

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr. Appeal No.: 416 of 2006

Reserved on: 24.12.2012.

Date of Decision: 31.12.2012.

State of Himachal Pradesh.

...Appellant.

Versus.

1. Rajesh Kumar son of Sh. Bishambhar Dass, Caste Bahti, Resident of Loharli, Tehsil Amb, P.S.Gagret, District Una, H.P.
2. Smt. Vidya Devi Wd/o Bishambhar Dass, Caste Bahti, Resident of Loharli, Tehsil Amb, P.S.Gagret, District Una, H.P.

...Respondents.

Criminal Appeal under Section 378 of the code of Criminal Procedure.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for Reporting? No.

For the Appellant-State: Mr. Rajesh Mandhotra, Dy. A.G. & Mr. Ramesh Thakur, Asstt. A.G.

For the Respondents: Mr. Hemant Vaid, Advocate.

Per Deepak Gupta, J.

1. This appeal by the State is directed against the judgement dated 18.09.2006 delivered by the learned Additional Sessions Judge, Fast Track Court, Una, District Una in Sessions trial No. 16/06 whereby he acquitted the respondent-accused of having committed offences punishable under Sections 306, 498-A read with Section 34 IPC.
2. The undisputed facts of the case are that Usha Kumari deceased was married to accused Rajesh Kumar

on 10.10.1999. It is also not disputed that she in fact committed suicide on 18.08.2002 by consuming some insecticide/pesticide containing aluminium phosphide and died as a result of aluminium phosphide poisoning. After her death her father PW-1 Kamal Kishor lodged a complaint with the police (Ext.PW-1/A) alleging that after the marriage for some time his daughter was treated well by her in-laws including accused Rajesh Kumar and co-accused Vidya Devi mother of Rajesh Kumar. However, thereafter the two accused started harassing and troubling the deceased and kept demanding money and some articles as dowry. The prosecution story is that the deceased was treated with cruelty and this cruelty related to the demand of dowry and therefore, the accused are guilty of having committed offences punishable under Sections 306, 498-A read with Section 34 IPC.

3. At the outset, we may notice that the deceased committed suicide within seven years of her marriage. The only question is whether the prosecution has proved that the accused have treated the deceased with cruelty and are guilty.

4. The prosecution examined a number of witnesses but for the purpose of this appeal it would only be necessary to refer to the statements of PW-1 Kamal Kishor, father of the deceased, PW-2 Roshni Devi, mother

of the deceased and PW-3 Pawan Kumar, brother of the deceased.

5. The father while appearing in Court stated that his daughter Usha Kumari was married to accused Rajesh Kumar on 10.10.1999. She was treated well for some time by her in-laws but later on they started troubling her. As a result of this maltreatment his daughter suffered from some mental problem and he got her treated at home and after treatment she was sent back to her matrimonial home. According to the father the harassment of the deceased did not stop even thereafter and on one occasion he was asked to provide a ceiling fan and Rs.6000/- which he gave to the accused. This witness also states that Rs.15,000/- had been deposited by him in the name of deceased Usha Devi before her marriage and when accused Rajesh Kumar came to know about this deposit he insisted that this money be paid to him. Thereafter, the complainant arranged for Rs.15,000/- and paid this amount to the accused. At this stage it would be relevant to mention that in the complaint it was written that this amount had been withdrawn from the fixed deposit and then paid to the accused. Despite this the harassment continued and did not stop and on 18.8.2002 he received a telephonic message from the accused that Usha Devi was suffering from vomiting and loose motions.

He and his son Pawan Kumar went to the house of the accused and reached there at 12.30 a.m in their own vehicle. Usha was lying unconscious and one private doctor was attending upon her. Accused Rajesh Kumar and other persons were present. Thereafter, Usha was brought to the hospital at Amb where accused Rajesh Kumar told PW-3 Pawan Kumar that Usha had consumed some poisonous substance. Then the doctor referred Usha to the District Hospital, Una where Usha despite best efforts of the doctor unfortunately expired. The complaint was lodged on the next day.

6. This witness was shown the complaint Ext.PW-1/A and admitted that he had stated that his daughter was not in a proper frame of mind. He states that he had not got her treated from a psychiatrist but had got her treated from Dr. Naresh. According to him the fan was demanded 2-3 months after the marriage. He then stated that the ceiling fan and Rs.6,000/- was demanded on two separate occasions and he could not give any details when this amount of Rs.6000/- was paid. It, however, appears that some amount was given by this witness to the deceased at the time when sister-in-law of the deceased (sister of the accused) was getting married. Though in the complaint it was stated that Rs.15,000/- deposited in the account of Usha Kumari was withdrawn while appearing in the Court

this witness stated that he had deposited a lesser amount which on maturity was to become Rs.15,000/-. He also stated that he had in fact not withdrawn this amount of Rs.15,000/- since the sum had not matured. He gave a new version in Court that he arranged the money from other sources i.e. Rs.8,000/- from his own salary and Rs.7,000/- as loan from his son-in-law Jiwan Kumar. These facts were not stated in the original complaint. He also admits that he never made any complaint to any person or authority about the demands of dowry or other harassment or beatings administered to his daughter by the accused. He admits that his statement and the statement of his son were recorded before the body of the deceased was handed over to cremation. He also admitted his signature on Ext.DA which is a compromise entered on at a later stage whereby he had agreed to withdraw the criminal charges made against the accused.

7. PW-2 Roshni Devi is the mother of the deceased. Her statement is similar to that of Kamal Kishore, father of the deceased. She admits that at the time of marriage no demand of dowry was made by the accused persons. According to her, prior to the occurrence she had seen the signs of beating on the face and shoulder of Usha. She, however, made no complaint about this to the Panchayat and according to her she had got treated her daughter

from Dr. Kashmir. She also admits that it was Usha who had asked for Rs.15,000/-, which was given to her by the parents and thereafter Usha never demanded any dowry nor she disclosed any fact about her harassment by the accused persons.

8. PW-3 Pawan Kumar is the brother of the deceased. According to him when they were informed that his sister was vomiting, he alongwith his father went to the house of the accused where his sister was lying unconscious alongwith some private doctor. Thereafter, Usha was taken to the hospital at Amb since he knew that Dr. Verma was posted there. There he was told by accused Rajesh Kumar that Usha had consumed poison. According to him if accused had told about this fact earlier he would have straight way taken his sister to the District Hospital, Una. With regard to the illtreatment there is virtually no statement by this witness except that Usha had demanded a fan and on two occasions she demanded Rs.6,000/- and Rs.15,000/-. According to him Usha was treated by Dr.Naresh. This is the entire material with regard to the harassment of the deceased.

9. According to the prosecution witnesses the deceased was got treated from two doctors i.e. Dr. Naresh and Dr. Kashmir. None of these doctors have been examined to show what was the ailment which the deceased was

suffering from. It is, however, clear that she was suffering from some mental ailment, which may be depression. From the statement of the parents and the brother it appears that it is the deceased herself who demanded the money. As far as the ceiling fan is concerned, it virtually stands proved that the ceiling fan was given but this cannot be termed as a demand for dowry. A ceiling fan could be given to make the daughter comfortable also. It is also in evidence that the ceiling fan was to be used by the sister of the accused Rajesh Kumar since she used to impart tuitions in a room which did not have a ceiling fan.

10. Whether we may approve of such a practice or not, the fact is that in India sometimes the parents of a daughter have to spend money on the marriage of her sister-in-law, etc. These are not demands for dowry. First of all it is not proved that Rs.6,000/- was given but even it is held that Rs.6000/- was given that would not amount to a dowry demand. Similarly, the amount of Rs.15,000/- being in the name of the deceased was her money. As per the family members this money was not demanded by the accused persons but by the deceased. There is no evidence that the accused persons ever demanded money. There is no evidence to corroborate the statements of these witnesses that the accused was beaten by the

accused. No doctor has been examined. According to the father he arranged Rs.7000/- from his son-in-law Jiwan but Jiwan has also not been examined. Furthermore, the statement of father is totally unbelievable because in the complaint he has stated that he had withdrawn Rs.15,000/- which was in the name of Usha but later he given the explanation that he has arranged for some money since the said deposit had not matured. He admits that later he received this amount. There is no letter by the deceased or the statement of any independent witness to prove the fact that she was treated with cruelty.

11. In these circumstances, the learned trial Court was fully justified in acquitting the accused. We, therefore, find no merit in the appeal, which is accordingly dismissed. The bail bonds furnished by the accused are ordered to be discharged.

(Deepak Gupta)
Judge.

31st December, 2012
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(Kuldip Singh)
Judge.