

Court No. - 44

Case :- CRIMINAL APPEAL No. - 299 of 2018

Appellant :- Smt. Bachani Devi And Another

Respondent :- State of U.P.

Counsel for Appellant :- Abhishek Mayank, Gaytri Rajput, Indra Pal Singh Rajpoot, Saurabh Gour

Counsel for Respondent :- G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Madan Pal Singh, J.

1. Heard Sri Abhishek Mayank, learned counsel for the appellants and Ms. Archana Singh, learned AGA-I for the State.
2. Present appeal arises from the judgement and order dated 08.12.2017 passed by Sri Subhash Chandra Kulshreshtha, Additional Sessions Judge, Court No. 1, Agra in Sessions Trial No. 139 of 2015 (State of U.P. Vs. Smt. Bachani Devi & 2 Ors.). By that order, the learned court below has convicted the appellants for offence under Section 302 read with Section 34 I.P.C. It has awarded them life sentence together with fine Rs. 10,000/- with default sentence of three months each.
3. As per Custody Certificate dated 05.06.2022, which has been marked as 'X' and retained on record, she may have remained confined for 8 years 1 month. Also, as per Custody Certificate dated 22.03.2025 with respect to the accused appellant Deepu, he may have remained confined for more than 10 years 4 months. That Certificate has been marked as 'Y' and retained on record.
4. The prosecution case emerged on the F.I.R. registered on 09.12.2014 at the instance of Dinesh Chand (P.W.-1 at the trial), the father of the deceased Gunjan. In that F.I.R. submitted through scribe Manoj (not examined at the trial), it was disclosed that Gunjan was

married to the accused Deepu four years ago. Deepu and his family members used to demand a four wheeler vehicle in dowry. They used to physically assault and harass her for non-fulfillment of that dowry demand. The first informant had tried to pacify his son-in-law Deepu on many occasions and also tried to explain that he could not afford such a heavy expense. For reason of dowry not given, on 08.12.2014 at about 3:00 p.m., Deepu alongwith his mother Bachani and his father Mahesh poured kerosene oil over the deceased and set her ablaze. Upon gaining knowledge of that occurrence, he reached the hospital S.N. Emergency, Agra and found his daughter admitted at that hospital. She told him that her husband Deepu, mother-in-law Bachani and father-in-law Mahesh had poured kerosene oil over her and set her ablaze and that her three and half year old child was also in the custody of the accused. The Written Report is Ex. Ka-1 at the trial. The F.I.R. is Ex. Ka-8A at the trial. Thereafter, another Written Report was submitted by Dinesh Chand (P.W.-1), reporting that Gunjan died during treatment. That report is Ex. Ka-2 at the trial.

5. Before her death, a Dying Declaration of the injured Gunjan was recorded at 4:15 a.m. on 09.12.2014 by Sri Ramji Lal, then A.C.J.M., Agra (P.W.-10 at the trial). In that, the injured Gunjan narrated, she was married to the accused Deepu about four years ago and had a three year old son born from that marriage. Second, Deepu used to physically assault and harass her in connection and with respect to his demand of a four wheeler vehicle in dowry. On 08.12.2014 she had taken Rs. 100/- from Deepu. In return, the latter took Rs. 400/- from her and tore that currency. Thereafter, he physically assaulted her. At that stage, the co-accused Bachani arrived on the scene and exhorted her son to kill Gunjan. They were joined by Mahesh. All three accused poured kerosene oil over Gunjan and Bachani Devi set her ablaze. Third, as she was suffering, Deepu and Bachani Devi offered to get her treated and give

her water to drink only if she promised to make a statement that she had suffered burn injuries, accidentally. Fourth, she narrated that her neighbours informed her parents about the occurrence.

6. However, it remains a fact that according to Dinesh Chand (P.W.-1), father of Gunjan, he met the deceased at S.N. Emergency Hospital, Agra. Clearly, the injured Gunjan had been admitted to that hospital, prior in time. No evidence emerged to establish that the injured had been admitted to the hospital by third persons and not the appellants.

7. Pursuant to that case being registered, on 18.12.2014 recoveries of pieces of burnt quilt cover and saree of the deceased; burnt Rs. 10/- currency note; burnt pieces of unidentified things from the wall and floor were recovered by Sub-Inspector Naval Singh Yadav (P.W.-7 at the trial). That Recovery Memo is Ex. Ka-8. Also, on that date, an empty plastic can of five litre capacity, that smelt of kerosene oil was recovered by Sub-Inspector Naval Singh Yadav (P.W.-7). That Recovery Memo is Ex. Ka-9 at the trial.

8. Also, the Inquest Report was prepared on 16.12.2014. That is Ex. Ka-3 and 4 at the trial.

9. On 17.12.2014 Dr. Atul Saraswat (P.W.-2 at the trial) alongwith Sri Sudhir Kumar Mehrotra conducted the autopsy examination on the dead body of the deceased Gunjan. The cause of death was noted as septicemic shock as a result of burn injuries. The Autopsy Report is Ex. Ka-A1.

10. In such facts, upon completion of investigation Sri Somen Verma, the Investigation Officer (P.W.-9 at the trial) submitted charge sheet against the appellants under Sections – 498-A, 304-B I.P.C., read with Section 3/4 Dowry Prohibition Act.

11. Upon the case being committed for trial to the Court of Sessions, the learned court below framed two charges (in the main) and two

charges in the alternative. First, the learned court below framed charges against the appellants under Section 498-A and 304-B I.P.C. (both main charges). Second, in the alternative, it framed two other charges against all the accused persons under Section 302/34 IPC and Section 4 of Dowry Prohibition Act.

12. At the trial, besides the above documentary evidence, the prosecution led oral evidence through 11 witnesses. In that, the father of the deceased namely Dinesh Chand was examined as (P.W.-1). He proved the marriage between the deceased and the appellant-Deepu. However, he completely denied demand of dowry, and he also denied the F.I.R. allegation that the appellant had caused the occurrence. He denied that the deceased told him that the appellants had caused the occurrence. Infact, he claimed that the marriage of the deceased was a happy marriage. On such evidence, he was declared hostile. During his cross-examination by the prosecution, he denied knowledge of the contents of the Dying Declaration of the deceased Gunjan. However, he admitted that that statement had been recorded. On his statement recorded under Section 161 Cr.P.C. being read out to him, he denied that he had made that statement to the police. He also denied any compromise reached between the parties. During his cross-examination by the defence, he stated that Dying Declaration of the deceased Gunjan was recorded 2-3 hours after he had reached the hospital. He then claimed that seeing his daughter in that state had angered him - leading to the F.I.R. being lodged.

13. Then, Dr. Atul Saraswat, the doctor who conducted the autopsy examination on the dead body of the deceased was examined as P.W.-2. He proved the nature of injuries suffered and the cause of death being septicemic shock following extensive *ante mortem* burn injuries suffered by the deceased. Thereafter, Sri Arun Kumar Singh, A.C.M.-II was examined as P.W.-3. He proved the Inquest Report Ex. Ka-3.

14. Next, Rahul Singh S/o Dinesh Chand (P.W.-1) was examined as P.W.-4. He is the brother of the deceased Gunjan. He proved that the deceased was happily married and there was no demand of dowry by the appellants. According to him, the deceased suffered an accidental occurrence in which she suffered burn injuries. He denied that the deceased had told him that the appellants had poured kerosene oil over her and set her ablaze. At that stage he was declared hostile. During his cross-examination by the prosecution, he denied having made any statement to the police under Section 161 Cr.P.C. He maintained that there was no demand of dowry made by the appellants side. During his cross-examination by the defence, he proved that the Dying Declaration of the deceased Gunjan was recorded in his presence. He however stated that at that time the deceased was not able to speak clearly. Thereafter, like his father he also claimed that he was angered when he had seen his sister in that state and therefore the F.I.R. was registered on the suggestion given by others.

15. Thereafter, Smt. Parvati Devi, the mother of the deceased Gunjan was examined as P.W.-5. She made similar statement as her husband Dinesh Chand (P.W.-1). She too was declared hostile. Cross-examination by the prosecution and by the defence are similar as her son Rahul Singh (P.W.-4).

16. Thereafter, Sunil Rathore, a person known to the informant side was examined as P.W.-6. He stated that he had signed blank papers on 18.12.2014 (with respect to recovery of quilt cover, pieces of burnt Rs. 10/- currency note, matchbox and empty kerosene can of five litres capacity). Thus, he disproved/denied recoveries Ex. Ka-8 and Ex. Ka-9 made in his presence. At that stage, he was declared hostile. During his cross-examination, he denied having made any statement to the police under Section 161 Cr.P.C. During his cross-examination by the defence, he claimed that the deceased had suffered an accidental occurrence

wherein she received burn injuries.

17. Thereafter, the Investigation Officer, Sub-Inspector Naval Singh Yadav was examined as P.W.-7. He proved the investigation. The Constable Clerk Subodh Kumar was examined as P.W.-8. He proved the registration of the criminal case. Next, the second Investigation Officer, Circle Officer Somen Verma was examined as P.W.-9. He proved the investigation and submission of charge sheet.

18. Thereafter, A.C.M.-II, Ramji Lal was examined as P.W.-10. He proved the Dying Declaration of the deceased Gunjan. Last, Dr. R.B. Lal was examined as P.W.-11. He proved that the deceased Gunjan was in a fit state of mind at the time of her Dying Declaration being recorded.

19. Thereafter, the statement of the accused were recorded under Section 313 Cr.P.C. Though not specific, perusal of that statement clearly indicates that adverse circumstances were put to them only with respect to dowry as the cause for the occurrence.

20. In such circumstances and evidence, the learned court below has passed the impugned judgment and order on 08.12.2017 and convicted the appellants under Section 302/34 I.P.C. and sentenced them to life imprisonment.

21. At the outset, learned counsel for the appellants submits, all witnesses of fact were declared hostile. They led no evidence to establish that the occurrence was caused by the appellants. Therefore, except the Dying Declaration of Gunjan, there is no evidence against the appellants.

22. Second, it has been submitted, all prosecution witnesses of fact proved that the deceased was happily married and there was no demand of dowry. Therefore, the Dying Declaration may not be relied to infer guilt of the appellants of having caused occurrence.

23. Third, in the alternative, it has been submitted, in any case if the Dying Declaration is to be read as evidence against the appellants, it

must be read in entirety. Clearly, it records that the occurrence was caused for reason of demand of dowry not met. Besides that, a petty quarrel wherein Rs. 400/- are described to have torn by the appellant - Deepu, no other circumstance was proven or alleged to establish that the appellants had killed the deceased. Therefore, such an occurrence may not travel beyond the ingredients of Section 304- B I.P.C.

24. Fourth, in absence of any adverse circumstance pertaining to heavier charge under Section 302 I.P.C. put to the appellants, it never became open to the learned court below to travel beyond the evidence led by the prosecution with respect to the lesser charge under Section 304-B I.P.C. and to convict the appellants under Section 302 I.P.C. He has relied on a recent decision of coordinate bench of this Court in **Amit Kumar Vs. State of U.P., Neutral Citation No. - 2025:AHC:35968-DB.**

25. On the other hand, learned A.G.A. would submit, the appellants have caused the occurrence upon pre-meditation. Therefore, the appeal does not merit any interference.

26. Having heard learned counsel for the parties and having perused the record, in the first place, the prosecution story emerged at the hands of the father of the deceased Gunjan, namely, Dinesh Chand (P.W.-1). Though in the F.I.R. itself, he alleged demand of dowry as also cruelty and harassment caused to the deceased Gunjan for reason of demand of four wheeler vehicle (as dowry) not met, he also alleged - having learnt of the occurrence, he reached the hospital where he found Gunjan was already under treatment. Therefore, in the first place, the demand of dowry as motive and ingredient of the offence under Section 304-B was disclosed at the first stage. Second, it was admitted to P.W.-1 that the injured Gunjan had been admitted to the hospital by the time he first met her. No effort was made and no evidence was led by the prosecution to

establish that the injured Gunjan was admitted to the hospital by any person, other than the appellants with whom she naturally resided, upon her marriage to Deepu.

27. Seen in that light, at the trial, Dinesh Chand (P.W.-1) who is the father of the deceased Gunjan; Rahul (P.W.-4) who is the brother of the deceased and, Smt. Parvati (P.W.-5) who is the mother of the deceased denied the demand of dowry and they further disproved the F.I.R. allegation that the accused had poured kerosene oil over the deceased and caused the occurrence. In the first place they were not eye-witness of the actual occurrence. Yet, they did not prove the demand of dowry.

28. The only fact that they proved in favour of the prosecution story was that the Dying Declaration of the deceased Gunjan was recorded in their presence. Even in that, doubt was sought to be introduced that the deceased was not wholly coherent, at this stage. Therefore, the Dying Declaration is the only piece of substantive evidence available with us to test the prosecution story.

29. The Dying Declaration of the Gunjan clearly narrates that she was married to Deepu about four years ago and had a son born from him, who was aged about three years. Second, her husband Deepu used to practice cruelty and used to harass her for non-fulfillment of his demand of dowry of a four wheeler vehicle. As to the facts immediately preceding the occurrence, she proved that on the date of occurrence, she had taken Rs. 100/- from her husband Deepu who took back Rs. 400/- from her and tore that currency. Thereafter, he beat her up. At this stage, the co-accused Bachani Devi and Mahesh intervened. All poured kerosene oil over her and Bachani Devi set her ablaze. She also stated that the accused offered to get medical help to Gunjan only if she would describe the occurrence as accidental.

30. Other than the Dying Declaration, no other statement was made by the deceased. Yet, it is also the fact that she was admitted to the hospital even before her parents arrived in the morning on 09.12.2014. As to who got her admitted to the hospital was not proven by the prosecution. Thus, it was not proven or alleged that the appellants did not take the injured Gunjan to the hospital or that they did not offer medical treatment to her. It is also not the prosecution case that the appellants had fled from the place of the occurrence or the hospital. Such facts were never alleged or proven.

31. Though the Dying Declaration involves all the accused persons in the occurrence and also in the demand of dowry, yet, that allegation is chiefly against Deepu. Seen in that light, a stray sentence appearing in the middle of the Dying Declaration that Deepu took Rs. 400/- from the deceased and tore that currency, remains an unexplained and incongruent fact in the entire occurrence narrated by the deceased in the Dying Declaration. Therefore, in the first place, there is no premeditation on part of the accused, to kill Gunjan. At most, the prosecution alleged – besides demand of dowry, a sudden quarrel had erupted between the couple. Neither the subject matter of that sudden quarrel nor the context in which such quarrel had arisen was explained/proved. No prosecution witness led any evidence as may allow us to reach a conclusion that the occurrence may have been caused for reason of premeditation to cause murder simpliciter. The accused Deepu is described to have torn the currency note taken by him from the deceased. That may not be a circumstance that may be cited that therefore Deepu murdered Gunjan.

32. Then, we have to keep in mind the fact that the deceased did make a specific statement that she was being harassed and cruelty was being practised on her for non-fulfillment of demand of dowry made by her husband Deepu as was supported by his parents. In that, she further

narrated that she was assaulted as well. To that extent, the Dying Declaration was duly proven and the deceased Gunjan was certified to be in fit state of mind at the time of making her Dying Declaration which fact was also proven by Dr. R.B. Lal (P.W.-11). Therefore, we are of the view that the prosecution had duly proven through the Dying Declaration of Gunjan that the appellants had caused the occurrence motivated by non-fulfillment of demand of dowry raised by Deepu as was supported by his mother Bachani Devi.

33. The circumstances of non-fulfillment of demand of dowry and the occurrence being caused as a consequence thereof were put to the accused persons under Section 313 Cr.P.C. To that extent, the prosecution story and the procedure followed by the learned court below may not be faulted. However, as to the ingredients of the offence under Section 302 I.P.C., no such circumstance was either proven at the trial or put to the accused under Section 313 Cr.P.C.

34. In view of the above, we find, the occurrence as proven by the prosecution fulfills the ingredient of the offence under Section 304-B I.P.C. and not Section 302 I.P.C. The appellants are convicted on that altered charge Section 304-B I.P.C.

35. On the issue of sentencing, we find, other than proving the occurrence on the strength of the Dying Declaration, no other aggravating circumstance was proven inasmuch as it does appear that the deceased, then injured, was admitted to the hospital by the appellants and they do not appear to have fled from the place, at that time. Last, her own family members namely parents and brother have not supported her stand contained in her Dying Declaration.

36. Considering the above, against the minimum sentence of seven years awardable under Section 304-B I.P.C., the appellant Bachani Devi has remained confined for eight years and one month and the appellant

Deepu has remained confined for ten years and four months. Accordingly, while modifying the conviction under Section 302 I.P.C. and convicting the appellants under Section 304-B I.P.C., the punishment for that offence is awarded to sentence undergone with fine of Rs. 10,000/- each. In default thereof the appellants shall suffer default sentence three months. The judgment and order of learned Court below is modified accordingly. Accordingly, the appeal is **partly allowed**.

37. The appellant no. 1 – Smt. Bachani Devi is on bail. She need not surrender. Her bail bonds are cancelled and sureties discharged. The appellant no. 2 - Deepu is in jail. He may be released forthwith, subject to him not wanted in any other case. Both appellants are directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.

38. A copy of this judgment alongwith original record of the trial court be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court, at the earliest. Office is directed to keep the compliance report on record.

Order Date :- 24.7.2025
Abhilash/SA/Prakhar

(Madan Pal Singh, J.) (S. D. Singh, J.)