

Neutral Citation No. - 2024:AHC-LKO:81048

Court No. - 12

Case :- CRIMINAL APPEAL No. - 1537 of 2002

Appellant :- Ram Abhilakh Alias Ram Bilash

Respondent :- The State Of U.P.

Counsel for Appellant :- A.K.Tiwari, Akshay Srivastava, Desh
Deepak Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Saurabh Lavania,J.

1. Heard Shri Sandeep Kumar Pal, Advocate, holding brief of Shri Desh Deepak Singh, 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 namely Ram Abhilakh alias Ram Bilash against the judgment and order 29.10.2002 passed by the learned Sessions Judge, Court No.29, District Barabanki in Session Trial No.277 of 1998, arising out of Crime No.94/97, P.S.- Asandra, District Barabanki, convicting and sentencing the accused-appellant to undergo one year rigorous imprisonment with a fine of Rs.5,000/- under Section 4 of D.P. Act and in default of payment of fine to undergo further one month rigorous imprisonment; to undergo rigorous imprisonment for one year under Section 498-A I.P.C. with a fine of Rs.5000/- and in default of payment of fine to further undergo six months rigorous imprisonment; to undergo seven years rigorous imprisonment under Section 306 I.P.C. and to undergo rigorous imprisonment for three years under Section 201 I.P.C. All the sentences were ordered to run concurrently.
3. The case of the prosecution, in nutshell, is to the effect that marriage between the deceased and accused-appellant-Ram

Abhilakh Yadav alias Ram Bilash was solemnized about seven years back from the date of incident indicated in the FIR, i.e. in the midnight of 26/27.02.1997. On account of non-fulfillment of demand of dowry, the deceased was subjected to cruelty by the accused-appellant, namely, Ram Abhilakh Yadav s/o Ram Sewak and other family members namely Brijesh s/o Ram Sewak (brother-in-law of the deceased), Ram Sewak s/o Gareebe (father-in-law of the deceased), Smt. Sukhrana w/o Ram Sewak (mother-in-law of the deceased) and for this reason the deceased committed suicide in the midnight of 26/27.02.1997 by consuming poison. The deceased died leaving behind her two sons aged about 2 ½ years and 2 months, respectively. No-one from the family of the deceased was present at the time of cremation.

4. The FIR thereafter was lodged by informant-Amarnath Yadav. According to his statement, he reached the place of incident, i.e. Village Siddhaur, District Barabanki, on 28.02.1997 and there the accused-appellant informed him that deceased committed suicide by consuming poisonous substance.
5. The FIR of incident occurred on 26/27.02.1997 was lodged on 01.03.1997 at about 22:30 hours registered as Crime No.94/97 under Sections 498-A, 306 I.P.C. and Section 3/4 of D.P. Act at P.S. Asandra, District Barabanki.
6. The Investigating Officer thereafter carried out the investigation and after concluding the evidence submitted the charge sheet dated 01.02.2002 under Sections 498-A, 306, 201 I.P.C. and Section 4 of D.P. Act against the accused-appellant, Ram Abhilakh Yadav, and other family members, namely, Brijesh, Ram Sewak and Smt. Sukhrana.

7. 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.277 of 1999 and charges were framed against the accused/appellant-Ram Abhilakh alias Ram Bilash, Brijesh Kumar, Ram Sewak and Smt. Sukhrana under Sections 498-A, 306, 201 I.P.C. & Section 3/4 of D.P. Act. The charges were denied by the accused and, therefore, they were put to trial.
8. The prosecution, in support of its case, examined as many as four witnesses namely informant-Amarnath Yadav (P.W.1), Mohd. Yaseen (P.W.2), Bhagirath (P.W.3) and Brijmohan Arya (P.W.4).
9. That after closing of the evidence, statements of accused/appellant were recorded by the trial court under Section 313 Cr.P.C. in which he denied the prosecution version and it has also been stated that the marriage was solemnized in the year 1989. To establish the defence taken by the accused/appellant regarding the cause of death of the deceased, i.e. jaundice, the defence examined Dr. Laxmikant Shukla as D.W.1.
10. It would be apt to indicate that in support of the plea taken in the defence regarding cause of death of the deceased no documentary evidence was filed before the trial court except Ex.Kha-1, which was not found to be genuine by the trial court.
11. Informant/Amarnath Yadav (P.W.1) supported the prosecution story before the trial court and Mohd. Yaseen (P.W.2) levelled specific allegations regarding demand of motorcycle against the accused-appellant.
12. According to statement of Bhagirath (P.W.3), the accused-appellant assaulted the deceased on account of non-fulfilment of demand of dowry. According to statement of Bhagirath

(P.W.3), the other accused, namely, Ram Sewak, Brijesh and Smt. Sukhrana were living separately at village Ganeshpur and they never demanded the motorcycle.

13. Thereafter, the learned trial court after hearing learned counsel for both the parties and upon due consideration of the evidence available on record including the statements which includes statement of the witnesses of fact came to the conclusion that offence under Sections 498-A, 306, 201 I.P.C. & Section 4 of D.P. Act is made out against the accused/appellant Ram Abhilakh alias Ram Bilash and, therefore, convicted the accused/appellant – Ram Abhilakh alias Ram Bilash as aforesaid under Sections 498-A, 306, 201 I.P.C. & Section 4 of D.P. Act and acquitted the accused, namely, Ram Sewak, Brijesh and Smt. Sukhrana for the offence under Sections 498-A, 306, 201 I.P.C. & Section 4 of D.P. Act.
14. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction, the appellant-Ram Abhilakh alias Ram Bilash has preferred the present appeal.
15. It is stated that the Hon'ble Apex Court in the case of **Paranagouda and another vs. The State of Karnataka and another** reported in **2023 SCC OnLine SC 1369**, based upon the dying declaration, altered the conviction for the offence under Section 304-B to Section 306 IPC and while imposing the sentence took lenient view and sentenced to imprisonment for the period already undergone, i.e. 1 year 27 days, with fine of Rs.5000/- and in default of payment of fine to undergo one month simple imprisonment for each of offence. It is also stated that in this case the marriage was solemnized on 16.05.2010 and the deceased committed suicide and her dying declaration was recorded on 20.12.2010 and the judgment dated 14.09.2012 of trial court was affirmed by the High Court vide order dated 20.07.2022. It is further stated that at the time of

passing the judgment in this case the accused were aged about 66 and 61 years.

Para(s) 37 and 38 of the judgment, being relevant, are extracted hereinunder:

“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.

38. For the reasons afore-stated the appeal is allowed in part. The judgment and order of conviction passed by the Sessions Court in SC No.35 of 2011 dated 14.09.2012 as affirmed in Criminal Appeal No.2847 of 2012 by judgment dated 20.07.2022 is hereby modified. The appellants are acquitted for the offences punishable under Section 304B IPC and Section 3 and 4 of Dowry Prohibition Act and convicted for the offence punishable under Section 306 and Section 498A read with Section 34 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.”

16. Based upon the judgment passed in the case of **Paranagouda (supra)** as also the period lapsed i.e. about 27 years from the date of incident and also the period of incarceration, i.e. about

13 months, it is further stated that, upholding the conviction, on sentence lenient view may be taken in this case of the appellant aged about 54 years and father of two sons born out of wedlock of accused-appellant and deceased.

17. Learned A.G.A. on the contrary tried to defend the judgment under appeal but could not dispute the aforesaid.
18. Considered the submissions advanced by learned counsel for the parties and perused the records.
19. In the instant case from the facts of the case including the statement of the witnesses of fact 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 and in this view of the matter, this Court finds no illegality in the judgment of conviction under appeal. Accordingly, conviction of accused-appellant is upheld for the offence under Sections 498-A, 306 and 201 I.P.C. and Section 4 of D.P. Act.
20. 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 opinion that on the sentence of the accused-appellant, aged about 54 years and who already spent 13 months and 9 days in prison and has no criminal history, a lenient view has to be taken.
21. 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.277 of 1998 (Supra) on sentence of the accused/appellant is hereby modified. The accused/appellant-Ram Abhilakh alias Ram Bilash is sentenced to imprisonment for the period already undergone with fine of Rs.5000/- each

for the offence indicated above and in default to pay the fine to undergo one month simple imprisonment for each of the offence.

- 22.** The accused/appellant is on bail and accordingly, his personal bond is cancelled and sureties are discharged.
- 23.** Let a copy of this judgment and record be sent forthwith to the trial court concerned.

Order Date :- 04.12.2024

Anand/-