
(2010) 07 UK CK 0015

In the Uttarakhand High Court

Case No : Criminal Appeal No. 344 of 2008

Jagmohan Singh Bisht (In Jail)

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 304B, 304B(2), 306, 498A

Citation : (2011) 3 UC 1767

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Rajendra Kotiyal, for the Appellant; M.A. Khan, Brief Holder, for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973 (for short Code of Criminal Procedure) is directed against judgment and order dated 03.12.2008, passed by Additional Sessions Judge/I Fast Track Court, Nainital, in Sessions Trial No. 57 of 2007, State v. Jagmohan Singh Bisht, whereby said court has convicted the Appellant Jagmohan Singh Bisht u/s 304B of Indian Penal Code, 1860 (for short IPC) and one punishable u/s 4 of Dowry Prohibition Act, 1961, and sentenced the convict to rigorous imprisonment for a period of 7 years (under Section 304B IPC), and rigorous imprisonment for a period of 1 year and directed to pay fine of Rs. 2,000/- u/s 4 of Dowry Prohibition Act, 1961.

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

3. Prosecution story in brief is that on 29.11.2002, Appellant Jagmohan Singh Bisht got married to Prabha @ Pratibha (deceased), daughter of complainant Ram Singh Adhikari (P.W.1). The deceased used to live in her husband's house in Haldwani after her marriage. Ason was born out of the wed-lock. In the first information report (Ex. A1) complainant Ram Singh Adhikari (P.W.1) has alleged

that after the marriage his son-in-law Jagmohan Singh Bisht (Appellant), Chandra Bisht (since acquitted) and Kailash Bisht (since acquitted) used to harass the deceased for non fulfilment of demand of dowry. Chandra Bisht was mother-in-law and Kailash Bisht was brother-in-law (JETH) of the deceased. It is also alleged that Appellant Jagmohan Singh Bisht was a drunkard and he used to behave with his wife (deceased) with cruelty. On 27.01.2007, at about 9:50 A.M. Chandra Bisht rang Surendra Singh (P.W.2), brother of the deceased, to reach immediately in Sushila Tiwari Hospital. On this, Surendra Singh (P.W.2) rang Jagmohan Singh (Appellant) who told that Prabha @ Pratibha has committed suicide and expired. On this, Surendra Singh alongwith his mother Meena Adhikari (P.W.3) reached hospital but by then the body of Prabha @ Pratibha had already been taken to mortuary room and police had been informed about the unnatural death. The police prepared inquest report (Ex. 2) in the presence of Surendra Singh (P.W.2) and others, and got sent the dead body for post-mortem examination. On the very day i.e. On 27.01.2007, Dr. C.P. Bhainsora (P.W.5) conducted post-mortem examination on the dead body and prepared autopsy report (Ex. A4), wherein he opined that the deceased had died of asphyxia as a result of antemortem hanging. Meanwhile, the police took CHUNNI/DUPATTA from the house of the Appellant which was used by the deceased for committing suicide, and prepared memorandum of recovery (Ex. 3) in the presence of Surendra Adhikari (P.W.2) and his uncle Himanshu Panwar. Complainant Ram Singh Adhikari (P.W.1) got information on phone at Karanprayag (District Chamoli) where he was busy with his contract work. He rushed to Haldwani and reached there by the evening. On next day i.e. 28.01.2007 he got lodged first information report (Ex. A1) at 12:35 P.M. (noon) which was registered as crime No. 336 of 2007 relating to offences punishable u/s 498A, 304B I.P.C., and one punishable u/s 4 of Dowry Prohibition Act, 1961, against the Appellant Jagmohan Singh Bisht, his mother Chandra Bisht and his brother Kailash Bisht. Circle Officer Hukum Singh Khati, (P.W. 10) investigated the crime. After interrogation of the witnesses and collecting the evidence, Investigation Officer submitted charge sheets (Ex. A11 and Ex. A12) against the Appellant Jagmohan Singh Bisht and his mother Chandra Bisht and his brother Kailash Bisht, for their trial in respect of offences punishable u/s 498A and 304B I.P.C., and one punishable u/s 3/4 of Dowry Prohibition Act, 1961.

4. On receipt of the charge sheets ,the Additional Chief Judicial Magistrate, after giving necessary copies to the accused as required u/s 207 Code of Criminal Procedure , committed the case to the court of Sessions. In the sessions court, the case committed against accused/Appellant Jagmohan Singh Bisht, was registered as sessions trial No. 57 of 2007, and the case against the other two was registered as sessions trial No. 113 of 2007. Both the cases were tried together. After hearing, learned Sessions Judge framed charge of offences punishable u/s 498A and 304B I.P.C., and one punishable u/s 4 of Dowry Prohibition Act, 1961, against the accused/Appellant Jagmohan Singh Bisht, who pleaded not guilty and claimed to be tried. A separate charge was framed against

other two and they too pleaded not guilty. On this, prosecution got examined P.W.1 Ram Singh (complainant and father of the deceased), P.W.2 Surendra Singh Adhikari (brother of the deceased), P.W.3 Smt. Meena Adhikari (mother of the deceased) P.W.4 Bhagwati Devi (maternal aunt of the deceased) P.W.5 Dr. C.P. Bhainsora (who conducted the autopsy) P.W.6 Rajkumar Narang (declared hostile) P.W.7 Laxmikant Mehtolia (declared hostile) P.W.8 Pratap Singh, Tehsildar, P.W.9 Constable Ashok Kumar and P.W.10 Hukum Singh Khatri (Investigating Officer). Oral and documentary evidence was put to the accused in reply to which they alleged that the evidence against them was false. However, the factum of marriage and that of death of his wife was admitted by the accused/Appellant Jagmohan Singh Bisht. At the end of his reply u/s 313 of Code of Criminal Procedure, he submitted that his wife was short tempered. It is also pleaded that earlier also in the year 2003-04 at Pithoragarh she created problem whereafter she was shifted to Haldwani. In defence no oral evidence was adduced. After hearing the parties the trial court found that as against accused Chandra Bisht and Kailash Bisht charge was not proved beyond reasonable doubt but the accused/Appellant Jagmohan Singh Bisht was found guilty of the charge in respect of offence punishable u/s 304B I.P.C., and one punishable u/s 4 Dowry Prohibition Act, 1961. He stood acquitted in respect of other charges. After hearing on sentence, the trial court sentenced the convict to rigorous imprisonment for a period of 7 years u/s 304B I.P.C., and rigorous imprisonment for a period of 1 year and directed to pay fine of Rs. 2,000/-under Section 4 of Dowry Prohibition Act, 1961. It is further directed by the trial court that the convict Jagmohan Singh Bisht shall undergo further rigorous imprisonment for a period of one month in default in payment of fine. Aggrieved by said judgment and order dated 03.12.2008, passed by Additional Sessions Judge/1 Fast Track Court, Nainital, in Sessions Trial No. 57 of 2007 this appeal was preferred by the Appellant.

5. Before further discussion, this Court thinks it just and proper to mention the antemortem injuries found on the body of the deceased by Dr. C.P. Bhainsora (P.W.5) who recorded the same in autopsy report (Ex. A4) on 27.01.2007, at 2:00 P.M. The same are being reproduced below:

(i) Legators mark:

16x1.5 cm non continuous oblique ligature mark seen on the upper part of neck between larynx and chin on both side of neck (left and right) mark in the direction upward and backward and disappeared at the end of mandible on left side and just below the ear lobe on the right side. No mark found on the back of the neck.

(ii) Knot marks also not visible.

(iii) The skin under the ligature mark was parchmented.

(iv) On dissection of neck, tissue under the ligature mark was dry, white, glistening. Hyoid bone, thyroid cartilage, cricoid cartilage, trachea were intact.

6. The statement of P.W.5 Dr. C.P. Bhainsora, read with autopsy report (Ex.4)clearly establishes that Prabha @ Pratibha (wife of the Appellant) has committed suicide on 27.01.2007. Now this Court has to see whether the charge of offence punishable u/s 304B I.P.C, and one punishable u/s 4 of Dowry Prohibition Act, 1961 is proved on the record as found by the trial court, or not. Section 304B of I.P.C, defines offence of dowry death as under: -" Where the death of 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.

Sub-section (2)of Section 304B provides that whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. Section 4 of Dowry Prohibition Act 1961, provides that if any person demands, directly or indirectly from the parents or other relatives or guardian of a bride or bride-groom as the case may be any dowry he shall be punished for imprisonment for a term which shall not be less than 6 months but which may extend to two years and with fine which may extend to 10,000/-rupees. It further provides that the court may for adequate and special reasons to be mentioned in the judgment impose sentence of imprisonment for a term less than 6 months.

7. P.W.1 Ram Singh, complainant has stated that his daughter Prabha @ Pratibha got married to accused/Appellant Jagmohan Singh Bisht on 29.11.2002, he has further stated that one son was born out of the wed-lock after one year of the marriage of his daughter. However, he has alleged that the accused/Appellant and his mother and brother used to demand dowry and treated Prabha (deceased) with cruelty. He has further stated that accused/Appellant Jagmohan Singh Bisht used to drink liquor and spent money on his friends to which Prabha used to object. Accused/Appellant Jagmohan Singh Bisht on such protest used to beat his wife. He also used to say that he would divorce her and get married to another woman.

8. P.W.2 Surendra Singh, brother of the deceased and P.W.3 Smt. Meena Adhikari,mother of the deceased, have repeated same story in their examination in chief. In support of their statement P.W.4 Bhagwati Devi (maternal aunt of the deceased) is also examined who got settled the marriage between Prabha (deceased) and the accused/Appellant Jagmohan Singh.

9. From the statement of P.W1 Ram Singh (father of the deceased) P.W.2 Surendra Singh (brother of the deceased) and P.W.3 Smt. Meena Adhikari (mother of the deceased) it is clear that marriage between accused/Appellant Jagmohan Singh Bisht and Prabha @ Pratibha (deceased)was solemnised in ARYASAMAJ TEMPLE. The marriage in ARYASAMAJ TEMPLE are normally solemnised without dowry. P.W.1 Ram Singh in his cross-examination admits that

whatever dowry was given by him in the marriage that was on his own volition and not due to demand of dowry. He has also admitted in the cross-examination that it was the groom side who insisted that the marriage be performed in ARYASAMAJ TEMPLE. He has further admitted that marriage was solemnised in ARYA SAMAJ TEMPLE so that it is performed with simplicity. He has also stated in his cross-examination that accused/Appellant never made any direct demand of dowry from him. P.W.2 Surendra Singh has also stated in his cross-examination that his sister Prabha (deceased) never told him relating to dowry harassment rather she used to complain that her husband beats her. P.W.3 Smt. Meena Adhikari mother of the deceased has also admitted in her cross-examination that his son-in-law (Appellant) never made any demand of money from her. However, she has stated that in the cross-examination that though the Appellant never had liquor in her presence but he used to come drunk and once he (Appellant) misbehaved with his wife in her presence in her house. The statement of P.W.4 (maternal aunt of the deceased) contents shows that the allegations of demand of dowry and harassment are hear-say evidence as she has stated that she was told about this by P.W.3 Meena Adhikari.

10. Above discussion of evidence makes this Court believe that the allegations of demand of dowry and harassment due to that reason cannot be said to have been proved beyond reasonable doubt. But as to the fact that the behaviour of the Appellant was cruel to his wife as he used to beat her after getting drunk is clearly established on record beyond reasonable doubt. From the facts and circumstances of the case, it appears that the said conduct on the part of the Appellant constitutes abetment of committing suicide by his wife Prabha @ Pratibha. That being so, infact from the evidence on record what is proved is, the offence punishable u/s 306 I.P.C., against the present Appellant Jagmohan Singh Bisht, and not the charge of offence punishable u/s 304B .P.C., or one punishable u/s 4 of Dowry Prohibition Act, 1961.

11. For this reasons as discussed above, the Appellant is liable to be convicted u/s 306 I.P.C., and considering the facts and circumstances of the case, it just and proper to sentence the Appellant for rigorous imprisonment for a period of three years.

12. Accordingly, this appeal is partly allowed. The impugned judgment and order dated 03.12.2008, passed by Additional Sessions Judge/I Fast Track Court, Nainital, in session trial No. 56 of 2007, is set aside so as it relates to the conviction and sentence recorded u/s 304B I.P.C., and one punishable u/s 4 of Dowry Prohibition Act, 1961, against the Appellant. He is Acquitted of said charge. The Appellant Jagmohan Singh Bisht is convicted u/s 306 I.P.C, and sentenced to rigorous imprisonment for a period of three years. He is in jail for a period more than three years as he remained in jail during period of investigation, trial of the case, and pendency of this appeal. The sentence awarded by this Court shall stand adjusted against the period undergone by the Appellant. In the circumstances, it is directed that Appellant Jagmohan Singh

Bisht be set at liberty if not wanted in connection with any crime. Registry is directed to send the lower court record back alongwith copy of this judgment for its compliance. Also, copy of this judgment be sent to the Superintendent of the Jail concerned.