
(2006) 04 AHC CK 0182
In the Allahabad High Court
Case No : Government Appeal No. 641 of 2001

State of U.P.

APPELLANT

Vs

Rama Shanker Kushwaha and Others

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2006) 9 ADJ 7 : (2006) 3 RCR(Criminal) 496

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

Bench : Division Bench

Advocate : R.K Singh and R.P. Singh and A.G.A, for the Appellant; Khursheed Alam, Samit Gopal, B.N. Singh and Umesh Vats, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—The State has preferred this appeal against the judgment dated 10.10.2000 passed by VI Additional Sessions Judge, Deoria in Sessions Trial No. 297 of 1998. It is a case of bride's death (Bachiya Devi wife of accused respondent No. 2 Ram Deo son of accused respondent No. 1 Rama Shankar). The accused respondent No. 3 Shyam Deo is elder brother of the husband of the deceased whereas accused respondent No. 4 Smt. Simarajiya is her mother-in-law. The accused respondent No. 5 Anirudh Brahm Deo was uncle-in-law of the deceased who died during the pendency of the appeal which came to be abated against him under order dated 4.10.2005.

2. We first give a resume of the broad essentials of the case. The incident took place on 9.6.1998 at about 4 A.M. in the Sasural of the deceased situated in village Chhitrauli, P.S. Khampar, District Deoria. The F.I.R. was lodged on 10.6.1998 at 10.30 P.M. by Kishun Deo Kushwaha PW 1-brother of the deceased. The deceased had been married with Ram Deo about four years before the incident on 24.6.1994. Her Gauna had been performed three years later. She lived in her Sasural thereafter for about one year but during this period she was being harassed, assaulted and maltreated by the accused respondents for having

not brought sufficient dowry. The informant's younger brother Awadhesh Kushwaha PW 2 used to frequently visit the Sasural of his sister to whom she used to narrate the tale of her woe. 10.6.1998 had been fixed as the day of her Vidai from her Sasural for being brought to her parental home. The informant's brother went to the Sasural of his sister on 9.10.1998 in the evening but her sister was not found to be there. She had been burnt to death by the accused persons. The dead body had been buried at a little distance in a grove. Returning home, the younger brother of the informant informed the informant and other members of his family. Then Kishun Deo Kushwaha PW 1 got a report of the incident scribed in the way and lodged it at the police station leading to the registration of the case and investigation.

3. The defence was of denial of the accusation. The case put forth by the accused was that an accidental fire had taken place in the house of Rama Shankar and everything was reduced to ashes. So, it was claimed that the deceased died in such accidental fire.

4. The prosecution examined Kishun Deo Kushwaha-informant PW 1 (brother of the deceased), Awadhesh Kushwaha PW 2 (another brother of the deceased), Kashi Nath PW 3, Dr K.D. Sharma, M.O. PW 4, Head Constable Indradeo Singh PW 5 and S.S.I. Ram Rekawa Yadav PW 6 I.O. Two witnesses were examined by the defence also. Not finding the evidence of the prosecution to be believable as to the causing of death of the deceased by the accused by burning who were allegedly demanding dowry, the trial judge recorded acquittal,

5. We have heard Sri R.K. Singh, learned A.G.A. from the side of the State and Sri B.N. Singh, learned Counsel for the accused respondents. The record has been summoned which has carefully been perused by us.

6. It has been argued for the State that it was satisfactorily proved by the evidence of the prosecution that the deceased had been married with Ramdeo accused respondent No. 2 four years before the incident (24.6.1994) and she died by burning in her Sasural within seven years. The trial court, it has been urged, unjustifiably rejected the testimony of her having been subjected to cruelty and harassment by the accused respondents because of non-fulfilment of demand of dowry and she having ultimately been done to death by burning whose dead body was recovered from a pit in which the same had been concealed by the accused respondents. The finding of acquittal, as per the argument of A.G.A., is perverse and illegal. On the other hand, the learned Counsel for the accused respondents has supported acquittal with the submission that it is based on proper and judicious appraisal of the evidence adduced on record.

7. We have carefully examined the evidence adduced on record. It should be prefaced before proceedings further that the High Court in an appeal against acquittal would not disturb it, if interference is sought on mere possibility of an alternative view in respect of the evidence adduced in the case. If two views are

reasonably possible and the view taken by the trial court is a possibly reasonable view, then reversal of acquittal is not justified. Conversely stated, the High Court would interfere only in cases where the findings recorded by the trial court are unreasonable or perverse or where the court below has committed serious error of law or has recorded its findings in ignorance of relevant material on record or by taking into consideration inadmissible evidence.

8. In the present case, though it was proved satisfactorily by the evidence of the prosecution that the deceased had been married with Ramdeo accused respondent No. 2 within seven years preceding her unnatural death by burning, but the evidence regarding her being subjected to cruelty or harassment by the accused respondents or any of them over the score of demand of dowry and of doing her to death by burning was not at all satisfactory. Rather, it was seemingly a case of accidental fire having taken place in the thatched house in which she was living.

9. Taking up the question of alleged cruelty or harassment over demand of dowry first, we note from the testimony of Kishun Deo Kushwaha PW 1 and Awadhesh Kushwaha PW 2-brothers of the deceased that though the marriage had taken place four years before the incident, but the second marriage (Gauna) took place only about a year before the incident whereafter the deceased was residing in her Sasural. It is there in their testimony that cash, utensils, clothes etc. had been given in dowry. The demand of cycle, radio and wrist watch was allegedly the bone of contention. The testimony of Kishun Deo Kushwaha PW 1 was that even cycle and radio had also been given, meaning thereby that the grudge of the accused respondents centred around only over not getting wrist watch. He contradicted himself at another place that he could not give cycle, radio and wrist watch. The statement of his brother Awadhesh Kushwaha PW 2 was at variance that the cycle had been given and then the demand of radio and wrist watch was raised which could not be met. Kishun Deo Kushwaha PW 1 never went to the Sasural of his sister before 10.6.1998 as stated by him. It was Awadhesh Kushwaha PW 2 who used to frequently visit her Sasural after her Gauna to be told about her maltreatment and harassment over demand of dowry items.

10. It was a fact that a fire had taken place in village Chhitrauli regarding which an information had been given at the police station by an unconcerned person of the said village, namely, Devendra Mishra on 9.6.1998 at 8.30 A.M. as surfacing from the testimony of the Investigating Officer Ram Rekha Yadav PW 6. He also testified that even the fire brigade was requisitioned which had reached the village before his arrival there. The fire had been extinguished earlier to his reaching. It was admitted by Kishun Deo Kushwaha PW 1 himself that even the neighbouring thatched house of Chhaddu had got burnt. It was also there in the testimony of I.O. S.S.I. Ram Rekha Yadav PW 6 that the residential house of Rama Shankar (accused respondent) had completely been reduced to ashes including all belongings kept there. There was nothing excepting heap of ashes. So, it could not be doubted that an accidental fire had taken place in which

neighbouring house of Chhaddu was also burnt. As we said above, the fire brigade was summoned. We also note from the testimony of the Investigating Officer that a day before, fire had taken place in village Madho Chhapar also. The incident took place in the month of June. In this view of the matter, it sounds to be illogical that because of non-fulfilment of the alleged demand of wrist watch or radio, the accused respondents would have burnt their own house reducing all the articles to ashes so as to succeed in their design to burn alive the deceased. The possibility was very much there that the deceased got burnt in such accidental fire. The brothers of the deceased have tried to make capital of it, fastening guilt on the heads of the accused respondents on the premise of the alleged harassment of the deceased by them over non-fulfilment of demand of dowry i.e. radio and wrist watch.

11. Learned A.G.A. argued that as per the post mortem report Ext. Ka-2 of the deceased prepared by Dr K.D. Sharma PW 4, the smell of kerosene was coming out and it could not be there if she had not been burnt alive. Scrutinizing the testimony of the said Doctor, we find that his statement in the court was completely contradictory that no smell of kerosene oil was coming out of the dead body. The prosecution did not re-examine him as to the recital in the post mortem report. So, it could not be pronounced with certainty that actually the smell of kerosene was coming out on the dead body of the deceased. Moreover, a glowing lantern or something else filled with kerosene might have fallen on the deceased when engulfed inside the thatched house in the accidental fire.

12. Learned A.G.A. further urged that the part of the dead body of the deceased was buried by the accused Ram Deo (husband of the deceased) in two pits in a grove nearby the village and the same could be recovered at his instance before the Sub-Divisional Magistrate on 10.6.1998 which established his culpability. We are afraid, this argument cannot possibly be accepted. In the first place, as rightly pointed out by the learned Counsel for the accused respondents, this circumstance was not even put to Ram Deo accused in his Statement u/s 313 Cr.P.C. Secondly, the Sub-Divisional Magistrate before whom the alleged recovery was made was not even examined as a witness. As per the statement of Ram Rekwa Yadav PW 6, the alleged recovery was made on 10.6.1998 at 5 P.M. The F.I.R. in question was lodged by Kishun Deo Kushwaha PW 1 (brother of the deceased) on 10.6.1998 at 10.30 P.M. i.e. even before lodging of this F.I.R., the alleged recovery was made. If it were so, Ram Deo would have been arrested then and there. The fact, however, was that he was arrested on 22.6.1998. There was no public witness either of the alleged recovery having been got made by Ram Deo. The alleged recovery, therefore, cannot be relied upon as a circumstance to fasten the guilt on the head of Ram Deo.

13. On analysing the evidence on record, the view taken by the trial court is found to be quite reasonable, not suffering from any illegality or perversity. None of the accused respondents could be held to be guilty. The possibility was very much there, as we said, that the deceased died in an accidental fire taking place

in thatched house of her Sasural.

14. In view of the above discussion, we find no merit in this appeal and it is hereby dismissed. The appeal has already abated against the accused respondent No. 5 Anrudh Brahm Deo under order dated 4.10.2005 because of his death. The acquittal of accused respondents No. 1, 2, 3 and 4, namely, Rama Shankar, Ram Deo, Shyam Deo and Smt. Simarajiya is affirmed. They are already on bail.

15. Certify the judgment to the lower court for in-corporating necessary entry in the concerned register and reporting compliance within two months.