

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

Neutral Citation No. - 2024:AHC-LKO:7372-DB

Reserved on:30.10.2023

Delivered on:25.01.2024

Court No. - 9

Case :- CRIMINAL APPEAL No. - 33 of 2021

Appellant :- Mohd. Hashim @ Pappu

Respondent :- State of U.P.

Counsel for Appellant :- Saryu Prasad Tiwari

Counsel for Respondent :- G.A.

A N D

Case :- CRIMINAL APPEAL No. - 1308 of 2020

Appellant :- Mohd. Kaseem @ Kasim And Another

Respondent :- State of U.P.

Counsel for Appellant :- Saryu Prasad Tiwari

Counsel for Respondent :- G.A.

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per : Rajan Roy, J.)

1. Heard Shri Saryu Prasad Tiwari, learned counsel for the appellants and Shri Prabhat Adhulia, learned A.G.A. for the State.

2. These are two Criminal Appeals under Section 374 Cr.P.C. preferred by the appellants, namely, Mohd. Hashim @ Pappu, Mohd.

Kaseem @ Kasim and Smt. Maimunnisha challenging their conviction and sentencing vide judgment dated 26.11.2020 passed in Session Trial No. 248 of 2012 (State of U.P. Vs. Hashim @ Pappu and Ors.), arising out of Case Crime No. 239 of 2012, under Sections 498-A/149, 304B/149 IPC alternative Section 302/149 IPC and Section 3/4 D.P. Act, Police Station - Gosaiganj, District - Sultanpur.

3. The appellant- Mohd. Hashim @ Pappu has been convicted for the offence punishable under Section 304B/149 IPC and sentenced to life imprisonment. He has also been convicted under Section 498-A/149 IPC for which he has to undergo imprisonment for two years with fine of Rs.5,000/- failing which he would have to undergo further imprisonment for six months. He has also been convicted under Section 4 of D.P. Act for which he has been undergo imprisonment for one year with fine of Rs.2,000/- failing which he would have to undergo further imprisonment for three months.

4. The appellants, namely, Mohd. Kaseem @ Kasim and Smt. Maimunnisha have been convicted under Section 304B/149 IPC for which they have been sentenced to undergo rigorous imprisonment for 10 years each. They have also been convicted under Section 498-A/149 IPC for which they have also been sentenced to undergo imprisonment for two years with fine of Rs.5,000/- each failing which they would have to undergo further imprisonment for six months. They have also been convicted under Section 4 of D.P. Act for which they have also been sentenced to undergo imprisonment for one year with fine of Rs.2,000/- each failing which they would have to undergo further imprisonment for three months.

5. The prosecution case in nutshell is that the deceased was married to the appellant- Mohd. Hashim @ Pappu on 25.05.2010. She died on 07.04.2012 as a result of shock on account of 99% burn injuries

sustained by her in the house of her husband and that prior to her unnatural death she was subjected to harassment in connection with demand of dowry, as such, the offence was punishable under Section 304B IPC and other provisions of law.

6. The case of the defence is one of denial. According to husband, the deceased set herself on fire in the store room after pouring kerosene oil. He himself got burn in the process of saving her. The mother-in-law while denying the offence has stated that there was altercation between husband and wife on account of which the deceased set herself on fire while she i.e. mother-in-law was lying in another room with her grand daughter. The father-in-law of the deceased has stated under Section 313 Cr.P.C. that he was not at home at the time of the incident. He heard that his daughter-in-law had locked herself inside the room, poured kerosene oil and set herself on fire. His son sustained burn injuries in the process of saving her.

7. Initially there were seven accused all family members of the husband. Out of these four, some of whom were minor, have been acquitted. The husband, mother-in-law and father-in-law have been convicted by the trial Court. The husband- Mohd. Hashim @ Pappu is in jail ever since he was arrested immediately after the incident which occurred on 07.04.2012. The mother-in-law and father-in-law are on bail.

8. The contention of the appellants' counsel was that on the same evidence four of the accused have been acquitted by the trial Court which itself is a factor creating a doubt on the entire prosecution case and therefore, the conviction of the remaining appellants is perverse and erroneous. The testimony of PW-1 and PW-2 is not at all reliable, as, they are related and interested witnesses. They have narrated their versions parrot like as if they have been tutored to falsely implicate the

appellants only on account of their daughter having died in her in-laws' house, although, it was a case of their daughter setting herself on fire and not a case either of murder or of the offence under Section 304B IPC. No F.I.R. or complaint was lodged with regard to demand of dowry or any harassment meted out to the deceased by the husband or his parents prior to her death, therefore, their testimony in this regard is absolutely unreliable and ingredients of Section 304B IPC even when read with Section 113(B) of the Indian Evidence Act, were not satisfied at all. The prosecution failed to discharge the initial burden in light of the provisions under Section 304B IPC, therefore, there was no question of any presumption under Section 113(B) of the Indian Evidence Act. PW-1 and PW-2 have themselves stated in their testimony that there was no demand of dowry prior to or during marriage. It being so it was highly improbable that there would be any such demand after marriage. Their statements in this regard are not at all reliable and can not be made a basis for conviction of the appellants.

9. It was also argued that defence witness in the form of testimony of a neighbour DW-1 has been discarded by the trial Court on flimsy reasons. She, by her testimony, has clearly proved that the deceased had locked herself in the store room and set herself on fire. The appellant- Hasim was outside and rushed to save her and in this process burnt his fingers. The trial Court has erred in disbelieving her testimony and its judgment has resulted in grave miscarriage of justice. The prosecution has failed to prove the guilt of appellants beyond reasonable doubt. They are liable to be acquitted and their appeals are liable to be allowed.

10. Learned A.G.A. vehemently opposed the appeals. He has stated that the initial burden of proving the ingredients mentioned in Section 304 B IPC were proved by the prosecution. The marriage took place on

25.05.2010. The death occurred in unnatural circumstances on 07.04.2012 i.e. within a period of two years. The prosecution has proved by leading the evidence of PW-1 and PW-2 that there was demand of dowry and harassment on its non-fulfillment on account of which the deceased declined to go back to her in-laws and ultimately when she did go back on the assurance of her husband that she would not be ill treated, she was again harassed resulting in her death in abnormal circumstances, thereby, attracting the presumption under section 113(B) of the Indian Evidence act shifting the burden upon the appellants to rebut the presumption but they have failed to do so. The testimony of DW-1 is not at all reliable. She is a neighbour of the appellants and has deposed to help them, therefore, her testimony has rightly been disbelieved by the trial Court. The fact that out of seven accused four have been acquitted, does not enure to the benefit of the appellants as against them there is sufficient evidence to prove their guilt. The trial Court has given reasons for acquitting the other members of the family which do not apply in the case of the appellants. The appeals are liable to be dismissed.

11. F.I.R. has been lodged by mother of the deceased who reached the scene of crime on receiving a telephone call at about 12.00 in the day on 07.04.2012. The F.I.R. has been lodged on the same day at 02.10 p.m. The mother resided at about 17-18 kilometers from the scene of crime. The police station is one and half kilometers away, therefore, the F.I.R. is prompt. The written 'tehrir' Ex. Ka-1 has been proved by the PW-1 and PW-3. PW-3 is the scribe and PW-1 is the informant.

12. The Site Plan Ex. Ka- 5 which has been prepared on the statement of the prosecution witness shows that the deceased was burnt in the store room of the house by her husband. Her body was taken out and kept in the Courtyard. The scene of crime has also been proved by

prosecution witnesses. Human blood was found on the soil collected from the scene of crime as per forensic report dated 20.08.2014.

13. Inquest report is Ex. Ka-8. It mentions about the body of the deceased lying in the Courtyard of the house of Mohd. Kasim the father-in-law. It was covered with a blanket. Burnt clothes were clinging to the body of the deceased. There was blood at the back of the head.

14. Postmortem report is Ex. Ka-2. Postmortem was conducted 08.04.2012 at 1.00 p.m. The age of the deceased is mentioned as about 22 years. Probable time since death is mentioned as one day. The report clearly mentions about smell of kerosene oil from scalp hair. Tongue was partially protruded. Skin was peeled up at most of the place. The following ante-mortem injuries were detected on the body of the deceased:-

"(1) Contusion (Lt) side upper part of chest and neck 10 x 6 cm underneath hematoma present.

(2) L.W. over (Lt) side scalp 8 cm from (Lt) ear size 2 cm x 1 cm underneath hematoma over scalp present.

(3) Two contusion over mid of back, 1st on T8-2 size 8 x 2 cm, 2nd one at L1-L2 chest side 4 cm x 3 cm.

(4) Multiple contusion over face, ear and both Eyes temporal region & over maxilla size 3 x 2 cm to 1 x 1 cm.

(5) All over body deep to superficial burn. Line of redness present at some places about 99% burn."

15. The Membranes and Brain was congested. The postmortem also mentions about burnt pieces of clothes on the body of the deceased.

The cause of death is mentioned as shock as a result of ante-mortem burn injuries.

16. PW-4 the Doctor, who conducted the autopsy, has proved the postmortem report. He has spoken about smell of kerosene oil from the body of the deceased. The blisters on the skin were open. The body was burnt about 99%. He has reiterated the cause of death as mentioned by him in the postmortem report. In cross-examination he has stated that the death of the deceased was caused by shock resulting from burn injuries and not from any other ante-mortem injuries. He has spoken about superficial to deep burn injuries. He has stated that injury no. 2 could have been caused by a fall or striking or forcible contact with a wall. He has denied suggestion that ante-mortem injury no. 3 could be caused by fall.

17. PW - 4 was also called as a Court witness wherein he has explained as to how he has mentioned contusions when the degree of burn injuries was 99%. He had cut the skin to find contusions. According to him, there was no contradiction in the report. The death had been caused on account of shock due to 99% burn injuries.

18. From the discussion made hereinabove, especially with regard to medical evidence, it is proved firstly that the deceased wife died from shock caused by 99% burn injuries and that it was not death in normal circumstance. It is proved from the prosecution witnesses that marriage had taken place between the accused Mohd. Hashim and deceased on 25.05.2010 and death occurred in abnormal circumstances on 07.04.2012, this happened within less than two years of marriage.

19. The question to be considered is as to whether soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry or not.

20. The prosecution has relied upon the testimony of PW-1 the mother and informant. The mother has stated about marriage having been solemnized on 25.05.2010. No demand of dowry was made prior to or at the time of marriage, but, after the marriage when the girl came back to her maternal house for the first time she told her and other family members that her husband- Hashim and other family members including mother-in-law and father-in-law were demanding a Hero Honda Motorcycle and two lac rupees cash as dowry. She has stated that she and her husband talked to the in-laws and informed them that they did not have the financial capacity as of then to meet the demands, for which time should be given and gradually they will fulfill those demands. On this the appellant- Mohd. Hashim took his wife back to his house. Even thereafter, the accused kept demanding dowry and harassing the deceased. The deceased had told PW-1 about it when she came to her maternal house again. PW-1 and her husband pleaded with the in-laws of the deceased whereupon the deceased again went to her in-laws' house. A girl child was born out of the said wedlock. She has stated about the deceased again coming back to her maternal house i.e. after the birth of the child and of informing PW-1 about the harassment and cruelty of her in-laws and that then she declined to go back. About a month prior to the incident, the appellant- Mohd. Hashim came to her house and assured them that he would no longer trouble her. It is then that PW-1 allowed her daughter to go with him to his house. On 07.04.2012 at 12.00 p.m. she received telephonic call that her daughter had got burnt. She along with her brother Shakil Ahmad and nephew Mohd. Usman reached the scene of crime at Village- Etkauli and saw that her daughter's body was lying in the Courtyard in a burnt condition. She was dead.

21. In cross-examination she has stood her ground and the defence has not been able to dislodge her statement in the examination-in-chief nor impeach her credibility in any manner. No doubt she has stated that

deceased remained with her in-laws only for about three months and rest of the time she lived with her. This only goes to show that she was not willing to live with her husband and in-laws on account of demand of dowry and harassment in this regard. In all fairness she has stated that no demand of dowry was made prior to or at the time of marriage. This only goes to show the truthfulness of witness. She has also stated that she had not lodged any F.I.R. regarding the demand of dowry and harassment nor had called for a panchayat but had talked to the in-laws of her daughter. She has denied the suggestion that her daughter lived happily in her in-laws' house and that there was no demand of dowry or harassment in this regard.

22. PW-1 was re-examined in view of the fact that the other accused were arrested only subsequently and trial started against them thereafter. In this re-examination also she has stood her ground and on cross-examination by the said accused, she has not contradicted herself or revealed any glaring inconsistency so as to create a doubt about the credibility of her testimony. She has reiterated that on coming to the maternal house for the first time after marriage her daughter had complained about demand of dowry and harassment by the husband and in-laws and the assurances given in this regard by PW-1 and her husband and repeated demand of such dowry thereafter and the information given by her daughter whenever she came home. She has fairly stated that both the families were related to each other that is why marriage had been solemnized. She has denied receiving information about her daughter having got burnt from her husband-Hasim. She has stated that she reached the scene of crime within 30-45 minutes. She has fairly stated that she had not seen anybody pouring kerosene oil on her daughter or burning of her daughter. She has also fairly stated that her husband (PW-2) had not gone to the scene of crime with her. She has also spoken about demand of dowry by appellant- Hasim specifically and also that her daughter used to tell

about this to her father i.e. husband of the PW-1. She has also spoken about the presence of the appellant- Hasim at the scene of crime when she reached there. She has denied the suggestion of having heard that Hasim had broken the door to enter into the room where her daughter had burnt herself and in this process his hands got burnt.

23. From her statement the demand of dowry and harassment meted out to her daughter as revealed by the latter to her while she was alive are amply proved and there is no reason to disbelieve her version. Such statements are admissible in evidence under Section 32(1) of the Indian Evidence Act as has been held by Hon'ble the Supreme Court in the case of *Amar Singh Vs. State of Rajasthan* reported in **2010 (70) ACC 970**. Such statements made by the daughter, when she was alive, to her mother (PW-1) would be covered under Section 32(1) of the Indian Evidence Act which is an exception to hearsay evidence as has been held in the aforesaid case relying upon the earlier judgment of Hon'ble the Supreme Court rendered in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra* reported in **(1984) 4 SCC 116**.

24. PW- 2 is father of the deceased. When information about the death of his daughter was received by his wife he was away and did not reach the scene of crime immediately along with his wife, but, reached there later. As regards demand of dowry and harassment of his daughter by the husband and in-laws he has also testified about being told by his daughter about such demands and harassment immediately after marriage. He has also fairly stated that prior to or during marriage no such demand was made, but, immediately after marriage, when his daughter came to her parental house she told him that her husband and family members of the in-laws used to taunt her that she had not brought anything substantial as dowry and had demanded a Hero Honda Motorcycle and 2 lac rupees in cash from her parents. He has reiterated and corroborated the version of PW-1 in this regard. He has

also spoken about being informed about the demand of dowry and harassment meted out by the husband by his daughter and in-laws telephonically and when she came to his house that he had counseled the in-laws and sent his daughter to their home, but, the harassment and cruelty continued even thereafter. His daughter had informed him that there was no improvement in the behaviour of her in-laws and she declined to go back. He has stated that the appellant- Hasim came to his house to take back his wife a month prior to the incident with the assurance that he will not ill treat her and in view of the assurance given by him, he sent his daughter to her in-laws, thereafter, the information about her death was received by his wife at 12.00 p.m. on 17.04.2012. He has fairly stated that he was not at home when the information was received and whatever was seen by his wife at the scene of crime was told to him later.

25. In cross-examination his testimony has remained intact. He has fairly stated that the in-laws of his daughter were known to him as they were his relatives. He has truthfully stated that there was no demand of dowry either prior to or during marriage. They had not demanded Hero Honda Motorcycle and 2 lac rupees during marriage or prior to it, but, he has nowhere contradicted himself as regards his testimony in examination-in-chief that after marriage the demand of dowry and harassment took place. He has accepted that he had married for the second time after his marriage with PW-1. He has stated that her daughter was killed on account of non fulfillment of demand of dowry and that she was harassed on account of it prior to her death.

26. PW-2 has also been re-examined for the reason already mentioned above but his testimony has remained intact. He has stated that the second wife was residing in her maternal house and that he had not visited her for the past 2-4 months and he has a daughter from the second marriage, but was not aware as to whether she studies or not.

He has stated that on the very second day after marriage the in-laws of his daughter started taunting and abusing her about not bringing adequate dowry. His testimony clearly proves the demand of dowry as also harassment meted out to his daughter and the information given by her in this regard to him and PW-1 which are already stated, is admissible in evidence under Section 32(1) of the Indian Evidence Act as the statement by the daughter made to PW-1 while she was alive, and is referable to the words -"as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question', as, used in Sub-section 1 of Section 32 of the Indian Evidence Act.

27. PW-3 has stated that he has knowledge about the demand of dowry etc. on the basis of what has been told to him by his 'Bua' i.e. PW-1. He has stated that the accused had not made any demand of dowry in his presence. His testimony is not of much relevance.

28. From the testimony of PW-1 and PW-2 which we find it to be reliable, it is proved that demand of dowry was consistently and regularly being made by the husband, mother-in-law and father-in-law since immediately after the marriage. Whenever the daughter came back to her maternal house she used to tell about it to her parents and also that she was being harassed and ill treated her on account of non-fulfillment of demands. Barely one month prior to the incident she was taken by her husband on the assurance that he would not ill treat her and thereafter the incident occurred on 07.04.2012. As per the postmortem report apart from 99% deep to superficial burn injuries there were other ante-mortem injuries such as contusions, lacerated wounds etc. while some of the injuries in the opinion of the Doctor could have been caused by a fall or coming into forcible contact with a wall, there were other injuries especially injury no. 3 on the spine/back about which he has stated that this could not have been caused by a

fall. No explanation has been offered by the appellants regarding these injuries as to how they were caused, especially as, the appellant-Hasim and the appellant- Smt. Maimunnisha the mother-in-law were present in the house. These unexplained injuries which could not have been caused by a fall as opined by the trial Court also, rightly so, point towards physical ill treatment and cruelty immediately before her death and after she had gone back to her in-laws barely a month prior to incident. Once, it is so, then, a presumption arises under Section 113(B) of the Indian Evidence Act about the death of the deceased being dowry death caused by the appellants.

29. Now, the question is whether the appellants were able to rebut this presumption by leading any evidence.

30. In this very context we may refer to the defence of the appellant-Hasim that her wife had locked herself in the store room and burnt herself and in the process of saving her, he also burnt his hands, however, he has not given any reason as to why she did it. It is said that he was examined by Doctor Shri Gopal Prasad Rajak who was produced as PW-4 and also DW-2 as well as Court Witness-1. In his testimony as prosecution witness he has testified about conducting the postmortem on the body of the deceased as already mentioned hereinabove. As DW-2 he has spoken about appellant- Hasim being brought for medical examination on 09.04.2012 at 03.15 p.m. i.e. two days after the incident and also of having medically examined him. He has stated that the patient did not complaint about anything to (DW-2) when the latter examine him, he did not find any injury and abnormality and DW-2 informed the Constable that he was in good health. In cross-examination on being shown the photocopy of 'majroobi chhithi' which mentions about some blister on the palm of right hand and left hand he opined that he could not give any opinion in this regard because the document was a photocopy and reiterated

that the injured had not made any complaint before him and that he had not detected any such burn injuries on his body. As regards his testimony as Court Witness No. 1 this was only with regard to the injuries mentioned by him on the body of the deceased, therefore, that does not help the appellant- Hasim.

31. Thus, the defence miserably failed to prove the alleged burn injuries on the hands of the appellant- Hasim and also the defence plea that he tried to save his wife and in that process he got burnt.

32. What remains to be discussed is the testimony of DW-1, who is a neighbour of the appellants. Her testimony was disbelieved by the trial Court. In her examination-in-chief she has stated that the incident had occurred about eight years ago. Children were playing outside and they saw smoke coming out of the house of Hasim and raised an alarm. People gathered outside his house. The deceased was on fire in the store room. She had locked herself in the room from inside. Hasim was standing outside and came running on hearing the commotion. Hasim and others broke open the door and tried to take out the victim. By then she had been substantially burnt. The father of appellant- Hasim was not at home and had gone to work. His ailing mother was at home but in another room. She (DW-1) stayed there for quite a while but on account of nervousness came back to her house.

33. In cross-examination she has admitted to the fact that she had never deposed in this regard before the police and that for the first time she was appearing in Court to testify. She has also stated that she does not remember the date of her marriage and that she would not be able to search out her 'Nikahnama' and produce it. She does not even remember the date of marriage of the deceased. A suggestion was made to her that she was not residing at the relevant time as she had not been married, of course, this has been denied by her. Based on the aforesaid,

the trial Court has disbelieved her testimony as it was highly unnatural that in the circumstances mentioned hereinabove she would not remember her marriage nor that of the deceased, although, she was residing as a neighbour. Most important she has also stated that she did not see as to how deceased got burnt. In view of this statement her testimony loses significance and is of no help to the defence. Moreover, the testimony of DW-1 does not establish that the death of the wife was under normal circumstance nor does it belie the testimony of PW-1 and PW-2 regarding demand of dowry and harassment in connection therewith, so as to bring it out of the purview of Section 304B IPC.

34. In his statement under Section 313 Cr.P.C. the appellant- Hasim who was admittedly present in the house has not explained as to why, as claimed by him in his defence, his wife set herself on fire, though, he was the best person to depose in this regard, therefore, it is also a fact which goes against him, especially, in view of the presumption under section 113(B) of the India Evidence Act.

35. In view of the above discussion, we have no hesitation in saying that the prosecution has proved that soon before her death the deceased was subjected to harassment on account of non-fulfillment of demand of dowry. The demand of dowry is also proved.

36. We are conscious of the fact that out of the seven accused four have been acquitted by the trial Court, though, the evidence with regard to them was same, however, we find from a reading of the trial Court judgment that it has given cogent reasons in this regard. It has taken into consideration the argument advanced on behalf of other accused- Babu @ Tauhid who was aged about 16-17 years and Julekha @ Gudia had got married long ago in 1998 and was residing with her in-laws elsewhere, and her younger sister was also residing with her.

Gudia was also married having four children and living at her in-laws' house. The trial Court has opined that no direct benefit of any demand of dowry was available to these accused nor is there any evidence to show that these accused considering their age were so mature at the time of incident as to have the understanding and mental frame work to conspire and be part of the commission of crime and accordingly, opined that their liability is not proved beyond reasonable doubt.

37. As already discussed, so far as appellant- husband, mother-in-law and father-in-law are concerned, their guilt has been proved beyond reasonable doubt. Having said so, we must put it on record that out of the seven accused four accused having been acquitted the conviction with the aid of Section 149 IPC by the trial Court is not sustainable, as, the number of accused is less than five. Nevertheless, for the offence punishable under Section 304B, 498-A and Section 3/4 of D.P. Act the same is sustained.

38. At this stage we may also put it on record that an alternative charge was framed on 22.04.2013 by the trial Court against all the three appellants- Mohd. Hashim @ Pappu, Mohd. Kaseem @ Kasim and Smt. Maimunnisha under Section 302, 149 IPC, but there is no discussion in the trial Court's judgment with regard to this charge, which is a grave error. Nevertheless, as there is no appeal by the prosecution on this count and appeal is by the accused who is convicted only under Section 304B IPC, we do not wish to venture into this aspect of the matter. We may in this context refer to the Privy Council Judgment rendered on 2nd July, 1928 in the case of ***Kishan Singh Vs. Emperor*** reported in ***The Law Weekly, 1928 Vol. XXVII*** wherein their Lordships were faced with similar situation involving a case where the trial Judge did not record an express finding of acquittal in respect of the charge of murder instead convicted the accused of the charge under Section 304 IPC and they opined that the conclusion at

which the learned trial Judge arrived amounted to an acquittal in respect of that charge of murder, and also that the High Court had no jurisdiction in exercise of its revisional powers to convert the trial Judge's finding of acquittal on the charge of murder into one of conviction of murder.

39. Now, coming to the question of sentence, the mother-in-law and father-in-law have been sentenced to 10 years rigorous imprisonment each for the offence punishable under Section 304B, 149 IPC. As already stated the conviction under Section 149 IPC is not sustainable. The conviction under Section 304B IPC is with the aid of the presumption under Section 113(B) of the Indian Evidence Act and the trial Court has not ventured to consider the charge framed under Section 302 IPC, therefore, there is no conviction under the latter provision. Nevertheless, considering the fact that there is no evidence as to what actual part was played by the mother-in-law and father-in-law in the commission of crime, in our opinion instead of 10 years rigorous imprisonment as aforesaid, 7 years rigorous imprisonment each would suffice as sentence. We rely on the judgment of Hon'ble the Supreme Court in *Amar Singh's case* (supra) in this regard. We order accordingly. With regard to the sentence under Section 498-A IPC and Section 4 of D.P. Act we uphold the sentence as imposed by the trial Court. All the sentences shall run concurrently.

40. As regards the appellant- Mohd. Hashim @ Pappu we find that he was about 26-27 years of age at the time of commission of crime and here again there is no evidence as to what actual part was played by him in the commission of crime. His conviction is also with the aid of the presumption under Section 113(B) of the Indian Evidence Act and the trial Court has not recorded any finding of guilt regarding the charge framed under Section 302 IPC, but as he was the husband of the deceased, therefore, taking into consideration all these factors, we are of

the opinion that instead of life imprisonment awarded to him a sentence of 10 years imprisonment would suffice. We order accordingly. With regard to the sentence under Section 498-A IPC and Section 4 of D.P. Act we uphold the sentence as imposed by the trial Court. All the sentences shall run concurrently.

41. The judgment of the trial Court is upheld on the question of conviction of the appellants under Section 304B, 498-A IPC and Section 4 of D.P. Act. It is set-aside so far as conviction under Section 149 IPC is concerned. The judgment of the trial Court is modified so far as sentence imposed by it on the appellants are concerned, as aforesaid.

42. The appellants- Mohd. Kaseem @ Kasim and Smt. Maimunnisha are on bail. They shall be taken into custody forthwith and sent to jail to serve out the sentence, unless they have already undergone the sentence. The Chief Judicial Magistrate concerned shall ensure compliance of the same.

43. Both the appeals are **allowed but only in part.**

44. The records, which are photocopies of the original, shall be remitted back to the trial Court for necessary action as per law.

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

Order Date :-25.01.2024

R.K.P.