

Neutral Citation No. - 2024:AHC-LKO:75378

**Court No. - 12**

**Case :-** CRIMINAL APPEAL No. - 856 of 2009

**Appellant :-** Bipin Srivastava

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Anil Kumar Sharma, Anil Kumar Sharma

**Counsel for Respondent :-** G.A.

**Hon'ble Saurabh Lavania, J.**

1. Heard learned counsel for the appellant, learned A.G.A. for the State and perused the record.
2. The instant Criminal Appeal under Section 374 (2), Cr.P.C. has been filed by the accused-appellant against the judgment and order 30.03.2009 passed by the learned Additional District & Sessions Judge, Court No.2, District Lucknow in Session Trial No.103 of 2007, arising out of Case Crime No.462 of 2006, P.S.- Madiaon, District Lucknow, convicting and sentencing the accused-appellant to undergo five years imprisonment with a fine of Rs.20,000/- under Section 306 I.P.C.; one year imprisonment with a fine of Rs.4000/- under Section 498-A I.P.C.; six month imprisonment with a fine of Rs.2000/- under Section 3/4 of Dowry Prohibition Act. In case of default in payment of fine, to further undergo imprisonment for one year under Section 306 I.P.C., three months under Section 498-A I.P.C. and one month for offence under Section 3/4 of D.P. Act. All the sentences were ordered to run concurrently.
3. According to the story of the prosecution indicated in the FIR, which was lodged on 27.04.2006 at P.S. Madion, District Lucknow by Rajendra Lal (P.W.2) s/o Chandrika Lal, r/o Village & Post – Nasriganj, District – Rohtash (Bihar), the

marriage of Sushila, daughter of informant/Rajendra Lal, was solemnized with accused/appellant Bipin Srivastava 4-5 years ago from the date of incident and after marriage her daughter was subjected to cruelty and torture on the pretext of non-fulfilment of demand of dowry by her husband and other members of her 'Sasural'. According to this FIR an amount to the tune of Rs.25,000/- was demanded by the accused/appellant Bipin Srivastava and he also threatened that if the demand is not fulfilled he would kill the daughter of the informant (P.W.2). On 25.11.2006 at Lucknow Sushila, daughter of informant/Rajendra Lal (P.W.2), died on account of burn injuries sustained. The FIR dated 27.04.2006 (Ex.Ka-4) was registered as Case Crime No.462 of 2006, under Sections 498-A, 304-B I.P.C. and 3/4 of D.P. Act at P.S. Madiakon, District Lucknow.

4. The Investigating Officer, after completing the investigation, submitted the charge sheet (Ex.Ka-12) against the appellant under section(s) 498-A, 304-B I.P.C. & Section 3/4 of D.P. Act along with other documentary evidence which includes the Inquest Report (Ex.Ka-2), Post Mortem Report (Ex.Ka-6), Challan (Ex.Ka-8) and Sample of Seal (Ex.Ka-10) etc.
5. After submission of charge sheet, learned Magistrate took cognizance and thereafter the case was committed to the Court of Sessions where it was registered as Session Trial No.103 of 2007 and charges were framed against the appellant under Sections 498-A, 304-B I.P.C. & Section 3/4 of D.P. Act. The charges were denied by the accused appellant and, therefore, he was put to trial.
6. The prosecution, in support of its case, examined as many as ten witnesses, namely, Smt. Kisra Devi (P.W.1), informant Rajendra Lal (P.W.2), Smt. Runa Devi (P.W.3), Anupam Kumar Verma (P.W.4), Bhola Prasad Srivastava (P.W.5), Satyawati

(P.W.6), Court Moharrir 1449 of P.S. Madaon (P.W.7), Dr. Rakesh Kumar Mishra (P.W.8), Anup Kumar Swami (P.W.9) and Printinder Singh (P.W.10).

7. That after closing of the evidence, statement of accused/appellant was recorded by the trial court under Section 313 Cr.P.C. in which he denied the prosecution version and stated that he has been falsely implicated and that the witnesses gave false statement. He added that he was living happily with his wife. She died in an incident of burning. He never demanded dowry and that he also did not harass or torture his wife.
8. Thereafter, the learned trial court after hearing learned counsel for both the parties and appreciating the entire evidence, oral as well as documentary, found the accused/appellants guilty and convicted them as above.
9. The trial court upon due consideration of the evidence available on record including the statement which includes statement of the witnesses of fact came to the conclusion that offence under Sections 306, 498-A I.P.C. & Section 3/4 of D.P. Act is made out against the accused/appellant and, therefore, convicted the appellant as aforesaid under Sections 306, 498-A I.P.C. and 3/4 of D.P. Act and acquitted the accused appellant for the offence under Section 304-B I.P.C.
10. The relevant portion of the judgment, under appeal, is extracted hereunder :-

*“25. Now coming to the point whether murder was committed by accused Vipin Srivastava, or not, from the perusal of statement of P.W.6. Satavati, landlady of the premises where occurrence took place, has stated that on date 25-11-2006 at the time of occurrence she had gone to Daliganj Market and when she came back at about 4.00 P.M. she saw that smoke and foul smell was coming out of room of the place of occurrence. She reached there and knocked the door, but his call was not responded. Then she called people of nearby locality and got broken the door. She saw that Sushila was burning and then she informed the police. The fire was doused by throwing water and sand. In her cross-examination, she stated that*

*when she reached at her house Vipin was not present there. After informing the police, Vipin arrived on the spot and the door was found closed from inside and the goods kept inside the room were also burnt with Sushila. From the statement of P.W.9, Anoop Kurer Swami, Sub-Inspector, it is quite clear that when 'Punhcatnama' was being prepared the accused arrived on the spot after receiving information of the incident. He told telephone number of the complainant on which information of the incident was given to the complainant. From the statement of Investigating Officer, Pritinder Singh, the then circle officer of the area, it is evident that during investigation it was found that door of the room was closed from inside and it was broken open and body of the deceased was taken out of the room. Thus, from the evidence of P.W.6, P.W.8, P.W.9 and P.W.10 it is evident that the accused was not present on the spot at the time of the incident. Rather, the room was closed from inside and it was broken open. Thus, these circumstances make it doubtful that murder by burning the deceased was committed and, therefore, presumption cannot be raised against the accused in view of the provisions contained in section-113-B of the Indian Evidence Act and Section 304-B I.P.C. Therefore, offence under section 304-B IPC is not proved against the accused beyond doubt.*

*26. However, from the aforesaid discussion of the evidence, it is evident that demand of dowry was made by the accused and it was communicated to the complainant and elder sister of deceased Smt. Sushila and, thus, this court arrives at the conclusion that deceased Smt. Sushila herself committed suicide and since demand of dowry was being made soon before the incident of death of Sushila, presumption is drawn that she committed suicide by burning herself which accused Vipin Srivastava abetted by demanding dowry soon before death which is punishable under section-306 I.P.C.*

*27. In view of the discussion, made above, I hold accused Bipin Srivastava, guilty under sections-306 and 498-A I.P.C. and sections-3/4 of Dowry Prohibition Act. However, I hold him not guilty under section-304-D IPC."*

11. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction, the appellant has preferred the present appeal.
12. Upon due consideration of the submissions advanced by learned counsel for the parties Shri Anil Kumar Sharma, learned counsel assisted by Ms. Kushboo Singh, learned counsel for the appellant and Shri V.K. Shahi, learned A.A.G. for the State, as also the evidence available on record including the post mortem report (Ex.Ka-6) and the statement of witnesses of fact, particularly, informant/Rajendra Lal (P.W.2),

who proved the facts narrated in FIR (Ex.Ka-4), Satyawati (P.W.6), who is the main witness of fact, according to which the accused appellant Bipin Srivastava and the deceased were tenant of a room at first floor of her house no.537Bha/441, Bharatnagar, Mohibullapur, P.S. Madiakon, District Lucknow and she saw smoke and foul smell while she was returning from market on 25.11.2006 at about 4:00 P.M. (date of incident indicated in the FIR) and she tried to open the door which was locked inside and the door was ultimately broken and thereafter the deceased was taken away and the deceased committed suicide and also the statement of Dr. Rakesh Kumar Mishra (P.W.8), who proved the post mortem report, according to which the deceased died on account of shock and due to ante mortem burn injuries and also that incident occurred within seven years of the marriage, this Court is of the view that trial court has not committed any error in convicting the appellant under Section 306, 498-A I.P.C. and Section 3/4 of D.P. Act.

13. In the aforesaid background and the evidence on record, as already noticed hereinabove, this Court is of the view that accused-appellant is liable to be convicted for the offence punishable under Section 306 IPC though charge was not framed. The accused-appellant has already spent two years and four months in prison, as indicated in the order dated 07.04.2009 passed by this Court in this appeal. He does not have any past history of criminal record. Hence, a lenient view has to be taken while imposing the sentence.
14. For the reasons afore-stated, the appeal is *allowed in part*. The judgment and order of conviction dated 30.03.2009 passed by the learned Additional District & Sessions Judge, Court No.2, District Lucknow in Session Trial No.103 of 2007, arising out of Case Crime No.462 of 2006, P.S.- Madiakon, District Lucknow, under Sections 498-A, 304-B I.P.C. and Section 3/4

of D.P. Act. is hereby modified. The appellant/Bipin Srivastava is acquitted for the offences punishable under Section 304B IPC and Section 3/4 of Dowry Prohibition Act and convicted for the offence punishable under Section 306 IPC and Section 498A IPC and sentenced to imprisonment for the period already undergone with fine of Rs. 5000/- and in default to pay the fine to undergo one month simple imprisonment for each of the offence.

15. The appellant is stated to be on bail, his personal bond is cancelled and sureties are discharged.
16. Let a copy of this judgment and record be sent forthwith to the trial court concerned for compliance.

**Order Date :-** 14.11.2024

Anand/-