

(2015) 11 AHC CK 0093
In the Allahabad High Court
Case No : Criminal Appeal No. 634 of 2011

Kanhaiya Lal Goswami

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 354(2)
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B, 304-B, 498A, 498-A

Citation : (2015) 11 AHC CK 0093

Hon'ble Judges : Surendra Vikram Singh Rathore and Pratyush Kumar, JJ.

Bench : Division Bench

Advocate : Janardan Singh, for the Appellant

Final Decision : Partly Allowed

Judgement

Surendra Vikram Singh Rathore, J.—Heard learned counsel for the appellant, learned A.G.A. for the State and perused the material available on record.

2. The instant criminal appeal has been preferred by the appellant-Kanhaiya Lal @ Nangu Goswami challenging the judgment and order dated 22.12.2010 passed by learned Additional Sessions Judge/F.T.C. Court No. 3, Gonda, in Sessions Trial No. 122 of 2010, relating to Case Crime No. 394 of 2009, under Sections 498-A , 304-B IPC and Section 3 /4 of Dowry Prohibition Act, Police Station Karnailganj, District Gonda, whereby the appellant Kanhaiya Lal @ Nangu Goswami was convicted for the offence under Section 498A IPC and was sentenced to undergo rigorous imprisonment for a period of three years and also with fine of Rs. 5000/-, he was further convicted for the offence under Section 304-B IPC and was sentenced with imprisonment for life and also with fine of Rs. 5000/- and he was further convicted for the offence under Section 4 of Dowry Prohibition Act and was sentenced to undergo rigorous imprisonment for a period of one year's and also with fine of Rs. 500/-. In default of payment of entire fine amount

appellant was directed to undergo three months" additional simple imprisonment.

3. All the sentences were directed to run concurrently.

4. The other appellant Jagdish Prasad, who happens to be father of the present appellant, was acquitted of the charges levelled against him extending him the benefit of doubt.

5. It is a case of dowry death. Appellant happens to be husband of the deceased. The FIR of this case was lodged by Pramod Kumar who happens to be brother of the deceased. It was alleged that the marriage of the deceased had taken place about 3 years prior to her death with appellant Kanhaiya Lal @ Nangu Goswami. Appellant and his family members used to treat her with cruelty in connection with the demand of dowry. This demand of dowry and consequential ill treatment was narrated by the deceased several times to her family members. Thereafter, the family members of the deceased made an effort to pacify the appellant but ultimately their efforts failed and appellant threatened that unless and until a motorcycle, a gold ring and colour television are not given in dowry then he will kill his second wife also as he has killed his first wife. It was also alleged that the deceased used to make phone call to her family members and used to tell them about the hell like conditions which she was facing and she also expressed apprehension that she may be killed any time. Panchayat was also conducted in this regard but that too was not obeyed by the appellant and their family members. They persisted their demand of dowry. On 08.08.2009 in the evening at 4.30 p.m. some person told him on phone that his sister has been murdered and has been thrown in a pond of the village. The said person also asked them to come immediately otherwise dead body shall be disposed off. On this information the complainant, alongwith other persons went to village of the appellant. They reached there at about 6.30 p.m. and found that dead body of the deceased was lying on a cot and the same was in wet condition and there were also marks of injury on the body. Several persons of village told them that the deceased was treated with cruelty in connection with demand of dowry and whenever any person of the village tried to intervene then appellant and his family members used to say that it is their internal family matter. On the basis of the FIR, the case was registered and investigation proceeded. Before the registration of this case the village Chowkidar had given information regarding unnatural death of wife of the appellant on the basis of which the police had come into action and inquest proceedings were conducted.

6. After registration of the case investigation proceeded and postmortem on the body of the deceased was conducted on 09.08.2009 at 3:00 p.m. and following ante-mortem injuries were found on the body of the deceased: a) Abrasion 1.5 cm x 1.00 cm on interior aspect of neck. On opening, congestion was present around neck, tissues and muscles around neck. Hyoid bone was fractured and there was congestion on the fracture site.

The cause of death was asphyxia due to strangulation. She was found pregnant

with full grown male child.

7. After completing the investigation, the charge-sheet was filed against both the accused appellant.

8. The case of the defence was of total denial. The appellant in his statement recorded under Section 313 Cr.P.C. has stated that in his absence his wife died because of some accident and before his arrival she was brought from the village pond to his house.

9. In order to prove its case, the prosecution has examined PW-1, the complainant of this case Pramod Kumar, PW-2 Bhawani Bux, father of the deceased, PW-3 Smt. Shrimati, mother of the deceased, PW-4 Dr. Nitin Gupta, who had conducted the postmortem on the body of the deceased, PW-5 Head Constable Vinod Kumar Yadav who has prepared the chik report and G.D. of this case, PW-6 Ram Murat who is also a witness of fact, PW-7 Circle Officer, Ravindra Kumar Verma, the Investigating Officer of this case, PW-8 Hari Sewak Shukul, S.I. who has prepared the inquest report on the information received from the village Chowkidar Satai, PW-9 Satai, Chowkidar, who has given information of unnatural death of the deceased at the police station.

10. On behalf of the defence, four defence witnesses namely DW-1 Ziledar, DW-2 Sadanand, DW-3 Sanghacharan, DW-4 Rajendra Prasad Singh were examined. All these defence witnesses were examined on the point of separate living of co-accused Jagdish Prasad who has been acquitted by the impugned judgment.

11. After appreciating the evidence on record, the trial court convicted the appellant as above. Hence the instant appeal.

12. Learned counsel for the appellant has submitted that he does not intend to challenge the finding of conviction of the appellant and he has restricted his arguments only on the point of sentence. It is submitted that it is a case under Section 304-B IPC and appellant has been awarded maximum sentence of imprisonment for life which is a very harsh punishment and has submitted that extreme penalty of imprisonment for life ought to be inflicted in rare cases of extreme brutality and the present case does not come within the ambit of such cases which deserves the extreme penalty.

13. Learned Additional Government Advocate has submitted that by the prosecution evidence their case stands proved. The defence evidence was only with regard to the separate living of the father of the present appellant. Since he has already been acquitted, therefore, the defence evidence becomes immaterial for the purpose of instant appeal.

14. Learned A.G.A. has also submitted that quantum of sentence is the discretion of the Court.

15. Though learned counsel for the appellant has not challenged the conviction but being the Court of first appeal, we have gone through the entire evidence

and impugned judgment.

16. Perusal of the evidence of PW-1 Pramod Kumar, PW-2 Bhawani Bux, PW-Smt. Shrimati and PW-6 Ram Murat clearly established that the deceased was married with the appellant about three years prior to her death. This fact has also not been challenged during cross examination nor any evidence to controvert this fact has been produced by the appellant in his defence. The fact of unnatural death stands fully established by the medical evidence as the cause of death was found to be strangulation. She was subjected with cruelty soon before her death also stands established by the fact that injury was found on her person. Apart from it, the evidence of the above named four witnesses of fact also clearly established that there was demand of dowry and in that connection the deceased was subjected to cruelty and harassment. Nothing could be elicited in their cross examination to render the evidence of these witnesses to be unreliable. All the circumstances necessary to draw the presumption under Section 113B of the Evidence Act are present and the appellant has utterly failed to rebut the said presumption. Hence, the finding of conviction recorded by the trial court was the correct conclusion drawn on the basis of evidence available on record. Therefore, the finding of the conviction need not to be interfered with.

17. It is submitted that the appellant has been in custody for the last about six years so a lenient view on the point of sentence may be taken. It is a case of dowry death which provides minimum sentence of 7 years which may extend upto imprisonment for life. Therefore, there is great discretion given by law to the Court in awarding the sentence in such nature of cases.

18. On the point of sentence, in case under Section 304-B I.P.C., Hon"ble the Apex Court in the case of Hem Chand Vs. State of Haryana, , in paragraph 7 of the judgment, has held as under:-

"Now coming to the question of sentence, it can be seen that Section 304B I.P.C. lays down 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."

The point for consideration is whether the extreme punishment of imprisonment for life is warranted in the instant case. A reading of Section 304B I.P.C. would show that when a question arises whether a person has committed the offence of dowry death of a woman that all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and

that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death shall presume to have caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in Section 304B I.P.C. also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied."

Hon"ble the Apex Court in the case of G.V. Siddaramesh Vs. State of Karnataka, has observed in paragraph 30 of the judgment as under:-

"On the point of sentence, learned Counsel for the appellant pointed out that the appellant is in jail for more than six years. The appellant was young at the time of incident and therefore, the sentence awarded by the trial court and confirmed by the High Court may be modified. In so far as sentencing under the section is concerned, a three Judge Bench of this Court in the case of Hem Chand Vs. State of Haryana, has observed that:

"Section 304B merely raises a presumption of dowry death and lays down that the minimum sentence should be 7 years, but it may extend to imprisonment for life. Therefore, awarding the extreme punishment of imprisonment for life should be used in rare cases and not in every case." Keeping in view the facts and circumstances of the case, this Court reduced the sentence from life imprisonment awarded by the High Court to 10 years R.I. on the above principle."

It is settled law that the courts are obliged to respect the legislative mandate in the matter of awarding of sentences in all such cases.

19. A reference on this point may also be made to the pronouncement of Hon"ble Apex Court in the case of Sunil Dutt Sharma Vs. State (Govt. of NCT of Delhi), wherein Hon"ble the Apex Court has considered the point of sentence in detail and has observed in para 5 as under:-

"The power and authority conferred by use of the different expressions noticed above indicate the enormous discretion vested in the Courts in sentencing an offender who has been found guilty of commission of any particular offence. No where, either in the Penal Code or in any other law in force, any prescription or norm or even guidelines governing the exercise of the vast discretion in the matter of sentencing has been laid down except perhaps, Section 354(2) of the Code of Criminal Procedure, 1973 which, inter-alia, requires the judgment of a Court to state the reasons for the sentence awarded when the punishment prescribed is imprisonment for a term of years. In the above situation, naturally, the sentencing power has been a matter of serious academic and judicial debate to discern an objective and rational basis for the exercise of the power and to

evolve sound jurisprudential principles governing the exercise thereof."

The case of Sunit Dutt Sharma (Supra) was also a case of dowry death. In that case the cause of death was strangulation and Hon"ble Apex Court was of the view that a sentence of 10 years rigorous imprisonment would be appropriate.

20. The trial court has also awarded sentence for the offence under Section 498-A I.P.C. but the offence under Section 498-A I.P.C. is included in the offence under Section 304-B I.P.C. So there was no need to pass separate sentence under Section 498-A I.P.C. It has been so held by Hon"ble the Apex Court in the case of Smt Shanti and Another Vs. State of Haryana, . Last lines of paragraph 5 reads as under:-

"5..... But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the sections and if the case is established they can be convicted under both the sections but no separate sentence need be awarded under Section 498-A in view of the substantive sentence being awarded for the major offence under Section 304-B ."

21. The appellant Kanhaiya Lal @ Nangu Goswami was aged about 29 years on 06.12.2010 when his statement under Section 313 Cr.P.C. was recorded. So at present he is a man aged about 34 years. Keeping in view the manner in which the incident has been committed, we are of the considered view that the facts of this case does not deserve the extreme penalty of imprisonment for life. On the contrary, the minimum sentence of seven years would also be inadequate for this offence. Therefore, in our considered view, rigorous imprisonment for a period of ten years would be adequate punishment for the offence under Section 304-B IPC in the facts of this case. Accordingly, this appeal deserves to be partly allowed on the point of sentence only. The appeal is hereby partly allowed. The conviction of the appellant under Section 304-B , 498-A IPC and Section 3 /4 Dowry Prohibition Act is hereby confirmed. However, the sentence of imprisonment for life for the offence under Section 304-B IPC is hereby modified with sentence for a period of ten years. No separate sentence is being passed for the offence under Section 498-A IPC. Sentence awarded by the trial court for the offence under Section 3 /4 of Dowry Prohibition Act is also hereby confirmed. The appellant Kahnaiya Lal @ Nangu Goswami is in custody. He shall serve out remaining part of his sentence as modified by this Court.

22. Office is directed to communicate this order forthwith to the court concerned and to send back the lower court record to ensure compliance.