

Wazir Chand and Another

Vs

State of Haryana

Criminal Appeal No. 507 of 1988

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Vs

Wazir Chand and Another

Special Leave Petition (Criminal) No. 2827 of 1988

(B. C. Ray, M. H. Kania JJ)

01.12.1988

JUDGMENT

KANIA, J. –

1. This is an appeal against the judgment of a learned Single Judge of Punjab and Haryana High Court convicting the Appellants, namely, Wazir Chand and Kanwar Singh of offences under Section 306 and 498-A of the Indian Penal Code. A few facts are necessary for the purpose of disposing of this appeal.

2. Appellant 1, Wazir Chand and appellant 2, his son Kanwar Singh, are both residents of Faridabad. The deceased Veena was married to Kanwar Singh on October 16, 1983. On June 10, 1984, within less than a year of her marriage, Veena died after having sustained burn injuries at the residence of her husband Kanwar Singh who was living with his father Wazir Chand. She sustained burn injuries at about 6/6.30 a.m. on June 10, 1984 and was taken to the Geeta Nursing Home where she died at about 11 a.m. The case of the prosecution is that the appellants and Krishna Devi wife of Wazir Chand, not being satisfied with the dowry given at the time of Veena's marriage, were making demands for further articles of dowry from Veena and her relatives and were harassing, humiliating and insulting Veena and she was driven to commit suicide by setting herself on fire. The case appears to be that she sprinkled kerosene on her clothes and set herself on fire. This incident occurred in the kitchen of Wazir Chand's residence. It is also the case of the prosecution that, although Veena cried, the noise of her cries were suppressed by someone in Wazir Chand's family by putting on loudly a radio or television set and that the neighbours and outsiders whose attention was attracted by the cries of Veena were prevented from entering the residence as the doors were shut. It was also alleged by the prosecution that there was deliberate delay in taking Veena to the Geeta Nursing Home where she died, and that she was deliberately taken to Geeta Nursing Home where adequate facilities for treatment of burn injuries were not available instead of Badshah Khan Hospital, which is also known as the Civil Hospital, where better treatment for burn injuries was available as known to the appellants. The appellants, Wazir Chand and Kanwar Singh as well as Krishna Devi, the wife of Wazir Chand were charged and tried before the Court of learned

Additional Sessions Judge, Faridabad under Sections 306 and 498-A respectively of the Indian Penal Code. The defence taken by the accused was that Veena did not commit suicide but her clothes accidentally caught fire when she was preparing tea for the family over a stove. The allegations regarding harassment of Veena for dowry were also denied. The learned Additional Sessions Judge acquitted Krishna Devi but convicted Wazir Chand and Kanwar Singh under the aforesaid sections of Indian Penal Code. Kanwar Singh was sentenced to under go rigorous imprisonment for a period of three years and to pay a fine of Rs. 500 for the conviction under Section 306 of the Indian Penal Code and was further sentenced to rigorous imprisonment for one year and the payment of a fine of Rs. 100 for the conviction under Section 498-A of the Indian Penal Code. As far as Wazir Chand is concerned, it was held that he played the more important and active part in putting pressure on Veena for dowry articles and causing harassment to her. He was sentenced to undergo rigorous imprisonment for five years and payment of a fine of Rs. 500 for the offence under Section 306 of the Indian Penal Code and further sentenced to rigorous imprisonment for one year and a fine of Rs. 100 for the conviction under Section 498-A of the Indian Penal Code.

3. Wazir Chand and Kanwar Singh preferred an appeal to the High Court of Punjab and Haryana against the decision of learned Additional Sessions Judge. The learned Single Judge of the High Court disposed of the said appeal confirming the conviction of both the accused i.e. Wazir Chand and Kanwar Singh but reduced the sentenced on Wazir Chand under Section 306 of the Indian Penal Code to a period of three years. In the trial court as well as in the High Court the sentences were directed to run concurrently. It is this judgment of the learned Single Judge which is said to be impugned in his appeal before us.

4. It was submitted by Mr. Lalit, learned counsel for the appellants that there is no evidence to establish that the deceased Veena committed suicide. It was further submitted by learned counsel that, as far as the demands for dowry articles are concerned, the evidence of witnesses is full of inconsistencies regarding the precise nature of the demands and the articles demanded and it was not possible to come to a conclusion of harassment to Veena on the basis of this evidence with the degree of certainty required in the criminal trial.

5. We propose to discuss first the validity of conviction under Section 306 of the Indian Penal Code because that is the more serious offence alleged against Wazir Chand and Kanwar Singh. Section 306 of the Indian Penal Code states inter alia that whoever abets the commission of suicide shall be punished with imprisonment and fine as set out in the said section. Section 107 of the Indian Penal Code defines abetment. Reading Sections 306 and 307 (sic 107) together it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under Section 306 of the Indian Penal Code for abetting the commission of suicide. A plain reading of this provision shows that before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide. We may mention here that the commission of dowry death is now punishable under Section 304-B of the Indian Penal Code and certain presumptions are prescribed under sub-section (1) of that section, but it is pointed out to us that that section was not enacted at the time when the incident in question took place and hence can have no application to the case before us. We must, therefore, first examine whether the evidence on record establishes with the degree of certainty required in criminal law that Veena committed suicide. In this regard it is pointed out by Mr. Lalit that, in the present case, there is so such clear piece of evidence like a suicide note or statement had been made by Veena after the incident to the effect that she had taken her own life or set herself on fire. Further there is no evidence that her clothes gave out a smell of kerosene which would indicate suicide. It is true that the post-mortem

was performed after several hours and such smell might not have been detectable from Veena's clothes at that time but it is significant that Dr. Kusum Goel, who treated Veena at the Geeta Nursing Home has not been asked any question regarding any smell given out by Veena's clothes. As far as the question of improbability of sustaining burns accidentally from the stove lighted for preparing tea is concerned, evidence was led by the prosecution to show that the stove was placed on the raised slab which would make it unlikely that burns were caused to Veena by accident. The evidence in this regard, however, is by no means satisfactory. The evidence of the Investigating Officer, S. I. Bansi Dhar undoubtedly is to the effect that when he went to the residence of Wazir Chand for the first time for investigation, the stove was lying on the slab. However the evidence of the photographer who went to the residence of Wazir Chand along with the Investigating Officer is to the effect that when he went there, the said stove was lying on the kitchen floor. In view of this contradiction, it is not possible to hold that the stove was placed on the slab when Veena was preparing tea for the family and hence an accident was highly unlikely.

6. The next circumstance sought to be relied upon by the prosecution to establish the case of suicide was that there was deliberate delay in taking Veena to a hospital or a Nursing Home. It was urged by the prosecution that although the accident occurred at about 6/6.30 a.m. it was only one and a half hours later that Veena was taken to the Nursing Home and this would show that Veena committed suicide as a result of the harassment and instigation of Wazir Chand and Kanwar Singh and his relatives and that delay was made in taking her to the hospital so that she might become unconscious and unable to make any statement and further so that the chances of her recovery might be diminished or rendered nugatory. In this regard, again, there is no satisfactory evidence. Dr. N. K. Garg, a private practitioner has deposed that on June 10, 1984 Wazir Chand came to his house in Old Faridabad in the morning at about 6.30 a.m. or 6.45 a.m. and told him that his daughter-in-law has received some burns on account of catching fire from the stove and desired that Dr. Garg should accompany him to his residence for treatment. Dr. Garg told him that he would be opening his clinic within half an hour and that Veena should be brought there. Dr. Kusum Goel has stated that on that day, when she entered the Geeta Nursing Home which is her private Nursing Home between 7.45 or 8.00 a.m. in the morning, Veena was lying on a bed there with burn injuries on her body and in a semi-conscious stage. She was accompanied by one lady and two gentlemen, one of them was aged, apparently Wazir Chand. In view of this evidence, it is not possible to come to a conclusion with the degree of certainty required in a criminal trial that there was any deliberate delay in taking Veena to the hospital. As far as the question of not taking Veena to the Civil Hospital is concerned, it is again difficult to base any conclusion on this circumstance. It is true that better treatment would, in all probability, have been available at the Civil Hospital. The evidence, however, shows that Wazir Chand first went to Dr. Garg and thereafter took Veena to Geeta Nursing Home and he was there by 7.45 a.m. to 8.00 a.m. The evidence on record also shows that Nursing Home was in the same sector of Faridabad, namely, Sector No. 16 so that it was easier to take Veena to that Nursing Home. In these circumstances, it is difficult to come to a conclusion that Wazir Chand deliberately avoided taking Veena to the Civil Hospital. As far as the question of suppressing the sounds of cries of Veena is concerned, it is again not possible to draw any inference from this circumstance as it has not been put to either Wazir Chand or Kanwar Singh with the inference sought to be drawn when their statements were recorded under Section 313 of the Criminal Procedure code. It is therefore, not permissible to place any reliance on this circumstance in convicting them. The result, therefore, is that there is no satisfactory evidence on the basis of which a conclusion could be reached with any reasonable certainty that Veena committed suicide and the conviction of Wazir Chand and Kanwar Singh under Section 306 of the Indian Penal Code must be set aside.

7. Coming next to conviction under Section 498-A of the Indian Penal Code, a reading of the said

section shows that whoever, being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Clause (b) of the Explanation to that section shows that the harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security or is on account of the failure by her or any person related to her to meet such demand would amount to cruelty for the purposes of Section 498-A. In the present case, as pointed out by the learned Additional Sessions Judge as well as the learned Judge of the Punjab and Haryana High Court, there is an ample evidence that repeated demands were made inter alia by Wazir Chand and Kanwar Singh on Veena, her parents and her brother Krishan Kumar for articles of dowry and money. There is also evidence that Veena made statements after her marriage and right up to the time when she died that she and her parents were being harassed by Wazir Chand, and Kanwar Singh and his family members for various dowry articles and also for money. As pointed out by Mr. Lalit that there are some inconsistencies regarding the precise nature of the articles demanded but we are of the view that these inconsistencies are of little importance, considering the volume of evidence showing that repeated demands were made for various articles of dowry and money on Veena and her parents. In fact, what is the most telling circumstance is that after the death of Veena a large number of dowry articles seem to have been taken back by Veena's family members from Wazir Chand's residence which were admittedly being given as dowry. There is also substantial evidence to show that an amount of Rs. 20,000 to Rs. 25,000 was demanded from Krishan Kumar, the brother of Veena and her mother by Wazir Chand for setting up Kanwar Singh in business and they were to satisfy these demands. We, therefore, agree with the conclusion reached by the Additional Sessions Judge and confirmed by the High Court in this connection and confirm the conviction and sentence imposed on Wazir Chand and Kanwar Singh under Section 498-A of the Indian Penal Code.

8. As far as the aforesaid special leave petition is concerned, it has been preferred by the State for enhancement of the sentence under Section 306 of the Indian Penal Code. As the conviction of the accused under Section 306 of the Indian Penal Code is set aside, the said petition must be dismissed and it is ordered accordingly. The notice of enhancement is also in respect of the conviction under Section 306 and the same is discharged.

9. The appeal is partly allowed as set out earlier insofar as the conviction under Section 306 of the Indian Penal Code and the sentence imposed thereupon are concerned. The appeal against the conviction under Section 498-A of the Indian Penal Code is dismissed. If the appellants are on bail, they must surrender to the police and undergo the balance of their sentences, if any, and also pay the fine imposed on them for the conviction under Section 498-A, if that has not already been paid.

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