

(2015) 03 AHC CK 0145
In the Allahabad High Court
Case No : Criminal Appeal No. 4789 of 2010

Nandu Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 372
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113-B
Penal Code, 1860 (IPC) — Section 201, 304-B, 498-A

Citation : (2015) 2 ACR 1725 : (2015) 89 ALLCC 767

Hon'ble Judges : Rakesh Tiwari, J;Vijay Lakshmi, J

Bench : Division Bench

Advocate : K.K. Rao, for the Appellant; S.P. Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J.—Aggrieved and dissatisfied by the judgment and order of acquittal dated 26.5.2010 passed by the Sessions Judge, Basti, in S.T. No. 85 of 2009, Santosh Singh and others v. State of U.P. and another, the complainant, who is the father of the deceased bride, has come to this Court in appeal under section 372, Cr.P.C. By the impugned judgment the Trial Court has acquitted all the accused persons/respondent Nos. 2 to 4, who are the husband, father-in-law and mother-in-law of the deceased, from the charges under sections 498-A, 304-B, 201, I.P.C. and sections 3/4 Dowry Prohibition Act. We have heard Sri K.K. Rao, learned Counsel for the appellant, learned AGA for the State and Sri S.P. Singh appearing on behalf of accused-respondent Nos. 2 to 4 and perused the record.

2. The case of the prosecution in brief is that the deceased Ritu Singh, daughter of the appellant Nandu Singh, was married to respondent No. 2, Santosh Singh, near about five years before the incident, which took place in the intervening night of 6/7.2.2009 in village Ghanahawa Mudiary, Police Station Kalwari,

District Basti. It has been alleged by the complainant/appellant that the husband and in-laws of the deceased i.e. respondent Nos. 2 to 4 after one year from the marriage started ill-treating and harassing his daughter in connection with demand of a motorcycle and Rs. 50,000/- cash as additional dowry. In the intervening night of 6/7.2.2009 someone informed the complainant on phone that his daughter Ritu had been set ablaze by the respondent Nos. 2 to 4. The complainant/appellant along with his family went to the matrimonial home of his daughter on 7.2.2009. He found his son-in-law Santosh Singh, his father and mother inside the house but when he did not find his daughter and asked about her, they informed that she died in the past night had been cremated by them. When the complainant made a quarry as to why her dead body was cremated in their absence, they kept silence. The complainant/appellant then wrote a report and lodged it at 19.20 hours on 7.2.2009 at Police Station Kalwari, District Basti, where Case Crime No. 61 of 2009 under sections 498-A, 304-B, 201, I.P.C. and sections 3/4 Dowry Prohibition Act was registered against respondent Nos. 2 to 4 and the matter was investigated. During investigation the complainant produced a slip of paper alleged to be written by the deceased Ritu on which it was scribed that . The complainant alleged that the aforesaid piece of paper was a part of a letter sent by the deceased to her younger sister Supriya in May, 2008. The Investigating Officer inspected the place near the bank of river where the dead body of Ritu had been cremated. He collected ashes and sand from the bank of the river and prepared memos. He also inspected the living room of the deceased and found that there was no sign of fire. It was found neat and clean. It's floor freshly smeared with cow dung. The I.O. recorded the statement of witnesses and after completion of investigation, submitted charge sheet against all the accused respondents.

3. Learned Sessions Judge framed charges against the respondents to which they pleaded not guilty and claimed to be tried.

4. The prosecution, in order to prove its case, produced six witnesses in all i.e. PW 1 the appellant Nandu Singh, who is the complainant in the case, PW 2 Shanti Singh, wife of the complainant, PW 3 Ram Das Singh, the real brother of the complainant, PW 4 Supriya Singh, the younger sister of the deceased Ritu Singh, who had identified the hand-writing of the deceased scribed on the piece of paper given by the complainant to the I.O. during investigation, PW 5 is Maan Singh, constable Moharrir, who was posted at Police Station Kalwari, District Basti, at the time of occurrence and who had registered and prepared the check report (exhibit Ka 5) and relevant GD (exhibit Ka 6) in his hand-writing and PW 6 is Jiya Lal, who is the I.O. of this case. He was posted as Circle Officer at District Basti at the time of occurrence.

5. After conclusion of prosecution evidence the statements of accused-respondents were recorded under section 313 Cr.P.C. in which they denied the allegations and alleged their false implication and stated that the deceased was under a state of depression since several years due to the reason of her being

issue-less. In the intervening night of 6/7.2.2009 severe pain occurred in her chest and she died. Whereas respondents 3 and 4, who are the parents of respondent No. 2, stated that they were living separately from Santosh Singh, respondent No. 2, at Basti with their elder son Vishwanath.

6. In defence the accused-respondents produced Vishwanath Singh their elder brother/son as DW 1, who stated about respondent Nos. 2 and 3 were residing at Basti with him for the last 6-7 years and that at the time of occurrence only deceased Ritu Singh and her husband were residing in village Dhanahawa Muriyari. He has also stated that after getting information of death of Ritu Singh, he immediately informed her parents and talked on mobile phone with Smt. Shanti Devi, the mother of the deceased. Thereafter all of them went to village Dhanahawa Muriyari where they came to know that suddenly severe pain occurred in the chest of Ritu Singh and by the time she was taken to hospital, she died. He also stated that Ritu Singh was in deep mental agony and distressful condition due to the reason that she was issue-less and that they after waited uptill 4 O'clock in the evening but when the parents of Ritu did not come they cremated the dead body as it was winter season when the sun sets early.

7. Learned Trial Judge after a detailed appreciation of the evidence produced by both the parties came to the conclusion that the prosecution could not prove its case beyond reasonable doubt against all or any one of the accused. He disbelieved the slip of paper given to the I.O. by the complainant allegedly written by the deceased Ritu and found the witnesses untrustworthy. Accordingly, the learned Trial Judge acquitted all the accused persons from the charges levelled against them.

8. The aforesaid order of acquittal has been challenged in this appeal on the following grounds:

I. Learned Trial Judge has illegally and arbitrarily passed a perverse order on the basis of mere surmises and conjectures ignoring that the offence under section 498-A, 304-B, 201, I.P.C. and section 3/4 D.P. Act are clearly made out against all the accused respondents.

II. The deceased Ritu had died under unnatural circumstances within seven years of marriage.

III. There is cogent evidence on record that she was being harassed in connection with dowry demand in the shape of a motorcycle and Rs. 50,000/- cash.

IV. The accused-respondents tried to conceal the cause of her death by hurriedly cremating her dead body without waiting for her parents.

V. But the Trial Court without considering the aforesaid aspects has wrongly acquitted the accused/respondents.

9. It has been prayed that on the aforesaid grounds the impugned judgment and

order of acquittal passed by the learned Trial Court be set aside and the accused-respondents be convicted and sentenced accordingly.

10. In order to arrive at a correct finding it appears expedient to have a bird's eye view on the statements of the witnesses produced by the prosecution.

11. PW 1, Nandu Singh, has stated that his daughter Ritu Singh was married to accused Santosh Singh on 27.6.2003. In the marriage he had given sufficient dowry according to his capacity. After four months of the marriage his sons Ashutosh and Alok had visited the matrimonial home of his daughter on the occasion of "Teej" where his daughter Ritu had informed them that her in-laws were dissatisfied by the dowry. After three months his daughter came to her parental home and then she told her mother/complainant's wife that her in-laws were demanding a motorcycle and Rs. 50,000/- cash. She was not inclined to return to her matrimonial home but on the assurance given by Santosh Singh and his father Hira Singh that she would not be harassed any more she went to her matrimonial home but the same maltreatment started once again due to non-fulfillment of the demand of motorcycle and Rs. 50,000/- cash. PW 1 has further stated that in the night of 6/7.2.2009 someone had informed him on telephone that his daughter Ritu Singh had been set ablaze and her dead body was going to be cremated. Receiving the news he, his wife, his brother Ram Das Singh, his son and other relatives reached village Dhanahawa Muriyari where they found Santosh Singh, his father Hira Singh and his mother Kumud present inside the house. When he asked them about his daughter, they informed that she had died due to some unknown reason and they had cremated her dead body in the night. When he asked why he was not informed, they did not reply. Thereafter he went to police station and lodged a written report (exhibit Ka 1). PW 1 has further stated that his daughter has been set on fire by her in-laws and in order to conceal the evidence they had cremated her dead body.

12. When PW 1 was cross-examined by learned Counsel for the accused persons, he stated that his daughter Ritu was issue-less and due to this reason she and all the family members were in a state of distress. He has stated that his son-in-law Santosh Singh and father-in-law of Ritu namely Hira Singh did not use to do any work. However, PW 1 has expressed his ignorance about the fact that due to aforesaid reason there was financial crisis in their home. He has further stated that he had reached at the place of occurrence on 7.2.2009 at 12.00 Noon. By that time the dead body of his daughter had been cremated. He stayed there for 2 or 3 hours and thereafter went to police station to lodge the FIR. He has also stated that he alongwith Daroga Ji (I.O.) had inspected the spot where his daughter was set on fire but there was no sign of any burning at that place and the floor was found neat and clean and freshly smeared with cow dung. PW 1 has denied the suggestion that Vishwanath Singh had given the information of death of Ritu on mobile phone to his wife. When confronted with his earlier statement given to the I.O. he has stated that he had not given any such statement to CO. Sahab that . He has also denied his earlier statement given to

the I.O. that he had reached the matrimonial home of his daughter at 5.30 P.M. to. He, however, has admitted the fact that at the time of marriage there was no demand of dowry from the side of respondents and that in the evening of 6.2.2009 at about 5.30 P.M. he had talked Ritu on her mobile phone. He also admitted that besides the piece of paper (exhibit Ka 4) given to the I.O. he had no letter written by deceased Ritu with him in which his daughter had made any complaint regarding dowry harassment and that he did not make any complaint against his son-in-law or the other in-laws even after hearing complaints of dowry demand from his deceased daughter.

13. PW 2 Shanti Singh is the wife of the complainant-appellant and is mother of the deceased Ritu. She has also repeated the same facts as deposed earlier by PW 1 but in contradiction to the statement of PW 1 she has stated that in May, 2008 when her son had gone to Ritu's Sasural to know her welfare she had given him a small piece of paper written by her (exhibit Ka 4), which her son had given to her daughter Supriya. She has also stated that in the night of 6/7.2.2009 someone informed her on telephone that her daughter Ritu had been set on fire. When all of them reached to her daughter's place she was not found and they were informed that her dead body had been cremated.

14. During cross-examination she has further stated that in the night of 6.2.2009 some one had informed her on mobile phone that her daughter had been killed. She had stated that the person informing her did not disclose his name and denied the suggestion that she had been informed at 10.30 A.M. on the next day about the death of her daughter by Vishwanath Singh. However, she also admitted the fact that there was no demand of dowry at the time of marriage and that no complaint was lodged by them before any authority earlier with regard to dowry demand or harassment of their daughter. In total contradiction to the statement of PW 1 she has stated that no letter was sent by her daughter but she had sent only a small piece of paper. She has admitted that there is neither any date nor any signature on that piece of paper. She has also admitted the fact that every time when her daughter came to her parental home, her son-in-law came to take her back and at the time of "Bidai" no dispute with regard to dowry demand ever arose. She has also admitted that no child was born to her daughter but she has denied the suggestion that due to being issue-less her daughter was leading a tensed and distressful life.

15. PW 3 Ramdas Singh, brother of the complainant, has stated that he had also gone to Ritu's matrimonial home with Tilak and at that time there was no demand of any motorcycle or Rs. 50,000/- cash made by her in-laws. At the time of "Bidai" also there was no such demand and "Bidai" was performed in a delightful atmosphere. He has stated that in between the time of marriage and the time of death of Ritu he had visited the house of accused-respondents several times and he was always welcomed by them properly. He has stated that they had reached the village of accused respondents at about 12.00 Noon. He has also admitted that they got the information about the death of Ritu at about

9 or 10 P.M. in the night of 6.2.2009. They had proceeded to her matrimonial home at 7.00 A.M. on 7.2.2009 and after five hours of journey they had reached to Ritu's matrimonial home.

16. PW 4 Supriya, the younger sister of the deceased Ritu stated that she has passed B.A. After receiving the information of death of her sister her parents went to her sister's place. In May, 2008 when her brother Ashutosh Singh had visited Ritu's matrimonial home, she had given a small piece of paper to him on which she had written that the entire family would be responsible for her death. They want dowry. She identified the hand-writing on that piece of paper as that of Ritu and the piece of paper has been exhibited in the Court as exhibit Ka 4 and stated that this piece of paper was given by her to the I.O. when he was recording her statement.

17. During cross-examination she has admitted that there is neither signature of Ritu on exhibit Ka 4 nor date is mentioned on it, that her sister had given it to her brother without keeping it in any envelope and that she had shown this piece of paper to her parents but they did not lodge any complaint even after seeing this paper.

18. The aforesaid slip of paper (exhibit Ka 4) cannot be held to be of any relevance in this case for the reasons that the prosecution has neither made any effort to prove the hand-writing of Ritu scribed on it nor produced Ashutosh, the brother of the deceased Ritu, to whom it is alleged to have been given by deceased Ritu. Ashutosh could have been a material witness in this case but he has not been examined in this case for the reason best known to the prosecution. The conduct of the family members of the complainant also appears doubtful due to the reason even after receiving the aforesaid slip of paper indicating that Ritu may be killed, they neither took any step to save her nor made any complaint before any authority against the husband and the in laws of the deceased.

19. No other witness of fact has been produced by the prosecution.

20. The defence witness produced by accused respondents-DW 1 Vishwanath Singh stated that he had informed the mother of the deceased Ritu Singh on mobile phone on the same day when Ritu had died. He was living in Basti at that time along with his parents. On receiving information about the death of Ritu they rushed to the village. They waited till 4 O'clock in the evening but when parents of Ritu did not reach and as it was time of winters and the sun was going to set, they cremated the dead body. The parents of Ritu reached after cremation. They got annoyed and lodged the false FIR.

21. After a close analysis of the statements of prosecution witness it appears that there are several improvements, omissions and contradictions in their statements making the prosecution case unworthy of credit e.g. PW 1 stated that a letter was sent by Ritu to him in May, 2008 informing him about the demand of dowry and her harassment and that the piece of paper (exhibit Ka 4) is a torn

out piece of the same letter whereas the mother of Ritu stated that in May 2008 when her son had gone to Ritu's Sasural, Ritu had given him a small piece of paper, which her son handed over to her daughter Supriya. Her statement does not inspire confidence for the reason that she has stated that she cannot tell the time spent while travelling from their home to the place of occurrence. She has stated that she does not know whether Santosh's brother Vishwanth lived at Basti or not. She even does not know the telephone number of her daughter Ritu.

22. The statements of PW 1, PW 3 and PW 4 suffer from several discrepancies, contradictions and embellishments and hence do not inspire confidence. None of them has been able to state about the time as to when they got the information about the death of their daughter and about the time when they reached their daughter's matrimonial home. PW 1 has stated that he had a telephonic talk with his daughter in the evening of 6.2.2009 but he has not stated any such fact about Ritu informing him regarding any ill-treatment by her husband or in-laws.

23. All the prosecution witnesses have stated that they had received the information about the death of Ritu in the night of 6.2.2009 then what was the reason that they did not rush to their daughter's matrimonial home immediately? PW 1 has stated that he had received the information in the night of 6.2.2009 that his daughter Ritu had been set on fire and the in-laws were going to cremate her dead body then what was the reason that he did not take any action immediately and only went to police station to lodge the FIR at 7.20 P.M. on the next day?

24. The case of the defence is that Ritu died due to acute pain in her chest. They waited till 4.00 P.M. on 7.2.2009 for her parents to come before cremating her but when the parents and other family member of Ritu did not reach their place, they cremated the dead body as sun sets early in winter season. According to the defence the complainant and his family members reached the house of their deceased married daughter on 7.2.2009 after 5.30 P.M.

25. The I.O. of the case has also corroborated this fact by stating that during interrogation the complainant had given statement that he had reached about 5.30 P.M. at the place of accused persons, who are in-laws of the deceased Ritu. The time of lodging of the FIR is 7.20 P.M. which also indicates that the complainant and his family members might have reached at the place of accused persons on 7.2.2009 at about 5.30 P.M. and when they found that the dead body had already been cremated they might have got annoyed and thereafter the complainant would have gone to the police station to lodge the report at 7.20 P.M.

26. All the prosecution witnesses have admitted the fact that there was no demand of any dowry at the time of Tilak ceremony, marriage ceremony or at the time of "Bidai". They have also admitted the fact that whenever they used to visit the matrimonial home of Ritu they were properly welcomed. The mother of the deceased has admitted the fact that her son-in-law used to come to her home to take back Ritu and he never made any demand at the time of "Bidai".

There is no evidence on record with regard to the fact that any ill-treatment was meted out to Ritu by her husband or her in-laws soon before her death. Except one torn out piece of paper on which it has been scribed that which is neither signed by Ritu nor there is mention of any date on it, there is no letter sent by Ritu to any person making complaint of any harassment. Hence it cannot be said that Ritu was subjected to cruelty in connection with the demand of dowry soon before her death.

27. One more fact raising a doubt in the prosecution story is that although the prosecution has stated that Ritu was set ablaze by her husband and in-laws but no sign of fire or any burnt article or any mark of smoke on the walls or roof were found in the room of Ritu. Only on the basis of the fact that floor of her room was found neat and clean and freshly smeared with cow dung it cannot be assumed that she was set on fire in that room. In India and specially in villages of India generally the floor of house is washed after the dead body is sent for cremation. Hence the possibility cannot be ruled out that the room of Ritu was cleaned and smeared with cow dung after her dead body was sent for cremation.

28. Admittedly when the complainant and his family members reached at the house of accused respondents, all of them were found inside the house and were not found absconding. This conduct is also a strong indicator of their innocence.

29. Learned Counsel for the appellant has vehemently argued that it is a case of dowry death and section 113-B of the Evidence Act raises a presumption of dowry death of a woman, if it is shown that soon before her death such woman had been subjected to cruelty or harassment in connection with any demand of dowry. Learned Counsel has contended that after such presumption under section 113-B of the Evidence Act the burden shifts on the accused persons to prove their innocence. He has argued that the accused persons in the present case have not been able to prove their innocence, hence they should have been convicted and sentenced but the Trial Court has arbitrarily acquitted them all by the impugned judgment.

30. We find no force in the aforesaid argument of learned Counsel for the appellant. The evidence available on record shows that the prosecution in this case has not been able to prove the existence of all the essential ingredients of the offence of dowry death as provided under section 304-B of I.P.C. The law is well settled by the Apex Court in a catena of judgments that the initial burden to prove the essential ingredients of section 304-B, I.P.C. is always on the prosecution and when the prosecution successfully discharges its initial burden by proving with the help of cogent and reliable evidence the existence of all the ingredients, then only the burden shifts on the accused persons to prove their innocence. These ingredients are:

I. Death of a woman by any burn or bodily injuries accruing otherwise than under normal circumstances.

II. Within seven years of her marriage.

III. She must have been subjected to cruelty or harassment by her husband or relatives of her husband.

IV. In connection with any demand for dowry.

V. Soon before her death.

31. So far as the facts of the present case are concerned, there is no doubt that deceased Ritu has met an unnatural death within seven years of her marriage in her matrimonial home but at the same time, the evidence adduced by the prosecution does not appear to be conflicting, sufficient and reliable to prove that there was any dowry demand or harassment of Ritu in connection with such demand. There is no evidence on record in proof of the fact that Ritu was subjected to cruel treatment in connection to dowry demand soon before her death or even any thing earlier.

32. As the aforesaid essential ingredients of section 304-B I.P.C. are found missing in this case, this Court is not inclined to raise a presumption under section 113-B of the Evidence Act against the accused persons. Accordingly, the burden to prove their innocence is not found shifted on the accused-respondents in this case.

33. Considering all the aforesaid facts and circumstances of the case we are of the firm view that the prosecution has failed to discharge its initial burden to prove the existence of all the essential ingredients of dowry death in this case against the accused-respondents beyond reasonable doubt. The learned Trial Court has rightly acquitted the accused persons from the charges levelled against them and there appears to reason to deviate from the same.

34. The law is also well settled that if two views are possible the Appellate Court should not disturb the finding of acquittal.

35. In *Syed Peda Aowlia Vs. The Public Prosecutor, High Court of A.P., Hyderabad*, (2008) CriLJ 3486 : (2008) 11 SCC 394 the Apex Court has held that:

"Generally, the order of acquittal should not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted."

36. In *State of Rajasthan Vs. Talevar and Another*, AIR 2011 SC 2271 : (2011) 3 Crimes 61 : (2011) 7 JT 1 : (2011) 6 SCALE 575 : (2011) 5 UJ 2998 : (2011) AIRSCW 3889 : (2011) 4 Supreme 570 and also in *Govind Raju v. State*, 2012 (78) ACC 545 (SC) : 2012 (115) AIC 167 the Apex Court has held that:

"The Appellate Court should bear in mind the presumption of innocence of the accused and further that the Trial Court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible

should be avoided unless there are good reasons for interference."

37. In *State of Haryana v. Shakuntala*, 2012 (77) ACC 942 (SC) : 2012 (114) AIC 138 the Supreme Court has held that:

"An Appellate Court must bear in mind that in case of acquittal, there is a double presumption in favour of accused. Firstly, the presumption of innocence is available to such accused under the fundamental principles of criminal jurisprudence, secondly, that a Lower Court, upon due appreciation of all evidence has found him innocent. Merely because another view is possible, it would be no reason for High Court interfere with the order of acquittal."

38. In *Mukeshbhai Gopalbhai Barot v. State of Gujarat*, 2011 (72) ACC 535 (SC) the Apex Court has held as follows:

"It has repeatedly been held that interference by the High Court in an appeal against acquittal should be minimal and only in cases where the trial Court judgment is perverse or does not flow from the evidence."

39. For the aforesaid reasons the appeal appears to be devoid of merits and is liable to be dismissed. Accordingly, the appeal is dismissed.