

MANU/WB/0070/2006

Equivalent Citation: 2006(3)CHN101

IN THE HIGH COURT OF CALCUTTA

C.R.A. No. 437 of 2003

Decided On: 27.01.2006

Appellants: **Shyamal Pyne**
Vs.

Respondent: **State**

Hon'ble Judges/Coram:

A.K. Basu and P.K. Deb, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: J. Bagchi and J.N. Chatterjee, Advs.

For Respondents/Defendant: Kazi Safiullah, S.K. Mallick and Sofia Begum, Advs.

JUDGMENT

P.K. Deb, J.

1. This appeal being C. R. A. No. 437 of 2003 has been directed against the conviction and sentence under Sections 498A IPC and 304B IPC passed by the learned Sessions Judge, Howrah in connection with Sessions Trial Case No. viii(1) of 1994.

2. This case relates to an unfortunate death of a young lady in her early twenties. What is more shocking is the fact that she died within three months of her marriage. The marriage of the young lady called Swapna Naha with the appellant Shymal Pyne was solemnised on 26th June, 1990. It was the marriage by registration. The prosecution side came up with the allegation that almost from the inception of her marriage, the appellant and her mother went on demanding Rs. 50,000/- by way of dowry from her relation. An amount of Rs. 30,000/- had to be paid in three instalments to please the appellant and her mother. Dissatisfied with the amount of dowry paid to them, they egged on her to bring the additional amount of 20,000/- in the form of dowry. She had to withstand to physical torture in their hands as well. The young lady was even threatened with dire consequences. The tragic end of her life came on 20/06/ 1990 when she was strangled well inside her matrimonial house.

3. With her father Ajit Ranjan Naha lodging an FIR relating to the incident of dowry death, Golabari P.S. Case No. 365 dated 26/9/90 was registered. S.I., Ranjit Kr. Khan was entrusted with the task of holding the investigation. At the very outset, the Investigating Officer held the inquest over the deadbody and prepared a report. Therefore, the body was sent to the morgue for postmortem examination.

4. The Investigating Officer also seized Statements of Account and letter said to have been written by the young lady. Thereafter, the case was handed over to S.I. Birendra Kr. Saha who also seized the exercise book and sent it to the expert for opinion. Finally, on examination of all the witnesses and collection of all the papers and reports, the chargesheet was submitted.

5. The learned Sessions Judge framed charges under Sections 498A/34, 304B/ 34, 120B and 201/34 IPC against the appellant. He was charged with having inflicted physical and mental torture upon his wife. He was also charged with having committed dowry death of his wife Swapna Pyne. In wake of the specific denial of the charges, the prosecution side examined as many as 21 witnesses. The father, the younger brothers, the sister-in-law and the cousin-in-law were amongst the relations of the victim who were examined on behalf of the prosecution. Some of the neighbours, an employee of the registration department and the doctor conducting the post-mortem deposed on behalf of the prosecution. The officers who initiated the case and took part in the investigation were also cited as prosecution witnesses. Banking heavily on the statements of her near relations as to the appellant making constant demand of dowry and factum of unnatural death, as evidenced by the post-mortem report, the learned Additional Sessions Judge convicted the appellant Shyamal Pyne for commission of offence under Sections 498A and 304B. The appellant Shyamal Pyne was sentenced to rigorous imprisonment for life for commission of offence under Section 304B IPC. He was also sentenced to rigorous imprisonment for three years and fine of Rs. 1000/-, in default, rigorous imprisonment for another six months for commission of offence under Section 498A IPC.

6. The sentence of his mother Labanya Prova Pyne was kept in abeyance, with direction being given to the Probation Officer to submit a report as to her antecedent and conduct.

7. Aggrieved by the conviction and sentence under Sections 498A and 304B IPC, the appellant has preferred the instant appeal.

8. Appearing on behalf of the appellant. Mr. J. Bagchi has submitted that the Trial Court failed to appreciate the fact that there was hardly any reason for the appellant and his mother to make sustained demand of dowry, as they were financially sound and had high reputation in the society. Their recognition in the society has also been acknowledged by the relations of the victim. It is further contended that had there been payment of Rs. 30,000/- in the form of dowry, there ought to have been some documents as to the receipt of the same by the appellant. The death of the housewife was shrouded in mystery. The near relations of the deceased exploited the mysterious death as a handy weapon to entangle the appellants and other members of her family in apparently false case of dowry death, as contended by Mr. Bagchi.

9. Commenting on the allegations as to demand of dowry, Mr. Bagchi has submitted that deviating from their original stand, the witnesses levelled vague charges against the appellant at the time of the trial. There being substantial deviation from what they stated during the investigation, the Trial Court was not justified in considering their statements made at the time of the trial as gospel truth. Mr. Bagchi has argued that the Trial Court made gross error in not placing any importance on the suicidal note of the victim. Had proper appreciation of the suicidal note being made, the view would have been otherwise. Reacting on the admissibility of a letter said to have been written by the deceased. Mr. Bagchi has argued that the letter should not have been given any importance, as it had not been proved in accordance with law.

10. Mr. Mallick, representing the State, on the other hand, has strongly defended the conviction and sentence, contending that there has been overwhelming evidence as to infliction of physical and mental torture on the housewife. The seizure of the Books of Accounts, it is contended, amply proves that the payment had been made by the near relations of the victim to please the appellant. Her near relations with one accord supported the prosecution version that sustained demand of dowry had been

made by the appellant. Finally, she was strangled. That too happened within three months of the marriage. In view of the unnatural death having taken place within three months of the marriage following sustained demand of dowry made by the appellant, the Trial Court, it is contended, rightly convicted and sentenced the appellant for commission of offence under Sections 498A and 304B IPC.

11. The case was instituted on the complaint of the father of the victim girl. P.W. 1 Ajit Ranjan Naha alleged that the appellant started torturing his daughter within one month of her marriage. He further alleged that her daughter was subjected to physical and mental torture over the issue of payment of dowry of Rs. 50,000/-. The witness claimed that he paid Rs. 30,000/- with promise to pay the remaining amount of Rs. 20,000/- after the puja, but he was not given that much of time to pay the amount. His daughter also conveyed her apprehension of being murdered at the hands of her husband and other in-laws. As per statement of P.W.4 Sambhu Naha, gold, ornaments and cash were given to his sister on the occasion of her marriage with Shyamal Pyne. He corroborated the statements of her father that his sister had been subjected to torture over the issue of payment of dowry of Rs. 5,000/-. He too confirmed that Rs. 30,000/- was paid with promise to pay the remaining Rs. 20,000/- after the puja. Identical accusations were made by P.W.5 Proloy Kr. Naha who also happened to be the younger brother of the deceased Swapna Pyne. P.W. 12 Provas Bose happened to be cousin brother-in-law of the deceased Swapna Pyne. As per his statements, he once visited her matrimonial house. On such occasion, his sister-in-law Swapna Pyne asked him to request her father to pay the amount of Rs. 20,000/- as early as possible. She apprehended that she would be subjected to severe torture at the hands of her husband and mother-in-law if their demand for payment of dowry was not met. Her another brother-in-law P.W. 19 Akshoy Pal Chowdhury testified that torture on Swapna Pyne was intensified over the issue of payment of the balance amount. The matrimonial life of the Swapna Pyne lasted for just three months. Within that short of span of three months, she had to withstand constant torture simply because of the failure on the part of her father to pay the balance amount of Rs. 20,000/-. The appellant was not satisfied with the initial payment of Rs. 30,000/- in the form of dowry, as testified to by P.W.1 Ajit Ranjan Naha, P.W.4 Sambhu Naha, P.W.5 P.K. Naha, P.W.6 Gitarani Naha and P.W. 19 Akshoy Pal Chowdhury. The young lady expressed the apprehension that her life and security would be insecured if their demand of dowry was not materialised, as stated by her father. A feeble attempt was made on behalf of the defence to deny the factum of marriage. The marriage register with relevant entries therein (Doc. Ext. - 2), however, confirmed that the marriage between the appellant and Swapna Pyne was duly registered. This was also acknowledged by the appellant at the time of his examination under Section 313 of the Code of Criminal Procedure. Her ordeal continued with the constant demand of dowry, followed by sustained torture. She was strangled within three months of her marriage, as indicated in the post mortem report. It is on record that the appellant subjected his wife to cruelty before her death over the issue of demand of dowry. She was repeatedly harassed for the failure of her relations to pay the balance amount. Her unnatural death came within three months of her marriage. All the ingredients having been established, there would be natural presumption under Section 113B of the Evidence Act as to the appellant causing dowry death of his wife. The convictions under Sections 498A and 304B IPC were, thus, rightly awarded by the Trial Court.

12. Now comes the vital question of infliction of sentence. The appellant was sentenced to rigorous imprisonment for life and fine of Rs. 1,000/- for commission of offence under Section 304B IPC. The sentence of his mother, though convicted under Section 498A and 304B IPC, was kept in abeyance till the receipt of the report of the Probation Officer. Mr. Bagchi has argued that extreme punishment has been awarded

against the appellant simply because of the fact that he happened to be the husband of the deceased. It is submitted that there is no direct evidence as to the appellant committing murder by strangulation. There was no specific charge under Section 302 IPC either. In the backdrop of these facts and circumstances, the infliction of sentence of rigorous imprisonment for life was totally unwarranted, as submitted by Mr. Bagchi. In this connection, Mr. Bagchi has cited the case of Hemchand v. State of Haryana reported in MANU/SC/0026/1995 : AIR1995SC120 to substantiate his argument that awarding of extreme punishment of imprisonment of life is done in rare case and not in every cases.

13. Countering the plea for reduction of sentence, Mr. Mallick has urged maintenance of the sentence, as awarded by the learned Additional Sessions Judge. Mr. Mallick has submitted that in view of a young housewife being strangled within three months of her marriage following sustained demand of dowry, extreme punishment as provided in the section should be awarded. The imprisonment of life, it is contended, is commensurate with the misdeed the appellant had perpetrated.

14. The unnatural death of a young housewife is evidenced by the postmortem report. Finding certain notable features like rupture of the hyoid bone, the doctor opined that death was caused by strangulation. The house where the incident occurred was possessed by the appellant and his mother. There is no direct evidence of strangulation of a young housewife by her husband. There was no charge either of commission of murder against her husband. There is, however, no denying the fact that her death was not normal or accidental. It was definitely an unnatural death within the meaning of Section 304B IPC. It is on record that the wife had to sustain torture and harassment over the issue of non-payment of dowry. Her unnatural death also occurred within three months of her marriage. This case, thus, squarely falls well within the purview of Sections 498A and 304B IPC. Despite having positive evidence against the mother-in-law, her sentence was kept in abeyance. The fact that death was caused by strangulation perhaps prompted the Trial Court to award the extreme punishment. The Trial Court lost sight of the fact that no charge under Section 302 IPC was framed. Who committed the alleged murder is not clear. Identical things happened in the case of Hemchand v. State of Haryana. There also the wife had been subjected to cruelty over the issue of payment of dowry. The death was also caused by strangulation. No charge under Section 302 IPC was however, framed. Taking those aspects into consideration, the Apex Court reduced the sentence from rigorous imprisonment for life to ten years rigorous imprisonment. Acting on the principle that award of extreme punishment of imprisonment of life should be in rare case and not in every case and judging the nature of the case, we do feel inclined to reduce the sentence under Section 304B from imprisonment for life to rigorous imprisonment for ten years. Accordingly, while confirming the conviction of the appellant under Section 304B IPC, we reduce the sentence of imprisonment for life to rigorous imprisonment for ten years for commission of offence under Section 304B. That will be in addition to the fine of Rs. 1,000/- in default, for further rigorous imprisonment for another six months. The conviction and sentence under Section 498A IPC will stand.

15. In the result, the appeal is dismissed, subject to the above modification of sentence.

16. Send the L.C.R. to the Trial Court with a copy of the judgment with a direction to issue modified jail warrant in view of the reduction of sentence under Section 304B IPC.

17. Let another copy of the judgment be sent to the Superintendent of Jail/

Correctional Home where the present appellant is detained for information.

A.K. Basu, J.

18. I agree.

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