

(2005) 12 AHC CK 0007

In the Allahabad High Court

Case No : Government Appeal No. 2713 of 2003 and Criminal Revision No. 1933 of 2000

State of Uttar Pradesh

APPELLANT

Vs

Kundan alias Utkarsh and Anusheel alias Kunwar, Smt.
Jagdamba Gaur and Sri Keshav Prasad Gaur

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 302, 304B, 498A

Citation : (2006) 1 DMC 377

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

Bench : Division Bench

Advocate : R.P. Dubey and Usha Kiran and A.G.A, for the Appellant; B.K. Tripathi, G.S. Chaturvedi and P.K. Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—Government appeal in question has been preferred by the State against judgment dated 9.6.2000 passed by the Special Judge (Anti-Corruption Act)/Additional Session Judge, Gorakhpur in S.T. No. 567 of 1998. The accused respondents Kundan alias Utkarsh, Anushil alias Kunwar, Jagdamba Gaur and Keshav Prasad Gaur have been acquitted of the charges u/s 498A and 304B I.P.C. and u/s 3/4 of Dowry Prohibition Act. The accused respondent No. 1 Kundan alias Utkarsh is the husband of the deceased Minni alias Ranjita Bharti; accused-respondent No. 2 Anushil alias Kunwar is younger brother of accused-respondent No. 1; accused-respondent No. 3 Jagdamba Gaur is the mother-in-law of the deceased and accused-respondent No. 4 Keshav Prasad Gaur is her father-in-law. Criminal revision No. 1933 of 2000 has been filed by Chandrawati Gaur (informant and the mother of deceased) challenging the acquittal. We propose to decide them together.

2. Broad features of the case are thus: The deceased was married with Kundan alias Utkarsh on 2.2.1998 according to Hindu rites and the incident occurred in her Sasural sometime in the night of 25.6.1998 or in early hours of 26.6.1998. The F.I.R. was lodged by deceased's mother- Chandrawati Gaur PW 1 at the concerned Police Station Shahpur, District Gorakhpur on 26.6.1998 at 11.30 A.M. As per the F.I.R., the informant had given sufficient dowry in the marriage of her daughter beyond expectation of her in-laws. Thereafter, the accused respondents started harassing her daughter pressing the demand of a maruti car in dowry. The deceased used to complain in this behalf to her mother. She told her daughter that she was in a financial crisis and would give maruti car too on making arrangement of finances. But the pressure for the same continued from the side of the accused-respondents with harassment of the deceased who, from time to time, used to inform her mother in this behalf on telephone. On 25.6.1998 at about 10.10 P.M. her daughter informed her on telephone bemoaning that she was being beaten up and implored her to save her life. Sensing the exigency of the situation, she with her sons Sanjai Bharti and Chandan Bharti PW 2 immediately went to her daughter's sasural at Bichhiya. Her Sasural's house was found locked. On inquiry from neighbours, she learnt that deceased was wailing, weeping and crying in the night and her in-laws took her to the hospital or somewhere else. Throughout the night, she kept her searching with her two sons in different hospitals and nursing homes but in vain. When she went to Gorakhpur Medical College in the morning, she found her to be admitted in Ward No. 5 in precarious condition. She was being medically treated there. She had injuries on her person. She died after sometime. She then lodged the F.I.R., setting the machinery of law in motion.

3. So, the accusation was that four accused-respondents had committed dowry death of her daughter because of non-fulfilment of their demand of maruti car. Consequent upon the registering of the case, the investigation was made by CO. Mahendra Yadav PW 5 who reached the medical College, prepared inquest report of the dead body of the deceased with preparation of necessary papers. The dead body after being sealed was sent for post mortem which was conducted on 26.6.1998 at 6.05 P.M. by Dr. Surendra Deo PW 6 in association with another Doctor A.K. Saxena. The site plan of the house of the accused-respondents was also prepared the same day by the Investigating Officer. After completion of investigation the chargesheet was laid, leading to trial. It should be related here that the deceased had died in Medical College, Gorakhpur at 9.55 A.M. on 26.6.1998. She was aged about 23 years. The following three ante mortem injuries were found on her person:-

- A) Abrasion on right side of face 2 cm x 5 cm.
- B) Abrasion on right big and second toe.
- C) Abrasion 3 cm x 2 cm on post aspect of right leg.

The cause of death could not be ascertained. Viscera was preserved. The viscera

report ultimately disclosed the presence of aluminium phosphide poison. The deceased was carrying a male foetus of about 5 months.

4. The prosecution, in support of its case, examined Chandrawati Gaur informant PW 1, her son Chandan Bharti PW 2 and Harish Dutt Pandey PW 3, besides five other witnesses inclusive of doctor and Investigating Officer. The most material witnesses were Chandrawati Gaur PW 1, Chandan Bharti PW 2 and Harish Dutt Pandey PW 3.

5. The marriage of the deceased with accused respondent No. 1 Kundan alias Utkarsh on 2.2.1998 was admitted, but the defence was that there had never been any demand of dowry from the side of the accused respondents at any point of time. It was allegedly a love-cum-arranged marriage. Earlier to the marriage, the deceased allegedly had erotic relations with one Bablu who wanted to blackmail her. 26.6.1998 was the birthday of Kundan alias Utkarsh. Bablu threatened the deceased on phone in the morning to send her objectionable photographs in her Sasural that day and apprehending her matrimonial life to be on rocks, she consumed poison in frustrated state of mind. Kundan alias Utkarsh immediately carried her to medical College for treatment but she could not be saved. It was also the part of defence that the information of the incident was given to the mother of the deceased by the accused on the basis of which she had reached the Medical College. The deceased's mother put up a demand of Rs. 5,00,000/- in the Medical College after the death of the deceased and as they (accused) could not meet it, she falsely lodged the F.I.R. projecting it to be a case of dowry death, involving all of them (entire family).

6. The accused respondent No. 3, Jagdamba Gaur mother-in-law of the deceased, put forward the plea of alibi that she actually was in Banshi at the relevant time where she was a lecturer of B.Ed. in Ratan Sen Degree College. Nishar Ahmad DW 2 was produced in support of this plea. He claimed himself to be the owner of the house where she was residing at Banshi and, according to him, on 26.6.1998 in the morning, the accused Kundan had given a telephonic call which he had received informing that the deceased was seriously ill and that his mother (Jagdamba Gaur) be immediately sent to Medical College, Gorakhpur. He gave this message to Jagdamba Gaur. Three other witnesses were also produced in defence.

7. The trial judge recorded acquittal holding that the demand of dowry and causing of injuries to the deceased or her torture by the accused could not be proved. He also held that the defence put up by the accused well competed with the prosecution case.

8. We have heard Miss Usha Kiran learned A.G.A. from the side of State in support of the appeal. None appeared from the side of the revisionist to argue out the revision filed by Chandrawati Gaur- mother of the deceased. From the side of the accused respondents the arguments of Sri G.S. Chaturvedi assisted by Sri B. K. Tripathi have been heard. Record hits been summoned before us

which we have perused. The submission of learned A.G.A. is that the trial judge erroneously disbelieved the testimony of the informant Chandrawati Gaur PW 1 and her son Chandan Bharti PW 2. There was demand of maruti car in dowry by the accused-respondents and cruelty and harassment were heaped by them on the deceased. The trial judge, argued learned A.G.A., also gravely erred in disbelieving the testimony of Harish Dutt Pandey PW 3, who supported the factum of demand of dowry as having participated in a Panchayat at the house of accused on 15.6.1998 along with the mother and brother of the deceased in connection with the said demand of maruti car by them. She urged that certain injuries found on the person of the deceased at the time of her post mortem were the outcome of the beating given to her in between the night of 25/26.6.1998 when she had been poisoned by them. The testimonial assertions of the witnesses, it has been stressed, were in agreement with medical evidence. Thus, the impugned judgment of acquittal has been assailed to be based on faulty appreciation of evidence and has been designated to be based on superficial approach, also unjustifiably ignoring the provision of Section 113B of Indian Evidence Act.

9. On the other hand, argument from the side of the accused respondents is that the trial judge has taken a proper view on judicial appreciation of evidence and attending circumstances. The prosecution, it is urged, utterly failed to prove the demand of maruti car in dowry and any harassment of the deceased by the accused on this score. She, it has been submitted, committed suicide in an emotional strain because of threats offered by her erstwhile lover of exposing her in her sasural by sending her objectionable snaps blackmailing her. They, on the other hand, did their best to save her but God willed otherwise.

10. We have carefully gone through the record and have crosschecked the findings of trial judge with the evidence. We should say before proceeding further that the settled position of law with regard to appeal against acquittal, summarised in few words, is that High Court is entitled to reappraise entire evidence on record, but it shall interfere only in cases where the findings recorded by the trial court are unreasonable or perverse or where the court has committed serious error of law, or the trial court has recorded its findings in ignorance of relevant material on record or by taking into consideration the evidence which is not admissible.

11. In the present case, it is admitted position that death of the deceased took place within five months of her marriage and that the incident took place in her sasural. It is also amply established on consideration of post mortem report and viscera report that the death was unnatural one by poisoning by aluminium phosphide.

12. We find that several reasoned factors are lined up showing that the prosecution case and evidence regarding demand of dowry and torture of the deceased by the accused respondents was incapable of being believed. Unnatural death of the deceased could not be attributed to any criminal act of the accused

respondents or any of them. The prosecution case right from the beginning was as if there was no demand from the side of the accused respondents at the time of the performance of marriage and the dowry voluntarily given by the deceased's mother Chandrawati Gaur PW 1 was beyond their expectations. The demand of maruti car was allegedly started being pressed and the deceased was being tortured on this score by the accused-respondents subsequent to the performance of the marriage. It is there in para 16 of the testimony of Chandrawati Gaur PW 1 that at the time of settlement of marriage of her daughter, the accused had not even enquired about her financial condition. She had told them about her source of income and of the members of her family. She is a widow and teacher. To say in other words, the accused-respondents were not worried about her financial status. She specifically stated that bridegroom's father did not even inquire about her financial status. She also testified that at the time of settlement of the marriage, it was projected that bridegroom (Kundan alias Utkarsh) was serving as an engineer in Jhansi but after about 3 1/2 months of the performance of marriage, it came to be revealed that he was unemployed with no profitable engagement. It does not stand to reason that the demand of maruti car would have been started to be made and intensified with torture of the deceased subsequent to the performance of the marriage. The bridegroom having been misrepresented to be employed as an engineer at the time of the settlement of marriage, best opportunity to accused respondents to fork out dowry from the mother of the deceased would have been before or at the time of the performance of marriage, and not subsequently when even it came to be revealed that the bridegroom was actually unemployed.

13. Further, as per the F.I.R. which is the earliest version of the prosecution, the alleged demand of maruti car was being pressed and conveyed to the parental side of the deceased through her (deceased). There is no mention in the F.I.R. that any demand of maruti car subsequent to the performance of the marriage was made directly by the accused-respondents or by any of them from Chandrawati Gaur PW 1 and/or her sons. The case was that the demand of maruti car was used to be made through the deceased, who in her turn, apprised about it to her mother from time to time on telephone. It was also not the prosecution case in the beginning that 10 days before the alleged incident i.e. on 15.6.1998, the deceased telephoned to her mother that the accused were harassing her in extremity because of non-fulfilment of the demand of maruti car and that then the mother and brothers of the deceased as also Harish Dutt Pandey PW 3 and Dr. Kamal had gone to the Sasural of the deceased and a Panchayat was held in which Chandrawati Gaur had imploringly assured the accused-respondents that on making financial arrangement she would give maruti car too. As per Harish Dutt Pandey PW 3, the said Panchayat was held on 15.6.1998 at about 6 P.M. at the house of the accused-respondents. This story is clearly an improvement at the evidence stage. The allegation of demand of maruti car by the accused-respondents from the mother of the deceased was neither in the F.I.R. nor in the statements made u/s 161 Cr.P.C. In her

examination-in-chief also, Chandrawati Gaur did not say anything about the said Panchayat at the house of the accused-respondents on 15.6.1998. To boost up the prosecution case, the story was developed in the testimonial assertions of the deceased's brother Chandan Bharti PW 2 and Harish Dutt Pandey PW 3.

14. Assuming that any such Panchayat was held on 15.6.1998 (though it cannot be believed) and the mother of the deceased had imploringly requested the accused-respondents for time to meet the said demand by making financial arrangement, then there could hardly be any occasion for cutting short the life of the deceased by the accused-respondents or any of them barely after ten days. They were in the know of the financial status of the mother of the deceased that she was a widow and simply a teacher. She could not miraculously make financial arrangement for purchase of maruti car within a span of ten days. They would have at least waited for a reasonable time for the demand being satisfied. As a matter of fact, reliance could not be placed on the testimony of Harish Dutt Pandey PW 3 that he had participated in any such Panchayat. As per Chandan Bharti PW 2, it, was at about 10. A.M that Ranjita deceased had told her mother on telephone regarding her extreme torture by the accused-respondents because of the non-fulfilment of the demand of maruti car. Then they had gone to Harish Dutt Pandey who with Dr. Kamal reached Sasural of the deceased in the evening and participated in the Panchayat. The statement of Harish Dutt Pandey PW 3 is that he had been informed by Chandrawati Gaur PW 1 at his residence through telephone and he had asked her to come to the court in his office at about 4.00 P.M. She, her son Chandan Bharti PW 2 and her another son Sanjai Bharti reached at his Takhat in the court at the appointed time. Two or four minutes thereafter Dr. Kamal also came there. After finishing court work, he reached the Sasural of the deceased alongwith these persons. This witness Harish Dutt Pandey PW 3 claimed to be practising law in courts. Earlier, he was a clerk somewhere. Admittedly, while serving as a clerk in the office of RFC Azamgarh, he remained in jail in connection with a case u/s 302 I.P.C. He pleaded forgetfulness to answer any inconvenient question as to in which period he was in jail; who was the complainant in that case, what was the incident; whether he was in jail for 1,2 or 6 months; whether he had informed departmental authorities about this criminal case and whether he had been accused in other criminal cases also. Reliance could not be placed on his testimony to support the story developed by the prosecution at the stage of adducing evidence in court. If it was a matter of such an emergency, it spills beyond comprehension that the mother and the brothers of the deceased waited till evening to reach the house of in-laws of the deceased. The urgent and emergent telephone call given by the deceased to her mother at 9-10 A.M. on 15.6.1998 would have exceedingly alarmed them to reach her Sasural without any loss of time.

15. There is another aspect which militates against the alleged demand of maruti car in dowry by the accused-respondents from the mother of the deceased either through her (deceased) or directly. We find that Chandrawati PW 1 (mother of the deceased) twisted and coloured her testimony before the court so as to suit

her purpose. It would be recalled that the marriage of the couple had been performed on 2.2.1998. She stated in para 20 that settlement of marriage took place on 30.6.1997. She stated in para 16 of her deposition that she came to be introduced to the family of accused a year before of the performance of the marriage. Her this statement is demonstrably false. She admitted in her cross-examination in para 20 that she had got rectified the mistake in the name of the accused Kundan alias Utkarsh (bridegroom) in his high school mark-sheet. When suggested that it was got done in 1991, she gave prevaricating reply that she could not tell the year. Further questioned, she pleaded inability to say as to how many years back she had got it done. To say in other words, she could not deny the suggestion that such correction was got made by her in 1991. It is there in her testimony that her daughter Ranjita had passed high school in 1991. It sounds to be quite probable that Kundan had also passed high school in that year. It goes to indicate that the two families knew each other from long before the settlement of the marriage. The marriage having been settled on 30.6.1997 and performed on 2.2.1998, there was intervening period of 7 months. Chandrawati Gaur stated that after the settlement of the marriage, the accused Kundan alias Utkarsh used to come and meet Ranjita at her house. Not only this, they used to go out together for outing in the city. It goes to indicate that they had developed immense liking for each other and were conducting themselves contrary to the traditional way (of husband and wife developing intimacy only after the performance of marriage). This scenario runs in the teeth of the alleged demand of maruti car in dowry by any of the accused subsequent to the performance of marriage either directly or through the deceased.

16. There is yet another important factor to be taken note of. Chandrawati PW 1 admitted in para 26 of her statement that at the time of the incident the deceased was student of B.Ed. She had taken admission in B.Ed. only 10-12 days after her marriage. Her mother-in-law had accompanied her for her admission in B.Ed. She was a post graduate already. The mother and mother-in-law of the deceased were in teaching profession. She (deceased) was also in the process of joining teaching profession after completing B.Ed. Naturally, she would have been a regular income earner for the family of her in-laws after being fixed in employment on completion of B.Ed. It does not fit in the scheme of things that ignoring the future, the accused-respondents would have tortured her for the demand of maruti car in dowry after the performance of marriage and would have done her to death on the non-fulfilment of such demand as alleged by the prosecution.

17. 26.6.1998 was the birth day of the accused Kundan alias Utkarsh (husband). Chandrawati PW 1 admitted in para 38 of her statement that even before the settlement of marriage, she had attended the birth day party of Kundan alias Utkarsh (accused respondent No. I) along with her family members on 26.6.1997. So, it comes to be fixed that 26.6.1998 was the birth day of the accused-respondent Kundan alias Utkarsh. It is illogical that he or his family members would choose the night of 25/26.6.1998 to put the deceased to death

by poisoning.

18. Sequence of events sought to be projected by the prosecution does not have the attraction of logic at all. The conduct of Chandrawati PW 1 and her family members goes a long way against the prosecution case and the evidence put-forth to fasten guilt on the heads of the accused-respondents. It is alleged that the deceased contacted Chandrawati Gaur PW 1 at about 10 P.M. on 25.6.1998 and told her sobbing that she was being assaulted by the accused persons. She earnestly asked her to reach her at once to save her life. Being alarmed, Chandrawati PW 1 immediately reached her daughter's Sasural with her two sons using scooter and motorcycle. The distance was about 15 kms. The house of the in-laws of the deceased was found locked and on her call neighbours came out informing that her daughter was weeping and wailing in night and that her in-laws had taken her to the hospital or somewhere. Then she and two sons kept her searching in hospitals and nursing homes of the city but in vain. Disappointed, she and her sons reached back their house and in the morning went to the Medical College with her relations where the deceased was found admitted in ward No. 5 in precarious condition. After about an hour, she died. The conduct of the mother of the deceased and her sons does not pass the test of scrutiny. No police help was sought in the night. No information was given at the Police Station, though mother and brother of the deceased were well aware of the exigency of the situation that the life of the victim might be in danger. They had not found her in her Sasural where they had reached by scooter and motorcycle covering a distance of 15 kms. at fast speed immediately on receiving the telephone call from her at about 10 P.M. Chandrawati PW 1 admitted in para 28 of her testimony that nearest the Sasural of Ranjita was the Medical College. She also admitted that best treatment in Gorakhpur was available in Medical College, It goes unexplained as to why the mother and brothers of the deceased did not visit the Medical College in the night itself which was the nearest to her Sasural. They did not do so even on being unsuccessful in tracing her out in any other hospital or nursing home. They returned back to their home at about 3 A.M. believing that something untoward had happened to the deceased. Still they did not inform the police in the night. It is obviously unnatural. It is not easily understandable as to how all of a sudden they along with relations happened to reach the, Medical College in the morning.

19. We should point out that if she was being assaulted by the accused-respondents in the night, they would not have allowed her to make any telephone call to her mother.

20. All these factors taken together strongly indicate that actually the incident took place in wee hours of 26.6.1998 and the information of the incident was given from the side of accused-respondents to the family of the Chandrawati Gaur PW 1 in consequence whereof she with others happened to reach the Medical College. It was the husband of the deceased who had admitted her in Medical College. Treatment was being given to her. True, aluminium phosphide

was found in the viscera report. But, a look at her post mortem report would show that only following ante mortem injuries were found on her person: (1) abrasion on right side of face 2 cm x 5 cm, (2) abrasion on right big and second toe and (3) abrasion 3 cm x 2 cm on post aspect of right leg. Had she been subjected to any assault or beating by the accused-respondents, the injuries would have been much more than these abrasions. It has come in the testimony of Chand an Bharti PW 2 in para 10 that Kundan alias Utkarsh accused had purchased a motorcycle after his engagement, but before marriage. It was in an emergency that she had been taken to the Medical College by her husband (nearest to the house of the accused-respondents where best treatment could be possible). While carrying his wife to medical college in an emergency abrasions might have been sustained by her. So far as the abrasion on right side of face 2 cm x 5 cm is concerned, the same could be caused during the course of gastric lavage. It is a process of treatment in which the locked jaw is opened forcibly for washing the stomach through tube as stated by Dr. Surendra Deo also in para No. 7.

21. On thoughtful consideration, reliance could not be placed on the crude story of the prosecution that demand was made by the accused respondents subsequent to the performance of the marriage regarding maruti car either through the deceased or directly to the mother/brothers of the deceased and that any Panchayat was held on this issue at the house of the accused-respondents in the evening of 15.6.1998 as developed at evidence stage.

22. On bestowing our thoughtful consideration to the evidence on record and concomittant circumstances, greater possibility was that the deceased and her husband quarrelled over some real or fancied issue and driven by anger, she consumed poison in a fit of sudden impulse. It seems to have so happened, the alleged premarital love affair of the deceased with Bablu alias Pharmendra being left aside. Her husband immediately knowing about it carried her to the Medical College for treatment and did his best to save her life, but God willed otherwise and he lost his wife who was carrying a five months' foetus too. What happened was not the result of any criminal act on the part of her husband or any other member of his family.

23. Our view tuned by the evidence and voice of the attending circumstances is that the view taken by the trial judge is a reasonable view which does not call for any interference by this Court of appeal. What happened is unfortunate, indeed. But no culpability can be fastened on the heads of the accused-respondents or any of them. The acquittal of the accused-respondents is perfectly justified.

24. We see no merit in the Government Appeal No. 2713 of 2000 and Criminal Revision No. 1933 of 2000. The Government appeal and criminal revision both are dismissed.

25. Certify the judgment to the lower court immediately.