
(2011) 05 SHI CK 0115
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 400 of 2001

State of Himachal Pradesh	Vs	APPELLANT
Puran Chand and Another		RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

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

Citation : (2011) 05 SHI CK 0115

Hon'ble Judges : Sanjay Karol, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—For an offence, which is alleged to have been committed in the year 1995 - 1998, accused were put to trial. In terms of judgment dated 13.3.2001 passed by the learned Additional Sessions Judge (I), Kangra at Dharmshala, HP, in Sessions Case No. 38-N/98, titled as State of Himachal Pradesh v. Puran Chand and Anr., the accused stand acquitted of the charged offences.

2. It is the case of the prosecution that Smt. Shital Devi was married to Puran Chand (accused No. 1) some time in the year 1995. A child was born out from the wed-lock. Initially accused Puran Chand and his mother Smt. Rattani Devi (accused No. 2) treated Smt. Shital Devi well, but however, after a period of one year they started harassing her and subjected her to cruelty for having brought insufficient dowry. Smt. Shital Devi informed her parents about the same. When confronted, accused promised to mend their behaviour. However, the harassment and maltreatment continued. Consistent dowry demands prompted Smt. Shital Devi to consume poison (aluminum phosphate tablets) on 28.7.1998 at her matrimonial house. She was immediately taken to the hospital by the accused where she was treated by Dr. M. K. Saxena (PW-8). She was admitted into the hospital at about 5.30 p.m. The matter was reported to the police. Inspector

Salwinder Singh (PW-16) from Police Station, Nurpur visited the hospital and moved an application (Ext. PW 8/B) before the Doctor for obtaining fitness certificate who opined that Smt. Shital Devi was unfit to make any statement. This was at about 6.05 p.m. and also at 6.30 p.m. Later on Smt. Shital Devi made a statement which was recorded by the Executive Magistrate Sh. Balak Ram (PW-14). The statement is Ext. PW 14/A. Independently, the very same statement was also recorded by PW-16 and is Ext. PW 14/B. Based on the same, PW-16 sent ruka to Police Station, Jawali for registration of the case. F.I.R. No. 164 of 1998 (Ext. PW15/A), dated 28.7.1998, under Sections 498-A read with Section 34 I.P.C. was registered at Police Station, Jawali. Immediately after recording of the statement Smt. Shital Devi died in the Civil Hospital, Nurpur. ASI-Dharam Dev (PW-15) prepared inquest reports (Ext. PW 7/B and 7/C). Pot mortem was carried out by Dr. D.R. Riyal (PW-7) who issued Post Mortem Report (Ext. PW 7/D). Police recovered and seized poisonous tablets, clothes and other articles belonging to the deceased. The case was further investigated by HC-Kuldeep Singh (PW-17) who visited the spot and searched the house of the accused. He recovered one diary (Ext. P-9) from the room of the deceased in the presence of Sh. Ran Singh and Sh. Om Raj. It contained a dying note incriminating the accused husband. The matter was fully investigated and with the completion of investigation challan was presented in the Court for trial.

3. The accused were charged for having committed offences punishable under Sections 498-A and 304-B of the Indian Penal Code to which they pleaded not guilty and claimed trial.

4. In order to prove its case prosecution examined seventeen witnesses and statements of the accused u/s 313 Code of Criminal Procedure were also recorded in which they took up the following defence:

I am innocent. I was working on petrol pump at Ludhiana during those days and visited my house in village Kanjuyan after the gap of five months. My wife Smt. Sital Devi, few days back of my arrival has got herself aborted, about which I came to know in the village. My wife was in love with one Subhash Singh alias Pappu resident of village Diana and both she and her mother Prito used to visited village Diana, after every 15 days or even earlier, where Subhash Singh above mentioned, was working in the post office. I raised this issue with my relations and with my mother-in-law and asked her that she was taking undue advantages of my absence from home, but Smt. Prito did not deter. The people of the village took up the matter with the parents of Subhash Singh, who under shame committed suicide. On 16.7.1998 and after that my wife Smt. Sital Devi also went under depression and on 28.7.1998, she took some poisonous matter, when I was in the field and when she started vomiting. I was called by one boy named Hans and I found her in a very bad condition and I immediately removed her to the hospital at Rehan, where the Dr. after giving her first aid, asked me to remove her to Nurpur, where I took her and got her admitted in the Nurpur Hospital. She have become unconscious on the way and remained unconscious

till she died at about 8.00 p.m. on 28.7.1998. It is incorrect that any dowry was demanded by me from my in-laws or from her or that she was ever tortured or ill-treated by me or by my mother, who an old lady and cannot even move since, she is more than 85 years of age. A false case has been cooked against me by the police at the instance of Smt. Prito Devi, who is an ill-reputed woman.

5. The Court below acquitted the accused of the charged offences. Hence the present appeal.

6. That Smt. Shital Devi died by consuming poisonous tablets is not in dispute. In any event same stands proved on record through the testimony of Dr. D.R. Riyal (PW-7) as also MLC (Ext. PW 8/A).

7. That the deceased who was married to accused No. 1 died within seven years of her marriage is also not in dispute. She died at her matrimonial house.

8. It is also not in dispute that the accused themselves took the deceased to the hospital for medical treatment. Accused No. 2, mother-in-law of the deceased is an old, infirm lady is also not in dispute.

9. In order to prove its case Mr. R.K. Sharma, learned Sr. Addl. Advocate General has invited our attention to the statements of Smt. Prito Devi (PW-9), Sh. Bishamber Singh (PW-10) and Smt. Bachlo Devi (PW-13), being the mother, brother and sister of the deceased. Our attention has also been invited to the dying declarations (Ext. PW 14/A and 14/B) and the suicide note (Ext. PW 13/A). According to the prosecution the aforesaid incriminating evidence conclusively establishes the guilt of the accused to the charged crime.

10. With regard to the dying declarations (Ext. PW 14/A & 14/B) we doubt the same to be a voluntary statement of the deceased or made by her immediately before her death in a fully conscious state of mind. According to the Doctor (PW-8), application (Ext. PW 8/B) was moved by the police for seeking his opinion as to whether the deceased was fit to make a statement. The said application clearly records the fact that the deceased was unfit to make the statement. Not only that this witness further states that he examined the deceased at 5.30 p.m. and informed the police about the incident. At 6.05 p.m. and 6.30 p.m. the deceased was unfit to make statement. Even thereafter she never became fit to make any statement. According to him Ext. PW8/B is the only application moved by the police. He was in the hospital till about 8.00 p.m. and neither the police nor any Magistrate contacted him for obtaining the fitness certificate of the deceased.

11. Statement Ext. PW 14/A & 14/B is recorded at 7.05 p.m. Statement Ext. PW 14/A is recorded by Sh. Balak Ram (PW-14), Naib Tehsildar, according to whom the deceased had narrated that she was harassed by her in-laws, who were demanding dowry, due to which she consumed poisonous tablets. This fact is also recorded in Ext. PW 14/A. However, we find the version of PW-14 not to inspire confidence for various reasons. Not only is the statement is not recorded

in answer and question form, which fact admitted by him, though may not be fatal, but however he further admits that he had recorded the statement "partly after asking the deceased" and "partly adding his own words and sentences". Importantly he admits that at that time the deceased was feeling restless and she was under a shock. Now this witness states that police had also recorded the very same statement side by side. He admits that police was present at the spot at that time. Now this version of his stands contradicted by PW-16 according to whom statement Ext. PW 14/B was recorded separately when none was present and in fact when statement Ext. PW 14/A was being recorded, PW-14 was alone in the room. That apart, PW-14 admits that he had obtained certificate from the Doctor to the effect that Smt. Shital Devi was fit to make statement. Importantly not only this certificate is not on record but his version stands contradicted by PW-8. PW-14 had made statement (Mark-D) to the effect that body was charred with fire which fact he denied in Court, but was confronted with his earlier version. The manner in which the statement stands recorded renders the truthfulness/correctness of the statement to be doubtful.

12. According to PW-16 the deceased was fit to make statement and the Doctor had certified to that effect. Now this version of his stands materially contradicted by documentary evidence (Ext. PW 8/B) and also the version of PW-8. His credibility stands impeached.

13. In these circumstances it cannot be said that the deceased was fit to make any statement or that the statement (Ext. PW 14/A and 14/B, same statement recorded by different persons) is the true statement made by the deceased and thus cannot be relied upon to convict the accused.

14. With reference to the suicide note (Ext. PW 13/A) we find that there is nothing incriminating against the accused. It does not bear any date or period. It simply states that "Husband I am going leaving my child. Take care of him. I tried to reason out with you but it was difficult for you to understand". It is a note contained in a diary (Ext. P-9) allegedly belonging to the deceased and recovered from her matrimonial house. There is serious doubt with regard to the recovery of the same. In any event nothing has been shown to conclusively link the hand writing contained in the diary to be that of the deceased.

15. Having perused the statements of PW-9, PW-10 and PW-13 we are of the view that their version does not inspire confidence. It is contradictory. Further except for bald and unspecific allegations of maltreatment, dowry demand and cruelty nothing has been proved on record to substantiate the same. With regard to the same Smt. Prito Devi (PW-9) has deposed as under:

Accused kept well my daughter for about 1 year after her marriage. Thereafter, accused Puran Chand and his mother started harassing my daughter on account of dowry. We had given dowry as per our capacity. Accused demanded more dowry and we were not in position to meet their demands. Accused also used to beat her on that account. My daughter had disclosed these things to me when

ever she visited my house. Thereafter, we used to advise accused Puran Chand. The treatment of accused towards my daughter improved for few days and thereafter they again started mal-treating her on this account. We heard from the co-villagers that my daughter had died due to consumption of some poison. This information was received by us on the next day of her death. My daughter was not happy in the house of accused and she committed suicide due to harassment caused by accused to her.

16. In examination-in-chief version of PW-10 and PW-13 is also to this effect. But however in cross examination PW-9 admits that even before her death, deceased and accused Puran Chand used to visit and spend the night in her house. The couple would never quarrel. She never saw them quarrel. In fact they used to live together in peace. She admits that in her family there is no custom of dowry demand. Dowry is neither given nor demanded. She admits that she never made any report about the alleged demands of dowry or harassment to any person including the relevant authorities. She does not remember the date, time and month as to when the alleged acts of cruelty were committed. She also does not remember as to when the same were narrated to her by her daughter. She has made improvements with regard to the specific articles of dowry which do not find mention in her statement (Mark D-I) with which she was confronted. Importantly she admits that accused No. 2, who has since died, was ninety years of age and never gave any beatings to the deceased. Thus prosecution has falsely implicated her.

17. Version of PW-10 and PW-13 is also more or less to this effect. Importantly PW-10 and PW-13 do not specifically deny the suggestion put by the accused that the deceased was suspected of having illicit relation with one Sh. Pappu who was working in the post office in the same village. That Sh. Pappu had died just few days before the death of the deceased stands proved on record. The defence taken by the accused is consistent and appears to be probable. Further statement of the Pradhan Sh. Om Raj (PW-12) is categorical to the effect that the deceased was having illicit relationship with Sh. Pappu. Importantly there is no cross examination by the prosecution on this point. In support of their defence accused has also examined Sh. Kartar Singh (DW-1). Even if his version is to be ignored on the point of illicit relationship, there is enough material to conclude that the defence taken by the accused is not improbable.

18. That apart, prosecution has failed to prove, by leading clear, cogent and reliable material on record that the accused had subjected the deceased to cruelty or had made any dowry demands which prompted her to take her life. Simply because the deceased died at the matrimonial house would not automatically prove the prosecution case. In these circumstances the statutory presumption would also not apply.

19. The accused has had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down in Mohammed Ankoos and Ors. v. Public Prosecutor, High Court of Md. Ankoos and Others Vs. The Public

Prosecutor, High Court of A.P., it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the person has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused No. 1 are discharged. Accused No. 2, has since died and appeal qua her stands abated.