

25 March 2009

CRIMINAL APPEAL NO. OF 2009(Arising out of SLP (Crl) 950/09)

The Judgment was delivered by : Dr. Arijit Pasayat, J.

Leave granted.

1. Challenge in this Appeal is to the judgment of the Division Bench of the Allahabad High Court dismissing the appeal filed by the appellant. He was the appellant alongwith three others before the Allahabad High Court. The accused was found guilty of offences punishable under Section 498A of the Indian Penal Code, 1860 (in short the 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (in short the 'Act').

2. Background facts, as projected by prosecution in a nutshell are as follows:

3. The accused appellant is the resident of Village Budhanna, Police Station Chandpur, District Fatehpur. The complainant-informant, Shiv Balak Tiwari is resident of village Garhi, Police Station Jafarganj, district Fatehpur. Smt. Rekha (hereinafter referred to as the 'deceased') was daughter of complainant, Shiv Balak Tewari, who was married with the accused-appellant, Rajesh Pandey about five years back to the occurrence in question. The accused-appellant Kallu @ Shivdhani is the father of appellant Rajesh Pandey, Smt. Rama is daughter of Kallu @ Shivdhani and Smt. Shanti Devi is his wife, meaning thereby, Rajesh Pandey is husband, Kallua @ Shivdhani is father-in-law, Smt. Shanti Devi is mother-in-law and Smt. Rama is sister-in-law of deceased.

4. The marriage had been performed according to the Hindu rites. In the marriage, dowry etc. was given by the complainant-informant according to his capability but the accused-persons were not happy. They were demanding Buffalo, golden chain and Rs.20,000/- in cash in dowry and for that they were torturing the deceased, who used to make complaints regarding her harassment and torture by her husband and in-laws to her parents. The complainant informant repeatedly made attempts to persuade the appellants to not torture his daughter. He also told them that he was not in a position to fulfill their demands.

5. On 07.07.2000 at about 1.00 P.M., the complainant informant was informed that in-laws of his daughter burnt her alive by pouring kerosene oil on her. It was also informed that before burning, she was beaten by them. When the complainant-informant with his associates went to the house of in-laws of his daughter, the village people told him about the incident. No one was available at the house of accused-persons except the minor child of deceased Smt. Rekha. The village people told the complainant-informant that the neighbors had taken Smt. Rekha to some hospital in Qasba Amauli, district Fatehpur on a Tractor, where she died. The dead body of the deceased was lying at the house of accused-persons.

6. Just before the day of occurrence i.e. on 06.06.2000, Vinay Kumar, the youngest son of complainant-informant had gone to the house of accused-appellants and met his sister Smt. Rekha who had told him about harassment and torture etc. made by the accused-appellants for dowry. The deceased had given a letter in which the entire facts were disclosed.

7. The complainant-informant lodged report of occurrence to the Police Station, Chandpur, district Fatehpur on 07.07.2000. The written F.I.R. is Ext. Ka-1. The police registered a case under Section 498-A 304-B IPC and Sections 3 and 4 of the Act, against the accused appellants which is evident from the copy of G.D. Ext. Ka16. Chik report is Ext.Ka-15. The matter was investigated by the police concerned. The Investigating Officer visited the spot and prepared inquest report Ext. Ka-8, photo of dead body Ext. Ka-11, Challa n Ext. Ka-12 and after that he sealed the dead body and wrote letter Ext.Ka-9 and Ka-10 to the R.I. Police Lines and C.M.O. Fatehpur respectively for post mortem examination of deceased. Dr. A.S. Khan and Dr. B.K. Sharma conducted the post mortem examination of deceased on 08.07.2000. The post mortem report is Ext. Ka-5. The Investigating Officer took burnt clothes of deceased and the plastic container which were recovered from the spot and prepared memo Ext.Ka-13 and Ka-14 respectively. He interrogated the prosecution witnesses and after concluding investigation, submitted charge sheet Ext.Ka-7 against the accused appellants.

8. The accused-appellants admitted this fact that Smt. Rekha, daughter of complainant informant, Shiv Balak Tewari was married with the accused appellant Rajesh Pandey according to Hindu rites in the year 1995. But they denied the allegation regarding demand of dowry, torture and about causing death of deceased. They further stated that all the proceedings were conducted by the police on false consideration. The accused-appellant Rajesh Pandey further alleged that Smt. Rekha was desirous of partition of ancestral house and when she failed in her designs, she committed suicide by burning herself. He further stated that

the prosecution witnesses have given evidence against him under undue pressure of one Ram Bharosey Tiwari. Smt. Shanti Devi stated that she was residing separately in a temple and she did not know how the deceased died. She also stated about factum of partition of the house as alleged by her son, Rajesh Pandey. The accused- appellant, Shivdhani also took same defence as taken by his son Rajesh Pandey. Smt. Rama Devi stated that she was a married lady and had come to the house of her parents and was living in a temple separately. The deceased was not even on talking terms with her. She did not know how she died.

9. After completion of investigation charge sheet was filed. Trial court convicted the appellants under Section 498A and 304B IPC and Sections 3 and 4 of the Act.

10. Section 304 B IPC reads as follows:

"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."

11. The necessary ingredients of Section 304 B IPC are as follows:

(1) The death of the woman was caused due to burns, bodily injuries or due to unnatural circumstances.

(2) The death should be within seven years of marriage.

(3) It is shown that soon before death victim was subjected to cruelty or harassment by her husband or any relative of the husband.

(4) The cruelty or harassment was for or in connection with any demand for dowry.

12. High Court allowed the appeal of the co-accused persons. But the appeal was dismissed so far as it relates to the present appellant. Trial Court and the High Court have with reference to the evidence on record categorically held that it was not a case of suicide. The victim died of burns. They have referred to letter Ext.Ka-2 to conclude about the demand of dowry and the torture meted out to the deceased. The conviction as recorded cannot be faulted. However, the sentence is reduced to eight years. If the appellant has served said period of sentence he shall be released from custody forthwith unless required to be in custody in any other case.

13. While issuing notice on 2.2.2008, it was indicated that notice was issued limited to the quantum of sentence. In the instant case there is practically no discussion of the evidence by the High Court. It simply reiterated the analysis made by the trial court. Therefore, we have considered the evidence on record. We find that the accusations have been established by cogent evidence. Minor variations in evidence cannot affect the credibility of the prosecution version.

The appeal is allowed to the aforesaid extent.

Appeal allowed