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Court : Punjab and Haryana

Decided On : Oct-01-1999

Reported in : 2000CriLJ1647

Judge : T.H.B. Chalapathi, J.

Appeal No. : Cri. Appeal No. 854-SB of 1999

Appellant : Sunil Palta and Another

Respondent : State

Advocate for Pet/Ap. : R. S. Cheema, Sr. Adv. and; S. S. Narula, Adv.

Judgement :

1. This appeal is directed against the conviction and sentence imposed by the learned Sessions Judge, Chandigarh in Sessions Case No. 31 of 1997 decided on 19-8-1999.

2. According to the case of the prosecution, the 1st accused married Sunita Rani alias (sic) the eldest daughter of Hari Chand, who is the complainant, in November 1973 at Chandigarh. The said Sunita died under suspicious circumstances on 23rd, May, 1997 in General Hospital, Sector 16, Chandigarh. On the complaint given by the father of Sunita, the case was registered against the husband and mother-in-law of Sunita for the offences under Ss. 306, 304-B and 498-A, I.P.C. read with Section 34, I.P.C.

3. On completion of the investigation, a charge sheet has been filed against both the accused. On the basis of the material placed before him, the learned Magistrate committed the case to Sessions as the offences are exclusively triable by the Court of Session. After committal, the learned Sessions Judge framed charges against both the accused for the offences under Sections 306, 304-B and 498A, I.P.C.

4. In order to prove the guilt of the accused, the prosecution examined 10 witnesses and marked document.

5. On a consideration of the evidence on record, the learned Judge convicted both the accused for the offence under S. 306, I.P.C. but acquitted the accused under Ss. 304-B and 498-A I.P.C. For the offence u/S. 306, I.P.C. the learned Sessions Judge sentenced both the accused to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 1,000/- each.

6. Aggrieved by the said conviction and sentence imposed by the learned Sessions Judge, the accused preferred this appeal.

7. There cannot be any dispute that Sunita Kumari committed suicide. PW 1 is the Doctor who conducted autopsy on the dead-body of Sunita Kumari on 23-5-1997. He along with the other Doctors who constituted the Board, found a ligature mark present above, the thyroid cartilage and below the chin measuring 2 cms in front of the neck. He further deposed that in their view the cause of death was due to asphyxia as a result of hanging which is sufficient to cause death in the normal course of nature. He also deposed that the hanging is ante mortem in nature. He further stated that the poisoning is ruled out in the report of the Chemical Examiner.

8. The only question for consideration is whether Sunita Kumari committed suicide being unbearable the cruel treatment meted out to her at the hands of the accused. PW 2 is the father of the deceased Sunita Kumari. According to him, right from the beginning, Sunil Kumar, the husband of Sunita Kumari was misleading them and was telling that he was a graduate, but he was not. He also deposed that Sunil Kumar gave out that his father had only one wife, but it was

found that he had another wife living in Tundla and that he has got one brother. He further deposed that his daughter was telling that she was finding it difficult to pull on with the accused as they were always cheating and taunting and he should arrange for her divorce. But the fact remains that he did not tell this in his statement recorded under S. 161, Cr.P.C. In fact that case of the PW 2 is that his daughter was killed by the accused and one other person, but there is no evidence to this effect. His evidence in regard to the demand of dowry is quite contradictory and no reliance can be placed on his evidence. He deposed that his wife gave a cheque for Rs. 50,000/- but the evidence on record clearly shows that the cheque was encashed by his own son not by Sunil Kumar. After going through the entire evidence of PW 2, I am of the opinion that he is not a reliable witness and his evidence is of no consequence.

9. Admittedly, the marriage between Sunit Kumar and the deceased was not an arranged marriage. It was love marriage. The letters exchanged between the deceased and Sunil Kumar during the years 1994-95 clearly indicate that their relations were Cordial.

10. The evidence of PW 5 only shows that the marriage was performed at Dharamshala at Sector 23, Chandigarh. The evidence of PW-6 shows that on receipt of a message from the Control room he reached House No. 313 Sector 44, Chandigarh and he found that the door of that house was broken. He had taken the photograph of the deceased. His evidence is not material. PW 7 is a Social Worker. Her evidence is to the effect that PW 2 told her that there was 'Kalesh' (quarrel) between Sunita and her husband and she should go to their house and try to advise them. Her evidence further shows that her husband also accompanied her and Sunita told her that she was very much harassed because her husband was suspecting her moral character and there was a dispute for a sum of Rs. 50,000/-. A close reading of her evidence does not inspire any confidence. To my mind, she is only a chance witness. After going through her evidence. I am unable to place any reliance on her evidence.

11. The evidence of PW 8 is only to the effect that wedding cards for the marriage of Sunit with Sunil Kumar were printed in his press. His evidence is not material.

12. PW 9 is the brother of the deceased. His evidence clearly shows that for some time after the marriage, the relations between the deceased and her husband were cordial, but after some time some problem cropped up and she was complaining that the accused were harassing her and also suspecting her moral character. A reading of his evidence clearly shows that it is not consistent with the evidence of his father. He tried to introduce a new fact that a querrel took place between Sunita and Sunil when they visited their house which was not spoken to by PW 2. His evidence itself discloses that the husband and wife used to quarrel over petty matters. On a close reading of his evidence, I am unable to place any reliance on his evidence.

13. PW 10 has only deposed that he received the information of the admission of Sunita Kumar in the Hospital. His evidence is of formal nature. PW 11 recorded the statements of the witnesses under Section 161, Cr.P.C.

14. After closure of the prosecution evidence, the accused were examined under Section 313, Cr.P.C. in which they stated that this case has been foisted.

15. From the evidence of PW 2 it is evident that he was a heart patient and was under constant treatment and that he was also facing financial problems. The statements of the accused under Section 313, Cr.P.C. also support this theory. In his statement recorded under Section 313, Cr.P.C. accused No. 1 stated as follows :-

'Before marriage she was giving her pay to her father and even after her marriage we both i.e. I and Sunita have been helping her family with money and other articles as and when so required. I even gave a sum of Rs. 50,000/- for by-pass surgery of my father-in-law Hari Chand Kukreja by taking a loan from my employer S. Anoop Singh. I have been attending on Hari Chand all through his treatment at the PGI, Chandigarh as well as AIIMS, New Delhi, I even arranged and donated blood for him besides footing bills off and on including expenses for travelling even to Delhi. So much so that Bank drafts for treatment at AIIMS was also deposited by me. As the father of Sunita was facing financial problems and was also under heavy loans for which he and his mother, family members used to often ask for financial help and take money from Sunita she being a very sensitive and

emotional lady could not endure the stress on account of her father's problems. This gave final stroke when Neelam younger siser of Sunita came to the matrimonial house on 22-5-1997 and either said or demanded something which led to Sunita ending her life.'

16. The learned Sessions Judge acquitted both the accused for the offences under Sections 498-A and 304-B, I.P.C. Thus it is clear both from the findings of the learned Sessions Judge and also from the evidence adduced on record in this case that there is no evidence of any cruelty. Therefore, in my view, the presumption under Section 113A of the Evidence Act cannot be invoked in the present case. To raise a presumption of abetment of suicide, it must be shown that the suicide was committed within seven years of marriage and that the deceased was subjected to cruelty by the husband of the deceased or his relatives. There cannot be any dispute that in the explanation to Section 113A of the Evidence Act 'cruelty' shall have the same meaning as in Section 498A of the Indian Penal Code. So if once the accused are acquitted of the charge under Section 498A, I.P.C., then it becomes clear that the deceased was not subjected to cruelty. There-fore presumption under Section 113-A of the Evidence Act cannot be invoked in this case. If no presumption is raised, it is for the prosecution to prove that the deceased was subjected to cruelty and that cruelty should be proved beyond all reasonable coubts. When any harrassment or cruelty is not proved, no presumption can be raised. The letters exchanged between the deceased and her husband clearly show that their relations were cordial and there is not even a single word in these letters which shows that the deceased was subjected to cruelty. There is also no evidence in regard to demand of any dowry or any other article from the parents or other relatives of the deceased. Thus, it cannot be said that the accused abetted the deceased to commit suicide.

17. On a consideration of entire evidence on record and after going through the judgment of the learned Sessions Judge, I am of the opinion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubts. Therefore, the conviction under Section 306, I.P.C. cannot be sustained.

18. The result is, the appeal is allowed and both the accused are acquitted of the charge under Section 306, I.P.C. Their bail bonds shall stand cancelled.

19. Appeal allowed.

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