

Neutral Citation No. - 2024:AHC-LKO:76671

Court No. - 12

Case :- CRIMINAL APPEAL No. - 435 of 1991

Appellant :- Raghavendra Kumar Dixit S/O Tribeni Shankar
Dixit

Respondent :- The State Of U.P.

Counsel for Appellant :- S Kumar, Rakesh Prasad, Sachin
Srivastava

Counsel for Respondent :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard Shri Mohd. Shahid Akhtar, learned Amicus for the appellant and Shri Ajay Kumar Srivastava, learned A.G.A. for the State-opposite party.

2. The instant Criminal Appeal under Section 374 (2), Cr.P.C. has been filed by the accused/appellant challenging the judgment and order 08.08.1991 passed by XI Additional Sessions Judge, Lucknow (in short "trial Court"), in Session Trial No. 301 of 1989, under Sections 304-B and 498-A of Indian Penal Code, 1860 (in short "IPC") and Section 4 of Dowry Prohibition Act 1961 (in short "D.P. Act") whereby the trial Court convicted and sentenced the accused/appellant under Section 304-B IPC to undergo rigorous imprisonment for seven years.

3. Before proceeding, further, it would be apt to indicate that the accused/appellant is an absconder and in his absence with the assistance of Amicus and learned A.G.A., this appeal is being decided and in this regard, the order dated 26.09.2024 passed by this Court is extracted herein-under:

"1. No one is present for the appellant when the appeal is taken up for hearing. However, learned A.G.A. is present for the State. No request for adjournment has either been moved on behalf of the appellant.

2. In pursuance of the earlier order of this Court, a report has been submitted by the Chief Judicial Magistrate, Lucknow informing that the surety bonds filed by the appellant in order to release him from prison in pursuance of the bail order could not be traced.

3. Perusal of the record would also reveal that non-bailable warrants were issued against the appellant. However, the same could also not been served, as the appellant- Raghavendra Kumar Dixit was not found residing at the given address.

4. Thus, keeping in view that the appeal is pertaining to the year 1991, the same may be disposed of on merits even in absence of the appellant, who appears to have absconded. In this regard, the office is directed to go through the record of the trial court in order to find as to whether any surety bonds of the appellant is available therein and if it is found that the surety bonds of the appellant are available in the record, summoned by this Court for the purpose of disposal of this appeal, a copy of the same shall immediately be sent to the trial court for the purpose of issuing notices to the sureties under Section 446 of the Code of 1973 or relevant provisions of B.N.S.S. 2023.

5. As of now, as the appellant is not traceable and prima facie appears to have been absconded, Shri Mohd. Shahid Akhtar is appointed as 'Amicus' for the appellant, who will inspect the record and would prepare the case and argue the same on the next date of listing. He would be paid appropriate fee, which would be determined by this Court at the time of final adjudication of the appeal.

6. List this case on 16.10.2024 in top 10 cases of the cause list, by showing the name of Shri Mohd. Shahid Akhtar as Amicus for the appellant.

7. The office is directed to provide photostat copies of the relevant documents including the statement of the witnesses available in the record of the trial court to Shri Mohd. Shahid Akhtar.

8. A copy of this order be immediately sent to the trial court for compliance."

4. The case of the prosecution in brief is to the effect that the marriage between the appellant and the deceased was solemnized on 23.06.1985 at House No. 549/80, Bada Barha, Police Station- Alambagh, District - Lucknow and a scooter was demanded by the husband, the father in law, mother-in-law and sister(s)-in-law namely Raghavendra Kumar Dixit (accused/appellant), Tribeni Shankar Dixit, Savitri, Meena and Madhu, respectively from the father of the deceased/Mukut Bihari Vajpayee and when the father of the deceased showed his inability to provide the scooter then in response it was said that provide Rs. 5,500/- the rest would be added and the scooter would be purchased. However, the said amount i.e. Rs. 5,500/- could also not be provided to the in-laws of the deceased. On account of non-fulfillment of this demand, the deceased was subjected to cruelty by all the family members which includes the husband of the deceased. The deceased succumbed to burn injuries on 06.08.1988. The FIR

related to this incident was lodged on 06.08.1988 at about 08:40 p.m. against the appellant/husband, father in law, mother-in-law and sister(s)-in-law.

5. The deceased on account of burn injuries was admitted to the Command Hospital, Lucknow for the reason that the appellant/husband of the deceased, as stated, was serving on the post of Lance Naik in the Indian Army. The statement i.e. dying declaration (Ex.Ka-20) of the deceased was recorded by Shri V. K. Dubey, A.C.J.M., Lucknow which reads as under:

"सा० सं० 10 श्री वी०के० दुबे ए०सी०जे०एम० द्वारा श्रीमती अलका का बयान (डाइंग डिक्लेरेशन) प्रदर्श क-20 लेखबद्ध किया गया, जो निम्न प्रकार से है:-

" मेरी शादी श्री राघवेन्द्र कुमार दीक्षित, पुत्र श्री त्रिवेणी शंकर मेरे पिता का नाम श्री मुकट बिहारी बाजपेयी है। दीक्षित के साथ आज से तीन साल पहले हुआ था। शादी के समय मेरे ससुर ने कहा कि स्कूटर दीजिए, पर पिता जी ने कहा कि स्कूटर देने का मेरा सामर्थ्य नहीं है। मेरे ससुर ने कहा कि 5500.00 रु० दे दें। शेष पैसा वे मिलाकर स्कूटर खरीद लेंगे। उस समय पिताजी ने यह बात माल ली थी, परन्तु पिता जी का सामर्थ्य न होने के कारण अब तक वह रुपया न दे पाये। ससुराल में पहली बार जब आई तो ससुराल वालों ने ठीक बर्ताव किया। सावन के महीने में दोनों ननद मधु तथा मीरा आपस में गाँव के राशन की दुकान के एक लड़के के बारे में बात कर रही थी, तब मैंने भी कहा कि यदि तुम्हारे भाई को पता लग जाएगा तो क्या होगा। उस बात से नाराज होकर मेरी सास ने रोकर मेरी शिकायत मेरे पति से की तो पति ने मारा। शादी के बाद से चूंकि मेरे पति अधिकांश नौकरी पर बाहर ही रहते थे तथा सास तथा दोनों ननद मुझे ताने दिया करती थी। सास तो गाली से बात करती थी। जब मैं खाना बनाती तो कोई न कोई नाराज होकर खाना नहीं खाते थे। अतः मैं अधिकांश समय मायके रहती थी। काम के बारे में भी वे लोग बातें करते थे। स्कूटर के 5500.00 रु० के लिए सास ननद कभी परेशान नहीं करती थी। मेरे पति जब भी आते थे 5500.00 रु० वाली बात कहते थे और गंदी-गंदी गाली भी देते थे। परसों मेरे पति घर आए। आज सुबह एक दो बजे मेरे पति ने कहा कि 5500.00 रु० जब तक स्कूटर वाली नहीं मिलेगा, तुम मायके रक्षाबंधन में भी नहीं जाओगी। आज 12 बजे के लगभग मेरा छोटा भाई आशू उम्र 15 साल, मेरे ससुराल आया था। आशू ने मेरे पति को कहा कि मेरे घर चलिए। वहाँ पिताजी से बात हो जाएगी। मेरे पति ने कहा कि न तो तुम राखी बांधने मायके जाओगी और न ही अपने भाइयों को राखी ही बांधोगी। आशू के साथ मैं जाने को तैयार थी, परन्तु उन्होंने जाने नहीं दिया। आशू 3.00 बजे तक बैठा रहा, उसके बाद वह चला गया। उसके जाने के बाद मेरे पति बड़बड़ाने लगे कि मैं अबकी बार आऊंगा तो तुम्हारे मैके वालों को मारूंगा। मैंने कहा कि मेरे ऊपर मिट्टी का तेल डालकर फूंक दो। तुम्हारे 5500.00 रु० मिल जाएंगे। ये कमरे के बाहर चले गये तो मैंने अपने ऊपर मिट्टी का तेल डालकर माचिस से आग लगाया। तब पति भी आग बुझाने दौड़ा। आग बुझाने में वे भी थोड़ा जल गए। उन्होंने मेरे ऊपर गलीचा डाला, पानी डाला, शाल डाला, तब जाकर हम बचे। मेरी ननद मधु अंदर वाले कमरे में थी, वह नहीं दौड़ी। मेरी सास घर पर नहीं थी। छोटा देवर अमित उम्र 7 साल अंदर वाले कमरे में था। मैं अपनी सास, ननद (विशेषकर मधु तथा छोटी ननद मीरा, जो कम परेशान करती थी) तथा पति के व्यवहार से तंग आकर आत्महत्या करने हेतु स्वतः आग लगाई। घटना लगभग 3.30 बजे की है। "

6. In the aforesaid background of the case, the charge-sheet was filed by the Investigating Officer, under Sections 304-B, 498-A IPC and Section 4 of D.P. Act. The Magistrate concerned after taking cognizance committed the matter to the Court of Sessions where the case was registered as Session Trial No. 301 of 1989 (State Vs. Raghavendra Kumar Dixit and Others).

7. The Sessions Court framed the charges against the accused under Sections 304-B, 498-A IPC and Sections 4 D.P. Act. The accused denied the charges and claimed trial.

8. To establish its case, prosecution examined P.W.1/Mukut Bihari Vajpyee (father of the deceased), P.W.2/Lalit Kishori (mother of the deceased), P.W.3/Girish Chandra Mishra (maternal uncle of the deceased), P.W.4/Ashutosh Vajpyee (brother of the deceased), P.W.5/Pradeep Kumar (neighbor), P.W.6/Dr. Naveen Saxena (who conducted the post-mortem), P.W.7/ SI Rajpati Mishra, P.W.8/Abhijeet Mukherjee (handwriting expert, Assistant Forensic Science Laboratory, Lucknow), P.W.9/Constable Clerk Awadesh Kumar Dwivedi, P.W.10/V. K. Dubey, A.C.J.M. (who recorded dying declaration) P.W.11/SI Chandrabhan Dubey, P.W.12/Head Constable Ramakant Pandey, P.W.13/Cricle Officer/ Ajay Mohan Sharma Investigating Officer), P.W.14/Inspector Babban Singh (Investigating Officer), P.W.15/Major P.K. Singh.

9. The witnesses of the fact i.e. P.W.1 to P.W.5 proved the case set up by the prosecution in the FIR.

10. The formal witnesses also proved the case of the prosecution including documentary evidence viz. post-mortem report, dying declaration, etc.

11. After completion of the evidence, statement of the accused were recorded in terms of Section 313 Cr.P.C..

12. The trial Court, upon due consideration of the evidence available on record which includes post-mortem report as also dying declaration proved by Shri V.K. Dubey, A.C.J.M., Lucknow (P.W.10) convicted the

accused/appellant Raghavendra Kumar Dixit (husband of the deceased) and Tribeni Shankar Dixit (father-in-law of the deceased) and acquitted Savitri (mother-in-law) and Madhu (sister-in-law) and thereafter awarded sentence to the accused named herein-before, as detailed above.

13. In the aforesaid background of the case, the present appeal was instituted by the accused/appellant (husband of the deceased) and **CRIMINAL APPEAL No. 420 of 1991** was instituted by Tribeni Shankar Dixit (father-in-law of the deceased) challenging the impugned judgment dated 08.08.1991.

14. It would be apt to indicate that on account of death of sole appellant Tribeni Shankar Dixit, the CRIMINAL APPEAL No. 420 of 1991 was dismissed as abated, vide order dated 22.11.2022. The order dated 22.11.2022 reads as under:

"Learned AGA has submitted instructions which is taken on record and as per the death certificate issued by the Nagar Nigam dated 30.10.2022 as well as the general diary details dated 30.10.2022, Sri Tribeni Shankar Dixit, the sole appellant has died on 08.12.2021.

In view of the aforesaid fact, the appeal is abated."

15. Impeaching the order under challenge, Shri Mohd. Shahid Akhtar, learned Amicus, appointed vide order dated 24.09.2024 by this Court, stated that the conviction of the accused/appellant, in fact, is solely based upon the statement of the deceased i.e. dying declaration recorded by Shri V.K. Dubey, A.C.J.M., Lucknow and accordingly, the punishment ought to have been awarded for offence under Section 306 IPC and not under Section 304B IPC.

16. In continuation, it is stated that a perusal of the dying declaration (Ex.Ka.20) proved by P.W.10 would indicate that on account of ill treatment for non-fulfillment of demand of dowry the deceased committed suicide. It is a case of self-immolation and it further appears from this statement of the deceased that the accused/appellant tried to save the life of

the deceased and it is for this reason the accused/appellant also sustained burn injuries in his hands.

17. It is further stated that taking note of the contents of dying declaration of the deceased, the conviction of the appellant for the offence under Section 304-B is liable to be altered for the offence under Section 306 IPC and an appropriate sentence be awarded after taking note of the fact that the accused/appellant tried his best to save the life of the deceased and also the period of pendency of the present appeal as also the period of elapsed years from the date of incident i.e. 06.08.1988 and various pronouncements on the subject of sentence to be awarded to an accused settled by the Hon'ble Apex Court .

18. It is further stated that in similar circumstances, the Hon'ble Apex Court took note of the injuries sustained and altered the conviction from the offence as indicated under Section 304-B to Section 306 IPC. Reference in this regard has been made on the judgment passed by the Hon'ble Apex Court on the judgment passed in the case of ***Paranagouda and another vs. The State of Karnataka and another*** reported in ***2023 SCC OnLine SC 1369***. Para 37 of the report, being relevant, is extracted herein-under:

37. In the aforesaid background and the evidence on record as already noticed by us hereinabove, it can be safely noted that High Court ought to have examined as to whether accused could have been convicted for an offence for which no charge was framed and not undertaking of such an exercise would result in failure of justice? Thus, it will have to be seen from the facts unfolded in the present case as to whether the accused was aware of the basic ingredients of the offence for which they are being tried and whether the main facts sought to be established against them were explained to them clearly and whether they got a fair chance to defend themselves. If the answer is in the affirmative, then necessarily this Court will have to proceed further and examine as to whether accused can be convicted for the offence not charged and if the answer is in the negative it would result in acquittal of the accused for said offence. In the instant case the dying declaration of the deceased would clearly indicate that deceased was mentally traumatized and she was unable to tolerate the torture and harassment meted out by the accused person on account of which she committed suicide. It is this taunting or mental torture which she could not withstand and forced her to commit suicide by self-immolation. In that view of the matter, we are of the considered opinion that accused persons are liable to be convicted for the offence punishable under Section 306 IPC though charge was not framed. The accused (appellant Nos. 1 and 2) are now aged about 66 and 61 years respectively. They have already spent one year, one month and 27 days in

prison. They do not have any past history of criminal record. Hence, a lenient view has to be taken while imposing the sentence.

19. Learned AGA on the contrary tried to defend the judgment under appeal but could not dispute the aforesaid facts and the law settled.

20. Considered the submissions advanced by learned counsel for the parties and perused the records.

21. In the instant case from the facts of the case including the dying declaration of the deceased it is apparent that on account of non-fulfillment of demand of dowry the deceased was mentally traumatized and she was unable to tolerate the torture and harassment meted out by the accused and on account of the harassment and mental torture, which she could not resist/withstand, the deceased committed suicide by self-immolation and the accused/appellant tried his best to save the life of the deceased.

22. In view of above as also taking note of the observations made by the Hon'ble Apex Court in the case of **Paranagouda (Supra)**, I am of the considered opinion that accused persons are liable to be convicted for the offence punishable under Section 306 IPC though charge was not framed. The accused is now aged about fifty eight years and has already spent three years in prison. He does not have any past history of criminal record. Hence, a lenient view has to be taken while imposing the sentence.

23. For the reasons aforesaid, the appeal is **allowed in part**. The judgment and order of conviction passed by the Sessions Court in Session Trial No. 301 of 1989 (Supra) is hereby modified. The accused/appellant is acquitted for the offences punishable under Section 304-B IPC and Section 4 of D.P. Act and convicted for the offence punishable under Section 306 and Section 498A IPC and sentenced to imprisonment for the period already undergone with fine of Rs.5000/- each and in default to pay the fine to undergo one month simple imprisonment for each of the offence.

24. The accused/appellant is on bail and accordingly, his personal bond is cancelled and sureties are discharged.

25. Let a copy of this judgment and record be sent forthwith to the trial court concerned.

26. Shri Mohd. Shahid Akhtar, Advocate, has argued the matter on behalf of the accused-appellant, in compliance of order dated 26.09.2024, therefore, it is provided that an amount to the tune of Rs.15,000/- (Rupees Fifteen Thousand Only) would be paid to him by Legal Aid Services Authority of the High Court.

Order Date :- 20.11.2024
Mohit Singh/-