
(2013) 08 AHC CK 0246
In the Allahabad High Court
Case No : Criminal Appeal No. 401 of 1993

Lal Bahadur and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 83 ALLCC 480

Hon'ble Judges : Anurag Kumar, J

Bench : Single Bench

Advocate : R. Murtaza, Manoj Sahu, Mohd. Arif Khan, Prince Lenin, Sunil Singh, Sunil Kumar Singh and Vipin Kumar Verma, for the Appellant;

Final Decision : Dismissed

Judgement

Anurag Kumar, J.—Lal Bahadur son of Jagnu, Ram Sajiwan son of Lal Bahadur, Ram Pyarey son of Lal Bahadur and Smt. Sonawati wife of Lal Bahadur filed this appeal against the judgment and order dated 7.9.1993, passed by III Additional Sessions Judge, Unnao in Sessions Trial No. 148 of 1991, convicting the appellants u/s 306 I.P.C. and sentencing them to undergo rigorous imprisonment for three years and further convicting them u/s 498A I.P.C. and sentenced to undergo rigorous imprisonment for one year and u/s 4 of Dowry Prohibition Act sentencing to undergo rigorous imprisonment for six months. During pendency of appeal, appellant No. 1, Lal Bahadur and appellant No. 4, Smt. Sonawati died and appeal abated against them by Court order dated 25.7.2012.

2. The prosecution case in brief is that the informant, Shiv Prasad Shahu on 27.9.1990, at about 15.10 hours filed a written report at Police Station-Ajgain, District-Unnao alleging therein that father-in-law (Lal Bahadur i.e. the appellant No. 1 herein, since dead) of her daughter (Smt. Kushma Devi) taken her to his house on 25.9.1990, but in the night of 26/27.9.1990 all the accused persons set fire his daughter (Smt. Kusuma Devi) and thereby murdered her. After the marriage of his daughter the accused persons started demanding golden chain and bufallow and used to ask to bring the said dowry otherwise they would kill

her. Due to this reason, the informant did not send his daughter to the house of accused persons for the last one year, but when on 25.9.1990 Lal Bahadur came to the house of informant and on his taking responsibility of the deceased he sent his daughter with the accused-Lai Bahadur. The informant came to know on 27.9.1990 that on preceding night the accused-persons using kerosene oil set fire on the deceased and she died. The First Information Report (in short F.I.R.) under sections 498A-304B of I.P.C. and section 3/4 of the Dowry Prohibition Act was registered at Case Crime No. 390 of 1990, at Police Station-Ajgain, District-Unnao. Before lodging of the said F.I.R. on the same day at 10.45 a.m. one Ram Balak resident of village of the accused-persons submitted information in writing that deceased had committed suicide. The entry was made in the G.D. and S.O. Shri B.R. Verma proceeded towards the spot and basic formalities of Panchnama etc. were conducted by him and body was sealed and sent for post-mortem. After registration of F.I.R., the investigation was transferred to Deputy Superintendent of Police, Shri Kishan Singh who after completing investigation submitted charge-sheet against the accused-persons u/s 498A and 304B of I.P.C. and section 3/4 of Dowry Prohibition Act.

3. On 3.4.1991, 1st Additional Munsif Magistrate, Unnao committed the case to the Court of Sessions. The Sessions trial was transferred to V Additional Sessions Judge, Unnao and on 21.6.1991 charges were framed under sections 498A and 304B of I.P.C. and section 3/4 of Dowry Prohibition Act. The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 7 witnesses in all to prove his case. Shiv Prasad informant was examined as PW-1, S.O. Balak Ram Verma as PW-2, PW-3 Head Constable Kailash Saroj F.I.R. and Chik G.D. Writer, PW-4 Ram Narain witness of fact, PW-5 Dr. R.K. Ratan who conducted the post-mortem, PW-6 Raj Kumar Joshi who solemnized the marriage of the deceased with the accused Ram Sajiwan and PW-7 Constable Radhey Shyam Yadav formal witness. The statements of accused-persons were recorded, in which they denied the allegation of prosecution and stated that marriage of the deceased was performed about eight years ago. The accused-persons are innocent. In defence Suraj Pal was examined as DW-1 and Munni Lal as DW-2.

5. Heard Shri Sunil Kumar Singh, Shri Manoj Sahu, learned Counsel for the appellants, Ram Sajiwan and Ram Pyarey, and Shri Masood Alam, learned Additional Government Advocate for the State.

6. Learned Counsel for the appellants submitted that learned Lower Court on wrong interpretation of the evidence convicted the appellants. The prosecution failed to prove that there was a demand of dowry. The marriage between the deceased and Ram Sajiwan took place in the year 1981. The prosecution failed to prove that marriage of the deceased with Ram Sajiwan was solemnized on 21.5.1986. The priest PW-6 Raj Kumar Joshi turned hostile. There is a major contradiction in the evidence of the witnesses and evidence of the witnesses of facts are not reliable. No offence u/s 306 I.P.C. is made out and the learned

Lower Court wrongly convicted appellants u/s 306 I.P.C. only on the basis of sections 113A of the Evidence Act. The prosecution fully fails to prove his case beyond all reasonable doubt and accused-persons are liable to be acquitted.

7. On the other hand, learned Additional Government Advocate opposed the contention of learned Counsel for the appellants and submitted that the prosecution fully proved his case. Learned Sessions Judge after considering each and every aspect of the matter gave a reasoned and well discussed judgment convicting the appellants u/s 306 and 498A I.P.C. and sections 3/4 of Dowry Prohibition Act. The appeal has got no force and is liable to be dismissed.

8. The first contention of learned Counsel for the appellants is that there are major contradictions in the evidence of witnesses, but he failed to show any major contradiction in the evidence of witnesses. Learned Counsel for the appellants has pointed out only very minor contradictions and discrepancies, here and there, in the entire evidence, which are of no avail while taking into consideration the heinousness of crime because discrepancies in the matters of details always occur in the evidence of truthful witnesses. Such variations creep in because there are always natural differences in the faculties of different individuals in the manner of observation, perception and description. The minor discrepancy of trivial matters not touching the core of the matter cannot bring discredit to the story of prosecution giving undue importance to them would amount to adopting a hyper technical approach. The Court while appreciating the evidence should not attach much significance to minor discrepancy, for the discrepancies, which do not shake the basic version of the prosecution case are to be ignored.

9. Natural variances are bound to be there regarding same occurrence in the version of different eye-witnesses unless they give tutored or crammed evidence in parrot like manner. The same observations were reiterated by Hon'ble Apex Court in the case of Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another,

10. The next question to be determined is whether the marriage of the deceased with the accused-appellant, Ram Sajiwan, was solemnized in the year 1981 as alleged by the accused-persons or on 21.5.1986, as alleged by the prosecution. It is true that date of marriage or year was not written in the F.I.R., but F.I.R. is not an Encyclopedia and it is not necessary that each and every minor detail of fact was narrated in an F.I.R. PW-1 informant, father of the deceased, in his statement specifically stated that marriage of his daughter was solemnized on 21.5.1986 with Ram Sajiwan. PW-4, Shiv Prasad another witness of fact also stated that the marriage of Kusuma with Ram Sajiwan took place in the year 1986. There is lengthy cross-examination by accused-persons with these witnesses, but there is nothing in the cross-examination which helps the defence version that marriage was solemnized in the year 1981 nor there is anything which creates any doubt, regarding the marriage solemnized in the year 1986. PW-6 Raj Kumar Joshi, priest also stated that marriage of Kusuma Devi with Ram

Sajiwan took place on 21.5.1986, though prosecution declared this witness hostile, as this witness does not support the prosecution regarding fact of demand of dowry, but only on this ground that witness turned hostile, the entire evidence of witnesses cannot be thrown away. Evidence of PW-6 regarding date of marriage is clear and there is nothing in his entire evidence which creates doubt regarding the date of marriage. Hon''ble Apex Court in the case Ramesh Harijan Vs. State of U.P., held as under:--

18. It is settled legal position that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof.

11. The evidence of any witness though he may be hostile is to be seen in its entirety and not in piecemeal. The Hon''ble Apex Court in the case Atma Ram and others v. State of M.P., 2012 (78) ACC 124 laid down that statement of witnesses must be examined in its entirety and not by merely reading one sentence from deposition in isolation. The Division Bench of this Court in the case Mathura Prasad Vs. State of U.P., held that testimony of such hostile witness cannot be totally discarded. The Court can scrutinize his testimony and accept that portion thereof which receives corroboration from evidence on record.

12. The Hon''ble Apex Court in State of U.P. Vs. M.K. Anthony, Appabhai and Another Vs. State of Gujarat, Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, and State of H.P. v. Lekh Raj and others, 1999 (39) ACC 986 (SC) held that no evidence can ever to be perfect for man is not perfect and man lives in an imperfect world. Thus, the duty of Court is to see with the vision of prudence and acceptability of the deposition regard being had to the substratum of the prosecution story.

13. In the light of above, it is clear that the evidence of Raj Kumar Joshi cannot be discarded as held in its entirety and his evidence regarding fact of marriage is inconformity with the prosecution case and it is reliable in this respect. From the entire evidence of the prosecution, prosecution fully proved this fact that marriage of Kusuma Devi with Ram Sajiwan was solemnized on 21.5.1986. Against this, the defence version that marriage of Kusuma Devi with Ram Sajiwan was solemnized in the year 1981, defence failed to prove this fact, there is no evidence from the side of defence that marriage took place in the year 1981.

14. Next contention of learned Counsel for the applicant is that no offence u/s 306 I.P.C. is made out and conviction only on the basis of section 113A of the Evidence Act cannot be the basis.

15. From entire evidence of the prosecution, it is fully proved by the prosecution that deceased Kusuma Devi died an unnatural death in house of her father-in-law within seven years of marriage. Section 113A of the Evidence Act says:--

S. 113A. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

16. Thus, it is clear from plain reading of section that if suicide is committed by a woman within seven years of marriage, it would be presumed that she has subjected to cruelty by her husband and relative of her husband.

17. In the present case, from entire evidence, it is clear that the deceased committed suicide within seven years of her marriage and she was subjected to cruelty for demand of dowry by the accused-persons. The fact of demand of dowry and cruelty was also established from the fact that before incident from the last one year deceased was in her parental house. Learned Lower Court rightly convicted the appellants u/s 306 I.P.C. Relying on the provision of section 113A of Evidence Act. The Hon"ble Apex Court in the case in Gurnaib Singh Vs. State of Punjab, held as under:--

18. Clause (a) of the Explanation to the aforesaid provision defines "cruelty" to mean "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide". Clause (b) of the explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty. It has come out in evidence that there was ill-treatment by the mother-in-law and the husband. The bride was in her early twenties. She was turned out of matrimonial home on certain occasions. This aspect has been established beyond doubt. There can be no dispute that in a family life, there can be differences, quarrels, misgivings and apprehensions but it is the degree which raised it to the level of mental cruelty. A daughter-in-law is to be treated as a member of the family with warmth and affection and not as a stranger with despicable and ignoble indifference. She should not be treated as a housemaid. No impression should be given that she can be thrown out of her matrimonial home at any time. In the case at hand, considering the evidence of the prosecution witnesses, we are disposed to think that it is a case where the bride was totally insensitively treated and harassed. It is not that she has accidentally consumed the poison. She had deliberately put an end to her life. The defence had tried to prove that she was suffering from depression and because of such depression, she extinguished the candle of her own life. The testimony of the doctors cited by the defence has not been accepted by the learned Trial Judge as well as by the High Court. They have not been able to bring in adequate material on record that she was suffering from such depression as would force her to commit suicide. On a perusal of the evidence of the said witnesses, we find that the finding recorded on that score is absolutely impeccable. In view of the same, the evidence brought on record that she was treated with cruelty and harassed deserves to be given credence to and

accordingly we do so.

18. Thus, it is clear that appellants were rightly convicted u/s 306 of I.P.C.

19. The prosecution fully proved his case and conviction of the appellants under sections 306 and 498A I.P.C. and sections 3/4 of Dowry Prohibition Act, has rightly been made.

20. In view of the above, I do not find any force in the submission of learned Counsel for the appellants and, as such, this appeal has got no force and is liable to be dismissed.

21. Accordingly the appeal is dismissed. The office is directed to send Lower Court record along with copy of this judgment for compliance to the learned Trial Court without any delay.