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Neutral Citation No.2023:AHC-LKO:74275-DB

Court No. - 1

Case :- CRIMINAL APPEAL No. - 2039 of 2019

Appellant :- Amitpal Sahu @ Bablu Sahu

Respondent :- State Of U.P. And Anr.

Counsel for Appellant :- Jai Prakash Narain
Tiwari, Anil Kumar Tripathi, Bal Keshwar Srivastava

Counsel for Respondent :- Govt. Advocate

With

Case :- CRIMINAL APPEAL No. - 2038 of 2019

Appellant :- Shivpal Sahu And Anr.

Respondent :- State Of U.P. And Anr.

Counsel for Appellant :- Jai Prakash Narain Tiwari, Bal
Keshwar Srivastava

Counsel for Respondent :- Govt. Advocate

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

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

1. We have heard Sri Anil Kumar Tripathi, learned counsel for the appellants and learned Additional Government Advocate for the State-respondents.

2. Challenge in these appeals is to the judgment and order dated 01.10.2019 rendered by Additional District & Sessions Judge-III, District Balrampur in Sessions Trial No.43/2014, State of Uttar Pradesh vs. Amitpal @ Bablu Sahu & others, arising out of Crime No.872/2013, under Sections 498-A, 304-B Indian Penal Code (*hereinafter referred to as I.P.C.*) read with 3/4 Dowry Prohibition Act, Police Station Pachpedwa, District Balrampur, whereby the appellants have been convicted and sentenced to undergo life imprisonment for the offence under Section 304-B I.P.C. The appellants have also been convicted and sentenced to undergo two years' imprisonment along with fine of Rs.10,000/- for the offence under Section 4 Dowry Prohibition Act and in default of payment of fine, they have further been directed to undergo six months' imprisonment. All the sentences have been directed to run concurrently.

3. Since the aforesaid appeals have been preferred to assail impugned judgment and order dated 01.10.2019 rendered by Additional District & Sessions Judge-III, District Balrampur in Sessions Trial No.43/2014, State of Uttar Pradesh vs. Amitpal @ Bablu Sahu & others, arising out of Crime No.872/2013, under Sections 498-A, 304-B I.P.C. read with 3/4 Dowry Prohibition Act, Police Station Pachpedwa, District Balrampur, therefore, they have been heard together and are being decided by a common judgment.

4. The facts as unfolded by the prosecution, in short conspectus, are that the deceased, Lalita Devi, aged about 24 years, was married to appellant, namely, Amitpal Sahu @ Bablu Sahu. The first informant of this case, namely, Baburam, who is the father of the deceased, had given sufficient dowry in the marriage according to his financial status. However, the accused persons kept demanding more dowry. On 06.12.2013, the son of the first informant received a phone call, which was made by appellant, Shivpal Sahu, who is the brother of appellant, Amitpal Sahu @ Bablu Sahu, to inform that the deceased is not keeping well. When the first informant reached the house of the appellants, he found his daughter dead. The dead body of the deceased was lying there. There was some mark of injury around her neck. According to first information report, the appellants and their four unmarried sisters have caused dowry death of the first informant's daughter.

5. The aforesaid written report, Ex. Ka-1 was submitted by the first informant, namely, Baburam. On the basis of said written report, a first information report bearing Case Crime No.82/2013, under Sections 498-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act, Ex. Ka-3, came to be lodged at Police Station Pachpedwa, District Balrampur.

6. According to postmortem report of the deceased, Ex. Ka-9, the cause of death is reported to be asphyxia due to antemortem hanging. It is also mentioned in the

postmortem report that no internal or external injury was found on the body of the deceased except the ligature mark.

7. Investigating Officer under took the investigation. He recorded the statements of witnesses under Section 161 Cr.P.C. He also visited the place of occurrence and prepared site plan thereof as Ex. Ka-6 and upon conclusion of investigation, he submitted the charge sheet as Ex. Ka-7 & Ex. Ka-8 against the appellants under Sections 498-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act.

8. The accused/appellants were charged under Sections 498-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act and alternative charge under Sections 302/34 I.P.C. was also framed against the appellants vide order dated 06.05.2015 to which they denied and claimed to be tried.

9. To bring home the guilt of the appellants to the hilt, the prosecution has examined as many as ten witnesses. PW-1, Baburam, PW-2, Ramesh Singh, PW-3, Ganesh Prasad, PW-4, Santosh Kumar, PW-5, H.C.P. Umesh Verma, PW-6, Om Prakash Yadav, Sub Inspector, PW-7, Maya Devi, PW-8, Krapashankar, Investigating Officer, PW-9, Krishna Kumar, Circle Officer, and PW-10, Dr. Subodh Kumar.

10. Defence witnesses have also been examined as DW-1, Dr. Irshad Alam, DW-2, Dr. Archana Shukla, DW-3, Salim Akhtar and DW-4, Shri Lal Baccha Mishra.

11. The statements of the appellants were recorded under Section 313 Cr.P.C. They denied the charges and stated that they have been falsely implicated in this case. They have pleaded unstable mental condition and history of mental illness and treatment of the deceased. They have also pleaded long history of business and trade relationship between the appellants and first informant. The appellants, Shivpal Sahu and Raksharam Sahu have specifically pleaded that they have separate living.

12. After appreciating the prosecution evidence, the learned trial Court vide impugned judgment and order dated 01.10.2019 has convicted the appellants under Section 304-B I.P.C and Section 4 Dowry Prohibition Act. Hence, the instant appeal has been filed by the present appellants.

13. It is submitted by learned counsel for the appellants that in fact a false first information report came to be lodged initially against seven accused persons including the present appellants. However, charge sheet against real sisters of the accused persons, namely, Madhuri, Archana, Vandana and Ruchi was not submitted. It is also submitted that this fact itself shows that the prosecution story was not true in its entirety. His next submission is that the inquest was done in presence of family members of the deceased. The deceased was found wearing glass bangles and she was also having bindi on her forehead, which shows that there was no scuffle, struggle or assault on the

deceased, as there were no signs of being mauled or mishandled.

14. Learned counsel for the appellants has further submitted that the appellant, Amitpal Sahu @ Bablu Sahu, who is the husband of the deceased, has been convicted by learned trial Court by means of impugned order dated 01.10.2019 under Sections 304-B I.P.C. and 4 Dowry Prohibition Act on the sole ground that he happens to be the husband of the deceased and the dead body of the deceased was found in her matrimonial home. The learned trial Court lost sight of the fact that the prosecution had failed to establish the factum of demand of dowry and treating the deceased with cruelty soon before her death. Admittedly, the appellant, Amitpal Sahu @ Bablu Sahu is a licensee of three liquor shops and is a well-off person, therefore, he had no apparent reason to demand dowry from his in-laws. Therefore, the conviction of the appellant, Amitpal Sahu @ Bablu Sahu, under Sections 304-B I.P.C. and 4 Dowry Prohibition Act, is unsustainable. He has also submitted that the appellants, Shivpal Sahu and Raksharam Sahu are aged about 62 and 59 years respectively. They are married and have well grown children who have their separate place of residence. They were falsely implicated in this case. There was no evidence to suggest that they ever demanded dowry and treated the deceased with cruelty soon before her death. Therefore, the conviction of the appellants, Shivpal Sahu & Raksharam Sahu is also unsustainable.

15. It is also submitted that in view of the aforesaid submission, it was not open to learned trial Court to have raised presumption under Section 113-B of Indian Evidence Act. He has also submitted that the learned trial Court has dealt with prosecution evidence in a selective and biased manner in order to arrive at the finding of guilt of the appellants and that too by disbelieving the defence version and disbelieving the reliable testimonies of defence witnesses. His further submission is that standard of proof of defence version is very well settled by Hon'ble Supreme Court in a case of **Dudh Nath Pandey v. State of U.P., (1981) 2 SCC 166**, wherein it has been held by Hon'ble Supreme Court that defence witnesses are entitled to equal treatment with those of the prosecution and courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quiet often they tell lies but so do the prosecution witnesses. He submits that the learned trial Court failed to appreciate above settled legal position in its correct perspective.

16. It has been further argued that the appellants have been convicted and sentenced to undergo life imprisonment, which is excessive having regard to the fact that the appellants have no criminal history. The appellant, Amitpal Sahu @ Bablu Sahu has a young male child of age about 10 years, born out of his wedlock, who has been literally rendered orphan due to the incarceration of appellant, Amitpal Sahu @ Bablu Sahu.

17. Learned Additional Government Advocate appearing on behalf of the State, on the other hand, has submitted that the first information report in this case is prompt. In order to prove its case beyond doubt the prosecution has examined as many as ten prosecution witnesses. Their testimonies are consistent with the prosecution story as contained in written report, Ex. Ka-1. There is nothing on record to show that the appellants were falsely implicated in this case. The finding of conviction of appellants is based on proper appreciation and analysis of prosecution evidence and as a result thereof, the appellants have rightly been convicted under Sections 304-B I.P.C. and 4 Dowry Prohibition Act. He has, thus, submitted that the instant appeal being devoid of merit deserves to be dismissed.

18. Having heard learned counsel for appellants, learned A.G.A. for the State and upon perusal of the record, we find that according to prosecution story the deceased was killed by appellant, Amitpal Sahu @ Bablu Sahu along with other accused persons due to demand of dowry, which could not be fulfilled by the first informant, Baburam. The written report, Ext. Ka-1 was scribed by PW-4, Santosh Kumar, who has stated on oath that he had scribed the aforesaid written report on the dictation of PW-1, first informant, Baburam. Thus, the aforesaid written report has been proved by the first informant, PW-1, Baburam.

19. Upon a close scrutiny of testimonies of PW-1, first informant, Baburam, who is father of the deceased, PW-2, Ramesh singh, who is real brother of the deceased and PW-3, Ganesh Prasad, who is another brother of the deceased, we find that they have deposed that the deceased was married with appellant, Amitpal Sahu @ Bablu Sahu, husband of deceased on 21.06.2010. The date of death of the deceased, according to postmortem report, Ext. Ka-9, which has been proved by PW-10, Dr. Subodh Kumar, is reported to be 07.12.2013. Thus, it is apparent that the deceased died an unnatural death which was homicidal in nature, which occurred within seven years of her marriage with appellant, Amitpal Sahu @ Bablu Sahu. However, in the inquest report, Ext. Ka-2 as also the testimony of PW-10, Dr. Subodh Kumar, who had conducted the postmortem of the deceased, reveals that some other antemortem injuries were also found on the body of the deceased.

20. Having carefully examined the testimonies of PW-1, Baburam, PW-2, Ramesh Singh & PW-3, Ganesh Prasad, we also find that these prosecution witnesses have stated that the appellants used to demand dowry after the marriage of deceased with appellant, Amitpal Sahu @ Bablu Sahu. It has also come in their testimonies that the deceased had gone to her in-law's home 15 days prior to her death. The death of the deceased occurred in the house of appellant, Amitpal Sahu @ Bablu Sahu. Therefore, so far as appellant, Amitpal Sahu @ Bablu Sahu, husband of the deceased,

is concerned, we find that the following facts have been duly proved by the prosecution :-

(a) That the death of the deceased occurred in the house of appellant, Amitpal Sahu @ Bablu Sahu, husband of the deceased.

(b) That the cause of death, according to the postmortem report of the deceased, Ext. Ka-9, is reported to be asphyxia due to antemortem hanging. However, in inquest report, Ext. Ka-2 as also the testimony of PW-10, Dr. Subodh Kumar, who had conducted the postmortem of the deceased, reveals that some other antemortem injuries were also found on the body of the deceased.

(c) On the basis of testimonies of PW-1, Baburam, PW-2, Ramesh Singh & PW-3, Ganesh Prasad it is proved that the appellant, Amitpal Sahu @ Bablu Sahu, husband of the deceased, demanded dowry and due to non-fulfillment, the deceased used to be treated with cruelty soon before her death by the appellant, Amitpal Sahu @ Bablu Sahu.

(d) That no first information report about unnatural death of the deceased was lodged by the appellant, Amitpal Sahu @ Bablu Sahu, husband of the deceased, who had greater responsibility of care and protection of the deceased, his wife.

(e) That the explanation offered by appellant, Amitpal Sahu @ Bablu Sahu, husband of the deceased, to the effect that the deceased was undergoing through a phase of depression, for which she was treated also

and who committed suicide, has been rightly disbelieved by the learned trial Court having regard to the fact that there were some other antemortem injuries reported on the person of the deceased.

21. Therefore, keeping in view of the aforesaid proved facts, learned trial Court has rightly raised presumption as envisaged under Section 113B of Evidence Act against the appellant, Amitpal Sahu @ Bablu Sahu, husband of the deceased, and in want of any proved explanation of appellant, Amitpal Sahu @ Bablu Sahu, husband, as to how and in what manner the deceased died in his house in an unnatural manner, his conviction under Section 304B I.P.C. and Section 4 Dowry Prohibition Act by the learned trial Court appears to be based on proper analysis of the prosecution evidence available on record and we do not find any perversity in such finding so far as it relates to appellant, Amitpal Sahu @ Bablu Sahu, husband.

22. In so far as appellants, Shivpal Sahu & Raksharam Sahu, who are aged about 62 and 59 years, respectively, is concerned it appears to us that they have taken specific plea in their statements recorded under Section 313 Cr.P.C. that after partition of their ancestral property, they lived separately. DW-3, Salim Akhtar has stated in his testimony that the appellants, Shivpal Sahu & Raksharam Sahu are living separately though all the appellants have talking terms with each other. DW-4, Shri Lal Baccha Mishra has also stated on oath that the appellants, Shivpal Sahu & Raksharam

Sahu lived separately after partition of their ancestral property. The unshaken testimonies of DW-3 & DW-4 to the effect that the appellants, Shivpal Sahu and Raksharam Sahu had separate living appears to us to be reliable which ought to have been considered by learned trial Court.

23. Hon'ble Apex Court in the case of **Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599** in para no.16 has held as under :-

"16. Recently, in K. Subba Rao v. State of Telangana [K. Subba Rao v. State of Telangana, (2018) 14 SCC 452 : (2019) 1 SCC (Cri) 605] , it was also observed that : (SCC p. 454, para 6)

"6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

24. In the light of aforesaid settled legal position, we have examined the allegations levelled against the appellants, Shivpal Sahu & Raksharam Sahu in the written report, Ext. Ka-1 and we find that the allegations against the appellants, Shivpal Sahu & Raksharam Sahu are general in nature. Even the prosecution witnesses PW-1, Baburam, PW-2, Ramesh Singh and PW-3, Ganesh Prasad in their testimonies have levelled general allegations of demand of dowry against the appellants, Shivpal Sahu & Raksharam Sahu. They have separate living and even otherwise, having regard to their age, we do not see any plausible reason as to how they would be benefited by any

demand of dowry made by appellant, Amitpal Sahu @ Bablu Sahu from the first informant and his sons. Therefore, so far as the conviction of the appellants, Shivpal Sahu & Raksharam Sahu, who are brothers-in-law (Jeth) of the deceased and elder brothers of appellant, Amitpal Sahu @ Bablu Sahu, we find that the finding of guilt of the appellants, Shivpal Sahu & Raksharam Sahu under Sections 304B I.P.C. and Section 4 Dowry Prohibition Act, to be unsustainable.

25. In view of whatever has been discussed above, conviction of appellant, Amitpal Sahu @ Bablu Sahu under Sections 304B I.P.C. and Section 4 Dowry Prohibition Act deserves to be affirmed and is accordingly affirmed. He has no criminal history. Therefore, keeping in view the fact that he is aged about 37 years and has a young child to look after and also having regard to the fact that he is languishing in jail since 01.10.2019, we deem it just and proper to modify the sentence of appellant, Amitpal Sahu @ Bablu Sahu from life imprisonment to ten years' rigorous imprisonment. The amount of fine awarded by the trial Court and sentence to be undergone by appellant, Amitpal Sahu @ Bablu Sahu in case of his failure to deposit the said amount of fine deserves to be maintained and is accordingly maintained.

26. The Criminal Appeal No.2039 of 2019, filed by the appellant, Amitpal Sahu @ Bablu Sahu, is accordingly **partly allowed** in the aforesaid terms.

27. The Criminal Appeal No.2038 of 2019, in respect of appellants, Shivpal Sahu & Raksharam Sahu succeeds and is accordingly, **allowed**. Consequently, the impugned judgment and order dated 01.10.2019 deserves to be set aside and is hereby set aside in respect of the appellants, Shivpal Sahu & Raksharam Sahu only.

28. The appellants, Shivpal Sahu & Raksharam Sahu are on bail, their bail bonds are cancelled. Their sureties are discharged. They need not surrender, in case, they are not wanted in any other case.

29. In compliance with the provision contained in Section 437-A Cr.P.C. the appellants, Shivpal Sahu & Raksharam Sahu are directed to furnish personal bond and two sureties each to the satisfaction of the court concerned within a period of ten weeks from today.

30. Let copy of this judgment be placed on the records of connected Criminal Appeal No.2038 of 2019.

(Ajai Kumar Srivastava-I, J.) (Attau Rahman Masoodi, J.)

Order Date :- 08.11.2023

A.Dewal