

(2010) 09 UK CK 0087

In the Uttarakhand High Court

Case No : Criminal Appeal No. 332 of 2003

Diwani Ram @ Puran Chandra

APPELLANT

Vs

State of Uttaranchal (Uttarakhand)

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207

Evidence Act, 1872 — Section 113B

Penal Code, 1860 (IPC) — Section 302, 304B, 304B(2), 498A

Citation : (2011) 1 NCC 239 : (2011) 3 UC 2290 : (2010) 2 UD 440

Hon'ble Judges : Prafulla C. Pant, J; Nirmal Yadav, J

Bench : Division Bench

Judgement

Prafulla C. Pant, J.—These two appeals are directed against judgment and order dated 12.09.2003, passed by Sessions Judge, Almora, in Sessions Trial No. 40 of 2002, whereby said court has convicted the appellants Diwani Ram @ Puran Chandra and Shanti Devi under Sections 304B, and 498A, Indian Penal Code, 1860 (for short IPC). Accused/appellant Diwani Ram has been sentenced to imprisonment for life u/s 304B IPC, and rigorous imprisonment for a period of three years u/s 498A IPC. Accused/appellant Shanti Devi has been sentenced to rigorous imprisonment for a period of ten years u/s 304B IPC, and rigorous imprisonment for a period of two years u/s 498A IPC.

2. Heard learned Counsel for the parties and perused lower court record.

3. Prosecution story, in brief, is that accused/appellant Diwani Ram @ Puran Chandra got married to Uma (deceased) on 28.04.1998. She used to live in her husband's house in Village Ghurso, within the limits of Mahila Police Station, Almora. It is alleged by the prosecution that the accused/appellant Diwani Ram demanded Rs. 50,000/- as dowry, and due to non fulfillment of said demand she was subjected to cruelty. On 26.04.2002, at about 6:30 A.M., complainant P.W.2 Dheeraj Kumar (brother of the deceased) received information that his sister (Uma) was seriously ill. On this, the complainant rushed his sister's village and

saw that his sister Uma was lying dead. When he inquired about the cause of death from the in-laws of the deceased, he was told that on 25.04.2002, at about 6:30 P.M., while cutting vegetables in the courtyard, deceased suffered injuries on account of lightning of thunder storm. The complainant suspected that she has been got killed by accused/appellants Diwani Ram (husband of the deceased) and Shanti Devi (mother-in-law of the deceased) due to non fulfillment of demand of dowry. He lodged first information report (Ex. A1). On the basis of said report (Ex. A1) lodged by P.W.2 Dheeraj Kumar at Mahila Police Station, Almora, a crime No. 4 of 2002 was registered at the police station against accused/appellants Diwani Ram and his mother relating to offence punishable u/s 304B IPC. P.W.5, R.S. Sharma, Dy. Superintendent of Police, investigated the crime. He took the dead body of the deceased in his possession and got prepared inquest report (Ex. A3) on 26.04.2002, at about noon. Necessary connecting papers were also got prepared including sketch of the dead body. The dead body was sent for postmortem examination in a sealed condition. P.W.3 Dr. T.K. Pant, conducted post-mortem examination on the dead body on 26.04.2002, at about 4:15 P.M. Though, he found a lacerated wound on the front of the neck but the cause of death could not be ascertained as mentioned by him in the autopsy report (Ex. A2). He got viscera preserved. Preserved viscera appears to have been sent to the Forensic Science Laboratory from where report dated 08.08.2002 (Ex. A4) was received. As per the report received from the forensic laboratory it was found that the pieces of stomach, intestine, liver, kidney, and spleen contained organo phosphorus insecticide. After interrogating the witnesses, and on completion of investigation, the Investigating Officer submitted charge sheet (Ex. A5) against accused/appellants Diwani Ram @ Puran Chandra and his mother Shanti Devi for their trial in respect of charge of offences punishable u/s 304B, and 498A IPC.

4. The Chief Judicial Magistrate, Almora, on receipt of the charge sheet (Ex. A5), after giving necessary copies to the accused as required u/s 207 Cr.P.C., committed the case to the court of sessions for trial. Learned Sessions Judge, Almora, on 01.10.2002, after hearing the parties, framed charge of offences punishable u/s 498A, and 304B, in alternative 302 IPC, against both the accused namely Diwani Ram, and Shanti Devi who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W.1 Nandi Devi (mother of the deceased), P.W.2 Dheeraj (complainant and brother of the deceased), P.W.3 Dr. T.K. Pant, who conducted post-mortem examination, P.W.4 Vibha Pandey, Village Pradhan/Sabhapati of Village Ghurso, P.W.5 R.P. Sharma, Dy. Superintendent of Police, who investigated the crime, and P.W.6 constable clerk, Rekha Joshi, who registered the crime at the police station and made entry in the General Diary. Oral and documentary evidence was put to the accused in reply to which they admitted marriage of Uma (deceased) with Diwani Ram (accused/appellant). However the rest of the evidence was alleged to be false. Both the accused pleaded that they were not at home when deceased died. However, no evidence in defence was adduced. The trial court, after hearing the parties, found both the

accused namely Diwani Ram and Shanti Devi guilty of charge of offences punishable u/s 304B, and 498A IPC. The trial court found that the charge of offence punishable u/s 302 is not proved against anyone of the accused and both of them were acquitted of said charge (302 IPC). Aggrieved by said judgment and order dated 12.09.2003, passed by Sessions Judge, Almora, in Sessions Trial No. 40 of 2002, these two appeals were filed separately by the two convicts.

5. Before further discussion we think it just and proper to mention the ante-mortem injury found on the person of the deceased by P.W.3 Dr. T.K. Pant, who conducted post-mortem examination on 26.04.2002, at 4:15 P.M., and prepared the autopsy report (Ex. A2) the same is being reproduced below:

one lacerated wound on the front of the neck above thyroid cartilage size 12cm X 0.7mm.

Nothing incriminating was found on the internal examination. However, one month old fetus was found in the uterus of the deceased. According to the medical officer cause of death could not be ascertained hence viscera was preserved.

6. Report received from the Forensic Science Laboratory on chemical examination of viscera is Ex. A4 on the record in which it is reported that the pieces of stomach, intestine, liver, kidney, and spleen contained organo phosphorus insecticide.

7. It is relevant to mention here that Section 113B of Indian Evidence Act, 1872, provides that 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 had 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. The explanation to the Section provides that expression "dowry death" shall have the same meaning as in Section 304B of IPC. Section 304B of the IPC defines "dowry death" and provides punishment for said offence. Section 304B IPC provides that 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 other 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. Sub-Section 2 of Section 304B further provides that whoever commits dowry death shall be punished for imprisonment for a term which may not be less than seven years but which may extend to imprisonment for life. It is relevant to mention here that Section 498A provides punishment for an offence of cruelty by husband or a relative of husband of a woman.

8. P.W.1 Nandi Devi, mother of the Uma (deceased) has stated that whenever she (Uma) came to her parental house told that her husband and mother-in-law used to demand dowry and they subjected her to cruelty for non fulfillment of

demand of dowry. However she failed to disclose specific item or specific amount of demand of dowry. What she has stated is that at times accused used to demand Rs. 10,000/ -, Rs. 20,000/ -, and Rs. 30,000/ -. The aforesaid statement of P.W.1 Nandi Devi quite confusing and vague. In the first information report (Ex. A1) the amount of dowry is mentioned as Rs. 50,000/ -. P.W.1 Nandi Devi, in her cross-examination, disclosed that in the month of March she had been to her daughter's place, and there was everything well in her house.

9. P.W.2 Dheeraj Kumar (brother of the deceased) has stated that his sister (Uma) whenever came to her parental house, she used to disclose regarding her harassment due to non fulfillment of demand of dowry. This witness also states that (Uma) disclosed that sometimes Rs. 10,000/ -, sometime Rs. 20,000/ - and sometime Rs. 50,000/ - used to be demanded by the accused. Like P.W.1 Nandi Devi, this witness is also evasive in disclosing the exact amount or particular item as to demand of dowry. Disclosure by P.W.2 Dheeraj is the hearsay evidence as he states in his examination in chief that his mother (Nandi Devi) told him after the death of Uma about the demand of dowry. What has been stated by this witness (P.W.2) in his examination further weakens the evidence as to the demand of the dowry. In the cross-examination P.W.2 Dheeraj Kumar states that he used to leave Uma to her in -laws place, and never any demand of dowry was made.

10. P.W.4 Vibha Pandey, who is Village Pradhan/Sabhapati has stated that she was never told by deceased relating to demand of dowry. This witness was declared hostile by the prosecution.

11. Having appreciated the evidence on record on the point of demand of dowry, in our opinion, since the prosecution has utterly failed in proving the factum of demand of dowry, or cruelty on account of non-fulfillment of demand of dowry as such it cannot be said that charge of any of the offences punishable u/s 498A or that of 304B IPC is proved against anyone of the accused/appellants. The presumption u/s 113B of the Indian Evidence Act 1872, would have arisen only after the prosecution had proved the factum of demand of dowry and harassment for non fulfillment of demand of dowry. Therefore, we are of the opinion that the trial court has not correctly appreciated the evidence on record.

12. For the reasons as discussed above, since the charge of offences punishable u/s 498A, and 304B IPC are not proved against the accused Diwani Ram, and accused Shanti Devi therefore both the appeals deserve to be allowed. Accordingly, both the appeals are allowed. Impugned judgment and order dated 12.09.2003, passed by learned Sessions Judge, Almora, in Sessions Trial No. 40 of 2002, is hereby set aside. Accused/appellants Diwani Ram @ Puran Chandra, and Shanti Devi are acquitted of the charge of offences punishable u/s 498A, and 304B IPC. Accused/appellant Shanti Devi is on bail. She need not to surrender. Her bail bonds are discharged. Accused/appellant Diwani Ram @ Puran Chandra who is in jail, shall be set at liberty forthwith, provided that he is not wanted in connection with any other crime. Let the copy of this judgment be sent to the

Superintendent of concerned Jail. Also, lower court record be sent back.