

(2009) 05 AHC CK 0859

Allahabad High Court

Case No: Government Appeal No. 1264 of 2003

State of U.P.

APPELLANT

Vs

Ram Vishal Singh and Others

RESPONDENT

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**Date of Decision:** May 8, 2009**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 149, 304B, 323, 498A

**Citation:** (2009) 3 ACR 2481**Hon'ble Judges:** R.K. Rastogi, J; A.K. Roopanwal, J**Bench:** Division Bench**Advocate:** A.G.A, for the Appellant; Rajul Bhargwa and D.D. Yadav, for the Respondent**Final Decision:** Dismissed

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**Judgement**

R.K. Rastogi, J.

This is an appeal against the judgment and order dated 14.11.2002, passed by Sri Sagwa Singh then learned Special Judge (S.C./S.T. Act)/Additional District and Sessions Judge, Hamirpur in Sessions Trial No. 246 of 1992, State v. Ram Vishal Singh and Ors. Trial No. 246 of 1992, whereby he acquitted the accused Respondents of the charges under Sections 498A and 304B, I.P.C. in Case Crime No. 114 of 1991, Police Station Khanna, District Hamirpur.

2. The facts relevant for disposal of this appeal are that on 8.7.1991 at 9 a.m. Smt. Sunita wife of Guman Singh aged about 20 years resident of Akbai, Police Station, Khanna, District Hamirpur was admitted in the District Hospital, Banda as a case of burn injuries. She had burn injuries upon her face, neck, chest, back and arms. She was medically examined and as per medical examination report, she was in her senses. Her pulse rate was 68 per minute and her blood pressure was 100/60. Hair of her head were burnt. There was swelling on her face and there was smell of kerosene oil. The doctor who was on the emergency duty gave information to the police and also sent requisition to the S.D.M. at 9.25 a.m. for recording her dying

declaration, and under orders of the authorities concerned, the Naib Tehsildar reached the hospital and after obtaining a certificate from the doctor that she was in a position to give her statement, started to record her statement at 10.40 a.m. She stated in that statement that on the above date at about 8 a.m. she was cooking food for the family members. She was wearing a terricot Sari. She lighted the stove. Then a flame came out from the stove suddenly and her Sari caught fire. Then she tried to extinguish the fire and shouted for help. Then her mother-in-law reached there. Her husband was playing cards outside the house. He also reached there and rescued her. Her younger sister-in-law Somkali also reached there. She further stated that she had, in this way ; accidentally caught fire and none had burnt her, and all the members in the family were residing in the house in a congenial atmosphere and no quarrel had taken place with any one. She further stated that she had no issue and that the name of her father-in-law was Ram Vishal. This statement was completed by 10.45 a.m. Smt. Sunita died the same day at 5.15 p.m. Thereafter her postmortem was performed on 9.7.1991 and in the opinion of the doctors performing the postmortem, her death was caused due to shock as a result of ante-mortem burns.

3. On the same date, that is, 9.7.91 Sri Pratap Singh, father of Sunita lodged the report at Police Station Khanna against the accused Respondents with these allegations that the marriage of his daughter Sunita had taken place with the accused Guman Singh alias Kallu son of Ram Vishal Singh about four years ago, and ten days after marriage when he went to her in-laws" house at Akbai for her vidai, her husband Guman Singh alias Kallu, father-in-law Ram Vishal Singh, mother-in-law Shyam Bai alias Simiya complained about insufficiency of dowry and demanded Rs. 25,000. Pratap Singh returned back to his house alongwith his daughter and communicated the above demand of money to his father Kallu Singh. Then Kallu Singh went to his in-laws" house and told them that he was not in a position to give the above amount but they pressed that demand and threatened that if the amount is not given Sunita would have to suffer the consequences. However, Pratap Singh could not meet this demand. Consequently the accused started to beat Sunita and this mar pit continued for a period of about four years. On 6.7.91, Guman Singh came to his house and told Kallu Singh that he had purchased a tractor and had to pay Rs. 25,000 towards its price and so the amount of Rs. 25,000 should be given to him. Kallu Singh expressed his inability to meet this demand. Then Guman Singh became angry and threatened that he would see as to how Sunita resides at his residence. Then Kallu Singh asked Pratap Singh to go to the house of Guman Singh for taking back Sunita but they did not send Sunita with him and Pratap Singh had to stay there for two days. During this period the accused continued to beat her. They also misbehaved with Pratap Singh. On 8.7.91 Pratap Singh got up at 4 a.m. and went to ease himself. He returned back at about 5 a.m. and again made a request to Guman Singh and to his father and mother to send Sunita with him, but they abused him and started to beat Sunita, and when he asked them not to beat

her, they slapped him four to five times. Thereafter Ram Autar Singh, elder brother of Guman Singh and Ram Bahadur Singh younger brother of Guman Singh caught hold of Pratap Singh and they pointed their licensed gun of twelve bore upon his chest. Guman Singh and his mother Shyam Bai alias Simiya were beating Sunita at that time. Ram Vishal Singh asked them to burn Sunita. Then Shyam Bai went inside the kitchen and came out with a can of 10 litres having kerosene oil in it and she poured kerosene oil upon the head of Sunita and then Guman Singh took out a match box from his pocket and ignited the match stick and threw it upon Sunita. Consequently, she was burnt. Then she was taken to the District Hospital, Banda where she died. Therefore, he prayed that suitable action should be taken in this matter.

4. On the basis of this report, the police registered a case under Sections 304B and 323, I.P.C. against the above named five accused persons and after completion of investigation submitted a charge-sheet against them. All the accused were charged by the learned Additional Sessions Judge under Sections 498A/149 and 304B/149, I.P.C. The accused pleaded not guilty and claimed trial.

5. The prosecution produced Pratap Singh as P.W. 1. He narrated the entire F.I.R. case on oath. He also proved the F.I.R. as Ext. Ka-1. He also filed a letter alleged to have been written by Sunita to him and the envelope in which this letter was sent. The envelope has been marked as Ext. 1 and the letter has been marked as Ext. 2. He has stated that he had given a copy of this letter to the C.O. who was investigating the case.

6. Baldeo was examined as P.W. 2. He has stated that he resides at the village Akbai and he is acquainted with the accused persons. He further stated that about four years ago at about 5 a.m. Pratap Singh had told him that the marriage of his daughter had taken place with Guman Singh, and that he had come to that village for vidai of his daughter Sunita about two days ago but the accused were not sending her with him and were demanding Rs. 25,000 and were committing atrocities upon Sunita. He further stated that thereafter Pratap Singh went to the house of the accused Ram Vishal Singh and after lapse of some time, he had heard cries from that house. Then he immediately went to that place. Some other persons had also reached there. There was smoke coming out of the second storey of the house, and on the ground floor Ram Autar was pointing the licensed gun of Ram Vishal towards Pratap Singh on his chest and he was pulling Pratap Singh inside the aangan of the house. Pratap Singh was weeping and was crying for help. He further, saw that Sunita was burning inside the house and she was trying to extinguish the fire from her own hands. The villagers were saying that she is alive and so she should be taken to Banda for treatment. Thereafter, Sunita was taken to the ground floor. She had lost her senses and was not speaking. Then Ram Vishal expressed his joy. In the meantime, Pratap Singh got an opportunity to run away. Ram Vishal etc., called the tractor and took Sunita on that tractor to Banda. Thereafter, he came back

to his house.

7. Smt. Shakuntala was examined as P.W. 3. She is wife of Pratap Singh and mother of Sunita. She has deposed that Sunita told her about demand of dowry made by the accused persons and the atrocities committed by them upon her.

8. Dr. M. L. Anandi P.W. 4 had performed postmortem of the dead body of Sunita. He has proved the postmortem report Ext. Ka-2.

9. Shyam Pal Singh, C.O., Budaun had investigated this case and after investigation, he had submitted a charge-sheet against the accused persons Ext. Ka-3. Since the original charge-sheet had been torn, he produced its copy and proved the same which is Ext. Ka-4. He also prepared site plan of the place of incident which is Ext. Ka-5. He had also taken into his custody the stove, the can of kerosene oil and had prepared their memo Ext. Ka-6. He also identified the stove Ext. 3, stove pin Ext. 4, bottle of glass Ext. 5, spoon Ext. 6 and aluminium kadhai Ext. 7. The clothes of Sunita which were taken into possession by the police were also identified by him. He identified the blouse Ext. 8, petticoat Ext. 9, Sari Ext. 10, half burnt gadda Ext. 11 and the match box Ext. 12, burnt hair of the deceased which were taken into possession were also proved by him as Ext. 13.

10. The constable Jagat Narain was examined as P.W. 6. The dead body of Sunita was delivered to him in sealed condition for taking it to the mortuary. He has also proved Entry No. 40 of the General Diary dated 8.7.91. recorded at 6.15 p.m. Ext. Ka-6.

11. The constable Brij Mohan was examined as P.W. 7. He had prepared the chik report Ext. Ka-7 on the basis of the F.I.R. Ext. Ka-1. He also made its endorsement in the G.D. and proved the same as Ext. Ka-8.

12. Sri Banwari Lal Tripathi, Tehsildar was examined as P.W. 8. He had prepared the inquest report of the dead body of Sunita Ext. Ka-9. He had also prepared the photo and the challan of the dead body which are Ext. Ka-10 and Ka11. He had also written a letter for postmortem of the dead body which is Ext. Ka-12.

13. Dr. R. P. Gupta who was posted as the emergency medical officer in the District Hospital, Banda on 8.7.91 has been examined as C.W. 1. He had medically examined Smt. Sunita on her admission in the hospital and he has proved the medical examination report of Smt. Sunita prepared by him at the time of her admission in the hospital which is Ext. Ka-13. He also proved the certificates given by him on the dying declaration of Sunita.

14. The accused in their statements admitted that the marriage of Sunita had taken place with Guman alias Kallu but denied the allegations of making demand of dowry and committing atrocities upon her. They further stated that they had been falsely implicated in this case and the witnesses had deposed against them due to enmity. It was further stated that it was a case of accidental fire, and the same thing has

been stated by Smt. Sunita in her statement before the Tehsildar.

15. The accused produced Dhan Singh as D.W. 1. He was posted as Naib Tehsildar on 8.7.91 at Banda and under orders of the S.D.M., he had visited the District Hospital, Banda for recording the dying declaration of Smt. Sunita. He has proved the letter which was received by him under orders of the S.D.M. and the Tehsildar for recording the dying declaration of Smt. Sunita (Ext. Kha1). He has also proved the dying declaration of Sunita as Ext. Kha-4. He has also proved the certificates issued by the doctor at the time of starting to record the dying declaration and that taken at the time of conclusion of the dying declaration. Both these certificates have been proved as Exts. Kha-2 and Kha-3.

16. Learned trial court after perusal of the evidence was of the view that the dying declaration of Smt. Sunita was a genuine and reliable document in which she had stated that she had accidentally caught fire and the allegations that the accused were demanding dowry and were committing atrocities upon her are all false. He was of the view that no charges were proved against the accused. Therefore, he acquitted all the accused of the charges under Sections 498A and 304B I.P.C. Aggrieved with that judgment and order, the State of U. P., filed this appeal.

17. This appeal was initially put up before the Bench of this Court consisting of Hon"ble R. C. Deepak and Hon"ble V. D. Chatuvedi, JJ., for hearing on admission and their Lordships, after going through her dying declaration, were of the view that there was no illegality in the acquittal order, and so the application of the State for permission to file an appeal against the acquittal order was rejected.

18. Aggrieved with the above order, the State Government filed Criminal Appeal No. 989 of 2007 before the Hon"ble Supreme Court and the Supreme Court vide its order dated 27.7.07 set aside the order of rejection passed by this Court and admitted the appeal for hearing and remanded the matter to this Court with the direction that the appeal should be heard and decided on merits. In compliance of those directions of the Hon"ble Supreme Court, this appeal has been put up before us for hearing of arguments.

19. We have heard the learned Counsel for the State-Appellant as well as learned Counsel for all the accused Respondents and perused the record of the trial court as well as of this appeal and now we proceed to decide the appeal on merits.

20. Learned A.G.A., submitted that the prosecution has sufficiently proved this case against the accused persons and the trial court had taken a perverse view of the evidence and so the judgment and order passed by the trial court should be set aside and the accused Respondents should be convicted of the charges under Sections 498A and 304B, I.P.C.

21. Learned Counsel for the accused Respondents submitted in reply that in this case Sunita had caught fire accidentally when she was cooking food and this fact

was stated by her in her dying declaration. He further submitted that Sunita was taken by the accused persons to the District Hospital, Banda for treatment, and this conduct of the accused goes to show their bona fides. He further stated that the entire allegations made in the F.I.R. do not inspire any confidence, and on the other hand, the unnatural conduct of the informant Pratap Singh who had lodged the F.I.R. goes to show that his allegations are totally false. Let us now consider the rival contentions of both the parties.

22. First of all, we take the F.I.R. of the case. It is alleged in the F.I.R. that on the threat of Guman Singh given at the house of Pratap Singh that he would see as to how Sunita resides at his house, Pratap Singh under instructions of his father Kallu Singh went to the house of Guman Singh for vidai of Sunita on 6.7.91 but the accused did not send Sunita with him and during the period of his stay at their house, the accused used to beat her in his presence, and on 8.7.91 when he again made a request for vidai of Sunita, the accused started to beat Sunita, and when he prohibited them from doing so they slapped him also and the brothers of Guman Singh put the licensed gun of their father on his chest, and in the meantime, Ram Vishal asked the other accused persons to burn Sunita after pouring kerosene oil upon her, and then Shyam Bai went inside the kitchen and took out a can of ten litres containing kerosene oil and poured kerosene oil upon the head of Sunita, and then Guman Singh ignited her after lighting a match stick and throwing it upon her, and thus Sunita was burnt in the presence of her father Pratap Singh.

23. It has further been stated in the F.I.R. that during this period both the brothers of Guman Singh kept the licensed gun of their father on his chest and so he could not do anything. It was submitted by the learned Counsel for the accused Respondents that it is strange that the accused persons burnt Sunita in the presence of his father Pratap Singh on 8.7.91 but Pratap Singh did not take any action against the accused on that date though this incident had allegedly taken place in the early morning and he went to the police station to lodge the report in the evening of 9.7.91 and this inordinate delay in lodging the F.I.R. goes to show that the entire incident alleged in this F.I.R. is concoction and afterthought. He further submitted that it again appears very much improbable that the accused burnt Sunita in the presence of her father, and the inaction of Pratap Singh from the morning of 8.7.91 to the evening of 9.7.91 goes to show that this incident is totally false, otherwise after seeing that his real daughter had been burnt by the accused, Pratap Singh must have gone to the police station immediately to lodge the report of the incident.

24. Pratap Singh in his statement as P.W. 1 has given an explanation that since the accused had pointed his gun on his chest, he on getting an opportunity after arrival of witnesses ran away from the spot and went to his own house in village Sirsi Khurd and narrated the entire incident before his family members, and then they all came to the District Hospital, Banda and Sunita was lying in the hospital in senseless condition at that time. His above statement goes to show that he must have reached

the hospital on 8.7.91 before her death. It is strange that even after reaching the hospital on 8.7.91, alongwith his family members, before the death of Sunita, he did not take any action nor lodged any report at the police station and the F.I.R. was lodged on 9.7.91 at 6.40 p.m. This inaction on the part of Pratap Singh for two days even after seeing with his own eyes that the accused had burnt his daughter in his presence is so unnatural that it leads to the conclusion that the story stated by Pratap Singh is not true.

25. It is also to be seen in this regard that as per defence version Sunita had caught fire while cooking food and then she was immediately taken to the District Hospital, Banda for treatment and this act of the accused goes to show their bona fides. The dying declaration of Sunita was recorded at the hospital by the Naib Tehsildar, and in that statement, she had stated that she had accidentally caught fire due to sudden emission of flame from the stove and none had burnt her. It had been alleged from the side of the prosecution that Sunita could not be in a position, taking into consideration the extensive burn injuries on her body, to give a statement, and a false dying declaration has been prepared from the side of the accused in collusion with the Naib Tehsildar and the doctor. It is to be seen that the Doctor R. P. Gupta, C.W. 1 examined Sunita at the time of her admission in the District Hospital, Banda and he had given a certificate regarding her condition that she was in her senses and was in a position to give the statement. He was examined by the Court as C.W. 1 and the opportunity to cross-examine that Court witness was provided to the prosecution as well as to the accused but no cross-examination of this witness was done by the prosecution. If the prosecution was of the view that Sunita was not in a condition to give her statement and that she was senseless at that time, the prosecution should have cross-examined the above doctor on this point and should have given him suggestion to that effect but the prosecution did not do so, and as such there is no material on record on the basis of which the certificates given by the doctor that Sunita was in proper senses and that she was in a position to give her statement can be doubted.

26. The dying declaration of Smt. Sunita has also been proved by the Naib Tehsildar Dhan Singh who has been examined by the accused as D.W. 1. He has been cross-examined by the prosecution but there is nothing in the cross-examination which may go to discredit the testimony of Dhan Singh D.W. 1.

27. The prosecution has also relied upon a letter allegedly sent by Smt. Sunita to her father. The accused had denied the genuineness of the letter. There is a dispute on this point as to whether Smt. Sunita was educated or not. Pratap Singh P.W. 1 has stated in his statement that she was educated and she could write a letter, but Sri Shyam Pal Singh, C.O., P.W. 5 who had investigated this case has stated in his statement that Pratap Singh had replied in answer to his query that Sunita was not educated. If Sunita was not educated, how could she write a letter to her father regarding the so-called atrocities committed by the accused persons in connection

with demand of dowry.

28. We have gone through the entire evidence as well as the judgment of the trial court. The learned Judge has given cogent reasons in his judgment for rejecting the prosecution evidence and he has properly reached the conclusion that the prosecution had failed to prove its case against the accused persons. We do not find any perversity in his judgment.

29. It is clear, in view of the discussion attempted above, that the prosecution story as alleged by Pratap Singh, informant does not inspire any confidence, and the dying declaration of Smt. Sunita falsified the prosecution case. In this way, this appeal has got no force and it is liable to be dismissed. It is accordingly dismissed. The judgment and order of the lower court are confirmed.