

Pramod Kumar and Others. Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Sep-27-2010

Judge : S.C. Agarwal, J.

Appeal No. : Criminal Revision No.3884 of 2010; Criminal Revision No.2360 of 2010

Appellant : Pramod Kumar and Others.

Respondent : State of U.P. and Another

Judgement :

1. Criminal Revision No.2360 of 2010 is directed against the orders dated 22.4.2010 and 7.6.2010 and Criminal Revision No.3884 of 2010 is directed against the order dated 6.9.2010 passed by Additional Sessions Judge, Court No.8, Bareilly in Sessions Trial No.244 of 2009 State Versus Pramod Kumar and others arising out of case crime no.311 of 2008 under sections 498-A, 304-B IPC and 3/4 Dowry Prohibition Act, Police Station Qyolaria, District Bareilly.
2. Since both the revisions arise out of the same case, they are being disposed of by a common order.
3. Sri R.K. Singh, advocate file memos of appearance on behalf of opposite party no.2 in both the revisions. The same be kept on record.

4. Heard Sri Amit Srivastava, learned counsel for the revisionists, learned A.G.A. for the State, learned counsel for opposite party no.2 and perused the material available on record.

5. Initially charge under sections 498-A, 304-B IPC and 3/4 Dowry Prohibition Act was framed against the revisionists. By order dated 22.4.2010, at the stage of judgment, the trial court found that an alternative charge under section 302 IPC is to be framed against the accused persons - revisionists. Delivery of judgment was postponed and the accused persons - revisionists were directed to appear on 29.4.2010 for framing alternative charge against them under section 302 IPC. An objection was filed by the accused persons before the learned Sessions Judge, but the same was rejected by order dated 7.6.2010 on the ground that in the autopsy report, cause of death was found to be strangulation and from the evidence of the doctor, it was revealed that the deceased could not have committed suicide and it was a case of homicide. Subsequently, by order dated 6.9.2010, alternative charge under section 302/34 IPC was framed against the revisionists. All the above three orders are under challenge in the twin revisions.

6. Learned counsel for the revisionists submitted that the prosecution examined 10 witnesses in the case, out of which, 5 witnesses were witnesses of fact regarding demand of dowry, finding of dead body etc. and the remaining 5 witnesses were doctor and police personnel relating to investigation of the case. The submission is that all the witnesses of fact had turned hostile and did not utter a word against the revisionists in their testimony given before the trial court. The contention is that the offence punishable under section 304-B IPC applies to all cases, where the deceased died due to suicide or homicide on account of demand of dowry and simply because, the death was found to be due to strangulation, the charge under section 302 IPC cannot be framed even in the alternative, as there was no evidence on record to show that the murder of the deceased was committed by the accused persons - revisionists. His further contention is that simply on account of medical report, charge cannot be altered unless there was positive evidence, either evidence of the eyewitnesses or evidence in the nature of circumstantial evidence to show that the death of the deceased was caused by the accused persons - revisionists.

7. Learned A.G.A. and learned counsel for the complainant supported the impugned orders and submitted that autopsy report by itself is sufficient to frame charge under section 302 IPC in the alternative.

8. We cannot ignore the fact that the order directing framing of the charge under section 302 IPC came at the fag end of the trial i.e. at the stage of judgment, and whole evidence was before the trial court. Out of 10 witnesses, 5 witnesses named in the charge-sheet as witnesses of fact, have turned hostile and did not give testimony regarding demand of dowry. The remaining witnesses are formal in nature. No doubt, the doctor, who proved the autopsy report, testified that death of the victim was caused due to strangulation, but even homicidal cases are covered under section 304-B IPC. To frame a charge under section 302 IPC, there must be some direct or circumstantial evidence to show that the deceased was murdered. A case under section 304-B IPC can be decided on the basis of presumption under section 113-B of the Indian Evidence Act and there is a presumption as to abetment to suicide by a married woman as per section 113-A of the Indian Evidence Act, but there is no such presumption in case of murder. The murder case has to be decided on the basis of circumstantial evidence or the evidence of eyewitnesses.

9. Learned trial court has not indicated any ground except medical report, on the basis of which, it proposed to frame a charge under section 302 IPC. In these circumstances, the impugned orders passed by the trial court cannot be sustained and are liable to be set-aside and matter has to be remanded to the trial court for a fresh decision on this point.

10. Both the revisions are allowed.

11. The orders dated 22.4.2010, 7.6.2010 and the order dated 6.9.2010 framing alternative charge are set-aside and learned Additional Sessions Judge is directed to decide the matter afresh in the light of the discussions made above and to pass a reasoned order indicating the evidence on the basis of which the prosecution proposes to prove charge under section 302 IPC.