

Court No. - 42**Case :-** CRIMINAL APPEAL No. - 5227 of 2019**Appellant :-** Vedram And Anr.**Respondent :-** State of U.P.**Counsel for Appellant :-** Radhey Shyam Shukla,Vipul Shukla**Counsel for Respondent :-** G.A.

Connected with

Case :- CRIMINAL APPEAL No. - 2720 of 2024**Appellant :-** Rajendra**Respondent :-** State of U.P.**Counsel for Appellant :-** Ritesh Singh,Suresh Singh**Counsel for Respondent :-** G.A.**Hon'ble Ashwani Kumar Mishra,J.****Hon'ble Mohd. Azhar Husain Idrisi,J.***(Per: Hon'ble Ashwani Kumar Mishra, J.)*

1. These two appeals are directed against the judgment and order of conviction and sentence dated 5.7.2019, passed by Additional Sessions Judge/Fast Track Court No.2, Shahjahanpur, in Sessions Trial No. 167 of 2016 (State Vs. Vedram and others), arising out of Case Crime No.384 of 2015, Police Station Paraur, District Shahjahanpur, whereby the accused appellants Vedram and Smt. Kusuma Devi have been convicted and sentenced to ten years rigorous imprisonment each, as well as accused appellant Rajendra has been convicted and sentenced to life imprisonment, under Section 304-B IPC, and all accused appellants have also been convicted and sentenced to two years rigorous imprisonment alongwith fine of Rs.5,000/- each under Section 498-A IPC; two years rigorous imprisonment alongwith fine of Rs.3,000/- each under Section 201 IPC; one years rigorous imprisonment alongwith fine of Rs.1,000/- each under Section 4 Dowry Prohibition Act. On

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failure to deposit the above fines to undergo additional rigorous imprisonment for one year each. All punishments are to run concurrently.

2. Brother of the deceased has made a written report scribed by Jugal Kishore, stating that his sister Ramkanti got married about 4 years back in the month of June, 2012 to accused Rajendra son of Vedram. She was a graduate. Rajendra and his brother Manish as well as their father Vedram and mother-in-law used to harass her for dowry and on multiple occasions she informed him on Phone and also on visits to the parental family. Although dowry was given as per the financial ability but due to poverty, the informant could not meet all demands of the accused persons. The aforesaid persons demanded a motorcycle, gold chain and ring and as demand in that regard could not be met as such his sister was tortured and has been done to death. Her body has been cremated. The incident has occurred on 19.9.2015 at 5.00 pm. The informant received a telephone call from one Rajesh about the incident and has consequently lodged the report. This written report (Ex.Ka-1) forms the basis of FIR in Case Crime No.384 of 2015, under Sections 498-A, 304-B, 201 IPC and 3/4 Dowry Prohibition Act. Five persons have been implicated in the FIR, namely Vedram (father-in-law), Rajendra (husband), Manish and Anil (brothers-in-law), mother-in-law of Smt. Ramkanti (Smt. Kusuma Devi). Since the dead body had already been cremated on 19.9.2015 itself, as such neither any postmortem was possible nor any other forensic evidence is available to the prosecution. Relying upon testimony of witnesses chargesheet came to be submitted against 3 of the 5 named accused i.e. husband Rajendra as well as his parents namely Vedram and Smt. Kusuma Devi. Cognizance was taken on the chargesheet and the case was committed to the court of sessions where it got registered as Sessions Trial No.167 of 2016.

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Alternate charge was also framed under Section 302/34 IPC in addition to the sections in which chargesheet was filed by the police.

3. The informant has appeared as PW-1 and has supported the prosecution case with regard to marriage having been held in June, 2012; giving of dowry articles in marriage by the family to the deceased; demand of dowry by the family members due to which she was physically and mentally harassed; demanded motorcycle, gold chain and ring. PW-1 has also proved the written report. He has also stated that he came to know of the incident on Phone and by the time family members could reach Village Varkhimaee, Police Station Paraur, District Shahjahanpur, her dead body was already cremated. In the cross-examination PW-1 has admitted that no written complaint with regard to demand of dowry was ever made. He got no information regarding death of his sister from her in-laws. He got a Phone call from one Rajesh but his Phone number is not available. He has stated that at the time of marriage, there was no complaint made regarding dowry, but it was later that dowry was demanded. Panchayat was also held in that regard.

4. Similarly PW-2 Narendra Kumar claims to be the brother of deceased and has stated that marriage got solemnized in June, 2012. He has also supported the plea of demand of dowry and has testified that on its failure the deceased has been done to death. PW-2 has also admitted that ever since the marriage, no complaint was ever made with anyone with regard to demand of dowry by the accused persons. All expenditure in respect of the marriage was arranged by the father of the deceased.

5. PW-3 Yadunath Singh is a villager, who too has supported the prosecution case.

6. PW-4 Rajaram is father of the deceased. He has stated that

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at the time of marriage there was no demand of dowry. However, all her Stridhan was taken by the in-laws and this fact was disclosed by the deceased to her brother Narendra. PW-4 has admitted that some time before the death of the deceased she had started living separately and the deceased with her husband had separate living and kitchen etc. He has clarified that about 15 days prior to death her daughter and son-in-law separated from their parents and other family members.

7. PW-5 Sheeshram has not supported the prosecution case. This witness has stated that family members of deceased were informed and after waiting for sufficiently long the deceased was cremated. There was never ever a demand of dowry nor any any prior complaint was made.

8. PW-6 is the Investigating Officer, who has stated that accused persons were arrested on 1.10.2015. Statement of villagers were recorded and it was found that deceased was cremated in the field at a distance of about 300 metres from the house of the accused persons. The witnesses had informed him that deceased had committed suicide by hanging.

9. Based upon the evidence led during trial by the prosecution, statement of accused persons under Section 313 Cr.P.C. has been recorded, wherein they have denied the allegations made against them. In addition to above accused persons have stated that deceased committed suicide by hanging, which fact was intimated to the family members of the deceased. They participated in the cremation, whereafter a Panchayat was held and the family members of the deceased were demanding more money and as they could not pay the amount, a false report has been lodged. Similar stand has been taken by all the three accused persons.

10. The accused persons have also produced their witnesses. DW-1 has stated that deceased died on account of illness. The

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death was reported to family members but they did not arrive, and therefore, the body was cremated in the evening. Next day the family members arrived and demanded money on account of which FIR has been lodged. Similar stand has been taken by DW-2 and DW-3, all of whom are neighbours and claimed that they have participated in the cremation. It is on the basis of above evidence that the court of sessions has convicted the accused appellants and sentenced them as per law.

11. Aggrieved by the judgment and order of conviction and sentence, the accused appellants have filed the appeals, which have been heard together and are being disposed of by this common judgment. We have heard Sri Bishram Tiwari and Sri Ritesh Singh for the appellants, Sri Vikas Goswami, learned AGA for the State and have perused the materials available on record including the original records of the trial court.

12. In the facts of the case, evidence on record shows that the marriage of the deceased has been solemnized with accused Rajendra in June, 2012. This fact has been specifically asserted by prosecution witnesses. Prosecution witnesses have not been confronted on this aspect by the defence. Although suggestion has been given that marriage was held 9 years prior to the incident, but even in their written statement the marriage is reported to have been solemnized in 2010. Upon evaluation of evidence on the factum of marriage the trial court has concluded that the death of deceased has occurred within 7 years of marriage. Although this finding is assailed by the counsel for the appellants but having carefully perused the materials on record we do not find any reasons to disagree with the conclusion drawn by the court of sessions. The categorical statement of prosecution witnesses about marriage having been solemnized in June, 2012 is neither challenged nor any contra-evidence on this aspect has been led by the defence. We, therefore, concur with the opinion of the trial judge that death of the deceased has occurred within 7 years of the marriage.

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13. The other aspect is as to whether death of the deceased was unnatural or that she died on account of illness. On this aspect we find that defence version is not consistent. Three witnesses have been produced by the defence namely DW-1, DW-2 and DW-3, all of whom have asserted that the deceased was suffering from ailment and the death was natural. No evidence in support of such plea has, however, been placed on record. There are no prescriptions of the doctor nor any details of illness etc. has been furnished. We otherwise find that the defence version that deceased died a natural death due to illness is contradicted by their own statement under Section 313 Cr.P.C., wherein the accused have stated that the deceased committed suicide by hanging. The defence version on the factum of death, therefore, is contradictory. While accused in their statement under Section 313 Cr.P.C. claimed that the deceased committed suicide by hanging, but their witnesses claim that death occurred on account of illness and was natural. We have examined the evidence on this aspect of the matter, and we find the defence version on this score also not to be trustworthy. The Investigating Officer in his testimony has stated that he made enquiries from various villagers and he was informed that deceased had committed suicide by hanging. This is also the plea set up by the accused in their testimony under Section 313 Cr.P.C. The weight of evidence on record, therefore, persuades us to endorse the conclusions drawn by the trial court, as per which the deceased died an unnatural death. Death by suicide cannot be said to be natural, and therefore, we agree with the conclusion of the trial judge that the deceased died an unnatural death.

14. Coming to the other aspect relating to demand of dowry soon before her death, we find that the prosecution witnesses of fact have stated that the deceased was harassed for demand of dowry.

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15. PW-4, who is the father of the deceased, although has stated that at the time of marriage or soon thereafter the demand of dowry was not made but after few months when her daughter came in the month of November, she was physically assaulted and all her Stridhan was taken by the in-laws. His elder son Narendra had got back the deceased. PW-4 has also stated that a report with regard to physical assault to the deceased was lodged with police station but its details are not available. The evidence adduced by the prosecution clearly supports its plea that the deceased was subjected to demand of dowry and even soon before her death the demand of dowry had continued.

16. In the facts of the case, we find that even though the death of the deceased was unnatural, yet no information was furnished to the police about the unnatural death of the deceased. It was expected that accused persons would inform the police regarding unnatural death of deceased. No such information was given. It is admitted that the death occurred on 19.9.2015 and on the same day the deceased was cremated. Even if the family members of the deceased had not arrived on 19.9.2015, as is suggested by the defence, the accused persons were expected to have deferred the cremation till arrival of the family members or at least inform the police about the incident. The manner in which dead body has been surreptitiously disposed of without intimation made to the police, we are of the view that this was a case of dowry death. The prosecution witnesses although have not furnished the specific details with regard to the date and time of demand of dowry but they have fully supported the prosecution version of demand of dowry of motorcycle, gold chain and ring. In the facts of the case, we are of the opinion that the deceased has met an unnatural death within 7 years of the marriage, and that there was a demand of dowry which persisted till soon before her death. The conviction of accused appellant Rajendra under

Section 304-B IPC is, therefore, sustained.

17. Father-in-law of the deceased Vedram (accused appellant) has already died. Mother-in-law Smt. Kusuma Devi is reported to be around 70 years of age and is in jail for the last 5 years. So far as the role of mother-in-law in demanding dowry is concerned, the allegation is not specific as against her and the allegations at best appear to be omnibus and vague. PW-4, who is the father of the deceased, has categorically admitted that deceased and her husband (accused Rajendra) had separated from the family prior to her death. Not only that the deceased had started living separately but their kitchen etc. had also separated. In that view of the matter, we are of the view that even if the deceased has died unnatural death within 7 years of marriage, yet Smt. Kusuma Devi cannot be convicted for offence under Section 304-B, 498-A, 201 IPC & Section 4 Dowry Prohibition Act in the absence of any specific allegation against her, when it is admitted that deceased had a separate living. The conviction of Smt. Kusuma Devi under Section 304-B, 498-A, 201 IPC & Section 4 Dowry Prohibition Act is, therefore, reversed.

18. Coming to the question of sentence, we find that the trial court has awarded life sentence to the accused appellant Rajendra under Section 304-B IPC. Punishment under Section 304-B IPC varies from 7 years to life. When the court proceeds to award maximum permissible sentence for an offence, it is the cardinal principle of law that reasons have to be given for awarding such maximum punishment. We do not find any such reasons to have been disclosed by the trial court. We otherwise find that there are no circumstances, which may justify awarding of extreme punishment to the accused appellant Rajendra in the facts of the present case. Considering the evidence in its entirety, we are of the view that punishment of life under Section 304-B IPC to the accused appellant Rajendra is not warranted.

19. In Hem Chand Vs. State of Haryana, (1994) 6 SCC 727, the Supreme Court has observed that though punishment under Section 304-B IPC varies from 7 years to life but award of extreme punishment should not be as a matter of course and must be awarded in rare cases. In para 7 and 8, the Supreme Court observed as under:-

“7. Now coming to the question of sentence, it can be seen that Section 304-B IPC lays down that:

“Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

The point for consideration is whether the extreme punishment of imprisonment for life is warranted in the instant case. A reading of Section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in Section 304-B IPC also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied. In the instant case no doubt the prosecution has proved that the deceased died an unnatural death namely due to strangulation, but there is no direct evidence connecting the accused. It is also important to note in this context that there is no charge under Section 302 IPC. The trial court also noted that there were two sets of medical evidence on the file in respect of the death of the deceased. Dr Usha Rani PW 6 and Dr Indu Lalit PW 7 gave one opinion. According to them no injury was found on the dead body and that the same was highly decomposed. On the other hand, Dr Dalbir Singh PW 13 who also examined the dead body and gave his opinion, deposed that he noticed some injuries at the time of re-post-mortem examination. Therefore at the most it can be said that the prosecution proved that it was an unnatural death in which case also Section 304-B IPC would be attracted. But this aspect has certainly to be taken into consideration in balancing the sentence to be awarded to the accused. As a matter of fact, the trial court only found that the death was unnatural and the aspect of

cruelty has been established and therefore the offences punishable under Sections 304-B and 201 IPC have been established. The High Court in a very short judgment concluded that it was fully proved that the death of the deceased in her matrimonial home was a dowry death otherwise than in normal circumstances as a result of cruelty meted out to her and therefore an offence under Section 304-B IPC was made out. Coming to the sentence the High Court pointed out that the accused-appellant was a police employee and instead of checking the crime, he himself indulged therein and precipitated in it and that bride-killing cases are on the increase and therefore a serious view has to be taken. As mentioned above, Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case.

8. Hence, we are of the view that a sentence of 10 years' RI would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' RI. The other conviction and sentence passed against the appellant are, however, confirmed. In the result, the appeal is dismissed subject to the above modification of sentence.”

20. In *Kashmira Devi Vs. The State of Uttarakhand*, AIR 2020 SC 652, the principle laid down in *Hem Chand (supra)* has been reiterated and the Court observed as under in para 24:-

“24. Having arrived at the above conclusion the quantum of sentence requires consideration. The High Court has awarded life imprisonment to the appellant on being convicted under Section 304-B IPC. The minimum sentence provided is seven years but it may extend to imprisonment for life. In fact, this Court in *Hem Chand v. State of Haryana* [*Hem Chand v. State of Haryana*, (1994) 6 SCC 727 : 1995 SCC (Cri) 36] has held that while imposing the sentence, awarding extreme punishment of imprisonment for life under Section 304-B IPC should be in rare cases and not in every case. Though the mitigating factor noticed in the said case was different, in the instant case keeping in view the age of the appellant and also the contribution that would be required by her to the family, while husband is also aged and further taking into consideration all other circumstances, the sentence as awarded by the High Court to the appellant herein is liable to be modified.”

21. In light of the observation made in para 24 (reproduced above), the Court modified the sentence to a period of 7 years. Para 25 of the judgment in *Kashmira Devi (supra)* is, thus, reproduced hereinafter:-

“25. In the result, the following:

Order

25.1. The conviction of the appellant recorded by the High Court under Section 304-B IPC and Section 498-A IPC through its judgment dated 29-6-2017 [*State v. Govind Singh*, 2017 SCC OnLine Utt 1932] is

upheld and affirmed.

25.2. The sentence ordered by the High Court through its order dated 10-7-2017 [State of Uttarakhand v. Govind Singh, GA No. 42 of 2010, decided on 10-7-2017 (Utt)] is modified and the sentence of imprisonment for life is altered by ordering the appellant to undergo rigorous imprisonment for a period of seven years which shall include the period of sentence already undergone by the appellant. The fine as imposed and the default sentence is sustained.

25.3. The appeal is allowed in part, in the above terms.

25.4. The parties to bear their own costs.”

22. The accused appellant Rajendra has been taken in custody on 20.9.2015 and has remained in jail ever since then. The actual period of incarceration undergone by him is about 8 years 7 months and with remission the incarceration period is almost 10 years. We are of the considered view that the sentence awarded to him under Section 304-B IPC be modified to the sentence already undergone by him. The fine and the default sentence is maintained. The appellant Rajendra is set to liberty on the sentence already undergone, subject to observance of Section 437A Cr.P.C., provided he is not wanted in any other case. Criminal Appeal No. 2720 of 2024, consequently, succeeds and is allowed in part, to that extent.

23. For the reasons recorded above, the Criminal Appeal No. 5227 of 2019 of accused appellant Smt. Kusuma Devi succeeds and is allowed. The judgment and order of conviction and sentence dated 5.7.2019, passed in Sessions Trial No. 167 of 2016 (State Vs. Vedram and others), arising out of Case Crime No.384 of 2015, against the accused appellant Smt. Kusuma Devi is set aside. Accused appellant Smt. Kusuma Devi is reported to be on bail, as such her bail bonds stands discharged. The appeal at the instance of accused appellant Vedram abates and is dismissed.

Order Date :- 10.5.2024
Anil

(Mohd. Azhar Husain Idrisi,J.) (Ashwani Kumar Mishra,J.)