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Court : Allahabad

Decided On : Mar-05-2008

Reported in : 2008CriLJ2547

Judge : Alok K. Singh, J.

Appellant : Suresh Kumar Singh

Respondent : State of U.P.

Advocate for Pet/Ap. : Sri. Shishir Pradhan

Disposition : Appeal dismissed

Judgement :
ORDER

Alok K. Singh, J.

1. This criminal appeal has been preferred against the judgment and order dated 30-4-1996 passed by Sri C.P. Mishra, Sessions Judge, Rae Bareli, convicting the appellant under Section 304-B I.P.C. and sentencing him to undergo rigorous imprisonment for seven years and also convicting him under Section 498-A I.P.C. and sentencing him to undergo three years' rigorous imprisonment and a fine of Rs. 2000/-, in default six months' rigorous imprisonment.

2. The facts stated in brief are that Srimati Asha Devi was married to the appellant Suresh Kumar Singh in the year 1987 and after marriage the appellant, his younger brother and elder sister subjected her to torture for the alleged demand of dowry. This fact was told by the victim prior to her death to the complainant (elder brother) whenever she came to her mother's house. There was an additional demand of dowry for golden ring, golden chain and an amount of Rs. 5000/-. About one year prior to the incident the appellant tried to set her on fire due to which she sustained several burn injuries and the elder brother (complainant) got her medically treated. He also requested the appellant and his family members not to ill treat his sister. On 8-12-1993 one neighbour of the appellant, namely Chauhan, informed the complainant that his sister has been burnt to death by the appellant and his family members and they are trying to dispose of the dead body. The complainant immediately rushed to the spot and found his sister lying dead having serious burn injuries. He, therefore, immediately lodged the F.I.R. at Police Station Deeh on 8-12-1993 at 5.10 P.M. naming the appellant, his brother Zila Jeet Singh and elder sister Smt. Kusuma. After registration of the case the investigation started and the I.O. proceeded to the spot on 9-12-1993 along with Tehsildar-Magistrate. The inquest report was prepared on the same day at 1.30 P.M. and the statement of the complainant was recorded and the site plan was prepared on the spot. It was found that the evidence was destroyed on the spot by getting the floor washed by cow dung and none of the accused persons was present in the house except mother-in-law. Even the burnt clothes were given by the mother-in-law by getting them from outside the house. Then the I.O. recorded the statements of brother of the deceased and other witnesses such as Head Constable Prem Narain Rai and Dr. Ashutosh, who conducted post mortem of the dead body, and S.I. Sri R. P. Singh. He also recorded the statements of the accused persons and finally, after completion of the investigation, he submitted charge sheet against all the three persons under Section 304-B and 498-A I.P.C. The offences being triable by the court of session the accused persons were committed to the court of session vide order dated 20-5-1995 and there the charges under Sections 304-B and 498-A I.P.C. were framed against them to which they pleaded not guilty and claimed trial.

3. In order to prove its case the prosecution examined Ajmer Singh, the complainant (elder brother of the victim) (P.W. 1), another brother of the victim, Anant Bahadur Singh (P.W. 2), Dr. Ashutosh Gupta who conducted the post mortem (P.W. 3) (as per opinion of the doctor the death was caused due to ante mortem burn injuries and due to shock). It was also mentioned in his report that first to third degree burns were present on front and back of skull, neck, front and side of whole chest with upper part of abdomen, left axilla and arm, right anxilla and whole arm and back of shoulder and scapular region with exholate and pus coming out from right elbow region. Total burn about 40%). Raj Kumar Singh, the investigating officer, was examined as P.W. 4.

4. In the statement under Section 313 Cr. P.C. the accused persons contended that the marriage was performed about 14 years before. In defence one certified copy of electoral roll pertaining to the years 1983-87 has been filed to show that in the year 1983 one Raj Kumari has been shown as wife of the appellant and it is said that she is none other than the victim herself whose name was changed according to the custom. No oral evidence was adduced in defence.

5. After considering the evidence on record the learned court below found that on the basis of statements of both the real brothers of the victim it was duly proved that the marriage was performed within 7 years i.e. April-May, 1987 and that at the time of marriage as also immediately thereafter there was constant additional demand of dowry in respect of golden chain, golden ring and an amount of Rs. 5000/-. On account of non-fulfilment of said additional demand of dowry the victim was set on fire and she died an unnatural death on account of burn injuries. It was also found on record that on account of dowry about a year before this incident also she was subjected to cruelty and harassment and was set on fire for which she was got treated by her elder brother. Thereafter efforts were made to normalize the relations and she resumed her married life and no report in that regard was ever made at the police station. Further it was found by the court below that the matter was investigated upon by a senior Deputy Superintendent of Police who immediately after lodging the report visited the spot and found the dead body of the victim lying in the house of the appellant and at that time no accused were present except mother-in-law who has not been named in the F.I.R.

Further it was found that the floor of the house was washed with the help of liquidated cow-dung. The burnt clothes were handed over to the Investigating officer after getting the same from outside the house. Thus the learned court below found that initial burden of proving the relevant ingredients i.e. the marriage within 7 years, cruelty and harassment on account of dowry soon before the death and unnatural death at the residence of the husband, was duly discharged by the prosecution. Therefore the burden shifted on the husband-accused according to whom the lady was suffering from epilepsy and as such she some- how caught fire while preparing food in the morning and succumbed to burn injuries. It was also contended by him that the marriage was more than 7 years old. In support of the contention a voter list was filed wherein in the year 1983 the name of wife of this husband is mentioned as Raj Kumari and it was suggested that according to the custom after the marriage the name of victim Asha Devi was changed to Raj Kumari. But these contentions could not get any favour from the learned court below. Finally the charges under Sections 304-B and 498-A I.P.C. were found to be proved to the hilt against the husband-appellant. The learned court below opined that the allegations against the elder sister-in-law (Nanand) and younger brother-in-law (Devar) were not proved because the elder sister was married much before this marriage and she was living with her husband at a different place. Similarly in respect of younger brother-in-law (Devar) also the learned court below opined that in the absence of any specific allegations against him the charges against Devar are also not duly proved. Finally, therefore, the husband-appellant was convicted and sentenced under Sections 304-B and 498-A I.P.C. as mentioned above while the remaining two accused i.e. elder sister-in-law and younger brother-in-law were acquitted of the charges. Feeling aggrieved by the judgment and order the husband-appellant has preferred this appeal.

6. I have heard Sri Shishir Pradhan learned Counsel for the appellant and Sri Vishnu Swarup Srivastava learned A.G.A. for the State and perused the lower court record.

7. At the outset Sri Shishir Pradhan, learned Counsel for the appellant submits that initially the burden of proof lies on the prosecution and it would not shift on the accused merely on the basis of the allegations made by the prosecution that the

death had occurred within 7 years of marriage without proving the required preliminary facts. In this regard he places reliance on the case of State of Rajasthan v. Teg Bahadur and Ors. (2004) 13 SCC 300. In that case the factum of demand of dowry could not be established by the prosecution and, therefore, it was held that the husband cannot be convicted under Section 304-B I.P.C. read with Section 113-B of the Evidence Act. There cannot be any quarrel on the proposition of law laid down in the aforesaid case. As mentioned hereinabove the initial burden of proof has been properly discharged by the prosecution by producing the elder brother of the victim (complainant) as also the younger brother and both of them have given an elaborate account of the facts that there was a demand of dowry comprising an amount of Rs. 5000/-, a golden chain and a golden ring, from the very beginning of the marriage which was reiterated at the time Khichri also and due to non-fulfilment of this demand the victim was being constantly harassed about which she used to tell to the wife of PW-1 whenever she visited her mother's house. This harassment crossed every limit soon before the unnatural death of the victim. About a year before this occurrence she was set on fire but fortunately she survived and she was given proper treatment in the care of her brother. The evidence of her both the brothers on this point is credible which could not be shaken despite a detailed cross-examination. Somehow ostensibly relations became normalized for sometime but soon thereafter she was again subjected to cruelty and harassment by the appellant and was ultimately set on fire and this time resulting serious burn injuries causing her unnatural death. In fact regarding her unnatural death there does not appear to be any challenge also. About the performance of the marriage within 7 years the elder brother has categorically stated that it was performed in the months of May-April, 1987 and this period comes out to be 6 years and 8 months. In the statement under Section 313 Cr. P.C. It was said by the accused-appellant that the marriage was performed 14 years ago and out of the wedlock one son had also taken birth who died on account of snake bite. In support of the contention an electoral roll of 1983-87 was relied upon wherein one Raj Kumari is mentioned as wife of the appellant and it was suggested that the name of the victim Asha Devi was changed as Raj Kumari after marriage as per custom. In this connection cross examination of PW-1 has been referred wherein he says that appellant has

married with Smt. Asha Devi, his sister and no other lady. On the basis of this it is being suggested that appellant's marriage took place in 1983 and not 1987. But PW-1 has already denied that her sister was married to appellant prior to 1987 and that her name was changed from Asha to Raj Kumari or Shiv Kumari as per custom of changing name after marriage. No other documentary evidence or any oral evidence could be brought on record by the defence to prove this point. The learned Counsel further submits that according to own admission of P.W. 1 no marriage card was published in respect of the marriage performed in the year 1987. But it is a matter of common knowledge that in villages and that too about 20 years before such practice of getting marriage cards printed was not so common. In most of the villages of north India only few grains of rice coloured yellow with the help of turmeric (Haldi) are distributed with an oral invitation to attend a marriage. The defence has also not filed any marriage card of the year 1983 in favour of its contention therefore this point has no substance. Learned Counsel for the appellant also points out one thing more in this regard i.e. the marriage of this witness PW-1 who happens to be elder brother of the victim was performed in the year 1984 as admitted by him. Then how it can be believed that the marriage of the victim who was younger to him, was performed after three years i.e. In the year 1987. It is true that normally marriage of a sister even if she is a few years younger to the brother is normally performed prior to the marriage of the brother but merely on this ground the entire evidence as discussed above cannot be thrown away particularly when the entire evidence of both the brothers of the victim inspires confidence and despite a detailed and lengthy cross-examination nothing has come out to doubt their testimony. This witness could have also explained the reason for his marriage prior to his sister's marriage had he been asked a specific question on this point. Therefore the aforesaid arguments are devoid of any substance.

8. The learned Counsel for the appellant taking a cue from the case law of Thakkan Jha and Ors. v. State of Bihar (2004) 13 SCC 348 further submits that in this case the prosecution could not prove that the alleged cruelty and harassment was caused soon before the death and as such there was no proximate and live link between the two i.e. the alleged harassment on account of dowry and cruelty and the unnatural death. It is true that a proximate and live link between the two

has to be there but in the same case law it has also been laid down that determination of the period which can come within the term 'soon before' is left to be determined by the courts depending upon the facts and circumstances of each case and no strait-jacket formula can be laid down by fixing any time limit in this regard. As has been discussed above in the present case it has been proved that there was an attempt to end her life by setting her on fire about a year before this incident but fortunately the lady survived after getting proper and prompt treatment with the help of her brothers. Thereafter for some days the relations looked ostensibly normal. But soon thereafter the consistent harassment and cruelty was resumed and this time the attempt proved to be more foolproof resulting in her instant death. The gap in between the two burning incidents was not long. In the peculiar facts and circumstances of this case where two consecutive attempts were made to end her life by setting her on fire even a period of approximately one year does not make it stale since there was a continuous process of harassment and after the first incident of burning there was only an ostensible normalcy between husband and wife. Therefore it has to be construed to be 'soon before' the unnatural death and I find that there was existence of proximate and live link between the demand of dowry, consequential harassment and the unnatural death.

9. Then it is argued that the lady was suffering from epilepsy and due to accident she caught fire while she was preparing food and that is why no burn injury was found on her back side. The learned lower court has discussed this point also elaborately and did not find any substance in it. In fact no evidence has been adduced to show that the lady was suffering from epilepsy or the appellant ever got her treated. In view of the provisions of Section 304-B I.P.C. read with Section 113-B of the Evidence Act once the three ingredients including an unnatural death of the lady is proved at the residence of the husband then the burden shifts on the husband to show as to how she died because it was in the best knowledge of the husband himself who resided with her in the same house. But the appellant could not discharge this burden either in respect of marriage beyond the stipulated period of seven years or her alleged suffering from epilepsy and catching fire while preparing food. The persons may tell truth or lies but the circumstances never tell lies. As mentioned before also it is worthwhile to note that when the senior Deputy

Superintendent of Police who was conducting the investigation in this case, visited the site, found only the mother-in-law to be present there while the husband-appellant was absconding. It was also found by him that the entire floor of the house was washed with the help of liquified cow dung. The third and very strong circumstance is that the appellant did not inform about the incident either to the police or his in-laws or anybody else. This information was received by the complainant and the family members of the victim from a resident of the same village, namely Chauhan as has also come in the F.I.R.

10. Lastly the learned Counsel for the appellant further submits that on the basis of similar evidence two accused persons, namely elder sister-in-law (Nanand) and younger brother-in-law (Devar) have been acquitted and, therefore, on the same evidence the appellant should not be convicted. As would be apparent from the perusal of the judgment in question the elder sister-in-law has been acquitted on the ground that there are no specific allegations against her and secondly she was married much before the marriage of the victim and was living separately with her husband. Almost same analogy was given in respect of younger brother-in-law. The specific allegations were against the husband-appellant only. Normally in such cases mother-in-law is not left out but in the present case she was innocent and that is why she was not named even in the F.I.R. and that was the reason why she was found sitting by the side of the dead body of the victim when the investigating officer visited the spot immediately after registration of the case. This makes the prosecution case more believable. Therefore I regret in not finding any substance in this argument also.

11. No other submission was made from the side of the appellant. I also do not find any flaw in the judgment in question in respect of any point. The learned Sessions Judge has evaluated the evidence on record on the basis of preponderance of probabilities and then reached to the final conclusion.

12. Finally, therefore, in view of the discussion made hereinabove, the Judgment in question cannot be faulted on any point. The conviction and sentence of the appellant deserves to be affirmed and accordingly it is so ordered.

13. This appeal is dismissed. The appellant is on bail. His bail is cancelled and sureties are discharged. He shall be taken into custody forthwith to serve out the remaining sentence. The lower court record along with a copy of this judgment be sent to the lower court for compliance under intimation to this Court.

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