

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1199 OF 2001

State of U.P. .. Appellant

Versus

Santosh Kumar .. Respondent

J U D G M E N T

Dalveer Bhandari, J.

1. This appeal is directed against the judgment of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow dated 2.3.2000 passed in Criminal Appeal No. 281 of 1993.

2. The respondent and other accused were charged under sections 302/34, 304-B and 498-A of the Indian Penal Code, 1860 (for short, 'IPC') and sections 3 and 4 of the Dowry Prohibition Act, 1961 (for short, 'the Dowry Act') read with section 34 of the IPC.

3. The IInd Additional Sessions Judge, Unnao, in Sessions Trial No. 483 of 1992, convicted respondent Santosh Kumar under sections 302 and 498-A and sections 3 & 4 of the Dowry Act. He was however acquitted under section 304-B IPC. The IInd Additional Sessions Judge convicted respondents Shiv Pyari and Prem Narain under sections 498-A IPC and sections 3 and 4 of the Dowry Act. They were however acquitted under sections 302/34 and 304-IPC.

4. The High Court allowed the appeal filed by the accused and set aside the conviction and sentence of the accused respondents imposed by the trial court for the offences for which they were held guilty and convicted.

5. The appellant State of U.P. aggrieved by the impugned judgment has filed this appeal under Article 136 of the Constitution.

6. The State of U.P. has filed this appeal against accused Shiv Pyari, Prem Narain and Santosh Kumar. The other accused Shiv Pyari wife of Deo Krishan and Prem Narain s/o Guru Deen have expired during the pendency of the appeal,

therefore, the appeal filed by the State of U.P. against them has abated.

7. In this appeal, we are concerned with the only surviving accused respondent Santosh Kumar. Brief facts of the case in nutshell are as under.

8. Deceased Sunita, daughter of Dhani Ram was married to Ram Chandra on 1.5.1987. At the time of marriage, Dhani Ram gave dowry to his daughter beyond his capacity, but unfortunately her in-laws were not satisfied and they harassed her by regularly demanding dowry in the form of articles and money. Sunita told her parents repeatedly about the demands of dowry. Her father Dhani Ram met Prem Narain and Shiv Pyari and assured them that apart from whatever he had already given in dowry he would continue giving them throughout his life, but they should not harass his daughter.

9. According to the prosecution, on 15.3.1992 at about 9.00 a.m., Sunita was beaten by Shiv Piyari, Santosh Kumar and Prem Narain on account of demand of dowry. Deceased Sunita told them that there was no use of harassing her everyday for

dowry and that it would be better if she was finished once for all. Prem Narain exhorted at Santosh Kumar saying that, “DAAL DO MITTI KA TAIL JALA DO SALI KO AUR JO 10-20 HAZAR LAGENGE HUM LAGA DENGE” – meaning thereby to pour kerosene oil and kill her and we would take care of litigation expenses of ten to twenty thousand to save Santosh Kumar. Immediately thereafter, Santosh Kumar brought a container of kerosene oil and poured the same on Sunita and lit fire and burnt her alive. Deceased Sunita immediately after the burning episode cried for help and ultimately jumped into a small water pond to save her life.

10. On hearing the hue and cry, Om Prakash, Chotey Yadav and Santosh son of Jagdish arrived there and took her out from the pond. She was alive at that time. Dhani Ram, father of the deceased, on hearing about the incident came to his daughter’s house. The investigating officer also reached the spot and seized the container of kerosene oil, the piece of burnt dhoti and pieces of broken bangles. He took the same into custody in the presence of witnesses. After completing the necessary formalities of the investigation, a charge-sheet was

filed against the accused persons under sections 302/34, 304B and 498A of the IPC and sections 3 and 4 of the Dowry Act.

11. The prosecution examined 13 witnesses to prove its case. PWs 3 and 4, who alleged to have seen the occurrence, did not support the prosecution case, except the version that the deceased Sunita had jumped into a water pond and she was taken out from that pond and at that time accused persons and the family members of Dhani Ram were present there.

12. According to the prosecution, the death of deceased Sunita was caused by accused Santosh Kumar in furtherance of the common intention of all the accused on account of demand of dowry, while the defence version as set up by the respondents was a case of accidental fire. According to the defence version, the deceased Sunita was cooking and accidentally caught fire and died because of burn injuries.

13. The trial court came to a definite finding that it was a clear case of murder and not a case of accidental fire. According to the trial court, Dhani Ram PW1, father of the deceased, on receiving the information about burning of his

daughter reached at the place of occurrence. Deceased Sunita categorically told him that accused Santosh Kumar poured kerosene oil and set her on fire. She also stated that before setting her on fire, accused Santosh Kumar and others had beaten her. She further stated that accused Prem Narain told, "Pour kerosene oil and set her on fire. I will spend Rupees 10 to 20 thousand required for litigation to defend you (Santosh). This was construed to be the first dying declaration according to the prosecution.

14. The second dying declaration is Ext.Ka.16 which was recorded under section 161 of the Code of Criminal Procedure (for short, the Cr.P.C.) in the case diary by the Investigating Officer Shiv Kumar Tyagi PW8. In this dying declaration, it is stated that a day before the occurrence at about 9 a.m. she had a quarrel with her mother-in-law because she had refused to give Rs.20/- demanded by her. That, after some time her husband's younger brother, Santosh Kumar, came from outside and asked her as to what she had been doing in Bombay, then she replied that he could very well inquire from Bombay itself. Immediately thereafter he started hitting her by kicks, fists and blows. At that time, Sunita told him that he

could finish her forever instead of killing her slowly. Accused Santosh Kumar immediately thereafter brought kerosene oil in a container and threw it on her body and set her on fire. Sunita rushed towards her mother-in-law Shiv Pyari but she did not save her and, therefore, she rushed towards the water pond and jumped into it. The villagers tried to save her by bringing her out of the pond.

15. The third dying declaration is what was stated by deceased Sunita to the Tehsildar/Magistrate Rajesh Kumar Shrivastava, PW13. The Tehsildar/ Magistrate was summoned to record her dying declaration. Dr. S.N.H. Rizvi of the District Hospital, Unnao gave certificate that he had examined deceased Sunita and she was in her full senses and her statement could be recorded and only thereafter her statement was recorded by the Tehsildar. The said Tehsildar clearly stated that she was in a fit condition to give her statement. Deceased Sunita stated to the Tehsildar/Magistrate that she demanded Rs.20/- from her mother-in-law who refused to give her Rs.20/-. Thereafter, her brother-in-law Santosh Kumar came from the outside and asked her, “what were you doing in Bombay”. She replied, “Go to Bombay and get the matter

inquired into”. On getting this reply from the deceased, Santosh Kumar started beating her and her father-in-law also abused her. On exhortation of Prem Narain, Santosh Kumar brought a container of kerosene oil and poured the same on her whole body and set her on fire. In that statement, she has also stated that she had no dispute with her husband and Ram Kishore, another brother of her husband. She stated that her mother-in-law Shiv Pyari, uncle-in-law Prem Narain, brother-in-law (Devar) Santosh Kumar and elder brother-in-law (Jeth) Arjun Prasad had been harassing her from the very beginning. She also stated that her brothers-in-law Santosh Kumar and Arjun Prasad always used to tell her, “Bring ‘Roti’ (Bread) from your father”.

16. Om Prakash PW2, Chotey Yadav PW3 and Santosh PW4 did not support the prosecution case, the prosecution case hinges on the statements made by Dhani Ram PW1, Inspector S.K. Tyagi PW8 and the Tehsildar/Magistrate Rajesh Kumar Srivastava PW13.

17. The trial court carefully marshalled and analyzed the entire evidence on record. On the basis of the three dying

declarations, the trial court found the accused Santosh Kumar guilty of killing Sunita by pouring kerosene oil and setting her on fire. The Tehsildar/Magistrate PW13 categorically stated that deceased Sunita was in her full senses throughout the recording of her dying declaration.

18. The trial court after analyzing the entire evidence, while acquitting respondent Santosh Kumar under section 304-B IPC, convicted him under sections 302 and 498-A IPC and under sections 3 and 4 of the Dowry Act. Respondents Shiv Pyari and Prem Narain were convicted by the trial court only under section 498-A IPC and sections 3 and 4 of the Dowry Act.

19. The High Court in the impugned judgment observed that when the State has not filed any appeal against the order of acquittal under section 304-B IPC, the order of acquittal for the charge of offence punishable under section 304-B IPC has become final. The respondents preferred appeal against conviction under sections 302 and 498-A IPC and sections 3 and 4 of the Dowry Act by the trial court.

20. The High Court while acquitting the respondents herein under all the charges observed as under:

“When the charge under section 304-B I.P.C. was held to have failed, then there was no logic in convicting the appellants for offences punishable under sections 3 and 4 of the Dowry Prohibition Act as well as under section 498-A I.P.C. The trial Court ought to have acquitted all the appellants for offences punishable under section 498-A IPC and 3 and 4 of the Dowry Prohibition Act.”

21. This finding of the High Court is palpably wrong and unsustainable. The ingredients of sections 498-A IPC and sections 3 and 4 of the Dowry Act are different from the ingredients of section 304-B IPC. This erroneous understanding of law has led to entirely erroneous and unsustainable findings by the High Court. The High Court was entitled to re-appreciate the entire evidence in appeal, but in doing so the High Court could not ignore the vital features of the prosecution evidence. The High Court has given no reasons for setting aside a well reasoned judgment of the trial court and acquitted the accused under section 302 IPC. In this appeal, we are called upon to primarily decide about the legality of acquittal of the respondent under section 302 IPC.

22. The entire prosecution case hinges on the three dying declarations made by the deceased. On careful analysis of these dying declarations, it leads to only one conclusion that respondent Santosh Kumar after beating deceased Sunita poured kerosene oil on her and set her on fire and that she died because of burn injuries sustained by her. The High Court unnecessarily gave undue importance to the minor contradictions in the testimony of witnesses and dying declarations.

23. The High Court ought to have examined this case in the proper perspective. The doctor also certified that the deceased was in a fit mental condition to give statement. The Tehsildar/Magistrate PW13 also stated the same in his statement.

24. The basic consistency between the three dying declarations given to Dhani Ram PW1, the Investigating Officer PW8 and the Tehsildar/Magistrate PW13 is that the accused Santosh Kumar brought kerosene oil, poured the same on the deceased and set her on fire and she died because of the burn injury. It is the real genesis of all the three dying declarations.

It must be properly appreciated that the deceased Sunita gave these dying declarations in a state when she was having acute pain and minor inconsistencies in one dying declaration with another should not render the dying declarations void. Dying declarations must be construed in proper perspective.

25. The veracity of the dying declarations is proved beyond any shadow of doubt because the deceased specifically did not level any allegation against her husband and her other brother-in-law Ram Kishore. If she wanted to implicate other members of the family, she could have also named her brother-in-law Ram Kishore and husband Ram Chandra. But she specifically attributed the act of bringing and pouring kerosene oil on her and setting her on fire only by respondent Santosh Kumar. The High Court ought to have appreciated this fact in proper perspective as to why the dying person in all her three dying declarations named only Santosh Kumar and attributed act of pouring kerosene oil and setting her on fire to him alone when there were so many members in the family.

26. The statement of the deceased made to the Tehsildar/Magistrate PW13 cannot be brushed aside. He was

totally an independent witness and there was no reason for him to cook up any false story.

27. Similarly, the statement Ext.Ka.16 made to the Investigating Officer also seems to be correct, consistent and corroborated by the other two statements made before the Tehsildar/Magistrate PW13 and Dhani Ram PW1. The High Court gravely erred in setting aside a well reasoned judgment of the trial court and coming to the different findings which are totally unsustainable on proper analysis of the entire record.

28. In any criminal case where statements are recorded after a considerable lapse of time, some inconsistencies are bound to occur. But it is the duty of the court to ensure that the truth prevails. If on material particulars, the statements of prosecution witnesses are consistent, then they cannot be discarded only because of minor inconsistencies. While appreciating the evidence, the courts must also consider the fact carefully as to why would the father of the deceased falsely implicate only one of the members of the family and let go the real culprit? At that juncture, usual anxiety is to ensure that the real assailant must be punished.

29. The court in this case ought to have considered what was the interest of the Tehsildar/Magistrate to have wrongly recorded the statement of the deceased. Similarly, when the statement Ext. Ka 16 recorded by the Investigating Officer gets full corroboration from the other two dying declarations, there is no justification in discarding the testimony of the investigating officer.

30. We have carefully examined all the three dying declarations. The guilt of the accused Santosh Kumar of committing murder of the deceased Sunita is fully and clearly made out. In our considered opinion, no other view is possible in the light of the three dying declarations. The High Court erroneously set aside a well reasoned judgment of the trial court and acquitted the respondent and other accused. The High Court's finding that when the charge under section 304-B IPC could not be proved, then conviction under section 498-A IPC and sections 3 and 4 of the Dowry Act also cannot be sustained. This approach of the High Court is wholly erroneous and unsustainable.

31. In order to correctly appreciate the legal position, it is necessary to examine ingredients of these sections. Section 304-B IPC reads as under:

“304-B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.”

32. On analysis of the section, the following essential ingredients of section 304-B IPC emerge and they are set out as under:

“Essentials

- (i) That the accused caused death of a woman;
- (ii) that the accused was husband, or any relative of the husband of that woman;
- (iii) death of such woman,
 - (a) was caused by any burns, or bodily injury, or
 - (b) occurred otherwise than under normal circumstances;
- (ii) such death was caused within seven years of the marriage of that woman;

- (iii) soon before her death such woman was subjected to cruelty, or harassment;
- (iv) the accused had subjected such woman to such cruelty or harassment for, or in connection with any demand for dowry.”

33. Section 498-B IPC reads as follows:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”

34. The following are the essential ingredients of Section 498-

A IPC:

“Essentials

- (i) That there was a married woman;
- (ii) that such woman was subjected to cruelty;
- (iii) that such cruelty consisted of any willful conduct of such nature as was likely to drive such woman – to commit suicide, or to cause grave injury or danger to her life, limb or health, whether mental or physical; harassment of such woman where such harassment was – with a view to coercing such woman or any person related to her to meet any unlawful demand for any property or valuable security, or on account of failure by such woman, or any person related to her to meet the unlawful demand in able and the woman was subjected to such cruelty by – the

husband of that woman; or any relative of the husband of that woman.”

35. The High Court gravely erred in coming to the finding that once the charge under section 304-B IPC could not be proved, then conviction under section 498-A IPC and sections 3 and 4 of the Dowry Act also cannot be recorded. In **State of Karnataka v. Balappa** 1999 Cri LJ 3064 (Kant), at pages 3068, 3069 and 3070, the court has dealt with in great detail that even if the charge under section 304-B IPC is not made out, the conviction under section 498-A IPC can be recorded. Sections 304-B and 498-A IPC are both distinct and separate offences. The ‘cruelty’ is a common essential ingredient of both the offences. Under section 304-B, it is the ‘dowry death’ that is punishable and such death should have occurred within seven years of the marriage. In the statute, no such period is mentioned in section 498-A IPC. The husband or his relative would be liable for subjecting the woman to ‘cruelty’ any time after the marriage.

36. The legal position is absolutely clear that a person charged and acquitted under section 304-B can be convicted under section 498-A IPC. This court in **Smt. Shanti &**

Another v. State of Haryana (1991) 1 SCC 371 has taken the same view.

37. The demand of dowry is an essential ingredient to attract section 304-B IPC, whereas under section 498-A IPC the demand of dowry is not the basic ingredient of the offence. Therefore, even if there is acquittal under section 304-B IPC, still conviction under section 498A can be recorded under the law.

38. Sections 3 and 4 of the Dowry Act read as under:

“3 - Penalty for giving or taking dowry - (1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,-

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

- (b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of (he bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.”

“4. Penalty for demanding dowry.- If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.”

39. Section 3 of the Dowry Act deals with penalty for giving and taking of dowry. The scope and ambit of section 3 is different from the scope and ambit of section 304-B IPC.

40. Section 4 of the Dowry Act deals with penalty for demanding dowry, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be. The object of section 4 is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for 'giving' property or valuable security which demand, if satisfied, would constitute an offence under section 3 read with section 2 of the Act.

41. Thus, the ambit and scope of sections 3 and 4 of the Dowry Act is different from the ambit and scope of section 498-A IPC.

42. The incorrect understanding of law has led to the erroneous judgment consequently leading to grave miscarriage of justice.

43. As far as conviction of respondent Santosh Kumar under section 302 IPC is concerned, there is no discussion in the impugned judgment of the High Court. The High Court failed to find any infirmity in the judgment of the trial court which persuaded the High Court to set aside the trial court judgment.

44. All three dying declarations made by the deceased are totally consistent and lead to only one conclusion that the respondent Santosh Kumar had poured kerosene oil on the deceased and lit the fire. The fact is clearly corroborated from the testimonies of Dhani Ram PW1, the Investigating Officer Shiv Kumar Tyagi PW8 and the Tehsildar/Magistrate Rajesh Kumar Shrivastava PW13. The respondent is clearly guilty of offence under section 302 IPC.

45. The High Court without assigning any cogent reason set aside a well reasoned judgment of the trial court and acquitted the respondent under section 302 IPC. The impugned judgment of the High Court cannot be sustained.

46. This Court has always been slow in reversing the order of acquittal, particularly in a case where the other view is possible or plausible. We are fully conscious of our bounden obligation and duty that we are dealing with appeal against acquittal by the High Court. Unfortunately, in the instant case, on proper analysis of all three dying declarations, no other view is possible and the view taken by the High Court is perverse and unsustainable in law.

47. Consequently, this appeal is allowed. The impugned judgment of the High Court is set aside and that of the trial court is restored as far as the sentence of the respondent under section 302 IPC is concerned. The accused Santosh Kumar is directed to surrender in order to serve out the remaining sentence.

48. This appeal is accordingly disposed of.

.....J.
(Dalveer Bhandari)

.....J.
(Harjit Singh Bedi)

**New Delhi;
September 3, 2009**