

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Neutral Citation No. - 2023:AHC-LKO:85015-DB

Reserved on :- 09.10.2023
Pronounced on :- 22.12.2023

Court No. - 9

Case :- CRIMINAL APPEAL No. - 877 of 2019

Appellant :- Nikhilesh Yadav

Respondent :- State of U.P.

Counsel for Appellant :- Rahul Mishra, Sandeep Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per :- Hon'ble Ajai Kumar Srivastava-I, J.)

1. Heard Sri Sandeep Singh, learned counsel for the appellant, Sri Shailendra Singh, learned A.G.A. for the State and perused the entire record.

2. Under challenge in this criminal appeal is the impugned judgment and order dated 09.04.2019 passed by the learned Vth Additional Sessions Judge, Bahraich in Sessions Trial No.311 of 2012 titled as State vs. Nikhilesh Yadav arising out of Crime No.251 of 2012, under Sections 498A, 304B, 302/34 the Indian Penal Code¹ and Sections

1 hereinafter referred to as "I.P.C."

^{3/4} Dowry Prohibition Act, 1961², Police Station Ramgaun, District Bahraich whereby the appellant, Nikhilesh Yadav has been convicted and sentenced to undergo simple life imprisonment with a fine of Rs.50,000/- for the offence under Section 302 I.P.C. and in default of payment of fine, he has further been directed to undergo three years' months' simple imprisonment.

3. The case of the prosecution in nutshell is that the first informant Rajesh Yadav submitted a written report on 11.04.2012 at Police Station Kotwali Dehat, District Bahraich against the accused/ appellant, Nikhilesh Yadav along with Ram Pragat Yadav and Keshva Devi W/o of Ram Pragat Yadav stating therein that the marriage of his daughter, Priya was solemnized with the accused/ appellant, Nikhilesh Yadav on 09.07.2009 as per Hindu rites and rituals, in which, he gave enough dowry according to his status and capacity. The accused, namely, Ram Pragat Yadav and Keshva Devi are father-in-law and mother-in-law respectively of the deceased, Priya. The accused used to beat up the first informant's daughter for not getting a motorcycle, a colour television and a buffalo as dowry and they used to put undue pressure on the deceased to provide the above-mentioned articles in dowry. Whenever, the first informant's daughter used to come to her maternal house, she used to tell about the harassment and pressure that was being exerted on her for non-fulfillment of demand of dowry. The first informant used to pacify the deceased, Priya and used to send her

² hereinafter referred to as "Act, 1961"

back to her in-laws. On 11.04.2012 at about 04:00 P.M., the accused/ applicant along with other accused killed the first informant's daughter, Priya due to non-fulfillment of demand of dowry. Thereafter, to hide her dead body, the accused sent false information to the first informant's neighbour, Siddik to the effect that Priya has died. On receiving this information, the first informant reached the house of the accused/ appellant where he saw the dead body of his daughter and after enquiry, he found that she was killed by the accused due to non-fulfillment of demand of dowry that was being demanded by them. The first informant believed that the accused/ applicant along with Ram Pragat Yadav and Keshva Devi killed his daughter because of non-fulfillment of demand of dowry as demanded by them.

4. The inquest proceeding was started on 12.04.2012 at 07:00 AM and got concluded on 12.04.2012 at 08:35 AM. The inquest report has been duly proved as Ex. Ka-5.

5. According to postmortem report of the deceased, Priya, which has been duly proved by P.W.-4, Dr. Sanjeev Kumar Srivastava as Ex. Ka-2, the cause of death of the deceased is reported to be asphyxia as a result of antemortem strangulation. The postmortem report also reveals that left cornnle of hyoid bone and upper tracheal rings were fractured. There were six others antemortem injuries reported on the body of the deceased.

6. On the basis of aforesaid written report, Ex. Ka-1 submitted by the first informant, P.W.-1, Rajesh Yadav, the first information report, Ex. Ka-3 came to be lodged against the accused/ appellant along with Ram Pragat Yadav and Keshva Devi on 12.04.2012 at 06:25 AM for the offence under Sections 498A, 304B I.P.C. and Sections 3/4 of Act, 1961.

7. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure³. He visited the place of occurrence and prepared a site plan thereof Ex. Ka-9.

8. Upon conclusion of investigation, as far as the present accused/ appellant is concerned, the Investigating Officer submitted a charge sheet, Ex. Ka-10 against the accused/ appellant. He also submitted a charge sheet, Ex. Ka-11 against the accused, namely, Rampragat and Keshva Devi, who are the parents of the present accused/ appellant, and their case was registered as Sessions Trial No.189 of 2014.

9. Charges for the offences under Sections 498A, 302/34, 304B I.P.C. and Section 4 of the Act, 1961 were framed against the present accused/ appellant alongwith Ram Pragat Yadav and Keshva Devi, who denied the charges and claimed to be tried.

10. In order to bring home guilt of the accused/ appellant, the prosecution has examined Rajesh Yadav as

³ hereinafter referred to as "Cr.P.C."

PW-1, who is the first informant, Tulsiram Yadav as PW-2, Ram Vilas as PW-3, Dr. Sanjeev Kumar Srivastava as PW-4 and S.I. Girjesh Bahadur Yadav as PW-5.

11. The accused/ appellant in his statement recorded under Section Section 313 Cr.P.C. has stated the prosecution story to be false. He has also submitted that the prosecution witnesses have falsely deposed against him. He has submitted that he was living separately with his parents due to pressure exerted by the deceased to live separately. He has also stated that the deceased was educated upto intermediate whereas the accused/ appellant is illiterate, therefore, being unhappy, the deceased hanged herself. The accused/ appellant did not harass the deceased and never demanded dowry. He has also stated that on the date of incident, the deceased had gone to the house of Gopal to call the accused/ appellant, who refused to accompany the deceased thereafter the deceased returned and hanged herself.

12. As far as the other accused, namely, Ram Pragat and Keshva Devi, who are the parents of the present accused/ appellant, are concerned, they have stated in their statements recorded under Sections 313 Cr.P.C. that the prosecution story is false and fabricated. On the date of incident, they had gone outside for work. They have also stated that they have been falsely implicated in this case because they are the parents of the accused/ appellant herein.

13. D.W.-1, Pateshwari Pratap Singh and D.W.-2, Ram Adhar have been examined from the side of defence.

14. The learned trial court, after appreciating the evidence available on record adduced by the prosecution and by the accused, convicted and sentenced the appellant as stated herein above.

15. In such circumstances referred to above, the accused-appellant is before this Court with the present criminal appeal.

16. Learned counsel for the appellant has submitted that the appellant is innocent, who has been falsely implicated in this case. The finding of guilt of the appellant recorded by the learned trial court is against the weight of evidence, therefore, the same cannot be sustained.

17. His further submission is that initially, the case was registered for the offence under Sections 498A, 304B and Sections 3/4 of the Act, 1961. However, the accused/appellant has been wrongly convicted under Section 302 I.P.C. and on the basis of same set of evidence, two accused, namely, Ram Pragat and Keshva Devi have been acquitted.

18. His further submission is that the prosecution story is unbelievable and the appellant has been falsely implicated on the basis of false and fabricated facts. In absence of proof of initial facts, the learned trial court was wrong in convicting the accused-appellant under Section

302 I.P.C. taking recourse to the provisions contained in Section 106 of the Indian Evidence Act, 1872⁴.

19. His next submission is that the statements of witnesses of fact have not been considered in their right perspective and, therefore, the appellant came to be convicted by the impugned judgment and order dated 09.04.2019, which is not based on due analysis of evidence available before the learned trial court and unduly harsh sentence has been awarded to the appellant.

20. Learned counsel for the appellant has prayed to set aside the impugned judgment and order dated 09.04.2019 and to acquit the accused/ appellant accordingly.

21. Per contra, learned A.G.A. for the State has submitted that the accused/ appellant rightly came to be convicted vide impugned judgment and order dated 09.04.2019, which is well discussed and reasoned. The appellant was named in the first information report. Accordingly, interference by this Court is neither warranted nor is justified. He, accordingly, prays for dismissal of the instant criminal appeal.

22. Having heard the learned counsel for the appellant, learned A.G.A. for the State and upon perusal of record, it transpires that in order to prove prosecution case beyond reasonable doubt, the prosecution has examined P.W.-1, Rajesh Yadav, who is the father of the

⁴ hereinafter referred to as "Act, 1872"

deceased and the first informant, who has proved written report as Ex. Ka-1. P.W.-2, Tulsiram Yadav is grandfather of the deceased, Priya. Ram Vilas has been examined as P.W.-3, who is maternal grand father of the deceased. P.W.-4, Dr. Sanjeev Kumar Srivastava has conducted autopsy on the body of the deceased and has prepared postmortem report, which has been proved by him as Ex. Ka-2. P.W.-5, Girjesh Bahadur Yadav has proved chick F.I.R. No.78/2012 dated 12.04.2012 as Ex. Ka-3 and its entry in the G.D. as Ex. Ka-4.

23. We find that the first informant, Rajesh Yadav, who is the father of the deceased, has proved the written report, Ex. Ka-1. According to prosecution story, the deceased/ Priya, daughter of the first informant/ P.W.-1, Rajesh Yadav, was married to the accused-appellant on 09.07.2009, who, according to postmortem report, Ex. Ka-2, died an unnatural death on 11.04.2012. The cause of death of the deceased, according to postmortem report, Ex. Ka-2, is reported to be **asphyxia as a result of ante-mortem strangulation**. The autopsy surgeon, P.W.-4, Dr. Sanjeev Kumar Srivastava has also reported following ante-mortem injuries on the body of the deceased, Priya:-

"1. Contusion 2 cm x 1.5 cm present over right side forehead 4 cm above medial end right eye brow.

2. Contusion 10 cm x 1 cm present over front and left side of neck over thyroid transversely placed an ecchymosis present. Potential heamorrhage present under the mark over sub cutenious tissues.

3. Contusion 2.5 cm x 1.5 cm present over back of neck at level of 4th Cervicle vertebrae.

4. Contusion 3 cm x 2 cm present over posterior aspect of left elbow.

5. Contusion 3 cm x 3 cm present over posterior lateral aspect of right elbow.

6. Contusion 7 cm x 2 cm present over front of upper part of right thigh 2 cm below right iliac crest."

24. As discussed above, the fact of the death of the deceased, Priya being suicidal due to hanging is ruled out in the light of testimony of autopsy surgeon, P.W.-4, Dr. Sanjeev Kumar Srivastava, who has specifically stated that the cause of death of the deceased is **asphyxia as a result of ante-mortem strangulation** and also reported as many as six ante-mortem injuries on the body of the deceased.

25. Hon'ble the Supreme Court in **Babu alias Balasubramaniam and another vs. State of Tamil Nadu**⁵ paragraphs No.21 and 22 has held as under:-

"21. It is also pertinent to note that PW 5 Dr Rajabalan stated that the injuries sustained by the deceased could have been caused 10 to 12 hours prior to the post-mortem. We have already stated that the post-mortem was conducted at 5.00 p.m. Thus, the death occurred around 6.00 a.m. The death occurred in the house where the deceased resided with A-1 Babu. Presence of the accused at 6.00 a.m. in the house is natural. Besides, it is not contended by A-1 Babu that he was not present in the house when the

⁵ (2013) 8 SCC 60

incident occurred. To this fact situation, Section 106 of the Evidence Act is attracted. As to how the deceased received injuries to her head and how she died must be within the exclusive personal knowledge of A-1 Babu. **It was for him to explain how the death occurred. He has not given any plausible explanation for the death of the deceased in such suspicious circumstances in the house in which he resided with her and when he was admittedly present in the house at the material time. This circumstance must be kept in mind while dealing with this case. We are mindful of the fact that this would not relieve the prosecution of its burden of proving its case. But, it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference. In this case, in our opinion, the prosecution has succeeded in proving facts from which reasonable inference can be drawn that the death of the deceased was homicidal and A-1 Babu was responsible for it. A-1 Babu could have by virtue of his special knowledge regarding the said facts offered an explanation from which a different inference could have been drawn. Since he has not done so, this circumstance adds up to other circumstances which substantiate the prosecution case.**

22. In *Tulshiram Sahadu Suryawanshi v. State of Maharashtra* [(2012) 10 SCC 373 : (2013) 1 SCC (Cri) 193] , while dealing with Section 106 of the Evidence Act, this Court observed as under: (SCC pp. 374g-375a)

"A fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as to the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. Section 106 however is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference."

(emphasis in original)

The above observation is attracted to this case."

(emphasis supplied by us)

26. We find that the first informant/ P.W.-1, Rajesh Yadav, who was recalled by the learned trial court on an application moved by the accused/ appellant and other co-accused persons during trial under Section 311 Cr.P.C., subsequently turned hostile and stated that no demand of dowry was made by the accused-appellant and other co-accused persons. We do not express any opinion on such subsequent event of the first informant resiling from his earlier statement and turning hostile. However, in want of other necessary ingredients, such as, harassment of the deceased by the accused-appellant due to non-fulfillment of demand of dowry soon before her death, we find that the learned trial court rightly did not raise presumption as envisaged under Section 113B of the Act, 1872 against the accused/ appellant. However, the fact remains that the deceased died in the house of the accused-appellant. The deceased was legally wedded wife of the accused-appellant herein. The place where the deceased was found dead is shown as "X" in the site plan, Ex. Ka-9. Admittedly, it is the house of one of the accused, Ram Pragat Yadav, who is the father of the accused/ appellant herein. A close scrutiny of postmortem report of the deceased, Priya reveals that approximate time of her death is reported to be one day, which reasonably corresponds to the date and time of occurrence as stated by the prosecution. It is not denied even by the accused/ appellant that the dead body of the deceased was found in the house of his father shown as "X" in the site plan, Ex. Ka-9. The cause of death of the deceased is reported to be **asphyxia as a result of ante-mortem strangulation**. It

is also pertinent to mention that there are six other ante-mortem injuries reported on the body of the deceased as mentioned earlier in the preceeding paragraph. The aforesaid injuries do not appear to be self inflicted injuries. The accused/ appellant in his statement recorded under Section 313 Cr.P.C., had denied that he ever demanded any dowry. He specifically stated that on the date of incident, the deceased had come to the house of Gopal to call her. The accused/ appellant refused to accompany the deceased. When he reached home, he found that the deceased had hanged herself. However, Gopal has not been examined by the defence to establish this fact. Therefore, having regard to the aforesaid admitted/ proved facts, it was for the accused/ appellant to have offered any plausible explanation of the fact that how and in what circumstance did the deceased die an unnatural death in his house. The accused/ appellant produced D.W.-1, Pateshwari Pratap Singh and D.W.-2, Ram Adhar to show that the accused/ appellant lived separately from the co-accused, Ram Pragat Yadav. However, it has come in the testimony of D.W.-2 that the accused/ appellant used to live with his wife/ deceased, Priya.

27. Thus, in our considered opinion, the prosecution has been successful in proving the guilt of the accused/ appellant, therefore, he has rightly been convicted by the learned trial court by means of impugned judgment and order dated 09.04.2019, under Section 302 I.P.C. for committing murder of his wife/ deceased, Priya, which does not suffer from any illegality or infirmity, therefore,

the same is liable to be affirmed and is, therefore, affirmed, accordingly.

28. The present criminal appeal being devoid of merits deserves to be dismissed and the same is hereby **dismissed** accordingly.

29. Let the lower court record along with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

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

Order Date :- 22.12.2023

cks/-