

PRADEEP KUMAR
v.
STATE OF HARYANA
(Criminal Appeal No. 516 of 2006)

MARCH 31, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

Penal Code, 1860 :

s.304B and s.498-A – Essential ingredients – Deceased harassed by husband on account of dowry demand – Conviction under s.304B, s.498-A and s.302 – Affirmed by High Court – Held : On facts, evidence adduced by prosecution to substantiate the allegation of commission of offence under s.302 was that accused and deceased stayed in the same house – That was not sufficient to hold the accused guilty for offence under s.302 – However accusation relating to s.304B satisfied – Custodial sentence of 10 years would meet ends of justice.

Prosecution case was that appellant was harassing his wife for bringing dowry items. On the fateful day, she was found dead. Trial Court convicted appellant and the co-accused guilty under s.304B and s.498A IPC. Appellant was separately also convicted under s.302 IPC and awarded life imprisonment. High Court directed acquittal of the co-accused persons but upheld the conviction and sentence of appellant. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: It is undisputed that the marriage took place on 9.10.1996 and the date of occurrence was 25.1.1997. The co-accused persons were the father and the brother

A of the appellant. The only evidence adduced by the
prosecution to substantiate the allegation of commission
of offence punishable under Section 302 IPC was that the
accused and the deceased stayed in the same house.
That was not sufficient to hold the appellant guilty for
B offence punishable under Section 302 IPC on the facts
of the case. However, the accusations related to Section
304B IPC were satisfied. Therefore while setting aside the
conviction for offence punishable under Section 302 IPC,
the conviction, so far as it related to Section 304B IPC is
C upheld. Custodial sentence of ten years would meet the
ends of justice. [Paras 6 and 8] [301-C-D; 302-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 516 of 2006.

D From the Judgment & Order dated 07.03.2005 of the High
Court of Punjab & Haryana at Chandigarh dismissing in
Criminal Appeal No. 740-DB of 2002.

Nagendra Rai, Keshav Mohan, W. Gilani and T. Singh (for
E Ejaz Maqbool) for the Appellant.

T.V. George for the Respondents.

The Judgment of the Court was delivered by

F **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is
to the judgment of a Division Bench of the Punjab and Haryana
High Court upholding the conviction of the appellant for offence
punishable under Sections 302 and 304(B) of the Indian Penal
Code, 1860 (in short the 'IPC'). He was sentenced to undergo
rigorous imprisonment for life for the first offence but no
G separate sentence was imposed for the second offence.

2. Appellant alongwith two others faced trial. Each was
charged for having committed offences punishable under
Section 304(E) IPC and Section 498A IPC. Appellant alone

was separately charged for offence punishable under Section 302 IPC.

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3. Prosecution version as unfolded during trial is as follows:

Kewal Krishan (PW 4) is the complainant. He is a resident of Ambala City. He is the Director of G.G. Flour Mills. He had four daughters and two sons. Marriage of his eldest daughter Suman Rani alias Anamika (hereinafter referred to as the 'deceased') was solemnized with appellant Pardeep Kumar alias Raju on 19.10.1996 in Laxmi Palace at Patiala. As per asking of the accused persons dowry and streedhan was given according to the capacity of the complainant on the festival of Karva Chauth, complainant's daughter Anamika along with appellant and, Anamika's father-in-law and mother-in-law came to their residence. Sufficient articles were given on Karva Chauth. On that day, Anamika told the complainant that her husband Pardeep Kumar who was running a shop at Yamuna Nagar in the name and style of New Punjab Tractors, wanted to take her to Yamuna Nagar. He demanded colour T.V., washing machine, Godrej almira and a refrigerator. Thereafter his daughter went to her in-law's place in Village Dhanola, District Sangrur (Punjab). Ten to fifteen days thereafter, complainant's daughter rang them up from Dhanola that she along with her husband were shifting to Yamuna Nagar and the articles demanded should be sent to her at Yamuna Nagar. Complainant Kewal Krishan along with Mohinder Pal son of Bachan Lal resident of Ambala City came to Yamuna Nagar. They purchased colour T.V., washing machine, Godrej almira and a refrigerator and handed them over to the appellant in his house. Complainant's wife was operated upon at Ambala for some ailment. Anamika came to see her mother. Anamika did not look well. Complainant Kewal Krishan enquired about her health. Anamika stated that her husband, father-in-law and brother-in-law Parveen Kumar were threatening that if she wanted to remain alive, she should get Rs.2 lacs from her father,

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A as they wanted to expand their business at Yamuna Nagar. This demand was met and complainant gave Rs.50,000/- and requested for some time so that he will pay the remaining amount after arranging for it. This amount was given about a month prior to the death of Anamika. About 15 days before her death, Anamika made a telephone call to the complainant that her father-in-law Prem Nath had told her husband Pardeep Kumar that if Anamika did not arrange for the remaining amount, she should be eliminated, he would arrange for everything and perform his second marriage. Again on 23.1.1997, complainant's daughter gave a telephonic call to the complainant, that if 'the remaining amount was not arranged within 2/3 days, she would be eliminated.

On 25.1.1997 at about 9.30 p.m., Anil Kumar (PW-3) gave a telephonic call to the complainant that Anamika had got burnt by a gas cylinder. Complainant made a telephonic call to his brother Suresh Pal and his father Rameshwar Dass at Cheeka to reach Ambala. On their arrival from Cheeka, complainant along with them left for the house of his daughter at Yamuna Nagar. On reaching there, he saw his daughter lying dead on a double-bed. Besides her were lying a gas-cylinder, matchsticks and half burnt papers.

Investigation was undertaken and on completion thereof, chargesheet was filed.

F As accused persons abjured guilt, trial was held.

In order to further the accusations fifteen witnesses were examined. The trial court found the appellants and the co-accused persons guilty. By the impugned judgment High Court directed acquittal of the co-accused persons Prem Nath and Parveen Kumar, but upheld the conviction and sentence of appellant as aforementioned.

The trial court and the High Court placed reliance on the evidence of PWs 2, 3 & 4.

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4. In support of the appeal learned counsel for the appellant submitted that there was no evidence of the appellant having committed offences as alleged. There is no direct evidence to hold that the appellant has committed murder of the deceased.

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5. Learned counsel for the respondent on the other hand supported the judgment of the High Court confirming that of the trial court.

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6. It is undisputed that the marriage took place on 9.10.1996 and the date of occurrence is 25.1.1997. The co-accused persons were the father and the brother of the appellant. The only evidence adduced by the prosecution to substantiate the allegation of commission of offence punishable under Section 302 IPC is that the accused and the deceased stayed in the same house. That according to us is not sufficient to hold the appellant guilty for offence punishable under Section 302 IPC on the facts of the present case. However, the accusations related to Section 304 B IPC are satisfied.

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7. Section 304 B IPC reads as follows:

“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.”

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5. The necessary ingredients of Section 304 B IPC are as follows:

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- (1) The death of the woman was caused due to burns, bodily injuries or due to unnatural circumstances.

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- A (2) The death should be within seven years of marriage.
- (3) It is shown that soon before death victim was subjected to cruelty or harassment by her husband or any relative of the husband.
- B (4) The cruelty or harassment was for or in connection with any demand for dowry.

C 8. Therefore while setting aside the conviction for offence punishable under Section 302 IPC, we uphold the conviction, so far as it relates to Section 304 B IPC. Custodial sentence of ten years would meet the ends of justice. The appeal is allowed to the aforesaid extent.

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Appeal partly allowed.