

A.F.R.

Judgment reserved on : 01.09.2022

Judgment delivered on : 30.09.2022

Case :- CRIMINAL APPEAL No. - 4599 of 2015

Appellant :- Smt. Seema

Respondent :- State of U.P.

Counsel for Appellant :- Atul Tej Kulshrestha, Rajrshi Gupta, Vinay Kumar Khokhar, Vinay Singh

Counsel for Respondent :- G.A., Braham Singh, Sushil Kumar Tewari

With

Case :- CRIMINAL APPEAL No. - 4601 of 2015

Appellant :- Devendra Singh

Respondent :- State of U.P.

Counsel for Appellant :- Atul Tej Kulshrestha, Akhilesh Kumar Singh, Amit Misra, Rajesh Kumar Vishwakarma, Rajrshi Gupta, Vinay Singh

Counsel for Respondent :- G.A., Braham Singh, Sushil Kumar Tewari

With

Case :- CRIMINAL APPEAL No. - 4597 of 2015

Appellant :- Praveen Singh

Respondent :- State of U.P.

Counsel for Appellant :- Atul Tej Kulshrestha, Rajrshi Gupta, Vinay Singh

Counsel for Respondent :- G.A., Braham Singh, Sushil Kumar Tewari

Hon'ble Dr. Kaushal Jayendra Thaker, J.

Hon'ble Nalin Kumar Srivastava, J.

(Per Nalin Kumar Srivastava, J.)

1. These criminal appeals have been preferred by appellants Smt. Seema, Devendra Singh and Praveen

Singh against the judgment and order dated 15.09.2015 passed by Additional District & Sessions Judge / Fast Track Court No.2, Moradabad in Sessions Trial No.1549 of 2008 (State Versus Devendra Singh and others) arising out of case crime no.701 of 2005 under sections 498-A, 304-B, 201, 302 IPC and section 3/4 Dowry Prohibition Act, Police Station Asmauli, District Moradabad convicting and sentencing all the appellants for the offence under section 498-A IPC to undergo 2 years rigorous imprisonment with fine of Rs.5000/- and in default of payment of fine, three months further rigorous imprisonment, for the offence under section 304-B IPC to undergo imprisonment for life, for the offence under section 201 IPC to undergo 2 years rigorous imprisonment with fine of Rs.5000/- and in default of payment of fine, three months further rigorous imprisonment and for the offence under section 4 Dowry Prohibition Act to undergo one year rigorous imprisonment with fine of Rs.5000/- and in default of payment of fine, three months further rigorous imprisonment. All sentences were directed to run concurrently.

2. Factual scenario as culled out from the F.I.R. is that the informant (P.W.1) solemnized the marriage of his daughter with Devendra Singh (accused) on 8.4.2004 in which he spent around six lac rupees, but her husband and in-laws' were not satisfied with the dowry and they used to blame the daughter of the informant for not fulfilling their demand. Daughter of the informant had told this fact to him and other family members when she returned from her matrimonial house. On 30.6.2004, when the informant

went to meet his daughter at her in-laws' house, she told that her jeth, jethani and mother-in-law had made a demand of rupees five lacs and started extending torture to her. On 31.10.2004, the informant went to her daughter's place on the occasion of *karwachauth* and made complaint to Devendra, the husband, regarding harassment and additional demand of dowry. On 18.11.2004, the informant again visited her daughter's matrimonial house, but no one was found over there. On query being made, the neighbours informed that Devendra, his mother, his brother and bhabhi have committed the murder of her daughter due to demand of dowry and also destroyed the evidence thereof. Informant was not informed regarding the death of his daughter. The Police did not lodge any F.I.R. despite efforts of the informant and ultimately by order of the Court, F.I.R. was lodged.

3. Initially, the investigation was made by C.O. Harendra Pratap Singh (P.W.4), but subsequently it was transferred to C.O. Brijesh Kumar Srivastava (P.W.5), who conducting the proceedings of investigation, recorded statements of witnesses, prepared site plan Ext. A4 and after completion of entire formalities, charge-sheets Ext. A5 and Ext. A6 were submitted to the Court by the last I.O. Dpy. S.P. Sushil Kumar (P.W.6).

4. Magistrate concerned took cognizance in the matter and the case, being exclusively triable by the Sessions Court, was committed to the Court of Sessions.

5. The Trial Court framed charges against accused Devendra Singh, Praveen Singh and Smt. Seema for the

offence under Sections 498A, 304-B, 302, 201, 3/4 Dowry Prohibition Act on 18.7.2011.

6. Accused denied the charges framed against them, pleading not guilty and claimed to be tried.

7. Accused Smt. Krishna died before framing of charge and the case was abated against her.

8. In order to prove its case, prosecution examined six witnesses. Out of them, P.W.1 is Bhagwant Singh, the informant, P.W.2 Sudeep, the brother of the deceased, P.W.3 Hukum Singh, the uncle of the deceased, P.W.4 Circle Officer Harendra Pratap Singh, the first investigating officer, P.W.5 Brijesh Kumar Srivastava, the subsequent investigating officer and P.W.6 Circle Officer Sushil Kumar, the last investigating officer.

9. As per documentary evidence, application under section 156 (3) Cr.P.C. Ext. A-1, affidavit Ext. A-2, Chik F.I.R. Ext. A-3, Site Plan Ext. A-4, Charge-sheet Ext. A-5 and A-6 and application Ext. A-7 have been filed.

10. On conclusion of prosecution evidence, statement of accused-persons were recorded under section 313 Cr.P.C. wherein they denied all the allegations and incriminating evidence against them and stated that their implication in the present case is totally false. Narrating the story, they have stated that on 16.11.2004, Devendra was returning home along with his wife (deceased) on a motorcycle bearing registration no.UP-81 – 8427 and when they reached village Nandpur Beeta at 7:30 P.M., an unknown DCM vehicle hit their motorcycle, due to which Devendra and his wife became injured and thereafter his wife succumbed to the injuries. Devendra also received injuries

in the said accident. He got treated at Sai Hospital, Moradabad, Sainik Hospital, Meerut and lastly at Army Hospital, Kocchi. It was further stated that accidental case was converted into a case of dowry death. Panchnama was prepared on spot in the presence of informant and his family members who were also present at the time of cremation.

11. Accused persons in their defence have examined D.W.1 Harpal Singh, D.W.2 Ranjit Singh, D.W.3 Tirmal Singh, D.W.4 Dr. Anurag Agarwal, D.W.5 Rajendra Singh, D.W.6 C.P. 93 Harvir Singh, D.W.7 Devendra Singh (Accused), D.W.8 Chandan Giri Goswami and D.W.9 S.I. Anil Kumar.

12. Bed Head Ticket of Sai Hospital Ext. Kha-1, Panchnama Ext. Kha-2, Discharge Slip Ext. Kha-3, Medical Report Ext. Kha-4, Medical Treatment Report Ext. Kha-5, Treatment paper and discharge slip Ext. Kha-6, Kha-7 respectively have been produced as documentary evidence by defence.

13. Trial Court, having heard learned counsels for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused-appellants as above. Hence, feeling aggrieved with said judgment and order, accused-appellants have filed this appeal.

14. Heard Sri Rajarshi Gupta, learned counsel for the appellants, Sri N.K. Srivastava, learned A.G.A for the State and perused the entire record.

15. P.W.1 Bhagwant Singh has proved the application moved before the Court under section 156 (3) Cr.P.C. as

Ext. A-1 and he has also proved the facts of the marriage of her daughter with accused Devendra Singh on 8.4.2004. He has also deposed that accused-persons Devendra, Praveen, Seema and Krishna used to demand rupees five lacs as additional dowry from her and she was subjected to cruelty for the demand of dowry. He has further deposed that his daughter used to tell those incidents to him and when on 18.11.2004 he went to the house of the accused-persons to meet his daughter, the neighbours told that the accused-persons have murdered his daughter and the dead body was set to fire. In his cross-examination, he has expressed his ignorance about the alleged motorcycle accident wherein accused Devendra got injured and subsequently hospitalized and his daughter died. He does not know the cause of death of his daughter Sarita.

16. P.W.2 Sudeep is the brother of the deceased and he has also corroborated the deposition of P.W.1 and has categorically stated that the accused-persons used to demand additional dowry from his sister and she was continuously subjected to cruelty for demand of dowry.

17. P.W.3 Hukum Singh is the brother of the informant. He has also corroborated the statement of P.W.1 and supported the prosecution version in his deposition.

18. P.W.4 C.O. Harendra Pratap Yadav has deposed as secondary witness for H.M. Ganga Singh, the scribe of the F.I.R. and has proved the chik F.I.R. as Ext. A-3. This witness is also the first I.O. of the case and he had recorded the statement of H.M. Ganga Singh.

19. P.W.5 C.O. Brijesh Kumar Srivastava is the second I.O. of the case who has proved the site-plan Ext. A-4

prepared after inspection of the spot, which was prepared on the basis of the identification of the informant. He has also recorded the statement of the informant and other witnesses.

20. P.W.6 Dy. S.P. Sushil Kumar is the third I.O. of the case, who has proved the proceedings of investigation in his deposition and has also proved charge-sheets Ext. A-5 and A-6.

21. After prosecution evidence was over, the incriminating circumstances and evidence were put to the accused-persons. The accused-persons in their statement under section 313 Cr.P.C. has denied the prosecution story and told the whole evidence as false and fabricated. They have taken a specific defence that on 16.11.2004, accused Devendra was coming from his in-laws' house by motorcycle. At about 7:30 P.M., near village Nandpur Beeta, one unknown DCM vehicle collided with his motorcycle and both of them got injured. Deceased Sarita died of the injuries and accused Devendra was admitted into Sai Hospital, Moradabad and subsequently Sainik Hospital and later on he was treated in Sainik Hospital, Meerut and Sainik School Hospital, Kocchi (Kerala). The informant has maliciously gave a colour of dowry death to an accidental case. It has also been stated that in the pressure of the informant of the case, a panchnama was also prepared and all the family members of the deceased were present at the time of cremation.

22. To give support to the contention of whatsoever stated in the statement under Section 313 Cr.P.C., the

convicts have adduced oral and documentary evidence also.

23. Assailing the findings, learned counsel appearing for appellants argued that the prosecution case is totally baseless and from the evidence available on record, no case is made out as against the convicts / appellants. The impugned judgment is based on surmises and conjectures. There was no eye-witness or even any circumstantial evidence to connect the convicts / appellants with the crime alleged against them. It has been further submitted that the learned trial court has misinterpreted the evidence available on record and has not given any weightage to the defence evidence which was against the norms of the established legal principles. It has been submitted that no ingredients to bring home the guilt of the accused under section 304-B IPC was proved by the prosecution.

24. Per contra, the learned A.G.A. has contended that the impugned judgment suffers with no lacuna or error and the appeals, being devoid of merit, are liable to be dismissed.

25. Before appreciating the rival submissions made by both the sides, we have to put a glance upon relevant provisions of law.

Section 304-B IPC - 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 purpose of this sub-section, ‘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.”

26. In a catena of decisions, the ingredients to be proved in order to convict an accused for the offence punishable under Section 304-B IPC are promulgated. In **Maya Devi and Another Versus State of Haryana (2015) 17 Supreme Court Cases 405**, it has been reiterated that the following essentials must be satisfied to successfully charge under section 304-B IPC :

(Page 417) –

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

27. P.W.1 says that the marriage between the deceased and accused Devendra was solemnized on 8.4.2004 and this fact has been corroborated by P.W.2 and P.W.3 also. The death of the deceased was caused on 18.11.2004. This

is an admitted position of fact that the deceased died within seven years of her marriage.

28. The prosecution alleges that the accused-persons, to fulfill their demand of dowry, caused the dowry death of the deceased and a specific defence has been taken by the accused-persons that the deceased died in a road accident wherein accused Devendra was also got injured. It is argued that in such circumstances, one has no hesitation to say that the death of the deceased may be called as unnatural death.

29. It has also been submitted by the learned A.G.A. that P.W.1, P.W.2 and P.W.3 have narrated in their deposition that the deceased was subjected to cruelty for the demand of additional dowry by her in-laws and they used to harass her to fulfill the demand of rupees five lacs. They have also stated that the accused-persons forcibly obtained the signature of the deceased on withdrawal form and withdrew rupees two lacs from the Bank account of the deceased. P.W.1 has also stated that he went to the in-laws of his daughter and requested them not to harass the deceased, but they did not pay any attention to it. In their cross-examination, P.W.1, P.W.2 and P.W.3, besides minor contradictions, have corroborated the each other's version so far as the fact of demand of additional dowry and cruelty caused to the deceased is concerned. The learned A.G.A. has also submitted that element of "soon before" has been established by the prosecution evidence. P.W.1 in his examination-in-chief has stated that when, on 31.10.2004, he went to the in-laws of his daughter on the occasion of *Karwachauth*, the deceased told her regarding

the demand of rupees five lacs and also her harassment for this demand, of which he had also complained to the accused-persons and some days after, on 18.11.2004, he was informed of the murder of her daughter. This ingredient of “soon before” has also been proved by P.W.2 in his deposition.

30. The learned A.G.A. has submitted that in this way, the prosecution has proved its case beyond reasonable doubt and the learned trial court has committed no error in holding the accused-persons guilty of the offence of dowry death.

31. The learned counsel for the appellants has vehemently argued that no evidence has been adduced by the prosecution to show as to the death of the deceased was unnatural. He has submitted that the accused-persons / appellants have a specific defence that the death of the deceased was caused in a road accident when she was going by motorcycle with her husband accused Devendra. He has also argued that sufficient evidence in this respect has been adduced by the convicts, but the learned trial court with a preoccupied mind did not analyze the defence evidence in proper manner and rejected it out-rightly without giving any weight, which was improper.

32. In **Neel Kumar alias Anil Kumar Versus State of Haryana (2012) 5 Supreme Court Cases 766** (paragraph-30), the Hon’ble Apex Court has held - “It is the duty of the accused to explain the incriminating circumstance proved against him while making a statement under Section 313 Cr.P.C. Keeping silent and not furnishing any

explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him.”

33. In **Janak Yadav and Others Versus State of Bihar, 1999 SCC (Criminal) 558 (559)**, it was held that Section 313 Cr.P.C. prescribes a procedural safeguard for an accused facing the trial to be granted an opportunity to explain the facts and circumstances appearing against him in the prosecution’s evidence. That opportunity is a valuable one and cannot be ignored.

34. The learned counsel for the appellants has submitted that to support their version in the statement under Section 313 Cr.P.C., oral and documentary evidence has also been adduced from the defence side. He has relied upon the decision of the Hon’ble Apex Court in **Munshi Prasad Versus State of Bihar (2002) 1 SCC 351** wherein it has been held that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution. A lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors’ witnesses. The judgment was followed in **Adam Bhai Suleman Bhai Ajmeri Versus State of Gujarat (2014) 7 SCC 716**.

35. D.W.7 accused Devendra Singh himself has supported his evidence in statement given under Section

313 Cr.P.C. He has affirmed this fact that on 16.11.2004, when he was driving motorcycle with his wife sitting behind him, at about 7:00 P.M., one vehicle hit his motorcycle from behind wherein he got injured and his wife succumbed to injuries. He was admitted in Sai Hospital, Moradabad and subsequently sent to the Military Hospital, Meerut and Sanjeevini Hospital, Cochin and the record of the treatment was deposited in Mumbai Cabs. He has proved the discharge slip of the Meerut Hospital executed by Sri Jaideep Chaudhary, Surgeon Commander as Ext. Kha-3. He has also proved the medical reports of Sanjeevini Hospital executed by the same Jaideep Chaudhary as Ext. Kha-4, 5, 6 and 7, which include the treatment report and discharge slip as well. He has also narrated this fact that report in the accident case was lodged under Sections 279, 337, 338, 304-A IPC against unknown driver, however subsequently charge-sheet against the accused / driver Narendra Singh was submitted and criminal case is pending.

36. It also transpires from the record that when F.I.R. in the accidental case was not lodged, an application under Section 156 (3) Cr.P.C. was moved by Praveen Singh, the brother of the husband / accused Devendra Singh before the Court and by order of the Court dated 11.10.2012, the application was allowed and S.O. Asmauli was directed to lodge an F.I.R. and investigate into the matter. This order (Ext. Kha-12) is available on the trial court record. Ext. Kha-11 is the copy of the judgment of the revisional court wherein the order dated 11.10.2012 was challenged and the revision was dismissed. Ext. Kha-9 and Ext. Kha-10

are the copies of F.I.R. and charge-sheet relating to the case of the accident registered as Crime No.288 of 2012 wherein the date and time of the accident is mentioned as on 16.11.2004 at 7:00 P.M. Charge-sheet into the matter has also been submitted against the accused / driver Narendra Singh. All these papers are available on the record of the trial court and proved.

37. The learned counsel for the appellants has submitted that the learned trial court has not considered the aforesaid documents in right perspective. It has been submitted that the learned trial court has emphasized upon the requirement of inquest and postmortem of the body of the deceased in an accidental case, but he has not considered Ext. Kha-2 Panchnama in proper manner.

38. It has been vehemently argued that statement of P.W.1 Bhagwant Singh has been given weightage by the trial court wherein he has stated that he was not present at the time of Panchnama and he has also relied upon the statement of cross-examination of D.W.5 wherein he has stated that when he reached on the spot, Bhagwant Singh was not present over there. The learned counsel for the appellants has drawn the attention of this Court towards the statement of P.W.1 Bhagwant Singh himself, who, in his cross-examination at page no.15 has admitted that “ मैं अपने दस्तखत पहचानता हूँ का० सं० 64 A / 3 प्रदर्श खा-2 पर भी मेरे हस्ताक्षर हैं । It is pertinent to mention that Paper No. Ext. Kha-2 is the Panchnama, which has been written by Rajendra Singh, D.W.5 at the place of accident. It also bears the signature of Bhagwant Singh, Surendra Singh, Gajendra Singh, Roop Singh, Jitendra Singh, Hari Om

Singh and Satveer Singh. In Ext. Kha-2, it has been mentioned that the death of the deceased Sarita has been caused on spot in a road accident at Simli - Nandpur Beeta Road and Devendra Singh has been admitted into Sai Hospital, Moradabad in injured condition for treatment. It has also been mentioned that the family members of Devendra Singh and deceased Sarita are present on the spot along with several other persons. All the Panchas are of the opinion that since it is a case of sudden accidental death, no legal formality is required and with the consent of all the persons, the cremation of the deceased ought to be performed. It has been submitted that accordingly the cremation of the deceased was performed in the presence of the family members of the deceased.

39. Learned counsel for the appellants has submitted that since Bhagwant Singh – P.W.1, the father of the deceased, was himself present on spot and was very well aware of the fact that it was an accidental death and he was also consenting for the cremation of her deceased daughter, there is no doubt that it was not a case of homicidal or dowry death rather it was a case of accidental death.

40. We have focused upon the issue of burden of proof lying upon the accused in a criminal proceeding.

41. In **Rishi Kesh Singh and others Versus State, AIR 1970 All 51 (FB)**, which is the leading case on the subject, the issue of burden of proof of the accused has been discussed. The principle enumerated in **V.D. Jhingran Versus State of U.P., AIR 1966 SC 1762** has been quoted in the aforesaid judgment, which reads like this -

“It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability.”

42. Similarly, **Harbhajan Singh Versus State of Punjab, AIR 1966 SC 97** has also been quoted wherein it has been held that “Where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That, no doubt, is the test prescribed while deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but that is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where an accused person is called upon to prove that his case falls under an Exception, law treats the onus as discharged if the accused person succeeds in proving a preponderance of probability.”

43. In **Rishi Kesh Singh’s** case (supra) the abovementioned principle has been accepted.

44. In **Bhikari Verus State of U.P., AIR 1966 SC Page-1**, the Court held that “The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable

presumption that the accused was not insane, when he committed the crime.....the accused may rebut it by placing before the court all the relevant evidence – oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings.”

45. From the above, it is to be summed up that in a criminal trial, if the accused succeeds to create a reasonable doubt in the mind of the Court as regards to his guilt and on the basis of evidence - oral, documentary or circumstantial adduced in his defence, it is sufficient for his acquittal because the burden to prove its case lies heavily and solely beyond reasonable doubt upon the prosecution. In the present case also, on the basis of the defence evidence, both oral and documentary and in the circumstances of the case, the convicts / appellants have succeeded to create a doubt about the genuineness of the prosecution case.

46. In **Pankaj Versus State of Rajasthan, 2016 AIAR (Criminal) 886 (Supreme Court)**, it has been held that “it is well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted”. The evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. (Emphasis supplied)

47. In the facts and circumstances of the present case, the aforesaid law is clearly applicable. On the basis of defence evidence, the convicts / appellants have succeeded to provide an alternative approach to the Court to consider that they might be innocent and the incident did not occur

in such a manner and at such place as the prosecution claims. The defence evidence adduced by the convicts / appellants helps their case by a preponderance of probability. The learned trial court did not appreciate the defence evidence and brushed it out in an improper manner.

48. As a result thereof, in our view, the appeals succeeds and the conviction judgment and order of the learned trial court is liable to be set-aside.

49. The Appeals are accordingly allowed. The impugned judgment and order of the Trial Court dated 15.09.2015 convicting and sentencing the convicts / appellants is hereby set aside and the appellants are acquitted of the charges levelled against them. Appellants Smt. Seema and Praveen Singh are on bail, their personal bonds are cancelled and sureties are discharged. Appellant Devendra Singh is in jail. He shall be released forthwith, if not wanted in any other case.

50. Let a copy of this judgment along with lower court record be sent forthwith to court concerned for compliance.

Order date : - 30.09.2022

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