife (deceased) and after making them understand, compromise was effected in between them. On 4.2.2004, accused Swarup Singh had returned from Calcutta. On 14.3.2004, Jyoti, younger daughter of the complainant Sena Devi, telephoned deceased to know about her well being. Deceased at that time also told about the beatings given to her by the accused. Complainant had also talked to Neema @ Anita over the phone and she had disclosed to her that her husband Swarup Singh had developed illicit relations with his sister-inlaw, Pinki (accused No.2) and whenever she objected to it, she was beaten by her husband, accused No.1. Due to the illicit relation of accused with each other, Swarup Singh started beating and harassing her. She committed suicide in village Chobin and ended her life. Police was informed on 16.3.2004. SHO visited the spot. Statement of the complainant was recorded vide Ext. PW-2/A. FIR was registered. SHO took photographs Ext. PW-4/A to Ext. PW-4/E. Inquest papers were prepared. He also prepared spot map. Rope Ext. P-1 was taken into possession. Dead body was sent for post-mortem examination. Post-mortem report is Ext. PW-1/B. Room of the deceased was searched. Statements of witnesses were recorded. On 22.3.2004 diary Ext. PW-6/B and application Ext. PW-6/C were produced by Ranjit Singh, brother of the deceased before the police. On 29.3.2004, Sena Devi produced letter Ext. PW-1/C of the accused before the police along with its envelope Ext. PW- 2/D, which was taken into possession by the police vide memo Ext. PW-2/B. This letter was stated to have been written by accused Swarup Singh to the deceased on 24.3.2004. Case property was sent by the MHC to FSL Junga for chemical analysis through HHC Jagdish Chand. Reports of the FSL Junga are Ext. PW-9/B, Ext. PW-10/A and PW-10/B. Police also moved application Ext. PA before the JMIC Baijnath for taking handwriting and signatures of accused Swarup Singh for comparison with Ext. PW-9/A but he refused to give such writing and his statement Ext. PC was recorded by the learned JMIC. Investigation was completed. Challan was put in the Court after completing all the codal formalities.

3. Prosecution has examined as many as fourteen witnesses to prove its case against the accused. Accused were also examined under Section 313 CrPC. They pleaded innocence. Accused No. 1 Swarup died during the pendency of the trial. Proceedings against him had abated vide order dated 21.1.2008 by the learned trial Court. Accused No.2 was acquitted. Hence, this appeal by the State.

4. Mr. M.A. Khan, Additional Advocate General has vehemently argued that the prosecution has proved its case against the accused.

5. Mr. J.R. Poswal, Advocate, has supported Judgment dated 27.2.2008.

6. We have heard the learned counsel for the parties and also gone through the record carefully.

7. PW-1 Dr. Karan Singh, has conducted post-mortem examination. He opined that the deceased died due to ante-mortem hanging leading to asphyxia.

8. PW-2 Sena Devi testified that marriage between deceased and accused

Swarup Singh was solemnised in 1998. For one year, relations between the parties remained cordial. After that, accused started beating his wife and also used to threaten her. Her daughter Neema used to tell these things to her. She had reported this matter to the Ward Panch and Pradhan of Chobu Panchayat and Chobin Panchayat. They made accused Swarup to understand and a compromise was effected between accused and deceased. In March 2004, Neema was telephonically asked by her younger daughter about her welfare. PW-2 Sena Devi was also standing there. Her daughter (deceased) told that she had been beaten by the accused Swarup. She had also talked to her on the telephone. She had told her that the cause of giving her beating was her objection about her husband having illicit relations with his sister-in-law. On 16.3.2004, she was told about the death of her daughter. In her cross-examination, she admitted that the houses of Pritam, Sant Ram and Shaliram were situated adjacent to the house of the accused. She had never visited the house of the accused before the occurrence. She also talked with deceased on telephone. She had disclosed about the conversation to the police in her statement when she had lodged report Ext. PW-2/A. (confronted with her statement Ext. PW-2/A, wherein it is not so recorded). She had also disclosed in her statement Ext. PW-2/A to the police that the accused used to threaten the deceased to do away with her life. (confronted with her statement Ext. PW-2/A, wherein it is not so recorded). Letter Ext. PW-2/C came in her possession since deceased used to reside with her. She did not know whether envelope of letter which was produced by her before the police had been sent on her address or in the name of her daughter. The letter was handed over to her by the official of Post Office. Their Post Office was Chobin. She was told by her daughter (deceased) about the illicit relations of accused with each other and some other villagers had also told her. She could not disclose the names of villagers who had told her about this illicit relation. Her daughter used to tell her about the illicit relations of accused whenever she visited their house. She could not tell the exact date and year. She also disclosed to the police about the illicit relations of the accused with each other when she lodged the report. Her daughter had not disclosed about the illicit relations of the accused before her in the presence of any other person. Compromise of accused and her daughter (deceased) at the instance of Panchayat was an oral compromise.

9. PW-3 Yashoda deposed that her sister Sena Devi had telephoned her and told her that the husband of her daughter was quarrelling with her. She had also visited the house of her sister. She also told her that accused persons being brother-in-law and sister-in-law were intimately living with each other. They might be having illicit relations. Pradhans of Chobu and Chobin had also made a compromise between accused and deceased regarding this incident and it was told to her by her sister. In her cross-examination, she has admitted that she had no personal or individual knowledge that accused persons were having illicit relations. It was told to her by her sister only and deceased. She had also not seen the accused persons with her eyes in compromising position. Except her

sister and deceased, none had told her about the illicit relations of accused. She also did not know the names of other persons in the village who were saying that accused had done away with the life of deceased. She also admitted that the house of accused was at 50-60 kms from her house. She had never visited the house of accused prior to the occurrence. She did not remember in which year her sister had told her about the beatings of the deceased by accused. She also did not remember the date and month of the same.

10. PW-5 Shakina Devi testified that marriage was solemnised between accused No.1 and deceased in the year 1998. Their relations with each other remained cordial for about 1-2 years. Their relations worsened because of illicit relations of Swarup with his sister-in-law. Her sister used to tell about such illicit relations to her mother and other relatives. She had also told her that accused persons were beating her and they were having illicit relations with each other. Her sister had also made report to the Pradhan of Gram Panchayat Bahi. Her sister had died because of the illicit relations of the accused and their having given beatings to her. In her cross-examination, she has admitted that accused Swarup resided in Calcutta and used to come to his house once or twice a year. She also admitted that before the death of the deceased, she had never visited the house of accused. She did not know whose houses are situated adjacent and near to the house of accused. Accused Swarup had never visited her house. She did not remember the year when her mother had told her about the illicit relations of the accused. She also admitted the suggestion that she came to know about the illicit relations of the accused from her mother. Deceased had two children who had died prior to the incident. She also admitted the suggestion that personally she did not know how the deceased had died and what actually had happened.

11. PW-6 Bhim Singh deposed that marriage between deceased and accused No.1 was solemnised in the year 1998. For 1-2 years, their relations remained cordial. After that accused started beating her. He came to know from his sister-in-law whenever he visited her house that the accused persons were having illicit relations with each other. She had also told him that the accused persons were harassing the deceased by giving her beating. On 16.3.2004, he received telephonic information from his sister-in-law who told him that deceased had been killed by accused persons. He deposed that accused used to beat and harass the deceased even on small matters. In his cross-examination, he has admitted that regarding illicit relations of accused with each other, he was told by his sister-in-law. Volunteered that some persons of the village of accused had also told on the date of occurrence that accused had illicit relations. He did not know the names of the villagers. Beatings given by the accused to the deceased were once seen by him in February 2000, at the time of marriage of younger sister of deceased. He had not disclosed this fact to the police in any statement. Volunteered that the police had not asked him about it. Deceased had not visited his house after the marriage. He also admitted the suggestion that after marriage of deceased, he had never visited her house except on the date of occurrence. He admitted that after the death of children, deceased used to

remain sad.

12. PW-9 Dr. Minakshi Mahajan has proved Ext. PW- 9/B.

13. PW-11 Suresh Kumar deposed that he did not remember whether application was moved by deceased before him, however, her parental side members had made an oral complaint to him that they were being abused by the accused. On this oral complaint, accused Swarup was called by him and by Pradhan Gram Panchayat Chobin to the house of some other person where three-four persons of his in-laws" side were also called and then oral compromise was effected in between them. On 16.3.2004, he heard noise from the house of the accused on which he went to his house. He had seen deceased lying on the bed. He had also informed Pradhan Gram Panchayat Chobin about the death of deceased and requested him to inform about this death to her parental side. 15-20 persons from the parental side of deceased had come to the house of the accused. He had not seen accused Swarup giving beating to deceased nor he had heard about it. It was only the oral complaint which was made to him by her parental side once about which he had got the matter compromised. He was declared hostile and cross-examined by the learned Public Prosecutor. He denied the suggestion that after a few months of marriage accused Swarup used to beat and taunt deceased on small matter. He also denied that compromise which had been entered in his presence and presence of Gram Panchayat Chobin was about this very beating of deceased by accused. Volunteered that it was between accused Swarup and his in-laws. He could not say that accused persons were having illicit relations and such type of relation was being objected to by the deceased.

14. PW-12 Rajesh Rana deposed that the mother of deceased once had told him before one-two months of death of deceased that the deceased was being maltreated and harassed by her in-laws. Mother of the deceased had told him that the accused had illicit relation with accused No.2 Pinki. In his cross-examination, he has admitted that he did not know the name of the owner of the house where compromise was arrived at. Accused Swarup was not present at the time when compromise took place. Volunteered that Pradhan of Chobin had undertaken to go to the house of accused Swarup and make him understand there. He also admitted that all the depositions made by him about the harassment of deceased by the accused and also about illicit relations of accused were based on hearsay stories.

15. PW-13 Ranjit Singh deposed that accused persons were having illicit relations and both of them used to beat the deceased. Deceased due to the beating of accused came to his house in the year 2001. Accused persons had throttled the deceased on 16.3.2004 and after killing her in this way they got her hanged with a rope. In his cross-examination, he has admitted that he was not present at the time of compromise. He also admitted that he has not made any report either to the police or to the Panchayat or to any other person about the illicit relations of accused.

16. PW-14 SI Mohinder Singh, in his cross-examination, deposed that earlier to this, there was no report lodged by the deceased or her parental side against the accused about the harassment of the deceased by the accused persons. Deceased had lodged one report against the accused in the Panchayat which was addressed to Pradhan, Gram Panchayat, Chobin. Application was moved on 28.6.2001. He had tried to verify from the Panchayat record about the registration of the application but same was not found to have been registered. He had not recorded the statement of Secretary about such application. He came to know about letter and diary only when these were produced before him.

17. According to the averments made in Ext. PW-2/A, statement of the complainant recorded under Section 154 CrPC, accused Swarup Singh had returned from Calcutta on 4.2.2004. On 14.3.2004, Jyoti, younger daughter of the complainant Sena Devi, telephoned deceased to know about her well being. Deceased at that time also told about the beatings given to her by the accused. Complainant had also talked to Neema @ Anita over the phone and she had disclosed to her that her husband Swarup Singh had developed illicit relations with his sister-in-law. Allegations levelled in Ext. PW-2/A are specifically directed against accused Swarup and not against accused No. 2 (Pinki). In her cross-examination, PW-2 Sena Devi admitted that she was told by her daughter (deceased) about the illicit relations of accused with each other and some other villagers had also told her. She could not disclose the names of villagers who had told her about this illicit relation. She admitted that she has not reported the matter to the police earlier about the beatings given to the deceased. She has also not made any written complaint to the Panchayat Pradhan. Statement of PW-2 Sena Devi does not connect accused Pinki with the commission of offence. PW-3 Yashoda in her cross-examination admitted that she had no personal or individual knowledge that accused persons were having illicit relations with each other. This fact was told to her by her sister and deceased. House of accused from her house was 50-60 kms. She never visited the house of accused. She did not remember the year in which her sister complained about beatings to the deceased by the accused. Deceased has visited her house only once before marriage and never visited after marriage. She never had any telephonic conversation with her. Though PW-3 Yashoda deposed that she was told about the illicit relations of the accused but PW-2 Sena Devi in her statement testified that she has not told about the illicit relations between the accused to any other person. PW-5 Shakina Devi deposed that relations between Swarup and her sister worsened because of illicit relations. Her sister used to tell about said illicit relations to mother and other relatives. Similarly, she has also stated that she came to know about relations of accused with each other from her mother. It is reiterated that PW-2 Sena Devi has categorically stated in her statement that she has not shared this information with any other person. PW-6 Bhim Singh also deposed that the deceased was daughter of his sister-in-law. Relations between deceased and her husband were cordial for 1-2 years. He came to know from his sister-in-law when he visited her house that accused were having illicit relations

with each other. PW-2 Sena Devi as noticed herein above, has not shared this information with any person. In his cross-examination, he has admitted that some persons of the village of accused also told on the date of occurrence that the accused were actually having illicit relations with each other but he did not know the names of villagers. Deceased never visited his house after marriage. He also deposed that after death of her children, deceased used to remain sad. He had seen accused giving beatings to the deceased in February, 2000. However, he has not disclosed this fact to the police in his statement. Volunteered that police did not ask him about it. PW-5 Shakina Devi in her examination-in-chief told that her sister told that accused were having illicit relations with each other. However, in her cross-examination, she has admitted that she came to know about the illicit relations of accused with each other from her mother.

18. Prosecution has placed strong reliance on Ext. PW- 6/C. It was moved before Panchayat. PW-11 Suresh Kumar, the then Pradhan, Gram Panchayat, Chobin. He testified that he did not remember whether application was moved before him by deceased. However, parental side of deceased made an oral complaint to him that they were being abused by the accused Swarup. He deposed that he had not seen accused Swarup giving beating to deceased nor he had heard about it. It was only the oral complaint which was made to him by her parental side once about which he had got the matter compromised. He was declared hostile and cross-examined by the learned Public Prosecutor. He denied the suggestion that compromise which has been entered in his presence and in the presence of Gram Panchayat Chobin was about the beatings of deceased by the accused. He could not say that the accused persons were having illicit relations with each other and such type of relation was being objected to by the deceased.

19. We have gone through Ext. PW-6/C. There is no specific allegation against Pinki Devi. Allegations were against Swarup Singh and other family members. In fact, deceased wanted her husband to live separately. Swarup Singh was not agreeing to this proposal. Application is dated 28.6.2001. Deceased died in the year 2004. PW-12 Rajesh Rana in his cross-examination, has admitted that all the depositions made by him about the harassment of deceased by the accused and also about illicit relations of accused were based on hearsay stories. Application Ext. PW-6/C was made before the Gram Panchayat in the year 2001. However, PW-12 Rajesh Rana deposed that he got the matter compromised with the help of Gram Panchayat, Chobin between accused and deceased two months prior to death. PW-13 Ranjit Singh in his examination-in-chief has testified that accused Swarup Singh came to his house where a compromise was effected. However, in his cross-examination, he has admitted that compromise was effected in the house of accused. He was not present at the time of compromise. Though PW-11 Suresh Kumar has deposed that accused was called by him and Pradhan of Gram Panchayat, Chobin to the house of some other person. PW-13 Ranjit Singh deposed that once he visited in-laws of deceased and at that time he had seen him on a single bed in compromising position. He did not remember

the date and year of the occurrence. Volunteered that it was summer. He has not disclosed this fact to the police. He did not disclose this fact because police did not record his statement. He also admitted that he has not made any report anywhere either to the police or Panchayat about the illicit relations of the accused No. 1 and accused No.2. In case he has seen his brother-in-law in compromising position with his sister-in-law, he should have definitely told this fact to his relatives.

20. Now, so far as suicide note Ext. PW-9/A is concerned, it has lost its relevance for the reason that Swarup Singh has died during the course of trial. It has been stated in the Ext. PW-9/A that the deceased was dying voluntarily. Nobody was responsible for her death. There is no evidence of harassment and cruelty being meted out to the deceased, by Pinki. There is no evidence that she has abetted deceased to commit suicide. Thus, there is no occasion for us to interfere with the sufficiently reasoned judgment of the learned trial Court.

21. In view of the discussion and analysis made herein above, the appeal has no merit and the same is dismissed. Bail bonds of accused are discharged.

22. All pending applications are also disposed of.