
(2016) 06 AHC CK 0029
In the Allahabad High Court
Case No : Criminal Appeal No. 2115 of 2007

Anil Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2016) 96 ACrC 30 : (2016) 5 ALLJ 78

Hon'ble Judges : Sudhir Kumar Saxena and Alok Kumar Mukherjee, JJ.

Bench : Division Bench

Advocate : I.S. Singh Vatsa and R.C. Yadav, Yogesh Srivastava, Advocates, for the Appellant; Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

1. This criminal appeal is directed against the judgment and order dated 14.03.2007 passed by Additional Sessions Judge, court no. 16, Deoria in S.T. No. 66 of 1999 convicting appellants i.e husband, mother-in-law, under Sections 498-A, 304-B I.P.C. Under Section 304- B I.P.C. husband-appellant has been sentenced to life imprisonment, mother-in-law Smt. Prabhawati has been sentenced to rigorous imprisonment of seven years. Both have been sentenced to 2 years and one year R.I. respectively under Section 498-A I.P.C. in addition to fine of Rs. 5000/- upon both the convicts. Sister-in-law Meena has been acquitted.

2. Briefly stated prosecution case is that Meera was married to appellant Anil Yadav in the year, 1994. Mother-in-law, two sisters-in-law and husband were harassing her for demand of Motorcycle as additional dowry. Since father of the victim was not in a position to fulfil the additional demand, she was not sent after "Gauna". They came to know that Meera has been murdered on 09.09.1998. A report was lodged by Lallan Yadav, whereupon after investigation charge-sheet had been submitted against Anil Yadav, Smt Prabhawati Devi (mother-in-law) and Meena (sister-in-law). Second sister-in-law Sheela was not

charge-sheeted.

Accused persons denied charge and claimed trial.

3. Prosecution examined 12 witnesses. Lallan Yadav (PW-1), maternal uncle of deceased, Vashisht Yadav (PW-3), father of deceased, Ram Pravesh Yadav (PW-4), mediator of marriage. W-9 Shiv Prasad Chaudhary, first cousin of Vasistha states that during marriage, at the time of "Khir Khawai" a customary ceremony, motorcycle was demanded by Anil. Ram Narayan Yadav (PW-12) who was present in all the ceremonies, had specifically stated that no demand of dowry was made. Dr. N.B. Gupta (PW-5) has found that death occurred on account of asphyxia due to three broken rings of trachea. No external injury was found by the doctor. Sukhdev and Ram Awadh did not support prosecution. Trial Judge relying upon the entire evidence convicted and sentenced the appellants as above.

4. We have heard Sri R.K. Singh, learned counsel for the appellants and learned A.G.A. appearing for the State.

5. Submission of Sri R.K. Singh, learned counsel for appellants is that there is no evidence of cruelty caused by mother-in-law and she could not be benefited by any additional demand of Motorcycle. Further submission is that there is no evidence that husband had caused dowry death.

6. From the evidence of maternal uncle, father and mediator, we find that general allegations have been made against mother-in-law, husband and sister-in-law for fulfilling the additional demand of Motorcycle. No specific allegation of harassment and torture has been made against mother-in-law. Lallan Yadav merely says that Anil's mother reminded them of promise to give motorcycle. Allegation of abusing and beating has been made against husband. On the same evidence, sister-in-law has been acquitted. Vasistha Yadav (PW-3) does not say anything about cruelty caused by Prabhawati soon before death. Ram Pravesh Yadav (PW-4) is father-in-law of informant Lallan Yadav. In examination-in-chief, he does not say anything regarding cruelty caused by Prabhawati. Ram Naresh Yadav (PW-12) negates the demand of motorcycle or cruelty. Since no specific evidence of cruelty for additional demand of dowry by mother-in-law has been found, conviction of mother-in-law cannot be sustained, as such, she deserves to be acquitted. Even trial court has not found any specific role attributable to Prabhawati.

7. So far as case of husband Anil Yadav is concerned, we find that death has taken place within seven years of marriage. There is specific case of demand of Motorcycle and cruelty caused therefor. Cause of death has been found to be asphyxia due to three broken rings of trachea. In these circumstances, presumption may be drawn that dowry death has been caused. Refusal to send the wife to her relatives after "Gauna" may also amount to cruelty.

8. In these circumstances, all the ingredients, attracting Section 304-B I.P.C., are

available and prosecution has successfully proved the above ingredients. Anil Yadav (husband) has failed to lead any cogent evidence to rebut the presumption. The allegation that he was not present on the spot, is not established from the record. Vivek Gupta, DW-1 does not say that Anil was present at Kota on the day of occurrence.

9. In these circumstances, we are inclined to agree with the view taken by the trial court that prosecution has successfully proved its case against the husband. As such, conviction of husband under Sections 304-B and 498-A I.P.C. is liable to be maintained.

10. Lastly, it was urged by Sri R.K. Singh, learned counsel for the appellants that maximum punishment awarded is excessive. Marriage has taken place four years ago. No external injury has been found on the body of deceased and there is no evidence of cruelty. In 2006 age of Anil Yadav was 28 years (see statement under Section 313 Cr.P.C.), as such, in 1998 he must be nearly 20 years. He is lying in jail for last 9 years. He must have been in jail for some time during trial. Prosecution has failed to establish this case as "rare" case. Punishment of life imprisonment can be awarded under Section 304-B I.P.C. but specific reasons have to be given. In support of his submission, appellants' counsel has placed reliance upon the decision of Hon'ble Apex Court rendered in the case of Hari Om v. State of Haryana & Another [2014 Law Suit (SC) 894]. Paragraphs 21 to 25 of the judgment are being reproduced below:

"21. This issue has been the subject matter of debate before this Court in several cases, which arose out of Section 304-B read with Section 498-B and wherein this Court while interpreting the expression "may" occurring in Section 304-B IPC held that it is not mandatory for the Court in every case to award life imprisonment to the accused once he is found guilty of offence under Section 304-B. It was held that the Court could award sentence in exercise of its discretion between seven years to life imprisonment depending upon the facts of each case. It was held that in no case it could be less than seven years and that extreme punishment of life term should be awarded in "rare cases" but not in every case.

22. In the case of Hem Chand v. State of Haryana, (1994) 6 SCC 727, the courts below had awarded life term to the accused under Section 304-B read with Section 498-A but this Court reduced it to 10 years. This was also a case where the accused was a police officer who had suffered life imprisonment. This Court held as under:

"7..... the accused-appellant was a police employee and instead of checking the crime, he himself indulged therein and precipitated in it and that bride-killing cases are on the increase and therefore a serious view has to be taken. As mentioned above, Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be

in rare cases and not in every case.

8. Hence, we are of the view that a sentence of 10 years? RI would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years? RI. ?."

23. Similarly this Court in *State of Karnataka v. M.V. Manjunathgowda and Anr.*, (2003) 2 SCC 188, while convicting the accused under Section 304-B awarded 10 years imprisonment in somewhat similar facts.

24. Recently in *G.V. Siddaramesh v. State of Karnataka*, (2010) 3 SCC 152, this Court while allowing the appeal filed by the accused only on the question of sentence altered the sentence from life term to 10 years on more or less similar facts. Hon?ble H.L. Dattu, J. (as His Lordship then was) speaking for the Bench held as under:

"31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B IPC. However, his sentence of life imprisonment imposed by the courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years? rigorous imprisonment would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years? rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed."

25. Applying the principle of law laid down in the aforementioned cases and having regard to the totality of facts and circumstances of this case, we are of the considered opinion that the ends of justice would meet, if we reduce the sentence of the appellant from life imprisonment to that of 10 years. In our view, this case does not fall in the category of a "rare case" as envisaged by this Court so as to award to the appellant the life imprisonment. That apart, we also notice that while awarding life imprisonment, the courts below did not assign any reasons."

(emphasis supplied)

11. Any conviction recorded on the basis of presumption has to be treated differently. For giving maximum sentence of life imprisonment under Section 304-B I.P.C., there must exist special reasons on record so as to make it a rare case. A brutal killing within short span of marriage, pre and post conduct of accused and some aggravating factors could furnish some indication. In the absence of special reasons justifying it to be a rare case, maximum sentence of life imprisonment should be avoided.

12. In the case at hand, we find that appellant is a young man lying in jail for

last nine years. Death had taken place after four years of marriage. There are no external injuries. There are other circumstances apparent from record which persuade us to reduce the sentence.

13. Perusal of impugned order shows that trial Judge has not given any reason for awarding the maximum sentence. Moreover, after going through the record, we are unable to hold that it is a rare case attracting maximum penalty. In our opinion, sentence needs alteration.

Consequently, appeal is partly allowed.

14. Judgment and order dated 14.03.2007 is modified to the extent that:

(a) Conviction of Prabhawati mother-in-law under Section 498- A, 304-B I.P.C. is set aside. She stands acquitted of the charges framed against her.

(b) Conviction of Anil Yadav under Sections 304-B, 498-A I.P.C. is maintained.

(c) Anil Yadav is sentenced for a period of 10 years R.I. under Section 304-B I.P.C.

(d) Sentence awarded to Anil Yadav under Section 498-A I.P.C. is maintained.

(e) Sentences will run concurrently. Period already spent in jail will be adjusted.

15. Record be remitted forthwith.