

CASE NO.:
Appeal (crl.) 812 of 2006

PETITIONER:
KEWAL KRISHAN

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 23/01/2008

BENCH:
P.P. Naolekar & Markandey Katju

JUDGMENT:
JUDGMENT

O R D E R

1. Accused-appellant Kewal Krishan along with her sister Vijay Kumari was convicted and sentenced to undergo R.I. for ten years under Section 304-B/34 IPC. He was further sentenced to undergo R.I. for five years and a fine of Rs.5000/-; in default of payment of fine to undergo further R.I. for two years under Section 306/34 IPC. He was also sentenced to undergo R.I. for two years and a fine of Rs.2000/-; in default of payment of fine to undergo further R.I. for 6 months under Section 498-A/34 IPC. Vijay Kumari, convict-accused was sentenced to undergo R.I. for seven years under Section 304-B/34 IPC. She was also sentenced to undergo R.I. for 3 years and a fine of Rs.2000/-; in default of payment of fine to undergo further R.I. for 9 months, under Section 306/34 IPC. She was further sentenced to undergo R.I. for one year and a fine of Rs.1000/-; in default of payment of fine to undergo further R.I. for 3 months under Section 498-A read with Section 34 IPC. All the substantive sentences of imprisonment of both the convicts were directed to run concurrently.

2. Both convicts-accused filed an appeal before the High Court of Punjab and Haryana at Chandigarh against the judgment of the Sessions Judge, Ferozepur dated 16th January, 1988 whereby they were convicted and sentenced as aforesaid.

3. The High Court by its judgment and order dated 22nd August, 2005 partly allowed the appeal. The conviction and sentence awarded to Vijay Kumari was set aside and she was acquitted of the charges. However, in the case of the appellant herein, his conviction under Sections 304-B, 306 and 498-A IPC was upheld but his sentence was reduced from ten years to seven years under Section 304-B IPC.

4. The case of the prosecution is that appellant-Kewal Krishan was married to Usha Rani (since deceased) about 3= years back before the date of occurrence which took place on 16th May, 1987. On that day PW.2 Ramesh Kumar son of maternal uncle of deceased had gone to Ferozepur in connection with some challan case under the Shop Act. At about 10.00 P.M. when he went to the house of his cousin Usha Rani (since deceased), he found that some portion of the house where she was residing was under fire and he immediately went to inform the Fire Brigade. Fire Brigade came and extinguished the fire. Thereafter, he found burnt body of his sister Usha Rani and thereupon he went to the police station City Fazilka and lodged the FIR. It has come in evidence that there was an extensive fire in the house and one wall of the store had fallen down. The roof had a big whole on account of the fire. The dead body of the deceased was found in the open courtyard with hundred per cent burn. There is no evidence led by the prosecution that at the time of fire in the house, Kewal Krishan, the appellant was present in the house or in the neighbourhood. In fact, it has come in evidence of PW.2 that Kewal Krishan was posted at Village Ghallu near Abohar. The extensive damage caused to the house indicates towards possibility of the deceased catching fire by accident while she was in the house. We have some doubt whether the 100 per cent burn injury can be caused to a person when he can escape from the place

where the fire breaks out. But in the absence of evidence that Kewal Krishan was present in the house at the time of incident, it cannot be said beyond reasonable doubt that he was the person who set Usha Rani (since deceased) on fire. Although we have strong suspicion of involvement of the accused-appellant, but mere suspicion is not sufficient to hold the appellant guilty. Therefore, the appellant is entitled to benefit of doubt, particularly so when his presence in the house at the time when the fire broke out is not proved beyond reasonable doubt by the prosecution.

5. On consideration of the evidence placed by the prosecution, we do not find any positive evidence of the harassment of the deceased with a view to coercing her to meet any unlawful demand for any property or valuable security. The prosecution has also not led any evidence to show that the deceased was driven to commit suicide.

6. Considering all these facts, we set aside the conviction of the accused-appellant by giving the benefit of doubt and the judgment of the trial court as well as that of the High Court are set aside. The appeal is allowed. The accused appellant shall be set at liberty immediately, if he is not required in any other case.