

Ramesh Chander Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : Dec-09-1994

Reported in : II(1995)DMC175

Judge : K.K. Srivastava, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 107, 304B, 306 and 498A;
[Evidence Act, 1872](#) - Sections 113A

Appeal No. : Crl. Appeal No. 515-SB of 1986

Appellant : Ramesh Chander

Respondent : State of Haryana

Advocate for Def. : D.S. Bishnoi, Dupty Adv. General,; R.S. Ghai, Sr. Adv.,;

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

Disposition : Appeal allowed

Judgement :

K.K. Srivastava, J.

1. This appeal is directed against the judgment and order dated July 31, 1986, passed by Mrs. Nirmal Yadav, Additional Sessions Judge, Ambala, whereby she has convicted the appellants Ramesh Chander, his mother Kamla Devi, sister

Indra and brother-in-law Dharampal (Husband of Indra) under Sections 306 and 498A of the Indian Penal Code (hereinafter referred to as 'the Code'). The appellants were sentenced to suffer three years' rigorous imprisonment and to pay a fine of Rs. 250/- each and in default of payment of fine to suffer further rigorous imprisonment for three months under Section 306 of the Code. They were further sentenced to suffer one year's rigorous imprisonment under Section 498A of the Code. The substantive sentences were ordered to run concurrently.

2. Late Mukandi Lal resident of Barwala had three sons, namely, Suresh Kumar (P.W. 4), Narinder Kumar-complainant (P.W. 5) and Manmohan Lal and a daughter Sunita (deceased). The death of Mukandi Lal took place in 1979 and his wife had died in the year 1962. The marriage of Sunita was performed by her three brothers aforesaid with accused-appellant Ramesh Chander in the year 1981 in Village Barwala. Sunita had a daughter and a son from her husband Ramesh Chander-appellant. The case of the prosecution is that just after the marriage, the accused-appellants started harassing Sunita for bringing insufficient dowry. Sunita came to the house of her brothers and complained to them about her harassment and the taunts made by the accused-appellants for not bringing a motor-cycle in the dowry. It is alleged that on October 21, 1985, at about 2 a.m., Satish, younger brother of the accused-appellant Ramesh Chander, came to the house of Suresh Kumar (P.W. 4), who was residing at Ambala City, and informed him about Sunita receiving burn injuries. Suresh Kumar hired a taxi and went to Village Tamnauli, where the appellant Ramesh Chander and his mother Kamla Devi resided, and found Sunita lying in burnt condition on a cot and covered with a bed-sheet. Narinder Kumar (P.W. 5) was also informed about the burn injuries of Sunita by the aforesaid Satish, who was accompanied by one another person of Village Tamnauli, at about 3.45 a.m. Satish informed Narinder Kumar that now Sunita was alright and he need not worry. He also informed that Sunita had been admitted in the hospital. Narinder Kumar, accompanied by one Ramesh, Member Panchayat of Barwala, came to Civil Hospital, Ambala City, at about 5 a.m. and found that Sunita had already died. He found Ramesh Chander-appellant standing at the gate of the hospital. Narinder Kumar left the hospital at about 11 a.m. for lodging the First Information Report when Sub-Inspector Kundan Lal met him outside the hospital and he recorded the statement (Exhibit P.J.) of Narinder Kumar on the

basis of which First Information Report was registered. The post mortem examination on the dead body of Sunita was conducted by Dr. S.K. Gupta, Medical Superintendent, Civil Hospital, Ambala City (P.W. 1) on October 21, 1985. He assessed the age of the deceased about 25 years and found the dead body of a moderately built young woman. Rigor mortis was found present on all the limbs. There were burns on whole of the body except front of face, forehead, scalp, both hands with dorsal and palmer surface, back of forearms on both sides, both soles and sacral region. There was no smell of kerosene. The walls of thorax were burnt, pleural were healthy. Larynx and trachea and lungs were congested. Stomach contained about one ounce of fluid, small intestine contained chyme, large intestine contained faecal matter. Liver, spleen and kidneys were congested. He prepared post mortem report, carbon copy of which is Exhibit P.A. Cause of death in his opinion was shock due to extensive burns which were ante mortem in nature and sufficient in the ordinary course of nature to cause death. Viscera was sent for chemical examination.

3. Sub-Inspector Kundan Lal (P.W, 8) is the Investigating Officer. He had sent the dead body after inquest proceedings for post-mortem examination. In the hospital he recorded the statements of Mohan Lal, Ramesh Kumar, Suresh Kumar and Swaran Lal under Section 161 of the Code of Criminal Procedure and went to Village Tanmauli the same day at about 7 p.m. The neighbours of the accused-appellants accompanied the Police Party. The accused-appellants were not found present there. He prepared rough site plan (Exhibit P.O.) and took into possession the burnt Jumper, burnt pieces of Salwar and underwear and prepared recovery memo (Exhibit P.H.) . On October 22, 1985, Sarpanch Dara Singh produced the accused before the Investigating Officer, who arrested them. The Investigating Officer found the letter (Exhibit P.K.) lying near the bed in the house of the accused and took the same into possession vide recovery memo Exhibit P.K./1. This letter was sent by complainant Narinder Kumar and was shown to him by the Investigating Officer. Uday Bhan, Draftsman (P.W. 2) prepared the sealed map of the place of occurrence which is Exhibit P.B. dated November 27, 1985. After completion of Investigation, the Investigating Officer prepared a report under Section 173, Criminal Procedure Code.

4. The accused-appellants were charged under Sections 306 and 498A of the Code and tried on their denial of the charges. The prosecution evidence included witnesses of fact, namely, Suresh Kumar (P.W. 4) and Narinder Kumar (P.W. 5), who are the real brothers of the deceased Sunita. Ramesh Chander, Member Panchayat (P.W. 7) is a formal witness.

5. I have heard the learned Counsel for the appellants and the learned Dupty Advocate General for the State of Haryana and also the learned Counsel for the revision-petitioner of Criminal Revision No. 1119 of 1986. I have also perused the record of the case. I was taken through the evidence of the prosecution witnesses and other documents on record by the learned Counsel for the appellants.

6. The contention of the learned Counsel for the appellants is that, in the instant case, before the accused-appellants can be convicted under Section 306 of the Code, the prosecution has to prove that Sunita (deceased) committed suicide. He had submitted that once the prosecution proves that Sunita (deceased committed) suicide, it is only then that the question of abetment for suicide will arise. The contention of the learned Counsel for the appellant was that, in the instant case, there is no evidence whatsoever to indicate that it was a case of suicide. He has further submitted that notwithstanding the fact that the appellants could show to the Court that it was a case of accidental death due to burns, the burden remains on the prosecution, to prove that Sunita committed suicide. He has also contended that there is no allegation made in the statement (Exhibit P.J.) of Narinder Kumar that Ramesh Chander, husband of the deceased Sunita, Dharam-pal and Indra were, in any way, involved in the demand of dowry and harassment of the deceased Sunita in connection with the demand of dowry. He has also pointed out that it has come in the evidence of the prosecution that the accused-appellant Ramesh Chander had separated from his parents with his wife Sunita about six months prior to this occurrence. Sunita had a young infant son aged about 41/2 months and, according to the defence version, she had gone to prepare milk to be fed to the infant son and since she suffered from the disease of epilepsy, she was caught in a fit and fell on a burning Chulah and suffered bum injuries. He has also contended that, in the instant case, the absence of kerosene smell from the dead body and the clothes rule out the case of suicide. Even otherwise, there are no

facts and circumstances from which it may be probablised that Sunita could commit suicide.

7. The learned Deputy Advocate General appearing for the State of Haryana-respondent, on the other hand, contended that it is a case of suicide and Sunita did commit suicide and she was abetted for the commitment of suicide by the accused-appellants, who were harassing and torturing her for the sake of demand of dowry.

8. Now coming to the main question regarding Sunita committing suicide which is the essential ingredient for punishing the accused-appellants for the abetment for commission of suicide, it may be pointed out that in the statement (Exhibit P.J.) recorded by Sub-Inspector Kundan Lal (P.W. 8), Narinder Kumar-complainant stated that the harassment of Sunita started about six months prior to the date when his statement was recorded and at that time Sunita was pregnant. The accused-appellant Kamla Devi, Indra and her husband Dharampal were harassing Sunita and asking him (Narinder Kumar) to take Sunita to his house. Sunita at that time was not in a position to accompany him because of her advanced stage of pregnancy. Thereafter, in due course of time Sunita gave birth to a son and the complainant Narinder Kumar took articles according to the custom prevalent in his caste, but the items taken by him at that time were rejected by the parents-in-law of Sunita, who described these articles of inferior quality and demanded articles of superior quality and they also demanded a motor-cycle. Dharampal, accused-appellant, it is mentioned in the statement (Exhibit P.J.) went to Narinder Kumar and told him that there was some quarrel in the house of the accused-appellants in Tamnauli and Sunita has separated from her parents-in-law and that he (Narinder Kumar) should bring her with him. Thereafter, Narinder Kumar and his younger brother went to Tamnauli on a scooter about two months prior to the occurrence for taking their sister Sunita with them and they talked to the mother-in-law Kamla Devi of Sunita, who refused to send her with them on the pretext that they did not give presents to Sunita whenever they took her with them. After a gap of about 22 days, the accused-appellant Ramesh Chander brought Sunita and her two children to Barwala and left them at the house of Narinder Kumar. On October 20, 1985, Ramesh Chander accused-appellant again came to Barwala at the house of

Narinder Kumar to take back his wife Sunita and two children when Sunita told Narinder Kumar that he should present a motor-cycle to her husband Ramesh Chander accused because her mother-in-law was harassing her. Narinder Kumar gave some money to her and promised to pay the balance after the festival of Diwali. Sunita left with her husband at about 3.20 p.m. by bus and in the early hours of the night intervening 20th/21st October, 1985 Satish aforesaid brought the message of the burn injuries suffered by Sunita. The narration of the facts mentioned in Exhibit P.J. clearly go to show that no allegations of the demand of dowry were made against the husband Ramesh Chander, Indra and her husband Dharampal. The allegations which were made were against Kamla Devi, mother-in-law of the deceased Sunita. When Narinder Kumar entered the witness box as P.W. 5, he stated in his cross-examination that at the time of settlement of the marriage, the accused did not say anything about the dowry and they had explained to the accused their financial position at the time of settlement of marriage. The marriage was performed after the accused had seen the girl and agreed for the marriage. He has also admitted the fact that Sunita did not write a letter to him or his brothers about her harassment meted out at the hands of her in-laws and his brother Suresh Kumar (P.W. 4) had not informed him about receiving any such letter from Sunita. He had not stated before the Investigating Officer in his statement recorded under Section 161 of the Code of Criminal Procedure that Ramesh Chander-appellant had ever maltreated his sister Sunita (deceased) or that Sunita had ever told him that Ramesh Chander had ever maltreated her. He also did not state before the police about spending a sum of Rs. 60,000/- in the marriage and about giving articles detailed by him in the examination-in-chief. He was confronted with his statement (Exhibit P.J.) where it was not recorded that the accused has started maltreating his sister just after the marriage. Even the facts that all the four accused had started maltreating his sister on the ground that she had brought inadequate dowry, or that the articles given in the marriage were not of good quality, or that the accused used to demand television or motor-cycle did not find place in the statement Exhibit P.J. He had not mentioned the fact that the mother-in-law Kamla Devi of Sunita had complained about not giving of gifts or other presents to Sunita. The fact of throwing of the articles taken by him after the birth of the son by the accused was not mentioned

in the statement Exhibit P.J. The statement (Exhibit P.J.) only recorded the fact that the parents of Ramesh Chander accused had commented that the articles brought were of inferior quality and that articles of superior quality with a motor-cycle should have been given. The demand of motor-cycle was not specifically mentioned in Exhibit P.J. Now coming to the statement of the other brother Suresh Kumar (P.W. 4), he was confronted with several omissions made in his statement recorded by the police and these omissions related to the expenditure of Rs. 60,000/- in the marriage of Sunita (deceased); about the accused harassing Sunita since the time of her marriage, or that his sister informed him about the accused harassing her and further that the accused harassed and maltreated his sister for not bringing sufficient dowry. He did not state before the Police that Sunita came to live with him because the accused used to taunt her for not bringing motor-cycle in dowry. He had also not stated the fact before the police that the deceased came to his house six/seven months prior to her death and told him that the accused had demanded motor-cycle. He had also not stated about the presence of four accused-appellants in the hours when he reached there on receiving the information about the burn injuries suffered by Sunita. All these omissions regarding relevant material and substantial facts in this case assume significance. The statement of Suresh Kumar (P.W. 4) is full of material and substantial contradictions and the same is wholly unworthy of being relied upon. The statement of Suresh Kumar made before the Trial Court is full of improvements upon his statement made before the Police. The statement of the witness Suresh Kumar about receiving letter from the deceased Sunita and disclosing this fact to his brother Narinder Kumar has been substantially and materially contradicted by Narinder Kumar (P.W. 5). On the records, there is no letter of the deceased Sunita to her brother about any harassment or torture made to her by the accused-appellants. It is noteworthy that the father-in-law, who has also been alleged to be involved in harassing and torturing the deceased Sunita, was not implicated as an accused. There is nothing on record to show that the father-in-law of Sunita is not alive. There is no evidence worth the name regarding the harassment made by the accused-appellant Ramesh Chander for the demand of dowry. On the other hand, there is categorical evidence on record that the husband Ramesh Chander had brought his wife in burnt condition to the hospital and she was admitted in the

hospital in the presence of her husband. This fact, which is recorded, was denied by Suresh Kumar (P.W. 4), who was also shown as present at the time of admission of Sunita. Suresh Kumar has denied the suggestion that Ramesh Chander and he himself got Sunita admitted in the hospital. He also denied the suggestion that his name as well as the name of Ramesh Chander were written in the medico-legal report (Exhibit D.A.) at the time of medico-legal examination of Sunita. In the medico-legal report (Exhibit D.A.), the presence of Ramesh Chander-appellant at the time of admission of Sunita is mentioned. The statements of both these witnesses, Suresh Kumar (P.W. 4) and Narinder Kumar (P.W. 5) regarding the demand of dowry and consequential harassment for the sake of dowry are not reliable. The prosecution has, thus, failed to prove that there was, in fact, a demand of dowry and Sunita was being harassed for the demand of dowry and this fact finds further corroboration from the fact that about six months prior to the occurrence, Ramesh Chander-appellant had separated from his parents with his wife.

9. Now coming to the submission of the learned Counsel for the appellants that it is not a case of suicide but a case of accidental death and that the prosecution has miserably failed to prove it to be a case of suicide, the statement of Dr. S.K. Gupta (P.W. 1) would go to show that presence of kerosene was not found on the dead body of Sunita. The injuries were found on whole of the body except face, forehead, scalp, both hands with dorsal and palmer surface, back of forearms on both sides, both soles and sacral region, which categorically rules out a case of suicide. In a case of suicide with the help of kerosene, the smell of kerosene would surely be found emitted by the dead body and the clothes and the burns would be on the scalp, hair, face and hands besides other parts of the body. It is also significant to note that the report of the Forensic Science Laboratory about the presence of kerosene oil was not proved by the prosecution and there is no material on record to show that there was, in fact, any presence of kerosene on the dead body. The places affected by the burn injuries also negative the plea of suicide. The attention facts and circumstances of the case also negative the contention regarding the commission of suicide. The statements of Suresh Kumar (P.W. 4) and Narinder Kumar (P.W. 5) do not go to show that Sunita committed suicide. Once the case of the prosecution become doubtful regarding the demand

of dowry and consequential harassment of the deceased-wife Sunita, the question of Sunita committing suicide becomes quite improbable. As mentioned above, Ramesh Chander-appellant had separated from his parents along with his wife Sunita (deceased) and resided separately though in the same house about six months prior to the occurrence when, according to the prosecution case, the mother-in-law Kamla Devi-appellant had refused to send Sunita with her brother. It was the husband Ramesh Chander who left her at the house of her brother. There is nothing on record to show that the conduct of the husband Ramesh Chander and his sister and brother-in-law was such that they were guilty of the demand of dowry and harassment of the wife Sunita (deceased) after non-fulfilment of the demand of dowry.

10. In this case, the presumption under Section 113A of the Indian Evidence Act cannot be raised against the husband or his relatives because for the applicability of Section 113A of the Evidence Act, the prosecution has to prove that the woman committed suicide and that it had been abetted by her husband or relative and within seven years from the date of her marriage. Section 113A of the Evidence Act provides as under :--

'113A. Presumption as to abetment of suicide by a married woman --When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.'

Since in this case, the prosecution has failed to prove that her husband or such relative of her husband had subjected Sunita (deceased) to cruelty and that she committed suicide, the presumption under Section 113A of the Evidence Act could not be raised.

11. The scope of Sections 106 and 307 of the Code was considered by the Supreme Court in the case of Wazir Chand and Anr. v. State of Haryana, AIR

1989 Supreme Court 378 = I (1989) DMC 132 (SC). It was held that Section 306 of the Code states inter alia that whoever abets the commission of suicide, shall be punished with imprisonment and fine as set out in the said Section 107 of the Code defines abetment. Reading Sections 306 and 107 of the Code together, it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide. The person causing the instigation is liable to be punished under Section 306 of the Code for abetting the commission of suicide. A plain reading of this provision shows that before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide. It was further observed that commission of dowry death is now punishable under Section 304B of the Code and certain presumption are prescribed under Sub-section (1) of that section, but that section was not enacted at the time when the incident in question took place. In the instant case also, the occurrence took place in the month of October, 1985, whereas the provisions of Section 304B of the Code were incorporated in the Indian Penal Code with effect from November 19, 1986, by Act No. 43 of 1986. In the case before the Supreme Court, the question was whether the evidence on record established with the degree of certainty required in criminal law that the wife (Veena) committed suicide. In that case, there was no clear piece of evidence like a suicide note or statement having been made by Veena after the incident to the effect that she had taken her own life or set herself on fire. Further, there was no evidence that her clothes gave out a smell of kerosene which would indicate of suicide. It is true that post mortem was performed after several hours and such smell might not have been detectable from Veena's clothes at that time, but it is significant to note that Dr. Kusk Goel, who treated Veena at the Geeta Nursing Home, had not been asked any question regarding any smell given out by Veena's clothes. As far as the question of improbability of sustaining burns accidentally from the stove lighted for preparing tea is concerned, evidence was led by the prosecution to show that the stove was placed on the raised slab which would make it unlikely that burns were caused to Veena by accident. The evidence in this regard, however, was held to be by no means satisfactory. In the instant case also, no suicide note was written by Sunita (deceased). Sunita did not state before any one after suffering burn injuries that she was committing suicide. The

presence of kerosene was not found by the Autopsy Surgeon, who has stated above the fact that he did not find smell of kerosene coming from the dead body. Coupled with this fact, the scalp, hair, hands etc. being unaffected by the burns, also negative the case of suicide. Therefore, there is no room for doubt that it was not a case of suicide and the prosecution has miserably failed to prove that Sunita had, in fact, committed suicide. Once the prosecution fails to prove as a fact that Sunita committed suicide, the question of abetment by the accused appellant instigating her to commit suicide does not arise.

12. The appeal, therefore, succeeds and is allowed. The conviction and sentence of the accused-appellant under Sections 306 and 498A of the Code are set aside and they are acquitted of the charges levelled against them.

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