

Reportable

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HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.249 of 2007

Dr. Ram Shankar Gupta & anotherAppellants

Vs.

State of UttarakhandRespondent

Present:-

Mr. Vikram Singh Dhapola, learned counsel holding brief of Mr. Ramji Srivastava, learned counsel for the appellants.

Mr. K.S. Bora, learned Deputy Advocate General along with Mr. J.P. Kandpal, learned Brief Holder for the State.

Hon'ble Pankaj Purohit, J.

This appeal is preferred by the appellants under Section 374(2) of Cr.P.C. and is directed against the judgment and order dated 11.06.2007, passed by learned Sessions Judge, Chamoli (Gopeshwar) in Sessions Trial No.06 of 1997, State vs. Dr. Ram Shankar & another. By the said judgment, appellants were convicted under Section 3/4 of Dowry Prohibition Act and were sentenced as under: -

S.No.	Conviction	Sentence	Fine	Sentence in-lieu of fine
1.	Section 3 of Dowry Prohibition Act	2½ years' R.I.	Rs.15,000/-	Six months' additional S.I.
2.	Section 4 of Dowry Prohibition Act	Six months' R.I.	Rs.1,000/-	Two months' additional S.I.

Both the sentences were directed to run concurrently. However, the appellants were acquitted for the offences punishable under Sections 498-A and 304-B IPC.

2. In brief the prosecution case is that Smt. Kanchan Gupta was sister of informant, namely, Alok Kumar Gupta and was

married to Dr. Ram Shankar Gupta (appellant no.1) as per Hindu rites and rituals on 02.05.1993. On the fateful day of 19.10.1993 she was found dead. The informant alleges that she was killed by her in-laws as her paternal family was unable to fulfil dowry demand of cash, scooter, fridge and gold ornaments.

3. On the basis of aforesaid report, a charge-sheet was filed by the investigating officer, the case was triable by Court Of Sessions, learned Chief Judicial Magistrate, Chamoli, by an order dated 17.01.1997 committed it to Court Of Sessions.

4. Thereafter, learned Sessions Judge, Chamoli framed charges under Sections 498-A & 304-B IPC. The charges were read over and explained to the accused, who pleaded not guilty and claimed to be tried.

5. To prove its case, prosecution examined PW1 (Alok Kumar-informant), PW2 (Madhu Gupta-elder sister of deceased), PW3 (Ashok Kumar Gupta-cousin brother), PW4 (Shiv Kumar Gupta-cousin brother), PW5 (Dr. S.K. Tripathi), PW6 (R.P. Bakshi-Investigating Officer) and PW7 (Dr. Data Ram) to substantiate and prove the charges against the appellants.

6. After prosecution evidence, the statements of appellants were recorded under Section 313 Cr.P.C. in which they stated that they were innocent. Appellant no.1 further stated that he was being falsely implicated by his in-laws as they wanted him to marry elder sister of deceased. He further deposed that he had cordial relations with the deceased and he or his family never demanded any sort of dowry from the parents of deceased. He also stated that deceased died due to accidental burn injuries caused to her while working in the kitchen and he tried his best to save her but no medical treatment was able to save her. Appellant no.2 stated that the deceased was not

subjected to dowry, cruelty by any of his family members. He further stated that deceased was very happy with her marriage and soon before her death, the couple went to various places for honeymoon. He further stated that they themselves informed parental relatives of the deceased regarding unfortunate accident resulting in her death and conducted her last rites only when they arrived and with their consent.

7. During trial, PW1 in his examination-in-chief stated that he is the cousin of the deceased and stated that as the deceased had no father or real brother, it was he who helped her to solemnize the marriage. He further stated that they had given sufficient gifts to the matrimonial family of the deceased but the deceased by letters used to tell him that her in-laws were demanding more dowry. He further deposed that the death of her sister was not accidental rather she was killed by her in-laws. He further produced Photostat copies of letters written to him by the deceased. In his cross-examination, he accepted that he didn't tell about demands of cash and some other items to the investigating officer and he never visited deceased in her matrimonial home.

8. PW2 on oath deposed that she is the elder sister of deceased. She supported the prosecution story and stated that inspite of meeting almost all the demands of dowry, in-laws of the deceased were not satisfied. In her cross-examination, she accepted that she did not tell about dowry demand, made post marriage to the investigating officer and also admitted the fact that she never visited deceased in her matrimonial house.

9. PW3 in his examination-in-chief deposed that he is the cousin of the deceased and stated that Rs.51,000/- cash, gold ring, chain, fridge and V.C.R. were demanded by the husband and father-in-law of the deceased in lieu of marriage. He further stated that in

spite of fulfilling all the demands they were not satisfied. He stated that he was of the opinion that his sister was killed by her in-laws and her death was not accidental. He also stated that the original letters written by the deceased regarding demand for dowry were handed over to investigating officer during investigation. In his cross-examination, he admitted that the deceased just before her death went for honeymoon to various places and also admitted that letters regarding demand of dowry were written by deceased before her death and also he admitted that he did not visit deceased in her matrimonial home.

10. PW4 is also one of the cousin of the deceased. He also supported the prosecution story and reiterated the facts stated by PW1 to PW3. He also admitted that he had never visited deceased matrimonial house post marriage.

11. PW5 and PW7 are Medical Officers. They deposed that the deceased was brought before them with burn injuries. PW5 stated that he conducted post-mortem of the deceased body. He stated that injuries caused in her body were burn injuries and cuts found in her body could be done due to initial treatment provided to her to save her from succumbing to burn injuries.

12. PW6 who happens to be the investigating officer in his examination-in-chief stated that he was handed over the investigation after a delay of more than 1.5 years. He submitted that he took statements of most of the witnesses. He also accepted the fact that he was quite satisfied regarding the fact that the cut in throat of deceased was made by doctors during treatment.

13. It is vehemently argued by learned counsel for the appellants that there is an unexplained delay in lodging the FIR which creates a serious doubt over entire prosecution story. He

further stated that non-presence of independent witnesses also weakens the case of prosecution. He also stressed heavily on the fact that dying declaration of the deceased was recorded by S.D.M. in which she herself stated that while cooking she accidentally fell on stove and caught fire.

14. It is vehemently submitted by learned counsel for the appellants that the learned trial court acquitted the appellants of the charges under Sections 498-A & 304-B IPC. But convicted and sentenced them under Section 3/4 of the Dowry Prohibition Act. It is also submitted by learned counsel for the appellants that the learned Sessions Judge, Chamoli initially framed charges under Sections 304-B & 498-A IPC and all the evidence were produced under this Sections and appellants got opportunity of defence under these sections only but the learned Sessions Judge surprisingly without altering/adding charges went on to convict the appellants under Section 3/4 of the Dowry Prohibition Act that too even without framing proper charges, producing proper evidence and giving the accused persons/appellants an opportunity to defend themselves. The learned counsel for the appellants relied upon the para 30 & 31 of the judgment of Hon'ble Apex Court in the case **Kalicharan & others vs. State of Uttar Pradesh**; reported in **(2023) 2 SCC 583**.

15. He further submitted that the prosecution has not produced any independent witnesses of the alleged offence under Sections 3 & 4 of Dowry Prohibition Act. The PW1-PW4 are interested witnesses and other witnesses are procedural witnesses. The prosecution witness PW1 Alok Kumar/informant/cousin of deceased did not see any of incident of demand of dowry or harassment for the same, and his evidences are hearsay, and the same has no evidencery value. The PW2 (Madhu Gupta/elder sister) in her testimony did not depose that how and when demand was made, and there are major contradiction in her deposition and her

deposition is nothing but further developed story. The deposition of PW3 (Ashok Kumar Gupta/cousin) and PW4 (Shiv Kumar Gupta/cousin) also have major contradiction and they have further developed the story. However, these witnesses alleged that deceased died by strangulation but the dying declaration as well as the medical evidence and deposition of doctors proved the case otherwise, which clears the fact that these witnesses just want to implicate the appellants by concocting a false story. He further stated that the aforesaid letters demanding dowry are Photostat copies which are not admissible in evidence without producing the original.

16. Per contra, learned State Counsel supported the case of prosecution.

17. Having heard the learned counsel for the parties and on perusal of record, the argument advanced by learned counsel for the appellants regarding failure of justice for not framing the charge under Sections 3 and 4 of the Dowry Prohibition Act, 1961, before conviction cannot be accepted. As Section 222 Cr.P.C. empowers the Court to convict a person for minor offences even if he is not initially charged under them, therefore, in the opinion of this Court, the learned court below has committed no irregularity in convicting the accused for minor offences as the accused persons were initially charged under the Sections 304-B and 498-A of IPC and were not charged with Sections 3 and 4 of Dowry Prohibition Act, 1961. Section 222 Cr.P.C. is quoted hereinbelow:-

“222. When offence proved included in offence charged.-(1)
When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.”

18. My above view is further fortified by the judgment given by Hon'ble Supreme Court in the cases of **Shaukat Hussain Guru vs. State (NCT) Delhi & another**; reported in (2008) 6 SCC 776. Para 15 of the said judgment is quoted hereinbelow:-

“15. Section 222 of the Code of Criminal Procedure, 1973 (CrPC) authorises and gives jurisdiction to the court to convict an accused of the charge which has not been framed, if he is found guilty of a minor offence. The court need not frame a separate charge before the conviction is rendered on a minor offence. In *Shamnsaheb M. Multtani v. State of Karnataka* [(2001) 2 SCC 577 : 2001 SCC (Cri) 358] , this Court has held in paras 15-16 as under: (SCC p. 584)

“15. Section 222(1) of the Code deals with a case ‘when a person is charged with an offence consisting of several particulars’. The section permits the court to convict the accused ‘of the minor offence, though he was not charged with it’. Sub-section (2) deals with a similar, but slightly different situation.

16. What is meant by ‘a minor offence’ for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence.”

19. In the case of **Suman Sood alias Kamal Jeet Kaur vs. State of Rajasthan**; reported in **(2007) 5 SCC 634**. Para 29 of the said judgment is quoted hereinbelow:-

“29. We find no substance in the said contention as well. It is no doubt true that Section 365 IPC had not been mentioned in the order of extradition. But as already seen earlier, Section 364-A IPC had been included in the decree. Now, it is well settled that if the accused is

charged for a higher offence and on the evidence led by the prosecution, the court finds that the accused has not committed that offence but is equally satisfied that he has committed a lesser offence, then he can be convicted for such lesser offence. Thus, if A is charged with an offence of committing murder of B, and the court finds that A has not committed murder as defined in Section 300 IPC but is convinced that A has committed an offence of culpable homicide not amounting to murder (as defined in Section 299 IPC), there is no bar on the court in convicting A for the said offence and no grievance can be made by A against such conviction.”

20. This Court is of the opinion that the judgment relied upon by the learned counsel for the appellants, is of no use to him, as it is based upon entirely different facts. Thus, the argument of learned Counsel for the appellant that before convicting the appellant under Sections 3 and 4 of the Dowry Prohibition Act, charge under these sections has not been framed and the same resulted into illegality, is misconceived and is, accordingly, rejected.

21. However, this Court is of the opinion that the learned trial court committed grave illegality and irregularity in convicting the accused persons/appellants under Section 3/4 of the Dowry Prohibition Act as the conviction is based upon hearsay evidence of the PW1 i.e. the informant and on the basis of Photostat copies of the alleged letters, completely ignoring the settled law that photocopy in the absence of original is not admissible. Moreover, the statements regarding supplying of original letter to the investigating officer made by the prosecution witnesses were only bald statements and were not supported by any evidence.

22. The upshot of the aforesaid discussions is that the appeal deserves to be allowed. Accordingly, present appeal is allowed and the impugned judgment and order dated 11.06.2007 passed by learned Sessions Judge, Chamoli whereby the appellants were convicted and sentenced under Section 3/4 of the Dowry Prohibition Act is hereby set-aside. The appellants are on bail. They need not to surrender. Their sureties be discharged forthwith.

23. Let the T.C.R. be immediately sent back to the trial court for consignment.

(Pankaj Purohit, J.)
12.06.2025

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