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Neutral Citation No. - 2024:AHC:124362-DB

Judgment reserved on 18.7.2024Judgment delivered on 02.08.2024Court No. - 45

Case :- GOVERNMENT APPEAL No. - 2416 of 1997

Appellant :- State of U.P.**Respondent :-** Ativeer Singh And Others**Counsel for Appellant :-** V.S. Misra,A.G.A.,Alok Ranjan Mishra,G S Chaturvedi,Samit Gopal,Tej Pal,V.S. Singh**Counsel for Respondent :-** Devendra Dahma,A.D. Giri,Apul Mishra,Lav Srivastava,P.N. Mishra,S.D.N. Singh

AND

Case :- CRIMINAL REVISION No. - 1370 of 1997

Revisionist :- Sri Narendra Pal Singh**Opposite Party :-** Udai Pratap Singh And Others**Counsel for Revisionist :-** Tej Pal,Amrendra Pal Singh,S.S. Rajput,Sukhendu Pal Singh**Counsel for Opposite Party :-** A.G.A.,Devendra Dahma**Hon'ble Siddhartha Varma,J.****Hon'ble Ram Manohar Narayan Mishra,J.****Delivered by Hon'ble R.M.N. Mishra, J.**

1. Instant Government Appeal and Criminal Revision have arisen out of same judgment and order dated 08.07.1997 passed by learned Additional Sessions Judge/ Special Judge, Aligarh in S.T. No.834 of 1993 State Vs. Ativeer Singh and three others and S.T. No. 642 of 1994 State Vs. Udai Pratap Singh, Case Crime No.62 of 1993, Police Station Sikandara Rau , then District Aligarh under Section 498-A and 304-B of IPC. By the impugned order learned trial court has disposed of both the connected sessions trial and acquitted all the accused persons namely Udai Pratap Singh, Ativeer Singh Chauhan, Smt. Vimlesh,

Kumari, Archana and Ajai Pratap Singh for charges under sections 498-A and 304-B IPC.

2. From perusal of the record it appears that respondent No.1 Ativeer Singh died during the pendency of instant Criminal Government Appeal and Appeal was directed to be abated, qua respondent No.1 vide order dated 27.05.2015 passed by this Court. Similarly respondent No.2 Smt. Vimlesh in instant Government Appeal also died during the pendency of appeal, and vide order dated 06.04.2022 the Government Appeal was directed to be abated in respect of said respondent No.2 Smt. Vimlesh. Thus the instant Government Appeal and Criminal Revision have been heard in respect of respondent Nos. 3,4, and 5 namely Kumari Archana, Ajai Pratap Singh and Udai Pratap Singh.

3. Heard learned A.G.A. Sri Rahul Asthana counsel for the appellant-State and Sri Gopal Swaroop Chaturvedi, learned Senior Counsel assisted by Sri Alok Ranjan Mishra, for appellant-State, learned Counsel appearing for Revisionist/complainant Sri Devendra Dhama Advocate was heard on behalf of respondent Nos.3 to 5.

4. Learned trial court recorded acquittal of the accused appellants with a finding that by prosecution evidence the allegation of demand of dowry and practicing cruelty against the deceased has not been proved. It is also not proved that death of deceased occurred in unnatural circumstances, therefore the benefit of presumption under Section 113-A and 113-B IPC cannot be extended to the prosecution side.

5. Feeling aggrieved by the impugned judgment and order Government Appeal may file on behalf of the State as Government Appeal No.2416 of 1997 State Vs. Ativeer Singh and others under Section 378(3) Cr.P.C. and subsequently a Criminal Revision was also

filed by the informant/defacto complainant Narendra Pal Singh in Criminal Revision No.2717 of 1997 Narendra Pal Singh Vs. Udai Pratap Singh and four others. As the said government appeal and criminal revision have arisen out of same relief has been sought therein. Both of these are being disposed of by this common judgment.

6. The factual matrix of the case in brief are that the informant Narendra Pal Singh who was posted as Chief Food Inspector in the office of Chief Medical Officer, Aligarh by moving a written report bearing dated 04.03.1993 with an averment that on 15.02.1993 he was busy in official work at around 3:00 pm. One Dr. Vyas who was posted in PHC Sikandara Rau as Incharge came to him and asked him to come alongwith him to Sikandara Rau, but due to rush of work he expressed his inability to move alongwith him, thereupon Dr. Vyas left his office at 05:00 pm. On same day at around 08:00 pm one Sri M.P. Sharma, Health Inspector Sikandara Rau came to him with some other person at his residence and asked him to go Sikandara Rau because his daughter's condition was serious. On hearing this the informant immediately asked one Bijendra Swaroop, Sanatory Supervisor to approach Sri M.P. Sharma and discern the real facts to which Sri M.P. Sharma informed said Bijendra Swaroop that the daughter of informant had passed away. No information was given to the informant regarding death of his daughter from her husband and inlaws. He got flabbergasted on hearing sudden death of his daughter and came to his residence at Agra and reached Sikandara Rau alongwith his wife and son at around 12:00 night. He visited the matrimonial place of his daughter where he found his daughter in dead condition. Her tongue was stucked between the teeth, her lips had become blue and blood was coagulated under the lips. When he asked about the state of things, they told that she was caught by light fever and was vomiting, but her in-laws avoided to give true reasons of her death. Her daughter Alpana

Singh was married to Udai Pratap Singh, son of Ativeer Singh Chauhan on 24.04.1992 at Kaushalpur, Agra at the place of informant, her husband and father-in-law had made several demands prior to the marriage and even after solemnization of marriage they were insisting to fulfill the shortage of dowry. The informant had already given Rs.75,000/- cash, valuables and ornaments in the marriage. The husband and in-laws of the deceased were continued to maintain the demand of Maruti Car even after marriage and due to non-fulfillment of demand of additional dowry they subjected her to maltreatment and cruelty. Father-in-law of the deceased asked the informant to get a Computer Center opened for husband of the deceased, as he was master in computer science, but due to financial constraints he could not fulfill his this demand also. He had purchased a plot in Agra in the name of his daughter Alpana and original deed was already handed over to the husband of the deceased. However, he was insisting that the said plot be transferred in his name, but deceased was not agreed upon this. He had informed the local police, the factum of her suspicious death and on his information, the police of Sikandara Rau had got the postmortem on the dead body of the deceased conducted on 16.02.1993. From postmortem report it was revealed that death of deceased was unnatural and suspicious, he firmly believed that his daughter was killed by her husband Udai Pratap Singh, father-in-law Ativeer Singh Chauhan, mother-in-law Vimlesh, brother in law Ajai and sister-in-law Kumari Archana (nanad) by administering poison to her in concerted manner. The police failed to take any action inspite of previous written report submitted to him by the informant, therefore, he had to file a written report with Superintendent of Police, on which FIR was lodged on 16.03.1993 at 09:20 am, which is exhibited as Ext. Ka-20 on record. The police investigated the case and recorded the statements of the witnesses sent the viscera of the deceased for chemical examination

and submitted chargesheet against all the five named accused persons under Section 498-A and 304-B IPC.

7. In postmortem report dated 16.02.1993 no internal or external injury was found on person of the deceased. As cause of death could not be ascertained, viscera was preserved. In viscera examination report dated 04.03.1993 Aluminum Phosphide poison was found in chemical examination carried out at Forensic Science Laboratory, Agra.

8. The learned Chief Judicial Magistrate took cognizance of the offence after compliance of provisions under Section 307 Cr.P.C. committed to the court of session for trial.

9. Learned Special Judge, Aligarh framed charge under Sections 498-A and 304-B IPC against all the five accused persons on two different dates. The accused persons pleaded not guilty to it and claimed for trial.

10. The learned trial court examined PW1 Narendra Pal Singh complainant/father of the deceased, PW2 Veerpal Singh the mediator in the marriage of the deceased and Udai Pratap Singh, PW3 Kaushal Kumari mother of the deceased, PW4 Dr. R.P. Gupta who carried postmortem examination on the body of the deceased, PW5 Deputy S.P. Yashwant Singh the Investigating Officer, PW6 O.N.Dixit conducted inquest on person of the deceased on 16.02.1993 and proved the inquest report as Ext. Ka-12. PW7 Constable Rajvir Singh carried the body of the deceased from place of inquest to postmortem house.

11. PW8 Head Constable H.C. Guru Prasad is author or Chik FIR dated 19.03.1993, time 08:20 hours and extracts of G.D. of P.S. Sikandara Rau regarding registration of case and proved the documents as Ext. Ka 18 and 19 respectively.

12. Learned trial judge recorded the statements of the accused persons under Section 313 Cr.P.C. after conclusion of prosecution evidence. The defence case was taken in statement of Ativeer Singh, the father-in-law of the deceased in which he stated that deceased died due to illness and he immediately informed the father of the deceased regarding her death. The deceased was happy in her matrimonial home and there was cordial relationship between complaint side and accused. This case was instituted only to blackmail the accused side. The accused Udai Pratap Singh has stated that he was under going studies in M.Sc. at Aligarh at the time of incident. Accused Ajai Pratap Singh stated that as informant was posted in Health Department, he manipulated the things and obtained wrong viscera report by tampering with the documents at Aligarh and Agra. Similar statements were also given by other accused persons. The defene examined Dr. Chandra Prakash as DW1 who testified that he treated the deceased on date of her death at Sikandara Rau Hospital at 11 to 12 hours in the day. On the request of Ativeer Singh, father-in-law of the deceased, he did not find any symptoms of poisoning on her person. She was unconscious, he found symptoms of Epileptic attack on patient and had given her treatment, Dr. Vyas was also there he visited the patient again on that day at 05:00 pm, but by the time he reached there, she collapsed.

13. DW2 Pravendra Pal Singh was Gram Pradhan of his village, he also played role of mediator in the marriage of deceased and husband and testified that Aplana Singh died due to illness.

14. DW3 Dr. V.R. Vyas testified that he was posted as Incharge at PHC Sikandara Rau on 15.02.1993 and was acquainted with the complainant and accused Ativeer Singh. He visited patient Alpana on the request of her father-in-law on 15.02.1993 at around 08:00 am and examined her. He also stated that he had treated the deceased Alpana

Singh on a fateful day in the morning at around 08:00 am and noticed symptoms of a trampoline. He had noticed convulsion and nausea and on that basis he found that it is a case of Epileptic attack. He prescribed Epilepsy drugs to her and a prescription was prepared by him on which Et. Kha 54 has been marked. He advised Ativeer Singh at around 11:30 hours to her visited by Dr. Chandra Prakash Gupta, and Dr. Chandra Prakash Gupta visited the patient in his presence who also found it a case of Epilepsy and advised for requisite treatment. Thereafter he moved to Aligarh for personal work and Ativeer Singh told her to inform his Samdhi (Narendra Pal Singh DW1) regarding condition of his daughter and asked him to visit his place. He met M.P. Sharma at Aligarh and asked him to come to Sikandara Rau, he told him that his son will visit the place of his daughter, he did not treat the information seriously. In cross examination the witnesses stated that accused Ativeer Singh resided in a quarter in hospital compound at Sikandara Rau, he was having official relations with him. On 15.02.1993 he had spoken to patient Alpana Singh about her Epilepsy history, whereupon she denied any epilepsy history. It would be wrong to say that she was unconscious, he stated that on administration of Aluminium Phosphide, the patient suffers from vomiting, drowsiness, chest pain and froth emerging from mouth.

15. DW4, Hitendra Pratap is nephew (sister's son of accused Ativeer Singh) has stated that he studied at the place of his maternal uncle (Ativeer Singh) after Class V and he usually visits him now and then. He proved certain letters purportedly written by accused Udai Pratap Singh and proved his signature thereon, on which Ext. Kha 55 and Kha 56 was marked. He also proved letters as Ext. Kha-39 and 40 being written and signed by accused Archana Singh.

16. DW6 Dr. Salauddin stated that he was posted at Jain Medical College, Aligarh as Medical Officer, he filed death certificate of one patient Jai Kishore son of Harishankar resident of Maurya Nagar, P.S. Khair, District Aligarh being prepared in handwriting of Dr. Asif Hussain and stated that he was acquainted with writing of said doctor. Ext. Kha-1 was marked on said death certificate of Jail Kishore. He brought this death certificate from casualty ward of medical college, he also produced case sheet of said patient on which Casualty No.1994 Case No.1888/M/93 was entered. The witnesses stated that he signed this case sheet in place of C.M.O. This paper was also marked as Ext. Kha by DW4. According to witness the patient stated the he had consumed poison, both the doctors who prepared death certificate and case sheet of said patient Jai Kishore were alive. In case sheet, suspected poisoning case is written in death certificate of Jai Kishore, Aluminium Phosphide is written Aluminium Phosphide poison affects the respiratory system. In death certificate PCF is written which means peripheral circulatory failure.

17. DW7 Dr. Asif Hussain is author of death certificate of one deceased Jai Kishore aged about 24 years, who died on 13.02.1993 at 02:35 am at Medical College Aligarh, this certificate was also proved by evidence of Salauddin DW6. This was a case of Aluminium Phosphide poisoning. The witnesses has stated that he had given treatment to Jai Kishore along with his senior Dr. R.U. Khan and Dr. Mohd. (SIC). Aluminium Phosphide poison causes formation of gas.

18. DW8 Sri S C Sharma was accountant of T.B. Clinic Malkhan Singh Hospital Aligarh on the date of incident, he proved carbon copy of postmortem report of said Jai Kishore in absence of its author Dr. Vinay Kumar Yadav and filed copy of postmortem report dated 13.02.1993 which was in handwriting of Dr. Vinay Kumar Yadav. The

witness stated that according to postmortem report the viscera of Jai Kishore was preserved in Jar No.25 and 26, on which Ext. Kha-24 was marked. The witness expressed ignorance about mode and manner of preservation of viscera.

19. Amongst prosecution witnesses PW1 Narendra Pal Singh is author of written report dated 16.03.1993 being its author and formed basis of lodging of chik FIR Ext. Ka-18. He also proved letter dated 06.07.1992 and 15.01.1993 having in handwriting of his deceased daughter Alpana, on which Ext. Ka- 1 and 2 was marked. He stated that she had received education up to M.A., B.Ed. and he was acquainted with her handwriting and signature. He married his daughter Alpana to accused Udai Pratap Singh, on 29.04.1992 at his residence situated at Agra. She was send off to her matrimonial home after marriage and accused persons had refused to take her alongwith them initially due to non giving of Maruti car as per their demand, and they agreed to take her with them only on repeated request and ultimately assurance of the witness to fulfill their demand in future. She came back to her parental home after eight days of her Vidai. The witness and his son used to visit her on festive occasions and whenever any of his family member visit her, the accused person would tease them due to non-fulfillment of their demand of car. She had narrated the misbehaviour and torture meted out to her by her in-laws due to demand of dowry. He repeatedly requested the accused persons to restrain from torturing her, but they did not relent. She only lived for 9 and half months after marriage.

20. On 15.02.1993 Dr. V.R. Vyas visited him at his office and asked him to come to Sikandara Rau, but did not disclose anything regarding his daughter and in the evening of that day at around 08:00 pm M.P. Sharma, Health Inspector Sikandara Rau visited him at his residence in Aligarh and told him that they should go to Sikandara Rau as condition

of his daughter was serious. Subsequently Sri M.P. Sharma disclosed the factum of death of his daughter to his colleague of Vijendra Swaroop. He rushed to Agra alongwith Vijendra Swaroop to the place of accused persons at 12:30 in the night, where deadbody of his daughter was kept in the Varanda of their house. All the family members of Ativeer Singh were present there, but when he asked her for cause of death they avoided, and on further query they became apologetic to him. On hearing all these things he believed that death of his daughter was not natural and suspicious. He moved an application at P.S. Sikandara Rau which was written by his son Anil Kumar who is present, on which Ext. Ka-3 was marked. On this information inquest and postmortem examination on dead body of the deceased was carried out at the instance of police. He became shocked due to dowry death of his daughter, which he had to be admitted by doctors at Malkhan Singh Hospital where his son and wife were remained with him, due to his son illness none of his family members participate in postmortem and cremation of his daughter. He waited for 15 days for police action in the matter and when no police official visited him, he moved written report of the incident on 04.03.1993 through registered post to SSP Aligarh and other by police and administrative officers. The witness proved a typed copy of said written report bearing his signature, although the typed copy of the said written report was objected by counsel for the defence. In cross examination the witness stated that accused Ativeer Singh was serving at PHC Sikandara Rau on the post of Health Educational Officer, his one daughter was already married and the other daughter was Archana was unmarried. The witness was confronted with letter dated 04.01.1993 which he acknowledged to the writing of his son Anil, on which Ext. Kha-1 was marked and on which Ext. Kha-2 was marked during cross examination. A number of letters were produced before the witness during cross examination from the side of accused, which were written and signed by his family members

on which Ext. Kha-3 to Ext. Kha 24 was marked. The witness acknowledged certain photographs of deceased daughter Alpana Singh together with her female friends, husband and relatives. He was admitted in hospital for one day and next day he was discharged. He was told by police that viscera of his deceased daughter had been preserved and will be send for examination. He had got the written report typed at Civil Court Agra and signed it and send the report by registered post to Senior Superintendent of Police. He had send two written reports/applications to S.S.P. and on second application FIR was lodged. On report dated 16.02.1993 he requested for postmortem of the dead body of his daughter to ascertain the real cause of death. In that report no prayer was made to lodge an FIR, as he did not apprehend that her daughter was done away by administering poison to her. He thought that when police officials will undertake inquiry he would tell them the entire facts. He had not moved any application prior to 04.03.1993 for initiating actions against accused persons. He visited the police station only once between 16.03.1993 to 04.03.1993, the witness denied the defence suggestion that he had changed the viscera in collusion of doctor and staff of Malkhan Singh Hospital and when he become certain that viscera had been changed only then he moved an application for lodging an FIR bearing date 04.03.1993.

21. Dr. V.R. Vyas remained with him for three hours from the date of incident. During his travel from Sikandara Rau to Agra alongwith family after being apprised of death of his daughter, nobody stated that she was killed due to demand of dowry. The apprehension of dowry death occurred in his mind when he gave a report to the police on reaching the place of incident, but he did not narrate this fact in his first report, as he thought that the picture would be clear after postmortem examination. He had not written the allegation of demand of dowry or cruelty against the accused persons in first report. The witness also

acknowledged his signature on inquest report. He had not told anything to Darogaji with regard to allegation of demand of dowry or causing death of his daughter by accused persons, as he was not in his senses at that time. On inquest report, opinion of Panchas is written in his writing, on which Ext. Kha-27 was marked. The police personnel told him that there was no visible injury on dead body. He is not certain as to who had administered poison to his daughter, but all the accused persons had poisoned him.

22. In Pradarsha Kha-3 he had made a request to S.O. Sikandara Rau to get postmortem examination of his daughter and he did not name any accused person. This application was moved on 16.02.1993 he thought that after postmortem examination he will reveal all the facts before police. Both the applications dated 04.03.1993 and 11.03.1993 filed by him were same. The investigating officer had recorded his statement after 1 ¼ months.

23. Veerpal Singh was mediator of marriage of his deceased daughter to whom daughter of the cousin of his brother-in-law was married. Ateveer Singh had stated regarding dowry objection just one month prior to the marriage before Veerpal Singh. He did not state this fact in both the applications dated 04.03.1993 and 11.03.1993. In these applications, he has not stated that his daughter would tell the fact of dowry harassment to him when she visited him. He had told this fact to investigating officer (C.O) that Veerpal Singh, was mediator in the marriage, but he had not written this fact in his statement, he may not tell its reason. He has also not written this fact in his written reports that if he paid Rs.75,000/- in cash to accused persons in presence of Veerpal Singh, his deceased daughter had never asked him to refrain from interfering in family matters of accused. She never fell ill prior to

marriage. It would be wrong to say that she died natural death, his daughter visited his place 4 to 5 times after marriage.

24. PW2 Veerpal Singh has stated that he is acquainted with accused persons as well as the informant. He mediated the marriage of Udai Pratap Singh and deceased Alpana. The accused Ativeer Singh told him that his son was posted as a teacher in Kasganj Degree College. He got the marriage of deceased and Udai Pratap Singh settled on getting consent of both sides. Ativeer Singh raised demand of dowry, prior to marriage in his presence and also demanded maruti car, to which Narendra Pal Singh expressed its inability. He met the deceased 1 to 2 times after marriage in Agra, and wherein she requested him to ask his father for maruti car as demanded by the accused side. He did not participate in Tilak Ceremony of deceased. The deceased had stated that the accused had fired the maid servant and she had to perform all household chores, the accused were demanding maruti car.

25. PW3 Smt. Kaushal Kumari, mother of the deceased who corroborated the statement in chief of PW1 in her sworn testimony before the Court and testified regarding demand of dowry, practicing of matrimonial cruelty, torture and causing of dowry death of deceased Alpana by accused persons. She stated that Veerpal Singh mediated the marriage of deceased and accused Udai Pratap Singh. Her husband told him that groom side was demanding Rs.75,000/- from him. It would be wrong to say that her daughter would often complain regarding stomach ache, she was her youngest child. Accused were pressurizing her husband to give them a car as dowry.

26. PW4 Dr. R.P. Gupta is author of postmortem report on dead body of the deceased, which is proved by his evidence as Ext. Ka-9. He stated that death of deceased might have occurred in the noon on 15.02.1993. The death occurred one day earlier to postmortem which

was conducted by him on 16.02.1993 at Malkhan Singh Hospital, as cause of death could not be ascertained. He preserved viscera for chemical examination, no mark of external injury was seen. Both lungs were congested, stomach contains ounce watery matter, mucous membrane congested, spleen and kidney were congested, abdomen was distended, heart was partly filled, two ounce liquid matter was found in stomach. The viscera was preserved in Jar No.25 and 26. The witness also filed postmortem report of one Jai Kishore, which is authored by Dr. Vinay Kumar Yadav, who was posted in T.B. Hospital, which is situated in the compound of Malkhan Singh Hospital. In this postmortem report also it is stated that viscera was preserved in Jar No.25 and 26, on which Postmortem Report 117 of 1993 dated 13.02.1996 alongwith name and address of deceased is written. The witness filed a carbon copy of postmortem report of deceased Jai Kishore during his evidence, he stated that when the doctor finds it necessary to preserve viscera he takes jar from mortuary which is maintained by police hospital, the jar is kept in custody of pharmacist of police hospital. The person who was on duty had told him the number of Jars as 25 and 26, he had signed the Register while depositing the Jar containing viscera nausea is found in case of Epileptic. It would be wrong to say that as M.P. Singh was subordinate to C.M.O. a tampering was done in viscera on asking of C.M.O and M.P. Singh. It would also be wrong to say that the witness had sent viscera of some other person in place of viscera of Alpana, he is not able to disclosed the name of staff to whom he deposited the jar. The number of jar containing viscera is entered at relevant time as disclosed by staff on duty. The number which is told by staff is entered on jar.

27. PW5 Deputy S.P. Yashwant Singh is investigating officer of the case and he has proved site plan of place of occurrence in his signature as Ext. Ka-10 and chargesheet being in his signature as Ext. Ka-11,

these papers were prepared by SI O.N. Dixit on his dictation. The witness stated that witness Smt. Kaushal Kumari had not stated to him that when her husband visited his daughter to give gifts of Rakshabandhan they were pressurized for giving car. She has also not stated to him that when she visited her daughter her lips and nails became blue and tongue was stucked between the teeth. The witness reiterated the proceedings of investigation in his evidence.

28. PW6 SI O.N. Dixit carried out inquest on dead body of Alpana deceased on 16.02.1993 at 04:20 am at official residence of accused Atveer Singh in the campus of CSC Sikandara Rau. Witness proved inquest report Ext. Ka-12, Chalan Nash Ext. Ka-13, Photo Nash Ext. Ka-14 subsequent letters as Ext. Ka-15, letter to C.M.O. Ext. Ka-16, letter to R.I. as Ext. Ka-17 being in his handwriting and signature. The tongue of deceased was stucked between teeth. The parents of the deceased and accused persons were present during inquest proceedings.

29. PW7 Constable Rajvir Singh has stated that body was handed over to him for postmortem examination by S.I. O.N. Dixit for inquest proceedings and he who carried the dead body to postmortem house alongwith constable Mahaveer Singh.

30. PW8 Head Constable Guru Prasad is author of chick FIR, entries of GD for registration of Case vide Report No.9 time 19:20 dated 16.03.1993 and he has proved these documents by his evidence as Ext. Ka-18 and 19.

31. Learned A.G.A. appearing for the appellant-State and learned counsel for the revisionist Narendra Pal Singh submitted as under:-

(1) This is undisputed fact that deceased Alpana Singh died at the residence of her in-laws (appellant) in between 08:00 am to 05:00 pm

as disclosed from the evidence of doctor V.R. Vyas who attended her at her residence in the hospital premises at about 08:00 am, and Dr. Chandra Prakash who also attended her learnt from the employees of the hospital that she died at 05:00 pm. This fact is also undisputed that she died nine and half months after the marriage.

(2) In the report dated 16.02.1993 lodged by N.P. Singh at P.S. Sikandara Rau, he did not mention the fact of demand of dowry by accused persons and consequent ill treatment and harassment meted out to her for not fulfilling the demand of dowry. In his evidence PW1 N.P. Singh, has stated that he fulfilled all the demands of dowry except maruti car. He had also given the assurance to accused persons to fulfil their demand of maruti car, when the crop is reaped from the sale of agriculture proceeds. Although demand of maruti car was made prior to settlement of marriage and during marriage and also at the time of the departure of Alpana Singh after marriage, yet it continued after marriage. Further they put up a demand for establishing computer center for accused Udai Pratap Singh in lieu of maruti car. They also insisted that the plot at Agra lying in the name of Alpana Singh should be transferred in the name of Udai Pratap Singh.

(3) When the informant visited the place of accused persons and found dead body of his daughter, he notices unusual conduct of accused persons who touched his feet and requested him to excuse them, yet he was not sure at that time that her daughter was killed by them. The accused persons had even not informed the complainant even telephonically regarding ill health or subsequent death of deceased.

(4) The informant could not lodge a detailed report naming accused persons promptly at police station as he suffered mild attack due to unnatural and sudden death of his daughter and was admitted in the hospital and his wife and son had looked after him. Thus non

mentioning of the fact of demand of dowry and cruelty in the report dated 16.03.1993 filed with S.H.O or in the request report becomes immaterial and insignificant on the facts of the case.

(5) The deceased died only within nine and half months of her marriage with the accused appellant Udai Pratap Singh in unnatural circumstances. There is no evidence that she was suffering from Epilepsy prior to her date of death and this story is cooked up by accused persons to create a defence. The letters produced on record which are proved to be written by the deceased reflect that she was being ill treated and harassed at her matrimonial home. These letters correspond to the time of demand of maruti car, opening of computer center for accused Udai Pratap Singh and transfer of the plot in the name of husband of deceased as appearing in FIR and evidence of parents of the deceased. The letters indicate that she was suffering from mental agony and was trying to conceal something from her parents due to fear of the appellants.

(6) There is absolutely nothing in the application dated 04.03.1993 moved by the informant to SSP which would suggest that legal advice was taken before moving this application. The contents of the letter as explained above are quite consistent and untie the truth and this version is explained by the wife of the complainant in her evidence.

(7) Omission of name of Veer Pal Singh (PW3) who was a middle man in the marriage, in FIR as well as in statements of the parents of the deceased is insignificant as nothing could be elicited in cross examination of the witness which could suggest otherwise with regard to reliability of the witness.

(8) The prosecution has proved its case against appellant by cogent and trustworthy evidence of the informant N.P. Singh, his wife Kaushal

Kumari and witness Veerpal Singh in support of the charge against accused persons with regard to demand of dowry practicing matrimonial cruelty and causing dowry death of deceased. However, the learned trial court has erroneously disbelieved the testimony of the witnesses of facts produced by prosecution and recorded a verdict of acquittal of accused persons from all charges taking hyper technical approach.

32. Per contra, learned counsel for private respondents/ accused persons submitted that the judgment of learned trial court is sound, well reasoned, based on logical conclusion and is coupled with proper appreciation of evidence on record.

33. He further submitted that the learned trial court has rightly given a finding that taking into consideration the evidence adduced from both sides the prosecution case becomes doubtful. Even the viscera examination report does not conclusively prove that it was in fact viscera of the deceased Alpana Singh which was examined by chemical examiner at Forensic Science Laboratory Agra. No allegation, whatsoever has been raised against appellants in first report dated 16.02.1993 lodged with P.S. concerned by the informant. It trite law that the verdict of acquittal should not be interfered with in appeal by appellate court where two views are possible, one in favour of of the accused and other suggesting his complicity in the offence. On account of verdict of acquittal by trial court, the presumption of innocence of the accused gets fortified. Neither the appellant/State nor the Revisionist /informant could make out a good case for this Hon'ble Court to interfere with the judgment and order passed by learned trial court.

34. We have considered the submissions made by learned counsel appearing for the parties and reappreciated the evidence on record in the light of grounds taken in present appeal and criminal revision preferred against verdict of the acquittal passed by learned trial court in respect of private respondents. The accused-respondents are husband and in-laws of the deceased. Alpana Singh, the daughter of first informant had died unfortunate death around nine and half months of her marriage with respondent No.4 Udai Pratap Singh. This is admitted fact that deceased and respondent No.4 Udai Pratap Singh were married according to Hindu rites and rituals on 29.04.1992 at the residence of informant Narendra Pal Singh who was posted as Chief Food Inspector in the office of C.M.O. in Aligarh, whereas accused persons were resident of Kasba Sikandara Rau which was also lying at the time of incident in district Aligarh. The marriage was solemnized in Agra at the private residence of the informant, wherein his family was settled. The unfortunate death of Alpana Singh occurred on 15.02.1993 any time between 08:00 am to 05:00 pm at town Sikandara Rau in the campus of CHC, where official residence of Ativeer Singh the father-in-law of deceased was situated, as he was posted as Health Education Officer at Sikandara Rau district Aligarh.

35. The prosecution side produced PW1 Narendra Pal Singh, the informant and father of deceased, PW2 Veerpal Singh the mediator of the marriage of deceased and Udai Pratap Singh, PW3 Kaushal Kumari mother of the deceased, PW4 Dr. R.P. Gupta who conducted postmortem examination on dead body of the deceased on 16.02.1993 and proved her postmortem report by his evidence as Ext. Ka-9, he conducted postmortem examination in presence of Dr. S.N. Gupta and Ext. Ka-9 bears signatures of both the doctors. PW5 Yashwant Singh

was Investigating Officer of the case, who was posted as Deputy Superintendent of Police at Sikandara Rau. PW6 SI O.N. Dixit carried out inquest proceedings on the dead body of the deceased on 16.02.1993 at the resident of Ativeer Singh Chauhan situated in CHC Campus Sikandara Rau. According to PW6 after completing inquest proceedings between 07:30 to 09:00 am on 16.02.1993 he filled up requisite police forms for postmortem examination on dead body and handed over the dead body in sealed condition to constables Rajveer Singh and Yashveer Singh. The dead body was moved from the place of inquest to district headquarter on 16.02.1993 at 12:30 pm according to chalan nash. The district headquarter was 40 kms from the place of inquest.

36. The postmortem on dead body was conducted on 16.02.1993 at 03:15 pm whereas it was received at postmortem house on 02:30 pm. In P.M. Report, postmortem number is marked as 135/1993. In postmortem report it is stated that cause of death could not be ascertained as no ante mortem injury was found on the body of the person of the deceased. Contents of viscera were preserved in Jar No.25 and 26. Postmortem examination of Jai Kishore son of Hari Shankar resident of Maurya Nagar, Khair District Aligarh was conducted on 13.02.1993 by Medical Officer T.B. Clinic Aligarh. Dr. Vinay Kumar Yadav and certified copy of his postmortem report has been filed by DW6.

37. DW8 Dr. SC. Sharma, on which Ext. Kha has been marked, in said postmortem report also viscera is shown to have been preserved in Jar No.25 and 26. However, there is difference of three days between postmortem of Jai Kishore and deceased in the present case namely Alpana Singh. Both were cases of suspected poisoning and viscera was preserved. The postmortem report of Jai Kishore bears Postmortem

No.117/93. Jai Kishore died on 13.02.1993 at 02:30 am at J.N. Medical College, Aligarh. In viscera examination report the chemical expert from Forensic Science Laboratory, Agra has reported that in parts of viscera Aluminium Phosphide poison was found and on that basis the prosecution initiated on supposition that deceased Alpana was administered poison which resulted in her death, whereas both the jars in which viscera parts of deceased Alpana Singh and one Jai Kishore who is unconnected with present case were preserved, bore same number 25 and 26. The doctor V.R. Vyas (DW3) who attended the deceased on the day of incident has categorically stated that he did not find any symptoms of poisonings on her person and in his opinion symptoms of Epileptic attack were noticed on her body.

38. Learned trial court has analyzed the evidence regarding preservation and examination of viscera of the deceased vis a vis said Jai Kishore who was also alleged to have consumed Aluminium Phosphide poison, it raised doubt about veracity of prosecution case in the present case that deceased Alpana Singh was administered poison by the accused persons who are her husband and in-laws.

39. We find force in finding of learned trial court that as FIR in the case was lodged after much delay on 04.03.1993, it gave sufficient time to the informant who was posted in C.M.O. office in the same district to tamper with the material exhibits, in which viscera of deceased Alpana Singh and another person Jai Kishore were preserved, as both the jars co-incidentally bore same number and learned trial court also found force in defence version that in fact it were jars containing viscera of Jai Kishore, which were sent for chemical examination to F.S.L., Agra in the garb of viscera of deceased Alpana Singh and a favourable report was obtained that the viscera contained Aluminium Phosphide poison.

40. Learned trial court has rightly disbelieved the trust worthiness of viscera examination report of deceased Alpana, on which basis a case of homicidal death of deceased Alpana has been founded by prosecution in the case, and we find no perversity or error in finding of learned trial court on this count. Another Dr. (DW1) Chandra Prakash has also testified as defence witness that he was called by Ativeer Singh Chauhan (appellant) on 16.02.1993 at around 11 to 12 hours in the day to visit his daughter-in-law whose condition was serious. When he visited the deceased at the place of her in-laws in CHC Campus Dr. Vyas was also present there. He discussed the treatment given to the patient with doctor Vyas and he did not find any symptom of poisoning in patient Alpana Singh. He advised Dr. Vyas to give her injection calm-pose also and left the place after some time to visit the patients in his clinic.

41. Thus, neither the doctor who conducted postmortem examination on dead body of the deceased who appeared as prosecution witness nor defence witnesses doctor Vyas and Dr. Chandra Prakash who attended the deceased on the date of incident when she was seriously ill have stated in their statement that they they found it suspected case of poisoning. Therefore, only on the basis of viscera examination report which is itself shrouded with suspicion, categorical finding cannot be recorded that the deceased was administered poison like Aluminium Phosphide which resulted in her death.

42. So far as allegation of demand of dowry by the appellants is concerned, the informant and his wife who appeared as witnesses are not consistent regarding nature and demand, at one place they have stated in their evidence that appellants were demanding maruti car from father of the deceased as additional dowry and at another place they stated that they were insisting and putting pressure on PW1 to open a

computer center for the husband of the deceased who was a qualified person for his proper settlement and earning. At the third place, plea of demand of dowry is taken in evidence of witnesses of fact that the appellants were insisting that PW1 transfer the plot in the name of Udai Pratap Singh, the husband of the deceased, which was purchased by him in the name of his deceased daughter. Thus, case of demand of dowry is also not consistent. This fact is also noticeable that no allegation of demand of dowry has been made by the informant in his first report lodged with police on 16.02.1993, in which he had only given information regarding death of his daughter and prayed for her postmortem examination and this first information formed the basis of conducting of inquest proceedings on 16.02.1993 between 07:30 to 09:00 am. This information was received at police station on 16.02.1993 at 04:20 am, which was entered in Report No.8 dated 16.02.1993 at G.D. of P.S. Sikandara Rau, District Aligarh.

43. The formal first information was lodged on the basis of written report Ext. Ka8 addressed to Senior Superintendent of Police, Aligarh bearing date 04.03.1993 on 16.4.1993. On the basis of this written report Chick FIR was lodged by DW8 Head Moharir Guru Prasad, marked as Ext. Ka-18 and case was registered vide G.D. No.19 time 09:20 hours dated 16.03.1993. Thus, a gap of one month between the incident and lodging of formal FIR gave ample time to witness PW-1, for embellishment after thought and concoction in FIR version and learned trial court has rightly disbelieved the evidence offered in support of accusation of demand of dowry and consequent matrimonial cruelty practiced by the appellants against the deceased.

44. A number of letters purportedly written by the deceased to her family members as well as some letters to her husband by her when she was at her parental place are filed on record. These letters were written

by deceased to her between her marriage and death are placed on record, which are marked as Ext. Kha 1 to Ext. 54. Some photographs of the deceased, her husband and family members are also placed and proved on record, which are marked as material Ext. 1 to 10. In these photographs the deceased and husband appeared to be in cheerful and normal mode and nothing adverse can be discerned from them, even the letter of the deceased to her husband and in-laws suggest that relationship between deceased, her husband and in-laws were normal. Although in some letters she has raised some grievance with her father-in-law and also from her own father. There is no whisper of statement in these letters regarding any demand of dowry or any specific event of maltreatment meted out to deceased by her husband or in-laws.

45. Thus, after going through the judgment of the learned trial court and on re-appreciation of evidence on record, we find that the trial court was justified in regard to verdict of acquittal in respect of the appellants which is supported with evidence on record and cannot be held to be founded on surmises and conjectures and assumed contradictions as suggested from the side of State appellant and Revisionist the de facto complainant.

46. We find that the principal grounds which weighed with the trial court was according to the order of acquittal were that the FIR is highly belated and in first report filed by the informant with police just after arriving at the place of incident on hearing the death of his daughter at her matrimonial place, no allegations or accusation regarding demand of dowry or matrimonial cruelty, were mentioned therein. The circumstances in which viscera examined by the deceases surfaced or highly doubtful. The doctors who attended the deceased on the date of incident when she was seriously ill have unambiguously stated that they found no symptom of poisoning on her person, and cause of death

could not be ascertained in postmortem examination and on this factual situation it is difficult to hold that death of deceased was unnatural or homicidal. The learned trial court has found that the evidence regarding demand of dowry allegedly made by the appellants and matrimonial cruelty meted out to her by the appellants has rightly been found to be suffering from discrepancy and untrustworthiness.

47. The Hon'ble Supreme Court in **Khekh Ram Vs. Himachal Pradesh AIR SC 2018 5255**, dealt with an appeal against conviction by the High Court of Himachal Pradesh reversing the verdict of acquittal of the appellant by the trial court. Hon'ble Court has held that appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law. There is nothing to curtail the power of the court to review the evidence and to come to its own conclusion in an appeal against acquittal. The appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. The Hon'ble Court further observed as under :-

“ 23. It is a common place proposition that in a criminal trial suspicion however grave cannot take the place of proof and the prosecution to succeed has to prove its case and establish the charge by adducing convincing evidence to ward off any reasonable doubt about the complicity of

*the accused. For this, the prosecution case has to be in the category of "must be true" and not "may be true". This Court while dwelling on this postulation, in **Rajiv Singh vs. State of Bihar and another** dilated thereon as hereunder:*

"66. It is well entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and that no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The well established canon of criminal justice is "fouler the 5 (2015) 16 SCC 369 crime higher the proof". In unmistakable terms, it is the mandate of law that the prosecution in order to succeed in a criminal trial, has to prove the charge(s) beyond all reasonable doubt.

*67. The above enunciations resonated umpteen times to be reiterated in **Raj Kumar Singh v. State of Rajasthan** as succinctly summarized in paragraph 21 as hereunder:*

21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved and "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be"

and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand,

then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

[Emphasis laid by the Court]

*68. In supplementation, it was held in affirmation of the view taken in **Kali Ram v. State of H.P.** that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.*

69. In terms of this judgment, suspicion, howsoever grave cannot take the place of proof and the prosecution case to succeed has to be in the category of "must be" and not "may be" a distance to be covered by way of clear, cogent and unimpeachable evidence to rule out any possibility of wrongful conviction of the accused and resultant miscarriage of justice. For this, the Court has to essentially undertake an exhaustive and analytical appraisal of the evidence on record and register findings as warranted by the same. The above proposition is so well-established that it does not call for multiple citations to further consolidate the same."

48. In the light of the above stated dictum of Hon'ble Apex Court regarding scope of interference in Criminal Appeal against acquittal and re-appreciation of evidence adduced during trial and findings of learned trial court which are based thereon, we find no good grounds to interfere in verdict of acquittal recorded by learned trial court in respect of the private respondents. Consequently instant Government Appeal and connected Criminal Revision which has been preferred by the defacto complainant are devoid of merit and deserves to be **dismissed** in the manner.

49. The instant government appeal and criminal revision preferred against the impugned judgment and order passed by

learned trial court dated 25.04.1996 are dismissed and the impugned judgment and order passed by learned trial court are affirmed. The surviving respondents namely Kumari Archana, Ajai Pratap Singh and Udai Pratap Singh are directed to execute a persona bond and two sureties in the like amount to the satisfaction of the court concerned, in compliance of Section 437 A of Cr.P.C. within fifteen days of uploading of this judgment on website of this Hon'ble Court undertaking to appear before the High Court as and when such Court issues notice in respect of appeal or petition filed against this judgment.

Order Date :- 02.08.2024

Ashish/-