

(2005) 09 AHC CK 0066
In the Allahabad High Court
Case No : Government Appeal No. 2998 of 2001

State of U.P.

APPELLANT

Vs

Deen Dayal, Smt. Sukhrani and Amar Singh

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 302, 304B, 498A

Citation : (2005) 09 AHC CK 0066

Hon'ble Judges : M.C. Jain, J;M. Chaudhary, J

Bench : Division Bench

Advocate : Usha Kiran, R.P. Dubey and R.S. Maurya, A.G.As. and A.G.A, for the Appellant; P.N. Misra, Apul Misra and R.K. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—Deen Dayal, Sukh Rani and Amar Singh were tried before the IV Additional Sessions Judge, Agra in S.T. No. 740 of 1998 for the offences under Sections 498A and 304B I.P.C. Alternatively, they were charged u/s 302 I.P.C. They were acquitted by the trial court by impugned judgement dated 30.4.2001 which has been assailed by the State by means of this appeal.

2. The relevant facts may be stated briefly; Asha Devi daughter of Churamani PW 1 was married with accused Amar Singh in June 1997. Accused Deen Dayal is the father-in-law and Sukh Rani is the mother-in-law of the deceased. The accused were dissatisfied with the dowry given by Churamani to the best of his capacity. They used to maltreat and assault the victim over the demand of dowry after performance of marriage. Asha Devi used to complain to her parents about her maltreatment in her Sasural on her visits to her parental home. In July 1997, Deen Dayal accused went to Churamani's house for Bidai of Asha Devi and demanded Rs. 10,000/- and gold chain in dowry. When Churamani expressed his inability to meet his demand, he became annoyed and took Asha Devi with him

in angry disposition.

3. On 6.9.1998, Prahlad PW 4 reached at Churamani's house and informed him that the accused, after assaulting Asha Devi, had thrown her in a well and she had died, Churamani lodged the F.I.R. the same night at 9.30 P.M. at Police Station Pithaura, District Agra. The check F.I.R. was written by constable Onkar Singh PW 7. He also made the G.D. entry and registered the case. The investigation was started by SSI Nain Chandra Gangwar PW 6 who after reaching the spot prepared inquest report of the deadbody of deceased and necessary papers including the site-plan. The investigation was then taken over by C.O. Rajendra Kumar PW 8 and concluded by C.O. Veer Singh PW 9.

4. Post mortem over the deadbody of the deceased was conducted by Dr. Sunil Bhartiya PW 3 on 7.9.1998 at 3.30 P.M. The deceased was aged about 20 years and about 1 1/2 day had passed since she died. The following ante mortem injuries were found on her person:-

1. Traumatic swelling 3x3 cm front upper part of nose.

2. Traumatic swelling 5 x 5 cm top and middle of head.

5. On internal examination, left parietal bone was found fractured. Membranes of brain were lacerated. Nasal bone was fractured with clotted blood and two ounce of water-y fluid was there in her stomach. The cause of death was coma due to head injury. As opined by the doctor, the death could be possible on 6.9.1998 at about 10.00 A.M. It was also the opinion of the doctor that injuries found on the person of the deceased could have been caused by blunt object. Further, he deposed that there was no water in the lungs and trachea and the injuries found on the person of the deceased could not be possible on fall in a well having water.

6. At the trial, the prosecution examined, in all, nine witnesses including three police personnel connected with the investigation of the case, one doctor and one constable who had scribed the check F.I.R. and made related entry in the G.D. Churamani PW 1, Daya Shanker (brother of the deceased) PW 2, Prahlad PW 4 (who had gone to house of Churamani to pass on the information of the death of the deceased) and Chameli PW 5 were the other witnesses examined at the trial.

7. The defence was of denial and false implication. According to the accused respondents, Asha Devi died by accidental fall in the well while drawing water. The accused Deen Dayal and Sukhrani (father-in-law and mother-in-law of the deceased respectively) stated in their statement u/s 313 of the Code of Criminal Procedure that at the time of her accidental fall in the well, they were at their fields. Amar Singh accused (husband of the deceased) stated that he was not in the village having gone to village Paltua Ka Pura (near Shamsabad) to the house of his Bua.

8. One Har Prasad was also examined as DW 1. According to him, the deceased was being kept by the accused with affection and they never maltreated or harassed her. He also stated that he never saw any quarrel between the accused

and the deceased. He testified that the deceased had gone to fetch water from the well at about 9.30 A.M. on the fateful day. He had also taken his bullocks to well for giving them water. The deceased was drawing water from the well. As soon as she bent a little to catch hold of the bucket full of water drawn from the well, she fell down in the well and died sustaining injuries. As per his evidence, the accused neither made any demand for dowry nor ever ill-treated Asha Devi. She accidentally fell down in the well and died.

9. The evidence adduced by the prosecution did not commend itself to the trial judge. The trial Judge recorded acquittal on the ground that the prosecution could not prove the allegation of demand of dowry by the accused and that the deceased accidentally fell in the well while drawing water. He accordingly recorded acquittal.

10. We have heard Miss Usha Kiran, A.G.A. from the side of the State-appellant and Sri P.N. Misra, learned senior Advocate from the side of the accused-respondents. According to the State Counsel, the acquittal is based on faulty appreciation of evidence and it is illegal. According to her, the demand of dowry by the accused-respondents and maltreatment of the deceased over the non-fulfilment of such demand was clearly established by the prosecution evidence. It was, according to her, also clinchingly proved that after assaulting her the accused-respondents threw her in the well and enacted a drama of her having met an accidental death by falling in the well while drawing water. On the other hand, learned Senior Advocate appearing for the accused-respondents has urged that the prosecution could neither prove the demand of dowry by the accused-respondents nor the alleged maltreatment of the deceased by them. It was a case of accidental death and the view taken by the trial judge is reasonable one, not calling for any interference by this court of appeal.

11. In a case of dowry death u/s 304B I.P.C., the essential ingredients are: (i) the death of a woman should be caused by burns or bodily injury or otherwise than a normal circumstance; (ii) such a death should have occurred within seven years of her marriage; (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband; (iv) such cruelty or harassment should be for or in connection with demand of dowry and (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

12. It is also to be kept in mind that dowry death of the bride mostly takes place in her Sasural and ocular evidence in this behalf is difficult to be adduced by the prosecution. The conclusion is to be drawn having regard to reliability of the evidence concerning the demand of dowry and other allied factors related with the commission of crime. In the present case, it is an admitted fact that the deceased Asha Devi died otherwise than in normal circumstances in her Sasural vide her post mortem report Ex. Ka-2. It is also an admitted fact that she had been married with the accused Amar Singh on 16th June 1997 and the incident occurred on 16th September 1998, i.e., within 15 months of her marriage with

the accused Amar Singh. Thus, the ingredients No. 1 and 2 of Section 304B I.P.C. made mention of above do exist in the present case.

13. As regards the remaining ingredients No. 3,4 and 5 referred to above, the relevant testimony was given by the deceased's father Churaman PW 1 informant, Daya Shankar PW 2 (brother of the deceased) and Smt. Chameli PW 5 (mother of the deceased). The gist of their testimony was that the deceased's father had given dowry in the marriage of his daughter to the best of his capacity but the accused persons were not satisfied. They used to pester, harass and maltreat the deceased for bringing Rs. 10,000/- and a gold chain from her parents in dowry. Churaman PW 1 (father of the deceased) stated that Asha Devi used to inform and narrate the tale of her woe to him and other members of the family on her visits to her parental house. It has emphatically been stated by all the three witnesses that in July 1998, i.e., about two months before the incident, the accused Deen Dayal had gone to their house for the Bidai of Asha Devi (who was then at her parental home) and had again pressed the demand of Rs. 10,000/- and a gold chain. When Churaman PW 1 expressed his inability to meet the demand, Deen Dayal accused in an angered and displeased mood took Asha Devi to her Sasural. Though Asha Devi was not inclined to go in such tension mounted scenario, but her parents and brother had sent her after consoling her. Thereafter on 6.9.1998 Prahlad PW 4 (of the village of the accused) reached their village at about 2 P.M. to inform that Asha Devi had been killed by the accused persons and her dead body was thrown in a well. Then Churaman PW 1, Daya Shankar PW 2, Smt. Chameli PW 5 and few other persons from their village immediately reached the Sasural of Asha Devi and found her dead body placed on a cot outside the door of the accused. The accused were not there. There was no other male person near the dead body. Only some ladies of the village of her Sasural were there when they reached the deceased's Sasural. It is in the statement of Daya Shankar PW 2 that they had reached the deceased's Sasural at about 6 P.M. through tractor. Then the report was lodged by Churaman PW 1 at the concerned Police Station at 9.30 P.M. No doubt, Churaman PW 1, Daya Shankar PW 2 and Smt. Chameli PW 5 are close relatives of the deceased being father, brother and mother respectively, but undoubtedly, they could be the best witnesses on the point of demand of dowry by the accused and the cruel treatment meted out by the accused to the deceased on non-fulfilment of their demand. Indeed, the demand was to be met by them and the deceased could narrate her misery and tale of woe only to them. All of them spoke about the particular last instance of July 1998 when the accused Deen Dayal went to their house for the Bidai of Asha Devi and reiterated the demand of Rs. 10,000/- and gold chain as dowry. Of course, the demand could not be met because of the financial inability of the parents of the lady. Then, in a displeased and angered mood Deen Dayal brought Asha Devi to her Sasural. She, given to her choice, was reluctant to go to her Sasural in such a tension ridden situation, but was persuaded by her parents and brother to go with the accused Deen Dayal. The demand of Rs. 10,000/- and a gold chain as dowry raised and made by the

accused subsisted and the parents and brother of the deceased only heard of her death thereafter within two months of her having so last gone to her Sasural.

14. It has come in the evidence of Smt. Chameli PW 5 (mother of the deceased) that her daughter Asha Devi was illiterate. Therefore, there could be no documentary evidence regarding demand of dowry in the form of letters of the lady to her parents or brother. She was not in a position to write a letter at all. Therefore, over and above the oral testimony of the parents and brother of the deceased regarding demand of dowry, no other evidence could possibly be given by the prosecution.

15. Learned counsel for the accused respondents also argued that the accused themselves had sent information to the parents of the deceased regarding the accidental death of Asha Devi by fall in the well. He tried to draw support from the statement of Prahlad PW 4 who stated in his cross-examination that when he went to Churaman PW 1 and informed him about the death of his daughter, he replied that Deen Dayal (accused) had already informed him in this behalf. We should point out that Prahlad PW 4 is the resident of the own village of the accused. Churaman PW 1 was examined on 11.10.1999 and 6.12.1999 and Daya Shankar PW 2 (brother of the deceased) was examined on 6.12.1999. We note that no such suggestion was made to any of them that any information had been sent by the accused to the parents of the deceased about the death of Asha Devi. Later on, Prahlad PW 4 was examined on 4.1.2000 and to give a boosting to the defence, he stated as above in his cross-examination. He obviously obliged the accused being sympathetic to them.

16. The trial Judge unnecessarily made criticism that no F.I.R. was lodged regarding the maltreatment of Asha Devi by the accused over the demand of dowry and that no Panchayat was held to reach an amicable solution. In our opinion, such criticism was wholly uncalled for. Sasural is the usual home of a married girl. The deceased herself was illiterate. Her parents were rooted in poverty. Neither she nor her parents could be expected to act in extremity by lodging the F.I.R. on the question of demand of dowry by the accused and regarding her maltreatment over this issue. Nor was it advisable for them to have made a public issue of it by convening a Panchayat. Time is the greatest healer. The parents and the brother of the deceased reasonably thought that things would improve with the passage of time when they sent her with Deen Dayal accused in July 1998, consoling her in that tension mounted situation.

17. The accused examined Har Prasad as DW 1 to tender negative sort of evidence that the accused used to treat the deceased with affection and there was no demand of dowry. Such negative sort of evidence would not overshadow the confidence inspiring evidence of Churaman PW 1, Daya Shankar PW 2 and Smt. Chameli PW 5. This Har Prasad DW 1 was the immediate neighbour of the accused. It was suggested to him that he was deposing falsely as Deen Dayal accused was his Khandani. He could not deny this suggestion. It was apparent that because of his nearness with the accused, he lent them a helping hand by

giving negative sort of evidence over the issue of demand of dowry and also to support their defence version that the deceased had died of accidental fall in the well while drawing water and at that time he had also taken his bullocks to the well to make them to drink water. According to him, two boys of the village had taken her out of the well. To come to the point, the testimony of this defence witness was liable to be rejected. In our considered view, the finding of the trial Judge that the demand of dowry and the ill-treatment of the deceased over non-fulfilment of dowry was not proved, is not in consonance with the evidence on record and is liable to be upturned. The prosecution has successfully established the remaining ingredients of dowry death that the deceased had been subjected to cruelty and harassment by the three accused in connection with demand of dowry till soon before her death.

18. Now, the discussion has to turn on this aspect of the matter whether the accused caused her death or she accidentally fell in the well while drawing water and died as such. There is a proverb that the witnesses may lie but the circumstances will not. In the case at hand, the post mortem report of the deceased speaks a lot that she had been subjected to violence. There was traumatic swelling on front upper part of the nose and top and middle of head. On internal examination, left parietal bone was found fractured. The nasal bone was also found fractured. The stomach contained only 2 ounce watery fluid. The injuries found on the person of the deceased completely negated the theory of her having accidentally fallen in the well while drawing water. Had she fallen in the well accidentally while drawing water, there could hardly be any question of such injuries and fracture of parietal bone as also of nasal bone. We find from the testimony of Dr. Sunil Bhartiya PW 3, who conducted autopsy on the dead body of the deceased, that the injuries found on the person of the deceased could not possibly be sustained by a fall in a watery well. Further, had she accidentally fallen in the well while drawing water, she would have died only after being in water for some time and there must have been lot of water in her stomach. But the fact is that there was only 2 ounce water in her stomach. So, the theory of her having met an accidental death by fall in the well while drawing water completely falls to the ground on consideration of the state of her ante mortem injuries and internal examination as found at the time of post mortem. We should say as a passing reference that Har Prasad DW 1 stated that two boys of the village had taken out the dead body of the deceased from the well. None of them was examined to rebut the presumption flowing from Section 113B of the Evidence Act which is well attracted in this case. The defence could not at all displace the said presumption.

19. It is further significant to point out that the three accused simply vanished after committing the crime. None of them was to be found at the time of the visit of the Investigating Officer to the spot and preparation of Panchayatnama and inquest report. Deen Dayal accused could be arrested on 10.9.1998. Amar Singh and Sukh Rani surrendered in court on 6.10.1998. The investigation in the case was started by SSI N.C. Gangwar PW 6 who stated that when he reached the

spot, the accused were not there at their house and they could not be found even on search. He also stated that he had also inspected the well but did not find any blood or any other sign in the form of depression of earth etc., around the circle or parapet of the wall to back the theory of the accidental fall of the victim in the well. The dead body was found by him on a cot in front of the door of the accused. It is noted from the inquest report that there was blood near the cot and the nose of the deceased was also bleeding. So, what was found by the Investigating Officer at the spot while preparing the inquest report was consistent with the deceased having been done to death by application of violence, instead of her having died accidental death by fall in the well.

20. To conclude, the culpability of the three accused respondents (father-in-law, mother-in-law and husband of the deceased) in committing this crime is established to the hilt by the facts and circumstances proved by the prosecution. It admits of no doubt whatsoever that they were the authors of this crime and did the deceased to death with the application of violence on the non-fulfilment of the demand of Rs. 10,000/- and a gold chain as part of dowry made by them. As the demand remained unfulfilled, they continuously treated the deceased with cruelty and ultimately did her to death on 6th September 1998. We conclude thus:

(i) The death of the deceased Asha Devi was caused in her Sasural by the three accused with the application of violence within fifteen months of her marriage.

(ii) The deceased had been subjected to cruelty by the three accused over the demand of Rs. 10,000/- and a gold chain in dowry raised persistently and pressed by them after the marriage, which continued till her death.

(iii) The cruelty and harassment of the deceased was in connection with demand of dowry as stated above.

(iv) Cruelty and harassment had been meted out to As ha Devi soon before her death.

(v) The three accused, namely, Deen Dayal, Smt. Sukhrani and Amar Singh were the authors of the crime who caused the dowry death of the deceased.

21. The findings of the trial Judge are manifestly erroneous and contrary to the evidence. In our opinion, the sentence of ten years" rigorous imprisonment to each of the accused respondents u/s 304B I.P.C. and three years" rigorous imprisonment u/s 498A I.P.C. should be awarded.

22. In the result, we allow this Government Appeal. We set aside the acquittal recorded by the trial court and convict each of the three accused respondents Deen Dayal, Smt. Sukh Rani and Amar Singh u/s 304B I.P.C. with a sentence of ten years rigorous imprisonment and u/s 498A I.P.C. three years" rigorous imprisonment. Both the sentences shall run concurrently. The accused respondents are on bail. The Chief Judicial Magistrate, Agra shall cause them to be arrested and lodged in jail to serve out the sentences awarded to them. He

shall send compliance report within two months of the receipt of a copy of this judgement.

23. Certify the judgement to the lower court.