
(2008) 09 P&H CK 0185
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 27-SB of 1993

Ude Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B

Citation : (2009) 4 RCR(Criminal) 435

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Advocate : Pawan Kumar, for the Appellant; A.K. Jindal, AAG, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Sham Sunder, J.—This appeal is directed against the judgment of conviction dated 11.11.1992 and the order of sentence dated 12.11.1992, rendered by the Court of Additional Sessions Judge, Rohtak, vide which it convicted the accused/appellant, Ude Kumar and sentenced him to undergo rigorous imprisonment for a period of ten years, for the offence punishable u/s 304-B of the Indian Penal Code. The trial Court, however, acquitted Renu, Bimla, Madhu and Paras Kumar accused.

2. Urmila, daughter of Prem Chand, resident of Samana Mandi (Punjab) was married to Ude Kumar son of Ved Parkash, accused, resident of Chankyapuri, Rohtak on 10.8.1990. From the very beginning, Ude Kumar and the members of his family, were not happy with the dowry articles given by the father of Urmila, at the time of marriage. Thus, they used to tease, taunt and harass her, on the ground, that she had brought insufficient dowry. She was also subjected to cruelty by Ude Kumar and his co-accused (since acquitted). Urmila used to narrate the tale of woes to her parents. Ultimately, on 12.3.1991, at about 11

am i.e. less than one year of her marriage, Urmila died otherwise than under normal circumstances, in the house of her in-laws, on account of burn injuries, on account of her subjection to cruelty, in connection with the demand of dowry by the accused, continuously. When Prem Chand, father of Urmila came to know about the death of her daughter, he made statement Ex.PB, before the police on 13.3.1991, narrating the aforesaid facts, as a result whereof, FIR was registered. The post-mortem, on the dead body of Urmila, was got conducted. The accused were arrested. After the completion of investigation, Ude Kumar, accused and his co-accused (since acquitted) were challaned.

3. On appearance, in the Court of committing Magistrate, the copies of documents, relied upon by the prosecution, were supplied to the accused. After the case was received by commitment, charge u/s 304-B of the Indian Penal Code was framed against Ude Kumar and his co-accused (since acquitted). It was read over and explained to them, to which they pleaded not guilty and claimed judicial trial.

4. The prosecution, in support of its case, examined Sukhbir Singh, Draftsman, Civil Courts, Rohtak as PW1, who prepared scaled site plan Ex.PA of the place of occurrence. HC Jagat Singh, PW2, Photographer, who took the photographs Ex.P1 to Ex.P5 of the place of occurrence, the negatives whereof were Ex.P6 to Ex.P10. Prem Chand, PW3, father of Urmila, who made a detailed statement, with regard to the date, time and place of occurrence, and harassment being meted out to the deceased at the hands of the accused in connection with the demand of dowry continuously, from the date of her marriage till death. Kamlesh Kumar, PW4, cousin brother of Urmila, who also deposed with regard to the cruelty, being meted out to Urmila, at the hands of the accused, on account of bringing insufficient dowry, right from the day of marriage until her death. Dr. B.N. Sharma, PW5, who was posted as Medical Officer, Civil Hospital, Rohtak on 13.3.1991, and conducted the post-mortem examination on the dead body of Urmila and found 100% burns on her body. Her body was smelling of kerosene. In the opinion of the doctor, the cause of death was due to shock and extensive burns, which were ante-mortem, in nature, and were sufficient to cause death, in the ordinary course of nature. Thereafter, the Public Prosecutor for the State, closed the prosecution evidence.

5. The statements of the accused u/s 313 Cr.P.C. were recorded. They were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. Ude Kumar, accused, in his statement, admitted that Urmila was married to him on 10.8.1990. He also admitted that on 12.3.1991, Urmila died on account of burn injuries. He further stated that the construction of the house of their side was going on. On 12.3.1991 he had gone to the market to make some purchases. On return, at about 12 (noon), he came to know about the accidental death of his wife Urmila. He, however, rushed to telephone exchange for making an out-station trunk call from public booth to Samana for informing his in-laws. He further stated that he came to know there,

that the Telephone Exchange of Samana was out of order. He further stated that thereafter he rushed to Police Station Civil Lines, Rohtak, to inform the Police, about the mishap as the telephonic call to Samana could not be made. He further stated that the police detained him there. It was also stated by him that the police obtained the address of his in-laws and sent a Constable to Samana. It was further stated that Prem Chand, father of Urmila along with others came to his house, on that very night. He further stated that his mother, Bimla Devi, his brother, Paras and his sister-in-law Madhu were detained on 13.3.1991. He further stated that they all were falsely implicated, in the case, when they did not concede to the illegal demand of the police and Prem Chand, father of Urmila for compensating him regarding the expenses incurred by him, on marriage. He further stated that in the meanwhile the police obtained their remand on 15.3.1991. He further stated that SI Ram Kishan and Inspector Manohar Lal, SHO, in collusion with Prem Chand, Chiman Lal etc. pressurized them to part with Rs. 12,000/- and some ornaments, as mentioned in receipt marked "X". He further stated that they and their relations were further pressurized to make payment of Rs. 63,500/- over and above Rs. 12,000/- as Sham Sunder Bansal, a close relation of Prem Chand, in collusion with the police, forced them, to make the said payment and consequently under the threat of further police remand, his grand-father Dhari Lal who was looking after them after the death of his father as guardian withdrew Rs. 17,000/- from Bank of Baroda, Rohtak on 18.3.1991 and the said payment was made in lieu of the demand of Rs. 63500/- He further stated that he and his co-accused never taunted, tortured Urmila in connection with the demand of dowry. He further stated that they were treating Urmila with love and affection. He further stated that she was suffering on account of acute chronic deafness. He further stated that she got her treated from Medical College and Hospital, Rohtak. He further stated that her father had been visiting them and he was shown due regard and respect.

6. The remaining accused (since acquitted), in their statements, u/s 313 Cr.P.C. also stated that they were falsely involved in the instant case. The accused, however, examined Dr. Vikas Kakar, Lecturer, ENT Deptt. MCH, Rohtak, DW1, S.R. Batra, Assistant Manager, Allahabad Bank, DW2 Constable Dalip Singh, DW3, Amar Nath Gupta, DW4, S.K. Miglani, DW5, Dr. S.B. Loomba, Retd. Director Research and Medical Education, Punjab DW6 and Gurdyal Singh, DW7. Some documents were also tendered into evidence by Ude Kumar accused and thereafter the defence evidence was closed.

7. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced Ude Kumar, accused, and acquitted the remaining accused, as stated above.

8. Feeling aggrieved, against the judgment of conviction, and the order of sentence, rendered by the trial Court, the instant appeal, was filed by the accused/appellant.

9. I have heard the learned Counsel for the parties, and have gone through the evidence and record of the case, carefully.

10. For constituting the offence, punishable u/s 304-B, the prosecution was required to prove that the death of Urmila took place within seven years of her marriage, otherwise than under normal circumstances and that soon before her death, she was maltreated in connection with the demand of dowry, by the husband or his relatives. Once these ingredients are proved, presumption u/s 113-B of the Evidence Act shall operate that the accused committed the offence of dowry death. In the instant case, it was proved from the evidence of Prem Chand, PW3, father of Urmila, deceased, and Kamlesh Kumar, cousin brother of Urmila, deceased who appeared as PW4, that the death of Urmila took place on 12.3.1991, whereas, she was married to Ude Kumar on 10.8. 1990. It means that the death of Urmila took place within less than one year of her marriage. From the statement of Dr. B.N. Sharma, PW5, who conducted the post mortem on the dead body of Urmila, it is proved that she was having 100% burns. No doubt, during the course of his cross-examination, it was stated by him that the burns on the dead body could be accidental, homicidal or suicidal. However, the possibility of accidental burns could be completely ruled out, as there is nothing, on the record, to come to the conclusion that she all of a sudden caught fire while preparing meals or tea either on the gas or stove in the kitchen. The accused, in their statements, u/s 313 Cr.P.C., also did not take up such a plea. Even, during the cross-examination of Prem Chand, PW3, no such case was set up by the accused. Even the theory of suicidal death, could also be completely ruled out, as there is no evidence, on record, that Urmila was under deep depression, as a result whereof, she ended her life. Since Urmila died in the house of her in-laws on 12.3.1991 i.e. within about 7 months of her marriage, it was for the accused, to explain as to under what circumstances she caught fire and what steps did they take to extinguish the same. This fact was within the special means of knowledge of the accused, but he failed to furnish any explanation in that regard. It has also come in evidence, which would be discussed, in the succeeding paragraphs that soon before her death, she was subjected to cruelty in connection with the demand of dowry. When that factor is co-related, with the death of Urmila, on account of 100% burn injuries, then no doubt is left in the mind of the Court, that she was set ablaze by Ude Kumar, her husband. Two ingredients constituting the offence punishable u/s 304-B, thus, stood proved from the evidence on record.

11. The third ingredient for constituting the offence punishable u/s 304-B is that the deceased was subjected to cruelty, in connection with the demand of dowry soon before her death. Prem Chand, father of Urmila when appeared as PW3, stated that on 12.8.1990, i.e. two days after her marriage Urmila came to his house but did not narrate anything to them. Thereafter she went back to the house of her in-laws. In October, 1990 she again visited the house of Prem Chand, her father. At that time she told him that her husband Ude Kumar and other accused (since acquitted) were taunting her for bringing insufficient dowry.

When she narrated this incident, Shanti Devi wife of Prem Chand, and his nephew Kamlesh Kumar, PW4 also were present. Thereafter, Prem Chand went to the house of the accused and prevailed upon him, that they should not harass Urmila. On 12.1.1991, Ude Kumar and Bimla (since acquitted,) came to the house of Prem Chand and took Urmila to their house. After about one and half months when he visited the house of the in-laws of Urmila, he met his daughter. It as about 18/20 days prior to the death of Urmila. At that time,she complained that there was no change in the behaviour of the accused and she was still being harassed by them for bringing less dowry. He, at that time, gave a sum of Rs. 15,000/- to Ude Kumar, accused, who assured that he will not mal-treat Urmila. The statement of Prem Chand, PW3, is corroborated to a large extent by Kamlesh Kumar, PW4. From the statements of both these witnesses, it is proved that right from the date of her marriage until her death, Urmila was subjected to cruelty on account of the reason that she had brought insufficient dowry. During their course of cross-examination nothing could be brought out, which may discredit the evidence. No doubt, certain contradictions of minor nature, were found in the statements of Prem Chand and Kamlesh Kumar, prosecution witnesses. Such like omissions and contradictions are bound to occur in the statements of the truthful witnesses after the lapse of time and no undue weight can be attached to the same. Even otherwise the evidence of Prem Chand, PW3, conforms to what he stated in his statement, on the basis whereof the FIR was registered. In *The State of Punjab Vs. Hari Singh and Another*, SC 1168), it was held that it was difficult to find a witness, who evidence if so flawless, that it has to be wholly, completely and unqualifiedly accepted. In *Ugar Ahir and Others Vs. The State of Bihar*, it was held that hardly one comes across a witness, whose evidence does not contain a grain of untruth, or any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court, to scrutinize the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. The evidence of the prosecution witnesses, on scrutiny, has been found to be reliable. As stated above, since the deceased was subjected to cruelty on account of the reason that she had brought insufficient dowry, right from the date of her marriage until her death, the third ingredient for constituting the offence u/s 304-B is also fulfilled.

12. The Counsel for the appellant, however, submitted that had their been any demand of dowry or had there been any taunting of Urmila by the accused, on the ground, that she had brought insufficient dowry, she or her parents would have certainly lodged a report,before her death, as they had many occasions to do so, but they did not report the matter to the police. He further submitted that, under these circumstances, it could be said that the story that Urmila was treated with cruelty, on the ground, that she had brought insufficient dowry right from the date of her marriage, until her death, is nothing but a concoction of lies. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. It may be stated here, that the marriage of Urmila was just in infancy. She had hardly been married about seven months before, when her life

came to an end. She tolerated the taunts of the accused that she had brought insufficient dowry, in the hope that better sense may prevail upon him, but to no avail. However, she lost no time in telling her tale of woes, that she was being subjected to cruelty, as she had brought insufficient dowry, to her parents. It is a matter of common experience that a married daughter, can only apprise her parents and near relations about the tale of woes suffered by her at the hands of her in-laws. It was under these circumstances that, whenever, she was maltreated by the accused, on the ground, that she had brought insufficient dowry, she informed her parents. Since she did not want to make the things public, neither she nor her parents lodged any report, with regard to the maltreatment meted out to her, at the hands of the accused that she had brought insufficient dowry. Non-lodging of the report, with the police, before her death that she was subjected to cruelty, could not be taken, as an adverse circumstance. The submission of the Counsel for the appellant, in this regard, being without merit, must fail and the same stands rejected.

13. A number of witnesses in his defence were examined by Ude Kumar accused. The defence version of Ude Kumar, accused and all the other accused as also the defence evidence produced by them, were noticed in detail by the trial Court, in para 16 of its judgment. The trial Court also analysis the defence evidence vis-a-vis prosecution evidence and came to the conclusion, that the defence evidence could not be relied upon. The amounts which were withdrawn, from the Banks, for allegedly making payment to the complainant, with a view to save the accused from criminal liability, did not at all dilute the offence of the accused. No evidence was also produced that a sum of Rs. 17000/- was given by Dhari Lal to the complainant. The certificate Ex.DJ issued by the Bank of Baroda was also did not prove the innocence of the accused in any manner. The mere fact that Urmila was being got treated from the doctors before her death with regard to her deafness, as perounded by Ude Kumar accused also did not prove his innocence, so far as commission of crime is concerned. The defence evidence, produced by the prosecution, was thus rightly held to be of such a nature as did not cause any dent, in the prosecution case, nor did it advance the case of the accused so as to prove that he was innocent. After reappraisal of the defence evidence, this Court comes to the conclusion that the trial Court was right in disbelieving and discarding the same.

14. No other point was urged by the Counsel for the parties.

15. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, are based on the correct appreciation of evidence, and law, on the point. The same do not warrant any interference, and are liable to be upheld.

16. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment of conviction dated 11.11.1992 and the order of sentence dated 12.11.1992 are upheld. If the appellant is on bail, then his bail bonds, shall stand cancelled. The Chief Judicial Magistrate, Rohtak, shall take necessary steps, to

comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Cr.P.C.