

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 103/2011
Reserved on: April 28, 2016
Decided on: April 29, 2016

Adarsh Guleria Appellant

Versus

Rajinder Singh and others Respondents

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge

Hon'ble Mr. Justice Vivek Singh Thakur, Judge

Whether approved for reporting? ¹ yes.

For the appellant : Mr. Virender Thakur, Advocate.

For the respondents : Mr. Anoop Chitkara, Advocate, for respondents No.1 to 5.

Mr. M.A. Khan, Additional
Advocate General, for the
respondent-State.

Per Rajiv Sharma, Judge:

Preset appeal has been filed by one Shri Adarsh Guleria, who was a complainant in FIR No. 25/09 dated 24.9.2009, Police Station, Jawali. He has assailed Judgment dated 7.8.2010 rendered by the learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala in S.C. No. 27-J/VII/09 (S.T. No. 26/10), whereby respondents No.1 to 5-accused (hereinafter referred to as 'accused' for convenience sake), who were charged with and tried for offences under Sections 498-A/34 and 306/34 IPC, have been acquitted.

¹ Whether the reporters of the local papers may be allowed to see the judgment? .

2. Case of the prosecution, in a nutshell, is that deceased Shivani was married to accused Rajinder on 22.2.2008. Dhan Devi is the mother of accused No.1, whereas Dharamvir is his brother and Sunita is the wife of accused Dharamvir. Sandeep is the nephew of Rajinder. All the accused persons had subjected Shivani to cruelty by giving her physical as well as mental torture and also demanded dowry from her. On 11.1.2009, complainant Adarsh Guleria, brother of Shivani alongwith his sister Shivali and cousin Jyoti had gone to the house of accused on the occasion of *Lohri*. Adarsh Guleria had come back, whereas Jyoti and Shivali stayed at the house of accused. On 13.1.2009, accused persons quarreled with Shivani and they held her responsible for the loss in business. On 13.1.2009, at 7.30 PM, Shivani telephonically narrated the aforesaid occurrence to Adarsh Guleria and Shivani had also told Adarsh Guleria that accused persons had been torturing her. She also told that she would be coming back with her sister. Consequently, on 14.1.2009, Shivani had come back to the house of complainant alongwith Shivali and Jyoti. Shivani also told the complainant that accused persons doubted her character. On 21.1.2009, Accused Rajinder had called Shivani to Dehra and Shivani had met accused Rajinder and Sandeep at Dehra. When Shivani came back from Dehra, she became sad and did not talk to anybody. On 22.1.2009, complainant Adarsh Guleria received information that Shivani had committed suicide by hanging herself with the ceiling fan. The police was informed

and statement of complainant was recorded under Section 154 CrPC wherein he alleged that accused persons had abetted Shivani to commit suicide. The post-mortem was conducted. Admitted handwritings of Shivani as well as her questioned handwritings were sent to the Examiner and report was obtained by the police. Investigation was completed. Challan was put in the Court after completing all the codal formalities.

3. Prosecution has examined as many as ten witnesses to prove its case against the accused. Accused were also examined under Section 313 CrPC. They pleaded innocence. Learned trial Court acquitted the accused. Hence, this appeal.

4. Mr. Virender Thakur, Advocate, has vehemently argued that the accused have wrongly been acquitted by the learned trial Court.

5. Mr. Anoop Chitkara, Advocate appearing for the accused, has supported the judgment dated 7.8.2010.

6. We have heard the learned counsel for the parties and also gone through the record carefully.

7. PW-1 Adarsh Guleria is brother of Shivani. He deposed that Shivani was younger to him and Shivali was the youngest. Shivani was married to accused No.1 Rajinder on 22.2.2008. On 11.1.2009, he alongwith his younger sister Shivali and cousin Jyoti had gone to the house of accused at Gajowal on the occasion of *Lohri*. He came back on the same day whereas his sisters stayed there. At that time accused Narinder was not present in his house. On 13.1.2009, he received telephone from

Shivali at 7.30 PM that accused Rajinder had come and Shivani was made to sit in one room and all the accused were quarreling with her. Adarsh told that he would be coming. After an hour, Shivani telephoned him not to come as accused persons were torturing her and she would be coming on the next day with Shivali and Jyoti. Shivani told that the accused persons were doubting her character and they had also alleged that after her marriage, they had sustained loss in the business and accused persons had demanded money. On 21.1.2009, Rajinder had called Shivani to Dehra. Shivani had gone to Dehra and after coming back she had told that she had met Rajinder and Sandeep. She did not tell about the discussions she had with Rajinder and Sandeep. She had become sad and was not talking to anybody. On 22.1.2009, in the morning at 10.00 AM, he went to his office. He received telephone at 11 o'clock to come back and came to know that Shivani had committed suicide by hanging herself from the ceiling fan. They informed police. Police got the post mortem conducted and on 23rd they cremated the dead body of Shivani. On 24th Police recorded his statement Ext. PW-1/A. He could not give statement to the police earlier because they were upset due to untimely death of Shivani. On 22nd Police took into possession two *Chunnies* which were produced by his father. *Chunnies* were sealed in a parcel. He had identified the *Chunnies* Ext. P2 and Ext. P3. In his presence, police had taken into possession one suicide note written by his sister, Shivani, vide recovery memo Ext. PW-1/C. Suicide note was produced by

his father. Police recorded his statement. In his cross-examination, he has admitted that the marriage was arranged one after satisfying themselves with the financial and social status of the family of the accused and employment of accused Rajinder. On 22nd, police came to their house and house was inspected. He was also present. He lodged complaint to the police. Police had not recorded his statement. He also admitted that at the time of marriage, accused have not demanded any dowry and they had also not given any dowry. He also admitted that from 14.1.2009 to the morning of 21.1.2009, behaviour of Shivani was normal. He has also admitted that from June 2008 to December 2008, Shivani had stayed with them. Volunteered that accused persons had left Shivani with them and they were not coming to take her back. He admitted that Shivani had gone to the house of in-laws only 15 days prior to *Lohri*. He admitted that accused Dharamvir lived in separate house. Volunteered that the courtyard of that house was common. He also admitted that accused Sandeep lived in separate village. He admitted that Shivani was running a computer centre at Chauntra. He admitted that it was in the mind of Shivani that she was married in an old, conservative and orthodox family. He denied that due to this reason she used to remain unhappy.

8. PW-2 Narinder Guleria deposed that Shivani was his daughter. She was married to accused. They had doubted the character of Shivani and blamed her for losses in the business and demanded money from her. These facts were narrated by

Shivani to him. On 11.1.2009, his son, other daughter Shivali and niece Jyoti had gone to the house of accused on the occasion of *Lohri*. His son Adarsh had come back on the same day, whereas Jyoti and Shivali stayed back. On 13.1.2009 his son Adarsh received telephone from Shivani that all the accused had been quarreling with her. When Adarsh got ready to go to Shivani's place, Shivani telephonically told not to come as she would be coming back on the next day alongwith Shivali and Jyoti because the accused persons were torturing her. On 14.1.2009, Shivani came to their house with Shivali and Jyoti. Shivani told them about the aforesaid behaviour of accused persons. On 21.1.2009, Shivani had gone to Dehra to meet Rajinder and Sandeep. This fact had been told to him on her return. Thereafter, she had become sad and upset. On 22.1.2009, at 10.30 AM when his son had gone to his office, Shivani had committed suicide by hanging herself. He called his son back. Police was informed. Police took body for post mortem. On the same day, he could not reveal all these facts to the police being under shock. He has given statement to the police on 24th. He produced *Chunnies* Ext. P2 and Ext. P3. In his cross-examination, he has admitted that the marriage was an arranged one and status of the family of accused was ascertained. Accused persons had not demanded any dowry. They had also not given any dowry. After marriage also, he did not give dowry to the accused. accused did not demand dowry. From 14th to 20th Shivani was normal. He had asked Shivani about discussions she

had with Rajinder and Sandeep on 21st at Dehra but she did not tell anything. He also admitted that Shivani stayed with them from June 2008 to December 2008. House of Dharamvir was separate. Sandeep resided in another village.

9. PW-3 Savita Prashar deposed that she knew Shivani. They were running computer centre at Chauntra. Shivani was married to accused Rajinder. She was told by Shivani that her husband doubted her character and he also used to beat her. Shivani had also told that her father-in-law, mother-in-law and brother-in-law (*jeth*) were not behaving properly and they had been mentally torturing her. She also told her that her husband was demanding money. In her cross-examination, she has admitted that she has disclosed in her statement to the police that Shivani told that her in-laws used to observe old customs and were conservative. Shivani had told her that the village in which she was married was backward. There were no medical facilities.

10. PW-4 Divya Jyoti deposed that on 11.1.2009, she, Shivani and Adarsh had gone to the in-laws of Shivani on the occasion of *Lohri*. Adarsh had come back on the same day. She and Shivali stayed back. On that day, accused Rajinder was not present. Rajinder came on 13th. On 13th at 5.30 PM, all the accused had started quarreling with Shivani. Accused were saying that Shivani was responsible for the loss in their business. They were also raising doubts over the character of Shivani. Shivani telephonically informed Adarsh about this. After some

time, Shivani telephoned Adarsh not to come as she would be coming back with them on the next day. They came back on 14th. In her cross-examination, she has admitted that she had not given any statement to the police on 22nd. She had seen police in the house of Shivani on 22nd. She had not given any statement to the police on 23rd. Shivani had gone to her in laws about 10/15 days prior to *Lohri*. She admitted that Shivani had participated in beauty contest. She used to say that she was married in a conservative family. She admitted that on 14th she had come to her house and had not told anything to anybody. She also admitted that all the accused had attended the cremation of Shivani.

11. PW-6 Dr. Ashutosh Joshi has conducted post-mortem examination. Post-mortem report is Ext. PW-6/C. Probable time between injury and death was instantaneous and between death and post mortem was 24 to 26 hours. Cause of death was due to hanging which was ante mortem.

12. PW-7 Visheshwer Sharma has proved report Ext. PW-7/A and detailed reasons Ext. PW-7/B. In his opinion, blue enclosed writing and signatures sent and marked as A-1 to A-5 in Ext. P5 and the red enclosed writings and signatures similarly stamped and marked as Q-1 and A-4 in PW-4 were all written by one and the same person

13. SI Tilak Raj deposed that he reached the spot. Dead body of Shivani was lying on the floor. He had taken into possession *Dupattas* Ext. P2 and Ext. P3 which were produced

by Narinder Singh vide Ext. PW-1/B. He had also produced one suicide note and one handbook which was taken into possession vide Ext. PW-1/C. He filled in inquest papers Ext. PW-6/B. Dead body was taken into possession and sent for post mortem. He moved application Ext. PW-6/A for post mortem. On 22nd none had given any statement to him. On 24th he visited the spot. In his cross-examination, he admitted that on 22nd brother of deceased namely Adarsh and father Narinder were present and they had not lodged any complaint. He admitted that other relatives also did not lodge any report. He also admitted that from 14th to 21st, Shivani did not make any complaint to anybody. He admitted that house of Dharamvir was separate and village of Sandeep was also separate.

14. Marriage between accused No. 1 and deceased Shivani was solemnised on 22.2.2008. It was an arranged marriage. Marriage was solemnised after ascertaining the economic and social status of the accused family. PW-1 Adarsh Guleria has admitted that before marriage accused had not demanded any dowry. They did not give any dowry too. He also admitted that from 14th to 21st January 2009 (morning), behaviour of Shivani was normal. He has also admitted that from 14.1.2009 to the morning of 21.1.2009, behaviour of Shivani was normal. He has also admitted that from June 2008 to December 2008, Shivani had stayed with them. Volunteered that accused persons had left Shivani with them and they were not coming to take her back. He admitted that Shivani had gone to the house

of her in-laws only 15 days prior to *Lohri*. He admitted that accused Dharamvir lived in separate house. Volunteered that the courtyard of that house was common. Shivani had come back on 14.1.2009 with Shivali and Jyoti. PW-3 Savita Prashar admitted in her cross-examination that Shivani told that her in-laws used to observe old customs and were conservative. Shivani had told her that the village in which she was married was backward. PW-4 Divya Jyoti has admitted in her cross-examination that she has admitted that she had not given any statement to the police on 22nd. She had seen police in the house of Shivani on 22nd. She had not given any statement to the police on 23rd. PW-1 Adarsh Guleria and PW-2 Narinder Singh were present in the house. They have not lodged any complaint with the police on 22.1.2009 and 23.1.2009. Complaint was filed only on 24.1.2009. Accused family was present at the cremation. Police has taken into possession suicide note Ext. P4. It was found to be in the handwriting of Shivani as per the report of PW-7 Dr. Visheshwar Sharma. According to the contents of Ext. P4, deceased stated that she was being held responsible for every mishap. She did not trust anybody including herself. She did not want anybody to be unhappy due to her existence. She never wanted to break the marriage. She was not able to carry on with the married life. She was not able to carry on the relations. She blamed herself. She found that she was always wrong. Nobody should be held responsible for her act. There is nothing to suggest in the suicide note that accused persons were torturing her and due to this

reason she had committed suicide. It was apparent that Shivani was hyper-sensitive and could not adjust in the family of accused after marriage. There is no evidence on record to prove that she had committed suicide due to maltreatment at the hands of accused. Accused neither demanded dowry at the time of marriage nor thereafter. It has come in the statement of PW-1 Adarsh Guleria that deceased was normal between 14th and 21st January 2009 (morning). PW-2 Narinder has also stated that from 14th to 21st January, 2009 (morning) behaviour of Shivani was normal. Thus, there is no occasion for us to interfere with the well reasoned judgment of the learned trial Court.

15. In view of the discussion and analysis made herein above, the appeal has no merit and the same is dismissed. Bail bonds of accused are discharged.

All pending applications are also disposed of.

(Rajiv Sharma)
Judge

(Vivek Singh Thakur)
Judge

April 28, 2016
(vikrant)

