
(2006) 02 AHC CK 0049
In the Allahabad High Court
Case No : G.A. No. 3413 of 2001

State of U.P.

APPELLANT

Vs

Irfan Hussain and Rahman Hussain

RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 201, 304B, 498A

Citation : (2006) 02 AHC CK 0049

Hon'ble Judges : V.D. Chaturvedi, J;M.C. Jain, J

Bench : Division Bench

Advocate : Amar Jeet Singh and A.G.A, for the Appellant; Akhilesh Singh, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Chaturvedi, J.—This appeal is preferred by the State against the judgment and order dated 23.09.2001, passed by Sri C.K. Tyagi, the then IX Additional Sessions Judge, Moradabad in S.T. No. 673 of 1995, acquitting the accused-respondents Irfan and Rahman, who were charged for the offences punishable u/s 498A, 304B, 201 IPC and 3/4 D.P. Act.

2. We have heard Mr. Amarjeet Singh, learned AGA for the appellant and Mr. Akhilesh Singh, learned Counsel for the respondents.

3. The necessary and material facts are summarised as under:

4. Habib Ahmad son of Bhure, r/o village Asmauli, P.S. Asmauli, Moradabad (father of deceased Smt. Reshama) sent an application Ex. Ka. 1 to the District Magistrate/SSP Moradabad, stating therein that his daughter Reshma was married to the accused Irfan about 3 years back; that after the said marriage, the complainant came to know that his daughter's husband Irfan and other members of his family were greedy enough; that out of such greed, the accused

irfan and his mother started passing bitter remarks regarding the dowry given in the marriage and started beating Reshma for not bringing enough dowry; that she was subjected to cruelty by beating and by omitting to provide essentials for the life; that cash of Rs. 20.000/- and one scooter were being demanded in dowry; that Irfan used to say that if she would not bring the said dowry, she would be burnt alive; that Irfan was running a shop in village Asmauli which was finally closed on 10.04.1995 and all of its goods were removed by him (Irfan) same day; that on 12.04.1995 the complainant went to the house of Smt. Reshma to know about her welfare, but he did not find her in her in-laws house; that the complainant, therefore, inquired about her, whereupon Irfan and his mother told that she had gone to take medicines from the doctor; that the complainant became suspicious and made further inquiry from the neighbours who told the complainant that his daughter was burnt alive on 11.04.1995 by these persons (Irfan and other members of his family) and was burned with the connivance of police; that the complainant questioned Irfan and his mother as to why they did not inform him regarding the death of his daughter whereupon they told that they had got the case closed with the help of the police and he could do whatever he liked. The complainant further stated that in collusion with the police his daughter Reshma was burnt alive by her husband, mother-in-law and other members of their family for the greed of dowry. It was also stated in the complaint that the complainant went to the police station Asmauli on 13.04.1995 and tried to lodge the report and to take legal action. But it was not lodged there. Hence the complainant gave an application to DM/SSP Moradabad. it appears that on the said application of the complainant, the SSP passed appropriate order whereupon the case was registered on 21.04.1995 against the accused persons.

5. On 24.04.1995 the dead body of Smt. Reshma aged about 20 years, daughter of Habib r/o Asmauli District Moradabad was recovered from the grave in the presence of P.W.7 (SDM) and its inquest report Ex. Ka 3 was prepared at 12.30 p.m. The grave was opened by Mohd. Rashid, son of the complainant Habib by digging in the presence of P.W.7 Sri Vivek Varshney, SDM. The photo Nash Ex. Ka 4, the Chalian Nash Ex. Ka 5, letter to CMC Ex. Ka 6 and letter to RI Ex. Ka 7 were prepared by the SDM (P.W.7) on the same day i.e. on 24.04.1995. Ex. Ka 8 is the site plan of the place wherefrom the dead body of Smt. Reshma was recovered whereas Ex. Ka 9 is the site plan of the house of the accused where the occurrence of burning the bride Smt. Reshma is alleged to have taken place. Ex. Ka 10 is the carbon copy of GD dated 15.05.1995 showing the arrest of the accused Irfan and Rahman. Ex. Ka 11 is the charge sheet filed against the accused respondent No. 1 Irfan, respondent No. 2 Rahman and the accused Smt. Khushnoori who died during the pendency of the trial.

6. At the trial, the prosecution examined eight witnesses. These are PW1 Habib (complainant and the father of the deceased), PW 2 Smt. Amjadi (mother of the deceased), PW 3 Rashid (brother of the deceased), PW 4 Dr. P.K. Shukla (who conducted autopsy on the dead body), P.W. 5 constable Mukut Singh, PW 6 Hafiz

(brother of the deceased), PW 7 Vivek Vashney,, SDM and PW 8 C.P. Thapriyal, retired CO, Investigation Officer.

7. The defence of the accused irfan was that his wife Smt. Reshma died of her natural death; that the dead body, on which postmortem was conducted, was not of his wife Reshma, but of Reshma wife of Hanif. We may point out that the defence suggestion made to PW3 Rashid in his cross examination was that Reshma committed suicide by burning.

8. The defence of the accused Rahman was that he was blind since birth. In defence the accused persons produced D.W.1 Smt. Ajudhya and D.W. 2 Sri Anwar Husain. The accused persons also filed in defence, the copy of the ration card (Ex. Kha 1) and the copy of the Voter List (Ex. Kha 2).

9. The trial court found that the prosecution failed to prove its case beyond doubt for the following reasons:

1. There were two ladies of the common name of Reshma, one was married to the accused irfan and another was married to one Hanif; that Reshma wife of accused Irfan died of her natural death; that Reshma wife of Hanif died due to burn injuries; that postmortem was conducted on the dead body of Reshma wife of Hanif and not on the dead body of Reshma wife of accused Irfan. Thus, according to the trial court, the prosecution failed to prove beyond doubt that the Reshma wife of irfan died in unnatural circumstances.

2. No report or complaint regarding the demand of dowry was made, hence the prosecution failed to prove beyond doubt the facturn of demand of dowry.

3. No report was lodged or complaint made regarding cruelty practised by the accused upon the deceased Reshma, hence the prosecution failed to prove cruelty beyond doubt.

10. We are conscious that if on the basis of the evidence available on the record, there are two views possible, one in favour of the accused and the another in favour of the prosecution, the appellate court must not interfere in the findings of acquittal recorded by the trial court who adopted the former view, which is favourable to the accused. We are conscious further that the findings of acquittal recorded by the trial court may be reversed in appeal only when these are wholly erroneous and uncalled for. Keeping the above rule of caution in our mind, we proceed further.

11. The gist of the testimony of P.W. 1 Habib Husain (father of the deceased Reshma), was that Irfan was married with his daughter Smt. Reshma, about quarter to 3 years back from the date of occurrence. He had given dowry in the marriage according to his capacity and status. Few days after the marriage, the accused persons started beating and practising cruelty upon Smt. Reshma, who made its complaint to him and to her mother, revealing that they were making the demand of cash of Rs. 20,000/- and a scooter in dowry. He requested the accused persons and tried his level best to make them satisfied. He was a poor

person and had no capacity to give cash of Rs. 20,000/- and a scooter in dowry. As a result of the request made by him and under the pressure built by other persons, the accused Irfan took Reshma with him about 20-22 days before the occurrence. Irfan had a shop in village Asmauli but was living in his village Niawali. One day before the day of occurrence, Irfan took all the goods from the shop to his village Niawali and vacated the shop. On the next day he learnt about the vacation of the shop. He then went to village Niawali to know about the welfare of his daughter. Reaching the house of his daughter's sasural, he found that she was not there. The accused persons told him that she had gone to take medicines. Contrary to it, the neighbours told him that she was burnt alive and was buried by them. He went to the Police Station to lodge the report but the police declined to register the case. He then gave applications to the DM and SSP. The dead body of his daughter was taken out from the grave in the presence of the Magistrate, and was subjected to postmortem examination. She was burnt alive for the demand of dowry by the accused persons.

12. P.W. 2 Smt. Amjadi (mother of the deceased), P.W.3 Rashid and P.W.6 Hafeez (both brothers of the deceased) supported the prosecution case in material particulars. PW3 Rashid and PW 6 Hafeez also stated that Irfan had beaten Reshma even in their presence. It was Rashid who had opened the grave of his sister Reshma in the presence of the SDM.

13. P.W. 4 Dr. P.K. Shukla, conducted autopsy on the dead body of Reshma. He proved the postmortem report Ex. Ka 2. He found superficial deep burn injuries on whole of the body except both soles. Regarding cause of death, he opined that the death took place due to asphyxia and shock as a result of ante-mortem burn injuries.

14. P.W.7 Sri Vikek Varshney, was the SDM in whose presence the dead body of Smt. Reshma was exhumed from the grave. He deposed that he along with Sri G.P. Thapariyal, the Deputy SP, the SO of P.S. Asmauli and the witnesses including Rashid (brother of Reshma deceased) reached the grave and discovered the dead body of Smt. Reshma from her grave. The grave of Smt. Reshma was dug by Rashid, brother of the deceased Reshma. The grave was identified by the witnesses and the villagers present there. He proved the relevant documents. In cross-examination, the witness stated that the dead body, which was taken out, was of the wife of Irfan as identified by the witnesses.

15. P.W. 8 Sri C.P. Thaparial, retired C.O. deposed about the investigation conducted by him.

16. We should also refer here about the defence evidence, D.W.1 Smt. Ajudhya deposed that there were two ladies of the common name "Reshma." One of these two was married to Hanif and another was the wife of Irfan. Both of these ladies died. The witness filed a copy of the ration card of Hanif and proved it as Ex. Kha 1. The witness also filed a photocopy of the voter list of 1999 of village Rustampur. Niawali and proved it as Ex. Kha 2. She deposed that the wife of

Irfan died of her natural death and the wife of Hanif died sustaining burn injuries. The statement of D.W. 1 shows that she was newly elected Pradhan of the village Rustampur Niawali. But she had not taken charge of Pradhanship till the date of her statement in court. She was an illiterate lady who put her thumb impression on her statement.

17. D.W.2 Anwar Husain, S/o Shakeel Ahmad, r/o village Rustampur Niawali, stated that there were two ladies of the common name of Reshma in his village. One of them was married to Haneef and another was married to Irfan. Both of them were around the age of 20-22 years. Both had died the same day. Reshma wife of Irfan died of her natural death. Reshma wife of Haneef died sustaining burn injuries. The dead body which was exhumed from the grave was of Reshma wife of Haneef.

18. We find it proper to discuss first whether the deceased Smt. Reshma, D/o Habib r/o village and P.S. Asmauli who was married to the accused Irfan, died normal death or otherwise. In Ex. Ka 2 the note mentioned at the top of the postmortem report is as under:

Postmortem conducted on the body of Smt. Reshma, age 20 years wife of Sri Hanif D/o Habib village Asmauli, Moradabad on 24.04. 95 at 11.45 a.m. Body sent by SDM Sambhal, Moradabad in a sealed cloth. Seal found intact & correct on comparison.

19. The record shows that the dead body of Reshma was exhumed from the grave under the supervision of Sri Vivek Varshney, (P.W.7), the then SDM Sambhal, Moradabad. He prepared inquest report Ex. Ka 3 and other documents Ex. Ka 4 to Ka 7. We have minutely examined the documents Ex. Ka 3 to Ex. Ka 7, The inquest report Ex. Ka 3 clearly shows that this inquest report is regarding the dead body of "Smt. Reshma aged 20 years, father's name Habib, Caste manihar, Village Asmauli, P.S. Asmauli, Moradabad." It is also written on this Ex. Ka 3 that the grave was dug by Mohd. Rashid, brother of the deceased. Thus, from this document Ex.Ka.3, it becomes clear that the dead body which was exhumed from the grave on 24.04.1995 in the presence of P.W.7, Sri Vivek Varshney, SDM, was of none else but of that Reshma who was the daughter of P.W.1 Habib r/o village and P.S. Asmauli.

20. The challan Nash Ex. Ka 5 was also prepared by P.W. 7 Sri Vivek Varshney. In Ex. Ka 5 the name and particulars of the deceased are written in such careless hand writing that the writing may also be read as "Smt. Reshma W/o Habib (instead of D/o Habib) r/o village and P.S. Asmauli". Ex. Ka 6 and Ex. Ka 7 are the letters written by the same witness P.W. 7 Sri Vivek Varshney. In these letters, the particulars of the deceased Reshma are written in much more careless manner. In these Ex. Ka 6 and Ex. Ka 7 the words "Reshma D/o Habib r/o village and P.S. Asmauli District Moradabad" may also be read as "Reshma w/o Haneef r/o village and P.S. Asmauli District Moradabad".

21. P.W.5 constable Mukut Singh deposed that on 24.04.95 he was posted at P.S.

Asmauli; that the dead body of Smt. Reshma wife of Irfan was given to him and another constable for its postmortem; that he handed over the said dead body along with relevant papers to the doctor.

22. Dr. P.K. Shukla P.W.4, stated in his statement that on 25.04.1995 at 11.15 a.m., he along with two other doctors conducted autopsy on the dead body of Smt. Reshma, age 20 years, wife of Haneef, daughter of Habib, village and P.S. Asmauli. The said dead body was sent by SDM Sambhal in sealed cover. The dead body was brought and handed over by the constable Mukut Singh and another constable. The seal of the body was found intact. The deceased died about two weeks ago due to ante-mortem burn injuries.

23. P.W.4 Dr. P.K. Shukla was bound to mention on Ex. Ka 2 only those particulars of the deceased, which were mentioned on the police papers received by him. But he, beyond these particulars furnished to him through Ex. Ka 3 to Ex. Ka 7, baselessly added the words "W/o Haneef" between the words "Smt. Reshma age 20 years" and the words "D/o Habib village Asmauli, Moradabad". He, thus wrote the words, " Smt. Reshma, age 20 years, w/o Haneef, D/o Habib village Asmauli". The words, W/o Haneef in Ex. Ka 2 were thus, baselessly added by P.W.4 Dr. P.K. Shukla in Ex. Ka 2.

24. From the evidence discussed above it becomes clear that the dead body, which was taken out from the grave on 24.04.1995 in the presence of P.W.7, was of Reshma daughter of Habib P.W.1; that the postmortem on the dead body of the said Reshma was conducted by P.W.4 and two other doctors; that said Reshma daughter of Habib died due to ante- mortem burn injuries; that there was no basis for P.W.4 Dr. P.K. Shukla to mention the words " W/o Haneef" after the words "Smt. Reshma age 20 years" on Ex. Ka 2. Hence we are of the view that the words "W/o Haneef" occurring in Ex. Ka 2 have no roots in Ex. Ka 3 to Ex. Ka 7 so, these words are liable to be ignored.

25. In the voters' list Ex. Kha 2, at sl. Nos. 1380 & 1381 respectively, the name of Haneef s/o Mohd. Shafi and the name of Reshma wife of Haneef are mentioned. In Ex. Kha 2 there is no mention of the name of either "Reshma wife of Irfan or of accused "Irfan S/o Faiyaj". Moreover, this voters' list is of 1999 whereas occurrence took place on 11.04.1995, the case of which was registered on 21.04.1995. The only inference which may be drawn from the voters' list Ex. Kha 2 is that Reshma W/o Haneef was alive till the year 1999 when the election of Gram Panchayat was held. This inference further gives a jolt to the finding of the trial judge that "Reshma W/o Haneef died in 1995, At si. No. 1396 the name of yet another "Reshma" wife of Asfaq is mentioned. It, therefore, also appears that Reshma is a popular name in Muslims Thus, the accused made futile attempt to take undue advantage of such name of Reshma and built up the false defence on its basis. Accused persons, therefore, cannot take any advantage of the voters' list of 1999. The finding of the trial judge that Reshma wife of Hanif also died in 1995 is rather exploded by this voters' list.

26. Ex. Kha 1 is the photo copy of the Ration Card. The alleged Ration Card appears to have been issued on 15.01.1999 i.e. about four years after the date of occurrence. Thus, Ex. Ka 1 also goes to show that Reshma wife of Hanif was alive till 15.01.1999 when the alleged Ration Card appears to have been issued. So, this paper Ex. Kha 1 is also of no avail to the respondents.

27. In order to prove the death of "Reshma wife of Hanif r/o village Rustampur Niawali" in 1995 by burn injuries, the respondents could have produced in trial court either any close relative of the said Reshma W/o Haneef or any other convincing evidence of like nature. Her brother, father, mother, husband etc, could have been examined in defence. Neither D.W.1 Smt. Ajudhya nor D.W.2 Sri Anwar Husain was the relative of Smt. Reshma wife of Hanif. None of them was present when the dead body was exhumed on 24.04.1995. So, none of them could say that the dead body was of Reshma w/o Haneef.

28. The respondents produced no evidence that the father's name of Reshma W/o Hanif was also "Habib", and that such Habib was also the resident of "village Asmauli P.S. Asmauli".

29. The defence plea that Reshma W/o Haneef died in or about April 1995, by burn injuries is wholly without any basis. We, therefore, see no force in the finding of the trial judge that the postmortem was conducted on the dead body of a lady other than Reshma daughter of P.W.1 Habib r/o village & P.S. Asmauli. who was admittedly married to the respondent Irfan of village Rustampur Niawali. It was well established that the exhumed dead body subjected to postmortem was that of Reshma d/o P.W.1 Habib who was the wife of accused irfan.

30. We hold that Reshma W/o Irfan, D/o P.W.1 Habib died in April 1995, due to burn injuries and thus not in normal circumstances.

31. The other two points whereupon the trial Court found that the prosecution failed to prove its case beyond doubt were: (1) No report was lodged or complaint was made regarding the demand of dowry; (2) No report was lodged or complaint made to higher authorities regarding cruelty practised upon the daughter of the complainant. Both of these points should be dealt with together.

32. It is true that in normal cases when one person is subjected to cruelty by the other or when illegal demand is made from one by the other, the former normally lodges an FIR against the latter at the police station or gives complaint to higher authority regarding such cruelty or demand. But where the demand is of "dowry" or where the bride is subjected to cruelty by her husband or the members of the in-laws family, such cases deserve to be distinguished from the other normal cases. The reason for such distinction is simply that the parents of each bride wish and desire for and their interest also lies in the continuance of smooth and happy relationship between their daughter and the daughter's husband. The parents, therefore, avoid the lodging of an FIR against the groom or the relatives of the groom. They know well that the lodging of the FIR or making of a

complaint to higher authority regarding demand of dowry or regarding cruelty practised upon the bride, would add to the bitterness in the relationship between their daughter and her husband and such bitterness may lead even to the separation of the bride from the groom. Therefore, they do not take such risk. For these reasons the parents or the brother of the bride seldom resort to the police station or to the higher officers regarding the demand of dowry made by in -- laws or for the cruelty practised by them upon the bride. Keeping in view the aforesaid tendency of the parents of the bride, we are of the view that the omission to lodge the report at the police station or the omission to make the complaint to higher officers regarding the demand of dowry or regarding cruelty practised upon the bride, would not adversely affect the truthfulness of the prosecution case. The contrary view adopted by the trial Court is wholly erroneous, unwarranted and uncalled for. We, therefore, hold that such omissions create no doubt in the truthfulness of the prosecution case.

33. P.W.1 Habib Husain (the father of the deceased Reshma), P.W. 2 Smt. Amzadi (the mother of the deceased), P.W.3 Rashid (the brother of the deceased) and P.W.6 Hafiz the another brother of the deceased, categorically proved the demand of dowry by the accused Irfan and practising cruelty upon Reshma on non-fulfilment of such demand.

34. On the basis of the prosecution evidence, we hold that the marriage of Smt. Reshma, the daughter of the complainant Habib was solemnised with the accused Irfan within three years preceding the date of occurrence; that the occurrence of burning Smt. Reshma alive took place on or soon before 12.04.1995 when P.W. 1 Habib had gone to Rustampur Niyawali to enquire about the welfare of his daughter Smt. Reshma; that the accused Irfan demanded dowry after the said marriage; that for the said demand of dowry Smt. Reshma was subjected to cruelty by beating and by omitting to provide essentials for the life. The death of Smt. Reshma, by burning her alive was caused on any day between 10.04.1995 to 12.04.1995. Without giving any information to the complaint, the accused buried the dead body of Smt. Reshma in a grave to screen from legal punishment.

35. On the basis of the evidence adduced and on the basis of the presumption provided u/s 113B of the Indian Evidence Act, we hold that the accused Irfan is guilty of the offences punishable u/s 498A, 304B, 201 IPC and Section 4 of D.P. Act. He is, therefore, liable to be convicted on all of these counts.

36. Regarding the respondent Rahman, we are of the view that his interest, if any, in demand of dowry could not be so intensive as that of the prime accused Irfan. He is the brother of Irfan. Hence he could hardly be benefited by the dowry. P.W.1 Habib has stated in the concluding paragraph of his cross examination that Rahman was blind from before the marriage of Smt. Reshma with Irfan. In these circumstances Rahman was not capable of using scooter demanded in dowry. The admitted fact that Rahman was blind from before the date of marriage of Reshma and that he was the elder brother of Irfan create

doubt that he could be interested in the demand of dowry. Moreover, there is no mention in the FIR that Rahman made any type of demand of dowry or had ever practised cruelty upon Smt. Reshma or had assisted in the commission of Smt. Reshma's death or had buried her dead body. There is no mention of the name of Rahman in the FIR. It further gives a jolt to the prosecution story regarding the involvement of Rahman in the offence. In these circumstances, we find it safe not to interfere in the finding of acquittal of the respondent Rahman recorded by the trial court.

37. The appeal is, therefore, partly allowed and the impugned judgment and order acquitting the respondent Irfan is set aside. He is convicted under Sections 304B, 498A and 201 IPC as also u/s 4 of DP Act. He is sentenced as under:

38. The Accused Irfan is sentenced to 10 years RI for the offence punishable u/s 304B, 2 years" RI for offence punishable u/s 498A, 2 years" RI for the offence punishable u/s 201 IPC and 6 months" RI for offence punishable u/s 4 D.P. Act. All the sentences shall run concurrently. He is on bail. The CJM Moradabad shall cause him to be arrested and lodged in jail to serve out the sentences.

39. The State appeal against the respondent Rahman fails and is hereby dismissed. The judgment and the order of acquittal passed for him are upheld.

40. Certify the judgment to the lower court immediately. The CJM concerned shall report compliance within two months from the date when a certified copy of this judgment is received in his office.