

In the Court of Sessions Judge, Jaunpur.

Present:- **Anil Kumar Verma-I, HJS**

CNR NO. UPJP010008122019

Sessions Trial No. 30 of 2019

State

Versus

1. Tuntun @ Rajesh Vishvakarma S/o Badri Prasad Vishvakarma,
 2. Badri Prasad Vishvakarma S/o late Kishun,
 3. Jadavati Devi W/o Badri Prasad Vishvakarma,
- All R/o Dengu Sarai Chakki, Mungrabadshahpur, District Jaunpur.

Crime No.- 166 of 2018,
U/Ss- 498-A, 304-B, 302/34 IPC,
& 4 D.P. Act.
P.S.- Mungrabadshahpur,
District- Jaupnur.

JUDGEMENT

Preliminary

1. Accused (1) Tuntun @ Rajesh Vishvakarma, (2) Badri Prasad Vishvakarma and (3) Jadavati Devi were charge sheeted by the Police of P.S. Mungrabadshahpur, under Sections 498-A, 304-B, IPC & 3/4 D.P. Act. Since the case was exclusively triable by the Court of Sessions, hence, the Ld. Chief Judicial Magistrate, Jaunpur committed this case to the Court of Sessions Judge for trial vide order dated 21.01.2019 where it was registered as S.T. No 30 of 2019.

Background/Facts

2. The prosecution case, in brief, is that complainant Jyoti Vishvakarma submitted a written report at P.S. Mungrabadshahpur, Jaunpur stating therein that the marriage of her younger sister Priyanka was solemnized with Tuntun Vishvakarma at *Daulatiya*

Temple with Hindu customs and rituals before 03 years. As her father had died, so the complainant bore the expenses of marriage and given gift items etc. at the time of marriage. After marriage, husband Tuntun, father-in-law Badri Vishvakarma and mother-in-law Jadavati started torturing and harassing her sister for demand of motorcycle as dowry. She alleged that her sister used to tell her about the incident. On 03.06.2018, her sister (deceased) told her on phone call that they were beating her. On 03.06.2018 at about 11 O'clock, Tuntun informed her that Priyanka(deceased) had died due to burn by fire. When the complainant reached there, she saw that her sister was lying dead. The Complainant further alleged that in-laws of her sister burnt her to death.

3. On the basis of written report Ex.Ka.1 submitted by the complainant, a case at crime no. 166/2018 was registered under sections 498-A, 304-B IPC & 3/4 D.P. Act against accused (1) Tuntun Vishvakarma, (2) Badri Vishvakarma and (3) mother-in-law Jadavati Devi.

4. Investigating Officer visited the spot completed the necessary formalities of Inquest and sent the dead body for the post mortem. Post mortem report is available on record as Ex.Ka.11. Site Plan and Inquest Report was also prepared which are available on record as Ex.Ka.2 and Ex.Ka.4. Statement of the witnesses were recorded by the I.O. and after finding sufficient evidence against them, he submitted the charge sheet against the accused persons under Sections 498-A, 304-B IPC & 3/4 D.P. Act whereupon the cognizance was taken by the Magistrate and the case was committed for trial.

5. The charges against accused (1) Tuntun @ Rajesh Vishvakarma, (2) Badri Prasad Vishvakarma and (3) Jadavati Devi were framed by the then Ld. Sessions Judge on 23.02.2019 for the offences punishable under section 498-A, 304-B IPC & 4 D.P. Act with alternate charge under Section 302/34 IPC. Charges were read over and explained to the accused, but they pleaded not guilty and

opted to face trial.

Prosecution Witnesses

6. In order to prove its case, the prosecution produced and got examined complainant Jyoti Vishvakarma as PW-1, Prbhavati as PW-2, Bachai Lal Vishvakarma as PW-3, C.O. Awadhesh Kumar Shukla as PW-4, Tehsildar Santosh Kumar Shukla as PW-5, Dr. Kamlesh Prasad Gupta as PW-6, Constable Dhananjay Singh as PW-7 respectively and undermentioned documentary evidence were proved during the course of trial.

Sl No	Details of Prosecution Paper	Exhibits
1	Writtten Report	Ex.Ka.1
2	Site Map	Ex.Ka.2
3	Charge-sheet	Ex.Ka.3
4	Inquest Report, G.D.	Ex Ka 4,
5	Letter to R.I.	EX Ka-5
6	Letter to C.M.O	EX Ka-6
7	Police From 13	Ex.Ka.7
8.	Photonas	Ex.Ka.8
9.	Specimen Seal	Ex.Ka.9.
10	Recovery memo	Ex.Ka.10.
11.	Post Mortem Report	Ex.Ka.11
12.	FIR	Ex.Ka.12.
13.	General Diary	Ex.Ka.13.

07. Statements under Section 313 Cr.P.C. was recorded in which the accused stated that they have been falsely implicated in the case and they are innocent.

08. I have heard the arguments of Ld. D.G.C (Criminal) for the state and Ld. counsel for the defence Mr. S.S. Tripathi at length and perused the materials on record.

09. PW-1, Jyoti Vishvakarma was examined by the prosecution who stated on oath that when the marriage of her younger sister Priyanka (deceased) was solemnized, her father had already died. Her parental home is in Dhanbad, Jharkhand. Marriage of her sister Priyanka (deceased) was solemnized with Tuntun Vishwakarma on 15.05.2015 at *Daulatiya Temple*, Mungra badshahpur by Hindu customs and rituals. Cost of marriage was borne by her and her in-laws, gift articles were also given. She stated that after marriage, her sister told her on phone that husband Tuntun @ Rajesh, father-in-law Badri Vishvakarma and mother-in-law Jadavati used to torture her for demand of motorcycle as dowry. She further stated that she used to pacify her sister (deceased) and even she had visited her at her in-laws house. On 03.06.2018, the deceased told her on phone call that above mentioned accused are beating her for the said demand and it seems that they would kill her. On the same day at 11 O'clock, Tuntun @ Rajesh informed her that Priyanka had died by burn injury. She along with her neighbourer Ashish had reached there and saw that her sister was lying dead and her tongue was coming out. After inquest she reached to the police station and submitted written report. She proved the written report as Ex.Ka.1.

10. PW-2, Prabhavati was examined by the prosecution who stated on oath that the marriage of Priyanka (deceased) who is sister of Jyoti vishvakarma, was solemnized with Tuntun Vishvakarma @ Rajesh on 15.05.2014. She was also present in marriage ceremony. Marriage was solemnized at Darbatiya, Mungra badshahpur. On 3rd June, 2018, her in-laws burnt her to death due to demand of dowry. She stated that whenever she met with Priyanka (deceased), she told her that her husband Tuntun @ Rajesh, father-in-law Badri Prasad Vishvakarma and mother-in-law Jadavati Devi had demand of motorcycle as dowry and they used to torture her, they did not provide food to her. Investigating Officer had recorded her statement and she had given same statement. She further stated

that father of Priyanka had already died, so Priyanka (deceased) usually came at the house of Jyoti Vishvakarma. She further stated that due to non-fulfillment of demand of dowry, in-laws of Priyanka burnt her to death. Death of the Priyanka had occurred after 3-4 years of her marriage.

11. PW-3, Bachailal Vishvakarma was examined by the prosecution who stated on oath that his wife's name is Jyoti Vishvakarma. Priyanka(deceased) was younger sister of his wife Jyoti. Priyanka was living at his house. Marriage of Priyanka was solemnized with Tuntun @ Rajesh S/o Bardi Prasad at *Daulatiya Temple*, Mungrabadshahpur and marriage invitation card was not printed. After marriage, Priyanka had gone to her matrimonial home. After marriage, husband Tuntun, father-in-law Badri Prasad and mother-in-law Jadavati Devi had a demand of motorcycle as dowry. They had shown their incapability to fulfill their demand. Fore years ago, the accused persons burnt her to death due to the said demand of dowry. On information, his wife Jyoti and other family members had reached there.

12. Prosecution examined the **PW-4, Circle Officer Awadhesh Kumar Shukla** who stated on oath that on 03.06.2018, he was posted as Circle Officer, Machhali Shahar, District Jaunpur. On the same day, an FIR was registered at police station Mungrabadshahpur, crime no. 166/2018, under Sections 498A, 304B IPC & sections 3/4 D.P. Act against Tuntun Vishvakarma and others. He received the investigation. On 04.06.2018, he perused the FIR, G.D and recorded the statement of constable Dhananjay Singh on case diary. He recorded the statement of complainant Jyoti Vishvakarma and Ashish Rawat, inspected the spot of occurrence and prepared the site map. He proved the Site Map paper no. 5 as Ex.Ka.02. On information of Anil Kumar Singh, S.H.O Mungrabadshahpur, he reached on police station and recorded the statement of accused Tuntun @ Rajesh Vishvakarma and Badri Prasad Vishvakarma. On 11.06.2018, he received and perused the

inquest report and postmortem report of deceased Priyanka Vishvakarma and mentioned the summary in Case Diary. On 29.06.2018, perused the order of Hon'ble High Court and arrest memo of accused Jadavati Devi included in Case Diary. On 30.06.2018, additional statement of complainant Jyoti Vishvakarma and Ashish Rawat were recorded on Case Diary. Statement of independent witness Bachai Vishvakarma, Smt. Prabhavati and mediator Girish Vishvakarma was recorded on Case Diary. Statement of accused Jadavati Devi was also recorded on Case Diary. After summoning the witnesses i.e. Lalmani, Chandrajeet and Nanhakuram Yadav, their statements were recorded on Case Diary. Statement of Nayab Tehsildar Santosh Kumar Shukla was recorded in which he stated that semi burnt matches box was recovered from the spot. Soil mixed with kerosene and one-liter empty water bottle were also recovered from the spot, there was a strong smell of kerosene coming from the bottle. On 02.07.2018, statements of doctors, who conducted the postmortem of deceased, Kamlesh Prasad, Masood Ahamad and P.H.C Sondhi were recorded on Case Diary. On 06.07.2018, Statements of S.I. Devendra Kumar Dubey, Constable Mahendra Pratap Yadav, Home Guard Santosh Kumar Yadav were recorded. After finding sufficient evidences against accused, he submitted Charge-Sheet dated 06.07.2018 against accused persons Tuntun @ Rajesh, Badri Prasad Vishvakarma and Smt. Jadavati Devi under sections 498A, 304B IPC & 3/4 D.P. Act. He proved the Charge Sheet as Ex.Ka.03.

13. Prosecution examined **PW-5, Nayab Tehsildar Santosh Kumar Shukla** who stated on oath that on 03.06.2018, he was working as Nayab Tehsildar, Machhali Shahar, Jaunpur. On instruction of S.D.M Machhali Shahar, he reached at the village of incident where S.I. Devendra Kumar Dubey, constable Mahendra Pratap Yadav and other constables were present. Other nearby persons including relatives and family members of deceased were also present there. Panchan were chosen from them and necessary

formalities of inquest were completed. He proved the inquest report as Ex.Ka.4. During inquest, other papers were prepared by S.I. Devendra Kumar Dubey. He proved Letter to R.I., Letter to C.M.O, Police Form 13, Photonas, Specimen Seal as Ex.Ka.5 to Ex.Ka.9. Soil mixed with kerosene, one empty bottle in which there was strong smell of kerosene and semi burnt matches box were recovered and recovery memo was prepared. He proved the recovery memo as Ex.Ka.10.

14. PW-6, Dr. Kamlesh Prasad Gupta was examined by prosecution who stated on oath that on 04.06.2018, he along with Dr. Masood Ahamad was on post-mortem duty. A dead body of Priyanka Vishvakarma W/o Tuntun @ Rajesh was brought by constable Mahendra Pratap Yadav and Home Guard Santosh Kumar Yadav, P.S. Mungrabadshahpur. The dead body was identified by Jyoti Vishvakarma and Ashish Rawat as Priyanka W/o Tuntun @ Rajesh. On 04.06.2018, from 03:30 PM to 04:00 PM, they conducted the post-mortem. Height of the deceased was 130 cm, and weight was 55 Kg. Pugilistic attitude is present. The dead body was burnt, rigour mortis was present over body, tongue protruded.

Antemortem Injuries-

The body of the deceased was burnt by 100 percent, redness was present.

Internal Examination-

NAD was found in Head, Scalp findings, skull. Teeth 16/16. Larynx, *Greeva and Thapropad* (Thyroid, parathyroid and anterior neck tissue) were congested. Hyoid Bone was intact. Ribs and Oesophagus NAD. Soot Participles were found in trachea and bronchial tree. Pleura, pleura cavities, large blood vessels were congested. Lungs were congested. Right chamber of heart was semi filled while left chamber was full. 50ml semi digested food was present in stomach. Gas in small intestine while Gas and fecal matter was present in large intestine. Liver, spleen and pancreas were congested. Gallbladder was full. Bladder was empty. Non

gravid uterus. Spinal column and spinal cord were not opened. Time of death was before one and half days.

“Both the doctors opined that the cause of death is due to shock and suffocation as a result of extensive antemortem flame burn injury.”

He proved postmortem report as Ex.Ka.11.

15. Prosecution examined the **PW-7, constable Dhananjay Singh** who stated on oath that on 03.06.2018, he was posted as constable at police station Mungrabadshahpur, Jaunpur. On that day, complainant Jyoti Vishvakarma had come to the police station with a tehreer (written report). He dictated the written report to computer operator and registered the FIR on the basis of that written report as crime no. 188/2018, under Sections 498-A, 304-B IPC & 3/4 D.P. Act against the accused (1) Tuntun @ Rajesh Vishvakarma, (2) Badri Prasad Vishvakarma and (3) Jadavati Devi. He proved the paper no. 4/1, chick FIR as Ex.Ka.12 and G.D as Ex.Ka.13.

Defence Evidence

16. In order to rebut the allegations levelled against the accused, they submitted a written statement in which it has been stated that Accused Tuntun @ Rajesh is languishing in jail since 05.06.2018. First marriage of accused Tuntun was solemnized with Reeta but she left him in 2010. On 15.05.2015, second marriage of accused Tuntun @ Rajesh was solemnized with Priyanka (deceased) at *Daulatiya Temple*, there was no demand of dowry. A daughter was born after marriage but mental condition of the deceased was disturbed due to poverty. On the date of occurrence, accused Jadavati was on field to harvest grass and Tuntun had gone to market. The deceased had committed suicide due to her irritation and mental condition. She had left her daughter outside and closed the door from inside and committed suicide. The dead body was taken out after breaking the door. They have further stated that they are poor and as this was the second marriage of the accused, there is no question of demanding motorcycle as dowry.

17. Now, the court has to see that, to what extent the prosecution has succeeded to prove the charge against the accused.

Arguments

18. Mainly the following contentions have been raised by the learned counsel for the defence:-

(1) Accused did not make any demand of dowry from the deceased or the complainant. All the allegations made by the complainant and witnesses are false and fabricated.

(2) Both the parties are poor and so the marriage was solemnized in temple without any dowry. Neither any dowry was demanded nor any dowry was given by the complainant.

(3) Father of the deceased was not alive at the time of marriage and the cost of marriage was borne by the sister of the deceased who is also married, so there is no question of dowry.

(4) The complainant stated in her examination-in-chief that the deceased talked with her on phone on the date of incident and she had told that accused were beating her and they would kill her, even after that the complainant did not make any complaint to any authority, family members or not went at the house of accused for the safety of her sister, which shows that the complainant has made the above allegations afterthought with ulterior motives.

(5) No evidence is available on record with regard to the demand of dowry soon before her death as is required by Section 304B IPC and the evidence of soon before her death has been created by PW-1. No previous complaint against the accused was made and no panchayat was held with regard to the cruelty or torture of the deceased.

(6) The deceased had committed suicide by herself due to her mental condition and the case has been registered due to misunderstanding.

19. On the other hand, prosecution argued that prosecution has succeeded to prove all the three ingredients of Section 304B IPC as (1) death in abnormal circumstances, (2) abnormal death within 7 years of her marriage and (3) subjection to cruelty soon before her death in connection with demand of dowry. So, the burden is shifted towards the accused to prove their innocence. Accused could not explain as to how the deceased died in their house within 7 years of her marriage. So far as the demand of dowry is concerned, the witnesses which have been produced by the prosecution have clearly established that several times a demand of dowry was made by the accused persons. So, no question arises about their innocence and accused are liable to be convicted.

Discussion

20. Charge under **Section 4 Dowry Prohibition Act** has been framed against the accused. In this regard, PW-1 stated in cross-examination at page no. 7 that she had gone to fix the marriage and there was no demand of dowry by the husband and in-laws of the deceased because this was the second marriage of accused Tuntun @ Rajesh. She has also stated that she married her sister Priyanka (deceased) with accused Tuntun due to her poor condition. Complainant PW-1 Jyoti Vishvakarma stated in her cross-examination that at the time of marriage gifts were given as per their status and the marriage was solemnized at cordial atmosphere. She stated in her cross-examination that whenever she went to meet her sister, she used to give her Rs. 100-200 as *Vidai*, but she did not allege that her husband or in-laws used to demand the same. At page no. 8, she stated that whenever she went at the house of Tuntun, he used to welcome her and there was no

altercation or *Gali-Gupta* between her and accused persons. PW-2 stated in her cross-examination at page-2 that the marriage was solemnized happily and no dispute had arisen at the time of marriage. Invitation Card of the marriage was not prepared. At Page no. 4 of her cross-examination, she stated that she had witnessed the *Vidai* of Priyanka two times, and on those occasions she was happy. PW-3 has also stated that he had also gone to fix the marriage and there was no demand of dowry from the accused persons. In his cross-examination at page no. 4, he stated that at the time of marriage there was no dispute of demand of dowry. It has also been stated that marriage was conducted in happy atmosphere. Section 4 Dowry Prohibition Act provides for punishment for taking dowry. From the perusal of the evidences provided in connection with the offence under the said section, it is clear that no witnesses has presented any evidence against the accused regarding demanding dowry, taking dowry or receiving any money or valuable security in the form of dowry after marriage and it has been stated that gifts were given according to their status in marriage. Hence, there is no ground to convict the accused under this section.

21. Charge under **Section 498A IPC** has been framed against accused. Offence under this section is made out if the husband or in-laws of a married woman subjects such woman to cruelty. Cruelty has been defined in this section as:

(a) any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the women; or

(b) harassment of the women where such harassment is with the view to coercing her to any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any

person related to her to meet such demand.

22. Section 498A IPC contains two parts. From the observation of this provision, it is clear that harassing the deceased in the context of dowry demand or otherwise treating her in an indecent manner for any other reason, which is of the nature of inciting her to commit suicide, is punishable under this section. Cruelty includes physical and mental cruelty.

23. In the FIR, husband Tuntun @ Rajesh, father-in-law Badri Prasad Vishvakarma and mother-in-law Jadavati Devi have been named and it has been alleged that they demanded motorcycle as dowry. In her examination-in-chief, PW-1 stated that father-in-law, mother-in-law and husband used to torture and harass her sister for demand of dowry but in her cross-examination at page no. 8, she stated that she had not made any complaint about the same to father-in-law Badri Prasad or mother-in-law Jadavati Devi. She further stated that she had not called any Panchayat on this matter. Even she had not made any complaint about the same to mediator of the marriage. It is a common concept that when there is dispute between two family members with regard to marriage, torture or any demand, people complaint to senior members of the family or mediator of the marriage. If it is not solved, they call Panchayat to solve it and even then, if it is not solved, then they complaint to competent authority, as Police or higher officers. In the present case, PW-1 neither complaint to senior member of the family or mediator of the marriage nor any competent authority. PW-1 further stated that she used to go to the matrimonial house of her sister for *Vidai*, but nowhere she stated anything about misbehavior of father-in-law and mother-in-law. She stated in her cross-examination that sometime father-in-law of the deceased come at her home for *Vidai*. PW-1 stated in her cross-examination at page no. 15 that no altercation or dispute had aroused between her and accused

persons. In her cross-examination PW-2 Prabhavati Devi stated that she had witnessed the *Vidai* of deceased two times, on which occasions the deceased had gone happily to her matrimonial home. She has also stated that no any *Panchayat* was conducted with regard to any demand of dowry or cruelty meted out to the deceased. It is clear from the above statements that there were normal relation between complainant's family and accused and there was no dispute over dowry etc. No specific statements have been made against the accused regarding harassment for dowry. The prosecution has not provided clear evidence on record against the accused Jadavati Devi and Badri Prasad Vishvakarma regarding cruelty or harassment of deceased for dowry or any other reason. Hence, there is no satisfactory ground to convict the accused Jadavati Devi and Badri Prasad for the offence under section 498A IPC.

24. Prosecution Witness No. 6, Dr. Kamlesh Prasad Gupta stated in his examination-in-chief that the burn injury sustained by the deceased was sufficient to cause her death. Flame burn injury were present all over the body, and mentioned as 1st to 4th degree burn injury, line of redness were seen, 100% burn were present. In autopsy report cause of death is mentioned as shock & suffocation as a result of extensive antemortem flame burn injury. The doctor has stated in his cross-examination that the deceased might have taken food 10 hours before her death. He also opined that 100 % burn may be accidental and suicidal as well.

25. Accused Tuntun @ Rajesh is the husband of the deceased and is personally responsible for any harassment or cruelty meted out to the deceased by any member of the family. Prosecution Witness-1 Jyoti Vishvakarma stated in her written report and examination-in-chief that accused Tuntun (Rajesh) and in-laws of her sister used to torture and harass her for demand of motorcycle as dowry. In her cross-examination, she

stated that this was the second marriage of the accused Tuntun @ Rajesh. She stated in her cross-examination that what was the profession of accused Tuntun @ Rajesh and how much he was earning was not disclosed by her sister Priyanka (deceased). She further stated that he was earning something. She stated in her cross-examination that the mobile phone which was being used by the deceased was given by PW-1 herself. She has also stated that whenever she went for *Vidai*, usually Tuntun @ Rajesh met there and sometimes he used to drop her at Station but she clearly stated that he did not use to give her sweets, clothes etc at the time of *Vidai*. It has also been stated by the PW-2 that the deceased had told her about the harassment and torture made by husband and in-laws. She stated in her cross-examination at page no. 2 that it was second marriage of accused Tuntun @ Rajesh and in second marriage people give less attention to his wife. It is general conception of society that people provide some sweets and clothes at the time of *Vidai* of his wife, provide mobile for communication, so as to get in touch with each other. In general, it is considered as symbol of care and love between husband and wife. But in the present case, accused Tuntun @ Rajesh who is husband of the deceased had not shown proper care and given sufficient attention to his wife and allegation of torture and harassment have also been made by the above witnesses. The above statements made by the witnesses have not been denied by the accused. Under section 498A IPC, it is defined that cruelty can be both physical and mental nature and this cruelty need not be in relation to demand of dowry. Physical and mental cruelty due to the other reasons which is also in the nature of inciting the deceased to commit suicide is punishable under this section.

26. The circumstances of suicide of the deceased have not been clarified. The above conduct and behaviour of the

accused is indicative of mental cruelty. It is clear from the evidence that the deceased was driven to commit suicide due to mental harassment by accused Tuntun @ Rajesh. Hence, the accused Tuntun @ Rajesh is liable to be convicted for the offence under Section 498A IPC.

27. In connection with the crime under **Section 304B of the Indian Penal Code**, it has to be proved that the deceased died under abnormal circumstances within seven years of her marriage and soon before her death, she must have been subjected to cruelty by her husband or relatives of the husband in connection with demand of dowry. If the above circumstances exists, a legal presumption can be made against the accused under Section 113B of Indian Evidence Act that the married woman died due to dowry.

28. In the present case, PW-1 alleged in written report and in her examination in-chief that the marriage of his sister was solemnized with Tuntun @ Rajesh in 2015. She alleged that accused persons killed her sister for demand of motorcycle as dowry but in her cross-examination at page no. 13-14 she stated that she does not know which motorcycle was being demanded by the accused persons and which motorcycle is cheap and which one is costly. She has stated in her cross-examination that she had not made any complaint about this to mediator of the marriage or any competent authority. Even she had not called any Panchayat to solve the matter. She had admitted in her statement that husband had informed her about the incident and when she reached there, they were present there. In post mortem report cause of death is mentioned as shock and suffocation as a result of extensive antemortem flame burn injury. The death was occurred on 03.06.2018 and the date of the same has also been mentioned in post mortem report. Date of marriage and death has not been challenged by the defence.

29. In the Case of **Baljeet Singh vs State of Haryana 2004 (2) ACR 1288**, Hon'ble Supreme Court held that dowry death can be presumed only if the essential facts under under Section 113(B) of Indian Evidence Act and Section 304B IPC are present in the case.

30. In the case of **Asha vs. State of Uttarakhand 2014 (84)ACR 248**, the Hon'ble High Court has held that the fact of cruelty against accused in connection with demand of dowry is not supported by the available evidence. In this case, the deceased was died due to burn injury within seven years of marriage. But due to lack of sufficient evidence against the accused, it was considered appropriate to acquit them. In the present case, it is clear from the evidences that the deceased died in abnormal circumstances within seven years of her marriage, but the above discussion of evidence does not prove that the accused harassed the deceased for demand of dowry. To prove guilty under this section, the harassment given to the deceased must be in connection with demand of dowry soon before her death. In this case, the prosecution has not provided any evidence regarding harassment of the deceased by the accused for demanding dowry soon before her death. Therefore, a legal presumption causing dowry death of the deceased cannot be made against the accused. Hence, all the accused deserve to be acquitted for the charge under Section 304B IPC.

31. Charge under Section 302 IPC has been framed against accused. PW-1 alleged in FIR that the accused persons burnt her sister to death. In post mortem report, no injury has been shown on the body of the deceased. Cause of death is mentioned as shock and suffocation as a result of extensive antemortem flame burn injury. In his cross-examination, the doctor opined that it can be both suicidal or homicidal. Under Section 302 IPC, it is necessary to prove that the accused

caused the death of the deceased with intention and knowledge. But in the present case, there is no eye witness of the incident. There is no direct or circumstantial evidence against the accused regarding the murder of the deceased. The case shows the possibility of the deceased committing suicide. So far as the provision of Section 106 Evidence Act is concerned, mere on the basis of Section 106 Evidence Act accused cannot be held guilty unless primary burden is discharged by the prosecution as mentioned above. In a case of **Dharmendra vs State of U.P 2010 (70) ACC 817-** Hon'ble Allahabad High Court has held that aid of Section 106 Evidence Act can be had only in case where prosecution could not produce evidence to bring all the incriminating circumstances and sufficient material on record to prima facie probablise its case against the accused. There is no allegation against the accused of committing murder of the deceased by any weapon. In their written statement accused persons have stated that the deceased had committed suicide due to her mental condition and poverty. She had closed the door from inside the room and after breaking the door, dead body was taken out from the room. The conclusion could have been different if some other injuries besides burn injuries were found on the body of the deceased. Since no other injury has been found on the body of deceased, no prima facie probabilities arise in the present case against the accused. Thus, in view of the discussions made above the prosecution has also failed to prove the charges against the accused under section 302 IPC. Thus, the accused are liable to be acquitted for the charge under section 302/34 IPC.

32. In the present case, it is proved by evidence that the accused Tuntun @ Rajesh had behaved cruelly with the deceased within the meaning of Section 498A IPC. It is also proved that the deceased had committed suicide within seven years of her marriage. All the necessary elements of the case

are present to draw a legal presumption that the accused Tuntun @ Rajesh had instigated the deceased to commit suicide under Section 113A Indian Evidence Act. In **Vikramjeet Singh alias Vicky vs State of Punjab 2007 (1) ACR 204**, Hon'ble Supreme Court has observed that when there is a possibility of two conclusion in a case, then in such situation, the conclusion which is in favour of the accused will be considered for trial. In another case of **Paranagouda v. State of Karnataka, 2023 SCC OnLine SC1369 decided on 19.10.2023**, Hon'ble Supreme Court has held that the accused can be tried and convicted for the offence not charged. In this case, Hon'ble Supreme Court modified the judgement of Hon'ble High Court in which accused was convicted under Section 304B IPC while Hon'ble Supreme Court acquitted the accused under Section 304B IPC and convicted under Section 306 IPC although charge was not framed against him under Section 306 IPC. In the present case, charge has not been framed against the accused for instigating the deceased to commit suicide under Section 306 IPC, but, in the context of above case laws and Section 222(1) and Section 222(2) Cr.P.C. the accused can be tried for the offence under Section 306 IPC.

33. Section 222(1) Cr.P.C. provides that where a person is accused of an offence consisting of several particulars, some of which by combination only constitute a minor offence and such combination is proved but the remaining particulars are not proved, he may be convicted of that minor offence, though he was not charged with it.

34. Section 222(2) Cr.P.C. provides that where a person is charged with an offence and facts are proved which reduce to a lesser offence, he may be convicted of that lesser offence though he was not charged with it.

35. In the case in hand, the accused has been tried for the offences under Section 304B IPC and Section 302 IPC.

Section 302 IPC is punishable with death penalty or life imprisonment, Section 304B IPC also provides life imprisonment and the minimum punishment is seven years whereas the offence under Section 306 IPC is punishable with imprisonment up to ten years and no minimum period has been prescribed due to which the offence under Section 306 IPC is a relatively smaller offence as compared to Section 302 & 304B IPC.

36. In the context of the above legal provisions, a perusal of the evidence available on the record proves that the deceased committed suicide within 7 years of her marriage and the accused being her husband, behaved cruelly towards her and as per Section 113A of Indian Evidence Act, a legal presumption is made against the accused for instigating the deceased to commit suicide. There is satisfactory ground to convict the accused Tuntun @ Rajesh for the offence under Section 306 IPC. Hence, the accused Tuntun @ Rajesh Vishvakarma is convicted for the offence under Section 306 IPC.

Conclusions

37. In the light of discussions made hereinbefore, facts and circumstances elucidated above, this court is of the view that the prosecution has succeeded to establish the charge against the accused Tuntun @ Rajesh Vishvakarma for the offence under Sections 498A, 306 IPC and failed to prove the charges under section 304 B, 302/34 IPC & 4 D.P. Act.

38. Prosecution has failed to establish the charges against the accused Badri Prasad Vishvakarma and Jadavati Devi for the offence under section 302/34, 304-B, 498-A IPC and 4 D.P. Act. Thus, the accused Tuntun @ Rajesh Vishvakarma is liable to be convicted under Sections 306, 498-A IPC and liable to be acquitted under section 304B, 302/34 IPC & 4 D.P. Act. Accused Badri Prasad Vishvakarma and Smt.

Jadavati Devi are liable to to be acquitted under section 302/34, 304-B, 498-A IPC & 4 D.P. Act.

ORDERS

Accused Tuntun @ Rajesh Vishvakarma is convicted for the offence punishable under Sections 498-A, 306 IPC and acquitted for offence punishable under Section 304B, 302/34 IPC & 4 D.P. Act.

Accused Badri Prasad Vishvakarma and Smt. Jadavati Devi are acquitted from the charges under Sections 302/34, 498-A, 304-B IPC & 4 D.P. Act. During trial accused Badri Prasad and Smt. Jadavati Devi were on bail. Their sureties are discharged and bail bonds are cancelled. Accused Tuntun @ Rajesh is in judicial custody. On the request of the learned counsel for the defence, let the file be put up after lunch for hearing on the point of sentence

Date: 21.03.2025

(Anil Kumar Verma-I)
J.O. Code:- UP 6552
Sessions Judge,
Jaunpur.

After lunch,

File taken up. The learned counsel of the accused argued that the accused has no criminal history. There is no bread earner for his family except him. Mother and father of the accused are old and there is no one for their care. He has a little daughter and her life and education will spoil in absence of her father and requested that lenient view be taken and minimum punishment be awarded to him. On the other hand, Ld. DGC Criminal has submitted that due to torture and abetment, the deceased had committed suicide. The nature of crime is very grave and serious and maximum punishment should be awarded so that people desist from committing such crime in future.

In view of the arguments made by both sides, this court has to see the mitigating and aggravating circumstances before reaching at the conclusion of punishment.

Admittedly, the accused himself informed the complainant about the death of the deceased. He was present at the time of inquest. Certainly, there would be an adverse impact on health and education of daughter of accused if the accused is awarded maximum punishment. The deceased had committed suicide herself by setting herself at fire. Accused Tuntun @ Rajesh is languishing in jail since 06.06.2018. These are the mitigating circumstances in favour of the present accused. No aggravating circumstance exists against the accused which suggests hefty punishment. Punishment under section 306 IPC is maximum 10 years while minimum punishment has not been defined and accused has already undergone imprisonment for more than six and a half years which suggests that accused can ben enlarged.

On examining the evidence meticulously, this court is of the opinion the purpose of justice would be served if the accused Tuntun @ Rajesh is awarded imprisonment for the period of 5 (five) years for the offence under section 306 IPC, one year imprisonment for the offence under section 498-A IPC

ORDER

Accused Tuntun @ Rajesh is sentenced to undergo five years imprisonment and a fine of Rs. 10,000/- for the offence under Section 306 IPC, in default of payment of fine the accused shall further undergo six months imprisonment. He is further sentenced to undergo one year imprisonment and a fine of Rs. 2,000/- for the offence under Section 498-A IPC, in default of payment of fine the accused shall further undergo two months imprisonment.

Let the conviction warrant be prepared and accused be sent to the District Jail to serve out the sentences and the record be consigned in accordance with law.

All the sentences shall run concurrently. The period already undergone by the accused shall be adjusted in the sentences awarded.

Date: 21.03.2025

(Anil Kumar Verma-I)
J.O. Code:- UP 6552
Sessions Judge,
Jaunpur

Judgment signed, dated and pronounced in the open court today.

Date: 21.03.2025/-
Chandramani Yadav.

(Anil Kumar Verma-I)
J.O. Code:- UP 6552
Sessions Judge,
Jaunpur