

SUPREME COURT OF INDIA

Asha

Vs.

State of Uttarakhand

Crl.A.No.1893 of 2013

(Sudhansu Jyoti Mukhopadhaya and V.Gopala Gowda, JJ.)

09.11.2013

JUDGMENT

V. Gopala Gowda, J.

1. These appeals have been filed by the appellants against the common impugned judgment and order dated 07.01.2011 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 1931 of 2001(Old no. 1060 of 1998), whereby the High Court dismissed the appeal of the appellants and upheld their conviction and sentence of 10 years R.I. under Section 304B of the Indian Penal Code (in short "the IPC") awarded by the trial court. In Criminal Appeal No. 1893 of 2013 the appellants are the sisters-in-law of the deceased and in Criminal Appeal No. 1894 of 2013 the appellant is the father-in-law of the deceased. During pendency of the appeal before the High Court, the co-accused, Lilawati, the mother-in-law of the deceased had died, therefore, the case abated against her.

2. The brief facts of the case are stated hereunder to appreciate the correctness of the findings recorded by both the trial court and the High Court on the charges framed against the accused persons under Sections 302/34, 304B and 306 of the IPC and also to find out as to whether the appellants are entitled for the relief as prayed by them.

3. The deceased, Bhagwati Devi was married to Satish Chandra (the brother of the appellants in Criminal Appeal No. 1893 of 2013) on 13.06.1991. The deceased died due

to burn injuries in her matrimonial house on 18.07.1993, around two years after marriage. The co-accused, the father-in-law of the deceased, Nitya Nand (the appellant in Criminal Appeal No. 1894 of 2013) lodged a report (Ex.Ka.1) on 18.07.1993 with the patwari stating that his daughter-in-law committed suicide by burning herself at about 10.00 a.m. He alleged in the aforesaid report that the deceased burnt herself to death while he had gone to the market and his wife and their daughters were away in the jungle for cutting grass. On 19.07.1993, the complainant, Mahesh Chandra (P.W. 5), the brother of the deceased lodged another report to the patwari making allegations against the appellants herein and the mother-in-law of the deceased, upon which FIR No.1/93 dated 19.07.1993 was registered against them. The accused persons were arrested and sent to judicial custody on 22.07.1993. On 16.10.1993, the police, after investigation, submitted the charge sheet before the Chief Judicial Magistrate, Almora. The case was committed to the Court of the Sessions Judge on 23.03.1994 and the accused were charged under Sections 302/34 and 304B of the IPC and in the alternative, Section 306 of the IPC. Both the prosecution and the defence witnesses were examined to prove the charges against the accused persons and to show that they are not guilty of the offences alleged against them. The trial court, on appreciation of evidence on record, vide its judgment and order dated 01.06.1998, found the appellants guilty of offence under Section 304B of the IPC and they were sentenced to 10 years R.I. The appellants were acquitted for offences under Sections 302 and 306 of the IPC. The appellants filed Criminal Appeal No. 1931/2001 (Old no.1060/1998) before the High Court. The High Court dismissed the appeal and upheld the judgment and order of the Sessions Court vide its common judgment and order dated 07.01.2011. Aggrieved by the same they preferred these appeals, urging certain grounds and legal contentions.

4. The learned Sessions Judge relied upon the evidence of the prosecution witnesses to convict the appellants. The prosecution examined 9 witnesses in support of the case. P.W 3, Bhuvan Chandra and P.W 5, Mahesh Chandra are the brothers of the deceased. According to P.W. 3, his brother Deepak Chandra-the P.W.7 had gone to the matrimonial house of the deceased, when the four accused persons demanded [pic]30,000/- stating that the deceased had brought less dowry and threatened to send her back to their house if they did not pay the amount demanded. P.W.3 had written a letter (Ex. Ka.3) on 28.6.1993 to his parents informing them about the demand of the in-laws of the deceased for [pic]30,000/- and that due to this he withdrew [pic]4,000/- and sent it to his father through a villager to give it to his sister, the deceased herein. He also stated that the deceased-Bhagwati had told his wife and his father that she was being harassed at her in-laws house because she had brought less dowry. P.W.4, Nanda Devi, the mother of the deceased also alleged that the deceased was harassed by the accused persons for bringing less dowry. She deposed that the accused persons gave her less food and did not allow her to wear the clothes which were given to her at the time of the marriage. P.W.5, the brother of the deceased deposed that his sister had told him that her in-laws taunted her about being from a poor family and for having brought less dowry. P.Ws.3, 4 and 5 alleged that the accused burnt Bhagwati to death. P.W.6, Dr. Naval Kishore Pandey, the doctor who conducted the post mortem of the deceased deposed before the trial court that she had died due to 90% of burn injuries. P.W.7, Deepak Chandra, another brother of the deceased deposed before the court that he had gone to his sister's matrimonial house in May, 1993

when the accused persons demanded [pic]30,000/- and said that dowry was not fulfilled by the parents of the deceased and they had simply given a sewing machine. He also stated that the accused persons had misbehaved with his sister Bhagwati in his presence.

5. The trial court examined the evidence on record and held that the charge under Sections 302/34 of the IPC against the accused persons is not made out, but instead the accused created the circumstances and compelled the deceased to commit suicide. Further, it has held that the prosecution has been able to prove the case i.e. the charge under Section 304B of the IPC beyond reasonable doubt that the demand for dowry that was made by the accused persons subsequent to the marriage and soon before the death of the deceased amounts to 'dowry death'. As regards Section 306 of the IPC, the trial court held that there is no direct evidence regarding abetment to suicide by the deceased and instead reiterated that the accused created the circumstances for committing suicide and since evidence was not led under Section 306, the trial court held that the accused were liable to be acquitted for offence under Section 306. Therefore, the trial court convicted and sentenced the accused persons for offence punishable under Section 304B of the IPC and also cancelled their bail bonds, pursuant to this conviction.

6. The High Court, in the impugned judgment has stated that in dowry death cases, direct evidence is hardly available and such cases are usually proved by circumstantial evidence. Further, the High Court has stated that the death of the deceased cannot be said to be under normal circumstances for the reason that at the place of occurrence the investigating officer found a matchbox, a plastic jeri-can of five litres, half filled with kerosene oil and there was cot and bed towards the feet of the deceased but these articles were intact. It was felt by the High Court that it is surprising that the deceased was burnt to 90% and she might have moved around writhing in pain and during this process the articles kept inside the room might have caught fire but these circumstances were not found. Further, it has come in the prosecution evidence that the deceased was making complaints about the torture meted out to her by her in-laws at her matrimonial house in lieu of dowry demands and it has further held that the appellants-accused persons also could not explain the reason for the deceased having committed suicide at her matrimonial house. Thus, the High Court came to the conclusion that the death of the deceased cannot be said to be in normal circumstances. Therefore, the High Court held that it can be safely presumed that this is a case of dowry death against the accused persons in whose house the deceased had died due to burn injuries. The High Court further stated that another circumstance which goes against the accused persons is that they did not inform the parents/brothers of the deceased on coming to know of her death. The High Court has held in its judgment, on the basis of the evidence of the witnesses, that the prosecution case of ill-treatment of the deceased at the hands of the accused was found to be fully established. Therefore, the High Court has upheld the conviction and sentence awarded by the trial court in its judgment and dismissed the appeal of the appellants.

7. The learned counsel for the appellants have contended that there was no evidence on record to show that the deceased had been subjected to any cruelty or harassment by the

appellants in connection with demand of dowry soon before her death and the conditions set forth for conviction under Section 304B of the IPC were not satisfied by the prosecution. It was further contended by the learned counsel that there were no demands for dowry either at the time of marriage or subsequently and the courts below have erred in law in convicting and sentencing the appellants by relying upon the letter of P.W.3 marked as Ex.Ka.3, even though the trial court had come to the conclusion that the letter has been interpolated. The trial court has observed that in the letter, the word 'Sasur' (father-in-law) has been added after the word 'Sas' (mother-in-law) and many other words have been added or struck off here and there in the letter. Thus, the reliance placed by the trial court upon such evidence to convict the appellants of the charge was erroneous in law. Further, it is contended by the learned counsel that the courts below have picked one line from one place and another from another place from the evidence of the prosecution witnesses to arrive at the conclusion and held that there was demand for dowry by the appellants.

8. The learned counsel for the respondent-the State of Uttarakhand has contended that the evidence on record adduced by the prosecution witnesses would clearly show that the deceased was regularly subjected to cruelty and harassment by the appellants as she was poor and brought less dowry to the family of the appellants. The letter, Ex.Ka.3 written by P.W.3, one of the brothers of the deceased to his parents informing them about the demand of the accused persons for [pic]30,000/- with the brother of the deceased would clearly show that the demand for dowry is proved and the same is accepted by the trial court and the trial court rightly convicted and sentenced the accused persons for the offence under Section 304B of the IPC. It is further contended by the learned counsel for the respondent-State that the conviction of the accused persons under Section 304B of the IPC on the basis of the evidence on record was legally correct and the same need not be interfered with by this Court and must be upheld.

9. We have heard the rival factual and legal contentions urged on behalf of both the parties and very carefully perused the evidence on record to examine the correctness of the finding recorded against the accused persons in the impugned judgment. The following points would arise for our consideration:

i) Whether the trial court and the appellate court were correct in recording the finding that the accused are guilty of offence under S.304B of the IPC and in convicting and sentencing them under this Section?

ii) What order to be passed?

10. On considering the evidence of the prosecution witnesses as deposed by them which is on record, we are of the view that the charges of cruelty or harassment against the accused are not supported by legal evidence on record. The courts below have erroneously placed reliance on the letter (Ex. Ka.3) written by P.W.3 to his parents which is on record to establish the charge u/s 304B of the IPC, wherein he has stated in his letter that P.W.7 had

gone to the matrimonial house of the deceased and was met with demand for [pic]30,000/-. There is no evidence of demand for dowry by the accused persons prior to the alleged demand of [pic]30,000/-. To satisfy the ingredients of the provision of Section 304B of the IPC, the death of a woman must be caused due to burns or bodily injuries, and must be within 7 years of her marriage. Further, it must be proved that soon before her death, she was subjected to cruelty or harassment by her husband or her relatives “in connection with the demand for dowry”.

11. The said charge has not been proved by the prosecution by adducing evidence to attract the ingredients of the offence under Section 304B of the IPC. The trial court and the appellate court have not taken great care in analyzing and appreciating the evidence on record, keeping in view the gravity of the offence of dowry death and the punishment prescribed for it u/s 304B of the IPC. They were required to scrutinize the evidence very cautiously and carefully in order to arrive at the conclusion as to whether all the ingredients of the offence with reference to the conditions enumerated u/s 304B of the IPC to convict the accused have been satisfied by the prosecution. On perusal of the evidence on record, we are of the view that the charge is not proved by the prosecution, particularly as the courts below have failed to notice that the prosecution has failed to prove that the dowry demand was made by the accused either at the time of marriage or subsequently as it has not produced convincing and cogent evidence in this regard. In this case, the evidence on record is not clear as to whether the demand for [pic]30,000/- as alleged to have been made by the accused is a demand for dowry with the deceased that can constitute cruelty or harassment by the accused. The High Court, after careful examination of the letter dated 28.06.1993, has found that it has been interpolated and that some changes have been made in the letter and some words were added to it. The courts below have erred in law in convicting the appellants herein by erroneously placing reliance upon the above so called letter, wherein certain words were added with a view to make out a fabricated charge against them to secure the conviction of the accused persons. We are of the view that the document Ex.Ka.3 was created for the purpose of falsely implicating the accused to secure their conviction for the charge under Section 304B of the IPC. The said letter has been erroneously relied upon by the courts below to establish the allegation that there was cruelty or harassment by the accused persons on the deceased which has resulted in setting up of the circumstances for her death. The courts below have not noticed the important aspect of the case, namely, that the charge of dowry death, that there was demand on the deceased either before the marriage or soon before the death of the deceased made against the accused persons, should have been proved beyond reasonable doubt. The courts below have also failed to consider the relevant fact namely; the appellants herein were not in the house at the time of the incident.

12. In our considered view, after careful analysis of the aforesaid aspects of the case and on careful perusal of the evidence on record, the finding of fact recorded by the High Court in convicting the accused for the charge of Section 304B of the IPC is not only erroneous in fact but also suffers from error in law and therefore, the present appeals must succeed.

13. In view of the aforesaid reasons, i.e. the lack of compelling evidence, we have to reverse the judgment and order of the High Court by setting aside the conviction of the accused persons under Section 304B of the IPC. The impugned judgment of the High Court cannot be sustained and the same is accordingly set aside. The appellants are acquitted of all the charges. The appellants are on bail, their bail bonds stand discharged.

14. The appeals are allowed accordingly.