

Court No. - 67

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 150 of 2019

Appellant :- Rajendra Prashad Maurya

Respondent :- State Of U.P. And 5 Ors.

Counsel for Appellant :- Raj Kumar Sharma, Imtiyaz Ali

Counsel for Respondent :- G.A., Bhavya Sahai

Hon'ble Rahul Chaturvedi, J.

Hon'ble Ms. Nand Prabha Shukla, J.

1. Heard learned counsel for the appellant and learned A.G.A. for the State of U.P. as well as learned counsel for the opposite party nos. 2 to 6 at length and perused the record.

2. Invoking the power under Section 372 Cr.P.C., the informant Rajendra Prasad Maurya is assailing the legality and validity of the judgment and order dated 7.8.2019 passed by Additional Session Judge, Court No. 5, Jaunpur, arising out of Session Trial No.95 of 2017 (State vs. Akhilesh Maurya and 2 others) and Session Trial No. 277 of 2017 (State vs. Jadawati and two others) both arising out of Case Crime No. 960/2016 for the offence under Section 498-A, 304-B, 20-B and 201 IPC and Section 4 Dowry Prohibition Act, (alternative for the offence under Section 302/34 IPC) at Police Station Badlapur, District Jaunpur whereby learned trial Judge have acquitted the opposite party nos. 2 to 6, namely, Mithailal, father-in-law, Amar Bahadur, Nandoi, Jadawati, mother-in-law, Asha, sister-in-law and Suman, Jethani of daughter of the informant Rajendra Prasad Maurya under the aforesaid sections.

3. As per prosecution case, on 31.12.2016 the informant Rajendra Prasad Maurya has given a Tehrir alleging therein that her daughter Sulochana got married with Akhilesh Maurya on 22.06.2010 and she used to torture for demand of dowry and her husband usually used to call him on phone and demands unspecified goods and money from him. On the fateful day, he gave a call that his daughter committed suicide by hanging herself from the tree in the Ramjanki temple. He further states in Tehrir that there is grudge against family members of Mithailal. It is only

Akhilesh who is responsible for this unfortunate incident. There is clear cut concession and discount regarding Mithailal and his family members and only Akhilesh the husband of deceased Sulochana for this unnatural death.

4. After investigation, the Police has submitted the charge sheet under section 498-A, 304-B and 4 of Dowry Prohibition Act, Police Station Badlapur, District Jaunpur. The police has furnished number of documents collected during investigation and lastly the charge sheet No. 960/201 was also submitted by the Investigation Officer of the case against Akhilesh Maurya, Mithailal and Amar Bahadur Maurya.

5. Being a cognizance offence, the case was committed to the Court of Sessions for trial whereby the charges were framed under Sections 498-A, 304-B, 120B and 201 IPC and Section 4 of D.P. Act against Akhilesh Maurya, Mithailal and Amar Bahadur and also framed alternative charge under section 302/34 IPC and thereafter in the subsequent charges were also framed under Sections 498-A, 304-B, 120-B and 201 IPC and section 4 of D.P. Act against Jadawati, Asha and Suman and also framed alternative charge under section 302/34 IPC.

6. During investigation as many as 8 prosecution witnesses were examined in support of prosecution case and as many as 13 documents were exhibited during trial.

7. **P.W.1 the informant Rajendra Prasad Maurya** states that her daughter Sulochana got married with Akhilesh Maurya on 22.06.2010 and out of their wedlock, there are two sons, Raghu and Raghav. Her daughter often used to make a complain against the entire family on account of unspecified dowry. For this demand, he seeks pardon from the in-laws, however, he is ready to give one almirah to them. He also states that there was illicit relation of Akhilesh with some other girl which was the main problem between the husband and wife and due to this, the entire family members of Akhilesh was robbed in the present case.

8. We have carefully gone through the testimony of P.W.1 and there are number of reasons and causes were attributed for unfortunate incident. It is not sure that which cause was dominant over whom whether it was demand for almirah and illicit relation

of Akhilesh with some other girl.

9. **Similarly, P.W.2 Mahendra Kumar** who is uncle of the deceased, states that dead body of the deceased Sulochana was hanging in the Ramjanki temple, no body has seen the incident but it is stated that he has firm faith that Akhilesh Maurya is behind this offence.

10. **P.W. 3 Heerawati**, mother of the deceased states that she has given gift as per the capacity but her in-laws were demanding Rs.50,000/- and some unspecified articles.

11. **P.W.5 Dr. Vinod Kumar** who has conducted the autopsy of the deceased states that except ligature mark on the neck of the deceased. She died on account of asphyxia as a result of hanging.

12. **P.W.9 Vijay Kumar** was also produced who allegedly claimed to be an eye witness of the incident states that Rajendra Prasad, the first informant has shared the information with him with regard to the demand of dowry and harassment with her daughter by the in-laws. On 30.12.2016, while he was returning back around 4-4:30, he saw Akhilesh, Amar Bahadur, Asha and one other lady were dragging Sulochana towards Amar Bahadur's shop and thereafter P.W.9 went away. On 3.12.2016, an information was received to him that this unfortunate incident has taken place and then only he shared his experiences with the first informant Rajendra Prasad.

13. The Hon'ble Apex Court in ***Shanti vs. State of Haryana, AIR 1991 SC 1226*** and ***Panchanand Mandal vs. State of Jharkhand (2013) 9 SCC 800***, has pointed out certain essential ingredients for attracting Section 304B IPC, which reads thus:

"(i) The woman died unnaturally or on account of burn injury or bodily injury.

(ii) The woman died within seven years of her marriage.

(iii) The woman was subjected to harassment by her husband or relatives of husband.

(iv) Such harassment or cruelty was due to demand of dowry.

(v) Such cruelty or harassment was done which the woman soon before her death."

14. The Court has occasion to assess these facts and circumstances of the case and evidence available on record. No doubt the incident has taken place within seven of marriage but it is not clear that

what amount and was demanded by in-laws as additional dowry and what was the timing to attribute section 304-B IPC

15. Before proceeding further, it would be appropriate to take note of laws on the appeal against acquittal:-

(i) In the case of ***Bannareddy and others vs. State of Karnataka and others, (2018) 5 SCC 790***, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that:

"The High Court should not have re-appreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities."

(ii) In ***Jayamma vs. State of Karnataka, 2021 (6) SCC 213***, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against an order of acquittal passed by a Trial Court.

(iii) In a recent judgement of this Court in ***Virendra Singh vs. State of UP and others, 2022 (3) ADJ 354 DB***, the law on the issue involved has been considered.

(iv) Similar view has been reiterated by Hon'ble Apex Court in ***Rajesh Prasad vs. State of Bihar and another, (2022) 3 SCC 471***.

(v) Since, it is a Government Appeal against the acquittal, it will be relevant to note the principles of law laid down by the Apex Court with regard to the appreciation of evidence in the appeal against the acquittal. Recently, in the case of ***Mallapa and others Vs. State of Karnataka***, the Apex Court has held as under :-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive ? inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

16. As mentioned above, prosecution has failed to establish its case beyond all reasonable doubts. It has been stated that husband Akhilesh was having illicit relation with some other girl but who is that girl and what is the relationship with her, all the things are completely blank and no explanation is given and no complaint was made by the deceased regarding demand of dowry soon before death and also her parents were made any complain regarding additional dowry.

17. We are of the considered opinion that the reasoning adopted by the learned Trial Judge is sound and firm footed and has taken a plausible and possible view of the matter on appreciation of entire evidence on record, which cannot be substituted by this Court by taking a different view as per the law discussed above.

18. Assessing the aforementioned analysis and evaluation of the evidence with the aforesaid guidelines given by the Hon'ble Apex Court in the aforementioned judgements, we are of the considered opinion that the learned trial court has taken legally plausible view, which favours the accused-respondents. The judgment impugned is flawless and firm-footed which deserves no interference by this Court in exercise of powers under Section 372 Cr.P.C.

19. Accordingly, the instant appeal stands **DISMISSED**.

Order Date :- 31.5.2024

Monika