



**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr.Appeal No.331 of 2008.

Reserved on: 24/09/2014.

Date of Decision:09.10.2014.

State of H.P.

Versus

Prem Chand & Others

Coram

.....Appellant.

...Respondents.

**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.Ramesh Thakur, Assistant
Advocate General.

For the respondents:

Mr.N.S.Chandel, Advocate.

Per Sureshwar Thakur, Judge

1. The instant appeal is directed against the judgement of acquittal, rendered on 16.1.2008, by the learned Additional Sessions Judge-II, Kangra at Dharamshala, in Sessions trial No. 5/2007, whereby the respondents have been acquitted for theirs having committed offence punishable under Sections 498-A and 306 IPC read with Section 34 IPC.

2. The prosecution story, in brief, is that on 6.11.2003 on receipt of telephonic information regarding death of a female in suspicious circumstances at village Bandi, the police headed by SI Prem Chand rushed to the spot after incorporating the same

into the daily diary and the statement under Section 154 Cr.P.C of one Shri Raghbir Singh was recorded. Raghbir Singh has deposed in his statement that his daughter Reeta Devi was married with Prem Chand resident of Village Bandi on 5.3.2003. He further deposed in his statement that his wife had received a telephonic information in the early morning that Reeta Devi had died and thereafter he alongwith other villagers rushed to the matrimonial house of Reeta Devi at village Bandi, where they found her dead. He further disclosed in his statement that his daughter had already disclosed 3-4 times about the beatings being delivered by her husband and she was being beaten up at the instance of brother and bhabhi of her husband. He further disclosed that his daughter had been killed by giving beatings by the accused persons. His statement was sent to the Police station for registration of FIR and the dead body of the deceased was taken into possession after inquest report and same was sent for postmortem examination. The Doctor had opined the cause of death as asphyxia due to antemortem hanging as no other disease, injury or poison seen over the body. One Nawaar and cloth lying on the spot also taken into possession and site plan of the house of deceased was prepared after taking photographs of the dead body. Opinion of Forensic Expert was sought in which the Forensic Expert opined partial hanging antemortem in nature.

3. After completion of the investigation, challan, under Section 173 of the Cr.P.C., was prepared and filed in the Court.

4. The trial court charged the accused for theirs having committed offence punishable under Sections 498-A and 306 IPC read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined as many as 13 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.

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

7. The State of H.P. is aggrieved by the judgment of acquittal, recorded by the learned trial Court. Shri Ramesh Thakur, 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/respondent.

8. 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.

9. 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.

10. The first witness, who, stepped into the witness box to prove the prosecution case, is, PW-1 Dr. D.P Swamy who had conducted the post mortem examination of the deceased. In his opinion comprised in his report, he has attributed the demise of the deceased to antemortem hanging. He has denied in his opinion the factum of death of the deceased being sequelled by any injury or poison.

11. PW-2 Rahubir Singh deposes that the marriage of her deceased daughter was solemnized with accused Prem Chand on 5.3.2003 at village Bandi. He continues to depose that on 5.11.2003 he received telephonic information at about 4 a.m. that her daughter had died. On receipt of information he alongwith his wife and other villagers rushed to the house of her daughter Reeta Devi at village Bandi and found her daughter lying dead in the room. He further deposes about the factum of his deceased

daughter on hers visit to her parental home having disclosed to him the factum of beatings delivered to her by the accused.

However, he has deposed that he had advised her daughter to keep patience. He further deposes that on 4.11.2003 his daughter had come to his house and she disclosed to him about the beatings delivered by the accused on her person. He further deposes that his deceased daughter disclosed to him that she might be killed in her matrimonial home and on the next day she was found dead and they came to know that his daughter had died owing to hanging as there was piece of Nawar lying there. He further deposes that piece of Nawar Ex. P-1 is the same which was shown and taken into possession. He further deposes that his statement was recorded by the police over which he appended his thumb impression at encircled portion 'A'.

During the course of his cross-examination he deposes that his deceased daughter used to send letters from Patiala to him and used to have telephonic conversation. It is stated to be incorrect that his statement was not recorded by the police. He deposes that his statement was recorded only once and he appended his thumb impression over three places. It is stated to be incorrect that in his statement before the police, he did not mention the name of the brother and wife of the brother of accused Prem Chand. He confronted with his statement Ex. PW-2/A wherein the name of the brother and his wife are not mentioned though it has been mentioned as Jeth and Jethani of

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the deceased. He further deposes that the letters of deceased received by him were neither shown nor handed over to the police. It is stated to be incorrect that the police had recovered a piece of paper from the place where the deceased was found dead and the same was taken into possession by the police. It is also stated to be incorrect that he was is not in a position till today as to what is the cause of death of his daughter. It is also stated to be incorrect that the deceased was adamant to accompany her husband.

12. PW-3 Shakuntala Devi deposes that her daughter disclosed to her on hers visiting her parental house that accused Prem chand, his elder brother and his wife used to give her beatings. She further deposes that on 4.11.2003 the deceased had come to their house for Tikka to her brother and on being asked she disclosed that she was being beaten up by the accused. She further deposes that on the next morning at about 4 a.m. she had received telephonic information that her daughter had died. Thereafter they rushed to her matrimonial home where she was found lying dead in the house. She further deposes that she might have been killed by the accused. It is stated to be incorrect that her daughter was adamant to live with her husband. It is stated to be correct that the marriage of her deceased daughter with Prem Chand was with her consent. It is also stated to be incorrect that her daughter had no talks with

her when she visited their house before her death. It is stated to be correct that they never made any written complaint against the accused.

13. PW-4 Asha Devi deposes that deceased disclosed to her that she was being beaten up by her husband, jeth and jethani. She further deposes that accused Prem Chand used to give beatings to the deceased under the influence of liquor. She further deposes that on 4.11.2003 the deceased had visited her parental house for Tikka to her brother where she disclosed that she was being beaten up in her in-laws house and she was not ready to go back to her matrimonial home. She further deposes that they advised her to go to her matrimonial house and on the next morning she was found dead there. In her cross-examination she deposes that the deceased never wrote letter to her, however the deceased made telephone conversation with her from Patiala. She further deposes that there is no telephone in her house. It is stated to be correct that the deceased met her on 4.11.2003 on her visit to her parental home and was supposed to go back on the next morning to Patiala.

14. PW-5 Bidhi Chand deposes that he was associated by the police during the investigation. Piece of Nawar and one piece of cloth were deposed to have taken into possession by the Police under memo Ex. PW-5/A, which were put into a sealed packet

and sealed with seal SK. He further deposes that he and Ujala Devi signed the same.

15. PW-6 Kasturi Lal deposes that there is no facility of telephone in the house of Shakuntla Devi and his telephone is being used by them. On 5.11.2003 at about 4.00 a.m. a call for Shakuntla Devi came over to his telephone and on attending the same Shakuntla Devi started weeping and on his asking she told that her daughter Reeta Devi had died. Thereafter he accompanied the parents of Reeta Devi alongwith other villagers to the house of Reeta and found her lying dead inside her house. He further deposes that he came to know that she died as a result of hanging.

16. PW-7 Jagdish Chand is the photographer. He deposes that he clicked the Photographs comprised in Ex. PW-7/A to Ex. PW-7/F and negatives thereof are Ex. PW-7/A-1 to Ex. PW-7/F-1.

17. PW-8 is the deposition of Ashwani Kumar who deposes that during the investigation, he was associated by the police. He continues to depose that he prepared the site plan comprised in Ex. PW-8/A, which bears his signatures as well as signatures of Assistant Engineer at encircled portion 'A'. The site plan is deposed to be the true and correct as per the original record.

18. PW-9 Purshottam Chand has turned hostile and on being permitted by the Court, he came to be cross-examined by the learned Public Prosecutor. During the course of his cross-

examination he deposes that accused Prem Chand is his cousin.

He stated it to be correct that he heard a noise coming from the house of the accused on 5.11.2003 at about 10 p.m. It is also stated to be correct that he alongwith his wife and his Bhabhi Kailasho Devi rushed to the house of the accused after hearing noise and when they reached in the house, they found the deceased to be dead. It is stated to be incorrect that on making inquiry about the cause of death, it was disclosed by the accused that Reeta Devi died as a result of hanging. It is stated to be incorrect that the accused used to give beatings to the deceased. He denied that he is deposing falsely in order to save the accused being his brotherhood.

19. PW-10 Inspector Sanjeev Chauhan deposes that he prepared the final report after completion of the investigation.

20. PW-11 C . Rakesh Kumar deposes that on 6.11.2003 DD No. 34 was incorporated on the receipt of telephonic information. The copy of which is deposed to be bearing Ex. PW-11/A, which is true and correct to the original.

21. PW-12 SI Prem Chand deposes that on receipt of telephonic information on 6.11.2003 from PP Gagal regarding a female died in suspicious circumstance at Village Bandi, he proceeded to the spot accompanied by LC Sudha, HC Ashok and C. Bhawani Singh. He deposes that he recorded the statement of father of the deceased under Section 154 Cr.P.C comprised in

Ex. PW-2/A which was sent to the police vide endorsement Ex. PW-12/A for registration of FIR. He deposes that he prepared inquest reports Ex. PW-1/B and Ex. PW-1/C. He further deposes that on application Ex. PW-1/A he sought postmortem examination of the dead body of the deceased. He has prepared the spot map comprised in Ex. PW-12/B. He deposes that he took into possession one piece of ~~Nawar~~ Ex. P-1 and another piece of cloth Ex. P-2 under memo Ex. PW-5/A and put the same into sealed packet duly sealed with seal SK in the presence of the witnesses. He further deposes that he recorded the statements of the witnesses. He continues to depose that the forensic expert was also called on the spot on 14.11.2003. He further deposes that on completion of the investigation, he handed over the case file to the SHO.

22. PW-13 Dr. Suresh Sankhyan deposes that on 14.11.2003 at about 12. p.m. he visited the place of occurrence at the instance of the police and observed the length of the ligature material, low point of suspension, salivary stains report are suggestive of partial hanging ante-mortem in nature. He further deposes that low point of suspension results in partial hanging which is usually suicidal in nature. His report has been deposited to have comprised in Ex. PW-13/A.

23. PW-1 has proved the Post Mortem Report wherein he recorded his observations qua the body of the deceased as

subjected to post mortem examination by him. The said observations are:-

"Antimortem Injury

Ligature Mark

Antemortem reddish colour around mid of neck front side, extending to the upper part of the neck, near both the angles of mandible. Length and breadth 7 inches X 1/2 inches, below up-ward in direction because of evience grazed abrasion from below up-wards including two extra ligature mark each about 1x1/2 inch on the left side of upper part of the neck. Subcutaneous hemorrhages present below the ligature mark. The mark is not seen on the back of the neck because intervening scalp hairs as shown in the diagram

Cranium and Spinal Cord

NAD and only congestion of brain and membranes.

Thorax

1. Walls, ribs and cartiges

2,3,4 and 5 respectively pleure, larynx and trachea, right and left lungs were found congested and froth seen on cut section of lungs.

6. Heart and vessels

Right side full of dark reddish fluid.

Abdomen

1. and 2. Walls and peritoneum NAD and there was no smell alcohol in peritoneum cavity.

3. Mouth larynx and Esophagus was NAD

Stomach and its contents were found 300 cc of mildly digested food as rice, pulses (Grams) pale in colour. No smell of alcohol or poison.

5. Small intestines and their contents were 20 CC of midly digested food in the proximal 6 inches of small intestines.

6. Larger intestines and their contents was full of gases and faecal matter.

7,8,9 respectively Live spleen and kidney were shown congested.

10. Bladder empty and no peculiar smell.

11. Organs of generation NAD No evidence of pregnancy and other foul play.

Muscles, bones and Joints

NAD"

He has in his deposition proved his opinion comprised in it, wherein he has attributed the demise of the deceased to antemortem hanging. He has denied in his opinion the factum of death of the deceased being sequelled by any injury or poison.

24. The father of the deceased while stepping into the witness box as PW-2 has deposed in extremely vague and generalized terms about the factum of his deceased daughter on hers visiting her parental home having disclosed to him the factum of ill-treatment or maltreatment meted out to her by the

accused, comprised in theirs belaboring her. However, he has deposed that he had advised her daughter to keep patience.

The complaints aforesaid made by the deceased to her father on hers visiting the house of the latter are couched in vague and generalized terms, they lack in specificity qua attributions to each of the accused of specific acts of ill-treatment or maltreatment as also lack in specificity and precision qua the date month and year when such acts were purportedly perpetrated upon her by the accused. Even otherwise the fact as disclosed by the deceased to her father on hers visiting her father's house, of the accused belaboring her, is rendered unbelievable in the face of:-

(a) No complaint having been made by the father of the deceased on his receiving information from his deceased daughter on hers visiting him, wherein she revealed to him the factum of hers being belabored by the accused.

(b) Omission on the part of the father of the deceased as well as the deceased to get the injuries examined from a competent medical practitioner and to obtain MLC from him displaying as well as corroborating the factum of the deceased having been subjected to belaboring by the accused too belies all or any of aforesaid attributions made by PW-2 in his deposition to the deceased

25. Moreover in his cross-examination the father of the deceased has divulged the fact of the deceased having communicated to him through letters about the factum of hers being subjected to ill-treatment and maltreatment by the accused

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which purportedly instigated and actuated her to commit suicide, however in the face of the letters aforesaid having omitted to be handed over to the police by the father of the deceased, dispels the credibility of the deposition of the father of the deceased of his having been communicated by the deceased through letters about the woes she was undergoing in her matrimonial home. Consequently it emerges that hence the deceased did not communicate to her father through letters about the sufferings she was undergoing at her matrimonial home, which inference as a natural corollary constrains a conclusion that hence, she was not subjected to maltreatment or ill-treatment by the accused at her matrimonial home. As a concomitant it has to be deduced that attributions of maltreatment or ill-treatment made by PW-2 against the accused on revelations made to him by his deceased daughter rather apparently are a mere concoction as well as an invention and are to be construed to be incredible. The prosecution urges that given the fact that the deceased visited her parental home on 4.11.2003 on which date as divulged by the testimony of PW-2 she disclosed to the latter the reasons qua the woes which befell upon her at her matrimonial home, which reasons while portraying the fact of hers being belabored by the accused, hence, hers apprehending an imminent threat to her life while constituting a credible disclosure qua purported instigatory or actuary factors in close proximity to the fateful incident which occurred on 6.11.2003 constrain a conclusion qua the guilt

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of the accused. However the said argument necessitates its being repulsed on the score that in case there was a disclosure by the deceased to her father of an imminent threat to her life, it is enigmatic as to what led the father of the deceased to persuade her to leave for her matrimonial home. Consequently if she left for her matrimonial home after 4.11.2003 it has to be hence construed that she had left for that place as there was no grave or imminent threat to her life as portrayed by PW-2 in his deposition for if she faced such a grave threat to her life, PW-2 would have dissuaded her from departing from her parental home to her matrimonial home.

26. The deposition of PW-3 the mother of the prosecutrix corroborates the testimony of PW-2. However, again her testimony alike the testimony of PW-2 being unspecific and imprecise qua the attribution of acts of cruelty meted out by each of the accused to the deceased besides lacking in specificity and precision qua the date, time and year when such acts of ill-treatment or maltreatment were meted by the accused to the deceased. As such, on the strength of a vague and nebulous deposition of PW-3 no capital can be drawn by the prosecution that hence any of such unspecific or generalized acts actuated or instigated the deceased to commit suicide. Moreover besides when the potency and enormity thereof remain omitted to be communicated and when potent evidence portraying the

magnitude of the purported instigatory facts would alone have constrained this Court to draw a conclusion against the accused, omission thereof bolsters an inference that the inculpation of the accused remains un-clinched. Besides for the reasons alike the one meted by this Court for dispelling the strength of the testimony of PW-2 while its purportedly conveying that the accused hence belabored the deceased the testimony of PW-3 too necessitates its being discarded.

27. PW-4 too alike PW-2 and 3 has deposed in generalized terms qua the purported acts of cruelty meted by the accused to the deceased. She too deposed that when on 4.11.2003 the deceased visited her parental home and made a disclosure to her of hers being belabored by the accused in her matrimonial home and hers besides having also divulged to her of hers facing an imminent threat to her life, which fact too does not also attain credibility in the face of the aforesaid witnesses, too, alike PW-2 her father, having omitted to despite the purported gravity of threat to the life of the deceased, restrain her from proceeding to her matrimonial home. In case no such restraint was exercised upon the deceased by PW-2 against her proceeding to her matrimonial home where she was purportedly facing an imminent threat to her life, an apposite conclusion which emerges forth is that she was permitted to leave for her matrimonial home as the scenario there was neither grave nor

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alarming as espoused by PWs No. 3 and 4. Even otherwise she in her cross-examination has deposed that the deceased had telephonic conversations with her from Patiala wherein she disclosed to her the tales of woes and sufferings which had beset her at her matrimonial home. However the facts of any such disclosure over telephonic conversations she had with the deceased stands belied by the fact of hers having conceded in her cross-examination of there being no facility of telephone at her home. Consequently, it appears that this witness is inventing and concocting facts while attributing a false role to the accused.

28. An analysis of the testimonies of the prosecution witnesses made by this Court unveils the fact of the witnesses having abysmally failed to, with precision and exactitude depose qua the date and timings when the purported acts of ill-treatment or maltreatment were perpetrated on the person of the deceased by the accused , as a sequel on the strength of mere generalized attributions, besides omission on the part of the prosecution witnesses to depose that any of such purported acts acquired such potency or enormity so as to constitute theirs comprising instigatory or actuary factors for the deceased to take her life, constrains this Court not to draw a conclusion against the accused. Moreover preponderantly when they also omitted to depose qua the purported instigatory and actuary acts being in immediate proximity to the occurrence renders for the reasons

aforesaid the attributions made by the prosecution witnesses to the accused being both prevaricated and invented. As such, the entire genesis of the prosecution story has abysmally omitted to portray the factum of the deceased having been subjected to ill-treatment or maltreatment at the instance of the accused or also besides it has also omitted to emphatically project that the accused at a time proximate to the fateful incident had perpetrated upon her such acts of cruelty which were of such enormity which ultimately drove the deceased to commit suicide. In sequel for omission of portrayal by the prosecution of the accused having hence committed potent instigatory or actuary acts, of such potency and magnitude which drove the deceased to take her life, the learned trial Court has hence appreciated the evidence in a mature and balanced manner and its findings, do not necessitate interference. The appeal is dismissed 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.

9th October, 2014.
(TM/priti)

(Sureshwar Thakur)
Judge.