

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No. 960 of 2018**

**Damodar & Anr.**

**.... Appellant(s)**

**Versus**

**The State of Uttar Pradesh**

**.... Respondent(s)**

**O R D E R**

1. This appeal arises out of the impugned judgment and final order dated 16.11.2017 passed by the High Court of Judicature at Allahabad in Government Appeal No. 2923 of 2003, whereby the appellants were convicted under Sections 304B and 498A of the Indian Penal Code, 1860 (for short 'IPC') and consequently sentenced to undergo Rigorous Imprisonment (RI) for 10 years for the conviction under Section 304B of the IPC and 3 years for the conviction under Section 498A of the IPC after reversing the judgment of acquittal passed by the trial Court.

2. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the State of Uttar Pradesh.

3. The indisputable facts are that the marriage between the deceased viz., Smt. Sunita and the first appellant was

solemnised in the year 1988. The incident in which the deceased, Smt. Sunita, lost her life had occurred in the year 1994 at her matrimonial home. Though the marriage took place in the year 1988, the marital ceremony i.e., 'Gauna' was conducted only in the year 1992 and only thereafter that she came to her matrimonial home at Azamgarh. In the said circumstances, it is evident that the unfortunate incident in which Smt. Sunita lost her life due to 100 % burn injuries had occurred in the early morning on 01.09.1994, viz., within seven years of her marriage. The cremation was done on the same day itself. Initially, death of Smt. Sunita was treated as accidental. But then, certain circumstances ignited suspicion which ultimately, led to the registration of Case Crime No. 348 of 1994 dated 20.10.1994 at Jeeanpur Police Station, Azamgarh District.

4. The trial in Session Trial No. 484 of 1995 emerging from Crime No.348/1994 culminated in the acquittal of the appellants. The said judgment of acquittal of the appellants was originally confirmed by the High Court. However, on being challenged, the concurrent verdict of acquittal as per order dated 06.05.2015 in Criminal Appeal No.714 of 2009, this Court interfered with the matter and remanded it to the High Court, which ultimately culminated in the impugned order. As noticed hereinbefore, the High Court, as per the impugned order, reversed the acquittal and convicted the appellants.

5. The learned counsel appearing for the appellants submitted that there is considerable delay in lodging the FIR. It is also his contention that the prosecution had failed to establish that prior to the death of Smt. Sunita, she was subjected to cruelty or harassment and, apparently there was no demand at all for dowry. Yet, another contention to the effect that the High Court had failed to appreciate the evidence of PW-4 is also taken. In fact, the core contention is that it is the improper appreciation of the evidence of PW-4 that resulted in reversal of their acquittal.

6. *Per contra*, learned counsel appearing for the State would submit that on remand, the High Court warily considered the evidence on record, especially taking note of the fact that the incident leading to the death of Sunita has occurred in her matrimonial home and that too, within seven years from the date of her marriage. The appellants have failed to explain or discharge their burden in terms of Section 113B of the Evidence Act, 1872. It is further submitted that when the appellants were examined under Section 313 of the Cr. P.C., they offered no explanation at all, though the incident took place in the matrimonial home.

7. We have carefully gone through the records and appreciated the rival contentions. As noticed hereinbefore, the

indisputable position is that the death of Sunita had occurred within seven years from the date of her marriage and that too, the causative incident occurred inside the matrimonial home. The evidence of PW-1 to PW-4 would reveal that she was harassed and subjected to cruelty. Though, PWs 1 to 4 were cross-examined on behalf of the appellants, nothing could be elicited to make them untrustworthy witnesses. True that, the incriminating circumstances brought out by the prosecution were put to the appellants during their examination under Section 313, Cr. PC. It is to be noted that though the appellants were asked about cremation of the body of deceased Sunita for the purpose of removing evidence, both of them did not offer any explanation for burning her body which was already suffered 100 % burns. A perusal of the judgment of the trial Court would reveal that it did not properly appreciate the evidence and it is the cursory appreciation of the evidence that led to the acquittal of the accused and pursuant to the remand of the appeal by this Court, the High Court properly appreciated the evidence. As noted earlier, when the prosecution established the foundational facts to attract the offence under Section 304 B, IPC the first appellant who was the husband of the deceased was to discharge the burden under Section 113-B of the Indian Evidence Act, 1872.

8. Thus, the proven facts obtained in this case are that prior to the death of Sunita, the deceased was subjected to

harassment and cruelty and that the death had occurred within seven years from the date of her marriage, and that too, incident leading to her death viz., sustaining 100 % burn injuries had occurred inside her matrimonial home. When the prosecution had discharged its burden and proved such facts, the onus was on the appellants in terms of the provisions under Section 113 B of the Evidence Act to establish that it was not a dowry death, Section 106 of the Evidence Act also put burden on the first appellant-husband who went to sleep with her in the same room, but escaped unscathed to explain as to how the death had occurred as it was within the special knowledge within the meaning of said Section.

9. The High Court, accordingly, has rightly considered all the circumstances revealed from the evidence, the oral testimonies of the prosecution witnesses and also had taken note of the evidence of PW-6, Dr. Om Prakash Srivastava, the Medical Officer, Women's Hospital Azamgarh. The evidence of PW 6 would reveal that the death had occurred due to burn injuries.

10. In view of the aforesaid circumstances, the evidence brought in by the prosecution, and consequential failure on the part of the appellants to discharge their burden in terms of the provisions under Section 113 B of the Evidence Act and the additional burden cast on the first appellant-husband in view

of Section 106 of the Evidence Act, we are of the considered view that the High Court has arrived at the rightful conclusion based on the evidence on record. We do not find any perversity in the appreciation of evidence, consequently, in reversing the judgment of acquittal passed by the trial Court and in convicting and sentencing the appellants as mentioned above. To put it shortly, no case is made out warranting any interference in exercise of the appellate power of this Court.

**11.** Consequently, the Appeal stands dismissed.

**12.** Pending application(s), if any, shall stand disposed of.

....., J.  
**[C.T. Ravikumar]**

....., J.  
**[Sanjay Karol]**

**New Delhi;**  
**24<sup>th</sup> July, 2024**

ITEM NO.112

COURT NO.12

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

<sup>3</sup>  
Criminal Appeal No(s). 960/2018

DAMODAR & ANR.

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH

RESPONDENT(S)

(IA No. 81500/2018 - EXEMPTION FROM FILING O.T.; IA No. 153121/2022 - GRANT OF BAIL)

Date : 24-07-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR  
HON'BLE MR. JUSTICE SANJAY KAROL

For Appellant(s) Mr. Rajbir Bansal, Adv.  
Mr. Vinay Chaudhary, Adv.  
Mr. Eshu Aggarwal, Adv.  
Ms. Manshi Ahuja, Adv.  
Ms. Mrinalini Dayal, Adv.  
Ms. Anu Batra, Adv.  
Ms. Resha Panwar, Adv.  
Mr. Sudhir Naagar, AOR

For Respondent(s) Ms. Srishti Singh, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal stands dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(VARSHA MENDIRATTA)  
COURT MASTER (SH)

(MATHEW ABRAHAM)  
COURT MASTER (NSH)

(Signed order is placed on the file)