

AFRRESERVED

2026:AHC:32236-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD**CRIMINAL APPEAL No. - 2903 of 2020**

Shakeel Ahmad and another

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Arvind Kumar Srivastava, R.p.s. Chauhan, Rajiv Sisodia, Shailesh Kumar Srivastava, Shyam Shanker Pandey

Counsel for Respondent(s) : G.A.

Court No. - 43

**HON'BLE SALIL KUMAR RAI, J.
HON'BLE VINAI KUMAR DWIVEDI, J.**

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

This criminal appeal has been filed against the judgment and order dated 29.09.2018/03.10.2018 passed by learned IVth Additional Session Judge/Special Judge (E.C. Act), Bijnor in Session Trial No. 593 of 2015, arising out of Case Crime No. 272 of 2015, under Sections 304B in alternative 302/34 IPC and Section 4 of Dowry Prohibition Act, Police Station Chandpur, District Bijnor. By the impugned order, learned Additional Session Judge has convicted and sentenced the accused-appellants Shakeel Ahmad and Sherbaz @ Shadab to undergo imprisonment for life under Sections 304B IPC and under Section 4 of Dowry Prohibition Act, to undergo two years imprisonment and a fine of

Rs. 10,000/- and in default of payment of fine, to undergo three months' further imprisonment. Both the sentences awarded to the accused-appellants are to run concurrently.

2. Brief facts of the case are that on the basis of written report, Ext. K-1, which was filed by informant Naseema (PW-1) at police station Chandpur, district Bijnor, a first information report, Ext. K11, was registered on 24.04.2015 against Gulshana, Shakeel Ahmad, Shahzad, Km. Roshan and Shadab, who are mother-in-law, father-in-law, brother-in-law, sister-in-law and husband of the deceased, respectively, alleging *inter alia* that her daughter's marriage was solemnized with Sherbaz @ Shadab on 14.12.2014. After the marriage, her in-laws used to taunt her for bringing less dowry and the son-in-law used to demand a motorcycle and rest of the family members were demanding Rs. Two lakh. On 09.04.2015 at about 10:30 PM, Sherbaz put kerosene on her daughter and her mother-in-law and sister-in-law were saying that because the demand of additional dowry has not yet been fulfilled, therefore, burn her to death. After that, her brother-in-law Shahzad and father-in-law Shakeel lit a fire with a matchstick and threw it on her daughter. The daughter of the informant was seriously burned. The first information report was lodged after the death of the daughter of the informant.

3. On receiving information of the incident, Investigating Officer Mahesh Chandra Atri (PW-11) reached at the spot of the incident and inspected the place of occurrence. Prior to this witness, the case had been investigated by Shailendra Rao, Circle Officer. Mahesh Chandra Atri (PW-11) recorded the statement of the informant Naseema on 25.04.2015. He also prepared a site plan of the place of occurrence, Ext. K14, on the pointing out of the informant Naseema (PW-1). Thereafter, Investigating Officer recorded the statement of Reshma and Asif @ Asif. Investigating Officer also prepared other formal police papers and also prepared *panchayatnama* of the dead body of the deceased

through Sub Inspector Kripal Singh (PW-8). After *panchayatnama*, dead body of the deceased was sent for autopsy. After recording the statement under Section 161 Cr.P.C. of the prosecution witnesses, charge-sheet was filed only against accused-appellants, Shakeel Ahmed and Sherbaz @ Shadab, under Section 304B IPC and Section 3/4 Dowry Prohibition Act. Other persons named as accused in the written report were exonerated by the police. Dr. Ravi Prakash (PW-6) conducted the postmortem of the deceased Nazia and prepared the postmortem report, Ext. K-10, and according to Ext. K-10, Dr. Ravi Prakash (PW-6) found following burn injuries on her body :

“Superficial to deep burn present on whole of face, neck front and back both upper limb right and left, breast and abdomen as whole front and back, buttocks both genital organ, left thigh whole thigh front and back, right thigh front up to the knee. Blackish brown skin present. Infected pus present at the burn wound, whitish yellow in colour. Clawing of hand both right and left present. Line of redness present. Signing of hairs present on scalp, head, charred skin and face out. Burn is about 80%.”

4. Cause of death of the deceased as stated by Dr. Ravi Prakash (PW-6) was shock and septicemia due to ante mortem burn injuries. As per the postmortem report, the deceased had sustained approximately 80% burn injuries.
5. Since the case was exclusively triable by the Court of Session, hence learned concerned Magistrate committed the case to the Court of Session for trial.
6. Against accused-appellants, Shakeel Ahmed and Sherbaz @ Shadab, charge was framed by learned Sessions Judge under Section 304B IPC and in alternative under Section 302 read with Section 34 IPC. Charge was also framed against the accused-appellants by the learned trial Court under Section 4 of the Dowry

Prohibition Act. The accused-appellants denied from the charge and claimed trial.

7. Prosecution adduced as many as 11 witnesses in support of its case; informant Naseema (PW-1), Reshma (PW-2), Asif @ Arif (PW-3), Devraj Singh (PW-4), Om Prakash Yadav (PW-5), Dr. Ravi Prakash (PW-6), Onkar Singh (PW-7), Kripal Singh (PW-8), Dr. Madhumita Tripathi (PW-9), Indresh Singh Chahar (PW-10) and Mahesh Chandra Atri (PW-11). Apart from these evidences, prosecution also relied on documentary evidence, such as, Ext. K1 to Ext. K15.

8. In trial Court, after recording of the evidence of the prosecution witnesses, statements of accused persons were recorded under Section 313 Cr.P.C. The accused-appellants in their statements under Section 313 Cr.P.C. denied the allegations. They have also stated that the stove exploded while the deceased was cooking food, as a result of which the clothes of the deceased caught fire. She was taken to hospital for her treatment but she died. Accused-appellants have not adduced any evidence in support of their defence.

9. The trial Court after appreciating all evidences, both oral and documentary as available on the record, held the accused-appellants guilty of the alleged crime and death of deceased Nazia and convicted both of them under Section 304B IPC with life imprisonment and under Section 4 of Dowry Prohibition Act for two years imprisonment with a fine of Rs. 10,000/- to each accused and in default of payment of fine, both accused-appellants were directed to undergo further imprisonment for three months. Aggrieved by the above judgment and order of conviction dated 03.10.2018, accused-appellants have preferred this criminal appeal before this Court.

10. We have heard the arguments of learned counsel for the accused-appellants and also the arguments of learned A.G.A. for

the State, gone through the evidence as available on record and also perused the judgment and order of conviction passed by the learned Trial Court.

11. Learned counsel for the accused-appellants has argued in support of this criminal appeal that both parties belong to weaker sections of the society. Accused-appellants had not made any demand for dowry from the deceased or her family members. No demand was made for a motorcycle and Rs. 2 lakhs. On the date of incident, i.e., 09.04.2015, deceased Nazia was cooking food on the stove and the stove exploded during cooking, because of which the clothes of the deceased caught fire, causing her burn injuries. Accused-appellants took her to the hospital for treatment, but she died during treatment at the hospital. It is also submitted that the deceased Nazia sustained 80% burn injuries at her matrimonial home within seven years of her marriage but the accused-appellants had not poured kerosene nor lit fire from the matchstick. The prosecution witnesses, including Naseema (PW-1), Reshma (PW-2), and Asif @ Arif (PW-3) have not supported the prosecution story. However, learned trial Court wrongly relying on the evidence of above prosecution witnesses and also on the dying declaration, held the accused-appellants guilty under Section 304B IPC and convicted them for life imprisonment, which is excessive. It is also submitted that the parties belong to very poor sections of the society and earn their livelihood through labour work. It is further submitted that life imprisonment awarded to the accused-appellants by the trial Court is excessive. Accused-appellant no. 1 Shakil is languishing in jail since 13.08.2015 and appellant no. 2 since 10.10.2015, thus both the accused-appellants are in jail for more than ten years. It is also argued that under Section 304B IPC, it is not mandatory to award life imprisonment under Section 304B IPC. In Section 304B IPC, option has been given to the Court to award minimum sentence of seven years. By the above arguments, learned counsel for the

accused-appellants submitted that both the accused-appellants are languishing in jail for more than ten years which is much more than the minimum provided under Section 304B IPC. In view of the above, it is further pleaded that the punishment of the accused-appellants be reduced to the imprisonment as the period already undergone.

12. Per contra, learned A.G.A. for the State has submitted that the accused-appellants committed a heinous crime in their home. Deceased Nazia was the wife of accused-appellant no. 2, Sherbaaz @ Shadab, and daughter-in-law of accused-appellant no. 1, Shakeel Ahmed. She was burnt in her matrimonial home within two years of marriage. Her body was burnt by 80%, which proved fatal for her due to septicemia. It was also submitted by learned A.G.A. for the State that accused-appellants not only demanded dowry of Rs. 2 lakhs and one motorcycle from the deceased Nazia but when their demand was not fulfilled by Nazia and her parents, they poured kerosene upon her and lit the fire, causing 80% burn injuries on her body and she died during her treatment at hospital due to septicemia. He further submitted that the trial Court rightly and in proper perspective convicted the accused-appellants by maximum punishment of life imprisonment provided in Section 304B IPC. The accused-appellants by their criminal act ended the life of a young girl of 22 years of age, hence the accused-appellants deserved maximum punishment of life imprisonment which was rightly awarded to them by learned trial Court. Learned A.G.A. has also submitted that the reasoning and finding as recorded by learned trial Court suffers from no perversity or misappreciation of the evidence, hence criminal appeal filed by the accused-appellants has no merit and is liable to be rejected.

13. The prosecution case has not been supported by the prosecution witnesses, informant Naseema (PW-1), Reshma (PW-2) and Asif @ Arif (PW-3) who turned hostile during

recording of their evidence. However, from perusal of the evidence of the prosecution witnesses, this fact is clearly proved that deceased Nazia died in her matrimonial home in unnatural circumstances by sustaining 80% burn injuries on her body. Thus the factum of unnatural death has been established by the evidence of the prosecution witnesses, Naseema (PW-1), Reshma (PW-2) and Asif @ Arif (PW-3).

14. Learned Trial Court mainly relying on the dying declaration, Ext. K-3, evidence of Devraj Singh (PW-4), who recorded the dying declaration of the deceased Nazia and also relying on the evidence of Dr. Madhumita Tripathi (PW-9), who has given certificate before and after recording of dying declaration of the victim Nazia, held the accused-appellants guilty under Section 304B IPC and Section 4 of Dowry Prohibition Act. The Trial Court also considered this fact that a young married lady of 22 years of age was burnt and sustained 80% burn injury in her matrimonial home and died at hospital during treatment. Learned Trial Court relying on dying declaration, Ext. K-3 and also to the evidence of Devraj Singh (PW-4) and Dr. Madhumita Tripathi (PW-9) found that an unnatural and homicidal death had occurred in the house of the accused-appellants and, therefore, the burden was on the accused-appellants to explain the circumstances in which the deceased Nazia received burn injury of 80% on her body. The accused-appellants were unable to explain the burn injuries on the deceased by adducing any oral or documentary evidence. As per law, it was the responsibility of the accused-appellants to explain this fact by adducing their evidence in this regard in their statement under Section 313 Cr.P.C.

15. From the records, it appears that families of informant and accused-appellants belong to the weaker sections of the society, earning their livelihood by doing labour work. It is settled principle of law that punishment should be of the nature and extent that it must not be too lenient and also must not be too severe and

harsh. Both sides belong to weaker sections of the society and are daily wage earner. In view of the above social condition and economic capacity of the accused-appellants as well as also of the prosecution sides, we find that life imprisonment under Section 304B IPC as awarded by learned Trial Court for life imprisonment is too harsh and severe.

16. The Three Judges Bench of Hon'ble Supreme Court in the case of **Hem Chand v. State of Haryana, (1994) 6 SCC 727**, which was also a case under Section 304B IPC (dowry death), held in para 7 that;

"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. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. 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 in the section are satisfied. In the instant case the prosecution has proved that the deceased died an unnatural death, but there is no direct evidence connecting the accused with the death. The accused has not been charged under Section 302 IPC. 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 i.e., absence of direct connection of the accused with death has certainly to be taken into consideration in balancing the sentence to be awarded to the accused."

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."

17. Thus, from the above case law of Hon'ble Supreme Court, it is clear that under Section 304B IPC for dowry death, life imprisonment should be awarded in rarest of the rare cases, where it is alleged that bride was killed in a brutal and ruthless manner and also where there is no mitigating circumstances, then in this condition, life imprisonment should be awarded as a rarest of the rare cases. However, the trial Court also held the accused-appellants guilty under Section 4 of Dowry Prohibition Act and convicted them for two years imprisonment and a fine of Rs. 10,000/- to each accused and in default of payment of fine, both the accused-appellants were directed to undergo further imprisonment for three months.

18. In the case in hand, we find that it was the defence of the accused-appellants that the stove exploded at the time of cooking food on the stove by the deceased and the deceased caught fire and sustained burn injuries on her body.

19. We are of the view that the quantum of punishment should be proportionate. It should neither be too lenient nor too excessive and harsh. While awarding sentence, the Court must take an overall view of the facts and circumstances of the case, including the socio-economic conditions of both the parties, so as to meet the ends of justice and convey a clear message to society that no person could dare to commit any heinous crime.

20. In view of the above facts and circumstances of the case, as revealed from the records, we are inclined to sustain the order of conviction maintaining the finding and reasoning in this respect. However, we are inclined to reduce the sentence from life imprisonment to the period already undergone by the accused-appellants, without altering the finding of the trial Court.

21. In the light of the above discussion, we are of the considered view that the ends of justice would be met by reducing the sentence of life imprisonment, as awarded by the trial Court, to imprisonment for a period of ten years.

22. Since the accused-appellants have already served more than 10 years in jail, hence we reduce the sentence of both the accused-appellants as the period already undergone by them. Thus, the criminal appeal filed by the accused-appellants is liable to be partly allowed.

23. The criminal appeal is partly allowed. The sentence of life imprisonment under Section 304B IPC as awarded by the learned Trial Court to the accused-appellants is reduced to the period already undergone by them.

24. Let the accused-appellants be released forthwith.

25. Let the trial Court record be returned by the office alongwith copy of this judgment for necessary information and compliance forthwith.

(Vinai Kumar Dwivedi,J.) (Salil Kumar Rai,J.)

February 13, 2026

Shubham