

Court No. - 27

Case :- CRIMINAL APPEAL No. - 2361 of 2009

Appellant :- Ram Gulam And Another

Respondent :- State of U.P.

Counsel for Appellant :- Rakesh Kumar Tripathi, Mohd. Shahid
Akhtar, Pankaj Kumar Tripathi

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Rakesh Kumar Tripathi and Shri Mohd. Shahid Akhtar, learned counsels appearing for the appellants as 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 appellants- **Ram Gulam** and **Naresh** against the impugned judgment and order of the trial court dated 08.10.2009 passed by learned Additional Sessions Judge, Court No.6, Sitapur, in Sessions Trial No. 1288 of 2004 (State vs. Ram Gulam and others), arising out of Case Crime No. 504 of 2001, under Sections 498-A, 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Ramkot, District Sitapur, whereby the appellants have been convicted for committing offence under Sections 498-A I.P.C. and 3/4 of Dowry Prohibition Act and have been sentenced for maximum imprisonment of five years' for committing offence under Section 3/4 of Dowry Prohibition Act along with fine and also with default clause.
3. Brief facts necessary for the disposal of the instant appeal are in terms that informant of the instant case, namely, Ram Swaroop lodged an F.I.R. alleging that the marriage of her daughter Maheshwari Devi

was solemnized with appellant no.1- Ram Gulam about six years before lodging of the F.I.R. and about Rs. 17-18,000/- were spent. However, the appellant and his family members in pursuance of the demand of a '*she-buffalow*' did not send his daughter to her maternal home for about 05 years and whenever the brothers of the deceased visited her sister's house the appellant no.1 and his family members used to abuse them and on 23.12.2001 when Mathura and his son had visited the matrimonial house of his daughter they found her dead and lying in the courtyard of the house and on an inquiry it was told that she was suffering from 'cholera' and died. However, thereafter, they informed the informant and his family members that she has died by hanging herself, he is suspecting that his daughter has been done to death by the accused persons.

4. On this written information, an F.I.R. under Sections 498-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act was registered and the investigation commences.

5. During the course of investigation the inquest of the dead body of the deceased was prepared and her dead body was subjected to postmortem and perusal of the postmortem would suggest that a reddish mark 6 cm. x 1 cm. was found present over skin of left side of her neck and another reddish mark of 6 cm. x 1 cm. was found present over skin in front of neck. The cause of death of the deceased could not be ascertained and her viscera was preserved and was sent for forensic examination and as per the forensic report available on record, no poison has been detected in the viscera of the deceased.

6. The investigating officer after completion of the investigation submitted charge sheet against the appellants under Sections 498-A, 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act. The charges were also framed against the appellants under Sections 498-A, 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act, to which, the appellants denied and claimed trial.

7. The prosecution in order to prove its case before the trial court has presented P.W.-1/Ram Swaroop (Informant), P.W.-2/Mathuri, P.W.-3/Naresh, P.W.-4/Ram Asrey Verma (Naib Tehsildar), P.W.-5/Sub Inspector Virendra Pratap Singh, P.W.-6/Dr. Brijesh Kumar Singh and P.W.-7/Dr. Ajay Kumar Srivastava and apart from it, the prosecution has also relied on various documentary evidence e.g. Tehrir F.I.R., G.D. Kayami, inquest report, reports of police station pertaining to the postmortem, sample of seal, letter of R.I., photo 'lash', Chik F.I.R., site plan, charge sheet, postmortem report, forensic report as well as some photographs.

8. After conclusion of the evidence of the prosecution, the statement of the appellants/accused persons was recorded under Section 313 Cr.P.C., wherein they denied the evidence produced by the prosecution and in their defence have produced before the trial court through list 75-Ka, migration certificate of Amit Kumar and 'ration card' of Ram Gulam and also from list 29-Ga photographs have also been filed on record.

9. The trial court after appreciating the evidence available on record has found the case of the prosecution proved only to the extent of Section 498-A I.P.C. and convicted and sentenced the appellants in the manner shown in the 2nd paragraph of this judgment and has acquitted the appellants for the offence committing under Section 304-B I.P.C.

10. Aggrieved by their conviction and sentence, the appellants have preferred the instant appeal.

11. Learned counsel for the appellants while drawing the attention of this Court towards the impugned judgment passed by the trial court, vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record, while it was evident that the deceased has never been subjected to any cruelty and his death may not be termed as death otherwise than in normal circumstances even then the trial court has proceeded to convict the appellant for the offence which has never been committed by them.

12. It is vehemently submitted that there was no clinching evidence with regard to any cruelty committed by the appellants with the deceased but the trial court has relied on certain injuries found on the person of the deceased in postmortem report.

13. It is also submitted that so far as appellant no.-1/Ram Gulam is concerned, he is the father-in-law of the deceased and was not having any concern with the affairs of the deceased and appellant no.2-Naresh and he was living separately from them. Therefore, there was no occasion for him to commit cruelty with the deceased in order to demand any dowry.

14. While drawing the attention of this Court towards various parts of the statements of P.W.-1/Ram Swaroop and P.W.-3/Naresh, it is submitted that these witnesses are not conversant with the facts of the case and if their evidence is appreciated in total, it would emerge that they are not reliable and, thus, material illegality has been committed by the trial court in believing their evidence for the purpose of convicting the appellants.

15. Learned counsel for the appellants has also submitted written arguments, which have been taken on record and is also relied on the law laid down by a co-ordinate bench of this Court in ***Mewa Lal and others vs. State of U.P.*** reported in [2012(3) JIC 871 (All)] and ***Prem Das vs. State of U.P. and another*** reported in [2012(3) JIC 875 (All)].

16. Learned A.G.A. on the other hand submits that no illegality or to day any irregularity has been committed by the trial court in convicting the appellants under Section 498-A I.P.C. and appropriate punishment has been awarded.

17. Having heard learned counsel for the parties and having perused the record, it is reflected that the case of the prosecution before the trial Court was that the deceased, who was the daughter of the informant- Ram Swaroop, had died within seven years of her marriage with appellant- Naresh otherwise than in normal circumstances and, soon

before her death, she was subjected to cruelty in lieu of demand of Rs.4,000/- and a she-buffalo and, it is on this score, the deceased was not allowed to go to her matrimonial home for the last five years from before her death. The charges against the appellants were framed by the trial Court under sections 304-B and 498-A IPC read with section 3/4 DP Act. The trial Court, while passing the impugned judgment and order, was of the view that the prosecution has failed to prove the death of the deceased within 7 years of her marriage and also the main ingredients of the offence under section 304-B IPC that such a death of deceased was other than in normal circumstances. Thus, the trial Court was of the view that the death of the deceased was not in normal circumstances or in other words was a natural death.

18. It is pertinent to mention here that PW-2- Mathuri, who was stated to have gone to the house of the accused persons in order to see/take welfare of the deceased, has stated that he was informed by husband and father-in-law of the deceased that the deceased had died due to cholera and, thus, the finding of the trial Court with regard to the aforesaid point appears to be perverse and the trial Court has also not convicted the appellants for committing the offence under section 304-B IPC. Neither the State nor the victim has filed any appeal against acquittal of the appellants under section 304-B IPC. The trial Court has found the case of the prosecution proved only with regard to section 498-A IPC read with section 3/4 DP Act. Definitions of these penal sections are being given as under:-

“498A. 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.”

“3. Penalty for giving or taking dowry.—

(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be

punishable [with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:[Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years. [(2)Nothing in sub-section (1) shall apply to, or in relation to,— (a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.]

[4. Penalty for demanding dowry.—*If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:*

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]”

19. So far as the conviction of the appellants under section 498 A IPC is concerned, the ingredients of section 498-A IPC are in terms that 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 defined thereunder. This section also explains cruelty in the explanation clause (a) any willful 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.

20. The trial Court, for the purpose of convicting the appellants for offence under section 498-A IPC has relied on the statements of PW-1/Ram Swaroop (informant) and PW-3/Naresh who are the father and brother of the deceased respectively and also on the statement of PW-4- Ram Asrey Verma (Naib Tehsildar) and PW-7-Dr. Ajay Kumar. The trial Court has found the testimony of PW-1- Ram Swaroop and PW-3- Naresh reliable so far as cruelty committed by the appellants with the deceased in lieu of demand of dowry of Rs.4,000/- and a she-buffalo is concerned. It is to be recalled that it has been admitted by the PW-1/Ram Swaroop and PW-3/Naresh that they have not made any complaint anywhere with regard to commission of cruelty by the appellants with the deceased. It is also to be recalled that the trial Court has adjudicated that the prosecution has failed to prove the death of the deceased within seven years of her marriage, thus, for the seven long years, the deceased was subjected to cruelty and no complaint or any application was given in this regard is hard to digest, more so, in the background that both these witnesses of fact (PW-1/Ram Swaroop and PW-3/Naresh) have admitted in their defence that they were not having cordial relations with the appellants after the marriage of the deceased and the appellants have never visited their homes. Once, one relative of PW-1/Ram Swaroop had died and appellant-Ram Gulam had taken the

deceased directly to the house of that relative and did not visit the house of the informant. Thus, it has come in the evidence of these witnesses that relationship between the two families was not cordial. If the evidence of these witnesses is seen in the background that the prosecution has failed to prove the death of the deceased otherwise than in normal circumstances and the fact that these two families were not having cordial relationship, it may be that on the basis of inimical relations between them a suspicion might have arisen in the mind of the informant and his family members that perhaps the deceased might have been done to death for want of dowry and the FIR may be the result of such a suspicion. Thus, in absence of death of the deceased otherwise than in normal circumstances or to say, keeping in view the fact that the death of the deceased was a normal death, it is not emerging out of the evidence that the deceased was being subjected to cruelty either by the appellants or by any of their family members.

21. The trial Court has also relied on the statement of PW-7-Dr. Ajay Kumar, who has conducted postmortem examination, as well as on the statement of PW-4/ Ram Asrey Verma (Naib Tehsildar) wherein he has stated that at the time of inquest he has found two injuries on either side of neck of the deceased and that is why in the inquest report also there was an agreement in the opinion of the panch witnesses that the deceased has died due to hanging. The trial Court, in my considered opinion, appears to have committed patent illegality in appreciating the evidence of PW-4/Ram Asrey Verma (Naib Tehsildar) and PW-7/Dr. Ajay Kumar. No doubt, the panch witnesses have stated in the inquest report that the deceased might have died due to hanging but Dr. Ajay Kumar, who has been produced as PW-7, in his statement has categorically stated that though he has found two marks on dead-body of the deceased, but these marks were postmortem and not antemortem. Thus, these witnesses have categorically stated that these injuries have been sustained by the deceased after her death and, therefore, the injuries, which have been sustained by the deceased after her death in

the ordinary course of event, may not be inflicted by the appellants as it has also come in the evidence that when the informant's side arrived at the house of the appellants when they were not present in the house and had fled away. Thus, the trial Court has also committed an illegality in assuming that the injuries were inflicted by the appellants as they were postmortem marks. The defence of the appellants before the trial Court was also to the tune that after the natural death of the deceased the informant had demanded Rs. 1 Lac for the purpose of deposit in the name of children of the deceased and since they refused the same, the FIR was lodged.

22. Thus, keeping in view the aforesaid facts and circumstances of the case, I am of the considered opinion that so far as the finding of the trial Court with regard to commission of cruelty and demand of dowry by the appellants is concerned, the same is not based on proper appreciation of the evidence before it by the prosecution and, the trial Court has materially erred in holding that the injuries sustained by the deceased were not antemortem, while the doctor has stated in categorical terms that these injuries have been sustained or inflicted to the deceased in many ways after the death of the deceased and admitted case of the prosecution is that when the informant's side arrived at the scene of the occurrence, the appellants had fled away and they were not present at their home and the innocence of the appellants is also evident from the fact that the informant has got knowledge of death of his daughter from PW-2/Mathuri who had visited the house of the deceased and was informed by the appellants that the deceased had died due to cholera and this defence of the appellants is also fortified by the opinion of the doctor who has conducted the postmortem examination of the deceased that the deceased has not died otherwise than in normal circumstances or in other words the death of the deceased was a normal death. Therefore, for the reasons mentioned herein before, the impugned judgment and order passed by the trial Court may not sustain and appeal filed by the appellants is worth to allow.

23. Resultantly, the instant appeal is **allowed** and the impugned judgment and order passed by the trial Court is hereby **set-aside**.

24. The appellants appear to be on bail. Their sureties are discharged. They need not to surrender unless wanted in any other criminal case.

25. Having regard to the provisions contained under Section 437-A of the Cr.P.C., the appellants shall file their personal bond with two sureties of Rs. 50,000/- before the trial Court for the purpose of securing their presence before the Hon'ble Supreme Court if any S.L.P. or to say any criminal appeal is filed against this judgment.

26. A copy of this order along with trial Court's record be immediately sent to the trial Court through the Sessions Judge concerned for information.

Order Date: 04.12.2024

Praveen/MVS/-