

Kuldeep Kaur vs State Of Uttarakhand on 17 October, 2014

Equivalent citations: 2014 AIR SCW 6082, (2015) 145 ALLINDCAS 105 (SC), AIR 2015 SC(CRI) 30, AIR 2015 SC (SUPP) 1523, (2015) 2 MH LJ (CRI) 350, (2015) 88 ALLCRIC 280, (2015) 1 ORISSA LR 104, (2014) 4 MAD LJ(CRI) 509, (2015) 1 ALLCRILR 155, 2015 (1) SCC (CRI) 147, (2015) 2 RAJ LW 974, (2014) 4 BOMCR(CRI) 696, (2014) 3 ALLCRIR 3520, (2014) 4 CURCRIR 350, (2014) 2 MARRILJ 117, (2014) 59 OCR 1034, (2014) 4 CALLT 84, 2014 (10) SCC 584, (2014) 3 UC 2180, (2014) 12 SCALE 223, (2014) 3 DMC 779, (2015) 1 CRIMES 1

Author: M.Y. Eqbal

Bench: Pinaki Chandra Ghose, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2267 OF 2014
(Arising out of Special Leave Petition (Crl.) No.1453 of 2013)

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| Kuldeep Kaur | ...Appellant (s) |
| | versus |
| State of Uttarakhand | ...Respondent(s) |

JUDGMENT

M.Y. Eqbal, J.:

Leave granted.

2. This appeal by special leave arises out of judgment and order dated 3.1.2013 of the High Court of Uttarakhand in Criminal Appeal No.213 of 2006, whereby Division Bench of the High Court dismissed the appeal preferred by the appellant and affirmed the decision of the trial court convicting her under Section 306 of the Indian Penal Code to undergo three years rigorous imprisonment with fine of Rs.5000/-. The High Court also dismissed the appeal preferred by the State against the judgment of acquittal passed by trial court.

3. The prosecution case in a nutshell is that on 6.6.2001 the complainant of the case viz. Captain Jagtar Singh (PW1) lodged a report Ex.A-1 at P.S. Sitarganj, wherein it has been stated that marriage of his daughter Jagpreet Kaur was solemnized with Upkar Singh son of Harpal Singh on 1.3.2001. The complainant gave the articles in the marriage according to his capacity, but in-laws of his

daughter used to demand car etc. and used to taunt and harass his daughter. It was further complained that Jagpreet Kaur told the informant that her in-laws harassed her on account of non-fulfillment of demand of dowry and in the intervening night of 5th/6th of June, 2001, she was compelled to commit suicide. On the basis of this complaint, case was registered against the accused persons under Section 304-B, IPC and the police took into custody a small bottle, cover of which was slightly torned, on which "Cypermethrin High Emulsifiable Concentrate (Vet) Elitomin 100 E.C." was written. Diary Ex.A-2 written by the deceased was also seized. Dead body was sent for post-mortem, where no apparent injury except ligature mark on the neck was found. According to the concerned Doctor, cause of death of the deceased was due to asphyxia as a result of ante mortem hanging.

4. Upon investigation, charge-sheet for the offence punishable under Section 304-B, IPC was submitted in the Court of Magistrate, who committed the case to the Court of Sessions for trial. The trial court charged accused persons viz. mother-in-law Smt. Kuldeep Kaur and brothers-in-law Gurlal Singh & Rakesh Grover under Section 498A/304-B, IPC and Section 3/4 of Dowry Prohibition Act, to which the accused persons pleaded not guilty and sought trial.

5. It is worth to mention here that as accused Harpal (father-in-law) had died, case was abated against him, and since deceased's husband Upkar Singh and sisters-in-law Rupender Kaur and Satender Kaur were absent at the time of filing of chargesheet, their records were taken apart and separate chargesheet was filed against them at later stage. In that case, trial court has acquitted these accused persons by giving them benefit of doubt with respect to allegations alleged against them.

6. To prove its case against Smt. Kuldeep Kaur and Gurlal Singh & Rakesh Grover, prosecution examined eight witnesses, namely, PW1 Captain Jagtar Singh (deceased's father), PW2 Smt. Gurmeet Kaur (deceased's cousin sister), PW3 Pyara Singh (deceased's relative), PW4 Dr. R.A. Kediya (who conducted post-mortem), PW5 Harak Singh Rawat (Tehsildar), PW6 Balwant Singh, PW7 S.I. Sohan Pal Singh and PW8 Dalip Singh (Investigation Officer). In defence, three witnesses were examined. Incriminating evidence was put to the accused persons under Section 313 of the Code of Criminal Procedure, in which they submitted that they were falsely implicated in the case.

7. On appreciation of evidence and material placed on record, the trial court held that the deceased did not commit suicide due to cruelty caused to her in connection with demand of dowry and acquitted the appellant and other co-accused of the offence punishable under Sections 498A/304B, IPC and Sections 3 & 4 of the Dowry Prohibition Act. However, the appellant was held guilty under Section 306, IPC and was sentenced to undergo imprisonment for three years and fine of Rs.5000/-.

8. Aggrieved by the decision of the trial court, respondent-State preferred appeal before the High Court against the judgment of acquittal passed by the trial court. Accused-appellant also preferred appeal challenging her conviction under Section 306, IPC. After hearing learned counsel appearing for the parties and appreciating the evidence and papers placed before it, the Division Bench of the High Court dismissed the appeals affirming judgment of the trial court.

9. Hence this appeal by the mother-in-law of the deceased.

10. Mr. Huzefa Ahmadi learned senior counsel appearing for the appellant at the very outset submitted that the trial court has acquitted all the accused persons except the appellant, who has already undergone about six months of custody as under trial and she is an old lady aged about 86 years. It is further submitted that the appellant has undergone heart surgery and is also suffering from various old age ailments and practically confined to bed.

11. It has been contended on behalf of the appellant that PW1 father of the deceased made only general allegation of demand of dowry against all the family members and there are no specific allegations against the present appellant. The trial court while convicting the appellant has relied upon the contents of the diary of the deceased. However, trial court found contradiction in the statements of the witnesses PW1, PW2 and PW3 in respect of demand of dowry by the accused persons and the deceased not writing anything about demand of dowry in her diary in respect of these accused persons including the appellant and therefore, no presumption was taken by the trial court in respect of dowry death under Section 113B, IPC.

12. Learned senior counsel drew our attention to the following findings and observations of the trial court in its decision in separate trial pertaining to deceased's husband:

“...It appears from the perusal of diary that deceased was not happy from the behavior meted out to her by the accused persons and the members of the family and she was in depression. Her sensitivity towards things also appears to be more. PW-1 has stated in his cross-examination as to mental condition and temperament of the deceased that his daughter was an illiterate one and used to like cities much. Her temperament right from childhood was such that she used to get perturbed on any issue, whereas, there was nothing in scarce in her matrimonial house or in her paternal house. It was her nature to get depressed; she was a patient of depression. She was treated for depression much earlier also, but her thinking and tendency remained unchanged. PW-6, who is the brother of the deceased, has also stated in his evidence that his sister Priti was in depression. PW-7, the Investigation Officer has stated in his examination- in-chief that one sealed bottle was recovered from the site, whose cover was torn. Its report was also prepared by him.... In cross-examination this witness has stated that Actomin 100E/C was written on the bottle recovered from the site. He has not got any chemical examination done with respect to medicine the above bottle contained. He has not conducted any investigation in this regard that medicine kept in the bottle is used for which purpose. This medicine can also be used in the disease of depression. In this way, the statements mentioned in the diary available on the record alleged to be written by the deceased in context of evidences given by PW-1, PW-6 and PW-7 makes it clear that deceased was extremely sensitive and she could easily fall prey of depression even under normal circumstances. In this situation, special care of the deceased and sympathetic ambience was necessary for the deceased, but inability of her husband and other members of her family to understand her mental condition or their inability to help the deceased properly could be an important mistake on the part of the husband of the deceased and her other family members, but they cannot be held liable for any

offence for it.

xxxxx In the instant case, it is quite clear from the findings of the prosecution evidence that deceased was found hanging inside a room locked from inside, from where she was taken out after breaking glass and opening the door.”

13. Mr. Ahmadi contended that the finding of the trial court holding the petitioner guilty under Section 306, IPC is on the basis of surmises and conjectures. The trial court in its judgment pertaining to the appellant has reproduced a line from the diary of the deceased, which reads as “Still she wants me to work till late.” It is contended that the trial court erred in presuming that when the deceased writes the above line in her diary she is referring to the appellant. It is further contended that conviction of the appellant deserves to be set aside as both the courts below failed to appreciate that the prosecution did not led any evidence on record to show that there was direct reasonable nexus between suicide and alleged cruelty. As both the courts below gave findings that there was no demand of dowry or any cruelty committed with the deceased in connection with demand of dowry and acquitted the appellant from charge under Sections 304B, 498A IPC and under sections 3 & 4 of the Dowry Prohibition Act, the courts below could not have come to a contradictory view that the deceased committed suicide due to cruelty committed by the appellant. Even in the diary, deceased has not written even a single word against the appellant. Perusal of the diary only shows, as also observed by the trial court in its decision in the trial of other accused persons including deceased’s husband, that the deceased was depressed and has left no interest in life.

14. Learned counsel appearing for the State has not disputed that although against the judgment of acquittal passed by the trial court acquitting the husband, father-in-law, brother-in-law and two sisters-in-law, the State preferred appeal but the same was dismissed by the High Court. However, no further appeal has been filed by the State before this Court. Learned counsel submitted that the conviction of the appellant under Section 306 IPC is fully justified.

15. We have perused the judgment passed by the trial court as also by the High Court. We have also gone through the judgments by which the husband, father-in-law, brother-in-law and two sisters-in-law have been acquitted by the trial court and affirmed by the High Court. So far this appellant is concerned, she has also been acquitted against the charges of dowry harassment but she has been convicted under Section 306 IPC.

16. A perusal of trial court judgment pertaining to deceased’s husband would show that PW1, father of the deceased, in his cross examination stated that no dowry was demanded by the accused persons from the day of alliance till solemnization of marriage. Whatever stridhan was given was as per the custom and as per his will in the form of gift to his daughter. He further stated that his daughter had not told him that in the absence of Upkar Singh she remained dejected in her matrimonial house because of her mother-in-law, father-in-law, sister-in-law and husband and elder brother-in-law on the issue of dowry. Witness himself stated that only God knows why her daughter committed suicide without any reason. This witness has stated that it is true to say that neither the accused persons abetted his daughter to commit suicide nor they harassed her.

17. We have given our anxious consideration in the matter and analysed the evidence of the prosecution witnesses. In our considered opinion, the evidence adduced as against the appellant does not establish the case under Section 306 of the Code. On the basis of evidence of the prosecution witnesses, conviction of the appellant only cannot be sustained. Having regard to the fact of the case and the evidence of the prosecution witnesses, the trial court acquitted all the accused persons except the present appellant and the said judgment was affirmed by the High Court. We do not find any strong reason to agree with the judgment of conviction passed by the trial court and affirmed by the High Court as against the appellant.

18. For the reasons aforesaid, this appeal is allowed and the judgment of conviction of the appellant under Section 306 IPC is set aside.

.....J. [M.Y. Eqbal]J. [Pinaki Chandra Ghose] New Delhi
October 17, 2014