

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

19th DECEMBER, 2023

CRIMINAL APPEAL NO. 55 of 2005

1.Smt. Veera Kaur
2.Kripal Singh (deceased)
3.Manjit Singh Appellants

Versus

State of Uttarakhand Respondent

Counsel for the Appellants : Mr. Aditya Pratap Singh,
Advocate.

Counsel for the State : Mr. V.K. Gemini,
Deputy Advocate
General.

With

CRIMINAL APPEAL NO. 66 of 2005

Malkeet Singh Appellant

Versus

State of Uttarakhand Respondent

Counsel for the Appellant : Mr. Asif Ali,
Advocate.

Counsel for the State : Mr. V.K. Gemini,
Deputy Advocate
General.

Hon'ble Alok Kumar Verma, J.

These two Criminal Appeals have arisen from a common judgment dated 04.04.2005, passed by learned Additional Sessions Judge/IInd Fast Track Court, Udham

Singh Nagar in Sessions Trial No.345 of 2003, "State Vs. Malkeet Singh and Others", by which, the appellants have been convicted and sentenced to undergo rigorous imprisonment for a period of seven years for the offence under Section 304 B of the Indian Penal Code, 1860 (in short, "IPC"); they have been convicted and sentenced to undergo rigorous imprisonment for a period of two years under Section 506 IPC, and, they have been further convicted and sentenced to undergo rigorous imprisonment for a period of six months under Section 3/4 of the Dowry Prohibition Act, 1961. All the sentences have been directed to run concurrently.

2. The file of Criminal Appeal No.66 of 2005 has already been consolidated with the file of Criminal Appeal No.55 of 2005.

3. The case of the prosecution is that Smt. Surinder Kaur (deceased) was married to the appellant-Malkeet Singh on 14.11.2002. The appellant Smt. Veera Kaur was the mother-in-law of the deceased Smt. Surinder Kaur. Appellant-Kripal Singh was the father-in-law of the deceased. Appellant-Manjit Singh was the brother-in-law (Devar) of the deceased and appellant-Malkeet Singh was the husband of the deceased. Everything was fine till two months of marriage. Thereafter, the appellants started harassing the deceased demanding Rs.50,000/- and a motorcycle. Whenever she used to come to her parental

house, she used to tell about her torture. On the day of her last Rakshabandhan, she had gone to her parental house with her husband. Her husband demanded Rs.50,000/- and a motorcycle saying that he would not take his wife with him without the money and the motorcycle.

4. The deceased's father Sohan Singh (PW1) is the cousin of Bariyam Singh (PW2). The deceased died on 07.09.2003 at her in-laws' house. She was pregnant at the time of her death. A day before her death, she had informed Bariyam Singh (PW2) over phone that her in-laws were threatening her, demanding Rs.50,000/- and a motorcycle.

5. An FIR (Ext. Ka. 7) was registered on 07.09.2003 at 13:15 hrs. After registration of the case, Ali Hasan, the Sub-Divisional Magistrate, Khatima prepared the inquest report (Ext. Ka. 2). The inquest proceedings were written by Mohan Chandra Durgapal, the Senior Sub-Inspector (PW4) in his own handwriting.

6. The post-mortem examination of the dead body of the deceased was conducted by Dr. M.S. Martolia (PW5) on 08.09.2003. As per the post-mortem report (Ext. Ka. 9), the cause of death of the deceased could not be ascertained, hence the viscera was preserved for examination.

7. According to the report of the Forensic Science Laboratory, Uttar Pradesh, Agra dated 05.11.2003 (Ext. Ka. 15), organochloro insecticide poison was found in stomach, pieces of intestine, pieces of liver, kidney and spleen, but,

the said poison was not found in the salt solution sent to the Laboratory.

8. During the investigation, statements of witnesses were recorded and the site plan was prepared. Ashok Kumar Bhatt, the Circle Officer (PW6) filed the charge-sheet (Ext. Ka. 14) before the Court of competent jurisdiction.

9. The case was committed to the Court of Session. The charges were framed against the appellants-accused persons. They pleaded not guilty and claimed to be tried.

10. The prosecution, in order to establish the charges, examined altogether six witnesses.

11. The statements under Section 313 of the Code of Criminal Procedure, 1973 were recorded. The appellants-accused persons denied all the incriminating evidence, produced by the prosecution.

12. The appellants-accused persons examined Smt. Harnam Kaur (DW1), Kehar Singh (DW2) and Santa Singh (DW3) in their defence evidence.

13. Learned Trial Court heard arguments, appreciated the evidence and held that the prosecution has been successful to prove its case against the appellants beyond all reasonable doubts.

14. Aggrieved by the judgment of conviction and sentence, awarded by learned Trial Court, appellants appealed to this Court.

15. Due to the death of the appellant-Kripal Singh during the pendency of the appeal, an order was passed on 13.05.2008, “..... the appeal stands abated against appellant no.2, Kripal Singh.....”.

16. I heard learned counsel for the parties and carefully assessed the evidence, adduced by the parties.

17. Section 304 B IPC lays down that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before the death of the woman she was subjected to cruelty or harassment by her husband or his relatives for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and her husband or his relatives shall be deemed to have caused for death.

18. The ingredients for dowry death are –

- (i) There is a married lady;
- (ii) She has died unnatural death including death by burns or by bodily injury or by poisoning etc.;
- (iii) Such a death has occurred within seven years of the marriage; and
- (iv) It must be found that soon before her death she was subjected to cruelty or harassment for, or in connection with any demand for dowry by her husband or any of his relatives.

19. The provisions of Section 113 B of the Indian Evidence Act, 1872 enjoin upon the court to draw presumption of dowry death on proof of circumstances mentioned therein. The presumption shall be raised only on the proof of the following ingredients :-

- (i) The question before the court must be whether the accused has committed the dowry death of a woman;
- (ii) The woman was subjected cruelly or harassment by her husband or his relatives.
- (iii) Such cruelty or harassment was for, or in connection with any demand for dowry;
- (iv) Such cruelty or harassment was soon before her death.

20. In **Mustafa Shahdal Shaikh vs. State of Maharashtra, AIR 13 SC 851**, the Hon'ble Supreme Court has held that "soon before her death" means interval between cruelty and death should not much. There must be existence of a proximate and links between the affect of cruelty based on the dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become state enough not to disturb of the woman concerned, it would be no consequence.

21. The ingredients of the offence under Section 304 B IPC are well settled. A marriage performed within seven years before the death of the woman. The death must be unnatural. Soon before the death, the deceased must have

been at the receiving hand cruelty or harassment, on account of demand for dowry. It is described as dowry death. Section 113 B of the Indian Evidence Act comes to the rescue of the prosecutor by providing for a presumption that a person has caused dowry death, if it is shown that soon before her death, she was subjected by such person for cruelty or harassment for or in connection with demand for dowry. There should be a nexus between the death of the deceased and the dowry related harassment or cruelty inflicted on her.

22. Smt. Harnam Kaur (DW1), Kehar Singh (DW2) and Santa Singh (DW3) are relatives of the informant Sohan Singh (PW1). According to these witnesses, the deceased had stomach pain three-four days before her death. She was taken to the hospital. She was cured. She had stomach pain again on the day of her death. She was being taken to the hospital, but she died on the way.

23. It has been submitted by Mr. Aditya Pratap Singh, Advocate that the deceased died under suspicious circumstances, but her death was not due to poison, because Dr. M.S. Martolia (PW5), who conducted the post-mortem, has stated that after taking organochloro insecticide poison, stretching of muscles is found, respiratory obstruction is found, tongue comes out and foam flows from the mouth, but none of these symptoms were found on the body of the deceased. According to Dr. M.S. Martolia,

consumption of allopathic medicines can cause reaction and the reaction can also lead to death.

24. In the present case, the death of the deceased was otherwise than under natural circumstances and she had died within seven years from the date of marriage are not in dispute. Apart from this, the fact, which also has to be ascertained, is, whether the deceased was subjected to the cruelty, and, the said cruelty was soon before her death in respect of demand of dowry. This Court has to see whether death of Smt. Surinder Kaur occurring within seven years of marriage is due to cruelty or harassment in connection with demand of dowry and whether there is a reasonable nexus between the alleged harassment and death.

25. Sohan Singh (PW1), the father of the deceased, deposed in his examination-in-chief that after two months of marriage, the appellants started harassing her daughter demanding Rs.50,000/- and a motorcycle. Whenever his daughter came to his house, she used to tell about her harassment and also told about it on phone, whereas, he stated in his cross-examination that the deceased had talked on the phone a day before her death. He further stated that before the said phone call, she had never informed over the phone about the demand and her harassment.

26. According to Bariyam Singh (PW2), the deceased had told him on phone a day before her death that she was being threatened, demanding Rs.50,000/- and a motorcycle.

27. The prosecution did not produce any such evidence which could make it clear from which phone number the said last phone call was received. No Call Detail Record has been produced by the prosecution. The prosecution has also failed to explain the circumstances as to why the deceased could not make her alleged last call to her father's phone when she used to call her father on his phone.

28. Therefore, the prosecution's case does not prove beyond reasonable doubt that the deceased had made the said call a day before her death.

29. The deceased was the sister of witness Mangat Singh (PW3). According to Sohan Singh (PW1) and Mangat Singh (PW3), on the day of her last Rakshabandhan, she came to their house with her husband. Her husband demanded Rs.50,000/- and a motorcycle saying that he would not take his wife with him without the money and motorcycle.

30. Smt. Harnam Kaur (DW1) deposed that she had arranged the marriage of the deceased with the appellant Malkeet Singh. Sohan Singh (PW1) has accepted this fact in his cross-examination.

31. Smt. Harnam Kaur (DW1), Kehar Singh (DW2) and Santa Singh (DW3) are relatives of Sohan Singh (PW1), the father of the deceased. These witnesses have stated in their evidence that the appellants owned land and property

and they also had a tractor and motorcycle. Mangat Singh (PW3) has also admitted that the appellants have farms, tractor and motorcycle.

32. Smt. Harnam Kaur (DW1), Kehar Singh (DW2) and Santa Singh (DW3) deposed that no demand for the alleged dowry was ever made by the appellants nor was the deceased ever harassed by the appellants demanding any kind of dowry. Kehar Singh (DW2) deposed that if there was any demand for dowry, Sohan Singh would have definitely told him because he is his relative.

33. In the light of the said evidence, the arguments of Mr. Aditya Pratap Singh, Advocate and Mr. Asif Ali, Advocate, are strengthened that when the appellants were resourceful and they also had motorcycle, then there was no need for them to demand Rs.50,000/- and a motorcycle.

34. Sohan Singh (PW1) deposed that Manjit Singh, the appellant, had his own workshop. He (Sohan Singh) used to go to Manjit Singh's house and stay there at night. The said circumstance also makes the prosecution's case doubtful, because if he (Sohan Singh) had not been on good terms with Manjit Singh, the appellant, then why would he have stayed at his house.

35. In the instant case, nothing is on the record to suggest that the deceased was subjected to cruelty and harassment "soon before her death" and "in connection with the demand of dowry". Such deficiency in evidence proves

fatal for the prosecution case as evidence of cruelty and harassment in general is not sufficient to attract Section 304 B IPC.

36. In **Bhagwan Singh and others vs. State of M.P., (2002) 4 SCC 85**, the Hon'ble Supreme Court observed that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other of his innocence, the view which is favorable to the accused should be adopted.

37. It is also a basic rule of the criminal jurisprudence that suspicion, however, strong cannot take place of proof. In **Sujit Biswas vs. State of Assam, AIR 2013 SC 3817**, the Hon'ble Supreme Court held that suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved." In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be true" and "must be true", must be covered by way of clear,

cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied.

38. In a criminal case, the onus is on the prosecution to prove that the circumstances from which the conclusion of guilt is to be drawn, are fully established. Something more than mere suspicion is needed to convict the accused. The prosecution has to prove beyond all reasonable doubt that the deceased was subjected to cruelty or harassed by the appellants for or in connection with any demand of dowry. In order to presume the dowry death, it is a condition precedent that there must be unimpeachable evidence in relation to dowry demand. But, the evidence on record do not support the prosecution story. The circumstances of this case are not sufficient to connect the appellants with alleged offence. No offence under Section 304B IPC or Section 506 IPC or Section 3/4 of the Dowry Prohibition Act, 1961 is made out as there is no material on record to show that the appellants had subjected the deceased to cruelty. As per evidence on record, there is no positive and cogent evidence about demand of dowry, and, nexus between demand of dowry and harassment could not be established. Therefore, conviction of the appellants cannot be sustained.

39. On a detailed examination and scrutiny of the evidence, produced by the prosecution, it is considered view of this Court that the prosecution has failed to establish the

commission of alleged offence by the appellants beyond all reasonable doubt, therefore, they deserve benefit of doubt.

40. As a result, this Court accepts the case of the appellants. Accordingly, both the appeal are allowed.

41. The impugned judgment of conviction and sentence dated 04.04.2005, passed by learned Additonal Sessions Judge/IInd Fast Track Court, Udham Singh Nagar in Sessions Trial No.345 of 2003, "State vs. Malkeet Singh and Others", is hereby set aside. The appellants are acquitted of the charge under Sections 304B IPC, 506 IPC and Section 3/4 of the Dowry Prohibition Act, 1961. Appellants are on bail. Their bail bonds are cancelled and sureties are discharged.

42. Appellants are directed to make compliance of Section 437A of the Code of Criminal Procedure, 1973 within four weeks from the date of this judgment by appearing before the court concerned and execute a personal bond and two reliable sureties, each in the like amount, to the satisfaction of the court concerned.

43. A copy of this judgment be placed on the record of CRLA No.66 of 2005.

ALOK KUMAR VERMA, J.

Dt: 19th December, 2023
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