

(2011) 12 AHC CK 0184
In the Allahabad High Court

Case No : Criminal Appeal No. 5820 of 2006 and Criminal Revision No. 5975 of 2006

Rakesh Kumar and Others

APPELLANT

Vs

State of U.P.
Mithai Lal Jaiswal Vs State of U.P. and Others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Dowry Prohibition Act, 1961 — Section 3(4), 4

Penal Code, 1860 (IPC) — Section 201, 304B, 498A

Citation : (2012) 1 ACR 464

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Vinod Prasad, J.—A family of Ashok Kumar consisting of himself A-3, his wife Smt. Urmila Devi A-2, sons Rakesh Kumar (husband) A-1 and younger son Kamlesh Kumar A-4 (dewar) have challenged their conviction and sentence under Sections 498-A, 304-B, 201 I.P.C. and Section 4 D.P. Act imposed by Additional Session''s Judge, F.T.C. No. 20, Allahabad vide impugned judgment and order dated 18.9.2006 recorded in S.T. No. 1360 of 2004 State Vs. Rakesh Kumar and others relating to P.S. Uttraon, District Allahabad (crime no. 146 of 2004). Trial Judge has imposed common sentence on all the appellants u/s 498-A I.P.C. for three years RI with Rs. 5,000/-fine, default sentence being six months further RI. 3 years RI with Rs. 5,000/-fine u/s 201 I.P.C., default sentence being six months further RI. 2 months RI with Rs. 10,000/-fine u/s 4 D.P. Act, default sentence being further 8 months RI. However for the charge u/s 304-B I.P.C., Smt. Urmila Devi A-2 has been sentenced to 7 years RI whereas rest of the appellants have been sentenced to 8 years RI. It is this conviction and sentence which has been challenged in the instant appeal by the appellants.

2. Before advertng to the arguments harangued by either side, briefly sketched,

prosecution allegations were that Vinod Kumari (deceased) aged about 27 years, sister of informant Mithai Lal Jaiswal had tied her nuptial knot with Rakesh Kumar A-1, who is the son of A-2 and A-3 and elder brother of A-4 and spouses had a son aged about four years. In the marriage according to the fiscal means of the informant, dowry was given but the in-laws, husband and dewar were not satisfied. Additionally, they were demanding a motor-cycle and a T.V. because of which, they used to assault and torture the deceased Vinod Kumari. The woes were narrated by the deceased to the informant and other family relatives whenever she visited her parental house. It was alleged that in the night of 5.7.2004, appellants had murdered the deceased and disposed off her cadaver in a well. Information regarding the same was received to the informant Mithai Lal Jaiswal on 7.7.2004 in the evening and then he rushed to the in-laws house of his sister and found her corpse lying on the pedestal erected out side the well, which by that time was fetched out from the well by the villagers. Levelling such an allegations, Mithai Lal Jaiswal informant lodged his FIR on 8.7.2004 against malefactors at P.S. Uttraon, District Allahabad at 9.35 a.m., which was registered as crime no. 146 of 2004, under sections 498-A, 304-B I.P.C. and section 3/4 D.P. Act.

3. Constable R.A. Singh P.W. 6 registered the FIR and prepared chik FIR Ext. Ka-13 and GD entry Ka-14. Investigation into the crime was taken up by C.O. D.R. Shukla P.W. 4, who after coping the FIR and the GD Entry recorded 161 Cr.P.C. statement of the informant, conducted spot inspection at his pointing out, prepared site plan Ext. Ka-2 and thereafter recorded 161 Cr.P.C. statements of Anand Bahadur, Dukhi Lal Bhartiya, Rama Shanker Yadav, Sabbir, Mohd. Alam, Deshraj, Ram Dular, Mukesh, Bhagan Lal and Indramani. On 9.7.2004, I.O. copied the inquest, which had already been conducted on the cadaver of the deceased. On 10.7.2004, father-in-law Ashok Kumar was arrested by the I.O. and thereafter his statement was taken down by him. On 13.7.2004 statement of Radhey Shyam father of the deceased was recorded and list of the articles given in dowry were copied in the case diary regarding which, a memo was prepared vide Ext. Ka-3 to Ka-5. Thereafter, D.R. Shukla P.W. 4 recorded interrogatory statements of Smt. Manju Devi, Vijay Bahadur, Hriday Lal Patel, Jeet Lal Yadav and others. On 16.7.2004, I.O. applied for issuance of non bailable warrants against rest of the accused and the same day, he had recorded statements of Tehsildar Tileshwar Prasad P.W. 5, who had conducted inquest on the dead body of the deceased and other inquest witnesses. Same day, I.O. after arresting Smt. Urmila Devi A-2 and Kamlesh Kumar A-4 had recorded their statements. On 18.7.2004, P.W. 4 interrogated Dr. K.N. Singh P.W. 7, who had performed autopsy on the dead body of the deceased and had recorded his statement. Concluding investigation, I.O. had charge sheeted all the accused persons for the aforementioned offences vide Ext. Ka-6.

4. Accused persons were summoned and finding their case triable by court of session"s, their case was committed, where it was registered as S.T. No. 1368 of 2004, State Vs. Rakesh Kumar and others.

5. All the accused persons were charged under sections 498-A, 304-B, 201 I.P.C. and section 4 D.P. Act on 18.1.2005, which charges were denied by them, who claimed to be tried.

6. In its endeavour to establish guilt of the appellants, prosecution relied upon oral evidences of seven witnesses, out of whom informant Mithai Lal Jaiswal brother of the deceased P.W. 1, Manju Devi bhabhi of the deceased P.W. 2 and Radhey Shyam father of the deceased P.W. 3 were fact witnesses. Formal witnesses included C.O. D.R. Shukla P.W. 4, Tehsildar who had conducted inquest P.W. 5, constable R.A. Singh who had prepared FIR and GD P.W. 6 and Autopsy Dr. K.N. Singh P.W. 7.

7. In their statements u/s 313 Cr.P.C., accused persons denied incriminating circumstances put to them occurred in prosecution evidences and took the defence of their false implication. To establish alibi of Kamlesh Kumar A-4, they examined Dr. V.K. Jain as D.W. 1.

8. Trial Judge after looking into the facts and circumstances of the case, vetting of the evidences tendered before it, held that the appellants were guilty for all the offences under sections 498-A, 304-B, 201 I.P.C. and section 4 D.P. Act and, therefore, convicted and sentenced them as has already been mentioned in the opening paragraph of this judgment and hence is eschewed from being repeated. It however found that charge u/s 3 D.P. Act could not have been proved against the accused and, therefore, acquitted them for the said charge vide impugned judgment of conviction and sentence. It is this judgment, which is under challenge in the instant appeal.

9. I have heard Sri Ravi Chandra Srivastava, learned counsel for the appellants and Sri Raj Karan Patel, learned counsel for the informant P.W. 1 as well as Sri Patanjali Mishra, learned AGA for the respondent-State.

10. It is argued by counsel for the appellants that so far as husband Rakesh Kumar A-1 and mother-in-law Smt. Urmila Devi A-2 are concerned, they had already served out their entire period of sentence including the fine imposed upon them and they had already been released from jail. In my humble view, in respect of aforesaid two appellants A-1 and A-2, this appeal has become infructuous and is dismissed as such.

11. Turning to the appeal of rest of the two appellants, it is contended by either side that they had already served near about full period of imprisonment and the default sentence is to be served by them in case they did not deposit fine, which was imposed upon them i.e. Rs. 5,000/-each u/s 498-A and 201 I.P.C. each and Rs. 10,000/-under section 4 D.P. Act. Learned counsel for the appellants contended that so far as father-in-law Ashok Kumar A-3 is concerned, as on date he is 60 years of age, he had no criminal background and Kamlesh Kumar A-4, who was devar of the deceased was 22 years at the time of commission of the offence without having any criminal background and, therefore, their sentences be reduced to the period of imprisonment already undergone by them.

12. Learned counsel for the informant as well as learned AGA did not dispute the said contention raised by counsel for the appellants and agreed for reduction of their sentence as prayed.

13. In such a view, it is not necessary for this Court to consider the merits of the matter and go in for critical appreciation of evidences. Since only on the question of sentence, both sides have agreed, this appeal is allowed in part.

14. Instant appeal is dismissed on merits but so far as sentence part is concerned, for the charge under sections 498-A, 304-B, 201 I.P.C. and section 4 D.P. Act, rest of the two appellants A-3 and A-4 namely Ashok Kumar and Kamlesh Kumar are sentenced to the period of imprisonment already undergone by them with imposition of fine of Rs. 10,000/-cumulatively for all the offences on them. Failing to deposit the fine, these appellants shall surrender and will serve out three months further imprisonment as default sentence. Out of the fine to be deposited by the two appellants, which comes out to be Rs. 20,000/-, a compensation of Rs. 10,000/-be given to the informant.

15. Appeal is partly allowed as above.

16. Both the appellants are in jail. They shall be set at liberty forthwith unless they were wanted in some other case.

17. Turning towards revision against enhancement of sentence, which has been preferred by informant Mithai Lal Jaiswal against husband Rakesh Kumar, mother-in-law Smt. Urmila Devi, father-in-law Ashok Kumar and dewar Kamlesh Kumar, since the parties have entered into a compromise and the appeal preferred by the appellants against their conviction has already been decided as above, there remains nothing in this revision to be considered and decided.

18. Criminal revision no. 5975 of 2006, Mithai Lal Jaiswal Vs. State of U.P. and others, therefore, stands dismissed.