



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).1408/2013

BHUPAL SINGH & ANR.

APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND

RESPONDENT(S)

J U D G M E N T

ABHAY S. OKA, J.

1. The appellants/accused have been convicted for the offences punishable under Sections 304B and 498A of the Indian Penal Code, 1860 (for short, the "IPC"). For the offence punishable under Section 304B of the IPC, the appellants/accused have been sentenced to undergo rigorous imprisonment for 10 years and for the offence punishable under Section 498A of the IPC, the appellants have been sentenced to undergo rigorous imprisonment for two years with a fine of Rs.2,000/- each.

2. The first appellant is the father-in-law of the deceased (Kamla Devi) and the second appellant is the husband of the deceased. The marriage between the deceased and the second appellant was solemnized in February 1996. On the night of 13th/14th June 1999, the deceased was found in burnt condition. There are only two material prosecution witnesses. The first witness, Shri Khim Singh Nagarkoti (PW-1), is the father of the deceased, and the second witness, Shri Mohan Singh (PW-2), is the uncle of the deceased.

3. With the assistance of the learned senior counsel appearing for the appellants/accused and the learned counsel representing the respondent/State, we have carefully perused the testimony of both the prosecution witnesses. In the examination-in-chief, PW-1 has stated that:

(a) One year before the incident, the deceased had disclosed to him that the first appellant used to tell her that considering his status as a Captain in the Army, her family members had not given adequate dowry;

(b) Once or twice a year, the second appellant (who was in military service) used to come home on leave. He used to demand money from her;

(c) Pursuant to the said demands, he had paid approximately a total amount of Rs.40,000/- to Rs.45,000/- to the in-laws of his daughter; and

(d) When he met the deceased last time, she disclosed to him that the appellants used to tell her to bring dowry and used to make a demand for payment of money.

4. PW-1 has not disclosed when he last met the deceased before her death. We have perused the cross-examination of PW-1. The four factual statements which we have set out above are omissions as admitted by PW-1. He also accepted that he was unable to recollect the dates on which the amounts comprising of a sum of Rs.40,000/- to Rs.45,000/- were paid by him. In the report submitted by him, on the basis of which the First Information Report was registered, he accepted that the fact of sending the

amount of Rs.40,000/- to Rs.45,000/- was not mentioned therein. He also accepted that in the complaint, it is not mentioned that what was demanded was towards dowry. Therefore, the testimony of PW-1 regarding the demand for dowry by the appellants and payment of a sum of Rs.40,000/- to Rs.45,000/- is an omission. These omissions, being significant and relevant, become contradictions by virtue of the explanation to Section 162 of the Code of Criminal Procedure, 1973.

5. Apart from the contradictions, PW-1 was confronted with letters dated 19th December 1997, 18th January 1999 and 17th March 1999. PW-1 accepted that the letters were in his handwriting and bore his signatures. He accepted that in the said letters, he did not mention the demand for dowry.

6. PW-2 is the uncle of the deceased. We may note here that in the cross-examination, PW-1 stated that PW-2 was residing separately. In his examination-in-chief, PW-2 stated that he received a letter from the deceased which was marked as exhibit Ka-2. After receiving the letter, he met the deceased in May 1999, and upon making an enquiry with her, she disclosed that due to insufficient dowry paid by her parents, her in-laws used to taunt her. It is an admitted position that though **the Investigating Officer collected the alleged admitted handwriting of the deceased, the said alleged handwriting, along with the letter, were not sent to a handwriting expert to secure his opinion. Therefore, an adverse inference needs to be drawn against the prosecution.**

7. PW-2 accepted that when his statement was recorded by Naib Tehsildar, he did not disclose to him the receipt of the said letter. Thereafter, he admitted that he could not definitely state whether the letter was in the handwriting of the deceased because he was in doubt. Even the statement of PW-2 that the deceased disclosed to him that her father-in-law used to pressurise her to bring more dowry is an omission, which, again being significant and relevant, will constitute a contradiction.

8. Section 304B of the IPC reads thus:

"304B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of this subsection, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) 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."

9. For proving the offence of dowry death, the prosecution must prove that (i) the death of the woman is caused by any burns or bodily injury or has occurred otherwise than in normal circumstances, (ii) the death has occurred within seven years of her marriage, (iii) soon before her death, she was subjected to cruelty or harassment by her husband or his any relative and (iv)

the cruelty or harassment was for or in connection with the demand for dowry.

10. We must note that both the witnesses have not deposed about the specific instances of cruelty or harassment apart from stating that there was a demand for dowry. As stated earlier, the version of both the witnesses regarding the demand for dowry is an omission. In the circumstances, the necessary ingredients of the offence under Section 304B of the IPC were not established.

11. Section 498A of the IPC reads thus:

"498A. 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 purposes of this section, "cruelty" means—

(a) any wilful 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 or is on account of failure by her or any person related to her to meet such demand."

As stated earlier, there was no legally admissible evidence of the demand for dowry made by the present appellants. There is no specific evidence of any cruelty.

12. In the absence of legally admissible evidence, it is not possible to sustain the conviction of the appellants. According to the learned senior counsel appearing for the appellants, the second appellant has undergone the sentence.

13. Hence, we pass the following order:

(i) The impugned judgment dated 21st March 2013, passed by the High Court and the impugned judgment dated 27th October 2001, passed by the Sessions Court, are hereby quashed and set aside. The appellants are acquitted of the offences alleged against them. The bail bonds furnished by the first appellant stand cancelled.

(ii) The Appeal is, accordingly, allowed.

.....J.
(ABHAY S. OKA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JANUARY 09, 2025.