
(2007) 12 AHC CK 0055
In the Allahabad High Court

Karak Bahadur Singh and Smt. Usha Singh	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

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

Citation : (2007) 12 AHC CK 0055

Hon'ble Judges : Barkat Ali Zaidi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Barkat Ali Zaidi, J.—Despite the law being made stiff and stern, bride-burning cases, continue, unabated. It seems, law alone, cannot go with the problem, primarily because, the problem is essentially social in character and contents and needs to be tackled at that level.

2. A historical phenomena will be illustrative. In the days of Cromwell in England pickpocketing had become rife and rampant. In order to curb the same, death sentence was introduced, as the punishment and the offenders were publicly hanged. It was, however, discovered that there were cases of, pickpocketing in the crowd, which had assembled to witness the public hanging.

3. What social measures are needed, for the eradication of the malady, is for the Government and the sociologists to determine. The justification for this deviated diatribe is that, it is in the interest of society at large, that Judges should put forward their views, because, it is before them, that the depth and dimensions of the crime are unfolded. Their views need to be given new consideration. The utility of in-house suggestions, is universally acknowledged.

4. In this case, accused-appellants a husband and wife were tried in S.T. No. 240 of 1995 on charges under Sections 498-A, 304-B I.P.C. and Section 3/4 of Dowry

Prohibition Act, and the Trial Sessions judge (Addl. Sessions judge Fast Track Court No. 1) Jaunpur by judgment and order dated 13.1.2006, found them guilty for the offences under Sections 498-A.P.C. and punished them each with 2 year R.I. plus fine Rs. 5,000/- in default 6 months further imprisonment, u/s 304-B I.P.C. 10 year R.I. plus fine Rs. 1,00,000/- each in default 2 year further imprisonment and u/s 3/4 of Dowry Prohibition Act with one and a half year Rigorous imprisonment making all the sentences to run concurrently.

5. According to the Prosecution version the deceased girl Luxmi alias gudea, aged 30 year was married to vijay singh son of the accused ? appellants three year prior to the occurrence. Accused kadak Bahadur, who originally belonged to district pratapgarh was permanently residing at village mariyahun from where the marriage of the deceased girl was performed the deceased was the daughter of P.W. 8 Harendra pratap Singh, younger brother of the informant krishna pratap Singh (who died during the Trial). After the manage the Leased went to the house to the accused, where she stayed there or about 2-3 months. It is alleged that whenever, the informant and his family members went to see the girl, she complained that her father-in-law was harassing her, for giving, a colour T.V. and a V.C.R. in dowry, and used to coerce her, for fulfilling the demands. It is said that obsessed by their behaviour, informant took away the girl to his house. Thereafter, accused Kadak Bahadur forced the informant for doing Vidayee" and on his assurance, that the girl will not be teased, further she was sent to live with her husband again on 20.2.1995. Laxmi again informed the informant that her in-laws were again harassing her, and on 14.3.1995, around 8.00 O'clock in the morning, when the informant along with his brother-in-laws" son P.W. 1 Arvind arrived at the house of accused, they found Laxmi lying with burns. Laxmi told informant that they were late now and her father-in-law and mother-in-law after sprinkling Kerosene oil on her, had set her afire and decamped. It is alleged that thereafter, informant arranged a tractor and sent Laxmi along with Pawan son of Kailash of village Mariyahun to District Hospital, Jaunpur and himself returned to village Atariya P.S. Newariya to inform his family members. At 12.00 O'clock, in the noon when the informant reached the hospital, he came to know that Laxmi was dead and her dead body was lying in mortuary. The informant, thereafter, got a written report Ext. K-1 typed, narrating all these facts, stating that accused Kadak Bahadur Singh and his wife Smt. Usha Singh after, giving her a beating for non-fulfillment of dowry had killed her by burning her and produced the report under his signature at P.S. Mariyahun District Jaunpur at 4.20 P.M.

6. On basis of this report Ext. K-1, the police registered a case vide Case Crime No. 55 of 1995 under Sections 498-A, 304-B I.P.C. and Section 3/4 of Dowry Prohibition Act, against the accused - appellants by preparing chick F.I.R Ext. K-9, investigation of which was assigned to CO. V.P. Singh and an entry to this effect (Ext. K-10) was made in the General Diary.

7. The investigation officer, thereafter, went to the place of occurrence and prepared site plan (Ext. K-11).

8. The information of the death of Smt. Laxmi Singh alias Gudia was sent by the District Hospital to Kotwali, Jaunpur, which was entered in the General Diary on 14.3.1995 at 12.50 O'clock in the noon, and Sub-inspector Radhey Shyam of Chauki Bhandari, P.S. Kotwali, Jaunpur was dispatched the same day to the mortuary of the District Hospital, where, on 15.3.1995, at 1.30 O'clock in the noon, he prepared Panchayatnama Lash (Ext. K-2) of deceased Laxmi and the relevant papers (Ext. K-13 to Ext. Ka-19) for her post mortem examination.

9. Deceased Laxmi was carried in a burnt state by her cousin, P.W. 1 Arvind Kumar Singh to District Hospital, Jaunpur where on 14.3.1995 at 10.50 O'clock in the morning, she was examined by P.W. 5 Dr. Ajaz Ahmad, who vide her injury report Ext. K-7 prepared by him, found, 100% burn of first and second degree on her person, and her pulse and blood pressure could not be recorded, smell of Kerosene oil from all over the body.

10. On 15.3.1995 around 4.30 O'clock in the noon, P.W. 3 Dr. R.S. Saroj performed the autopsy on the dead body of the deceased Laxmi and vide post mortem report Ext. K-5 prepared by them found 90% burns of first and third degree on her face, chest, back, both arms, both legs and both soles, her brain, larynx Jungs, lever and kidney congested and her blood vessels cherry red rigour mortis present on her body. The doctors opined that death of Laxmi was caused due to shock as a result of ante mortem burn.

11. The Investigation officer, after completion of the investigation, submitted a charge-sheet (Ext. Ka-11) against the accused.

12. Prosecution examined eight witnesses in its evidence.

13. P.W. 5 is Dr. Ajaz Ahmad, Deputy Chief Medical Officer. He has stated that he had examined Laxmi @ Gudiya on 14.3.1995 at 10.05 A.M. at District Hospital, Jaunpur and had found 100% burns of first and second degree on her person, her pulse and blood pressure could not be counted vide report Ext. Ka-6 prepared by him. He also proved her bed head ticket Ext. Ka.7.

14. P.W. 4 Bhola Prasad Gupta is the Record Keeper of District Hospital, Jaunpur. He proved entry of Medical examination report of the deceased lady entered by Dr. Ajaz Ahmad on 14.3.1995 in Injury Register of District Hospital, Jaunpur.

15. P.W. 2 is Constable Vashishtha Narayan Singh, who stated that Panchayatnama Lash Ext. Ka 2 of the dead body of Laxmi was prepared by S.I. Radhey Shyam on 14.3.1995 at District Hospital, Jaunpur, who, thereafter sent the dead body along with Panchayatnama Lash and necessary papers (Ext. Ka. 13 & Ext. Ka 19) for post mortem examination.

16. P.W. 3 is Dr. R.A. Saroj, Medical Officer, District Hospital, Jaunpur. He stated that he along with Dr. D.N. Tiwari conducted post mortem examination on the dead body of Laxmi on 15.3.1995 at 4.30 P.M. and had found 90% burns on her body vide post mortem report Ext. Ka. 5 prepared by them.

17. P.W. 7 is Constable Arjun Singh. He has stated that on basis of report Ext. Ka 1 of Krishna Pratap Singh at Police Station Mariyahun District Jaunpur on 14.3.1995 at 16.20 P.M., a Case Crime No. 55/1995 under Sections 498-A, 304-B and 3/4 Dowry Prohibition Act was instituted vide Chik F.I.R. Ext. Ka-9 against the accused. The investigation of which was assigned to CO. V.P. Singh and an entry to this effect in the G.D. is Ext. Ka. 10. This witness has also stated that Investigation Officer went to the place of occurrence, prepared site plan Ext. Ka 11 and after completion of the investigation, had submitted a charge-sheet which is Ext. Ka 12 on the record.

18. P.W. 1, is Arvind Kumar son of the brother-in-law of the complainant Krishna Kumar. He has stated that a day earlier to the occurrence, he visited the deceased Laxmi, and on her instructions, he had taken Krishna Kumar to the house of the deceased on the day of occurrence around 8 A.M., and when they reached there, they found Laxmi in a burnt state, and she had stated before them, that they were late and her in-laws had sprinkled kerosene oil, set her ablaze, and decamped. He has further stated that there was demand of dowry of a VCR and a Colour TV by the accused, and for non-fulfillment of it, the accused committed this crime. He has stated that he had taken her to the District Hospital, Jaunpur and admitted her there, where the nurse had handed over to him two letters recovered from the brasserie of the deceased lady, which are Ext. Ka. 2 and Ext. Ka. 3 on record said to have been written by the deceased Laxmi. He also proved a letter Ext. Ka. 4 alleged to have been written and sent by accused Kadak Bahadur to the father of deceased Laxmi.

19. P.W. 6 Charan Devi and P.W. 8 Harendra Prasad Singh are mother and father of deceased Laxmi. None of them have supported the demand for dowry, nor have they said that Laxmi was killed by her in-laws. While P.W. 6 mother unequivocally admitted this fact in cross-examination, her father P.W. 8 said the same in examination-in-chief itself. Both of them were declared hostile and cross-examined by the counsel for the State.

20. In their statements u/s 313 Cr.P.C. the accused denied the prosecution version, and pleaded, they have been falsely implicated. Accused Smt. Usha further stated that she was ill on the date of occurrence and was in the nursing home. Her husband accused Kadak Bahadur Singh has stated that letters filed by the prosecution claimed to have been written by the deceased were fabricated. He was attending his wife on the date of occurrence in the nursing home.

21. The accused examined three witnesses in defence. D.W. 1 Gudiya Singh, D.W. 2 Dr. Moti Lal and D.W. 3 Vikas Srivastava.

22. D.W. 1 Gudiya stated that the deceased was her friend, who used to write letters to her. She produced two letters Ext. Kha 1 and Ext. Kha 3 and their envelopes Ext. Kha 2 and Ext. Kha 4 and has stated that they are in the handwriting of deceased Gudiya and the handwriting in these letters does not tally with the handwriting in Ext. Ka 2 and Ext. Ka 3 and that Ext. Ka 2 and Ext.

Ka 3 are not in the handwriting of the deceased Gudiya.

23. D.W. 2 Dr. Moti Lal stated that he is private medical practitioner. The accused Smt. Usha had come to his hospital on 13.3.1995. She was suffering with palpitation and giddiness. She was retained for observation in the outdoor of the clinic till 15.3.1995 vide certificate Ext. Kha-5.

24. D.W. 3, Vikas Srivastava is the handwriting expert. He stated that he examined letters Ext. Ka 4, Ext. Ka 2 and Ext. Ka 3, and the handwriting in Ext. Ka 4 does not tally with the handwriting in the order sheet dated 7.11.2005, 16.11.2005, 21.11.2005 and 30.9.2005 with the signatures made by accused Kadak Bahadur Singh. He also stated that the handwriting in Ext. Ka 2 does not tally with the handwriting in Ext. Kha 3.

25. The Trial Judge found the prosecution evidence dependable and convicted the accused, as noted above.

26. That is what brings the appellants here in appeal.

27. Heard Sri V.P. Srivastava, Senior Advocate, assisted by Sri Kamal Krishna and Sri Amit Daga for the appellants and Sri Sanjay Sharma, Sri S.U. Khan, Addl. Government Advocate for the State.

28. The trial court's conviction is based primarily on two considerations;

(i) that there was a demand of dowry and consequent harassment.

(ii) that the deceased made a statement to P.W. 1 Arvind Kumar about the fact that two accused had sprinkled kerosene oil on her and set her ablaze and this statement is dying declaration which is worth reliance and conviction can be based only on the basis of dying declaration

29. It will appear from the evidence as noted above that the demand from the side of the accused about dowry is said to be that only of a T.V and V.C.R.

30. The counsel for the accused argued that it is difficult to cowhand artefacts, which are not very cost, and valuable. This circumstance has also to be reckoned with other facts and other circumstances of the case and carries substantial weight, especially when accused Smt. Usha is a Principal and her husband a clerk.

31. The demand of these two items T.V. and V.C.R. also does not, stand proved because P.W. 1 Arvind Kumar, who has deposed about the same, has ultimately admitted in cross-examination that the demand of both these items was made by the deceased for her own use and facility. If that is so, it cannot be said that there was any demand of dowry on the part of the accused.

32. The Trial Court has wilfully or otherwise, somehow completely ignored this part of the statement of P.W. Arvind Kumar and has not referred to the same in his judgment. No such thing about the demand of the accused of these two items, was mentioned by the deceased in her alleged dying declaration. The mother and the father of the deceased lady, who were examined as P.W. 6 and

P.W. 8, have also denied that any demand for dowry was made.

33. As shall be noted hereafter, the statement of P.W. 1 with regard to two letters Ex. Ka-2 and Ka-3 picked up by the nurse from brassiere of the deceased is also not proved. P.W. 1 Arvind Kumar cannot, therefore, be considered a dependable witness.

34. It has to be seen in connection of recovery of these two letters, that the two letters are undated and no proper reason has been given as to why the lady was keeping them in her brassiere. No address is also given in the letters. According to P.W. 5, Dr. Ajaz Ahmad, the deceased had suffered 100% burns. If that be so, letters should also have been burnt or at least partially burnt but there is awfully note a trace even of blackening on the letters and they are completely clean. The nurse who is said to have recovered the letters from the brassiere of the deceased has not been examined and it is P.W. 1 Arvind Kumar alone who is witness of the recovery of letters, though the letters were not recovered in his presence and he was informed about the same by the nurse. The recovery of the letters is, therefore, extremely doubtful and cannot be relied upon.

35. We may now refer to the two letters, said to have been recovered from the brassiere of the deceased Laxmi, which are Ex. Ka-2, and Ex. Ka-3, The English translation of the two letters is being given hereunder for record.

My dear Bablu Bhaiya. Namastey

Bhaiya after receipt of this letter, you will think where from does come this enemy of mine, but you are my brother whom else should I address except you. Bhaiya, these people have recommenced their earlier drama. Bhaiya, whether I am an embodiment of all lapses. Bhaiya, from the day, I entered the kitchen, Suchitra started cooking separately. Nobody knows about it. Even yesterday, when I cooked meals, Suchitra cooked meals separately in the day, and it was I, who was blamed for it, Bhaiya do all the household works, and receive beating and abuses. How this is to go on When people outside hear, they will say, what, this drama going on, which will give us a bad name. Bhaiya how I shall carry on with them I may have gone to Atariya, but someone has forbidden me, not to go for the present. Bhaiya do something and save me from these people. Bhaiya, your Bua accepts your suggestions, and you, obtain her approval, so that I could go to Pratapgarh for a few days. I want to stay at Pratapgarh for some time. Bhaiya, save my honour, otherwise things will go out of hand, which I do not want. Please advice Bindu Bhaiya, not to divulge anything at Atariya. Bhaiya, obtain consent of Bua, Phupha for sending me to Pratapgarh, for which I shall be obliged and will never demand anything in future. If you want me alive, do it for me, otherwise, all will be ruined and I should not be held responsible. Take care that nobody knows about it, otherwise, I will not be allowed to live. Bhaiya even your Bua should not come to know about it. Either take me from here on any pretext, so that my honour is saved. Whatever you have to do, should be done within 2-3 days. You need not ponder because you are wise enough. Save my life

and my honour as a beggar otherwise this time, I will be defamed. I cannot say anything to any one except you. If possible, get me removed from here by sending Bindu or make Phupha agree so that he may send me to Pratapgarh. Bhaiya, I am at a loss to understand anything. I feel like committing suicide. There seems no way out.

Send the reply of this letter by someone.

To Respected Phuphaji and Bua Ji, Respectful regards,

I am well here and hope you are all well. You might be surprised on this communication. Buaji I have informed you about the attitude of the people here. You had promised to help me if there is need. You had assured me that you will get the things done with the aid of Mali Baba. So please get something done about my father-in-law from Mali Baba so that my father-in-law does not harass me any more. It will be good if you come and reside here sometime. Bua come as soon as possible. If you want, I can send Bindu Bhaiya from here. I am writing from my father-in-laws house.

Buaji, I have not informed my parents so that they do not grieve on hearing that my in-laws have recommenced their misbehaviour. Buaji I do not know what I am lacking, because, of which these people misbehave with me. I am writing this letter to you with the fervent hope. Buaji, better if someone from Atariya or Madhiyaun does not come to know about it.

Buaji, whatever my husband's elder brother's wife says, my mother in law acts upon it, while she does not permit any to do anything. Buaji, now I survive in expectation of your help. Please ask Mali Baba to do something to pacify these people and after getting it done. Please come, if possible, and in case, you inform, I will send brother Bindu. Please intimate to me the likely expenses. I shall be very pleased if you and also Phuphaji come.

Buaji I do not know what else to write. Buaji, you will pardon me if there is something wrong in the letter. I am very worried this time. Please reply as soon as possible and write when you are coming or I should send Bindu Bhaiya, and, you explain all things to him. Buaji I am very perturbed. Send reply of this letter soon and forgive me if there is anything wrong in this letter. Convey my regards to all elders and blessings to youngers. I am noting down my address, please write a letter soon.

Address: K.V. Prasad Singh (Laxmi Singh) Vivek Niwas Nearby Middle High School Shivajee Nagar, Madhiyaun District Jaunpur(U.P)

please keep this letter safely Scribe of the this letter yours unfortunate niece gudiya.

36. There is also a controversy, whether the letters are in the hand writing of deceased Laxmi. It is again P.W.1 Arvind Kumar, who is the sole witness of the facts that the letters are in the hand writing of the deceased. The mother P.W. 6

and the father P.W. 8 of the deceased, who were examined, have not testified that the letters are in the hand writing of the deceased.

37. D.W.1 Gudiya has stated that she used to exchange letters with the deceased and was well conversant with her hand writing and she stated that the letters Exs. Kha-2 and Kha-3 addressed to her, are in the hand writing of the deceased and has categorically stated that Ex. Ka-2 and Ka-3 are not in the hand writing of the deceased and also inter-se differ in hand writing with each other. A hand writing expert D.W. 3 Vikas Srivastava has also been examined by the defence, who has stated that the letters Ex. Ka2 and Ex. Ka-3 are not in hand writing of the deceased. The Trial Court brushed aside all these evidence including that of the hand writing expert but has given no reason whatsoever, good, bad or indifferent, for discarding the evidence of both these witnesses. There seems no reason to disbelieve the evidence of D.W. 1 and D.W. 3 because, there has come nothing in their cross examination, which may discredit them. The prosecution evidence about the two letters cannot, therefore, be relied upon.

38. The Trial Court in its judgment has referred to a letter Ex- Ka-4 written by accused Kadak Bahadur Singh to the father of the deceased P.W. 8 Harendra Pratap Singh and has inferred from this letter a demand of dowry. In this letter, after the letter has been signed, the following has been added, which translated into English, is written as follows:

I shall write you again after this letter. In place of "Chulha" there must be a T.V. which should be coloured portable T.V. This is from Benu. Rest when we meet. 20th Feb. should be treated as finalised for Vidayee.

39. D.W. 1 Gudiya has stated that she could identify the hand writing of accused Kadak Bahadur Singh and the writing contained in Ex. Ka-4 is not of Kadak Bahadur Singh. The Trial Court has not given any reason to reject the statement of this witness and has ignored the same.

40. The Trial Court has inferred from this writing, a demand for dowry. The hand writing expert D.W. 3 compared the writing of this letter Ex. Ka-4 with the writing of accused Kadak Bahadur Singh on the order-sheet of the file and came to the conclusion that this letter was not written by him. The Trial court has super imposed his own opinion and discarded the opinion of the hand writing expert. No reason has been given by the Trial Court for rejecting the opinion of the hand writing expert. It was not appropriate for the Court to rely upon his own vision and his own assessment, about the question, whether the hand writing Ex. Ka-4 was of accused Kadak Bahadur or not?

41. It may be permissible in law to make an assessment of hand writing but it must be understood that the court is not a hand writing expert and comparison of hand writing is full fledged science which requires training and skill and experience. That is why Courts do not generally make a comparison of the hand writing themselves. There seems no sufficient reason in the circumstance to reject the view of hand writing expert.

42. In these circumstances, it cannot be held that there was any demand of dowry and the findings of the Trial Court that there was demand of dowry is, therefore, wholly erroneous. The very foundation on which edifice of conviction has been constructed, stands, therefore, obliterated. The result is that it cannot be said that there was demand of dowry. Since no demand of dowry has been proved, the presumption u/s 113-B of the Evidence Act will not raise.

43. As regards the dying declaration, it is true that the law is well settled, that conviction can be based on the basis of dying declaration alone, but the dying declaration must be healthy and wholly dependable. The dying declaration here, is so shaky and brittle that no reliance can be placed on the same. In the first place, there is evidence of P.W. 5 Dr. Ajaz that the lady suffered 100% burns, which makes it very doubtful, where she was in a position to speak or not. Even P.W. 1 has admitted that Laxmi fainted while telling them about her burn injuries. The prosecution did not ask the doctor P.W. 5, whether a victim who suffers 100% burns, can be in a position to talk, and whether the deceased lady was in a position to give statement, if the prosecution wanted to rely on the dying declaration, that should have asked the doctor P.W. 5, whether she was in a position to talk or not? In the absence of such evidence, it becomes extremely doubtful that she was in a position to give a statement. Besides the statement has not been recorded by a Magistrate, a doctor or a police officer and is said to have been given only to P.W. 1 Arun Kumar who cannot be considered to be a wholly dependable witness. Reference has also been made about the inconsistency in the statement of P.W. 1 about the demand of dowry. It would be in the circumstances, wholly unsafe to rely upon the dying declaration said to have been given by the deceased to P.W. 1 Arun Kumar as has been noted herein before.

44. The statement of D.W. 3 Dr. Moti Lal calls for a little comment. He has stated that accused Smt. Usha was admitted in her private clinic on 13.3.1995 and was advised rest for 48 hours. It may be recalled that the incident took place on 14.3.1995. The doctor has thus provided Alibi to accused Smt. Usha. The statement of D.W. 2 Dr. Moti Lal is to the effect that she was not admitted as a regular patient in the clinic. He has stated that she was kept in the clinic for next 48 hours. This procedure is wholly unusual and wholly unnatural, and testifies to the unverity of the statement of this witness. If the lady was suffering from an ailment, for which she needed to be admitted, she should have been admitted as a regular patient in the hospital and proper entry in the register and a regular bed head ticket should have been prepared. Since no such entries were available the doctor perhaps has given statement that she was kept in the out door with a view to help out the lady.

45. Besides it may also be noticed the disease with which Usha was suffering from, is "Palpitation" and "Giddiness", which normally does not need hospitalisation. Though in some real cases and accompanied by special feature, the doctor may consider it advisable to admit the patient but no such features

have been mentioned and narrated. It is manifest, therefore, that D.W. 2 Dr. Moti Lal has gone out of his way to provide Alibi to the lady.

46. It is being increasingly observed that the doctors are not unoften Inclined to give un-biased and fair reports. Courts rely heavily upon Medical Examination reports and quite often the other evidence is tested on the touchstone of the medical report, and if medical report is not honest and fair, judicial justice will go hay wire. If doctors dither and prevaricate and violate " Hippocratic oath, it will become not only very arduous but also hazardous for courts to deliver justice.

The Homicide of a young lady goes unpunished, which is lamentable, but what can the courts do? Our jural pharmacopoeia mandates that cases shall be decided on basis of the evidence, and if there is no evidence or no worthwhile and reliable evidence, there is no option for the courts, except, to acquit accused.

47. We do not follow the French Pattern of Criminal Justice, where after an initial investigation, by the Magistrate, the onus is reversed when the case goes for Trial before the judge. We also do not have any procedure for Enquiry Reports by Prescribed Authorities being accepted by the Courts as Evidence. Our dependence is entirely on evidence.

48. The consequence is that the appeal is allowed and the conviction and sentence of the accused-appellants, recorded by the Trial Judge, is set aside. They are in jail, and shall be released forthwith, unless wanted in some other cases