

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.356 of 1993

Judgment reserved on: 31.12.2007

Decided on: January 9, 2008

State of H.P.

...Appellant

Versus

Jagdish Raj Khatta

...Respondent

Coram

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

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

Whether approved for reporting? Yes

For the appellant : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S. Nainta, Dy. Advocate General.

For the respondent : Mr. Anup Chitkara, Advocate,

Surjit Singh, Judge

This appeal by the State is directed against the judgment of the trial Court, whereby the respondent, who was charged with and tried for offences punishable, under Sections 498-A, 306 of the Indian Penal Code and Section 30 of the Indian Arms Act, 1959, has been acquitted.

2. Case of the prosecution may be stated thus. Deceased Suman was married to the respondent on 6.2.1984. Two children were born from the wedlock. On 7.1.1990, the deceased shot herself to death with the licensed gun of the respondent in the matrimonial home. Relatives of the deceased, including PW-3 Ashok Chaudhary, on being informed of the incident reached the spot. By the time the relatives of the deceased reached, police had already started inquest. On

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

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completion of the inquest proceedings and preparation of reports, dead body was sent to the hospital for postmortem examination. Postmortem was conducted by PW1 Dr. C.S. Rathor, who observed as follows:

“..... There was bleeding clotted from right ear and both nostrils. There was about 12x8 cms irregular area which was scorched, blackened in the centre, there was a lacerated wound 3x2 cms just opposite, thyroid cartilage. Margins lacerated, burnt up. It was 7 cms. deep on probing. Thyroid cartilage fracture into 4 pieces and trachea opened up. On further dissection, a cardboard round cartridge piece of 2 cm size, found embedded near right side of spine at cervical C-2 region. There was another piece i.e. rubber piece of the size of 50 paise coin found in right, internal carotid region. A third PVC piece equal to the size of 50 paise was found in front of cervical vertebrae at C-2 region. There were 11 pallets taken out from the base of the skull. Spinal cord was fractured at C-1 and C-2 region. Two small pieces of pallets were removed from the spinal cord matter, at C-2 and C-3 region. One more piece was embedded in pituitary region. Pericardium, Heart, Large Vessels, Abdomen, Muscles, bones and joints etc. were normal.”

The doctor opined that the cause of death was laceration of spinal cord at the base of skull and resultant shock.

3. On the next following day in the evening, PW-3 Ashok Chaudhary, a cousin of the deceased, lodged FIR with the police alleging that the deceased used to be subjected to cruelty by the respondent and because of that she had taken her life. It was alleged that whenever the deceased and the respondent visited the parents or any relative of the deceased, the respondent at odd hours of the night would force the deceased to leave her parents/relatives' house and this he used to do

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after consuming liquor. He also reported that the respondent was given to excessive drinking and the deceased complained to him several times about the mis-behaviour of the respondent. On 13.1.1990, the father of the deceased produced a letter Ext.P-9 alongwith its envelop Ext. P-10, which he received on 10.1.1990 by post. The letter was written to him by the deceased. In the letter, she wrote that the deceased had been giving beatings to her like beasts for the last six years and she had been tolerating it, but she was not in a position to tolerate it any longer. She also wrote that the respondent was very proud of his black money and often threatened her with divorce. It was also written that she was often dragged by her braid by the respondent in the presence of peons. She requested her father to do something to save her from the cruel treatment or she would be left with no alternative but to commit suicide. Envelop Ext. P-10 in which letter Ext.P-9 was alleged to have been received, bore two dated impressions of postal stamps. One impression of postal stamp bears the date 6.1.1990. The name of the place is, however, not decipherable. The other postal stamp impression is dated 10.1.1990 and the name of the Post Office is Matlahad. Police took into possession some admitted writings of the deceased and sent the letter and the envelop alongwith admitted writings of the deceased to the Govt. Examiner of Questioned Documents, who vide opinion Ext. P-17, opined that the writings on the letter and the envelop, Exts. P-9 and P-10, respectively, tallied with the admitted writings Mark A-1 to A-10 of the deceased.

4. Trial Court held that letter Ext.P-9 appeared to be doubtful. Admitted writings with which the writing on the letter was got compared from the Handwriting Expert was also held to have not been proved to be those of the deceased. So the trial Court rejected the Handwriting Expert's opinion. It also rejected the testimony of PW-12 Narinder Nath,

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the father of the deceased, to the effect that he was familiar with the writing of his deceased daughter and the letter Ext.P-9 and the address on the envelop Ext.P-10 were in the hand of the deceased. It also rejected the evidence of PW-3 Ashok Chaudhary that the letter Ext. P9 and the address on the envelop Ext.P13 were in the hand of the deceased and he was familiar with her writing.

5. We have reappraised the entire evidence in the light of the submissions made by the learned Additional Advocate General, as also the learned counsel for the respondent. Learned counsel representing the respondent submitted that there was enough evidence to the effect that the respondent was a loving and caring husband vis-à-vis the deceased and that he had been arranging for every comfort of life for her, including the modern gadgets like television, refrigerator and whenever she fell sick he arranged for the best possible medical attendance. He drew the attention of the Court to the cross-examination part of the testimony of the mother PW-4 Lajwanti and the father PW-12 Narinder Nath of the deceased wherein they testified that the respondent had television, refrigerator, telephone facility and domestic help at his place and that at the time of both the deliveries of the deceased the respondent got the deceased admitted in a private clinic, which was considered to be the best in the area. He also drew the attention of the Court to the testimony of PW-4 Lajwanti wherein she stated that when the deceased, after the birth of the second child, developed some complication, the respondent arranged for medical attendance which was quite satisfactory.

6. No doubt the mother and the father of the deceased have admitted that all the facilities had been arranged by the respondent at his place and those facilities were available to the deceased, but also there is evidence indicating that the respondent used to act in a cruel manner

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against the deceased even in the presence of her parents and other relatives. PW-3 Ashok Chaudhary, a cousin of the deceased, testified that whenever the respondent would visit his in-laws' place or his own (witness's) place in the company of the deceased, he would consume liquor in the night and in drunken state force his wife to leave her parents' or relatives' places at the dead of night, some times even at 12 or 1 and would also hurl abuses at her. To the similar effect is the testimony of PW-4 Lajwanti, the mother of the deceased, PW-5 Bhajan Singh, a *Sadu* (husband of wife's sister) of the respondent, PW-6 Bakshi Ram, PW-7 Shamsheer Singh and PW-12 Narinder Nath, the father of the deceased.

7. We may notice that the mother PW-4 Lajwanti and the father PW-12 Narinder Nath of the deceased and even PW-3 Ashok Chaudhary, a cousin of the deceased, appear to be very truthful witnesses. They have testified not only those facts and circumstances, which are indicative of the ill-treatment of the deceased by the respondent, but also such facts, which show that the deceased had been provided all the facilities, she used to be provided best available medical attendance, in case of need, and used to be taken by the respondent with him to different places, while availing leave travel concession (LTC). In case their intention were to seek the conviction of the respondent by all means or by hook or crook, they would not have admitted the suggestions put to them in the cross-examination about the aforesaid facilities which the respondent made available for the deceased. Therefore, the testimony of the parents and the above named cousin of the deceased cannot be disbelieved only for the reason that they are her close relatives. Rather we see no reason to disbelieve their testimony about various instances, when the respondent, after consuming liquor at their places, forcibly dragged and carried the deceased back to the

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matrimonial home at the dead of night on different occasions. Of course, all those incidents had taken place much before the commission of the suicide by the deceased and, therefore, they cannot be treated as the immediate cause of provocation for the deceased to take the extreme step.

8. However, we find from the letter addressed by the deceased to her father only a day before the occurrence that she was being constantly subjected to physical torture by the respondent. The letter is Ext.P-9. It was addressed to PW-12 Narinder Nath, the father of the deceased. It reached him on 10.1.1990 or say after the commission of the suicide by the deceased. It was sent in a postal envelop Ext.P-10. PW-12 Narinder Nath and PW-3 Ashok Chaudhary testified in no uncertain terms that the letter Ext.P-9, as also the address on the envelop Ext.P-10 were in the hand of the deceased herself and that they were familiar with her writing. PW-12 Narinder Nath testified that he was a teacher by occupation and that the deceased had been his own student from 1st to 5th standard. He further testified that when studying in Arts and Crafts College at Ambala, before her marriage, the deceased had been writing letters to him and for this reason also he was familiar with the writing of the deceased. It is a matter of common knowledge that father, mother and siblings, if literate, are supposed to be in a position to identify the writings of their children/siblings. Even cousins, if living in the neighbourhood, as the deceased and PW-3 Ashok Chaudhary had been, prior to the marriage of the deceased, can identify each other's writings. Therefore, there should be no reason to disbelieve the testimony of PW12 Narinder Nath, as also PW-3 Ashok Chaudhary that the letter Ext.P-9 and the address on the envelop Ext.P-10 are written in the hand writing of the deceased. This is particularly so when, as already observed hereinabove, the two witnesses appear to be quite truthful.

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9. The testimony of PW-12 Narinder Nath and PW-3 Ashok Chaudhary that the aforesaid letter Ext. P-9 and the address on the envelop Ext.P-10 are in the hand of the deceased is corroborated by the opinion evidence of PW-11 Shri S.K. Saxena, who compared the writing on the two documents with the admitted writings Ext.P-12, Ext.P-12/1 to Ext.P-12/9, which formed sheets of a practical note book Ext.P-37 of the deceased. These admitted writings have been proved by PW-12 Narinder Nath, the father of the deceased. The opinion of the aforesaid Hand Writing Expert is Ext.P-17.

10. On the strength of the testimony of PW-12 Narinder Nath, PW-3 Ashok Chaudhary and the opinion evidence of PW-11 S.K. Saxena, we have no manner of doubt that the letter Ext.P-9 was written by the deceased to her father. Envelop Ext.P-10 bears two stamps by the postal authorities. In one stamp impression, the station is not legible, but the date is legible and the same is 6.1.1990, meaning thereby that the letter was posted on 6.1.1990. The letter itself is also dated 6.1.1990. The other impression of the postal stamp bears both the name of the place and the date. The name of the place is Matlahad, that is to say the post office within the area of which the village of PW-12 Narinder Nath falls and the date is 10.1.1990. The opinion Ext.P-17 of PW-11 S.K. Saxena is not only to the effect that the address Marked Q-1 on envelop Ext. P-10 and the contents of letter Ext.P-9, Marked Q2, Q3 and Q4 are similar to the admitted writings Exts. P-12 and P12/1 to P12/9, but also to the effect that all the writings, that is, Mark Q1 on the envelop Ext. P-10 and Marks Q-2, Q-3 and Q-4 forming part of letter Ext.P-9 and the aforesaid admitted writing are in the hand of the same person, meaning thereby that the contents of the letter Ext.P-9 are written in the hand of the same person who has written the address Mark Q-1 on

Ext.P-10. In other words, the letter Ext.P-9 is the same as was sent to PW-12 Narinder Nath by the deceased in the envelop Ext. P-10.

11. A reading of the letter Ext. P-9 shows that the marriage of the deceased had taken place six years back and just one month after the marriage the respondent started giving merciless beatings to the deceased and had been doing so till the writing of the letter Ext.P-9. The letter further shows that the deceased used to be dragged by her braid in the presence of peons and was also threatened with divorce. Respondent, as per this letter, used to brag of his black money every now and then and humiliate the deceased by saying that her parents' status was very low and that he cursed the day when one Tilak got his matrimonial alliance settled with the deceased. The deceased further wrote to her father that she had been tolerating the beastly treatment at the hands of the respondent for the last six years, but it was not possible to tolerate the torture any longer and that she had no alternative, but to commit suicide. She cautioned her father that in case he could do nothing to rescue her from the respondent, she would end her life.

12. Learned counsel representing the respondent argued that nothing contained in the letter Ext.P-9 was true, inasmuch as nobody had come forward to testify that the deceased had ever been subjected to physical cruelty by the respondent. He submitted that brother of the father of the deceased was a cabinet rank minister with the portfolio of Forest Department of the State, in which department the respondent was employed as a Range Officer and despite such influential position of the brother of the father of the deceased, no witness was examined even from the forest department to prove the allegation of physical torture of the deceased by the respondent, even though as per contents of the letter, such torture used to take place in the presence of the peons. When questioned by us if the brother of the father of the deceased was

the minister even when the trial of the case commenced and was going on, the learned counsel for the respondent was candid enough to admit that he had ceased to be the minister at that time. The fact that the brother of the father of the deceased had ceased to be the minister when the trial commenced itself counters the aforesaid argument of the learned counsel for the respondent. Respondent's peons could not have testified against him with regard to the allegation of physical torture because of their being subordinate to him and the fear of his damaging their service career.

13. It is true that there is no direct evidence of the physical torture of the deceased at the hands of the respondent at the latter's place, but the fact that he used to subject her to physical violence even at her parents' and relatives' places, after consuming liquor and used to drag her to the matrimonial home at the dead of the night, corroborates the allegation of physical torture levelled by the deceased against the respondent, in the letter Ext.P-9. May be that the respondent was a loving and caring husband, as canvassed by the learned counsel for the respondent, but it appears that he was so only when he was not drunk. After drinking liquor in the night, he would turn into a beast, as is clear from the testimony of the father, the mother, the cousin and other witnesses of the prosecution as also the contents of the letter Ext.P-9.

14. It was also submitted on behalf of the respondent that the FIR that was lodged against the respondent was the result of deliberations, consultations and concoction because it had been lodged on the day next following the day of the occurrence and that too very late in the night at 11 PM as is clear from the FIR Ext.P8. He pointed out by referring to the evidence on record that the mother PW4 Lajwanti and the cousin PW-3 Ashok Chaudhary of the deceased reached the spot on 7.1.1990 itself when the inquest was being conducted by the police, but

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they did not lodge any report against the respondent in spite of the fact that PW-3 Ashok Chaudhary is an Advocate by profession and, therefore, supposed to be knowing the consequences of delay in lodging the FIR. It has come in the evidence that the father of the deceased was out of station on the day of occurrence and he did not reach the place of occurrence. PW-3 Ashok Chaudhary could not have lodged the report at his own level, without getting a nod from the father of the deceased because the deceased had left behind two very young children and their future was at stake. The lodging of the FIR by Ashok Chaudhary at his own level could have put him in an embarrassing situation had the father of the deceased not approved of his action subsequently.

15. Another submission made on behalf of the learned counsel was that even though letter Ext.P-9 was alleged to have been received by PW-12 Narinder Nath on 10.1.1990, it was passed on to the police only on 13.1.1990. It is true that the letter was received by the father of the deceased on 10.1.1990 as testified by him and also by PW-3 Ashok Chaudhary and it is also true that it was handed over to the police three days later, that is on 13.1.1990, but this fact in no way renders the genuineness of the letter doubtful nor does it make any dent in the prosecution version, because, as already noticed, the letter is proved to be in the handwriting of the deceased, who despatched it by post on 6.1.1990 and committed suicide before the letter reached her father.

16. It was also argued that the letter cannot be used as dying declaration because the statement made by the deceased in the letter is neither with respect to her cause of death nor is it in respect of any of the circumstances of the transaction which resulted in her death. The argument has been noticed only to be rejected. Legal position on the point is well settled. The Privy Council as long back as in the year 1939 had to deal with a similar situation in ***Pakala Narayana Swami Vs.***

Emperor, AIR 1939 Privy Council 47. The deceased in that case had received a letter from the accused to visit them to settle the accounts and to collect the money found due to him. The deceased showed the letter to his wife and left for the place of the accused saying that he was going to their place as desired in the letter. He did not return and instead his dead body was found a few days later at a railway station packed in a trunk. The question arose whether the statement of the deceased to his wife that he was going to the place of the accused, as desired by the latter in the letter received by him by post, was relevant, under Section 32(1) of the Evidence Act because it was urged on behalf of the accused that the statement to become relevant under the aforesaid provision must be made after the transaction takes place. Answering the question in the affirmative, their Lordships of the Privy Council opined that the natural meaning of the words used in the provision did not convey that the transaction, to the circumstances of which statement relates, should take place before the making of the statement. It was held that the statement may be made before the cause of death has arisen or before the deceased has any reason to anticipate being killed. Further, it was held that the statement made by the deceased that he was proceeding to the spot where he was in fact killed or as to his reasons for his so proceeding or that he was going to meet a particular person or that he had been invited by such person to meet him would each of them be circumstances of the transaction.

17. Following this judgment of the Privy Council, a three Judge Bench of the Hon'ble Supreme Court in **Kans Raj Vs. State of Punjab and others, AIR 2000 SC 2324** held that the words "as to any of the circumstances of the transaction which result in his death" appearing in Section 32 of the Evidence Act must have some proximate relation to

the actual occurrence. It was further held that the death referred to in Section 32(1) includes suicidal death.

18. In view of the above discussed evidence, there is no escape from the findings that the view taken by the trial Court is perverse and, therefore, the judgment of acquittal passed by the trial Court is not sustainable. The respondent is held guilty of subjecting the deceased to cruelty of such a degree as he knew or had reason to know was likely to drive the deceased to commit suicide. It has been held by the Hon'ble Supreme Court in ***K. Prema S. Rao and another Vs. Yadla Srinivasa Rao and others, AIR 2003 SC 11*** that where evidence on record shows that the husband was guilty of cruelty, punishable under Section 498-A IPC and it is also shown that on account of such cruel treatment, the wife was driven to commit suicide, the husband would be liable to punishment not only under Section 498-A IPC, but also Section 306 IPC and for conviction of the husband under the latter provision, presumption under Section 113-A of the Evidence Act can be lawfully drawn. In the present case, the deceased was subjected to physical torture constantly, she was dragged by her braid in the presence of peons and was humiliated and beaten up even at the place of her parents and other relatives. She was threatened with divorce. All this went on for six long years. Fed up with such cruel treatment, the deceased committed suicide within seven years of the marriage.

19. Looking to all the aforesaid facts and circumstances, it would be lawful in our considered view to draw the presumption against the respondent, under Section 113-A of the Evidence Act, and to hold him guilty of the offence punishable under Section 306 IPC, besides the offence, under Section 498-A IPC.

20. Consequently, we accept the appeal, set aside the judgment of acquittal passed by the trial Court and convict the

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respondent of the offences, punishable under Sections 498-A and 306 of the Indian Penal Code. He be produced on 27.2.2008 in person, for being heard on the question of quantum of sentence. Bailable warrant of arrest in the sum of Rs.10,000/- be also issued against him.

(Surjit Singh), J

January 9, 2008^(ss)

(Surinder Singh), J

High Court of H.P.