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Court : Uttaranchal

Decided On : Apr-13-2010

Judge : Dharam Veer, J.

Appellant : Sewa Ram and ors.

Respondent : State

Disposition : Appeal allowed

Judgement :

Dharam Veer, J.

1. This appeal, preferred by the appellants under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), is directed against the judgment and order dated 26.11.1997 passed by the Ist Additional Sessions Judge, Haridwar in Sessions Trial No. 71 of 1994, State of U.P. v. Sewa Ram and Ors., whereby accused appellants Sewa Ram and Ranvir have been convicted under Section 323/34 of Indian Penal Code, 1860 (for short, IPC) and Anr. accused appellant Pala has been convicted under Section 324/34 IPC. Accused appellant Sewa Ram has also been convicted under Section 498-A IPC and Section 4 of Dowry Prohibition Act, 1961 (for short, the Act). For the offence punishable under Section 498-A IPC and Section 4 of the Act, accused appellant Sewa Ram has been sentenced to undergo one years' RI along with a fine of Rs. 1000/- in each of the abovesaid offences and in default of payment, he was

directed to undergo additional RI of six months each in the abovesaid offences. Sewa Ram has also been sentenced to undergo RI of six months under Section 323/34 IPC. The substantive sentences and sentence awarded in default of payment in respect of accused appellant Sewa Ram were directed to run separately. Accused appellant Ranvir has been sentenced to undergo RI of six months under Section 323/34 IPC and accused appellant Pala has been sentenced to undergo RI of one year under Section 324/34 IPC.

2. The prosecution case, in brief, is that PW2 Hari Ram lodged an FIR Ex. Ka-3 with PS Pathri on 31.8.1992 at 12.10 pm with the averments that three years ago, his daughter Smt. Poonam (PW1) was married to accused appellant Sewa Ram, who was an employee of BHEL, Haridwar and was having his house at Arya Nagar, Jwalapur. In the marriage, he according to his status gave articles and cash worth Rs. 55,000/- in dowry. But immediately after the marriage Sewa Ram and his brothers Ranvir and Pala started pressurizing and harassing his daughter for more dowry. He received a dusti letter Ex. Ka-1 from his daughter upon which he went to village Chandpur and after taking the Pradhan of that village, he met Sewa Ram at his house and tried to comprehend him and also gave him Rs. 10,000/-. But Sewa Ram demanded Rs. 50,000/- more. For the well-being and happy life of his daughter, he promised Sewa Ram for more money according to his status. Thereafter his daughter gave birth to a male child. Two months thereafter, he received another letter Ex. Ka-2 from her daughter Smt. Poonam wherein she had stated that her life was in danger. Then he along with Mahaveer Singh, who was the mediator of the marriage and also along with Tejpal and Radhey Shyam went to the house of the accused appellants and met Sewa Ram, where he also saw that her daughter had become very weak and she was also nervous. He asked Sewa Ram as to why his daughter was being harassed in spite of fulfilling his every demand. Sewa Ram told him to give the remaining amount of dowry, else to take his daughter back. Everybody tried to persuade him. The complainant told Sewa Ram that he would give the money after the sugarcane crop. His daughter desired to live there for the sake of her respect. In the morning of 30.8.1992, Mahaveer Singh came to the complainant and informed him that at about 8 pm of the previous day i.e. in the evening of 29.8.1992, the accused appellants had committed marpit with his daughter Smt. Poonam. Her condition

was serious and she was at the quarter of Mahaveer Singh. On this the complainant immediately went to Haridwar and met his daughter, who stated to her that at about 8 pm on 29.8.1992, when she was in Chandpur, accused appellants abused and told her that her father would not understand and she would not be left alive. All the accused appellants grabbed her. Accused appellants Ranvir and Sewa Ram tried to strangulate her by putting the rope in her neck. Accused appellant Pala stabbed her with a knife. She was also beaten by fists and kicks. On hearing the cries of the victim Smt. Poonam and her baby, many villagers arrived there which also included Gram Pradhan Subhas, Jagdish, Teerath Singh (PW4), Pawan Singh (PW3), etc. who rescued her and also witnessed the said incident. Since it was late in the night, therefore, she went to the quarter of Mahaveer Singh. Thereafter the complainant got his daughter medically examined on the same day i.e. 30.8.1992 and lodged this FIR along with the medical report Ex. Ka-8 and copies of the aforesaid two letters Ex. Ka-1 and Ka-2.

3. Constable Clerk Rajkumar prepared the chick FIR Ex. Ka-4 on the basis of the aforesaid FIR Ex. Ka-3. He also made the necessary entry in the GD, copy of which is Ex. Ka-5. Investigation of this case was entrusted to PW5 SI Rajpal Sharma. Victim Smt. Poonam (PW1) was medically examined by PW6 Dr. BL Verma on 30.8.1992 at 1.40 pm, who also prepared the medical report Ex. Ka-8. The IO during the course of investigation inspected the place of occurrence and prepared the site plan Ex. Ka-6. He also recorded the statements of the witnesses and after completing the investigation, he filed the chargesheet Ex. Ka-7 against the accused appellants under Sections 498-A/323/324/504 IPC and Section 3/4 of the Act.

4. Learned Ist Additional Munsif Magistrate, Haridwar after giving the necessary copies of the documents to the accused appellants as prescribed under Section 207 Cr.P.C., committed the case to the Court of Sessions on 7.2.1994. Thereafter the case was transferred to Additional Sessions Judge, Haridwar for its disposal according to law.

5. On 11.9.1995, learned Ist Additional Sessions Judge, Haridwar framed the charges against the accused appellants under Section 498-A, Section 307 read with Section 34 IPC and Section 3/4 of the Act. The charges were read over and explained to each of the accused appellants, who pleaded not guilty and claimed to be tried.

6. To prove its case, prosecution has examined PW1 Smt. Poonam, the victim; PW2 Hari Ram, the complainant; PW3 Pawan Singh, an eyewitness; PW4 Teerath Singh, an eyewitness; PW5 SI Rajpal Sharma, the I.O. of the case and PW6 Dr. BL Verma, who had medically examined the victim and prepared the medical report Ex. Ka-8.

7. Thereafter, statements of each of the accused appellants were recorded under Section 313 of Cr.P.C. The oral and documentary evidence were put to them in question form, who denied the allegations made against them. However, they did not produce any documentary or oral evidence in defence.

8. After hearing learned Counsel for the parties and appreciating the evidence on record, the learned Ist Additional Sessions Judge, Haridwar vide his judgment and order dated 26.11.1997 convicted and sentenced to the accused appellants as discussed above. Against the aforesaid judgment and order dated 26.11.1997, the present appeal has been preferred by the accused appellants.

9. I have heard learned Counsel for the parties and have perused the entire material available on record.

10. Before any further discussion, it would be pertinent to mention the medical report Ex. Ka-8 prepared by PW6 Dr. BL Verma, who medically examined the victim Smt. Poonam (PW1) on 30.8.1992 at 1.40 pm at HMG District Hospital, Haridwar and the injuries found on the body of Smt. Poonam as mentioned in the said report are reproduced as below:

(1) Contused swelling 4 cm x 1.5 cm on Rt. Side neck. Reddish blue in colour.

(2) Contused swelling 2.5 cm x 1.5 cm on Lt. side neck near angle of mandible, Blue in colour.

(3) Contusion 4 x 2 cm on Rt. scapular region. Blue in colour.

(4) Contusion 3 cm x 1.5 cm on lower part of Lt. scapular region. Redish blue in colour.

(5) Linear abrasion 3.0 cm in length on palmar surface of middle of Lt. hand. Scab is forming.

C/o Pain in abdomen. Pain in both thighs.

Opinion : All injuries are simple. All injuries are caused by Hard Blunt Object except injury No. (5) which is caused by sharp pointed object.

Duration : About half to one day.

11. To prove the aforementioned medical report Ex. Ka-8, the prosecution has examined PW6 Dr. BL Verma, who has proved the contents of the same and has also stated that all the aforementioned injuries could be caused on 29.8.1992 at about 8 pm by lathi and danda. Injury No. (5) could be caused by some pointed object like knife.

12. To further prove its case, the prosecution has examined PW1 Smt. Pooanm, the victim, who has stated that she got married to accused appellant Sewa Ram prior to the said incident. Her father had given the articles and cash worth Rs. 55,000/- in dowry. After the marriage, her husband Sewa Ram and brothers-in-law (Devar) Ranvir and Pala started harassing her for the demand of dowry. On 15.4.1990, she had sent a letter Ex. Ka-1 through her fellow villager Manga, who was sent by her father at her house to deliver the 'Ghee'. Her father came to meet her immediately after receiving the said letter and gave Rs. 10,000/- to the accused appellant Sewa Ram, but he demanded Rs. 50,000/- more. Her father told Sewa Ram that he would give him the amount after the sugarcane crop and asked him to keep her daughter well. Thereafter he kept her well for few days. On 16.6.1990, she gave birth to a male child in the hospital. Thereafter she was treated well for few days. Thereafter he again started to harass her. He told her that her father gave lame excuses. Thereafter on 17.8.1990, she sent a letter Ex. Ka-2 to her father through post. On receiving her letter, her father came at her

house situated at Arya Nagar, Jwalapur along with her relatives Tejpal and Radhey Shyam and Mahaveer Singh, who was the mediator of her marriage. Her father inquired as to why she was being harassed. Sewa Ram said that he wanted Rs. 50,000/-. Her father replied that he would pay the amount to him after the sugarcane crop. But she was continued to be harassed thereafter by the accused appellants. Lateron she was taken to Chandpur by the accused appellants. She has further stated that at 8 pm on 29.8.1992, her husband Sewa Ram and brother-in-law Ranvir tried to strangulate her by a rope. Accused appellant Pala stabbed her with a knife, which she stopped on her hand and received cut injury in her hand. The accused appellants threatened her that they would not live her alive and further said that her father was making lame excused and their demand of Rs. 50,000/- was not being fulfilled. She as well as her baby cried thereafter, upon which Gram Pradhan Subhash, Jagdish, Teerath (PW4), Pawan (PW3) reached there and they rescued her. When the villagers returned to their homes, the accused appellants ousted her from the house along with her child. Thereafter she went at the quarter of Mahaveer Singh at BHEL, Haridwar which she had seen earlier. PW3 Pawan had dropped her there. Thereafter she narrated the incident to Mahaveer Singh and his wife. On 30.8.1992, she informed her father through Mahaveer Singh. Her father thereafter came there and got her medically examined and lodged the FIR on 31.8.1992 with PS Pathri. She has also stated that accused appellants used to harass her at the house situated at Arya Nagar for the demand of dowry. Her husband after leaving her at Chandpur used to bring prostitutes from Dehradun. He also used to take liquor. The step daughters of Sewa Ram used to mix salt and surf in her food. This witness was cross-examined at length by the defence counsel but nothing has come in her statement which may create any doubt about her testimony. The statement of this witness is reliable, believable and inspire the confidence.

13. PW2 Hari Ram, the complainant of this case, has reiterated the version made by him in the FIR Ex. Ka-3. He also could not be shaken in his cross-examination.

14. PW3 Pawan Singh has stated that on the date of incident he was in Chandpur in connection with the purchase of buffalo and he had stayed there in the house of Biran Singh. When at 8 pm he was going to answer the call of nature, he heard

noise coming out from the house of Sewa Ram. He stopped there and saw that Sewa Ram had put a rope around the neck of Smt. Poonam while Ranvir and Pala were beating her. Pala stabbed her with a knife which she stopped on her hand. Many people from the village i.e. Subhash Pradhan, Jagdish, Teerath (PW4) and many other villagers gathered there and they rescued Smt. Poonam. After sometime of the said incident, the accused appellants ousted her from the house. Poonam asked this witness to drop her at the quarter of Mahaveer Singh in BHEL and he dropped her there. Poonam had got injuries in her hand and in her body. This witness also could not be shaken in his cross-examination.

15. PW4 Teerath Singh did not support of the case of prosecution and was declared hostile.

16. PW5 SI Rajpal Sharma has stated that on 31.8.1992 he was posted in PS Pathri. On the basis of FIR lodged by Hari Ram, chick FIR Ex. Ka-4 was prepared by Constable Clerk Rajkumar. He also made the necessary entry in the GD, copy of which is Ex. Ka-5. He has further stated that investigation of this case was entrusted to him. During the course of investigation, he inspected the place of occurrence and prepared the site plan Ex. Ka-6. He recorded the statements of the witnesses and after completing the investigation, he filed the chargesheet Ex. Ka-7 against the accused appellants.

17. Thereafter, statements of each of the accused appellants were recorded under Section 313 of Cr.P.C. The oral and documentary evidence were put to them in question form, who denied the allegations made against them. However, they did not produce any documentary or oral evidence in defence.

18. Learned Counsel for the accused appellant argued that the prosecution has not proved its case beyond reasonable doubt against the accused appellant Sewa Ram for the offence punishable under Section 498-A and 323/34 IPC and against the accused appellant Ranvir for the offence punishable under Section 323/34 IPC and against the accused appellant Pala for the offence punishable under Section 324/34 IPC. I do not find any substance in the argument of learned Counsel for the accused appellants for the following reasons:

(i) That PW1 Smt. Pooanm, the victim of the case has very specifically stated that in her marriage, articles and cash worth Rs. 55,000/- were given by her father in dowry. Soon after the marriage, her husband Sewa Ram and brothers-in-law (Devar) Ranvir and Pala started harassing her mentally and physically for the demand of dowry. On 15.4.1990, she had sent a letter Ex. Ka-1 to her father who came to her immediately after receiving the said letter and gave Rs. 10,000/- to the accused appellant Sewa Ram, but he demanded Rs. 50,000/- more. Her father told Sewa Ram that he would give him the remaining amount after the sugarcane crop.

Thereafter she was told by the accused appellants that her father gave lame excuses. On 17.8.1990, she again sent a letter Ex. Ka-2 to her father through post. On receiving her letter, her father came at her house along with other relatives and inquired from the accused appellants as to why his daugther was being harassed. Sewa Ram said that he wanted Rs. 50,000/-. Her father replied that he would pay the amount to him after the sugarcane crop. But she was continued to be harassed by the accused appellants. Lateron she was taken to Chandpur. At 8 pm on 29.8.1992, her husband Sewa Ram and brother-in-law Ranvir tried to strangulate her by a rope. Accused appellant Pala stabbed her with a knife, which she stopped on her hand and received cut injury in her hand. The accused appellants threatened her that they would not live her alive stating that her father was making lame excuses and their demand of Rs. 50,000/- was not being fulfilled. After hearing her cries as well as the cries of her baby many villagers including Gram Pradhan Subhash, Jagdish, Pawan (PW3) reached at the place of occurrence and they rescued her. Thereafter the accused appellants ousted her along with her child from the house. She went at the quarter of Mahaveer Singh where she was dropped by PW3 Pawan. On 30.8.1992, she informed her father through Mahaveer Singh. Her father thereafter came there and got her medically examined and he lodged the FIR on 31.8.1992. She could not be shaken in her cross-examination. The statement of this witness is reliable, believable and inspire the confidence.

(ii) That statement of PW1 Smt. Poonam is also corroborated by the statement of PW3 Pawan Singh, an eyewitness of the incident.

(iii) That statement of the victim PW1 Smt. Poonam finds further corroboration from the statement of PW2 Hari Ram, the complainant of the case.

(iv) That ocular evidence of the prosecution is also corroborated by the medical evidence as well as by the statement of PW6 Dr. BL Verma, who has stated in his statement that injury No. (5) could be caused by sharp edged weapon like knife and rest of the injuries could be inflicted by lathi and danda on 29.8.1992 at about 8 pm.

19. Thus in view of foregoing discussion of evidence and for the reasons recorded above, the prosecution has successfully proved the charge of offence punishable under Section 498-A and 323/34 IPC against accused appellant Sewa Ram, charge of offence punishable under Section 323/34 IPC against the accused appellant Ranvir and charge of offence punishable under Section 324/34 IPC against the accused appellant Pala. Therefore, to this extent, the impugned judgment and order of the trial court is justified and correct and it warrants no interference by this Court on this point.

20. Learned Counsel for the appellants further submitted that substantive sentences awarded to the accused appellant Sewa Ram under Section 498-A and 323/34 IPC may be directed to run concurrently. I also deem it proper that ends of justice would be met if both the aforesaid substantive sentences awarded to the accused appellant Sewa Ram under Section 498-A and 323/34 IPC is directed to run concurrently. Accordingly, it is directed that both the aforesaid sentences awarded to the accused appellant Sewa Ram shall run concurrently. However, the sentence awarded in default of fine shall run separately.

21. Learned Counsel for the accused appellants further argued that prosecution has not proved its case against the accused appellant Sewa Ram for the offence punishable under Section 4 of the Act. He argued that Section 4 of the Act is not made out against the appellant Sewa Ram as he was not a bridegroom and neither the victim Smt. Poonam was a bride at the time of incident and Section 4 of the Act will apply only in the case of bride and bridegroom.

22. I find substance in the argument of learned Counsel for the appellants for the reason that words, 'bride' and 'bridegroom' have been used in Section 4 of the Act. It is an admitted case of prosecution that the marriage of Sewa Ram with the victim Smt. Poonam took place about three years prior to the said incident. Then the question arises as to whether there is any offence committed under Section 4 of the Dowry Prohibition Act? Section 4 of the Dowry Prohibition Act reads as follows:

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 trial 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.

23. Bride means 'newly married woman or a woman about to be married or very recently married' and Bridegroom means 'newly married man or one about to be married. In the instant case, the marriage had taken place three years prior the said incident. As neither the appellant Sewa Ram nor the victim Smt. Poonam was about to be married, they come under the category of already married. Obviously, the Section 4 of the Act will apply, if any demand directly or indirectly was made from the parents or other relations or guardians of the bride or bridegroom. After three years of marriage, the status of 'Bride' and 'Bridegroom' has undisputedly changed into husband and wife, or that of spouse and for such couple, the words, 'bride or bridegroom' cannot be used. There is, in my opinion, some positive objection in using a particular word in a particular section of law by the Legislature and it appears to me that these words were used to prevent such demands when the marriage was then to take place or if already taken place, the matrimony was in its great infancy.

24. Section 498-A of 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.

Explanation.--For the purpose of this section 'cruelly' means--

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand.

25. Here, in this section quoted above, the word used is 'relative of husband of a woman' or 'the husband'. The words 'bride or bridegroom' have not been used in this section. The woman has been defined under Section 10 IPC--'Woman denotes a female human being of any age'. The word 'woman' has also been used under Section 304-B, 376 IPC.

26. There is nothing in the Dowry Prohibition Act, 1961 to import the definition of bride or bridegroom from IPC or any other act and to construe these words as per the definition of IPC and bring 'bride' within the definition of a 'woman' as given in the IPC. Therefore, the Literal Dictionary meaning of these words has to be used while dealing with the cases arising out of Dowry Prohibition Act.

27. On the basis of the discussion made above, it is held that the Section 4 of the Dowry Prohibition Act is not applicable in the facts and circumstances of this case as at the time when the alleged demand was made, the husband was not a bridegroom, nor the wife a bride.

28. But nevertheless, as the victim came under the definition of a woman and the husband remained husband, the demands make out a case of mental cruelty also, so the cognizance and proceedings under Section 498-A, IPC against the accused

appellant Sewa Ram is legal and cannot be interfered with and the same has also been found to be proved (supra). But the proceedings in respect of offence under Section 4 of the Act is liable to be quashed.

29. With the aforesaid observations/directions, this appeal is allowed in part. The conviction of the appellant Sewa Ram under Section 4 of the Dowry Prohibition Act is hereby quashed and accordingly, the sentence of one year's RI along with fine of Rs. 1000/- awarded to him for the said offence is also set aside. However, conviction of accused appellant Sewa Ram under Section 498-A and 323/34 IPC is upheld and sentence awarded to him to undergo RI for one year under Section 498-A, IPC along with fine of Rs. 1000/- and in default, to undergo additional RI for six months and RI for six months' under Section 323/34 IPC are affirmed. The aforesaid sentences awarded to the accused appellant Sewa Ram shall run concurrently. However, the sentence awarded to him in default of fine shall run separately. Conviction of the accused appellant Ranvir under Section 323/34 IPC and accused appellant Pala under Section 324/34 IPC are also upheld and sentence awarded to accused appellant Ranvir to undergo six months' RI under Section 323/34 IPC and sentence awarded to accused appellant Pala to undergo one year's RI under Section 324/34 IPC are also affirmed. The impugned judgment and order dated 26.11.1997 passed by the Ist Additional Sessions Judge, Haridwar in Sessions Trial No. 71 of 1994, State of U.P. v. Sewa Ram and Ors., is set aside to the extent indicated above. The appellants are on bail. Their bail bonds are cancelled. They shall be taken into custody to serve out the sentence. However, the period during which the accused appellants were in jail during investigation, trial and appeal shall be adjusted towards their respective sentences after verifying the same from the record.

30. A copy of this judgment be sent to the trial court for its compliance. Let the lower court record be sent back.

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