

Charan Singh and ors. Vs. State

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Court : Uttaranchal

Decided On : Jun-11-2010

Judge : Dharam Veer, J.

Appellant : Charan Singh and ors.

Respondent : State

Judgement :

Dharam Veer, J.

1. This appeal, preferred by the appellants Under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), is directed against the judgment and order dated 28.8.1997 passed by the Special Judge/Additional Sessions Judge, Nainital in Sessions Trial No. 464 of 1995 State v. Charan Singh and Ors., whereby each of the accused appellants, viz., Charan Singh, Gurmeet Singh and Santo Kaur have been convicted under Section 304B, 498A and 201 of Indian Penal Code, 1860 (for short, IPC) and each of them has been sentenced to R.I. for 10 years Under Section 304B IPC, R.I. for 2 years Under Section 498A IPC and R.I. of 2 years Under Section 201 IPC. All the sentences have been directed to run concurrently.

2. The prosecution case, in brief, is that on 24.6.1995 at 6.15 pm, PW1 Pratap Singh lodged an oral report in PS Jaspur with the averments that two years ago, his daughter Smt. Chhilo Kaur was married to appellant accused Charan Singh

resident of village Bhogpur Dam, PS Jaspur as per the Hindu rites. In the marriage, he had given dowry according to his status. After two months of the marriage when his daughter Smt. Chhilo Kaur came to her maternal home, she told the complainant that her in-laws had asked her to bring a motorbike as the same has not been given in dowry. The complainant made her understand that he was not capable of giving a motorbike and he would consider it whenever he would be in a position to give it and sent her daughter to the house of her in-laws. Thereafter whenever his daughter came to her maternal home, she used to tell the complainant about the demand of motorbike by her in-laws. After one year of marriage, she told the complainant that her in-laws are also demanding land. Every time the complainant used to send his daughter to the house of her in-laws after making her understand. On the previous day of lodging the report i.e. on 23.6.1995 one Jagir Singh of village Bhogpur Dam came to him and told him that his daughter Smt. Chhilo Kaur was murdered by her in-laws. On this information, the complainant along with his wife came to Bhogpur Dam on 24.6.1995 where he came to know that at about 8 am on 22.6.1995, his daughter Smt. Chhilo Kaur was beaten and strangulated to death by her husband Charan Singh, brother-in-law Gurmeet Singh, and mother-in-law Santo Kaur i.e. the accused appellants and thereafter her dead body was also cremated by them. The complainant has further averred that his daughter was killed because of non-fulfillment of demand of motorbike and land in dowry. After her death, the injuries on the body of his daughter were seen by Balbir Singh (PW2), Beero Bia (PW3), Jogendra Singh (PW4) and Kishan Singh, the residents of village Bhogpur Dam and she died because of those injuries.

3. With the aforesaid averments, an oral report was lodged by PW1 Pratap Singh. On the basis of this report, chick FIR Ex. Ka-1 was prepared by Head Moharrir Bhagwan Singh. He also made the necessary entries in the GD, copy of which is Ex. Ka-2. Investigation of this case was entrusted to PW6 Babban Singh, Circle Officer Kashipur. During the course of investigation, the I.O. inspected the place of occurrence and prepared the site plan Ex. Ka-3 where the dead body of Smt. Chhilo Kaur was seen lying on the cot in the house of accused appellants. He also inspected the site of cremation and prepared the site plan Ex. Ka-4. The I.O. also collected the ashes which were mixed with soil and prepared the fard Ex. Ka-5. On

26.6.1995, the I.O. issued an order Ex. Ka-6 and thereby directed the Station Officer, Jaspur to arrest the accused appellants. The I.O. during the course of investigation recorded the statements of the witnesses and after completing the investigation, he filed the chargesheet Ex. Ka-7 against the accused appellants under Section 304B and 201 IPC.

4. Learned Judicial Magistrate, Kashipur after giving the necessary copies of the documents to the accused appellants as prescribed under Section 207 Cr.P.C., committed the case to the Court of Sessions on 7.10.1995. Thereafter the case was transferred to Special Judge/Additional Sessions Judge, Nainital for its disposal according to law.

5. On 7.12.1995, learned Special Judge/Additional Sessions Judge, Nainital framed the charges against each of the accused appellants under Section 304B, Section 498A and Section 201 IPC. The charges were read over and explained to each of the accused appellants, who pleaded not guilty and claimed to be tried.

6. To prove its case, prosecution has examined PW1 Pratap Singh, the complainant and father of the deceased; PW2 Balbir Singh; PW3 Beero Bai; PW4 Jogendra Singh; PW5 Rajendra Singh Hayanki, Station Officer, PS Jaspur and PW6 Babban Singh, Circle Officer, Kashipur and also the I.O. of the case.

7. Thereafter, statements of each of the accused appellants were recorded under Section 313 of Cr.P.C. The oral and documentary evidence were put to them in question form, who denied the allegations made against them and stated that they have been falsely implicated in the case. In reply to question No. 11, accused appellant Charan Singh has stated that on the date of alleged incident, a Panchayat was held in the village in which maternal uncle and maternal grandmother of deceased were also present and it was agreed in the Panchayat that the death was natural and thereafter articles given in dowry were also returned to her maternal uncle and maternal grandmother. However, in defence, they did not produce any documentary evidence on record. But one witness, viz., Gurmej Singh was examined in defence as DW1.

8. After hearing Learned Counsel for the parties and appreciating the evidence on record, the learned Special Judge/Additional Sessions Judge, Nainital vide his judgment and order dated 28.8.1997 convicted and sentenced to each of the accused appellants as discussed above. Against the aforesaid judgment and order dated 28.8.1997, the present appeal has been preferred.

9. To prove its case, the prosecution has examined PW1 Pratap Singh, the complainant and the father of the deceased, who has stated that two years before her death his daughter Chhilo Kaur got married to accused appellant Charan Singh. Gurmeet Singh was her brother-in-law and Santo Kaur was her mother-in-law. In the marriage, he had given dowry according to his status. After two months of the marriage his daughter came to her maternal home and told him that a motorbike was being demanded. The complainant made her understand his position and sent her back to the house of her in-laws. Thereafter when she again came to her maternal home, she told her father about the demand of motorbike by her husband Charan Singh. Thereafter land in addition to motorbike was also demanded by Charan Singh. He again convinced his daughter and sent her back to the house of her in-laws. This witness in his statement recorded on 11.3.1996 has further stated that about 9-10 months back one Jagir Singh of village Bhogpur Dam came to him and told him that his daughter Smt. Chhilo Kaur was murdered by the accused appellants and thereafter she was also cremated. He further told him that he did not see the injuries on her body but his brother-in-law Balbir Singh (PW2) had seen the injuries of Smt. Chhilo Kaur. Her teeth was broken, neck was strangulated and there was a bulge in her head. This witness has further stated that thereafter he had gone to PS Jaspur and narrated the incident and the same was written in the chick FIR Ex. Ka-1 and he also identified his thumb impression on that report. This witness was cross-examined at length by the defence Counsel but nothing has come out in testimony which may create any doubt about his deposition.

10. PW2 Balbir Singh has stated that two years two years prior to her death, Chhilo Kaur was married to Charan Singh. Her father Pratap Singh had given dowry according to his status. Later on he came to know that accused appellant Charan Singh was demanding motorbike. This witness in his statement recorded

on 11.3.1996 has further stated that about 8-9 months at 8.30 am, his children informed him that Chhilo Kaur had died and on this information he went to the house of Chhilo Kaur where he saw the sign of strangulation on her neck, her teeth was broken and there was a bulge on her head. Before her death, she was keeping good health. He asked to call the parents of Chhilo Kaur first and only thereafter touch her dead body. But the accused appellants did not pay any heed to his advice and dead body of Chhilo Kaur was cremated without informing her parents and he was stopped from going to the police station. He has further stated that he had told Jagir Singh about the injuries seen by him on the dead body of Chhilo Kaur. Jagir Singh had informed Pratap Singh (PW1) about the incident. In his cross-examination, he has stated that deceased Chhilo Kaur was his real niece (bhanji).

11. PW3 Beero Bia in her statement recorded on 11.3.1996 has stated that the house of accused appellants was at a distance of about one mile from her house. She used to visit Chhilo Kaur but the in-laws of Chhilo Kaur did not like it. They did not allow Chhilo Kaur to come to her house. This witness has further stated that Chhilo Kaur told her that accused appellant Charan Singh was demanding motorbike and told to get it from her maternal grandmother (nani). This witness herself was maternal grandmother of deceased Chhilo Kaur. This witness has further stated that her husband died last year and after the death of her husband, accused appellant Charan Singh used to tell Chhilo Kaur to get the land from her but she said that she had got no land. She had seen the dead body of Chhilo Kaur in the house of accused appellant Charan Singh. Her dead body was lying on a cot. Her teeth was broken. There was sign of rope on her neck and her head was also injured. She was cremated and her parents came on the third day of her cremation.

12. PW4 Jogendra Singh has not supported the prosecution case and was declared hostile.

13. PW5 Rajendra Singh Hayanki has stated that on 24.6.1995 he was posted in PS Jaspur as Station Officer. Head Constable Bhagwan Singh was also posted with him in the said police station. Pratap Singh (PW1) had lodged the report on

24.6.1995 and the chick FIR Ex. Ka-1 of this case was prepared by Head Constable Bhagwan Singh, who also made the necessary entries in the GD. Copy of GD is Ex. Ka-2.

14. PW6 Babban Singh has stated that in June, 1995 he was posted as Circle Officer, Bajpur. At the same time, he was also looking after the work of C.O., Kashipur and PS Jaspur was under his area of operation. The report was lodged on 24.6.1995 with PS Jaspur and he was informed about it through wireless. He reached at PS Jaspur at 9 pm on the same day and started the investigation of this case after obtaining the necessary papers from the police station. During the course of investigation, he inspected the place of occurrence and prepared the site plan Ex. Ka-3. He also inspected the site of cremation of the dead body and prepared the site plan Ex. Ka-4. From the site of cremation, he also collected the ashes which were mixed with soil and thereafter prepared a fard Ex. Ka-5. Thereafter he issued an order Ex. Ka-6 to PS Jaspur for the arrest of the accused appellants. During the course of investigation, he recorded the statements of the witnesses and after completing the investigation, he filed the chargesheet Ex. Ka-7 against the accused appellants.

15. Thereafter, statements of each of the accused appellants were recorded under Section 313 of Cr.P.C. The oral and documentary evidence were put to them in question form, who denied the allegations made against them and stated that they have been falsely implicated in the case. In reply to question No. 11, accused appellant Charan Singh has stated that on the date of alleged incident, a Panchayat was held in the village in which maternal uncle and maternal grandmother of deceased were also present and it was agreed in the Panchayat that the death was natural and the articles given in dowry were returned to her maternal uncle and maternal grandmother. However, in defence, they did not produce any documentary evidence on record. But one witness, viz., Gurmej Singh was examined in defence as DW1.

16. DW1 Gurmej Singh has stated that deceased Chhilo Kaur and the accused appellants as well as Beero Bia (PW3), Jogendra Singh (PW4) and Jagir Singh were known to him and they were the resident of his village. A Panchayat was

held in the village at 8 am on 22.6.1995 after the death of Chhilo Kaur. He was also called in the said Panchayat. Beero Bia (PW3), the maternal grandmother of the deceased and Jogendra Singh (PW4), her maternal uncle (mama) were also present in the said Panchayat. It came into light in the said Panchayat that Chhilo Kaur used to suffer fits and died of same. It was agreed in the Panchayat that the articles belonging to deceased Chhilo Kaur would be returned to her maternal grandmother and maternal uncle and the same were also returned after her cremation. Parents of Chhilo Kaur were informed by the family members of deceased after her death. In his cross-examination, this witness has stated that maternal grandmother and maternal uncle of the deceased had expressed doubt about the cause behind her death. He has further stated that on the date of incident he reached at the house of Chhilo Kaur at about 7-7.30 am. Accused appellant Gurmeet Singh, brother Charan Singh and one Pala Singh of his village had come to call him.

17. Learned Counsel for the accused appellants argued that on the basis of the evidence discussed above, the case against the accused appellants for the offence punishable Under Section 304B, 498A and 201 IPC is not proved beyond reasonable doubt by the prosecution.

18. The accused appellants have been convicted Under Section 304B, 498A and 201 IPC and, therefore, before any further discussion, it would be appropriate to quote these sections for the sake of convenience and the same are reproduced as under:

304B. Dowry death.--(1)Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation.--For the purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purpose of this section, 'cruelty' means--

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

201. Causing disappearance of evidence of offence, or giving false information to screen offender.--Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.--shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.-- and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.--and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

19. The evidence adduced on record has to satisfy the necessary ingredients provided under the aforesaid sections of IPC for sustaining the conviction and in the aforementioned factual backdrop, I have to consider as to whether a case has been made out for conviction of the appellants under the aforesaid sections of IPC.

20. The essential ingredients for proving the offence under Section 304B IPC are (i) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry; and (v) such cruelty is shown to have been meted out to the woman soon before her death.

21. The significant words are 'burns or bodily injury or otherwise than under normal circumstances', 'within seven years of marriage' and 'soon before her death'. The main ingredient of Section 498A IPC is also the act of cruelty by the husband or the relative of the husband of a woman.

22. Undisputedly, the deceased died within two years of her marriage and she did not die under normal circumstances as bodily injuries were present on her body. Now, in order to prove the offence against the appellants/accused Under Section 304B and 498A IPC, it was, thus necessary for the prosecution to establish that soon before her death, the deceased must have been subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

23. So far as another condition of cruelty or harassment of the deceased soon before her death is concerned, it has come in the evidence of PW2 Balbir Singh

and PW3 Beero Bia that they had seen the dead body of Chhilo Kaur in the house of accused appellants and noted the sign of strangulation on her neck. Her teeth was also broken and there was a bulge (swelling) on her head. It has also come in the statement of PW2 Bablir Singh that before her death, Smt. Chhilo Kaur was keeping good health. These circumstances clearly indicates that deceased Chhilo Kaur was subjected to cruelty and harassment soon before her death. But now the question arises as to whether she was subjected to cruelty for any demand of dowry.

24. As regards the demand of dowry by the accused appellants, it has come in the statement of PW1 Pratap Singh (father of the deceased) as well as in the statements of PW2 Balbir Singh and PW3 Beero Bia that the accused appellant Charan Singh was demanding motorbike and land in dowry. The said demand is alleged to have been made only by Charan Singh. Nowhere it has come in the evidence that other accused appellants, viz., Gurmeet Singh and Santo Kaur were demanding anything in dowry and even no allegation of any cruelty or harassment has been made against them. As such, demand of dowry and harassment is proved but only against the accused appellant Charan Singh who often used to ask the deceased Chhilo Kaur to bring motorbike from her father. Later on he also started demanding land.

25. The aforesaid conduct of accused appellant Charan Singh shows that the deceased was physically and mentally tortured by him for the demand of dowry which resulted in her death and she was subjected to cruelty and harassment soon before her death as her teeth was broken, her neck was strangulated and there also was a swelling on her head as has been discussed above. He did not immediately inform the parents of deceased and even the relatives of the deceased i.e. Balbir Singh and Beero Bia were stopped by him when they wanted to approach the police station and the dead body was cremated without informing the parents of the deceased. As regards the explanation furnished on his behalf that a Panchayat was held after the death of Chhilo Kaur wherein it was held that her death was natural. But no proceedings of said Panchayat has been filed on record. Even the names of the Panches or witnesses thereof have not been disclosed and it has also not been disclosed as to how and on what basis the

Panchayat came to the conclusion that the deceased died a natural death because of suffering fits. Soon thereafter the dead body was also cremated without even informing the parents of deceased. As such, accused appellant Charan Singh knowing that an offence has been committed, caused the evidence of the commission of that offence to disappear with the intention of screening himself from the legal punishment which is an offence punishable under Section 201 IPC.

26. In view of my foregoing discussion, offence Under Section 304B, 498A, 201 IPC is only proved against the accused appellant Charan Singh, but the prosecution has failed to prove the aforesaid offences punishable under Section 304B, 498A, 201 IPC against the accused appellants Gurmeet Singh and Santo Kaur beyond reasonable doubt and they are entitled to get the benefit of doubt. As such, the impugned judgment and order of the trial court is liable to be set aside to this extent only.

27. Learned Counsel for the appellants further submitted that the sentence of ten years' RI under Section 304B IPC awarded to the accused appellant Charan Singh by the trial court is very excessive in view of the fact that the case pertains to the year 1997 i.e. 13 years' old and the appellant has got no previous criminal history and it was the first offence committed by him. There is no other case pending against him. She further submitted that accused appellant Charan Singh is an illiterate and poor person who belongs to lower strata of society and he also got married after the said incident and is only earning member of his family and, therefore, some lenient view may be taken towards the sentence awarded to him by the trial court.

28. After considering the arguments advanced by Learned Counsel for the appellants and the other facts and circumstances of the case, I deem it proper that ends of justice would be met if the sentence of ten years' R.I. under Section 304B IPC awarded to the accused appellant Charan Singh is reduced to seven year's RI. As such, the impugned judgment and order of the trial court is liable to be modified to the said extent.

29. In the result, the appeal is partly allowed. The conviction of the accused appellant Charan Singh is upheld and the sentence awarded to him to undergo R.I. for 2 years Under Section 498A IPC and R.I. of 2 years Under Section 201 is hereby also affirmed. However, the sentence of ten years' R.I. under Section 304B IPC awarded to him is reduced to seven years' R.I. The conviction of the accused appellants Gurmeet Singh and Santo Kaur Under Section 304B, 498A and 201 IPC is hereby quashed and they are acquitted of the charges levelled against them and hence, the sentence awarded to appellants Gurmeet Singh and Santo Kaur to undergo R.I. for 10 years Under Section 304B IPC, R.I. for 2 years Under Section 498A IPC and R.I. of 2 years Under Section 201 IPC is hereby quashed. Judgment and order dated 28.8.1997 passed by the Special Judge/Additional Sessions Judge, Nainital in Sessions Trial No. 464 of 1995 State v. Charan Singh and Ors. is set aside only to the extent indicated above. All the sentences of accused appellant Charan Singh shall run concurrently. However, the period during which he was in jail during investigation, trial and appeal shall be adjusted after verifying the same from the records. Appellants are on bail. Appellant Charan Singh shall immediately be taken into custody to serve out the aforesaid sentence awarded to him. Other appellants Gurmeet Singh and Santo Kaur need not surrender unless required in any other case and their bail bonds are cancelled.

30. A copy of this judgment and order be sent to the trial court for its compliance. Let the lower court record be sent back.

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