

Pawan Kumar and Others Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Apr-25-2013

Appellant : Pawan Kumar and Others

Respondent : State of Punjab

Judgement :

Criminal Appeal not S-1251 SB o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
Criminal Appeal not S-1251 SB of 2009 Date of decision 25. 4.2013. Pawan
Kumar and others Appellant. versus State of Punjab Respondent.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?.
Yes 2. To be referred to the Reporters or not?. Yes 3. Whether the judgment
should be reported in the Digest?. Yes CORAM :- HON'BLE MR.JUSTICE
K.C.PURI. Present : Shri Harsh Bunker, Advocate for the appellants. Shri
S.S.Chandumajra, Senior DAG, Punjab. K.C.PURI, J.Appellants Pawan Kumar
and others have directed the present appeal against the judgment and order dated
30.03.2009 passed by Shri Tarsem Mangla, learned Additional Sessions Judge,
Jalandhar vide which the accused/appellants have been convicted and sentenced
in a case FIR No.36 dated 18.1.2006 registered under Sections 304-B, 316 and
498-A of the Indian Penal Code (in short - the IPC).

2. Briefly stated the case of the prosecution is that 18.1.2006 one Criminal Appeal not S-1251 SB o

2. ruqa was received from Civil Hospital, Jalandhar, in which it was mentioned that Smt. Rajni wife of Pawan Kumar is admitted with burn injuries. On receipt of this information ASI Pritam Singh alongwith other police personnel reached the hospital but the injured was found unfit to make statement. When police was returning to police station Maqsudan, Viney Simar, brother of injured Rajni appeared before ASI Pritam Singh and made statement to the effect that he has five sisters and is the only son of his parents. All his sisters were married. Rajni is also married and is his youngest sister. About one year ago, she was married to Pawan Kumar s/o Ram Lubhaya, r/o of village Reru. Ravi Kumar brother of Pawan Kumar is working as a carpenter. His Jija Pawan Kumar and his mother Vidya Devi and above said Ravi Kumar had been demanding money from his sister. They were asking her to arrange Rs. One lac from her parents so that they could send Ravi Kumar abroad but Rajni refused to oblige by saying that her parents are not rich and were unable to arrange money. Due to this refusal she was being given beatings by the aforesaid three person. In this regard Rajni had narrated her maltreatment to him many a times but each time she was sent back with the advise to tolerate but instead of mending themselves, the accused started issuing threats to kill her. In the morning, he visited the house of his Mama's son Madan Lal who is living near Transport Nagar. He along with Madan Lal went to see his sister Rajni at village Reru. At about 9.00 A.M. when they reached near the house of Rajni, he heard the noise. When he opened the gate he saw Rajni drenched with kerosene oil. Her husband Pawan Kumar and mother-in-law Vidya Devi had caught hold of her and within his view Ravi Kumar after lighting a match stick set Rajni Criminal Appeal not S-1251 SB o

3. on fire. Immediately, the fire caught the body of Rajni. He tried to extinguish the fire, but in the meantime she received severe burn injuries. He took Rajni to Civil Hospital and after leaving her at hospital had been going to report this matter to the police. On the basis of abovesaid statement of Viney Simar, FIR under Section 307, 498-A read with Section 34 IPC was registered and further investigations were started. On 19.1.2006, injured Rajni was declared fit by the doctor to make

statement and as such Sh. Jagdeep Sood, Judicial Magistrate 1st Class, (D) was requested to record her statement. The Judicial Magistrate recorded her statement. On 21.1.2006 Rajni succumbed to her burn injuries and consequently, offence under Section 304-B IPC was added. Her post mortem examination was conducted. At the time of her death. Rajni was found pregnant., hence offence under Section 316 IPC was also added. All the accused were arrested. Accused Ravi Kumar was declare innocent on an inquiry and after completion of investigation, challan against Pawan Kumar and Vidya Devi was presented in the Court of Illaqa Magistrate.

3. Copies of documents were supplied to the accused as required under Section 207 Cr.P.C. and the case was committed to the Sessions Court vide order dated 11.05.2006.

4. Charge under Sections 304-B, 498-A and 316 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

5. During the pendency of the trial, an application under Section 319 Cr.P.C. was moved by the prosecution which was allowed and accused Ravi Kumar was also summoned as an additional accused.

6. On his appearance and after hearing counsel for the parties, the Criminal Appeal not S-1251 SB o

4. trial Court framed charges against the accused under Sections 304-B, 498-A and 316 IPC, to which they pleaded not guilty and claimed trial.

7. The prosecution, in order to bring home guilt of the accused examined PW-1 SI Pritam Singh, Investigating Officer, PW-2 SI Onkar Singh, PW-3 Shri Jagdeep Sood, JMIC, PW-4 ASI Harjit Singh, PW-5 Vinay Simar complainant, (again shown Vinay Simar as PW-6 wrongly), PW-7 SI Pritam Singh and closed the prosecution evidence.

8. After closure of the prosecution evidence, all the incriminating evidence was put to the accused but the accused refuted all charges and pleaded false implication. The accused further submitted that Rajni was having mis-understanding with her

family. One day prior to the occurrence she visited her family. On the next day she set herself on fire without disclosing any reason. At that time, they were not present. They further submitted that they want to enter into defence.

9. In their defence, the accused examined DW-1 Amarjit Singh and closed their evidence after making a joint statement.

10. The trial Court after hearing the learned counsel for the parties convicted and sentenced the accused to undergo rigorous imprisonment for a period of eight years and to pay a fine of Rs.1000/- each and in default thereof to further undergo rigorous imprisonment for a period of one year each under Section 304-B of the IPC ; to further undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1000/- each and in default thereof to further undergo rigorous imprisonment for a period of six months each under Section 498-A of the IPC and to further undergo rigorous imprisonment for a period of eight years and to pay a fine of Criminal Appeal not S-1251 SB o

5. Rs.1000/- each and in default thereof to further undergo rigorous imprisonment for a period of one year each under Section 316 of the IPC.

11. Feeling dissatisfied with the aforesaid judgment and order dated 30.03.2009 the present appeal has been preferred.

12. Learned counsel for the appellants has submitted that case of the prosecution was that on 18.1.2006 at 9.00a.m. Vinay Simar (PW-6) and Madan Lal had gone to the house of deceased Rajni. They heard clamour in the house and opened the gate and found that Rajni was already drenched with kerosene oil. Ravi Kumar and Pawan Kumar had caught hold Rajni from her arms and Vidya Devi set her ablaze with a burning match stick. It is submitted that the trial Court has not believed the version given by the prosecution. Even charge under Section 302 of the IPC was not framed. It is further contended that the prosecution has not prayed at any stage of the trial to frame charge under Section 302 of the IPC not has preferred any appeal for convicting the appellants under Sections 302 of the IPC. So, it is contended that the story of the prosecution to the effect that Rajni died due to putting kerosene oil by the accused remains unproved.

13. The appellants have been convicted under Section 304-B, IPC under Sections 498-A and 316 of the IPC. It is contended that Section 316 of the IPC relates to Section 302 of the IPC whereas charge under Section 302 of the IPC is not framed and as such, the appellants cannot be convicted under Section 316 of the IPC.

14. It is further contended that so far as offences under Sections 304-B and 498-A of the IPC are concerned, those offences are also remained unproved against the appellants especially Ravi Kumar and Vidya Criminal Appeal not S-1251 SB o

6. Devi accused. The allegations in respect of offences under Sections 304-B and 498-A, of the IPC are that the accused used to demand Rs.1,00,000/- for sending Ravi Kumar to abroad. Ravi Kumar and Vidya Devi accused would not have been benefitted by the demand of Rs.1,00,000/- for sending Ravi Kumar abroad.

15. So far as accused Ravi Kumar is concerned, he has been declared innocent during the course of trial and has been summoned under Section 319 of the Cr.P.C. He was living separately from accused Pawan Kumar. To prove the ingredient of offence under Sections 304-B of IPC the prosecution is required to prove that soon before death of Rajni she was subjected to cruelty in connection with demand of dowry at the hands of accused/appellants. There are general allegations of demand of Rs.1,00,000/-. No specific time, date has been given for demanding Rs.1,00,000/- by Vidya Devi and Ravi Kumar. So, it is contended that ingredient of offence under Sections 304-B and 498-A of the IPC are not made out against Ravi Kumar and Vidya Devi accused. It is further contended that there is a tendency to implicate all the family members in case of death of bridegroom in her matrimonial house. The vague allegation of demand of Rs.1,00,000/- is not sufficient to convict Ravi Kumar and Vidya Devi accused for offence under Sections 304-A and 498- A of the IPC.

16. The learned State counsel has supported the impugned judgment and order of the trial Court in respect of offences under Sections 304-B and 498-A of the IPC against all the appellants. Criminal Appeal not S-1251 SB o

7. 17. I have considered the submissions made by learned counsel for both the sides and have gone through the records of the case .

18. It is settled law that appellate Court should decide the case after thoroughly re-appreciating the evidence on the file.

19. Section 316 of the IPC lays down as under :- 316. Causing death of quick unborn child by act amounting to culpable homicide whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

20. From the bare reading of this Section, it is revealed that accused can be convicted under Section 316 of the IPC if he does any act vide which there is a death of a quick unborn child. In the present case, the prosecution has handled the case in a very casual manner. The case of the prosecution from the very beginning is that the kerosene oil was put by the accused and fire was lit which caused the death of Rajni and unborn child. Strange enough the charge under Section 302 of the IPC has not been framed against any of the appellants. The prosecution has not prayed for framing charge under Section 302 of the IPC against the appellants.

21. Otherwise also, it cannot be believed that in the presence of such near relatives, the appellants put Rajni on fire. No efforts have been made by the complainant and Madan Lal to extinguish the fire. There is no evidence on the file that complainant and Madan Lal took Rajni to the hospital as the record of the doctor is silent. Otherwise also, the prosecution witnesses have taken contradictory stand regarding putting Criminal Appeal not S-1251 SB o

8. Rajni on fire. In Ex.PA it is mentioned that Pawan Kumar and Vidya Devi accused caught hold Rajni and Ravi Kumar lit the fire. However, Ravi Kumar was declared innocent and having realized the said fact that Ravi Kumar is not an accused before the Court, the complainant while appearing as PW-6 has stated that Ravi Kumar and Pawan Kumar caught hold Rajni from her arms and Vidya Devi set her ablaze. So, the prosecution is highly discrepant regarding the fact that who lit the fire. Since there is no charge under Section 302 of the IPC against the appellants, therefore charge under Section 316 of the IPC does not sustain as the

prosecution has failed to prove that the appellants have done any act which resulted in the death of unborn child. So, all the appellants stand acquitted under Section 316 of the IPC.

22. not reverting to offence under Sections 304-B and 498-A of the IPC, there are two sets of accused i.e. one Pawan Kumar husband of the deceased second Ravi Kumar and Vidya Devi accused, brother-in-law and mother-in-law of the deceased Rajni.

23. not first of all, we will take case of Ravi Kumar and Vidya Devi accused in respect of offences under Sections 304-B and 498-A of the IPC. The evidence produced by the prosecution is in the shape of Vinay Simar, brother of the deceased. This witness has stated Vidya Devi is mother of Ravi Kumar and Pawan Kumar. All the appellants i.e. Pawan Kumar, Ravi Kumar and Vidya Devi used to pressurize Rajni deceased to bring Rs.1,00,000/- from her parents so as to send Ravi Kumar abroad. Rajni-deceased refused to meet this demand on account of inability of her parents to pay the said amount. All the three appellants used to give beating Criminal Appeal not S-1251 SB o

9. to Rajni-deceased and she used to tell them about this fact many a times. Madan Lal has not been examined by the prosecution.

24. not the question arises whether the testimony of this witness is sufficient to convict Ravi Kumar and Vidya Devi accused for offence under Sections 304-B of the IPC and 498-A of the IPC?.

25. The answer to that question is in negative. Ravi Kumar has been declared as innocent during the course of investigation and he has been summoned under Section 319 of the Cr.P.C. There are general allegations of demand of Rs.1,00,000/- for sending Ravi Kumar abroad and that of beating. No specific time and date of demand of Rs.1,00,000/- by Ravi Kumar and Vidya Devi has been mentioned. On the vague statement of Vinay Simar (PW-6) in my view the ingredient of offence under Sections 304-B and 498-A of the IPC cannot be said to be made out against Ravi Kumar and Vidya Devi accused. Otherwise also, there is a tendency to involve all the family members in a criminal case. Ravi Kumar and

Vidya Devi accused would not have been benefitted by demand of Rs.1,00,000/- as the said amount was required by Pawan Kumar for sending him abroad.

26. The learned trial Court has relied upon dying declaration. In the dying declaration it is mentioned that she had been put on fire on account of the fact that she could not bring dowry articles. It is mentioned in this dying declaration that Ravi Kumar and Vidya Devi accused made demand of dowry articles or that they have taunted her on account of bringing less dowry.

27. So, I have no hesitation in holding that the trial court has wrongly convicted the appellants Ravi Kumar and Vidya Devi under Criminal Appeal not S-1251 SB o

10. Section 304-B and 498-A of the IPC.

28. Consequently, the appeal qua them stands accepted. The judgment and order of the trial Court qua them stand set aside. They stand acquitted by giving them benefit of doubt from the charges levelled against them.

29. not reverting to the case of Pawan Kumar-accused, the ingredient of offence under Sections 304-B and 498-A of the IPC are made out against him. The amount of Rs.1,00,000/- was demanded by him for going abroad. So, ultimately benefit of Rs.1,00,000/- was to be taken by Pawan Kumar-accused alone. Otherwise also, he is the husband of Rajni deceased and has to explain the circumstances under which she lost her life in matrimonial house in an unnatural manner. So, the ingredient of offences under Sections 304-B and 498-A of the IPC are made out against Pawan Kumar beyond reasonable doubt and the conviction recorded by the trial Court under Sections 304-B and 498-A of the IPC against Pawan Kumar stands affirmed.

30. not reverting to the quantum of sentence. Pawan Kumar accused is facing trial since 2006 and is in custody since 20.01.2006 So, the ends of justice would be met in case his sentence is reduced to seven years instead of eight years as awarded by the trial Court under Section 304-B of the IPC and I order accordingly. However, his sentence of fine as imposed by the trial Court under Sections 304-B and 498-A of the IPC stands affirmed.

31. In the manner indicated above, the appeal stands disposed of accordingly.
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11. 32. A copy of this judgment be sent to the trial Court for strict compliance. April
25th , 2013 (K. C. PURI) sv JUDGE

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