

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 03 of 2002

1. Subhash S/o Sri Ratan alias Om Prakash,
2. Manoj Kumar S/o Sri Subhash,
3. Smt. Kamlesh W/o Sri Subhash,
R/o Village Jhabreda, P.S. Jhabreda,
District Hardwar.

..... Appellants

Versus

State of Uttaranchal

..... Respondent

Present: Mr. Rajendra Kotiyal, Advocate for the appellants.
Mr. Amit Bhatt, A.G.A. for the State/respondent.

Coram : **Hon'ble Barin Ghosh, Chief Justice**
Hon'ble U.C. Dhyani, Judge

Date : 30th November, 2011

JUDGMENT

Barin Ghosh, C. J. (Oral)

In the instant case, by the judgment and order appealed against, appellants have been convicted for having committed offence punishable under Section 304B of the Indian Penal Code. As would be evidenced from Section 304B, in order to put home a charge framed there under, it has to be established that a woman has died and such death is (i) an unnatural death; (ii) taken place within seven years of her marriage and (iii) that 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. In the instant case, the victim is a woman. She died of strangulation caused by a ligature, since post mortem report indicated ligature mark on her throat, and that, she died within seven years of her marriage. The prosecution, however, has utterly failed to establish cruelty or harassment of the deceased by her husband or any relative of her husband for or in connection with any demand for dowry. Upon analyzing the evidence, that was tendered in course of trial, the Sessions Judge has come to the conclusion that the third

limb of Section 304B of the Indian Penal Code has been established, but we are of the view that the evidence brought on record does not suggest cruelty or harassment meted out by the husband of the deceased or any relative of the husband for or in connection with any demand for dowry. The fact remains, as has come in evidence, the victim was not confined to her matrimonial home. She was free to move around. In fact, she came to her parental home two days before she died. On that day, for the last time, it is alleged, she asked for twenty thousand rupees for the shop of her husband which request, however, could not be met. It has also come on evidence that she was not given food, and that, she used to be beaten by hand and fist. The evidence, to that effect, does not impress meting out of cruelty or harassment. The demand of twenty thousand rupees, the prosecution failed to establish, was connected with any demand for dowry.

2. We are, therefore, not *ad idem* with the learned Sessions Judge upon appreciation of evidence brought on record that the victim suffered cruelty or harassment at the hands of her husband or any of his relatives for or in connection with any demand for dowry immediately prior to her death. We, accordingly, set aside the judgment and order appealed against and exonerate the appellants from the charge of dowry death punishable under Section 304B of the Indian Penal Code.

3. The fact remains, as disclosed in course of investigation and tendering of evidence that the death was caused by strangulation by using a ligature. The ligature used for strangulation was neither seized nor tendered in evidence. The doctor, who conducted post-mortem and prepared autopsy report, was not asked what kind of ligature was used to strangle the victim on the basis of the ligature mark that was etched on the throat of the victim. A milkman is said to have had seen from outside the matrimonial home of the deceased that the body of the

deceased is hanging. He and others, then, tried to enter the room, where the dead body was hanging. They allegedly broke the lock of the door, fastened from inside, to enter the room. They are supposed to have brought down the dead body which was hanging. Nothing has come on record from where the dead body was hanging. The evidence suggests that the body was in suspended animation.

4. A great effort was made by the appellants and their supporters to suggest that the victim was suffering from depression. She was under treatment of doctors for depression. The doctors, who treated the victim, deposed, but none of them however suggested that the victim was on the brink of the edge that she might commit suicide. The victim had two children. It was suggested that those two children were deformed. The appellants tried to establish that the victim was suffering from depression due to deformation of her children. To a mother, most loving persons in the world is her children. Howsoever deform they may be, in the eye of the mother, they are the best, we think.

5. We have, therefore, not been able to find out, even a plausible reason, why such a lady, who is wife of a wealthy family; whose husband is well established in business and whose matrimonial home is loaded with money, should, by her own action, bring her life to an end. At the same time, the fact remains that the victim was strangled by using a ligature. We feel that, inasmuch as, the death was caused within seven years from the date of the marriage of the victim and since the death was an unnatural death, the police, on the basis of statements given by the members of the parental family of the victim, as referred above, wrongly concluded the matter by submitting a charge sheet in respect of an offence punishable under Section 304B of the Indian Penal Code and the learned Sessions Judge also mechanically framed charge for an offence punishable under the said Section.

6. In the facts and circumstances depicted above, it would, therefore, be our responsibility, while setting aside the judgment and order under appeal, also to set aside the order framing charge as well as the charge sheet and to direct the investigating agency to re-investigate the matter and, while doing so, to ascertain whether it is a case of an offence punishable under Section 302 of the Indian Penal Code.

7. Accordingly, the judgment and order under appeal is set aside. The appellants are set free of the charge punishable under Section 304B of the Indian Penal Code and, at the same time, the order framing charge and the charge sheet are set aside with a direction upon the investigating agency to re-investigate the matter and to submit a fresh charge sheet or a police report in final form within a period of twelve months from today.

(U.C. Dhyani, J.)
30.11.2011

(Barin Ghosh, C.J.)
30.11.2011

P. Singh