

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2023:AHC-LKO:68890-DB

Reserved on:15.09.2023

Delivered on:19.10.2023

Court No. - 9

Case :- CRIMINAL APPEAL No. - 802 of 2014

Appellant :- Rajendra Singh @ Chhutney

Respondent :- State of U.P.

Counsel for Appellant :- Devendra Pratap,Akhter Abbas,Bal Ram

Jakhar,Ratnesh Kant Agnihotri,Satyendra Tiwari

Counsel for Respondent :- Govt. Advocate

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per : Rajan Roy, J.)

1. Heard Shri Bal Ram Jakhar, learned counsel for the appellant and Shri Pawan Kumar Mishra, learned A.G.A. for the State.
2. This is an appeal under Section 374 Cr.P.C. preferred by the appellant- Rajendra Singh @ Chhutney challenging his conviction and his sentence vide judgment dated 16.05.2014 passed in Sessions Trial No. 591 of 2011 (State Vs. Rajendra Singh @ Chhutney) arising out of Case Crime No. 687 of 2011, under Section 304B IPC alternative Section 302 IPC and Section 3/4 Dowry of Prohibition Act, Police Station - Kachauna, District - Hardoi.

3. The appellant on being found guilty of the offence under Section 302 IPC has been sentenced to life imprisonment with fine of Rs.20,000/- failing which he would have to undergo further imprisonment of six months.

4. The prosecution's case in short is that an F.I.R. was lodged on 06.08.2011 at 23.10 p.m. to the effect that the informant - PW-1's sister, who was married to the appellant- Rajendra Singh @ Chhutney, was beaten up on 05.08.2011 at about 08.00 p.m. and then set on fire by the appellant and his mother, who, after committing the said crime got her admitted in a Government Hospital. The victim died subsequently at 02.15 in the night intervening 05.08.2011 and 06.08.2012, of burn injuries. The incident leading to death of the deceased occurred in the house of the appellant-husband.

5. The inquest (Ex. Ka- 06) was conducted on 06.08.2011 between 6.45 a.m. and 13.30 p.m. Postmortem was conducted on the same day at 4.00 p.m.

6. Thereafter, the F.I.R. was lodged on 06.08.2011 at 23.10 p.m. by the brother of the deceased which is Ex. Ka-3.

7. After investigation charge sheet was filed only against appellant- Rajendra Singh @ Chhutney under Section 306 IPC for abetting of suicide of his wife. It seems that at some point of time the mother of the appellant died that is why no charge had been framed against her by the trial Court. Initially, on 07.12.2011 the trial Court framed charge against the appellant under Section 306 IPC with an alternative charge under Section 302 IPC. Subsequently, on 01.02.2013 the charge was altered and it was framed against the appellant under Section 304B IPC with alternative charge under Section 302 IPC and another charge under Section 3/4 Dowry Prohibition Act was also framed. As the appellant denied the charges and demand trial, therefore, he was put to trial.

8. The case of the prosecution is based on circumstantial evidence and not direct evidence. Prosecution produced as many as eight witnesses. PW-1 (Awadh Baksh Singh) is the informant. PW-2 (Madhsudan Singh) belongs to the same village as the appellant. He was declared hostile. PW-3 (Ravindra Singh) is the other brother of the deceased whose statements were never recorded by the Police under Section 161 Cr.P.C. and he was not mentioned as a witness by the police in the charge sheet, but, he was produced as a witness for the first time before the trial Court. PW-4 (Smt. Rajni Singh) is the 'bhabhi' of the deceased and her statement was also not recorded before the Police under Section 161 Cr.P.C., but, she was examined for the first time before the trial Court. PW-5 (Siyaram) is the Head Constable who had received the 'tehrir' and made requisite entry in the police record as regards the first information relating to the crime. PW-6 (Dr. A. K. Gupta) is the Autopsy Surgeon who has proved the postmortem report which is Ex. Ka-5. PW-7 (Ram Narayan Yadav) is the Tehsildar Judicial in whose presence the inquest report as also challanas and Photo Nash etc. had been prepared. PW-8 is the Investigation Officer of the case.

9. The defence produced DW-1 (Abhimanya) who belongs to the same village as appellant and DW-2 (Randheer Kumar Rajvanshi) who had printed the marriage card pertaining to marriage of appellant with deceased. His testimony is relevant only with regard to the date of marriage, as, according to the prosecution the marriage had taken place on 06.05.2006, whereas, according to the defence it had taken place on 03.05.2006 and as such the death had occurred beyond the period of seven years envisaged in Section 304B IPC.

10. It is not out of place to mention that the trial Court has acquitted the appellant of the crime alleged under Section 304B IPC and Section 3/4 Dowry Prohibition Act. It has convicted the appellant only of the crime punishable under Section 302 IPC. The case of the appellant/ defence is one of denial. According to it, the deceased died as a result of burn injuries sustained while cooking food.

11. As already stated, it is not a case of direct evidence but of circumstantial evidence. The trial Court has convicted the appellant only of the offence punishable under Section 302 IPC that too only on the ground that the death occurred due to burn injuries, the entire body of the deceased having been burnt. It has found the explanation offered by the appellant regarding the incident as referred hereinabove acceptable and naturally.

12. In statement under Section 313 Cr.P.C. the appellant has alleged false implication and has mentioned that he is a farmer and that he is a poor person.

13. The contention of learned counsel for the appellant was that appellant has been convicted only on suspicion, conjecture, surmises and presumptions. He has not been convicted under Section 304B IPC nor for the offence under Section 3/4 Dowry of Prohibition Act, but, has been convicted under Section 302 IPC. The case is of circumstantial evidence and the only circumstances, which has prevailed upon the trial Court to convict him, is firstly that the body of the deceased wife was found in the house of the appellant. Secondly, the deceased had suffered 60% burn injuries, which by itself could not have been the basis of his conviction. The trial Court ignored the fact that there was no other ante-mortem injuries. The appellant and his mother had themselves taken the deceased to the hospital. In spite of the deceased being alive for sufficient time there is no dying declaration by her. PW-3 and PW-4 did not get their statements recorded before the police under Section 161 Cr.P.C. and were not even mentioned as witnesses in the charge sheet, they were produced for the first time in the Court itself. The testimony of PW-1 and PW-2 clearly establishes that F.I.R. was lodged only on saying of the villagers and their suspicion in this regard. In fact, even the police filed charge sheet against appellant only under Section 306 IPC, meaning thereby, the prosecution itself did not find any evidence for the offence either under Section 304B IPC or Section 302 IPC. The entire case for convicting the appellant under Section 302 IPC was planned during trial. No motive has been proved as, the demand of dowry etc. has not been proved. The chain

of events was not complete and the circumstances did not rule out any other possibility other than the guilt of the appellant, yet, he has been convicted of the offence. Hence, the appellant is entitled to be acquitted and the judgment of the trial Court is liable to set-aside.

14. On the other hand learned A.G.A. has submitted that body of the deceased was found in the house, she had suffered 60% burn injuries which is a circumstance about which there is no acceptable explanation by the appellant, as such, the trial Court has not committed any error in convicting the appellant. Therefore, the trial Court has rightly convicted the appellant of the offence under Section 302 IPC. and the Appeal is liable to be dismissed.

15. Before discussing the medical and other evidence it needs to be mentioned that it has come in evidence that death occurred on 05.08.2011 at 08.00 p.m. in the night. It is an admitted case of the prosecution, as is evidenced from the witnesses produced by it which are PW-1, PW-3 and PW-4 that after the incident it is the appellant and his mother who took the deceased to the Government Hospital where she was treated. There are no eye witnesses to the incident.

16. Site plan has been prepared by the Investigating Officer of the scene of the crime which is Ex. Ka- 12, according to which, the place where the incident took place was under a 'chappar' where food used to be cooked for the family. It has come in the testimony of the PW-1 that the appellant's family did not have any Gas Cylinder and food was cooked on 'chulha' which is a reference to the 'mud chulha' on which food is cooked in rural areas. The site plan does not detail the actual scene of crime as to whether there were any tell tale signs of any struggle or utensils being thrown around or spread out, the 'chulha' having been damaged etc. consequent to the incident or any container having been found containing any flammable liquid or material such as kerosene oil or any other sign of fire etc. In fact, no such details have been mentioned nor has any of the prosecution witnesses including the investigating Officer mentioned about it.

17. The Autopsy Surgeon PW- 6 has mentioned that while conducting autopsy there was no smell of kerosene oil on the body of the deceased.

18. From the postmortem report and testimony of the Autopsy Surgeon it is evident that the deceased did not die a natural death but was burnt to death. As per postmortem report Ist to IIIrd degree burns were present in front of neck and chin, right ear & part of face, front of chest, back in patches, upper part of abdomen. Burnt area was about more than 60%. Lower part of both thigh, back of both thigh were burnt in patches, both lower limbs front and back, both hands front and back, both upper arm and forearm were burnt in patches. Stomach contained 70ml. pasty matter and Gall Bladder was half full. The possible time of death has been mentioned in the postmortem as 02.15 a.m. on 06.08.2011. The cause of death is mentioned due to shock as a result ante-mortem burn injuries. PW- 6 has proved the postmortem report. Thus, from the medical evidence on record it is evident that death of the deceased was not natural.

19. The only question is whether she was murdered. If so, whether the appellant was guilty of the said offence.

20. In this very context it needs to be reiterated that even the prosecution had filed charge sheet against appellant only under Section 306 IPC and not under Section 304B or Section 302 IPC. The Investigating Officer PW-8 has stated that the charge sheet had been filed on 23.08.2011 under Section 306 IPC on the basis of statements of witnesses recorded by him. According to him, independent witness had stated before him that the deceased was childless, on account of which, she used to remain tense and used to say that she would end her life. Accordingly, the charge sheet was filed under Section 306 IPC. The trial Court has not found allegations of demand of dowry and the offence alleged under Section 304B IPC proved, therefore, we only have to see as to whether the deceased was murdered. If so, whether the appellant had committed murder.

21. As, already stated the case is one of circumstantial evidence. In a case of circumstantial evidence motive is an important aspect. It does not

mean that if other circumstances and chain of events are complete and point only towards the guilty of the accused, then, in the absence of motive, in the facts of a given case, the accused can not be held guilty but, in such cases, the Court should be on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. The effect of absence of motive would depend on the facts of each case. We may in this regard refer to the decision of Hon'ble Supreme Court reported in **2010 (8) SCC 593; G. Parshwanath Vs. State of Karnataka.**

22. The prosecution witnesses have not been believed by the trial Court on the question of cruelty prior to the death of the deceased as also demand of dowry and cogent reasons have been given for the same, with which we agree. PW-1, who is brother of the deceased, has stated that he had lodged the report after deliberations and consultations with the villagers of the appellant's village and that the villagers were saying that his sister had been murdered and therefore, report should be lodged. Accordingly, he lodged the report. During his testimony he has stated several times that marriage had taken place to the satisfaction of all and 'Bidai' of the deceased had also taken place accordingly. The bride and groom side used to visit to each other's house. A boy had been born to the appellant and the deceased, who died. Even, thereafter both the sides used to visit each other. Even one month prior to death he had visited house of her sister and come back happily. Although, at other places, he has stated that demand of dowry was made at that very time but this has been disbelieved by the trial Court, rightly so. At one place he has stated that a fight had taken place between the appellant and the deceased one and half months prior to the incident, though, he did not remember the date and thereafter, on 26.05.2011 also a fight had taken place at his house, but, apart from this, no fight had taken place in his presence. However, he has also admitted that no report was lodged in this regard nor any effort was made for conciliation etc. He has also admitted that he had not told the police in his statement under Section 161 Cr.P.C. about the demand of dowry. When he visited the hospital on coming to know about the burn injuries of the deceased, the appellant and his mother were also present

there and they got her admitted in government hospital. He has also admitted that he did not inform the Investigating Officer about demand of dowry by the appellant. He has repeatedly said that the villagers of the appellant had told him that the appellant and his mother had burnt his sister, the deceased, that is why he mentioned about murder having been committed by the appellant, in his 'tehrir'.

23. The statement of PW- 3 and PW- 4 were not even recorded before the Police under Section 161 Cr.P.C. and they were not mentioned as witnesses by the Police in the charge sheet but they were produced for the first time before the trial Court. It has come in the testimony of PW- 3 that he resides outside and had reached the hospital where the deceased was admitted after getting information about the incident. His testimony as regards demand of dowry has also been disbelieved by the trial Court for cogent reasons, which, we find to be correct. He has clearly stated in his cross-examination that at the time of marriage there was no demand of dowry. He has admitted that his house and PW-1 informant's house is the same. He has mentioned that the 'Bidai' of his sister i.e. the deceased, was happily conducted to the satisfaction of both the parties. Whenever he or his brother PW- 1 used to go to the appellant's house to bring their sister, the deceased, the 'Bidai' was conducted in a happy atmosphere and there was no dispute. Neither the appellant nor the appellant's mother had demanded dowry from them. As, he used to reside outside, therefore, the deceased had never told him that dowry was being demanded by the appellant or his family. He had remained in Lucknow for three years and then come back to his house. He has specifically stated that on receiving information about the incident he had reached the village of the appellant and the villagers had told him to lodge the report whereupon PW-1 (his brother) had lodged a report. It is the villagers who informed him that deceased had been burnt by the appellant. He has clearly stated that the appellant had never beaten the deceased in front of him nor had harassed or treated her cruelly in his presence. There are various contradictions in his testimony.

24. PW - 4 is the wife of PW- 3 who, as stated already, was not a witness in the charge sheet filed by the police but has only been produced subsequently. The trial Court has not believed her testimony nor do we for the reasons already given by the trial Court. There are various contradictions in her testimony and inconsistencies vis-a-vis the testimony of PW-1, such as, she has stated that PW-1 had visited the appellant's house 2-3 days prior to the incident, whereas, PW-1 has himself stated that he had visited the appellant's house about a month prior to the incident. She has not been able to specify as to when demand of dowry was made by the appellant and to whom. She has also stated that whatever was being testified by her before the Court had never been told to any one prior to it. Towards end of her cross-examination she has stated that it is wrong to say that the appellant had beaten up the deceased or had demanded dowry. Thus, motive has not been proved by the prosecution, but, this is only one aspect and if the other chain of events and circumstances clearly point towards the guilt of the appellant and that there was no possibility of any other probability relating to the death of the deceased, then, we can face our conviction on the other circumstances.

25. The only circumstance, which goes against the appellant and which has been relied upon by the trial Court is that the death occurred in the house of the appellant. Now, in this context we need to take into consideration the fact that the incident is said to have occurred at 8.00 p.m. in the night which is ordinarily the time when food is cooked in the household. As per the site plan, crime had been allegedly committed under one of the 'chappars'. Now, PW-1 has clearly stated in his cross-examination that the house of the appellant is a 'kachcha' house having two 'kachcha' rooms and 'chappar'. The house has a 'chulha'. There is no gas cylinder. Food is cooked on the 'chulha' and the 'chulha' is situated under the 'chappar' in the courtyard. Now, this tallies with the 'X' mark in the site plan showing the place of commission of the alleged crime, which is near the 'chulha' under the 'chappar' in the courtyard. PW-1 has also stated that there is no electricity in the house of the appellant. No doubt, as per the postmortem report, there are Ist to IIIrd degree burns on the body, but, in the facts of this case, in the absence of any motive, especially

considering the fact that the prosecution itself had filed the charge sheet under Section 306 IPC against the appellant and not under Sections 304B, 302 IPC nor under Section 3/4 DP Act and also considering the fact that it is the appellant and his mother who had admittedly taken the deceased to the government hospital where she ultimately succumbed and in view of the fact that PW- 2 who belongs to the same village as the appellant, has not supported the prosecution case and was declared hostile, as, he has clearly stated that Manju set herself on fire as she was annoyed by the fact that the appellant used to sell his property to sustain the family with which she did not agree and in cross-examination of PW-2 by the ADGC (Criminal) he has stated that he is a neighbour of the appellant and it was incorrect to say that the appellant or his mother had murdered the deceased on account of non-fulfillment of demand of dowry or that they used to beat her cruelly, further, in his cross-examination by the defence counsel he has stated that when the wife set herself on fire the appellant had tried to save her and in this process he had burnt his two hands, even though, there is no medical evidence on record regarding the hands of appellant being burnt, as there are no eye witnesses and the site plan as also the testimony of the Investigating Officer do not throw light on the actual condition of the scene of crime and as there is no dying declaration of the deceased, for all these reasons, we find it unsafe to convict the appellant of the offence punishable under Section 302 IPC merely because death has occurred in his house.

26. No ante-mortem injuries have been detected on the body of the deceased, may be because the body was burnt or may be there were no such injuries, therefore, this has to be kept in mind. Last rites of the deceased were performed by the appellant and his family. Her brothers PW- 1 and PW- 3 did not even attend last rites ceremony as has come in their testimony.

27. As already stated there is no evidence of 'kerosene' having been found at the scene of crime nor the Autopsy Surgeon smelt 'kerosene' oil at the time of conducting autopsy on the body of the deceased. There are two defence witnesses. DW-1 is a person who belongs to the village of the

appellant and in examination-in-chief he has stated that when the deceased got burnt he visited the scene and came to know that she was cooking food when her 'dhoti' (Sari) caught fire, on account of which, she got fire. He has also clearly stated that it is the appellant who had taken her to hospital. He is an independent witness and in his cross-examination the prosecution has not been able to impeach his credibility. The trial Court has not given any reason as to why his testimony should not be believed, as, it is on the same lines as the prosecution witness PW-2 (who was declared hostile) on the point that the appellant and his mother having taken the deceased to government hospital soon after the incident, a fact, the prosecution witnesses PW-1, PW - 2 and PW - 4 have also stated so.

28. There is not enough evidence as to what actually happened at 08.00 p.m. on 05.08.2011. How the deceased got burnt? What exactly transpired and there is no evidence to show that it is the appellant who had burnt her. The circumstances in this regard which could persuade us to hold him guilty beyond reasonable doubt, are absent. Motive is not proved.

29. Moreover, we find that at the stage of Section 313 Cr.P.C. no specific question was put by the trial Court to the appellant in the context of the explanation required to be offered by him under Section 106 IPC based on the admitted fact that burn injury occurred in the house of the deceased, though, she died subsequently in the hospital. This is a serious fault in the procedure adopted by the trial Court and materially affects the trial.

30. When we peruse the judgment of the trial Court at this stage, we find that the finding of guilt recorded by it on the basis of the burden imposed upon the appellant under Section 106 of the Indian Evidence Act, is highly cryptic. Merely referring to various judgments of the Courts on the provisions of Section 106 of the Indian Evidence Act, the requirement of an assessment of evidence to find out whether the guilt has been proved based on circumstantial evidence, is not satisfied. There is hardly any discussion showing due and proper application of mind to various aspects of the matter. A cryptic observation has been made towards the end of the judgment about the guilt of the appellant based on the fact that the burning

had taken place in the appellant's house and the entire body of the deceased had been burnt. No doubt the nature of the injuries caused would be important in the circumstances, but, they required a much more detailed consideration based on appreciation of evidence on record, as, it was not a case of direct evidence, therefore, merely because the body had been severely injured we find ourselves unable to hold the appellant guilty of the offence under Section 302 IPC in the circumstances discussed hereinabove. Motive on the part of the appellant has not been proved and is absent. Other circumstances as discussed do not rule out the possibility of she having sustained burn injuries while cooking etc. or some other mishap having taken place.

31. In view of the discussion, the facts and evidence on record create a reasonable doubt as to the commission of offence of murder of his wife by the appellant. Suspicion, however, strong can never take the place of proof. The prosecution has failed to prove the guilt of the appellant beyond reasonable doubt. We, accordingly, set-aside the judgment of the trial Court.

32. The appellant-accused, who is in jail, shall be released forthwith.

33. The appellant is directed to file a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A of the Code of Criminal Procedure within six weeks from the date of release.

34. Accordingly, the appeal is **allowed**.

35. The original records shall be remitted back to the trial Court for necessary action, if any.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy, J.)

Order Date :-19.10.2023

R.K.P.