

RESERVED ON:- 12.12.2023

PRONOUNCED ON:- 04.01.2024

Neutral Citation No. - 2024:AHC-LKO:826

Court No. - 14

Case :- CRIMINAL APPEAL No. - 306 of 1996

Appellant :- Ram Saran And Others

Respondent :- State of U.P.

Counsel for Appellant :- Pankaj Gupta, Mohd. Kamal Khan, Vijay Kumar

Counsel for Respondent :- Govt. Advocate

Hon'ble Karunesh Singh Pawar, J.

1. Since the appellant No.2-Guru Dayal and appellant No.3-Bitoli have died hence the appeal stands dismissed as abated in relation to appellant Nos.2 and 3.
2. Heard Sri Vijay Kumar, learned counsel for the appellant and Sri Alok Tiwari, learned A.G.A. for the State-respondent.
3. This appeal has been filed against the judgment and order dated 30.07.1996 passed by Additional District and Sessions Judge, Hardoi in Sessions Trial No. 151 of 1994, arising out of Case Crime No.589 of 1993, Police Station Kotwali City, Hardoi whereby the appellants have been convicted under Sections 498-A, 304-B IPC and Section 4 of the Dowry Prohibition Act. Appellant No.1-Ram Saran have been sentenced to undergo 10 years rigorous imprisonment for offence under Section 304-B IPC and appellant No.2-Guru Dayal as well as appellant No.3-Smt. Bitoli have been sentenced to undergo 7 years rigorous imprisonment for offence under Section 304-B IPC. All the three accused-appellants have also been sentenced to undergo six months rigorous imprisonment with fine of Rs.2,000/- for offence under Section 4 of the Dowry Prohibition Act and in default of making payment of fine, they would further undergo two months rigorous imprisonment.
4. Prosecution case is that a written report was given by the informant Kalawati alleging that she married her daughter Vimla Devi two and a half years ago with appellant No.1-Ram Saran. Immediately after the marriage, her in-laws used to beat her and demanded scooter, fridge and other costly items. Her daughter often

used to tell these incidents to her and her family members. In the last month my daughter was residing with me to escape from the harassment of her in-laws. Yesterday on 24.09.1993, her father-in-law Guru Dayal took her after farewell (*vidayi*) and told that he will take her to Kanhaipurwa. There is difficulty at home regarding cooking and other day to day work. Believing it, I did her farewell on the same day.

Today on 25.09.1993 in the morning Ram Dayal came at 08:00 am and told that her daughter has been done to death by pouring kerosene oil by appellant No.1- Ram Saran, her mother-in-law and father-in-law Guru Dayal. He told that Kushiram, Jageshwar and others have taken her to hospital on scooter. The daughter of the informant often used to object when they served liquor to Bhagwandeem at home as he was a goonda type person. When the informant came there, she came to know that in the night both husband and father-in-law of the deceased consumed excessive liquor at home. She came around 09:30 am today at the hospital and came to know everything. She found her daughter dead. She was not capable to give dowry and because of not giving dowry her daughter's husband, father-in-law and mother-in-law have burnt her daughter by pouring kerosene oil. While her daughter was burning, Om Prakash, Raghubar Dayal and Bhim Sen resident of Kanhaipurwa have seen the incident. The written report was given to the Superintendent of Police, Hardoi, Ex.ka-1 and he marked it to the S.H.O. Kotwali City and consequently, chik F.I.R. No.806 dated 25.09.1993, 16:20 hours, P.S. Kotwali City was registered which is Ex.Ka-13. The brief information about the incident has been mentioned in the general diary *Rapat* No.45 dated 25.09.1993 at 16:20 hours Ex.ka-14.

5. According to the prosecution and the documents of the hospital accused Guru Dayal father-in-law of the deceased informed that he brought his daughter-in-law on 24.09.1993 to home where she did not want to reside with appellants and today in the morning around 04:00 o'clock she poured kerosene oil upon her and set her on fire. The information to this effect was given in the police station which has been recorded in general diary *Rapat* No.8 dated 25.09.1993 at 06:50 am, Ex.ka-16. The Emergency Medical Officer, Hardoi on 25.09.1993 sent the information to the Prabhari Nirikshak, Kotwali City, Hardoi that deceased Vimla has been admitted on account of burn injury in the emergency ward. The

information has also been recorded in the general diary of the police station at *Rapat* No.11 dated 25.09.1993 at 07:15 am Ex.ka-17. On the same day in the general diary of the police station *Rapat* No.17 dated 25.09.1993 at 09:15 am ward boy Sharafat gave the information regarding the death of a burnt woman namely, Vimla. This information is Ex.ka-18. The Emergency Medical Officer sent the information regarding the death of the deceased to the S.H.O., Kotwali City District Hardoi on 25.09.1993 at 07:50 am through Ex.Ka-4. According to bed ticket Ex.Ka-2 Vimla Devi aged about 18 years was admitted in District Hospital, Hardoi for treatment of burning on 25.09.1993 at 06:25 am and died at 07:50 am on the same day. The inquest was prepared by Brijendra Bahadur Singh, Naib Tehsildar Ex.ka-3. The dead body was sent for post mortem through police form No.13 which is Ex.ka-5. The Kotwali City, Hardoi sent the letter to the CMO for conducting post mortem of the dead body vide Ex.ka-7. The post mortem was conducted by Dr. D. Puri, Medical Officer, District Hospital, Hardoi which is Ex.ka-9. The investigation of the case was done by Shyam Bihari Lal Saxena, Circle Officer Hardoi who took the statements of the witnesses, inspected the place of occurrence and prepared the site plan which is Ex.ka-19 and Ex.ka-20 and after completing the investigation filed the charge-sheet against the accused appellants under Section 498-A, 304-B IPC read with Section 3/4 of the Dowry Prohibition Act which is Ex.ka-21. Later on, the matter was sent to the Sessions court. The accused appeared and then the first Additional District and Sessions Judge framed charges against the accused under Sections 498-A, 304-B IPC read with Section 4 of the Dowry Prohibition Act.

6. Prosecution in support of its case has produced Smt. Kalawati as P.W.1, Sri Maya Shanker Shukla as P.W.2, Sri Shanker as P.W.3, Brijendra Bahadur Singh as P.W.4, Jaswant Singh as P.W.5, Dr. Dinesh Puri as P.W.6, Ram Darsh Verma as P.W.7, Sri Jageshwar Prasad as P.W.8, Aruna Shanker as P.W.9, Khusiram as P.W.10, Shyam Bihari Lal as P.W.11.

7. Defendant in support of its case has also produced Maya Shanker as D.W.1, Raies Ahmad as D.W.2, Aamina as D.W.3 and Chhote as D.W.4.

8. P.W 1 in her chief has stated that deceased Vimla was her daughter. She was killed by accused three and a half years back. She was married to the appellant No.1-Ram Saran two and a half years before her death. Guru Dayal is father of

Ram Saran and Bitoli is his mother. She further states that her daughter Vimla was burnt by the accused persons by pouring kerosene oil in their home at Kanhaipurwa due to that she died in District Hospital, Hardoi at around 07:45 am. She gave sufficient dowry in the marriage of Vimla according to her capacity. In the marriage, she went after farewell (*vidayi*) to her *sasural* (in-laws place). She remained there for three days and on the fourth day she came to her home. In the *Chauthi*, her sons Shanker and Vinod went to bid her farewell and after *chauthi* her sons and daughter returned and they told to her that accused persons are demanding the scooter, fridge and other pricy items in dowry. The pricy items is golden ring. After six months of *Chauthi*, *Gauna* took place. In the *Gauna*, Ram Saran and Guru Dayal came and they demanded scooter, fridge etc. but she could not give because of the poor financial condition. The girl was bidden farewell and went to her in-laws in *Gauna*. Since then her daughter was subjected to *maar-peet*, abused and was harassed due to non-payment of dowry. After that her daughter went to *sasural* six times and came to her home. She came to her home last time one and a half month prior to her death. Whenever, her daughter came home then on each occasion she told her regarding demand of dowry and harassment. Whenever, her son Shanker went to bring her daughter to her *sasural* then all the three accused appellants demanded scooter etc. Whenever, appellant came to take her, she used to tell the appellant regarding her helplessness still he insisted for the scooter etc. One day before the death accused Guru Dayal came to take Vimla and she told him regarding the harassment then he said that no one will harass her now. She sent Vimla on the same day at 04:00 pm with Guru Dayal. On the next day after bidding farewell her cousin brother Ram Dayal told that Vimla was set on fire at about 05:00 am in the morning by pouring kerosene oil by the accused persons Ram Saran, Guru Dayal and Bitoli. He also stated that Vimla has been taken to hospital by Kushiram and Jageshwar. Ram Dayal has died now. After that all her family members went to district hospital at 09:30 am and saw the dead body of the Vimla kept in a room and along with her *devar* Sriram went to Kutchehry where she got a written report and signed upon it. She has proved the written report Ex.ka-1. After that she returned to hospital. They were given the dead body after the post mortem. Since reaching the hospital and till the delivery of the body/receiving the body, she saw none of the accused persons.

In the cross she stated that Vimla was married with appellant No.1-Ram Saran and Rs.10,000/- dowry was fixed which she gave in *Tilak*. She also gave T.V. in *Tilak*. When his sons went to take the deceased in *Chauthi*, dowry was demanded in the shape of scooter and fridge by the accused persons. She denied the statement given by her under Section 161 Cr.P.C. to the Circle Officer that everything was alright till one year of marriage. In the cross, she again repeated that whenever the accused came to take her daughter, every time they demanded new scooter and fridge. Every time she said that she will not be able to give scooter and fridge. The dowry was demanded for the first time at the time of farewell in *Chauthi* from her sons. Ram Dayal told her that accused Ram Saran, his mother and Guru Dayal have killed her daughter by pouring kerosene oil. Om Prakash, Raghubar Dayal and Bhim Sen saw the incident. She denied the suggestion that while making tea in the morning, deceased caught fire from stove and got burnt. She further denied that Guru Dayal took her to hospital and got admitted rather said that her brothers Ram Dayal, Kushiram and Jageshwar got her admitted in the hospital. Ram Dayal told her that Jageshwar and Kushiram got her admitted.

P.W.2 Maya Shanker Shukla, Pharmacist stated that he brought the bed head ticket of deceased Vimla wife of Ram Saran along with bed head ticket outdoor *parcha* was also filed by him. He stated that deceased was in the treatment of Dr. J.L. Gautam who sent her for recording of dying declaration to the Tehsildar, Sadar. He is not sure whether dying declaration was recorded or not. He prove the bed head ticket which was in the hand writing of Dr. J.L. Gautam as Ex.ka-2. He recognized the writing and signature of Dr. J.L. Gautam.

P.W.3 Shanker who is brother of the deceased has stated in his chief that two and a half years before the death of Vimla, she was married with the appellant No.1. The information regarding her death was given by Ram Dayal who is his cousin uncle at 08:00 am on the same day. Ram Dayal told that Vimla was burnt by pouring kerosene oil at 05:00 am in the morning by Ram Saran, Guru Dayal and Bitoli. He also stated that Kushiram and Jageshwar have taken Vimla to District Hospital Hardoi. Ram Dayal has died. After receiving this information, he along with his mother and other family members reached district hospital at 09:30 am. On the same day post mortem and inquest was conducted. In the *Chauthi* he and

his brother Vinod went where Scooter, Fridge and Ring was demanded in dowry by accused appellants-Ram Dayal and Bitoli. Vimla also told regarding dowry to them. After bringing Vimla home, he and his brother Vinod told the demand of dowry to his family members. After six months of marriage *Gauna* took place in the month of *Aghan*. In the *Gauna*, Guru Dayal and Ram Saran demanded the aforesaid goods but they could not give since then accused started beating Vimla and abusing her and also harassed her regarding food and cloths. After going in *Gauna* and before death, Vimla came home six times whenever she came then she told her about demand of dowry and harassment. Except *Chauthi*, he alone went to bring Vimla. Every time accused persons demanded dowry. Vimla told about the harassment whenever he went to her in-laws place. Last time accused Guru Dayal came to take Vimla, on that day he told Guru Dayal regarding harassment meted out to Vimla in connection with demand of dowry then he promised that now no one will harass her neither will demand dowry. On this promise they did farewell at 04:00 pm. On the next day, they received information regarding the death of Vimla. Some times Ram Saran came to take Vimla although they tried to pacify him but he continuously demanded the aforesaid goods. Her sister has been done to death by pouring kerosene oil because of not getting dowry.

In the cross, he has denied his statement given to the Circle Officer that till one year after the marriage everything went well. He further stated that after *Gauna* he went to the house of Ram Saran then dowry was demanded and in between Ram Saran and others have beaten her however, he said that she was not beaten before him. He further stated that no dowry was fixed in the marriage of Vimla. Whatever he has given in the *tilak* they happily took and no demand was made after *tilak*. His brother Vinod had studied up to Class VI. No complaint was made by them regarding dowry. No letter was sent by his sister regarding demand of dowry. His maternal uncle Jageshwar and Kushiram did not inform them regarding *maar-peet*. He denied the suggestion that Guru Dayal has sent the information through Suresh that Vimla died due to burn from stove. His sister was not taken to hospital by Guru Dayal rather Kushiram and Jageshwar took her when he reached the hospital then only Jageshwar met him. In the hospital he remained till 06:00 pm. In the hospital Kushiram, Jageshwar and Sriram told his mother to give the written report. He denied the suggestion that Jageshwar and

others have told her mother to allege dowry in the written report. He denied the suggestion that dead body of Vimla was taken by Guru Dayal for cremation. He further denied that he is giving false statement because of Jageshwar and his mother. He denied the suggestion that no dowry was demanded by accused persons.

P.W.4 Brijendra Bahadur Singh, Naib Tehsildar who has conducted the inquest.

He has stated in the cross that during the inquest the brother and mother of the deceased were not present. In the cross, P.W.4 further stated that he was not aware that what is written in the inquest. It was written by the Sub Inspector. Time for closing the inquest was not written in it. He denied the suggestion that he has not went to mortuary and Inspector filled up the inquest form and while sitting in the Tehsil he has signed upon it.

P.W.5 is Sub Inspector Jaswant Singh, the Scriber of inquest. He has denied the suggestion that he has not filled up the inquest form on the dictation of Naib Tehsildar and has prepared it according to his own liking and got it signed at Tehsil by the Naib Tehsildar. That is why time of closing the inquest has not been written/mentioned in it.

P.W.6 Cardiologist District Hospital, Hardoi has conducted the post mortem who has found the following ante mortem injuries:-

“Burn injury from 1st to 4th degree present all over body except feet skin pealed of at places, blisters present at places, line of redness present, scalp, pubic and axillary hair singed, burning about 95%”

He further stated that all internal organs were congested. Deceased died in District Hospital, Hardoi on 25.09.1993 at 07:50 am as has been shown by police in enclosure No.4. According to the opinion of P.W.6, the deceased died due to burn injury and shock prior to the death.

P.W.7 is the formal witness who prepared the docket and produced the dead body before P.W.6 for post mortem and identified it.

P.W.8 is the resident of the village of the accused and the maternal uncle of the deceased Vimla. In the examination in chief, he has stated that Vimla died after two and a half years of her marriage. The accused demanded dowry in the shape

of Scooter, Fridge etc. which they could not give due to non-payment of dowry. Vimla was beaten by accused persons however, stated that she was not beaten in front of him. In the morning at 05:00 am Guddu of Saraithok informed him that his niece have been burnt by the accused then he and his family members went to the house of Vimla and found Vimla in the burnt state inside the room. He asked Vimla then she told that her husband, father-in-law and mother-in-law have poured kerosene oil and burnt her and have ran away from the house. She did not tell as to why she was burnt then he, his brother Kushiram, Om Prakash and others took Vimla to district hospital in tractor of Raies. He could not tell whether Guru Dayal came to the hospital or not. Vimla was burnt at 05:00 am in the morning and died at 06:00 am in hospital. He stated that he was the punch witness and has signed the *punchnama*.

In the cross he has stated that in the marriage, no demand of dowry was made. In the *Chauthi* dowry was demanded by accused persons. After the marriage, several times she came to her parents in between if dowry was demanded then he does not know she must have told her mother. Then he further states in the cross that accused demanded Rs.10,000/- *tilak* and TV which was given. He denied his statement given to the Circle Officer. He further denied the statement of the Circle Officer and said that he informed the C.O. that Guddu informed him about the incident that Vimla has died. He did not tell that he took the deceased on the tractor of Raies to the Circle Officer. He denied that immediately after the incident Guru Dayal went to give information to the police station. He further denied that he did not know that at 06:25 am Vimla was admitted by Guru Dayal. He further denied that Guru Dayal after getting Vimla admitted went to the police station. He denied suggestion that Suresh and Ram Saran were sent by Guru Dayal to give information to the parents of Vimla. He denied suggestion that he asked her sister to lodge the FIR. He further stated that statement of the deceased was taken by the Sub Inspector in the hospital at 06:00 am. He has signed the inquest. After the marriage, appellant No.1-Ram Saran kept Vimla with great affection. He denied the suggestion that accused persons have no demand of dowry. He further denied that Vimla burnt while making tea as an accident. He denied that accused tried to save Vimla.

P.W.9, Head Constable 53 Arunakar Dutt, has made the entry in the general diary and has proved it. He is also a formal witness.

P.W.10 is Kushiram, the maternal uncle of the deceased, who in his chief has repeated the prosecution version however, he further stated that Guru Dayal also came to the hospital behind them.

In the cross he has stated that two years ago before the death of Vimla, he came to know regarding demand of dowry. He could not tell the correct date or month. He denied his statement recorded by the Investigating Officer and stated that he told the Circle Officer that dowry was demanded in *Chauthi* however, he could not tell why he has not written it in his statement. He did not tell the Circle Officer that he took Vimla on tractor of Raies. He did not tell the fact that Guru Dayal came to the hospital.

In the cross, he further stated that he could not tell that Naib Tehsildar has interrogated her sister or not. He denied the suggestion that on the date of incident he was not in Hardoi rather was present at Sandila on his duty.

P.W.11 Shyam Bihari Lal Saxena, retired Deputy Superintendent of Police who conducted the investigation. He took the statements of eye witnesses Om Prakash and Bhim Sen Singh. He prepared *naksha nazri* from outside as it was closed. He also took the statements of the other prosecution witnesses. He again went to the house of the accused on 08.12.1993 and prepared second site plan.

In the cross he has stated that he has not taken statement of Raies. He has further stated that he has not taken statement of Guddu.

D.W.1 Maya Shanker, Pharmacist has brought the register. He was posted as Pharmacist at District Hospital Hardoi. He stated that Dr. J.L. Gautam medically examined the victim. The injured was brought by Guru Dayal.

D.W.2 Raies Ahmad stated that he took the deceased to the hospital after the Guru Dayal and Ram Sharan came upon his tractor. Vimla was speaking and said that she was making tea on the stove and got burnt.

In the cross, he said that Vimla was found in the east side of the room. Her mother-in-law was present. Guru Dayal, Ram Saran and Ram Dayal put Vimla on the tractor along with them his wife was also on the tractor. He stated that he

does not know that Kushiram and Jageshwar came for taking Vimla on tractor. He further denied that they took Vimla by his tractor to hospital. He further denied that Guru Dayal went to the hospital afterwards.

D.W.3 Aamina stated that deceased used to meet her. She never complained about demand of dowry, harassment and cruelty. She died because of burn injury. When she cried then all of them ran and behind her Guru Dayal also came. The *Rajayi* (quilt) was put by her upon Vimla.

In the cross, she has stated that after hearing the cry of the deceased when she went inside her home only she was present, there was no one else. The deceased was burning in the kitchen. Guru Dayal and his wife went to attend the call of nature. She further stated that she saw the wife of Guru Dayal and Ram Sharan in their room at 06:00 pm. They remained throughout the night in their home. After she saw the deceased burning, ten minutes after that Guru Dayal etc. returned home. She denied that she is giving false statement due to her relations with the accused.

D.W.4 Chhote stated that after hearing alarm from the house of appellant, firstly wife of Abdul Gani went then behind her he also went, she was burning and stove was also burning nearby. He put the stove off. After five minutes of reaching there, Guru Dayal and other accused persons came. She told him that due to stove pin put by her, her cloths caught fire. He told the Circle Officer that she was making tea and got burnt.

He stated that in the cross that he saw the wife of Ram Sharan burning inside the *varanda* towards west. He denied that he is giving false testimony due to saying of Guru Dayal and Vimla has not told him anything.

9. Accused was examined under Section 313 Cr.P.C. in which he admitted that he was married with the deceased two and a half years ago. He stated that his father took the deceased to the hospital. He further stated that his in-laws were informed by his father through Suresh. Except this, his case is of denial and in his defence he has submitted that Jageshwar and Khushiram are maternal uncle of deceased Vimla. They are his neighbours and on their say, this false case has been registered. His further defence was that prosecution witnesses have deposed against him due to enmity.

10. Learned counsel for the appellant submits that in para-4 of the F.I.R., it has been stated by the informant that Vimla was taken on Scooter but at the time of examination before the court as P.W.1, she did not tell as to how the deceased was taken to hospital. In para-9 of the F.I.R., it has been clearly mentioned that Om Prakash and Bhim Sen Singh have seen the incident. The same was said by P.W.1 before the court also. P.W.11, Shyam Bihari Lal Saxena, in his statement has stated that statements of Om Prakash and Bhim Sen have been taken under Section 161 Cr.P.C. however, both the eye witnesses have not been examined neither any reason has been assigned by the prosecution thus, adverse inference against the prosecution ought to have been taken. He has relied on the judgment of Supreme Court in the case of **Davinder Singh vs. State of Punjab [Criminal Appeal No.12 of 2015]** dated 22.06.2023.

He further submits that statement of P.W.1, P.W.3, P.W.8 and P.W.10 are contradictory regarding the demand of dowry and harassment meted out to the deceased. He further states that there is no evidence adduced by the prosecution that soon before her death, the deceased was subjected to cruelty relating to demand of dowry. She was with her parents one and a half months before her death. P.W.3, P.W.8 and P.W.10 have stated that dowry was demanded at the time of *Chauthi* and it is not soon before death. He has relied on the judgment of **Charan Singh @ Charanjeet Singh vs. State of Uttarakhand in Appeal No.447/2012** dated 20.04.2023. He submits that P.W.1, P.W.3, P.W.8 and P.W.10, all have stated that deceased was admitted in the hospital by Khushiram and Jageshwar whereas DW-1-Maya Shanker, Pharmacist, DW-2 Raies Ahamd have stated that deceased was admitted by Guru Dayal and appellants. P.W.8 and P.W.10 have stated that they took Vimla to district hospital on the tractor of Raies which has been denied by Raies-D.W.2 who stated that he took Vimla to the hospital upon asking of Guru Dayal and Ram Sharan. D.W.1 is a Pharmacist and this is admitted by the prosecution that Vimla was taken to hospital on the tractor of Raies however, the Investigating Officer has not taken the statement of Raies. P.W.8 and P.W.10 have admitted that first information regarding death of Vimla was given by Guddu to them however, the Investigating Officer has not recorded statement of Guddu. P.W.8, at page No.31 of the paper book, has stated that Vimla was kept with love and affection by Ram Sharan. P.W.10 Khushiram in his statement has stated that several times, he went to meet her niece at her

sasural and met her however, except the incident at *chauthi*, she never told him regarding the demand of dowry. The statement of P.W.1 and P.W.10 are contradictory. No complaint was made against the accused persons regarding demand of dowry prior to the death of the deceased neither any *punchayat* took place although the P.W.8 and P.W.10 are the real brothers of P.W.1 and they live in Kanhaipurwa, the village of the accused appellant. D.W.3 and D.W.4 in their statements have told that Vimla got burnt while starting the stove and no one else was there except her.

He submits that it is highly improbable that any body will call his wife from her parent's house and kill her on the very next day. He submits that according to Ex.ka-16, the first information to the police was given by father of the appellant No.1 namely, Guru Dayal. He submits that the appellant No.1 and his father namely, Guru Dayal got admitted the deceased immediately after the incident and inform the police and also to in-laws which shows their bona-fide.

11. *Per contra*, learned A.G.A. has submitted that from the statement of the prosecution witnesses, it is evident that deceased was done to death. She died in unnatural circumstances within seven years of marriage in the house of the accused. Demand of dowry and cruelty meted out to the deceased soon before her death has been duly proved. The marriage of the deceased Vimla Devi was solemnized with appellant No.1-Ram Saran two and a half years before her death. The appellants have been convicted under Section 498-A, 304-B IPC read with Section 4 of the Dowry Prohibition Act. Appellant No.1-Ram Saran was sentenced for 10 years under Section 304-B IPC and appellant Nos.2 & 3 namely, Guru Dayal and Bitoli were sentenced under Section 304-B IPC for seven years rigorous imprisonment each. Each of the appellants were sentenced for six months rigorous imprisonment with fine of Rs.2,000/- under Section 4 of the Dowry Prohibition Act. No separate punishment was given to the accused appellants under Section 498-A IPC for the reasons assigned in the judgment.

12. To appreciate the arguments of the parties regarding the dowry death of the victim-Vimla Devi, it will be apt to peruse the Sections 304-B, 498-A IPC and Section 113-B of the Indian Evidence Act. The same are extracted below:-

“304B. Dowry death.”-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her

marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation. - For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

498A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

*Explanation.—*For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

113B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. - For the purpose of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).”

13. In the case of ***Baijnath v. State of M.P.*** reported in ***[(2017) 1 SCC 101]***, Sections 304-B and 498A IPC was interpreted in paragraphs 25 to 27 which are extracted below:-

“25. Whereas in the offence of dowry death defined by Sections 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expounds "cruelty" as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences."

15. Thus, to attract the ingredients of Section 304-B of IPC, the main ingredients of the offence which are required to be established by the prosecution is soon before her death, the victim was subjected to cruelty and harassment that too in connection with demand of dowry. Now, this Court has to see in the peculiar facts of this case whether the presumption can be raised against the appellants thus, relieving the onus from the prosecution for proving its case and putting the onus on the accused appellants.

16. So far as the demand of dowry is concerned, P.W.1 in her chief has stated that in the *chauthi* i.e. 4th day after marriage, dowry was demanded in the form of scooter, fridge and other pricy items. After six months of *chauthi*, *gauna* took place and again accused demanded scooter, fridge etc. Thereafter, no specific day, time or year has been mentioned regarding the demand of dowry. Only this much has been said by her that one day before her death accused Guru Dayal came to take Vimla and she told him regarding the harassment then he assured that no one will harass now. This is not the demand rather the assurance taken by P.W.1 from Guru Dayal giving a reference to the past acts of the accused i.e.

demand made by them in *chauthi* and *gauna*. Apart from this, she has stated that whenever accused came to take her daughter, every time they made the demand of scooter and fridge. This part of the statement does not link to the close proximity of the death of the deceased, as it is too general and sweeping.

17. Likewise, P.W.3 who is the brother of the deceased also confirms the statement of P.W.1 that during *Chauthi* and *Gauna* dowry was demanded. Thereafter, no specific time except general allegations of demand of dowry were made as whenever she came, she told them about demand of dowry and harassment.

18. P.W.8 who is the maternal uncle of deceased Vimla has stated that there was no demand of dowry in the marriage. In *chauthi* dowry was demanded by the accused persons thereafter, he has stated that after the marriage Ram Saran kept Vimla with great affection and care. Except *chauthi* no other incident has been given by this witness regarding demand of dowry.

19. P.W.10 Kushiram is also the maternal uncle of the deceased. He stated that he came to know two years ago about demand of dowry but could not tell the correct date or month. He has denied his statement recorded by the Investigating Officer.

20. Although, demand of dowry has been alleged during *chauthi* and *gauna* by P.W.1 and P.W.3 except that P.W.8 has alleged demand of dowry during *chauthi* and P.W.10 has given a vague statement regarding demand of dowry i.e. 2 years before the death of Vimla. The statements of these prosecution witnesses of fact do not show that there was any close proximity with the demand of dowry from the deceased or her parents or her family members soon before her death. The Supreme Court in the case of **Charan Singh @ Charanjit Singh versus The State of Uttarakhand** reported in **[2023 LiveLaw SC 341]** has held that cruelty or harassment has to be soon before the death. The relevant paragraph Nos.16 and 21 are extracted below:-

“16. The cruelty or harassment has to be soon before the death. In his evidence, Pratap Singh (PW-1), father of the deceased stated that two months after the marriage his daughter came to the parental home stating that the appellant was demanding motorcycle, however, she was sent back. Thereafter, she again came and apprised him that the demand of motorcycle was being pressed by the appellant. Besides motorcycle, land was also demanded. There is nothing in the

statement that any such demand was raised immediately before the death as the incidents sought to be referred to are quite old. He admitted in his cross examination that at the time of funeral, his mother-in-law and two brothers-in-law were present. However, they were threatened not to lodge the complaint. Balbir Singh (PW-2), maternal uncle of the deceased, merely stated that at the time of marriage sufficient dowry was given by the father of the deceased. However, later he heard that the appellant had demanded the motorcycle. In his cross-examination, he admitted that he was living at the distance of about one furlong from the house of the appellant. No dowry was demanded at the time of marriage of the deceased. He did not state that the deceased ever shared with him about the demand of dowry or any harassment on account of non-fulfilment thereof though he was living close to the matrimonial house of the deceased.

21. In the aforesaid evidence led by the prosecution, none of the witnesses stated about the cruelty or harassment to the deceased by the appellant or any of his family members on account of demand of dowry soon before the death or otherwise. Rather harassment has not been narrated by anyone. It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the pre-requisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act. Even the ingredients of Section 498A IPC are not made out for the same reason as there is no evidence of cruelty and harassment to the deceased soon before her death.”

21. There is nothing in the statements of the aforesaid four witnesses of fact i.e. P.W.1, P.W.3, P.W.8 & P.W.10 that deceased was subjected to demand of dowry soon before her death. There is no allegation of demand of dowry in close proximity to the death. It is also admitted case of the prosecution that prior to the death, deceased remained with her parent's for one and half months.

22. In face of these oral averments regarding demand of dowry which was much prior to the incident, there is only general and vague allegations levelled by P.W.1 and P.W.3 only as whenever deceased came, she told them regarding demand of dowry, this type of statement is too general. It cannot be regarded as demand of dowry soon before the death. The statement of P.W.8 further goes to show that the deceased was kept with lot of love and affection and care by the appellant No.1-Ram Saran therefore, the ingredients of Section 498-A IPC are also not made out. The evidence led by the prosecution fails to fulfill the pre-requisite condition to invoke the presumption under Section 113-B of the Indian Evidence Act. The evidence adduced by the prosecution witnesses also does not inspire confidence. P.W.1 in her examination before the court stated that after

reaching hospital and till the delivery of the body of the deceased, she saw none of the accused persons. Likewise, P.W.3 Shanker denied that his sister was taken to hospital by Guru Dayal accused rather he has stated that Kushiram and Jageshwar took her. He further denied the suggestion that dead body of the Vimla was taken by Guru Dayal for cremation. Likewise P.W.8 also stated that his brother Kushiram, Om Prakash and another took Vimla to the district hospital however, he showed his ignorance whether Guru Dayal came to the hospital or not. P.W.10 did not told the fact that Guru Dayal came to the hospital whereas D.W.1 Maya Shanker pharmacist brought the register and on that basis he stated that injured was brought by Guru Dayal. D.W.2 Raies Ahmad stated that he took the deceased to the hospital after the Guru Dayal and Ram Saran came upon his tractor. Raies was important witness however, the Investigating Officer did not take his statement and Raies has been withheld by prosecution. All these statements show that P.W.1, P.W.3, P.W.8 and P.W.10 are lying on this material aspect of the matter that Guru Dayal accused took the deceased to the hospital on the tractor of the Raies. Coupled with the statement of the accused under Section 313 Cr.P.C. where he has stated that his father took the deceased to the hospital. He further stated that his in-laws were informed by his father through Suresh. He has further stated that Jageshwar and Kushiram P.W.8 and P.W.10 are maternal uncle of the deceased-Vimla. They are her neighbours and on their say this false case has been registered. The testimony of P.W.1 and P.W.3 so also P.W.8 and P.W.10 is doubtful. They are trying to prove the prosecution case as true and correct. There are contradictions in the statement of the prosecution witnesses. P.W.1 and P.W.3 make specific allegations regarding demand of dowry on *chauthi* as well as on *gauna* and later on general allegations of demand of dowry have been made by P.W.8 and P.W.10 however, P.W.10 in his statement has stated that two years before the death, he came to know regarding demand of dowry. Likewise, P.W.8 during his cross-examination has only said that during the *chauthi* dowry was demanded. After that he was not aware about any demand of dowry. He further stated that there was no demand of dowry demanded in the marriage. P.W.1, P.W.8 and P.W.10 say that they took the deceased on Raies's tractor while Raies himself stated that it was father-in-law Guru Dayal and husband Ram Saran who took the deceased to the hospital which corroborates the statement of pharmacist D.W.1 who also stated that it was the Guru Dayal

who admitted the deceased to the hospital. The alleged eye witnesses Om Prakash, Bhim Sen mentioned in the F.I.R. have not been produced before the court. Further, aforesaid four witnesses of prosecution led by it, no one has stated that soon before her death, she was subjected to cruelty relating to demand of dowry.

23. On the contrary, all the prosecution witnesses have tried to hide the truth that Guru Dayal and the accused Ram Saran took the deceased to the hospital. It is admitted case of the prosecution that deceased is with her parent's one and a half months before her death. The Investigating Officer has not taken the statement of Raies on whose tractor the deceased has taken to the hospital. He has also not taken the statement of Guddu who gave the first information regarding the death of Vimla to P.W.8 and P.W.10. P.W.8 has stated that Vimla was kept with love and affection by Ram Saran. P.W.10 Kushiram has stated that he went to meet his niece and meet her several times except the incident at *chauthi* she never told him regarding demand of dowry. No complaint was made regarding demand of dowry against the accused persons at any point of time neither any *panchayat* took place although the P.W.8 and P.W.10 are real brothers of P.W.1 and they live in Kanhaipurwa the village of the accused appellants where deceased died. D.W.3 and D.W.4 in their statement have stated that Vimla got burnt while starting the stove and there was no one else except her.

24. Learned counsel for the appellants submits that it is highly improbable that any body will call his wife from her parent's house and kill her immediately on the very next day, appears to be carry force. Ex.ka-16 is the information given to the parents by the father of the appellant No.1 namely, Guru Dayal and the fact that Guru Dayal informed the police. The information to the parents of the deceased was sent by Guru Dayal through Guddu. Guru Dayal and Ram Saran brought the deceased to the hospital shows the *bona fide* of the appellants.

25. On the contrary, the sustained efforts made by P.W.1, P.W.3, P.W.8 and P.W.10 to hide this information that the accused persons have informed them regarding death of the deceased, they brought the deceased to the hospital and they informed the police. It shows that there is a conscious effort made by the four prosecution witnesses P.W.1, P.W.3, P.W.8 and P.W.10 to hide the true and correct version of the incident. It is all the more reason that the independent

witnesses namely, Om Prakash and Bhim Sen who are alleged to be eye witnesses by the prosecution ought to have been examined before the court which has not been done by the prosecution neither any explanation for the same has been given. The witnesses have been withheld by the prosecution. This calls for taking adverse inference against the prosecution as in the given facts and circumstances of this case it was necessary to examine those witnesses so as to bring out the true and correct version of the prosecution case. The Supreme Court in the case of *Takhaji Hiraji vs. Thakore Kubersing Chamansing*, reported in *[(2001) 6 SCC 145]* has held as under:-

“19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, which would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness which though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the Court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself __ whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the Court can safely act upon it uninfluenced by the factum of non-examination of other witnesses.....”

Thus, non-production of the above two independent witnesses to the incident also goes against the prosecution.

26. In view of the aforesaid discussions, it is clear that prosecution has failed to prove that dowry was demanded by appellants as there is no cruelty meted out to the deceased soon before her death. Thus, the pre-condition to invoke Section 304-B IPC or Section 113B of the Indian Evidence Act are missing, the prosecution has failed to prove its case beyond reasonable doubt.

For the reasons aforesaid, the conviction of the appellant No.1-Ram Saran cannot be justified therefore, the impugned judgment and order dated 30.07.1996 is set aside. The appeal stands **allowed**. Appellant is set free. Bail bonds are discharged.

Order Date :- 4.1.2024

Saurabh Yadav/-