

In Chamber

Case :- CRIMINAL APPEAL No. - 5444 of 2018

Appellant :- Roomali And 3 Others

Respondent :- State of U.P.

Counsel for Appellant :- Brijesh Pratap Mishra, Sriram Dhar
Dubey

Counsel for Respondent :- G.A.

Hon'ble Ajai Tyagi, J.

1. This appeal has been preferred against the judgement and order dated 20.08.2018 passed by 11th Additional Sessions Judge, Budaun, in Session Trial No.590 of 2012, arising out of Case Crime No.176 of 2012 (State Vs. Smt. Romali and others) under Sections 498A, 304B, 201 IPC and under Section 3/4 Dowry Prohibition Act, 1961, Police Station-Sahswan, District- Budaun, in which appellants Satya Ram, Smt. Roomali, Smt. Rekha and Smt. Rajwala were convicted and sentenced under Section 304B IPC for ten years R.I., under Section 498A for two years and fine of Rs.2,000/-, under Section 201 IPC for two years and fine of Rs.2,000/- and under Section 4 Dowry Prohibition Act, 1961 for one year along with fine of Rs.1,000/-.

2. The brief facts giving rise to this appeal are that Rohan, the complainant and father of the deceased, submitted a written report at Police Station- Sahswan on 17.02.2012 with the allegations that her daughter Amlesh was married with Devendra r/o village Dhobai. He has given sufficient dowry according to his financial capacity but husband and in-laws of Amlesh were not satisfied with that and after sometime of marriage her husband Devendra, father-in-law Satya Ram, mother-in-law,

Nanad- Rekha and *Jethani* started torturing her by abusing and beating her for non-fulfilment of demand of additional dowry. They were demanding a buffalo, Rs.50,000/- cash and jewellery in the form of gold chain and earrings etc. When complainant's daughter remained unable to meet out the demand, they turned out her of the home. Complainant contacted her in-laws and tried to make them understand and promised to meet out their demand as and when he will be able to do it. Accused persons became quiet for sometime but after sometime they started torturing his daughter again and yesterday night of 16/17.02.2012 all the above-mentioned accused persons along with Rajeev and Rama of their village murdered his daughter for non-fulfilment of demand of additional dowry and disappeared her dead body. *Laturi* of village Dhobai gave this information to him on phone in the morning. On getting this information, he went to the matrimonial home of his daughter but neither his daughter nor her in-laws were found there.

3. On this written report, the first information report was registered at P.S.-Sahswan, District-Budaun against Devendra, Satya Ram, mother-in-law of the deceased, Rekha-*Jethani* of the deceased, Rajeev and Rama under Sections 498A, 304B and 201 IPC and 3/4 Dowry Prohibition Act, 1961.

4. After registering of the case as above, on 21.02.2012, i.e., after four days of first information report, another report Ex.Ka-2 was submitted by the complainant at the same police station, stating that he had lodged first information report regarding death and destruction of the evidence regarding the murder of his daughter on 17.02.2012. Thereafter, he along with his family members started searching for his daughter and on 21.02.2012,

the dead body of his daughter was found buried in a pit at the bank of river Mahawa in the jungle of village-Rasoolpur Danse.

5. Police went to the spot as told by the complainant in his report dated 21.02.2012 and recovered the dead body of the deceased from there, which was kept in a jute bag and was buried five feet below the earth. Recovery memo Ex.Ka-3 was prepared .

6. After investigation, charge sheet was submitted against offenders Smt. Roomali, Smt. Rajvala, Smt. Rekha, Rajeev, Smt. Rama under Sections 498A, 304B and 201 IPC and 3/4 Dowry Prohibition Act, 1961. Learned trial court framed charges against the accused persons under Section 3/4 Dowry Prohibition Act, 1961 and under Section 498A, 304B and 201 IPC.

7. Offender, the husband of deceased, was declared juvenile and his case was sent to other concerned court for trial. It is told by learned counsel for the appellants that his trial is still pending in the court.

8. The trial of the rest of all the accused persons proceeded and accused/appellants Satya Ram, Smt. Roomali, Smt. Rekha and Smt. Rajvala were convicted and sentenced under Section 304B, 498A and 201 IPC and Section 4 Dowry Prohibition Act as stated above. Accused Rajeev and Smt. Rama were acquitted. Aggrieved with the judgement of the trial court the appellants have preferred this appeal.

9. Heard Shri Brijesh Pratap Mishra , learned counsel for the appellants and Shri S.S. Sachan, learned AGA as well as perused the record.

10. Learned counsel for the appellants submitted that appellants Smt. Roomali is mother-in-law, Smt. Rajvala is *Jethani*, Smt. Rekha is married *Nanad* and Satya Ram is father-in-law of the deceased. The first argument advanced by learned counsel for the appellants is that prosecution has failed to prove that the death of the deceased took place within seven years of her marriage. In the first information report, no date of marriage is mentioned nor it is written by the complainant when the marriage of deceased and appellant-Devendra was solemnized. It is also submitted that investigating officer PW5 has stated in his cross-examination that he did not secure any marriage invitation card or *Pili Chithi* etc from the complainant and he has not recorded the statements of *Pandit* or *Naai*, who were engaged in the marriage of the deceased. Therefore, there is no evidence on record, which can show that deceased died within seven years of her marriage. It is next submitted by the learned counsel for the appellants that there is no evidence at all on the file that “soon before her death” the deceased was subjected to cruelty or harassment in connection with demand of dowry which is the main ingredient for bringing the case within the four corners of “dowry death”. Learned counsel for the appellants said that PW1-Rohan is father of the deceased, PW2-Gajram and PW3-Bhoorey are uncle of the deceased and PW4-Shanti Devi is sister of the deceased. Nobody has said in their respective statements when, before the death of the deceased, she was subjected to cruelty or harassment regarding the demand of dowry. Prosecution evidence is silent on this point. Hence, there cannot be any presumption of Section 113B of Indian Evidence Act and no case is made out against the appellants under Section 304B of IPC.

11. Learned counsel for the appellants very emphatically argued that the death of the deceased did not occur in her matrimonial home rather it took place in her parental home. Learned counsel submitted that the complainant, the father of the deceased, himself committed murder of the deceased and destroyed the evidence by burying the body of the deceased five feet below the earth because the deceased was licentious and she was having bad character due to which complainant committed her murder. In this regard, learned counsel for the appellants submitted that in the first information report it is said that some *Laturi* of village Daboi informed the complainant in the morning on phone regarding the death of the deceased but that *Laturi* is not produced before the trial court. If he would have been produced then defence could have opportunity to cross-examine him as to how he came to know about the death of the deceased. Since the said witness had not been produced and important link evidence is missing. Learned counsel for the appellants argued that after four days of the FIR, the complainant moved an application in Police Station-Swarana, District- Badaun on 21.2.2012 stating that when he was searching the dead body of his daughter along with his family members dead body of his daughter was found at the bank of the river Mohaba in the jungle of village Rasoolpur, which was buried five feet below the earth. But it is not explained by him as to how he came to know about the place where the dead body was found. It shows that death of the deceased took place in her parental house and not in the matrimonial home. It is very pertinent to note that the place where the dead body was found is very near to the village of the complainant and very far from village of appellants. Learned counsel for the appellants submitted that it has come in evidence

of witnesses that they went to the spot from village on foot. It shows that place where the body was found is shown near to the village of the complainant that one can move there by foot. This fact proves that death had occurred in her parental house. Hence, as per the provisions of Section 106 Indian Evidence Act, the factum of death of the deceased was in special knowledge of the complainant and, thereafter, burden lies on him to show how the death of the deceased took place.

12. Learned counsel for the appellants referred the statements of witnesses and submitted that complainant PW1- Rohan has said in his statement that *“मैंने खोजबीन करके अपनी लड़की की लाश ढूँढ ली थी”*. But he did not disclose the source of the information, pointing out the place where the dead body of his daughter was buried under the earth. Therefore, the evidence lacks credence and cannot be relied upon. PW2- Gajram has stated in his statement that the place from where we dug out the dead body, was searched by us. It is also said by PW2 that he also went in search of the dead body along with his brother and he also dug the pit and before digging, the police reached at the spot and body was unearthed in presence of the police. He has also stated that information regarding finding the dead body was already given to the police station before unearthing the dead body. Learned counsel for the appellants has said that at the time of searching the dead body they found slippers of the deceased. Learned counsel for the appellants said that those slippers were not produced before the trial court so as to ascertain whether it belonged to the deceased or not.

13. Learned counsel for the appellants argued that real fact was that the deceased was licentious and due to having bad

character she was murdered by the complainant himself. Therefore, no case is made out against the appellants and they were wrongly convicted by the trial court. Hence, the appeal be allowed.

14. Learned AGA argued that it is well proved by prosecution witnesses that deceased died within seven years of her marriage. She died after 11 months of her marriage. It is next submitted by the learned AGA that as far as the source of finding of the dead body is concerned, it is in prosecution witness that by seeing slippers and *loi*, complainant and his brothers came to know about the place. As per statement of PW8- Dr. Amit Kumar, who conducted the post mortem of the dead body, the death of the deceased was not a natural death rather she was killed by strangulation as her hyoid bone was found fractured, therefore, strangulation is there. Learned AGA also argued that no missing report of the deceased was lodged by the appellants' side in any police station. Appellants were regularly demanding buffalo, cash and jewellery as additional dowry and due to non-fulfilment of their demand, the appellants killed the deceased with the help of her husband and concealed the dead body under the earth. All the prosecution witnesses of fact have proved the demand of dowry, death occurred within seven years of her marriage, therefore, the offence of the appellants falls within the purview of definition of Section 304B of IPC. Medical evidence also corroborates the prosecution case and hence, the trial court has rightly convicted and sentenced the appellants. So, appeal may be dismissed.

15. First argument as advanced from the side of the appellants is regarding the time of the marriage of the deceased. It is argued

from the side of the appellants that prosecution could not prove that death of the deceased took place within seven years of her marriage. Learned counsel for the appellants referred the contents of first information report and has submitted that no date of marriage is mentioned in the FIR and I.O. has not collected any evidence in the form of marriage invitation card or '*Pili Chitti*' etc to know the date of marriage nor he has recorded the statements of *Pandit* or *Naai* who were engaged in solemnization of marriage but this Court is not convinced with the said argument of appellants. Although PW1, the father of the deceased, has not disclosed the date or year of the marriage of the deceased but PW2- Gajram, uncle of the deceased, has stated in his statement that his elder brother Rohan's daughter Amlesh was married with Devendra in the year 2011 in the month of "*Vaishakh*". PW3 Bhoorey has also stated that marriage of deceased of Amlesh took place 11 months before her death. PW4 Santi Devi is the sister of the deceased, she has also stated that the marriage of her elder sister took place five years before deposing the statement in the month of *Vaishakh*. Hence, it is not disputed that the death of the deceased took place within seven years of her marriage.

16. Question as to the place of death of the deceased is raised by the appellants by saying that the death of the deceased took place not in her matrimonial home but in the parental home. Learned counsel for the appellants has shown some circumstances in this regard. It is submitted that as per FIR some *Laturi* informed the complainant about the death of his daughter Amlesh. I agree with the argument of learned counsel for the appellants that in the mysterious circumstances of death of the deceased, *Laturi* was the key link who could depose that by

whom or in what manner the death of the deceased was caused but such *Laturi* was not produced before the trial court. Moreover, the I.O. PW5 has stated in his statement that complainant had told him that a person named *Laturi*, had given the information to him by telephone but such *Laturi* named person was not found by him.

17. Dr. Anil Kumar PW8, who conducted the post mortem of the deceased, has been produced before the trial court. He has proved the post mortem report as Ex.Ka-15. In the post mortem report, her hyoid bone was found fractured and it cannot be disputed that deceased was killed because her dead body was found inside the jute bag five feet beneath the earth.

18. No other argument was raised by the appellants' counsel. Appellants have given emphasis showing the circumstances of the death of the deceased. According to the learned counsel for the appellants, circumstances of death of the deceased are very mysterious and point out towards the complainant that he himself killed her daughter Amlesh and buried her body five feet below the earth. But this case is not the case of Section 302 IPC but the appellants were put on trial before the trial court for the offences under Section 498A, 304B and 201 IPC and Under Section 4 Dowry Prohibition Act as the charges were framed by learned trial court.

19. Analysing the evidence on record in the perspective of offence under Section 304B IPC, to convict the accused under Section 340B IPC, the prosecution has to establish the following ingredients:-

- (i) the death of a woman should have been caused by burns or bodily injuries or otherwise than under normal circumstances,
- (ii) Such a death must have occurred within seven years of her marriage,
- (iii) Soon before her death, she must have been subjected to cruelty or harassment by her husband and her in laws or any relative of her husband,
- (iv) Such cruelty or harassment must be for or in connection with demand of dowry.

20. Section 113B of the Indian Evidence Act is also relevant for the case in hand, which reads as under:-

“Section 113B- Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

21. As per definition of “dowry death” under Section 304B of IPC and the wordings under Section 113B of the Indian Evidence Act, it is necessary to show that “soon before her death” the woman concerned had been subjected to cruelty or harassment for or in connection with the demand of dowry. On proof of the essential ingredients mentioned in Section 113B of Indian Evidence Act, it becomes obligatory on the Court to raise a presumption that the accused had caused the dowry death.

22. In **Balvinder Kaur Vs State of Punjab 2015(1) JIC 71 (SC)**, it is held by the Hon’ble Apex Court that a combined reading of

Section 113B of Indian Evidence Act with Section 304B IPC shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. Thus the prosecution is obliged to show that soon before the occurrence of death there was cruelty or harassment and only in that case presumption under Section 113B of Indian Evidence Act operates.

23. In **Kamesh Panjiyar @ Kamlesh Vs. State of Bihar (2005) 2 SCC 388**, the Hon'ble Apex Court considered the expression (soon before death) and held as under:-

“The expression ‘soon before’ is very relevant where Section 113B of Indian Evidence Act and Section 304B of IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution.”

24. It is also held by the Hon'ble Apex Court in the above case that “soon before” is relative term and it would depend upon circumstances of each case and no straight jacket formula can be laid down as to what would constitute a period of soon before the occurrence.

25. The same view was expressed in **Thakkan Jha and other Vs. State of Bihar (2004) 13 SCC 348** and **Baldev Singh and others Vs. State of Punjab 2009 (1) JIC 120 (SC)**.

26. Hence, it is clear that to attract the provisions of Section 113B of Indian Evidence Act and Section 304B of IPC and to bring the death of a woman within the purview of ‘dowry death’,

it is must for the prosecution to produce evidence regarding fact that “soon before her death” the woman was subjected to cruelty or harassment for or in connection with demand of dowry. Proximity or live link between such cruelty or harassment and the death of deceased will depend upon the facts and circumstances of each case. It is very much relevant in the present case that no such evidence of cruelty or harassment soon before the death of the deceased is produced by the prosecution witnesses. There is no doubt that death of deceased Amlesh took place within seven years of her marriage and it was the death otherwise than under normal circumstances. But regarding the ingredient of “soon before death” this Court went through the evidence led by PW1, PW2, PW3 and PW4, who are witnesses of fact, all these four witnesses have not uttered even a single word regarding the factum that before the death of the deceased when she was subjected to cruelty or harassment regarding the demand of additional dowry. Even first information report is silent on this point. PW1 Rohan has stated in his statement that after marriage whenever Amlesh came to his house she told him and his family members regarding the demand of additional dowry. This is not the live link or proximity to the death of the deceased. He has not stated even a single word in his statement when last time she was subjected to cruelty or harassment before her death. Same is the case with PW2, PW3 and PW4. They have also not uttered even a single word regarding the factum when deceased was subjected to cruelty or harassment last time before her death. Hence, in absence of evidence on the point that soon before her death, the deceased Amlesh was subjected to cruelty or harassment for or in connection with demand of dowry, no presumption could be raised under Section 113B Indian

Evidence Act. In this regard, it is pertinent to add that trial court has written in its judgment that PW1 to PW4 have stated in their respective statements that after marriage accused persons were regularly demanding dowry from Smt. Amlesh and she was used to be harassed for non-fulfilment of their demand. But, trial court has written “उस दिन भी उसे दहेज के लिए उत्पीड़न किया गया तथा गला दबाकर हत्या कर दी गयी”. It is not known from where the learned trial court has written the words 'उस दिन भी' because these three words have not been uttered even by PW1, PW2, PW3 or PW4, therefore, the trial court has not appreciated the evidence of the above witnesses in right perspective and this finding that on the same day of the death she was subjected to cruelty is perverse.

27. Prosecution witnesses PW1 to PW4 have altogether stated that soon after the marriage, the appellants started demanding additional dowry and harassing her for non-fulfilment of the demand and whenever she used to come to her parental house, she used to tell this fact to her family members but it cannot be said to constitute a presumption or live link with her death. Therefore, the conviction of the appellants under Section 304B of IPC cannot be sustained. There is no such evidence on record that the dead body of the deceased Amlesh was concealed and buried under the earth by any of the appellants. There is no evidence against the appellants that they destroyed the evidence. Hence, their conviction under Section 201 IPC also cannot be sustained. As far as the demand of dowry and harassment in pursuant thereof is concerned, a buffalo, Rs.50,000/- and jewellery is said to be demanded. The husband of the deceased is not appellant in this present appeal. Appellants are father-in-law, mother-in-law, *Jethni* and married *Nanad* of the deceased. The

articles, said to be demanded, are not such for which present appellants can be direct beneficiaries. Moreover, evidence on the above point is not credible, if it is analysed in its entirety.

28. In view of the above discussions, this Court is of the considered opinion that prosecution has failed to prove the charges framed against the appellants. Trial court has wrongly convicted the appellants and, therefore, appeal is liable to be allowed.

29. Accordingly, the appeal is **allowed**. Conviction and sentence of appellants is hereby set aside and they are acquitted from all the charges levelled against them.

(Ajay Tyagi, J.)

Order Date :- 21/10/2021
Ashutosh Pandey