

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on : 21.11.2023
Pronounced on: 28.12.2023

CRAA No.18/2013

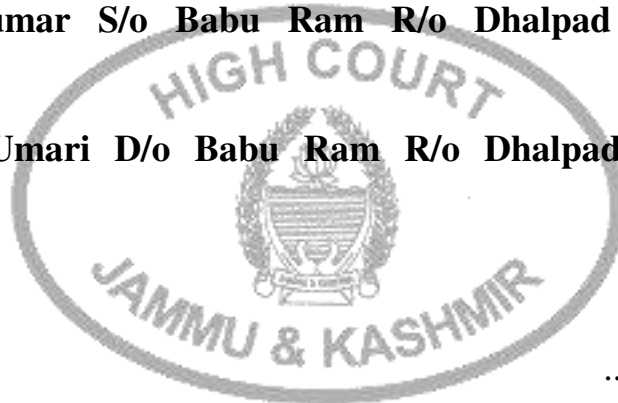
State of Jammu and Kashmir Through P/S Udhampur.

.....Appellant.

Through: Mr. Dewakar Sharma, Dy. AG

Versus

1. **Babu Ram S/o Devi Ditta R/o Dhalpad Tehsil and District Udhampur.**
2. **Satya Devi W/o Babu Ram R/o Dhalpad Tehsil & District Udhampur.**
3. **Ganesh Kumar S/o Babu Ram R/o Dhalpad Tehsil & District Udhampur.**
4. **Santosh KUmari D/o Babu Ram R/o Dhalpad Tehsil & District Udhampur.**



.....Respondents

Through: Mr .

CORAM; HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL.

J U D G M E N T

1. This appeal is directed against the judgment dated 15.09.2012 (for short ('impugned judgment') passed by learned Sessions Judge Udhampur (learned Trial Court') in case (File No.26/Sessions) titled *State of J&K vs Babu Ram and others*, for commission of offence under Sections 306/498-A/34 RPC, FIR No:206/2004 Police Station,

Udhampur, whereby accused excepting accused No.2 have been acquitted.

2. The impugned judgment is challenged on various grounds inter alia;

a. that the judgment is against the law and facts and liable to be set-aside;

b. That the Ld. Trial Court has mis-appreciated the law and evidence on record and has not appreciated the statement of prosecution witnesses in their totality;

c. that there is enough evidence on record which warrants the conviction and sentence of the accused-respondents but the Ld. Trial Court has not appreciated the law and facts of the case which has resulted into acquittal of the accused/respondent;

d. that the appellant reserves right to agitate the other points of law and additional grounds with the kind permission of the Court during the course of arguments. Lastly it is prayed that appeal be allowed and the impugned judgment be set aside;

3. The allegations against the respondents/accused as per prosecution case are that on the basis of a written report lodged by PW1, Manoj Kumar instant case was registered and investigation ensued. As per the report Rakesh Kumari was married to accused Ganesh Kumar since last four years and the couple was blessed with two sons. Accused No.3 was assaulting the deceased physically and threatening

to divorce her and many attempts were made to make the accused understand but they did not mend their ways and continued to ill-treat the deceased. On the fateful day a telephonic message was received by the informant that deceased is seriously ill and he along with others rushed to the matrimonial home of deceased where they found that accused persons were ill-treating the deceased which left her with no option but to commit suicide. During investigation the post-mortem of the deceased was got conducted and the investigating officer collected the evidence. On completion of the evidence it came to the fore that accused were ill-treating the deceased and also demanding dowry from her which led her to commit suicide by consuming some poisonous substance. Accordingly FIR No: 206/2004 for commission of offences under Sections 306/498A/34 RPC were found proved against the accused and the present charge sheet was laid before the court.

4. The learned Trial Court framed charges against the accused for commission of offences under Sections 306/498A/34 RPC and their pleas were recorded. The accused-respondents denied the charges and claimed trial of the case and prosecution was, therefore, directed to lead evidence in support of its case.
5. After completion of prosecution evidence by the Trial Court the statements of accused under Section 342 Cr.P.C were recorded and the accused/respondents also examined one witness in their defence and the case was fixed for final arguments.
6. In order to find out as to whether aforesaid offences have been committed by the respondents/accused persons beyond all shadows of

doubt, it will be appropriate to give a brief resume of the prosecution evidence available on record before the learned Trial Court.

PW Manoj Kumar has deposed that deceased was his sister who was married to accused No.1 since last four years. The relationship between accused No.1 and the deceased ran smoothly for about one year where after accused No.1 started ill treating her by assaulting her physically and demanding dowry. Two years before, the accused No.1 assaulted the deceased and her arm got fractured. Accused were made to understand that they must respect the matrimonial relationship of deceased and her husband but all in vain and they continued to assault the deceased physically. A day before the occurrence he and Kaka Ram went to the house of accused because they had assaulted the deceased and they wanted to take the deceased to her parental home but the accused told them that she would go to the parental home next day. The accused assaulted the deceased on that day even. She had suffered internal injuries. Next day at about 2.30 P.M accused No.4 informed him telephonically that deceased was serious. On hearing this he and others left for the home of accused where they found the deceased battling for life. She was not in a position to talk. Her neck was fractured. Till they arranged a vehicle to shift her to hospital the deceased passed away. The witness has admitted the contents of FIR ExPW-MK, ExPw-MK/1 seizure memos etc. to be correct. In cross examination the witness has stated that this is a fact that he is facing a case for setting ablaze the house of the accused. Accused No.1 and 2 have deposed against him in the said case. Whenever deceased would come to her parental home she would stay there for a month or so and accused No.1 would come to take her back. A number of meetings were held to settle the dispute between the spouses. Accused were demanding cash from the deceased and on one occasion his mother paid Rs.2000/- to accused No. 1.

PW Rano Devi deposed that deceased was her daughter. Accused No.1, was married to deceased since last four years. They lived together peacefully for one and half year after the marriage and thereafter the accused started ill treating her and demanded dowry from her. Deceased used to complain about ill treatment meted out to her by the accused. She paid Rs.2000/- to accused No.3 about 2 ½ years before. PW Manoj Kumar persuaded the accused to behave properly towards deceased. One fine day they received a phone call that deceased was dead. There were marks of violence on the neck of the deceased. The deceased complained about the ill treatment of the accused before her death. In cross examination the witness has stated that two days before the occurrence deceased complained that accused was not allowing her to go to her parental home. PWs Manoj Kumar and Kaka Ram went to the house of accused to persuade them to allow the deceased to go to her parental home. The accused told them that she would go to her parental home next day. She paid Rs.2000/- to accused No.3. Accused had once assaulted the deceased and she suffered a fracture in her arm but no report was lodged in police about the said occurrence.

PW Mohan Lal has deposed that deceased was the daughter of his brother-in-law. In July 2004 her brother informed him that deceased was not well. They proceeded to her matrimonial home where they found deceased in a serious condition. 10/15 minutes thereafter she passed away. A report was lodged in police station and the dead body was shifted for postmortem. The deceased was married to accused No.3 since last four years. She used to complain to her parents about the ill treatment of accused towards her.

PW Kaka Ram has stated that deceased was married to accused No.3 since 6/7 years. Accused were not treating her well and

were assaulting her physically. Many a times accused were advised to desist from ill treating the deceased. On 23.07.2004 he was informed by the brother of deceased that deceased is serious. They rushed to her home where they found deceased battling for life and she died soon after.

PW Dr. Narinder Nargotra *has deposed that on 23.07.2004 he conducted postmortem of the deceased. There was no external injury over the body of the deceased. Viscera of the deceased was sent for chemical examination and the FSL report revealed the presence of Aluminum Phosphide in the viscera. In his opinion deceased had died due to consumption of Aluminum Phosphide which is a rodenticide. The report Expw-NN is correct.*

PW Shiv Charan has deposed that he does not know anything about the occurrence. The witness has been declared hostile by the prosecution.

PW Om Parkash *has deposed that on 23rd July 2004 PW Manoj Kumar informed him that deceased was serious. They rushed to the house of the deceased and found her battling for life. Before they could shift her to hospital she died. He cannot say how the deceased died. Police came on spot and started investigation. This witness has also been declared hostile by prosecution and in cross examination by P.P he has stated that he has disclosed in his statement u/s 161 of Cr.PC that deceased was being ill treated by accused and accused No.1 was threatening to divorce her. On 24.07.2004 deceased consumed poison and commit suicide.*

PW Charanjeet Singh *has deposed that on the request of police he took the photographs of the dead body which stand marked as ExPw-CS, ExPW/I and ExPW-CS/II.*

PW Daya Nand has deposed that he conducted the investigation of the case partly. He managed the postmortem report from the hospital and after completion of the investigation challan was laid before the court.

PW Som Raj has deposed that on 23.07.2004 he was informed by PW1 that deceased was not well. He also rushed to the house of deceased and found that she was lying on the ground battling for life. She was not in a position to talk and died immediately thereafter. Numberdar was informed and the report was lodged in police. The accused never demanded dowry from the deceased or ill treated her to his knowledge. PW1 is facing prosecution for burning the house of accused. He was told by the mother and brother of the deceased that accused were ill treating the deceased.

PW Khajur Singh has deposed that he conducted the investigation of the case and during investigation he prepared the sketch map of the place of occurrence, got the postmortem of the deceased conducted. Prepared seizures of the poisonous substance, photographs, wearing apparels of the deceased etc. the Farad Surat hall Ext- P.11 and it was found that accused have committed offences 306/498-A/34 RPC.

7. The Trial Court after hearing the arguments of both sides acquitted the accused as the prosecution was not been able to bring home the guilt against the accused. The operative part of the judgment dated 15.09.2012 is reproduced as under:-

“ Thus, after considering the pros and cons of the case in light of the legal position reiterated above, I am of the view that the prosecution has not been able to bring home the guilt against the accused. There are so many

disturbing features in the case. The first information report and the evidence adduced at trial are at variance. The essential elements of the offences loaded against the accused have not been established as was required under law. It appears that the investigating agency has either failed to collect the best evidence or has booked the accused notwithstanding their innocence and the conclusion that can be drawn is that the case fails for want of sufficient proof which is accordingly dismissed and accused other than No.2 are acquitted of all the charges. Regarding accused no.2 the trial stands suspended by virtue of an order dated 05.06.2009 on account of the mental ailment of said accused and her inability to stand the trial. So the trial against her would commence from the stage she has turned unsound as and when she is fit to stand trial. Till then the file shall be consigned to records.”

8. I have heard the learned counsel for the parties and perused the material on record.
9. The accused-respondents are alleged to have treated the deceased with cruelty and are also stated to have abetted the commission of suicide by deceased. The prosecution evidence needs to be scanned to find out the reasons leading to the taking of extreme step by the deceased.
10. In so far as allegation of cruelty is concerned the brother and mother of the deceased i.e., PW Manoj Kumar and Rano Devi have stated that apart from physical assault the accused were demanding dowry from deceased but in the First Information Report, which was lodged by PW Manoj Kumar there is no mention of any dowry demand from accused. It is only mentioned in the report that A-3 was physically

assaulting the deceased and was threatening to divorce her. In his cross-examination he says that accused were demanding cash and his mother paid Rs. 2000/- to accused. Whereas PW Rano Devi, says that accused would say to deceased that she has not brought enough dowry and were making dowry demand and also assaulting her physically. In her cross examination she also says that once she paid Rs. 2000/- to husband of deceased. No other witness has supported this version of the brother and mother of deceased. Thus, while going through the statements of these two witnesses neither the demand for dowry nor the physical cruelty has been convincingly established.

11. PW Mohan Lal who is relative of deceased has stated that in July 2004 he came to know that deceased was in serious condition. He went to her house and immediately thereafter the deceased passed away. He has further stated that deceased was complaining to her father that accused are ill-treating her and A-3 was threatening to divorce her. The evidence of this witness is not of any significance as he is not witness to what is alleged by him and he has not stated about any specific demand of dowry. PW Kaka Ram who is uncle of deceased has stated in his cross-examination that he does not know about any dowry demand by accused. PW Shiv Charan has turned hostile. PW OM Parkash has also turned hostile, however in his cross examination he stated that he had heard that accused were ill-treating the deceased and threatening to divorce her. PW Charanjeet Singh has taken photographs of the dead body. PW Daya Nand has presented the challan in the Court. PW Som Raj states that accused never demanded dowry from deceased. The brother and mother of

deceased told him that accused were ill-treating deceased. PW Khajur Singh I.O has stated about the investigation conducted by him.

12.As per the material on record neither the demand for dowry nor the physical assault has been established. For constituting an offence under section 306 RPC there must be some overt act on the part of accused to instigate or aid the deceased in committing the suicide. There is no corroboration to the evidence of brother and mother of deceased on record and their shaky evidence do not make out a case for conviction of accused u/s 498-A/306 RPC. Thus, the prosecution has not been able to bring home the guilt against the accused. The contradictions and discrepancies in the statements of the witnesses are material and go to the very root of the case and it will not be safe to base conviction of accused persons without any cogent evidence.

13.In view of the facts and circumstances, the impugned judgement 15.09.2012 passed by learned Sessions Judge Udhampur is upheld and the appeal is, accordingly, dismissed.

(VINOD CHATTERJI KOUL)
JUDGE

Jammu
28.12.2023
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Whether the order is reportable: Yes/No