

A.F.R.
Judgement Reserved On 08.02.2024
Judgement Delivered On 21.05.2024

Neutral Citation No. - 2024:AHC:91066-DB

Court No. - 67

Case :- CRIMINAL APPEAL No. - 1686 of 2019

Appellant :- Sajid

Respondent :- State of U.P.

Counsel for Appellant :- Satish Kumar Tyagi, Nanhe Lal Tripathi, Perdeep Kumar Vishnoi, Ramesh Kumar Pandey, Syed Ahmed Faizan, Zaheer Asghar

Counsel for Respondent :- G.A., Mohd. Afzal, Satish Kumar Mishra

With

Case :- CRIMINAL MISC. APPLICATION U/S 372 CR.P.C (LEAVE TO APPEAL) No. - 106 of 2019

Applicant :- Shahjad Ali

Opposite Party :- State Of U.P. And 3 Ors.

Counsel for Applicant :- Mohd. Afzal

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

1. Heard Sri S.F.A. Naqvi, learned Senior Counsel assisted by Sri Syed Ahmad Faizan, Zaheer Asghar, Ms. Fatma Anjum and Sri Munawar Hussain, learned counsel for the appellants, Sri Mohd. Afzal, learned counsel for the first informant assisted by Sri Kushagra Srivastava, Sri Shahrukh, Advocates, Sri Ghanshyam Kumar and Satyendra Tiwari, learned AGA-I for the State.

2. Argument heard at length to the satisfaction of learned counsel for the parties.

3. The aforesaid criminal appeals are --- (i) Criminal Appeal No. 1686 of 2019 (Sajid Vs. State of U.P., is only on behalf of the accused Sajid, a convicted accused for the offence under Section 498A, 307/34, 323/34 IPC and Section 4 of the D.P.Act and therefore the present appeal is under Section 374(2) Cr.P.C. assailing the legality and validity of the judgement and order dated 12.02.2019 passed by Additional Sessions Judge/ FTC, Hapur, whereby accused Sajid was sentenced under Section 498A, three years R.I. and a fine of Rs. 3000/- along with default clause, under Section 307/34 IPC for ten years R.I. and a fine of Rs. 10,000/- along with default clause, and Section 4 of the D.P.Act, two years R.I. and a fine of Rs. 3,000/- along with default clause **AND** (ii) Criminal Appeal No. 106 of 2019 on behalf of Shahjad Ali, the informant, who is assailing the aforesaid judgement and order dated 12.02.2019 whereby the learned trial judge has recorded the acquittal of the remaining co-accused persons, namely, Zakir, Smt. Jaitoon and Nazakat under Sections 498A, 307/34, 323/34 IPC and Section 4 of the D.P.Act to reverse the finding and accord suitable sentence to them.

4. Since subject matter of both the appeals, is the judgement and order dated 12.02.2019 passed by Additional Sessions Judge/ FTC, Hapur while deciding the S.T. No. 1333 of 2013 and the same set of evidence has to be examined & appreciated in both the appeals, therefore for the sake of

brevity and convenience, both these appeals are being decided by a common judgement.

5. Needless to mention here, that same set of counsel are assisting the Court in deciding the aforesaid appeals and thus we have heard the learned counsel of both the sides representing their respective parties of the appeals to their satisfaction.

6. The paper book of the appeal is ready and the counsel for both the sides have advanced their submissions and the judgement was reserved.

7. Before appreciating the merit of the case, it is imperative to give a bare skeleton facts of the case to appreciate the controversy involved, which are :-

(i) For the incident of 29.07.2012, the informant Shahjad son of Mushtaq lodged an FIR on 30.07.2012 at 12.15 p.m., which was registered as Case Crime No. 234 of 2012 under Section 498A, 307, 323 IPC and Section 3/4 of D.P.Act against (a) Sajid(**husband**) son of Nazakat Ali, (b) Nazakat Ali (father-in-law), (c) Smt. Jaitoon(**mother-in-law**) w/o Nazakat Ali and (d) Zakir Ali(**Dewar**) son of Nazakat Ali.

(ii) As per the allegation made in the FIR, informant's daughter Nazrana got married about 15 months back with Sajid of Village Vait as per the Muslim Rites and rituals.

(iii) In this marriage the informant has spent Rs. 51,000/- in cash, a motorcycle, ornaments of gold and silver and other household goods of wood and iron.

(iv) Dissatisfied by the dowry given to her daughter, all the family members including Sajid, Nazakat Ali, Jaitoon and Zakir Ali used to target her daughter for bringing scanty dowry and she was constantly subject of cruelty and maltreatment and sometimes they used to manhandle her. This has caused lot of frustration and agony to her daughter. There was a constant demand of a four wheeler and Rs. 2,00,000/- by way of additional dowry. On 29.07.2012, they have committed a maar-peet with her. After getting the information, the informant, Pradhan Nawab and Intezaam went to village Vait, where they were informed that the in-laws have committed maar-peet with her and she has sustained injury over her hand. Informant and others have tried to pacify the situation and came back.

(v) As soon as they came back, they come to know that all the named accused persons after pouring oil upon her set her ablaze. Though she has not died but was taken to Meerut, where she informed that all of them have tried to kill her by burning her. After setting her fire all the accused persons fled away from the place and the informant is engaged in treatment of her daughter and that is how there is delay in lodging the FIR, whereby the FIR was case crime no. 234 of 2012, under Section 498A, 307, 323 IPC and Section 4 of D.P.Act, P.S. Simbhawali, District Hapur.

8. As a natural outcome here, that after registering the FIR the case was entrusted to the police for the investigation and the police after holding a indepth probe into the matter has submitted a charge sheet against all the named accused

persons on 19.09.2012 under Section 498A, 307, 323 IPC and Section 3/4 D.P.Act.

9. The learned Magistrate has taken the cognizance of the offence and being a cognizable offence the case was committed to the court of sessions for its trial.

10. It is worthwhile to mention here that all the accused persons were bailed out, but the learned trial judge have framed charges against all of them them under Section 498A, 307/34, 323/34 IPC and Section 3/4 D.P.Act and explained to them to which they have denied and insisted to be tried.

11. To establish their case, the prosecution have produced PW-1 Shahjad, PW-2 Nazrana (the injured), PW-3 Pushpendra Kumar, PW-4 Dr. Rajkumar, PW-5 S.I.-Tribhuvan and PW-6 Udaiveer Singh. In addition to above from the side of prosecution five documents were produced, which were duly exhibited during trial.

12. Syed Farman Ali Naqvi, learned counsel for the appellant in his introductory argument have stated that this is the exclusive case whereby the prosecution have changed its stand at every step casting the serious doubts about the veracity and authenticity of the prosecution case. The prosecution have magnified the unfortunate incident of burning to manifold just to falsely implicate the accused-appellant by levelling an omnibus and general role to all of them. Since the informant is not an eye witness to the incident, and therefore, driven by instinct of taking revenge from his opponents have collected the materials from various quarters and magnified it

and tried to tailor a bogus story of dowry related harassment to his daughter Nazrana. It is also contended by learned counsel for the appellant that these solemn provision of IPC has been grossly misused by the unscrupulous litigants by inserting and adding different angles to any how tangle the accused persons in this dowry related prosecution. It has been further submitted that the injured witness Nazrana/PW-2 was dancing on the tune of her father-informant/PW-1, who cooked up a story after collecting feed back from her.

13. In this regard learned counsel for the appellant have drawn the attention of the Court to the testimony of prosecution witnesses of fact, namely, PW-1 Shahjad Ali, PW-2 Nazrana (the injured) and PW-3 Pushpendra Kumar. Let us discuss the broad features of their testimonies one by one.

14. PW-1 Shahjad is not an eye witness. He states that he is labour by profession, who got her daughter married on 29.05.2011 by spending money according to his capacity but there is demand of four wheeler and Rs. 2 lacs. On this score, her daughter was a constantly a target of tangent and castic remarks by her in-laws. ***Thereafter, in his examination-in-chief, he added yet another angle for the first time that, a demand was made to purchase a plot in the name of her daughter, consequently after 14-15 days of her marriage a 90 yards plot was purchased from Jaywanti Rajesh Kumar costing him Rs. 1.90 lacs by her father-PW-1. After purchase of this plot the in-laws were silent for 5-6 months, but again they have started maltreating her and consequently yet another plot was purchased by him at***

village Vait ad-measuring 200 yards for Rs. 50,000/- in the name of her daughter, this plot was purchased from Wakila wife of Khilafat. This angle of purchase of two plots came out of Blue without any background, rather abruptly.

15. After one month on 29.07.2012 again they have started committing maar-peat with her daughter and subsequent narration of the fact, is identically similar to the FIR. From the aforesaid, it is clear that the role of catching hold was attributed to Nazakat (father-in-law) and Mst. Jaitoon (mother-in-law) and pouring the oil was attributed to Zakir Ali (Dewar) and Sajid was given a role of setting her ablaze. Since he was busy with her daughter's treatment and therefore he could not come earlier to lodge the FIR, the scribe of this FIR is Intezaam Ali.

16. In cross examination, PW-1 was completely exposed when he states that he was a motor mechanic and earned Rs. 18,000-20,000/- per month as his monthly income and his income was not a regular one. At this juncture, it is worthwhile to mention here that, PW-2 Nazrana (the injured) in her cross examination states that she is having seven brothers and sisters. Thus in fact, the PW-1 has got responsibility to feed ten mounts every day and Nazrana PW-2 is his eldest married daughter.

17. It has been candidly stated in his cross examination that there was no demand of dowry prior to or at the time of marriage. She visited her parent's place for three times during

her marital life. But she has never made any complaint to her parent or to the police.

18. At this juncture, it has been candidly argued by Sri S.F.A.Naqvi by drawing the attention of the Court to the PW-1 that, this story of purchasing of two plots in the name of Nazrana came for the first time in the examination-in-chief of PW-1. This story was neither in the FIR nor in the 161 Cr.P.C. statements of the informant or Mst. Nazrana. At this juncture it has been argued by learned counsel for the appellant, a person (PW-1) who claims himself that he is motor mechanic by profession and earns Rs. 18,000-20,000/- per months on irregular basis, it is beyond his capacity and means to purchase two plots in a quite succession in the name of his daughter. This angle is an after thought and just to create more a serious look to the entire prosecution story. It is unthinkable that PW-1 who is father of seven sons and daughters would spend this hefty amount only in the marriage of one daughter, seems to be highly improbable and unrealistic.

19. It is further pointed out by Sri Naqvi, learned Senior Counsel that those two sale deeds dated 14.06.2011 and 16.03.2012 were never produced by the prosecution witness or exhibited during the trial by the prosecution casting a serious doubt about the authenticity and veracity of this submission.

20. During the cross examination, it has been accepted by PW-1 that regarding the alleged incident of fire they have received information around 12 in the day on 29.07.2012 and reached to the hospital at 3.45 p.m. where they met their

daughter. She was in the emergency ward but none of her in-laws were present along with her. She remain there in the hospital for three days. PW-1 has denied the suggestion that she has received the thermal injuries while cooking meals. Besides this, he also pleaded ignorance as to who has got her admitted in the hospital.

21. Learned Senior Counsel has drawn the attention of the Court to the injury report which was duly exhibited and annexed as Page-6 of the paper book that as per the doctor opinion that she has sustained a 40% thermal burn injury over anterior part of her her body and it is her own dewar Zakir Ali who has got her admitted in the hospital at the first stroke.

22. From the testimony of PW-4 Rajkumar Agarwal in which he has categorically stated that it was Zakir (Dewar), who carried his Bhabhi (Mst. Nazrana) to the hospital. Though the injured Mst. Nazrana in her examination-in-chief have categorically stated that Zakir (Dewar) has poured oil upon Mst. Nazrana (injured) and her husband (Sajid) has set her ablaze. The allegation upon Zakir and his later conduct to carry her Bhabhi (Mst. Nazrana) to the hospital are incompatible. In this regard, learned counsel for the appellant has relied upon the judgement of Hon'ble Apex Court in the case of **Ram Das Vs. State of Maharashtra** reported in **AIR 1977 (SC) 1164**, The relevant extract of the judgement is quoted herein below:-

“9. The next circumstance on which great reliance was placed by the High Court was the fact that the accused immediately took the deceased to the Civil Hospital which, according to the High Court, was meant merely to cloak his guilt. We are indeed surprised that

the High Court should have taken such a perverse view of the matter. If the accused had himself administered the poison to Shantabai he would be the last person to take her to the Hospital and thereby take the chance of the deceased being cured or of regaining consciousness, in which case the deceased would have implicated the appellant. The conduct of the accused in rushing her to the hospital is more consistent with his innocence rather than with his guilt. The High Court instead of taking the circumstance as proving the good faith and bona fides of the accused drew the opposite inference. Furthermore, assuming that the High Court was right and that the accused went to the Hospital merely to cloak his guilt this may be one inference possible, but the other inference which is-equally reasonable was that the accused having found that his wife had taken poison and attempted to commit suicide took her to the hospital immediately so that she could be given proper medical aid and her life may be saved. In this state of the evidence, the High Court violated the rule of appreciation of circumstantial evidence in accepting only that inference which went against the accused and not entertaining the inference which proved his innocence and which, in our opinion, was more probable than the other.”

In the light of the above observation made by the Hon'ble Apex Court, the past conduct of the accused appellant carries weight and his innocences in the offence cannot be ruled out. It is further submitted that from the testimony of the injured Mst. Nazrana, it is clear that her Dewar (Zakir) has allegedly actively participated in setting her ablaze but as mentioned above her Dewar (Zakir) carried her to the hospital and got her admitted in the Emergency Ward, which clearly indicates that he would be the last person who took her to the hospital and thereby take a chance of injured being cured or of regaining consciousness, in which case, the injured would have implicated the appellants. Towing the aforesaid observation made by Hon'ble Apex Court in the case of **V.L.Tresa Vs. State of Kerala** reported in **(2001)3 SCC 549**. The relevant extract of the judgement is quoted herein below:-

“The learned Sessions Judge however, came to a definite conclusion that the prosecution has not been able to adduce sufficient and reliable evidence that it was the accused and the accused alone who inflicted the fatal injury on Vincent resulting in his death. The Sessions Court reminding itself of the golden principles for having a proof beyond all reasonable doubt recorded: it cannot also be said that the evidence adduced by the prosecution will conclusively show that Vincent was a person of expensive habits or squandering money or was threatening or ill treating the wife and on a consideration of the totality of the evidence, came to the finding as noticed above against the prosecution. Three decisions of this Court namely [Kali Ram v. State of Himachal Pradesh](#) [1973 SCC (Cri.) 1048]: [Ramdas v. State of Maharashtra](#) [1977 SCC (Cri.) 254] and [Prem Thakur v. State of Punjab](#) [1983 SCC Cri.) 88] were strongly relied upon in arriving at the opinion that the accused cannot be found guilty of murdering her husband.”

23. Now coming to yet another testimony, of Mst. Nazrana, PW-2, who claims herself to be the injured witness. She is now a re-married woman with some other person and mother of two kids. In the examination-in-chief she has reiterated the version of the FIR with the additional allegation of demand of dowry in the shape of Rs. 2 lacs and a four wheeler and thereafter she has underline and reiterated the testimony of her father, that after, 14-15 days of her marriage, her father has purchased a plot of 90 yards costing Rs. 1.90 lacs, thereafter her in-law remained silent for 5-6 months, which they again started demanding Rs. 2 lacs and a four wheeler, again his father has purchased yet another plot of 200 yards at village Vait costing to Rs. 50,000/-. On the fateful day i.e. 29.07.2012, they have committed maar-peat with her around seven in the morning and she has informed her father about the incident. His father responded to the call and thereafter tried to pacify the situation. While she was washing cloths, her fahter-in-law came to her on the false pretext, that her child is

crying as soon as she entered into the room Nazakat and Smt. Jaitoon caught her hold of her and Devar Zakir poured kerosene oil upon her and Sajid lit the match to eliminate her. On raising the alarm the co-villagers assembled and extinguished the fire. Thereafter she was extended threat by her in-laws for a dire consequences, if she reveals anything to her father. She has been treated for three days at Meerut Hospital and thereafter shifted to Safdarganj Hospital at Delhi. Her father has taken her to Safdarganj Hospital, Delhi. The entire medical expenses were borne by her father.

24. In her cross-examination, she states that she is seven brothers and sisters and out of which she is eldest one. Her father was a motor mechanic and she is unaware of about his income. She states that there was no demand of any dowry or either prior to or during her marriage, but after the marriage they have started demanding additional dowry. She further states that at her in-laws place there is a manual furnace (Choolha) and during the interruption of electricity Dhibri is being used. The oil was poured anterior side of her body under the neck causing burn to the entire area as well as her hand and neck. After the incident she became unconscious. So far as the purchase of plots are concerned, in her examination-in-chief, she has revealed this fact to the court, for the first time. Neither in the FIR nor in 161 Cr.P.C. statement she has made any whisper about this angle of the story. When I.O. came to her, she was perfectly sound and healthy mental stage but she did not disclose this fact to the I.O.. It is further mentioned that during the subsistence of her marriage neither she has shared

any complaint with her parent nor any complaint was lodged in this regard to the police.

25. In her cross-examination, she has denied to the suggestion that she was exerting pressure upon her husband. She is unaware of the fact that Sajid has filed any suit for cancellation of sale deed executed by her regarding her 200 yards of land.

26. PW-4 Dr. Rajkumar Agarwal, who treated the injured in his examination-in-chief states that on 29.07.2012 he was posted as Physician at Arjun Hospital, L-Block, Meerut and at that time around 3.45 p.m. Smt. Nazrana came to her with thermal burn injury of 40% anterior part of the body over her chest and abdomen and he has treated her. In his cross examination, he states that she was carried to Arjun Hospital by her own deaver Zakir, one of the accused. There is no reference in the record as to how many days she was in the hospital or she was stinking with the kerosene oil or any other oil. She was not talking and under the semi conscious condition. Her hairs were not burnt and as mentioned above, she was burned about 40%. Responding to the suggestion, if somebody in the stage of heated passion one can pour oil upon her on her own and set herself to fire. Various formal witnesses both the I.Os. were examined and they have narrated the investigation.

27. After closing the prosecution witnesses the accused Sajid has recorded his statement under Section 313 Cr.P.C. in which he states that he is also a labourer and to the question that he has committed the offence of setting her wife ablaze narrating

the entire incident about the plot purchase, demand of four wheeler and Rs. 2 lacs and thereafter setting her ablaze. He categorically denied the allegation levelled upon her by making a mention that it is he, who have purchased the plot for her and the entire sale consideration was made by him or by his Sasural. He has further denied that no body has set her ablaze as alleged in the FIR. It was her parent and in-laws got her admitted in the hospital. He and his father Nazakat was not present at the time of incident.

28. Responding to the allegation that after 14-15 days of her marriage, her father has got purchased ad-measuring 90 yards after paying sale consideration of Rs. 1.90 lac/- and second plot of 200 yards at village Vait for the amount of Rs. 50,000/-. He has denied point blank that he has ever committed any dowry related harassment with her. Sajid has purchased afore mentioned two plots in the name of his wife after taking the benefit of Govt. Policy that if any immovable property is purchased in the name of his wife, there is a discount of 2% in Stamp Duty in the sale deed. He has not a author of the incident and under the pressure of her father, the present FIR came into existence. It was further revealed by Sajid accused that since the financial condition of her father-in-law was not good and therefore, his wife Nazrana have sold out the plot ad-measuring 200 yards to some other person in a clandestine way. After this fact came to the knowledge he has filed a sale cancellation suit before the competent civil court. Almost on the same lines Nazakat Ali, Mst. Jaitoon and Zakir recorded their respective 313 Cr.P.C. statement.

29. And lastly Sajid Ali, DW-1 son of Wakila and Matloob, DW-2 this statement were recorded. The Court has gone through the testimonies of DW-1 and DW-2, which is literally an eye opener. Sajid in his testimony states that her mother Wakila agreed to sell out a plot over khasra no. 756 with Sajid, the accused for a sale consideration of Rs. 50,000/- and this amount was received to him on behalf of Wakila. Since there is a discount of 2% in the sale deed as per government policy, if the sale deed is executed in the name of a lady. Under the circumstances Sajid has got the sale deed executed in the name of his wife Nazrana. The original sale deeds were produced which was duly identified by him that he identified the thump impression and photograph of her mother Wakila. He further states that the sale deed was executed right in front of him and this sale deed was executed on 16.03.2012 in favour of Nazrana by Wakila after taking the sale consideration of Rs. 50,000/- from Sajid.

30. Yet another DW-2 Matloob in his testimony in which he has clearly indicates that the family unit of Sajid and Nazrana is quite distinct and different whereas his father resides in some other court. It is further states Sajid have purchased a plot in the name of his wife Nazrana about 15-20 days after his marriage and second plot was purchased after 6-7 months of marriage. He has never any quarrel between Sajid and Nazrana or by her in-laws. DW-2 Matloob resides in neighbourhood of Sajid. It is also borne out from the testimony of DW-2 that this division of family occurred 15-20 days after the marriage. Though the prior to marriage it was a joint family. He has lend Rs. 30,000/- to Sajid to purchase a plot.

31. After the conclusion of the prosecution witness, 313 Cr.P.C. statement and the testimony of the defence witnesses was over, the judgement under challenge for judicial scrutiny was pronounced on 12.02.2019.

32. We have gone through the every word of the judgement.

33. The moot point of the determination of the present appeal is that, there is paradigm shift in the stand of the prosecution with ulterior motive and purpose. There was not a whisper of the alleged purchase of plot in the FIR nor 161 Cr.P.C. statement. For the first time, this angle was introduced during the examination-in-chief of the prosecution witnesses, that too half heartedly. Neither the sale deed of alleged plot purchased by the informant's Shahjad Ali was produced nor financially he was capable of purchasing two plots successively, keeping in view his meagre earning of Rs. 18,000-20,000/- per month when he has already seven sons and daughter to his responsibility. This fact itself indicate the hyperbole used by the prosecution without any cogent basis or reason.

34. Per contra DW-1 Sajid Ali and DW-2 Matloob were examined and they have produced Paper No.37 and Paper No. 38, their identity card, Paper No. 39 Kha, identity card of Smt. Nazrana and Paper No. 41 original sale deed dated 16.03.2012 and Paper No. 42 Original Sale deed of 14.06.2011 in favour of Nazrana. Besides this, Paper No. 43 Ka was certified copy of sale deed and Paper No. 44 Kha was a certified copy of sale deed dated 06.10.2012 was also produced. In addition to above, Paper No. 45 Kha, the document of OS No. 1 of 2016 (Sajid Vs. Smt. Nazrana) and

Suit No. 155 of 2014 (Sajid Vs. Smt. Nazrana) were produced as a defence document. These document itself shows and clearly indicates that these two plots were purchased by Sajid, husband in the name of her wife Smt. Nazrana. There is nothing on record to establish the fact that the amount was given by the first informant Shahjad Ali as claimed by him. The learned trial judge has in paragraph 16 of the judgement have wrongly interpreted that these testimonies and after holding the absurd analysis came to a wrong conclusion.

35. It is a judicial propriety that the judge should decide a case with a open mind and not with a pre-conceived notion and thereafter, twist the testimonies whimsically to justify his conclusion. In the instant case, the learned trial judge has conducted an exercise of pick and have chosen those facts, which suitable and inconsonance with pre-determined conclusion to book the husband Sajid. This would lead to grave injustice to the husband.

36. In the instant case in paragraph 16, the learned trial judge have elaborately discussed the testimonies of DW's and the sale deed etc. into account but at Page 17 he has concluded that few days after the marriage Nazakat, Smt. Jaitoon and Zakir were separately resided and since they are separately residing, thus there is no question of demanding the additional dowry by them. To this extent, the conclusion given by the trial court is correct but later on, the learned trial court has wrongly interpreted after reading the testimony of DW-1 and DW-1 that these two plots were not purchased by

Sajid, the husband ignoring the original sale deed which is on record.

37. In paragraph 17 of the judgement the learned trial judge after thrashing the various prosecution witnesses have come to the wrong conclusion that it was the Sajid, who poured the kerosene oil upon her wife and set her ablaze. This finding is tangent to the testimony of PW-4 Dr. Rajkumar Agarwal as he did not record any smell of kerosene oil upon the body of the injured.

38. Shahjad Ali and his daughter Nazrana dishonestly inserted the story of purchase of plot in the name of his daughter. Neither he has produced any sale deed or money transaction to establish this fact. Since those sale deed in the name of Nazrana by the two different sellers, the informant assumes this credit to him and painted this picture.

39. The entire controversy has erupted that Mst. Nazrana sold out one of the plot purchased by the appellant in her name and the appellant has filed two civil suit before the concerned competent civil court to declare the said sale deed null and void. The O.S. No. 155 of 2015 is pending before Civil Judge (S.D.) Hapur filed on 20.03.2014 and another sale deed dated 09.07.2012 was filed a suit no. 01 of 2016 (Sajid Vs. Nazrana) pending in the court of Civil Judge (S.D.), Hapur was sold by PW-2 to whom the plot in question was purchased by the appellant on 14.06.2012. Except the testimony of Nazrana there is no other supportive evidence against PW-1, who is not an eye witness. At the cost of repetition this theory of sale and purchase of plot has surfaced for the first time in the testimony

of father Shahjad Ali, PW-1 and supported by his daughter Mst. Nazrana, PW-2.

40. The prosecution has cleverly hide the subsequent progress in the case when Nazrana sold out both the plots in a clandestine way and her husband have initiated the proceeding for cancellation of those sale deeds executed by Nazrana in favour of subsequent purchaser. Both the suit are pending for consideration. This incident has triggered the deep rooted discord and misunderstanding between husband and wife. Both the father and daughter have tried to twist and turn the facts of the case mercilessly, resultantly the entire testimony seems to be untrustworthy.

41. Admittedly, the only witness is the injured herself. Initially, the theory of a Car & Rs. 2.00 lacs were asked, but thereafter yet another angle of purchase of plots were added for the first time during trial. It is worthwhile to mention here that the lady Nazrana, the injured have conveniently digested the subsequent development i.e. one sold out the plot to some other person without taking her husband (Sajid) into confidence. This is the sole reason that Sajid have filed two suits for cancellation of those sale-deed, making Nazrana, the injured as defendant. Those proceedings are pending consideration.

42. The possibility of self immolation by Nazrana on account of the said civil proceedings cannot be ruled out completely. Out of sheer disgust, she might have poured oil upon her and set herself ablaze.

43. While deciding the case relating to the dowry harassment or even dowry death, the law courts are facing a novel feature, there is a exorbitant demand of the additional dowry by the accused persons to give a more serious and grim look to the entire incident. While jotting down the FIR the informant often oblivious of his own financial condition as well as the financial condition of his counter part. The Court is flabbergasted to see this new development in the recent days, it is unthinkable rather it would be mockery, that a person would demand a BMW or Audi Car from his counter part, who is a small roadside vendor or have meagre income. There has to be a financial compatibility with the demand made by the accused persons qua with his earning and financial status.

44. In the instant case as mentioned above, Shahjad Ali is a sole bread earner who in his own admission earns Rs. 18,000-20,000/- per month irregularly with ten mouths to feed by him. Under circumstances, he is benevolently purchasing plots after the plots in the name of her daughter, which is unthinkable and cannot be purchase with known source of income.

45. Learned Trial Judge in paragraph 16 and 17 of the judgement qualitatively selected those part of the testimonies, which suits their legal judicial conscious and book the husband Sajid for the offence.

46. Assessing the entirety of the circumstances of the case, we find that the judgement and the sentence awarded to Sajid is perse erroneous and lopsided and thus we have got no hesitation to quash the order of conviction and sentence awarded by the learned trial court vide judgement and order

dated 12.02.2019. The appellant Sajid is set at liberty, if not wanted in any other case, the charges against him is hereby discharged and the sureties are also discharged, accordingly, the appeal stands **ALLOWED**.

Criminal Appeal (U/S 372 Cr.P.C.) No. 106 of 2019
(Shahjad Ali Vs. State of U.P. and others)

(Order on Application for Special Leave to Appeal)

47. The aforesaid appeal is concerned, we have elaborately discussed and thrashed the entire evidence material and the judgement and we find that the learned trial judge has rightly arrived the acquittal Nazakat, Smt. Jaitoon and Zakir from the charges under Section 498A, 307/34 IPC and Section 4 D.P.Act., the reasoning adopted by the learned trial judge is correct and do not warrant any interference in exercise of power under Section 372 Cr.P.C., accordingly, the application for special leave to appeal is hereby by **rejected**.

(Order on Memo of Criminal Appeal)

48. Since the special leave to appeal is hereby rejected, the criminal appeal under Section 372 Cr.P.C. also stands **REJECTED**.

Order Date :- 21/05/2024

Abhishek Sri.