

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Criminal Appeal No.157 of 2008**

Smt. Makdi Devi .....Appellant

Versus

State of Uttarakhand ..... Respondent

**Present:**

Mr. R.P. Nautiyal, Senior Counsel assisted by Ms. Garima Thapa, counsel for the appellant.

Mr. Deepak Bisht, Deputy Advocate General assisted by Ms. Mamta Joshi, Brief Holder for the State.

**Dated: 19.12.2023**

**Hon'ble Vivek Bharti Sharma, J. (Oral)**

This appeal is directed against the judgment and order dated 20.06.2008 passed by learned Sessions Judge, Rudraprayag in S.T. No.19 of 2006, whereby the appellant has been convicted under Section 498A of The Indian Penal Code (*hereinafter to be referred as IPC*) and has been sentenced to undergo rigorous imprisonment for period of one and a half year and a fine of ₹ 2,000/-, and in default of payment of fine, she has been directed to undergo simple imprisonment of two months.

2. Brief facts, necessary for disposal of appeal are, that marriage of the deceased Bhawna was solemnized with co-accused Vinod Singh (*acquitted in Sessions Trial*) on 14.10.2004. A First Information Report (*registered as Case Crime No.467/2006*) was lodged by PW1 Basanti Devi, step mother of deceased Bhawna at P.S. Rudraprayag, District Rudraprayag

under Sections 498-A and 304-B IPC against the present appellant/convict and Vinod Singh and Bharat Singh, husband and father-in-law of deceased, respectively with the allegations that the deceased was not having any child after two years of the marriage and the appellant/convict and other accused persons used to harass her and had made her life miserable for demand of dowry; that on 04.10.2006, they got the information that her daughter Bhavna has committed suicide by hanging herself.

3. On completion of investigation, charge sheet was filed against the appellant/convict and other co-accused persons under Sections 498A and 304B IPC; On 21.12.2006, charges were framed against the appellant/convict and other accused persons under the same Sections i.e. 498A and 304B of IPC.

4. In order to prove its case, the prosecution examined as many as 12 witnesses, namely, PW1 Smt. Basanti Devi (*step mother of deceased*); PW2 Surni Devi, (*real mother of deceased*); PW3 Bhajman Singh (*real brother of deceased*); PW4 Sudama Devi (*grandmother*); PW5 Kunwari Devi, parental aunt of deceased (ताई); PW6 Udai Singh (*real elder brother of deceased*); PW7 Rakesh Singh (*neighbour of deceased*); PW8 Jaswant Singh

Rautela (*father of deceased*); PW9 Dr. Manendra Singh Bhandari (*Medical officer, who conducted postmortem on the body of deceased*); PW10 Constable CP Pancham Singh Butola (*FIR and GD Writer*); PW11 SI Payare Lal (*who conducted initial investigation*) and PW12 Ashadhu Lal Arya, Deputy S.P. (*who finally filed the charge sheet in the Court*).

5. After hearing the parties and on perusal of evidence led by the prosecution, trial court convicted and sentenced the appellant/convict, as above.

6. Heard arguments of learned counsel for the appellant/convict and the learned State Counsel as well as perused the entire record.

7. Learned Senior Counsel appearing for the appellant/convict would submit that there is no allegation, whatsoever, against the appellant/convict and the Trial Court has passed the impugned judgment, without proper appraisal of evidence, and the same is liable to be set aside.

8. He would further submit that PW3 Bhajman Singh, real brother of the deceased, PW4 Sudama Devi, real grandmother of the deceased; PW5 Kunwari Devi, real paternal aunt (ताई) of the deceased, PW7 Rakesh

Singh, neighbour of the *deceased* and PW8 Jaswant Singh Rautela, father of the deceased have specifically stated in their statements recorded before the trial court that there was no demand of dowry by the appellant/convict. He would further submit that the allegations were levelled by PW1 Smt. Basanti Devi, PW2 Sunri Devi and PW6 Udai Singh that there was harassment meted out to the deceased at the hands of the appellant/convict for demand of dowry of ₹ 10,000/- and a gas stove but these witness have not stated any date of incident of demand by the appellant/convict.

9. He would further submit that even if it is presumed for the sake of arguments that there was any demand by the appellant/convict, in that eventuality also, it would not fall within the ambit of Cruelty as defined in clause (a) of Explanation to Section 498A of IPC.

10. Per contra, learned State Counsel would support the impugned judgment on the ground PW1 Smt. Basanti Devi, who is step mother of the deceased, has specifically stated in her statement that the appellant/convict used to make demand of dowry from deceased Bhawna and similarly, PW2 who is the real brother of the deceased, also stated on oath in the trial

court that appellant/convict used to harass the deceased Bhawna for demand of gas stove.

11. In view of the submissions made by learned counsel for the parties, this Court perused the entire record.

12. After perusal of the record, this Court is of the view that impugned judgment passed by the trial court is against the facts and evidence on record. It is admitted fact that PW3 Bhajman Singh (*real brother of the deceased*) has unequivocally stated in his examination-in-chief that the deceased Bhawna had never told him about any harassment or atrocity by the appellant/convict from the demand of dowry. At this stage, this witness was declared hostile by the Court and therefore, was cross-examined at length by the prosecution with permission of the Court. In the cross-examination, he stuck to his guns and stated that the police had never recorded his statement u/s 161 Cr.P.C.

In cross-examination by the defence, this witness again reiterated the fact that none of the accused, including the appellant/convict, ever demanded dowry or harassed the deceased.

13. Likewise, PW4 Sudama Devi, who is the grandmother of the deceased, also stated in her

examination-in-chief that the appellant/convict and other persons never harassed her granddaughter Bhawna nor they made any demand of dowry. At the stage, this witness was also declared hostile and was therefore cross-examined at length by the prosecution with the permission of Court.

In cross-examination, she denied recording of her statement under Section 161 Cr.P.C. and that she had never told the police that the appellant/convict and other accused persons had made a demand of ₹ 10,000/- and gas cylinder and stove.

14. Similarly, PW5 Kunwari Devi, who is paternal aunt of deceased (ताई), also stated that she does not know about any harassment or demand of dowry by the appellant/convict with the deceased. In cross-examination with permission of the court, she also denied recording of any statement to the police u/s 161 Cr.P.C. She also stated that the deceased Bhavna had never told him that the appellant/convict and other accused persons used to harass her or that they were demanding dowry.

15. PW8 Jaswant Singh Rautela, who is father of the deceased, also reiterated the same things in his examination-in-chief that deceased Bhawana did not tell

anything about any harassment or demand of dowry by the appellant/convict.

In cross-examination by prosecution with permission of the Court, he denied the statement under Section 161 Cr.P.C. In cross-examination by the defence, he rather stated that in-laws of his deceased daughter Bhawna never demanded any dowry from him.

16. PW1 Smt. Basanti Devi, step mother of the deceased, stated in her statement recorded in the Trial Court that after the marriage the appellant/convict and other accused persons started harassing the deceased Bhavna for demand of dowry. However, in cross-examination by the defence, she admitted that in the FIR given by her this fact is not stated that there was demand of ₹ 10,000/- and a gas cylinder and stove by the appellant/convict and other accused persons.

17. It is very strange that when there is a demand of dowry and harassment for such demand and FIR is lodged in the circumstances of unnatural death by the complainant, who happens to be mother of the deceased, she did not state the fact of harassment or demand of dowry in the FIR. The FIR is completely silent on this point. Rather, as apparent from the FIR, the only allegation in the FIR is that the appellant/convict i.e. the

mother-in-law of the deceased Bhavna used to harass her making and had made life of the deceased miserable.

18. In considered view of this Court, there is no *iota* of evidence against the appellant/convict with regard to demand of dowry or harassment for such demand of dowry. In the statement recorded before the Trial Court, not a single witness has stated about any specific incidence of harassment. In the absence of any evidence, it cannot be held that the appellant/convict was tormenting the deceased and had made her life miserable for demand of dowry.

19. Besides this, PW2 Surni Devi, real mother of the deceased, admitted in her cross-examination that her husband, after re-marriage had left her and she was residing in her parental home eking her livelihood by labour work in her village. She further stated that the husband of the appellant/convict had thrice come for marriage alliance of his son with the deceased Bhavna and at that time he (*father-in-law of deceased Bhavna*) had not asked for any dowry.

In cross-examination, she further stated that she had no expectation from her husband that he would support her to meet the expenses of marriage of her deceased daughter.

In latter part of the cross-examination, she admitted that the appellant/convict and other co-accused persons had specifically stated that they did not want anything from family of deceased Bhawna in marriage, except Bhavna herself.

20. In these circumstances, the allegations made by PW1 Basanti Devi, PW2 Surni Devi and PW6 Uday Singh against the appellant/convict for demand of dowry and harassment, appear to be afterthought as the allegation of demand of dowry does not find mention in the FIR and is contradictory to the statements of other prosecution witnesses, who are real father, grandmother and brother of the deceased.

21. Learned State Counsel is at loss to explain as to what were the reasons that PW3 Bhajman Singh, real brother of the deceased, PW4 Sudama Devi, grandmother of the deceased and PW8 Jaswant Singh Rautela, father of the deceased did not support the prosecution story, except that there are statements of these witnesses recorded under Section 161 Cr.P.C. to support the prosecution story.

22. There are glaring contradictions in the statements of the witnesses which the prosecution is failed to explain at all. The evidence of PW1 Smt. Basanti

Devi, PW2 Surni Devi and PW6 Uday Singh are not trustworthy and consistent and do not inspire confidence.

23. For the reasons as recorded above, this Court is of the firm opinion that the prosecution has not been able to prove the charge of offence punishable under Section 498A of IPC against the appellant/convict. That being the position, the appeal is allowed. Impugned judgment and order dated 20.06.2008 is hereby set aside.

**(Vivek Bharti Sharma, J.)**  
**19.12.2023**