

**(2016) 03 AHC CK 0059**

**In the Allahabad High Court**

**Case No :** Criminal Appeal Nos. 2886, 2884 and 2885 of 2009

Shyam Bihari Sharma and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision :** 03-03-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 354(2), Section 428  
Dowry Prohibition Act, 1961 — Section 4  
Evidence Act, 1872 — Section 113B  
Penal Code, 1860 (IPC) — Section 304B, Section 304-B, Section 498-A

**Citation :** (2016) 03 AHC CK 0059

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

**Bench :** Division Bench

**Advocate :** Gaurav Misra, G.S. Pandey, Himanshu Tiwari, Maneesh Kumar Singh, Manu Dixit and Mayank Misra, for the Appellant;

**Final Decision :** Partly Allowed

## Judgement

Surendra Vikram Singh Rathore, J.—1. Criminal Appeal No. 2886 of 2009 has been preferred by Shyam Bihari Sharma, who happens to be father in law of the deceased, Criminal Appeal No. 2884 of 2009 has been preferred by Kuldeep, who happens to be husband of the deceased and Criminal Appeal No. 2885 of 2009 has been preferred by Smt. Baba Dei, who happens to be mother in law of the deceased.

2. Since all the aforesaid three criminal appeals arise out of the same judgment, hence these three appeals are being disposed of together.

3. Heard Mr. Maneesh Kumar Yadav, learned counsel for the appellants, Mr. Sharad Dixit, learned A.G.A. for the State and perused the lower court record.

4. All the aforesaid three criminal appeals arise out of a common judgment dated 1.10.2009 passed by learned Additional Sessions Judge, Court No. 1 Raebareli in Sessions Trial No. 323 of 2005 arising out of Case Crime No. 31 of 2005, Police

Station Gurubuxganj, District Raebareli whereby all the appellants were convicted and sentenced as under:--

"(i) 498-A I.P.C. three years rigorous imprisonment and fine of Rs. 10,000/- each with default stipulation of six months additional rigorous imprisonment.

(ii) 304-B I.P.C. imprisonment for life.

(iii) 4 of the Dowry Prohibition Act one year rigorous imprisonment and also with fine of Rs. 5,000/- each with default stipulation of three months additional rigorous imprisonment."

5. In brief, the case of the prosecution necessary for the purpose of the instant appeal may be summed up as under:--

"Complainant Ram Chandra lodged an F.I.R. at Police Station Gurubuxganj, District Raebareli on 28.5.2005 at 10:20 a.m. alleging therein that marriage of his daughter Anita was solemnized with appellant Kuldeep on 10.3.2004. His daughter was treated with cruelty in connection with demand of dowry, which was regarding the motorcycle. Whenever the victim used to visit her parent's house then she used to tell about the cruel behaviour of the family members of her husband. On 16.5.2004, the complainant went to the house of the appellant and disclosed them about their problem that he is not in a position to give motorcycle and fulfill their dowry demand. His daughter immediately expressed an apprehension to her life that if motorcycle is not given to them. The complainant again on 17.5.2005 made a request for the Vida of his daughter, which was turned down by the accused persons nor she was permitted to meet him. The complainant was asked to go away from their house. On 27.5.2005 at about 8:00 p.m., complainant got information that his daughter has committed suicide by hanging. When he reached the house of the appellants at about 10:00 p.m., he found that her daughter was in flames and there was smell of oil. On the basis of this information, case was registered. Inquest proceedings were conducted and the dead body was sent for postmortem, which was conducted on 29.5.2005 at 8:00 a.m. The duration of death reported by the doctor was about one and a half day and the deceased was an average built body. Dead body was in pugilistic posture. Rigor-mortis passing from upper extremities. Charring of thorax, abdomen and lower extremities was present. Left thigh missing. Charred left lower leg present below knee hair singeing eyes partially open. Tongue protruding smell of kerosene or petrol present. Hyoid bone was fractured. Carbon particles were found in trachea. The cause of death was asphyxia. This postmortem was conducted by the team of two doctors and other Dr. S.P. Arya agreed with the findings."

6. After concluding the investigation, charge sheet was filed.

7. The defence of the appellants as stated by them in their statement recorded under Section 313 Cr.P.C. was of their false implication. Appellant Kuldeep has stated that at the alleged time of incident, he had gone to village Mullickmau as

he was a carpenter. He was working at the house of Vijay Sonar of Mullickmau Chaubara. The parents in law of the deceased have taken plea of separate living. Shyam Bihari Sharma has also stated that at the time of incident, he was working in Chandemau at the house of Kishan Gadariya. Smt. Baba Dei has stated that at the time of incident, she had gone to attend the call of nature and the deceased was alone in the house.

8. In order to prove its case, prosecution has examined PW-1 complainant Ram Chandra, father of the deceased, PW-2 Smt. Binda Devi, mother of the deceased as witnesses of fact. PW-3 Rishi Kant Rajvanshi, Tehsildar, who has prepared the inquest proceedings on the body of the deceased. PW-4 Dr. Rajiv Singh, who has conducted the postmortem on the body of the deceased. PW-5 Gorakh Nath Rai, Investigating Officer of this case.

9. In defence, DW-1 Kishan Gadariya, DW-2 Budhi Lal Rawat, DW-3 Vijay Soni DW-4 Raj Sharma, DW-5 Bramhawati, DW-6 Pramod Kumar Mishra, DW-7 Ram Kishore have been examined and some documents have also been filed. The defence evidence has been adduced mainly on the point of separate living.

10. After appreciating the evidence on record, the trial court has convicted the appellants as above, hence the instant criminal appeal.

11. Submission of learned counsel for the appellants was that he does not want to press the instant criminal appeals on merit, and restricted his arguments only on the question of sentence. It is further submitted that in cases under Section 304-B I.P.C., the accused persons are convicted on the basis of presumption, therefore, extreme penalty of imprisonment for life ought to be inflicted in cases of extreme brutality. Thus he has restricted his prayer only with regard to the quantum of sentence.

12. Learned A.G.A. has submitted that case of the prosecution stands proved by the evidence of the eyewitnesses. The trial court has rightly convicted the appellants and their conviction needs no interference. He has further submitted that question of appropriate sentence is within the discretion of the court.

13. Though the conviction of the appellants for the aforesaid sentence has not been challenged but being the court of first appeal, we have gone through the prosecution evidence. The deceased died an unnatural death within a short period after her marriage i.e. little more than one year. There was specific allegation of demand of dowry and consequential ill treatment. There is also evidence that in connection with the demand of dowry, the deceased was subjected to cruelty soon before her death. Thus all the ingredients to constitute the offence under Section 304-B I.P.C. stood proved by reliable evidence. The medical evidence shows that she died because of asphyxia. It transpires from the medical evidence that the deceased remained in flames for a long period due to which her right arm and right thigh were missing. The doctor has not reported that the burn injuries were postmortem though he has also reported the fracture of hyoid bone. But all the three appellants have come with a definite defence that

they were not present in the house at the time of incident and have also adduced evidence on this point.

14. We have gone through the evidence of the prosecution and the impugned judgment. We are of the considered view that the trial court has rightly convicted the appellants for the offence under Section 304-B, 498-A and Section 4 of the Dowry Prohibition Act. Under Section 304-B I.P.C., the trial court has inflicted maximum punishment of imprisonment for life while the minimum sentence provided for the offence under Section 304-B I.P.C. is seven years. So a very vast discretion has been given to the court in inflicting appropriate sentence which depends on facts and circumstances of each case. So in cases of extreme brutality, maximum punishment of imprisonment for life ought to have been inflicted.

15. Now we will have to consider the law on the point of sentence to be inflicted in cases under Section 304-B I.P.C. Hon"ble the Apex Court in the case of Hem Chand v. State of Haryana reported in , (1994) 6 SCC 727, 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 v. State of Karnataka reported in , (2010) 3 SCC 152 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 Hemchand v. State of Haryana [, (1994) 6 SCC 727] 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.

16. A reference on this point may also be made to the pronouncement of Hon"ble Apex Court in the case of Sunil Dutt Sharma V State reported in , (2014) 4 SCC 375 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 Sunil 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.

17. In a very recent judgment in the case of V.K. Mishra and another v. State of Uttarakhand reported in , (2015) 9 SCC 588, Hon"ble the Apex Court has again

considered the question of sentence in cases of dowry death and has observed in paragraph No. 42 as under:--

"42. For the offence Under Section 304-B Indian Penal Code, the punishment is imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. Section 304-B Indian Penal Code thus prescribes statutory minimum of seven years. In *Kulwant Singh and Ors. v. State of Punjab* , (2013) 4 SCC 177, while dealing with dowry death Sections 304-B and 498-A Indian Penal Code in which death was caused by poisoning within seven years of marriage conviction was affirmed. In the said case, the father-in-law was about eighty years and his legs had been amputated because of severe diabetes and mother-in-law was seventy eight years of age and the Supreme Court held impermissibility of reduction of sentence on the ground of sympathy below the statutory minimum."

In the said case, Hon"ble the Apex Court has reduced the sentence of husband V.K. Mishra from imprisonment for life to imprisonment for a period of ten years.

18. 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 v. State of Haryana* reported in , (1991) 1 SCC 371. 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."

19. Keeping in view the facts and circumstances of the case, and the aforementioned legal position, we are of the considered view that a sentence of 11 years would be adequate for the offence under Section 304-B I.P.C. No separate sentence deserves to be inflicted for the offence under Section 498-A I.P.C. Conviction and sentence for the offence under Section 4 of the Dowry Prohibition Act deserves to be confirmed.

20. In view of the discussion made above, this appeal deserves to be partly allowed only on the point of sentence.

21. The appeal is partly allowed. The conviction of the appellant recorded by the trial court for the offence under Section 304-B & 498-A I.P.C. and Section 4 of the Dowry Prohibition Act is hereby confirmed but no separate sentence is being passed for the offence under Section 498-A I.P.C. However, the sentence awarded for the offence under Section 304-B I.P.C. is hereby modified from imprisonment for life to rigorous imprisonment for a period of 11 years. Sentence awarded by the trial court for the offence under Section 4 of the Dowry

Prohibition Act is also hereby confirmed. Both the sentences shall run concurrently.

22. The appellants are in jail. They shall serve out their sentence as modified by this Court.

23. The period of detention already undergone by the appellants in the instant case shall be set off in their substantive sentence in accordance with the provisions of Section 428 Cr.P.C.

24. Office is directed to certify this order to the court concerned forthwith to ensure compliance and also to send back the lower court record.