

Court No. - 16

Case :- CRIMINAL APPEAL No. - 1889 of 2003

Appellant :- Rajit Ram @ Gullu

Respondent :- State of U.P.

Counsel for Appellant :- P.V.Chaudhary

Counsel for Respondent :- Govt.Advocate

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned counsel for the appellant well as 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 preferred by the appellant- Rajit Ram @ Gullu against the judgment and order dated 01.09.2003 passed by Additional Sessions Judge, Court No. 30, District Barabanki in Session Trial No. 239 of 2003 (State vs. Rajit Ram @ Gullu and two others), Crime No. 45 of 2001, under Sections 498-A, 304(2)B/34 I.P.C. and Section 4 of the Dowry Prohibition Act, Police Station Dariyabad, District Barabanki.

3. Vide the said judgment and order appellant- **Rajit Ram @ Gullu** has been convicted and sentenced as follows:-

(i) U/s 498-A I.P.C., one year rigorous imprisonment along with fine of Rs.1000/-;

(ii) U/s 304-B I.P.C., seven years' rigorous imprisonment;

(iii) U/s 4 of the Dowry Prohibition Act, one year rigorous imprisonment along with fine of Rs. 1000/-

It has been directed that in case of non-deposition of the amount of the fine, the appellant shall undergo six months additional simple imprisonment and all the sentences would run concurrently.

4. Learned counsel for the appellant submits that in pursuance of the conviction and sentence recorded by the trial court whereby the appellant along with other co-accused persons was convicted for committing offences under Section 304-B and 498-A I.P.C. along with Section 4 of the Dowry Prohibition Act and sentenced for maximum punishment of seven years along with fine and default clause, the appellant has undergone the whole of the sentence, as imposed by the trial court and has also deposited fine and has been released from the prison. In this regard, learned counsel for the appellant has drawn the attention of this Court towards a report submitted by the Senior Superintendent of Jail, District Jail, Lucknow of date 05.04.2023, which is available on record.

5. It is further submitted that though, the appellant has undergone whole of the sentence imposed by the trial court but he under instructions is challenging the judgment and order passed by the trial court, as even after serving the whole of the imprisonment as inflicted by the trial court, the stigma of being convicted shall always remain with the appellant.

6. It is vehemently submitted that the trial court has committed manifest illegality in convicting the appellant without there being any cogent and reliable evidence available on record. It is submitted that the whole story as cooked up by the prosecution was highly doubtful and the prosecution had miserably failed to prove its case beyond reasonable doubt.

7. It is further submitted that the trial court has wrongly drawn a presumption as provided under Section 113-B of the Indian Evidence Act, as the said presumption could only be drawn when the prosecution is able to prove those circumstances and facts beyond reasonable doubt and on the basis of which such presumption may be drawn.

8. It is also submitted that it was not proved beyond reasonable doubt that soon before her death the deceased was subjected to cruelty in lieu of demand of dowry, thus, the trial court has committed grave error in

convicting the appellant and, therefore, the judgment and order passed by the trial court be set-aside and appellant be acquitted from the charges framed against him.

9. Learned A.G.A. on the other hand submits that there is no illegality or to say any irregularity in the judgment and order passed by the trial court and minimum punishment has been awarded to the applicant for committing offence under Section 304-B I.P.C., thus, the appeal is liable to be dismissed.

10. It is evident that the F.I.R. of the instant case has been lodged by Shiv Shanker, who is the father of the deceased on 08.07.2001 at Police Station Dariyabad, District Barabanki alleging therein that about seven years ago her daughter (deceased) was married to the applicant and the '*gauna*' was performed in the Month of November, 2000 but the in-laws of his daughter has subjected her to cruelty in lieu of demand of a T.V. and Cycle and they were also not sending the deceased to her maternal home and were assaulting them to pay the dowry and the deceased would only be sent thereafter and today on 08.07.2001 it is known that her daughter has been done to death for non-payment of dowry.

11. After investigation, the charge-sheet was filed against the appellant and other co-accused persons. Appellant is the husband of the deceased. During the course of trial, three prosecution witnesses, namely, P.W.-1/Shiv Shanker, P.W.-2/Ram Manohar and P.W.-3/Smt. Raj Kumari were testified apart from the other official witnesses including P.W.-7/Dr. R.K. Sharma and P.W.-9/Dr. Shakeel Ahmad. Documentary evidence was also produced before the trial court by the prosecution.

12. The accused persons in their statements recorded under Section 313 Cr.P.C. has denied the allegations and the evidence produced by the prosecution and have taken a defence that the deceased was done to death by some unknown miscreants as an incident of '*loot*' had occurred in their house.

13. The trial court after appreciating the evidence available on record and drawing presumption under Section 113-B of the Indian Evidence Act has convicted the appellant and other co-accused persons for committing offences under Section 304-B and 498-A I.P.C. along with Section 4 of the Dowry Prohibition Act and sentenced them accordingly.

14. Perusal of the record in the background of the submissions advanced by learned counsel for the parties would reveal that pertaining to the death of the deceased Srimata her postmortem report is available on record. Perusal of this postmortem report would reveal that a '*ligature mark*' has been found around the neck of the deceased and the cause of death of the deceased has been ascertained as 'asphyxia' as a result of 'ante-mortem hanging'. Thus, it may not be denied that the deceased had died in otherwise than in normal circumstances.

15. Coming to the fact that as to whether the deceased had died within seven years of her marriage, the trial court has considered the statement of P.W.-1/Shiv Shanker, who is the father of the prosecutrix and he has stated that about five years after the marriage '*gauna ceremony*' was performed. P.W.-2/Ram Manohar, who is the paternal cousin of the deceased, has also corroborated the fact that '*gauna ceremony*' was held after five years of the marriage of the deceased with the applicant. Similar is the statement of P.W.-3/Smt. Raj Kumari, who is the mother of the deceased. The trial court has considered the factum of death within seven years of marriage in para no.35 on wards of its judgment. The trial court while considering the statement of the father of the deceased that in the year 2000 the *gauna ceremony* of the deceased was held which had taken place after five years of her marriage with the applicant and death of the deceased is shown to have occurred on 08.07.2001 and also considering the statement of the other prosecution witnesses e.g. mother of the prosecutrix/P.W.-3, came to the conclusion that as the *gauna ceremony* had occurred after five years of the marriage of the deceased in November, 2000 and the death of the deceased had occurred within seven years of her marriage. Having regard to all the evidence which has

been tendered by the prosecution in support of the issue, I do not find any illegality in the conclusions drawn by the trial court that the death of the deceased has occurred within seven years of her marriage with the applicant.

16. Now the crucial question appears to be as to whether the prosecution has been successful in proving the allegation that soon before her death the deceased was subjected to cruelty in lieu of demand of dowry.

17. The evidence of three factual witnesses in this regard is important and the evidence of these three prosecution witnesses, namely, P.W.-1/Shiv Shanker, P.W.-2/Ram Manohar and P.W.-3/Smt. Raj Kumari would sufficiently demonstrate that these three witnesses of fact in one voice have stated that the deceased after happening of the *gauna ceremony* was not permitted to visit her maternal home, as the accused persons were insisting her to pay the dowry i.e. watch, cycle and television.

18. Apart from certain minor contradictions, which is not effecting the core of the prosecution case, I do not find any material contradiction in the testimony of these three witnesses pertaining to the fact that soon before her death the deceased was subjected to cruelty in lieu of demand of dowry.

19. Thus, I do not find any illegality in the conclusion drawn by the trial court that soon before her death the deceased was subjected to cruelty in lieu of demand of dowry.

20. Having regard to Section 113-B of the Indian Evidence Act when the prosecution has been successful in proving that the death of the deceased had occurred within seven years of her marriage in otherwise than in normal circumstances and soon before her death the deceased was subjected to cruelty in lieu of demand of dowry, it is the duty of the trial court to have drawn a presumption of dowry death and the same appears to have rightly done by the trial court.

21. Perusal of the record would also reveal that though, a defence has been taken by the applicant that the deceased had died in an incident of 'loot', however, this defence is not finding any corroboration from any evidence or material available on record nor the defence has been successful in establishing that the marriage of the deceased with the applicant was solemnized before 10 years of her death and, thus, in this regard the testimony of D.W.-1 appears to have been rightly rejected by the trial court.

22. Thus, having regard to all the facts and circumstances of the case, I do not find any illegality committed by the trial court in appreciating the evidence available on record and in convicting the appellant for committing offences under Section 304-B and 498-A I.P.C. along with Section 4 of the Dowry Prohibition Act.

23. The appellant has been sentenced for seven years' rigorous imprisonment for committing offence pertaining to Section 304-B I.P.C. and one year for 498-A I.P.C. as well as for six months imprisonment pertaining to Section 4 of the D.P. Act with stipulation that all sentences would run concurrently. Thus, for offence under Section 304-B I.P.C. the appellant has been inflicted minimum punishment. Therefore, I also do not find any illegality so far as the sentencing of the applicant is concerned and in the considered opinion of this Court, appropriate punishment has been inflicted on the appellant.

24. In result, the appeal appears to be devoid of force and is **dismissed** accordingly.

25. Though, the appeal has been dismissed but as the appellant has been released by the prison after serving whole of his imprisonment, as awarded by the trial court and has also deposited the fine, as is evident by the report of the Senior Superintendent of Jail, District Jail, Lucknow enclosing therewith the report dated 03.04.2023 of Senior Superintendent of Jail, Central Jail, Varanasi, the appellant need not to

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surrender before the trial court and would continue to be at liberty unless he is not warranted in any other case.

26. A copy of this order be sent to the trial court only for the purpose of information.

27. The record of the trial court be retained in connection with Criminal Appeal No. 1736 of 2003 pertaining to co-appellant Badri.

Order Date: 22.04.2024
Praveen/Anupam S/-