

(2005) 12 AHC CK 0167

In the Allahabad High Court

Case No : Government Appeal No. 2029 of 2001

The State of U.P.

APPELLANT

Vs

Ramesh Kumar, Rajendra Kumar, Smt. Kamla and Smt. Rani

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 113B

Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2005) 12 AHC CK 0167

Hon'ble Judges : M.C. Jain, J;K.N. Ojha, J

Bench : Division Bench

**Advocate : Mahendra Pratap and R.K. Singh and A.G.A, for the Appellant;
Anurag Pathak and Vivek Shandilya, for the Respondent**

Judgement

M.C. Jain, J.—Instant appeal has been preferred against the judgment and order dated 22nd February 2001 passed by I Additional Sessions Judge, Jhansi in Sessions Trial No. 132 of 1999 whereby respondent No. 1 to 4 Ramesh Kumar, Rajendra Kumar, Smt. Kamla and Smt. Rani have been acquitted of the charges under Sections 498A and 304B I.P.C., Police Station Gursarai, District Jhansi.

2. We have heard learned A.G.A. Sri R.K. Singh for the appellant-State of U.P. and Sri Vivek Sandilya, learned counsel for the respondents, We have gone through the record.

3. The prosecution case in brief was that the deceased Smt. Kalawati was married to accused respondent No. 1 Ramesh Kumar resident of Village Banka Pahari, Police Station Gursarai, District Jhansi, Father of Smt. Kalawati was resident of Village Jawan, Police Station Sakrar, District Jhansi, which was at a distance of 75 Kms. from Banka Pahari. The marriage took place about three years before 24.9.1998 when Smt. Kalawati met her unnatural death inside the house of her husband Ramesh Kumar. Rajendra Kumar is the brother of Ramesh Kumar, Smt. Kamla is the mother-in-law of Smt. Kalawati and Smt. Rani is the

married Nanad of the deceased. The marriage was celebrated according to Hindu rites. According to prosecution, an amount of Rs. 20,000/- in cash and presents were given in the marriage but the respondents were not satisfied. When Smt. Kalawati went to her husband's house, demand of further amount of Rs. 20,000/- was made by the respondents who were living together. The respondents started tormenting her to pressurize her for fetching the said amount of Rs. 20,000/- from her parents. Her request expressing her parents' inability to satisfy the demand did not yield any result. Whenever she visited her parental home, she told about her miseries but Rs. 20,000/- could not be given by her parents. Consequently, her torture continued. On 24.9.1998, the father-in-law of the accused respondent Rani resident of village Dhamna, District Jhansi informed the brother of Smt. Kalawati and other family members that she (deceased Kalawati) was ill at her husband's house. On this information, the informant Balaram-brother of Smt. Kalawati along with Chiranji Lal (another brother of Kalawati), Chandra Bhan and several other persons reached Village Banka Pahari and found Smt. Kalawati lying dead. On enquiry, it allegedly came to be revealed by the neighbours that the accused-respondents had strangled her to death due to nonfulfillment of the demand of dowry. Since the information was given in the morning at about 7 A.M., these persons at first reached Banka Pahajri to ascertain the condition of Smt. Kalawati and thereafter on 24.9.1998 itself at 5.10 P.M. Balaram (brother of the deceased) lodged the F.I.R. against the accused-respondents. A case under Sections 498A and 304B I.P.C. was registered at Police Station Garautha, District Jhansi.

4. Inquest report was prepared by PW 9 Sri R.L. Prajapati, the then Sub Divisional Magistrate. No external injury was found on the body of Smt. Kalawati. After inquest report, the dead body was sent for post mortem examination which was done by PW 4 Dr. R.S.Parihar on 25.9.1998 at 2.30 P.M. at Jhansi. In the opinion of the Doctor, Smt. Kalawati was aged about 22 years. Tongue and eyes had protruded. Eyeballs were coming out. There was discharge from both nostrils. Saliva was present on right side mouth and maggots were present over the neck. A ligature mark was found all around the neck except on back measuring 36 cm x 1 cm. This ligature mark was on the neck above thyroid cartilage upward upto mastoid. Small amount of semi digested food was found in the stomach. In the opinion of the Doctor, death had taken place two days before and she had died due to asphyxia as a result of hanging.

5. Investigation was started by Sri Raj Kumar Singh, Circle Officer, but was completed by another C.O.-PW 8 Sri Babu Ram, who submitted chargesheet against the respondents u/s 498A and 304B I.P.C. After the committal of the case, The Sessions Judge, Jhansi framed charges against the respondents under Sections 498A and 304B I.P.C.

6. The prosecution examined PW 1 Balaram and PW 2 Chranjeev Lal-brothers of Smt. Kalawati. They stated that cruelty was being constantly heaped on Smt. Kalawati by the respondents owing to their demand of additional amount of Rs.

20,000/- in dowry having remained unfulfilled and ultimately she was strangled by them to death. PW 3 Chandra Bhan Vishwakarma had accompanied the brothers of Smt. Kalawati to the residence of the respondents on 24.9.1998 in village Banka Pahari and had scribed the F.I.R. Ex.Ka-1 at the instance of Balaram which was lodged at the Police Station. PW 4 Dr. R.S.Parihar had conducted post mortem examination on the dead body of Smt. Kalawati on 25.9.1998 at 2.30 P.M. He proved post mortem examination report Ex. Ka-2. He stated that no external injury was found on the body of Smt. Kalawati except the ligature mark mentioned above. PW 5 B.L. Savita the then Station Officer had prepared inquest report at the dictation of PW 9 Sri R.L. Prajapati Sub Divisional Magistrate. In his opinion, it was a case of suicide. PW 6 Head Constable Munni Lal proved the chick report. Ex. Ka-9 and entry in G.D. related to the registering of the case. P.W.7 Har Bhajan Singh had carried the dead body after inquest for post mortem examination. P.W.8 Sri Babu Ram had completed the investigation and submitted chargesheet Ex.Ka-12. P.W. 9 Sri R.C. Prajapati, the then S.D.M. Jhansi got inquest report prepared through B.L. Savita, the then Station Officer. According to him, the deceased had died in suspicious circumstances and, in his opinion, it was a case of suicide.

7. The accused respondents examined DW-1 Imrat Singh in defence who was a witness of the inquest report Ex.Ka-3. He stated that Vishwanath Sahu and Chiranji Lal Lal were present at the time inquest report was prepared. He also stated that Chiranji Lal Lal (brother of the deceased) had written on the inquest report that murder of Smt. Kalawati was committed by the respondents on account of dowry.

8. The defence of the accused Smt. Kamla (mother-in-law of the deceased) and Rajendra (brother-in-law of the deceased) was that they used to live separately. The deceased allegedly committed suicide. The defence of Smt. Rani (married Nanad of the deceased) was that she had nothing to do and she was at her Sasural Dhamna when this incident occurred. The defence of Ramesh Kumar (husband of the deceased) was that Adarsh Vivah (ideal marriage) between him and the deceased had been performed in Barua Sagar Temple about three years back. He denied that cash or jewellery was given at the time of marriage or any further demand of Rs. 20,000/- was made thereafter. According to his statement u/s 313 of Code of Criminal Procedure, on the day of the incident, he was at his another house (where he used to run a cycle repair shop) because it was raining since evening. He also stated that his father and brother were living separately and her married sister Rani used to reside in her Sasural at Dhamna. He further stated that his wife was of sentimental nature and was depressed because of having not given birth to any child though three years had passed since her marriage. Therefore, she committed suicide when all alone.

9. After appreciating the evidence of the parties, the trial Judge held that the marriage of Smt. Kalawati with Ramesh Kumar had taken place about three years before her unnatural death inside the house of the respondents. But it was

a case of suicide because Smt. Kalawati was under depression as she could not bear any child, though marriage had taken place about three years back. He also held that F.I.R. was manipulated and it was written after consultation with the police. No external injury was found on the body of the deceased in post mortem examination and, according to the trial court, it demolished the prosecution case that she was strangled by the accused. It was further held that letters alleged to have been sent by Smt. Kalawati to her parents about demand of dowry and constant exercise of cruelty by the respondents on her had not been produced by her brothers or other family members before the Investigating Officer and the demand of dowry or exercise of cruelty before her unnatural death was not proved. He also held that it was Adrash Marriage according to the accused and there was no specific instance of particular date when cruelty was exercised for non-fulfillment of the alleged demand of dowry. It was also held that conduct of the accused was not such as to induce Smt. Kalawati to commit suicide. Resultantly, the order of acquittal was passed.

10. Learned A.G.A. has submitted that the trial Judge Laid uncalled for emphasis on minor omissions or lacunas in disbelieving the prosecution case and evidence. It has been stressed that the finding of acquittal is perverse and liable to be reversed.

11. On the other hand, learned counsel for the accused respondents has supported the reasoning adopted by the trial Judge in recording acquittal. According to him, the acquittal is perfectly justified, not warranting any interference by this court of appeal.

12. We have waded through the record carefully in the light of the submissions made from the two sides.

13. In order to attract the application of Section 304B I.P.C. the essential ingredients are that the death of the woman should be caused by burns or bodily injury or otherwise than under normal circumstance within seven years of her marriage; she must have been subjected to cruelty or harassment by her husband or any relative of her husband; such cruelty or harassment should be for or in connection with demand of dowry and that such cruelty or harassment should be shown to have been meted out to the woman soon before her death.

14. In the present case, it was an admitted fact that the death of the deceased occurred within seven years of her marriage in her Sasural and that it was an unnatural death. She died an unnatural death due to asphyxia as a result of hanging . There was the testimony of PW 1 Bala Ram and PW 2 Chiranji Lal Lal (brothers of the deceased) to the effect that in the marriage of the deceased they had given Rs. 20,000/- in cash and other articles in dowry but the accused were not satisfied and they started demanding Rs. 20,000/- more, heaping cruelty on her on this account. She allegedly used to narrate her tale of woe on her visits to her parental home and also through her letters. The accused, according to them, ultimately strangled her to death on non-fulfillment of the

said demand. They went to her Sasural on 24.9.1998 on getting information at about 7 A.M. in their village situated at a distance of about 75 Kms. through the father-in-law of the accused Rani. They found the deceased to be lying dead there.

15. We first deal with the case of Kamla (mother-in-law), Rajendra Kumar (brother-in-law) and Rani (married Nanad of the deceased). There is no evidence that any of them ever made any direct demand of Rs. 20,000/- from the parents or brother of the deceased. The case of the mother-in-law and brother-in-law was that they were living separately from Ramesh (husband of the deceased). Naturally, Rani (married sister of the deceased) must have been living in her Sasural, hardly having anything to do with the demand of Rs. 20,000/- as part of dowry subsequent to the performance of the marriage of the deceased and tormenting her on this score. The fact is also there that it was Rajendra accused who had informed the police on 24.9.1998 at 10.15 A.M. (prior to the F.I.R. lodged by PW 1 Bala Ram on 24.9.1998 at 5.10 P.M.) that she had committed suicide. PW 6 Head Constable Munni Lal admitted that Rajendra had already given such information. When PW 1 Bala Ram and PW 2 Chiranji Lal accompanied by Chandrabhan reached the Sasural of the deceased at about 3-4 P.M., the police was found present at the spot. It was in consequence of Rajendra Kumar having already informed the police that she had committed suicide. The possibility of the accused respondents Kamla (mother-in-law), Rajendra Kumar (brother-in-law) and Rani (married Nanad of the deceased) being innocent could not be ruled out and their acquittal is perfectly justified, not warranting any interference.

16. The things were, however, different with regard to accused Ramesh Kumar (husband). It has been argued by the learned counsel for the accused respondents that the evidence of these two brothers on the point of demand of Rs. 20,000/- as dowry subsequent to the performance of marriage could not be believed as the letters were not produced which were allegedly sent by the deceased to her parents in this behalf. It should be taken note of that the parties came from rural background. PW 1 Balaram explained that the letters written by her sister regarding the demand of dowry and cruelty being heaped on her in her Sasural were not available as they were lost or destroyed. Indeed, they were not legal experts expected to anticipate the extreme result of the non-fulfillment of the demand of Rs. 20,000/- from the side of the husband of the deceased as part of dowry. They could have well thought that the things would improve with the passage of time. Therefore, simply non-production of the letters written by the deceased to her parents could not justify the throwing away of the prosecution case and to discard the sworn testimony of PW 1 Balaram and PW 2 Chiranji Lal. Their testimony was believable that the deceased's husband Ramesh Kumar accused was making the demand of Rs. 20,000/- through the deceased and was subjecting her to cruelty because of the non-fulfillment of the same.

17. The accused respondent Ramesh Kumar hit at the crafty and clever most device of forking out an additional sum of Rs. 20,000/- from his in-laws by

pressurizing the deceased and using her as a tool for this purpose. She was nearest to her and could be exploited by heaping cruelty on her to force her parents/brothers to satisfy his additional demand of Rs. 20,000/- as part of dowry subsequent to the performance of marriage. It was, indeed, a case of suicide because no other external injury was found on the person of the deceased excepting ligature mark. But the principal question is as to what was the cause of her having committed suicide in the prime of her youth. She, a lady of rural background, had no moorings excepting her hearth, home and husband. She was only 22 years of age. The defence of the accused husband Ramesh Kumar was not worthy of a moment's attention that she committed suicide out of frustration as she could not bear a child despite three years having passed since her marriage. She being of 22 years only was not past of child bearing age. There is nothing to indicate that she was suffering from any gynaecological problem or that there was any hurdle in her bearing a child. Had that been the cause of suicide, Ramesh accused being her husband, would have consulted a medical expert. Needless to say, as held by the Supreme Court in the case of Kamesh Panjiyar @ Kamlesh Panjiyar v. State of Bihar 2005 Supreme Court Cases (Cri) 511, suicidal death of a married woman within seven years of her marriage, is covered by the expression " death of woman is caused...or occurs otherwise than under normal circumstances" in Section 304B I.P.C.

18. We should point out that the cruelty or harassment may not only be physical but may also be mental. To say simply, cruelty embraces physical and mental both. Ramesh Kumar accused was to be the immediate and direct beneficiary of Rs. 20,000/- demanded by him subsequent to marriage as part of dowry from her in-laws through his wife (deceased). Because of the non-fulfillment of this demand, he rendered the life of his wife to be most miserable by treating her with cruelty. In any case, he wilfully neglected her in a studied manner. The bride leaves the parental home for matrimonial home with the hope that she would see a new world full of love in her groom's house. By his studied cruelty heaped on the deceased, the accused Ramesh Kumar shattered all her dreams and legitimate expectations and she was driven to commit suicide with no hope of a happy future owing to callous attitude and behaviour of her husband. The blame, therefore, lies at the door of the accused Ramesh Kumar. According to his defence, on the day of the incident he had stayed at the house of his cycle's shop as it was raining. It came down from the testimony of PW 1 Balaram that the premises comprising his cycle shop was at a little distance of 100 or 150 paces from his residential house. Obviously, he was so wilfully neglecting his wife that despite this short distance, he left her to be all alone at the residential house. It is an indicator that he must have been behaving the same way regularly and the ultimate purpose was to torment and torture her in extremity to succeed in his game of forking out an additional amount of Rs. 20,000/- from his in-laws through her.

19. We may point out that the post mortem over the dead body was conducted on 25.9.1998 at 2.30 P.M. and the death was estimated to have occurred two

days before. It was in the morning of 24.9.1998 that Ramesh Kumar's brother Rajendra accused had passed on information to the Police Station regarding her death. The husband Ramesh Kumar did not do anything and remained passive and unconcerned. Giving reasonable margin as to the time of death, it could have occurred a little after sunset on 23.9.1998. The factum that the dead body was recovered in the morning of 24.9.1998 shows the utter neglect of the deceased by her husband.

20. He was behaving as if he was not at all concerned as to what happened to his wife. The information of her death was passed on at the Police Station by his brother Rajendra who as per his (Ramesh's) statement u/s 313 Cr.P.C. also was living separately. Rajendra seemingly did so as the factum of her death could not be screened indefinitely. He might have also been under the fear of being embroiled in the matter.

21. All facts taken together clinchingly established that Ramesh Kumar was treating his wife with cruelty. Judged from any angle, it was the accused Ramesh Kumar (husband of the deceased) who drove his wife to a state of utter depression and frustration leaving no other way for her except of putting an end to her life by committing suicide. He treated her with cruelty with the underlying design of extracting an additional amount of Rs. 20,000/- from her parents as dowry. His acquittal recorded by the trial court is wholly unjustified and manifestly erroneous without an in-depth analysis of the evidence on record as also the law including Section 113B of Indian Evidence Act, though the acquittal of the other three accused respondents Rajendra Kumar, Smt. Kamla and Smt. Rani deserves to be confirmed.

22. In the result, this appeal filed by the State is partly allowed. The acquittal of the accused respondents Rajendra Kumar, Smt. Kamla and Smt. Rani is affirmed but that of accused respondent Ramesh Kumar (husband of the deceased) is reversed. He (Ramesh Kumar) is found guilty of the offences punishable u/s 304B and 498A I.P.C. He is sentenced to undergo five years rigorous imprisonment u/s 304B I.P.C. and one year's rigorous imprisonment u/s 498A I.P.C. and Both the sentences shall run concurrently. The accused Ramesh Kumar is on bail. The Chief Judicial Magistrate, Jhansi shall cause him to be arrested and lodged in jail to serve out the sentences.

23. Certify the judgment to the lower court transmitting the record immediately. Compliance shall be reported by the Chief Judicial Magistrate, within two months from the date of receipt of a copy of this order.