



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.202 of 2008.

Reserved on: 13th March, 2015.

Decided on: 18th March, 2015.

State of H.P.

...Appellant.

VERSUS

Jasbir Singh and others

...Respondents.

Coram

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

The Hon'ble Mr.Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes.

For the Appellant: Mr. J.S. Guleria, Assistant Advocate
General.

For the Respondents: Mr. Onkar Jairath, Advocate.

Sureshwar Thakur, Judge.

This appeal is directed against the judgment rendered on 27.08.2007 by the learned Sessions Judge, Bilaspur, H.P., in Sessions Trial No.16 of 2003, whereby the respondents have been acquitted of the offences punishable under Sections 302, 306 and 498A read with Section 34 of the Indian Penal Code.

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2. The facts, in brief, are that on 18.10.2002 at about 6.30 a.m., an information was received at Police Station Kot-Kehloor through B-10 (wireless set) that Smt. Harjeet Kaur resident of Village Majari (hereinafter referred to as the deceased) had consumed poison and that she was admitted in Nangal Hospital. In this regard, rapat No. 27, dated 18.10.2002 was got entered in the rapat roznamcha register. In order to verify this report, H.C. Jai Dev went to BBMB Hospital, Nangal, where he was told that on 17.10.2002 the deceased had been referred to PGI. On this, H.C. Jai Dev went to PGI and came to know from the O.P.D. that the deceased had not been brought there. Upon this, he returned to police station and made rapat No.27 in rapat roznamcha. On 18.10.2002, at about 9.30 p.m., the complainant telephonically informed police station that his niece (deceased) had died in a private hospital (Kakkar Hospital) under suspicious circumstances. On this information, rapat No.17, dated 18.10.2002 was entered in the rapat roznamcha and ASI Prith Pal left for Kakkar Hospital along with other police officials and recorded the statement of the complainant.

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3. It is highlighted that the complainant is the uncle of the deceased whose parents died in the year 1992 and that she along with her three sisters and brother was under the care and custody of the complainant, who also married her to accused Jasbir Singh about seven/eight years ago. Only after one year of the marriage, accused Jasbir Singh started giving beatings to the deceased and also stopped paying her money. Thereafter, he went to Dubai and used to visit his house/native place after every year. It is alleged that whenever, he used to visit his house, his "Bhabi", accused No.3 Malkiat Kaur had been instigating him against the deceased and for this reason, she was being given beatings besides subjected to harassment. As such, accused No.3 had also been participating in the maltreatment and ill treatment meted out by accused No.1 to the deceased. Regarding being harassed/given beatings, the deceased had been complaining the complainant many times but every time, he along with other family members, used to prevail upon her to have patience so that in future, accused No.1 and accused No.3 may mend their ways to treat her nicely. Even accused No.1 had been admitting his mistakes by promising/assuring to keep the deceased well and to provide her

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money etc. In this regard, there had also been a written compromise. Twice, the deceased had also told that accused No.1 used to say/threaten that since she (deceased) was unable to bear children, he would remarry and leave or kill her. Accused No.3 also wanted this and used to torture and beat her when accused No.1 had been away to Dubai. From the date of alleged occurrence, accused No.1 had come from Dubai a week ago. On 18.10.2002, some unknown person telephonically informed the complainant that on 17.10.2002, during night time, the deceased had consumed poison and that she had been removed to Nangal Hospital from where she was referred to PGI, but the accused got admitted her in Kakkar Hospital, Morinda (hereinafter referred to as the Hospital) in stead of taking her to PGI. Upon this, he, along with Jaswant Singh and other relatives, went to the Hospital where the deceased was in a critical condition. Accused No.3 was also sitting by her side. There he came to know that accused No.1 and accused No.3 had got her admitted there (hospital) and himself (accused No.1) went away and did not return. The complainant expressed his suspicion/doubt that the deceased had consumed poison for the reason that she had been fed up by the harassment and ill-

treatment being given to her besides beatings. Consequent upon the aforesaid facts/allegations, case under Sections 498A, 306 read with Section 34, IPC was registered. Inquest papers were prepared and dead body was got sent to District Hospital, Bilaspur, where postmortem was conducted. Site plan was prepared and the house of the accused persons was searched.

4. During the course of the investigation conducted by Shri Gurdial Singh, the then SHO of the police station, it was unraveled that the deceased had told Dr. Neeraj kakkar that on the date of incident her husband (accused No.1) had beaten her and strongly hold her and that accused No.2 Charan Kaur made her to take poison. As such, on such statement of Dr. Neeraj Kakkar, Section 302 was also added. The clothes and viscera of the deceased were got sent to the FSL and to this effect, report was obtained as per which no poison had been detected. On having received this report, it was produced before the doctor who had conducted the postmortem because as per their opinion, they had also expressed the possibility of the deceased to have died by poisoning or torsion of left ovarian cyst leading to hemorrhagic ascitis. In these circumstances, in order to clarify the contradictory

opinions/versions, a clarification was again sought from FSL which was given as per report of SFSL/Crime 02-3132 dated 28.11.2002. In that report, it was made clear that in cases, where no traces of poison are found, that should not assumed to rule out poison. In the report, the possible reasons of negative findings were given which are as under:-

- (i) The poison may have been eliminated by vomiting and diarrhea.
- (ii) The whole of the poison may have disappeared from the lungs by evaporation or oxidation.
- (iii) The poison after absorption may be detoxified, conjugated and eliminated from the system.
- (iv) If the victim has been treated, the medication itself may alter the poisonous substance and make its detection difficult or even impossible.
- (v) Volatile and gaseous poisons if not properly preserved disappeared rapidly from the tissue with passage of time."

5. On the basis of clarifications, received from FSL aforesaid, the opinion of the doctors who had conducted the

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postmortem was again obtained and it is to this effect that "if the suspected poison has been eliminated from the body by vomiting diarrhea, evaporation from the lungs, then there could be a possibility of poisoning. From the subsequent opinion given by the doctors who had conducted the postmortem examination, the prosecution theory/story that the deceased had been administered poison with an intention to kill her got support/strength. Thus, A-2 was also arrested on 13.11.2002.

6. From the spot position, statement of the witnesses, records from BBMB Hospital, Nangal and the Kakkar Hospital, FSL clarification report and the injuries found on the dead body, as per their mention in postmortem report, it was found in the investigation that accused No.1 had given beatings to the deceased with a broom (jharu) and that when she became helpless, she was made to take poison which was administered by accused No.2 for the reason that she was unable to bear a child. When the deceased started vomiting, it got rumoured that she had taken poison. In the investigation, it further came that although, it had taken place on 17.10.2002 at 8/8.30 p.m. but she was admitted at BBMB Hospital, Nangal on the night intervening 17/18.10.2002 at 1.00 a.m. In

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fact, the distance of Nangal from Majari is only that of half an hour. Further, although, the deceased had been referred to PGI but she was taken to Kakkar Hospital which also casts a doubt on the conduct of the accused persons. Even, accused No.1 managed to run away after getting the deceased admitted in the hospital on 18.10.2002 at 6.00 a.m. and did not take her body and perform the last rites. Written compromise dated 22.11.1993 also gave strength to the case of the prosecution that the deceased was being harassed/given beatings by accused No.1. Hence the trial.

7. On conclusion of investigation into the offence, allegedly committed by the accused/respondents, challan was filed under Section 173 of the Code of Criminal Procedure.

8. The accused No.1 was charged for his having committed offences punishable under Section 498-A, 306 and 302 read with Section 34 IPC and accused No.2 and 3 were charged for theirs having committed offences punishable under Sections 306, 498A read with Section 34 of the IPC by the learned trial Court, to which they pleaded not guilty and claimed trial.

9. In order to prove its case, the prosecution examined as many as 16 witnesses. On closure of the prosecution evidence, the

statements of the accused under Section 313 Cr.P.C., were recorded, in which they pleaded innocence. On closure of proceedings under Section 313 Cr.P.C., the accused were given an opportunity to adduce evidence in defence, and they chose not to adduce any evidence in defence.

10. On appraisal of the evidence on record, the learned trial Court, returned findings of acquittal in favour of the accused/respondents.

11. The State of H.P. is aggrieved by the judgment of acquittal, recorded by the learned trial Court. Shri J.S. Guleria, learned Assistant Advocate General, has concertedly and vigorously contended that the findings of acquittal, recorded by the learned trial Court, are not based on a proper appreciation of the evidence on record, rather, they are sequelled by gross mis-appreciation of the material on record. Hence, he contends that the findings of acquittal be reversed by this Court, in the exercise of its appellate jurisdiction and be replaced by findings of conviction and concomitantly, an appropriate sentence be imposed upon the accused/respondents.

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12. On the other hand, the learned counsel, appearing for the respondents-accused, has, with considerable force and vigour, contended that the findings of acquittal, recorded by the Court below, are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

13. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

14. Deceased Harjeet Kaur was married to accused Jasbir Singh. Their marriage took place about eight years prior to the occurrence. The attribution of an inculpatory role to the accused (Jasbir Singh) is of his though having departed to Dubai yet on his visiting home, he in collusion and in connivance with accused A-3 (Malkiat Kaur alias Soma) subjecting his deceased wife to physical cruelty as well as to harassment. The prosecution alleges that in the absence from home of A-1, both A-2 (accused Charan Kaur) and A-3 (Accused Malkiat Kaur) subjected the deceased wife of A-1 to cruelty. Moreover, mental cruelty has also been alleged by the prosecution to have been perpetrated upon the deceased arising

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from taunts being meted by A-1 to the deceased for her inability to bear a child as also encumbering her mind with mental trauma arising from his threats to her to re-marry. The aforesaid, hence, have been canvassed by the prosecution to constitute an instigatory and actuary factor for the deceased to commit suicide. The prosecution witnesses, PW-2, PW-3, PW-4 and PW-14 have deposed in unison qua disclosures having been made by the deceased to each of them qua hers having been during her stay in her matrimonial home subjected by each of the accused to physical as well as mental cruelty. However, their depositions are vague and nebulous, inasmuch as they are imprecise and inexact qua the timings of perpetration of such mental as well as physical trauma upon the deceased besides, their potency remains unarticulated and consequently, there is lack of cogent evidence portraying that the purported acts of physical and mental cruelty which drove the deceased to commit suicide occurred at a time proximate to the alleged occurrence so as to conclude, hence, that such acts constituted a potent instigation for the deceased to commit suicide. In aftermath, the conclusion is that the prosecution has abysmally failed to bring home clinching and overwhelming evidence to mark

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the guilt of the accused for theirs having committed the offences punishable under Sections 498-A, 306, 302 read with Section 34 of the IPC. Even otherwise, the depositions of the prosecution witnesses aforesaid in striving to attribute to the accused a role of theirs having perpetrated mental and physical trauma upon the deceased stands ousted by the factum of recording of compromise deed Ex.DW3/A , translation whereof is Ex.PW 16/B. The aforesaid came to be recorded in the year 1993. However, the occurrence took place on 18.10.2002. Since, given the existence of eruption of a wrangle in the matrimonial relations of the deceased and A-1 in the year 1993 and thereafter no compromise having come to be drawn, paves way for an inference that subsequent to 1993 till the occurrence, there was no bickering or acrimony in the marital relations of A-1 and the deceased. The eruption, if any, would have as had transpired earlier as manifested by Ex.DW3/A of a previous marital duel having occurred inter se accused No.1 and his deceased wife and its having amicably settled, would too have sequeled the convening of a Panchayat for the termination of the dispute. It appears that since there is no evidence portraying the fact that any panchayat was convened at the instance of the

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deceased to resolve her marital discord with accused No.1 the ready inference is that, hence, there was no marital discord inter se accused No.1 and his deceased wife. As a natural concomitant, the factum of no Panchayat having been convened to abort the purported strained relations inter se accused No.1 and his deceased wife facilitates an inference that the testimonies of the prosecution witnesses, aforesaid are in their entirety availed upon prevarication. Even otherwise, in the face of revelation in Ex. D-3, the statement of account of the saving banks account of the deceased, of its swelling sequeled by replenishment from the funds remitted in it by the accused from Dubai which sequeled the construction of a house at the instance of the deceased, dispels the factum of theirs being uneasiness and discord inter se the deceased and accused No.1. Moreover, Ex. D-5, copy of Parivar Register discloses that accused No.3 is living separately in the house of her husband and not in the family of A-2. The aforesaid facts, garners an apt conclusion that the deceased was staying separately in the newly constructed house from the funds received by transmission into her saving bank account by accused No.1, who was serving in Dubai and that both accused No.2 and 3 were living separately

from the deceased. Consequently, there was no occasion for the accused to, in connivance and in collusion with each other perpetrate mental and physical cruelty upon the deceased as alleged by the prosecution. Moreover, the factum of accused No.1 taunting the deceased for not bearing a child as also threatening to remarry also does not inspire the confidence of the Court, more especially, in the face of the accused having adopted the daughter of accused No.3. Moreover, even if, accused No.1 intended to remarry, he would have not proceeded to transfer funds into the accounts of the deceased to enable her to carry out the construction of a house, wherein she was residing separately from accused No.2 and 3. The aforesaid discussion forcefully portrays the factum that the prosecution has adduced nebulous and infirm evidence in proof of the accused having committed offences under Section 498-A and Section 306 of the IPC.

15. However, the aforesaid allegations constituted against the accused further wane and loose their probative sinew in the face of Gurdial Singh, PW-16, during the course of his carrying out investigation, having unearthed material communicating the factum of accused No.2 with the aid of accused No.1 having administered

poison to the deceased besides, there is also an unveiling in the investigation carried out by PW-16 of accused No.1 having delivered beatings upon the deceased with broom, Ex.P-1 which was recovered under recovery memo Ex.PW6/A. The somersault in the posture of PW-16, inasmuch as he during his having carried out investigation having detected the factum, hence, of the accused having committed the murder of the deceased in the manner aforesaid, obviously, then the charge against the accused under Section 498-A and 306 amplifyingly besides, for the aforesaid reasons, too gets wholly jettisoned.

16. For determining whether the prosecution has efficaciously, proved the factum of the accused having murdered the deceased, the apt and germane material to be adverted to is Ex.PW8/B, the final opinion offered by Dr. A.K. Soni (PW-8) on his having considered the report of FSL, Ex.PW7/A, wherein he has communicated the opinion that the deceased died of shock owing to torsion of left ovarian cyst leading to haemorrhagic ascites. However, the occurrence of a statement in his deposition, of injuries observed to be existing on the body of the deceased in Ex.PW8/A being sequelable with broom Ex.P-1, depending upon the

force with which it used, has been heavily relied upon by the prosecution, especially in the face of its recovery under ExPW6/A at the instance of the accused, to be its hence articulating the fact that even if the final opinion reveals the factum of the demise of the deceased having occurred due to torsion of left ovarian cyst leading to haemorrhagic ascites, combined with the factum of the accused having administered poison, hence, the prosecution has been unflinchingly able to sustain the charge against the accused. However, the above assiduous concert on the part of the prosecution stands torpedoed by a further existence in the deposition in the cross-examination of PW-8 of the injuries leading to death being even causable by accidental fall especially when the patient was under shock. If, hence, doubt arises qua the cause of injuries, benefit thereto ought to go to the accused. Consequently, the factum of recovery of Ex.P-1 under memo Ex.PW6/A cannot at all sway this Court to conclude that the accused had any inculpatory role in inflicting any purported beatings with broom on the person of the deceased and such beatings having upsurged the cause of death as opined by PW-8. However, again the prosecution has with renewed vigour relied upon the deposition of

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PW-12, who has therein spelt out the communication to him by the deceased of her husband having delivered merciless beatings upon her and hers having then being administered poison by her mother-in-law, hence even if, no traces of poison were detected to be occurring in the germane and relevant parts of the body of the deceased, wherein it would have poured into, the aforesaid deposition of PW-12 which led PW-16 to conclude during the course of investigation that an offence under Section 302 of the IPC is constituted against the accused, is of vigorous strength for sustaining the charge against the accused. However, the deposition of PW-12 stands negated and potently repulsed by the factum of :-

- (a) Revelation in Ex.PW12/B of the deceased having died after 8.00 p.m. on 18.10.2002, obviously then the deceased would not have, when she was no longer alive at 9.30 p.m., proceeded to as deposed by PW-12 make an oral dying declaration before PW-12 wherein she attributed an inculpatory role to the accused.
- (b) With the revelation in the deposition of PW-13 of the deceased since her admission in BBMB, Hospital, Nangal till she was referred to PGI, Chandigarh, having

remained un-conscious, veracity whereof has remained un-shred or un-overwhelmed, renders the deposition of PW-12 qua on his visiting the deceased at 9.30 p.m. on 18.10.2002, the latter having made an oral dying declaration before him, to be ridden with inveracity.

(c) PW-3 Amar Singh having deposed that the deceased when admitted in hospital was unconscious.

(d) PW-15 too in corroboration with the deposition of PW-13 having deposed the factum of his having been informed by PW-12 of the deceased having come to be admitted in an unconscious state of mind and she having not regained consciousness, erodes the veracity of the deposition of PW-12 of the deceased having made any purported oral dying declaration before him.

(e) Ex.PW12/A which marks the fact of the patient undergoing treatment under chart Ex.PW12/B being conscious is handwritten and has remained un-initialed. Even though on the factum of hers being conscious is encircled in Ex.PW12/B, hence, Ex.PW12/A may then while constituting a vigorous

piece of evidence out weigh the deposition of the witnesses aforesaid. Nonetheless, the factum of it having remained un-initialed and PW-12 having deposed his not having scribed it, furthermore, its authorship having remained undetermined cannot carry it forward so as it, to be construed to be a vigorous piece of evidence for overwhelming the deposition of the witnesses aforesaid which pronounces upon the factum of the deceased having died at 8.00 p.m., hence, incapacitated to at 9.30 p.m., make an oral dying declaration before PW-12.

- (f) Moreover, even though, PW-8 has deposed that even if, poison is emitted through diarrhea or vomiting even then the contents of poison remain in the kidney spleen, liver and blood. Obviously, then if assuming an oral dying declaration qua the cause of her demise was made by the deceased to PW-12, yet he has not been portrayed to have then proceeded to collect the vomit material of the deceased nor concerted to extract from the kidney spleen, liver and blood, where

the poison purportedly forcibly administered by the accused had, hence, poured into. Omission on the part of PW-12 to make concerted endeavours in the aforesaid direction renders open an apt conclusion that the preponderant reasons for the demise of the deceased was owing to torsion of left ovarian cyst leading to haemorrhagic ascites. Contrarily, the submission of the learned Assistant Advocate General that the demise of the deceased was begotten by forcible administration of the poison stands discountenanced.

17. The aforesaid discrepancies and infirmities, which existed in the prosecution story, are grave and pervasive and take to stall the genuineness or the veracity of the prosecution story. Given the existence of the aforesaid infirmities, the prosecution story receives a jolt inasmuch as the prosecution version is to be construed to be incredible.

18. The learned trial Court has appreciated the evidence in a mature and balanced manner and its findings, hence, do not necessitate interference. The appeal is dismissed

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being devoid of any merit and the findings rendered by the learned trial Court are affirmed and maintained. Records of the learned trial Court be sent down forthwith.

(Rajiv Sharma)
Judge.

18th March, 2015.
(TM/jai)

(Sureshwar Thakur)
Judge.

High Court