

MANU/WB/0249/2006

Equivalent Citation: 2006CriLJ4250, I(2007)DMC525, 2007(5)RCR(Criminal)370

IN THE HIGH COURT OF CALCUTTA

C.R.A. Nos. 415 and 416 of 2002

Decided On: 18.08.2006

Appellants: **Anandamoy Ghosh and Ors.**
Vs.

Respondent: **State of West Bengal**

Hon'ble Judges/Coram:

P.N. Sinha and P.S. Datta, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Sekhar Basu, Kaushik Chatterjee, Somnath Banerjee and Debasish Roy, Advs. and C.R. Bag, Adv. for De facto

For Respondents/Defendant: R.B. Mahato and Amajit De, Advs.

JUDGMENT

P.N. Sinha, J.

1. The appellants have preferred these two separate appeals challenging the common judgment and order of conviction and sentence imposed on them by the learned Additional Sessions Judge, Kalna for the offence under Sections 304-B and 498-A of the Indian Penal Code (hereinafter called the IPC) in Sessions Trial No. 1 of 2002 arising out of Sessions Case No. 46/01. The father-in-law, the mother-in-law and the elder brother-in-law of the deceased Chandana Ghosh have preferred CRA No. 415/02 and the husband Amal Kumar Ghosh has preferred the other appeal being CRA No. 416/02. The husband Amal Kumar Ghosh was sentenced to suffer R.I. for 3 years and to pay a fine of Rs. 10000/- in default R.I. for one year for the offence under Section 498-A of the IPC and he was further sentenced to suffer R.I. for 10 years for the offence under Section 304-B of the IPC. Other three appellants who preferred CRA 415/02 were sentenced to suffer simple imprisonment for 2 years each and to pay a fine of Rs. 5000/- each i.d. to suffer S.I. for 6 months each for the offence under Section 498-A of the IPC and were further sentenced to suffer 7 years simple imprisonment each for the offence under Section 304-B of the IPC. We intend to dispose of both the appeals by this common judgment and order.

2. The prosecution story according to FIR (ext. 1), in short, is that Chandana Ghosh (the deceased) was married with Amal Kumar Ghosh, the youngest son of Ananda Mohan Ghosh of Par Sahapur within P.S. Kalna on 18.1.1998. At the time of marriage Rs. 60000/- in cash, 13 bharies gold ornaments and other gift items and furniture worth Rs. 25,000/- were given in terms of the demands made by the bridegroom party. A few days after the marriage the accused persons started inflicting severe mental and physical torture upon Chandana Ghosh and made further demand of dowry asking the deceased to give 4 bharies gold more and a motor cycle. It was stated in FIR that the accused persons alleged that gold which was given in marriage was less in weight. When the deceased Chandana visited her father's house she told her father, her mother and neighbours that it was not possible for her to live in the house of her father-in-law and further that she was unaware how long she would remain alive. The husband Amal Ghosh had illicit relationship with other women "and

when Chandana raised protest she was assaulted by her husband.

3. On 14.10.98 Sachindra Mohan Ghosh (P.W. 1), the FIR maker and father of deceased Chandana learnt that his daughter had expired on previous night. Receiving this Information P.W. 1 accompanied by his wife and other relatives went to the house of father-in-law of his daughter and found dead body of his daughter lying on the verandah of first floor. He asked the accused persons about the cause of death of his daughter and received the reply that the deceased had committed suicide. P.W. 1 wanted to know in which place and under what circumstances Chandana committed suicide but, the accused persons did not give any specific reply. The accused persons told P.W. 1 to give in writing that he had no complaint against them relating to death of his daughter but he protested to such demand and with the assistance of the villagers got post mortem examination of his daughter conducted. It was mentioned in the FIR by P.W. 1 that the accused persons have murdered his daughter and they are fabricating story of committing suicide by his daughter. Out of shock and mental frustration due to the death of his only daughter he could not lodge the complaint/FIR earlier. P.W. 1 lodged the written complaint/FIR on 22.10.1998 at the Kalna P.S. and on the basis of it Kalna P.S. Case No. 173/98 dated 22.10.1998 under Sections 498A/304-B/34 of the IPC was started against the four accused persons named above. After completing investigation charge-sheet was submitted under Sections 498-A/306/34 of the IPC against the appellants. The trial that followed ended in conviction and sentence of the appellants as mentioned above.

4. In order to prove its case the prosecution examined as many as 14 witnesses namely, P.W. 1 Sachindra Mohan Ghosh (father of deceased), P.W. 2 Bishal Chakraborty, P.W. 3 Krishna Mukherjee, P.W. 4 Ratan Kumar Debnath, P.W. 5 Hambari Pramanik, P.W. 6 Kanai Ghosh. P.W. 7 Radha Rani Ghosh (aunt of deceased), P.W. 8 Tarun Modal, P.W. 9 Niva Ghosh (mother of deceased), P.W. 10 Asit Baran Reja, P.W. 11 Swapan Kumar Roy, P.W. 12 Sk. Abdul Fattar, P.W. 13 Dr. Prosenjit Roy (post mortem surgeon) and P.W. 14 Jagannath Mahato.

5. Out of these 14 witnesses evidence of P.W. 1, P.W. 3, P.W. 4, P.W. 5, P.W. 6, P.W. 7, P.W. 9 are important as fate of the prosecution case depends on their evidence.

6. Evidence of P.W.2 is hearsay as his evidence discloses that whatever he stated in Court was heard by him and he did not disclose from whom he heard such things. Accordingly, we place no reliance on his evidence. P.W. 8 also stated nothing in favour of prosecution and was declared a hostile witness. His evidence does not require detailed discussion unless we find from his evidence anything worth mentioning during discussion of evidence. P.W. 10 is the part Investigating Officer (in short I.O.) who examined five witnesses and submitted charge-sheet. P.W. 11 is the first I.O. of the case who started investigation and examined witnesses and took preliminary steps of investigation and after he was transferred P.W. 10 completed the investigation. P.W. 12 is a constable who carried dead body of Chandana Ghosh for post-mortem examination. P.W. 13 is the doctor who held postmortem examination on the dead body of Chandana Ghosh. P.W. 14 is A.S.I. of Police who held inquest on the body of deceased Chandana Ghosh.

7. Mr. Sekhar Basu, the learned senior counsel appearing for the appellants submitted that the incident was on 14.10.1998 but the FIR was lodged on 22.10.1998. The grounds of delay as mentioned in FIR as well as in evidence of P.W. 1 is not convincing and acceptable as it appears that on 14.10.1998 P.W. 1 submitted a prayer before the Officer-in-Charge of police station praying for returning the dead body of Chandana Ghosh. In the said application P.W. 1 did not make any allegation either against the husband of Chandana Ghosh or against other accused persons. It is

clear, therefore, that P.W. 1 has lodged the FIR subsequently only for the harassment of the appellants.

8. Mr. Basu further submitted that if the evidence of the main witnesses is properly appreciated it will reveal that there was good relationship between the appellants and the deceased Chandana Ghosh. The story of torture on Chandana demanding dowry is not at all acceptable. Besides the inmates of the house of P.W. 1 the evidence of other witnesses is not at all convincing. The cross-examinations of P.W. 3, P.W. 4, P.W. 5 and P.W. 6 reveal that they made omnibus allegations against the appellants allegedly hearing from Chandana Ghosh about torture on her demanding dowry. These witnesses had no visiting term with P.W. 1. P.W. 4 did not make any allegation to police on the date of inquest. P.W. 5 had no special relation with any family member of father of Chandana and he cannot recollect how many days before death of Chandana he heard from Chandana relating to torture on her. Evidence of P.W. 6 reveals that Chandana did not use to come to his house nor he and his wife used to visit house of Chandana's father. He heard from Chandana while he was passing by the side of house of father of Chandana and such a chance witness cannot be relied upon. P.W. 3 is a witness who heard everything and his evidence being hearsay cannot be relied upon.

9. Mr. Basu also submitted that P.W. 9 was not examined by the I.O. and as such no reliance can be placed on the evidence of such a witness. The learned trial Court did not examine the accused persons under Section 313 of the Cr.P.C. properly. Though there was no evidence that the accused persons murdered Chandana in question No. 3 the learned trial Court put the question that, finally the accused persons had murdered Chandana. It shows total non-application of mind by the learned trial Court and learned trial Court put some questions to the accused persons during their examination under Section 313, Cr.P.C. when in fact there was no evidence to that effect.

10. Mr. Basu finally submitted that in the present case the prosecution cannot take the aid of Section 113-B of the Evidence Act. There was no evidence at all that death of Chandana was caused by the accused persons in connection with demand for dowry or that Chandana Ghosh was subjected to cruelty or harassment by her husband and the other appellants soon before her death. The evidence that came before the trial Court did not fulfil elements of Section 304-B of the IPC and being so application of inference or presumption under Section 113-B of the Evidence Act is not permissible. Proper scrutiny of cross-examination of the witnesses clearly reveals that there was very happy and normal relationship between Chandana and her in-laws. The order of conviction and sentence being bad in law should be set aside. In support of his submissions Mr. Basu cited three decisions vis., Mukhtiar Ahmed Ansari v. State (NCT of Delhi) reported in MANU/SC/0309/2005 : 2005CriLJ2569 , Raja Ram v. State of Rajasthan, reported in 2005 SCC (Cri) 1050 and Haradhan Sen v. State, reported in MANU/WB/0074/2004 : 2004(2)CHN527 .

11. Mr. R.B. Mahato, the learned advocate for the respondent State of West Bengal submitted that Chandana Ghosh died within 9 months of her marriage. The evidence of P.W. 1, P.W. 7 and P.W. 9 is very Important and their evidence clearly proves elements of Section 304-B of the IPC against the appellants. Evidence of father (P.W. 1) alone is sufficient to prove the prosecution case.

12. Mr. Mahato submitted that Section 304-B of the IPC stands on a different footing and the appreciation of evidence together with the presumption under Section 113-B of the Evidence Act in the instant case clearly proves that the prosecution was able to bring home all the charges levelled against the appellants. After the prosecution led

such evidence as are appearing before the Court the onus shifted on the appellants to establish that death of Chandana was not due to the torture perpetrated on her demanding dowry. The accused persons did not lead any evidence to discharge the onus and being so the prosecution case was proved beyond all reasonable doubts. The appellants during their examination under Section 313 of Cr.P.C. did not disclose any material or defence or circumstances to oust or discard the prosecution evidence and circumstances. The father, the mother and the aunt of a married woman, who died within 9 months of her marriage, are the best persons to say what type of torture was inflicted on the deceased and neighbours cannot throw proper light before the Court. The conviction and sentence imposed on the appellants was proper and there is no ground to interfere with the findings of the learned trial Court.

13. We have duly considered the submissions of the learned advocates for the parties and we have duly considered the principles of law as well as the evidence and materials on record. Let us scrutinise the evidence of the witnesses to judge their veracity on consideration of their entire evidence. Evidence of a witness becomes complete and subject of assessment when the Court considers the total evidence including the examination-in-chief and cross-examination.

14. P.W. 1, the father of the deceased Chandana Ghosh stated in his evidence that his only daughter Chandana was married with accused Amal Ghosh, son of Ananda Mohan Ghosh on 4th Magh, 1404 B.S. (corresponding to 18.1.1998) and in the marriage he gave cash of Rs. 60000/-, gold ornaments weighing 13 bardies and furniture valuing Rs. 25000/-. After some days of marriage his daughter told him that the accused persons started torture on her as he could not give 4 tollas of gold as per demands of the accused persons. The accused persons also demanded motor cycle from him through his daughter. His son-in-law used to torture and even assault his daughter. His son-in-law was of loose moral and he used to mix with other women and when his daughter raised protest she was subjected to torture and assault by accused Amal Ghosh. Father and motors of Amal Ghosh used to torture Chandana mentally for the gold ornaments and motor cycle for Amal. He learnt about story of torture and demand of dowry by accused persons from his daughter when she visited his house.

15. He further stated that on 14.10.1998 he came to know from neighbour that his daughter had committed suicide by hanging in her matrimonial home. Thereafter he, his wife and other relatives including Ratan Debnath had been to the house of the accused persons and reaching there found his daughter lying on the verandah of the first floor. He learnt from the accused persons that his daughter had committed suicide by hanging. He went to the police station thereafter and reported the matter and subsequently went to hospital and after postmortem examination took the body of his daughter and cremated her at Kalna burning ghat. As he was mentally perturbed and shattered due to the death of his only daughter there was delay in lodging FIR.

16. The cross-examination of P.W. 1 reveals that on 14.10.1998 he submitted a prayer before the Officer-in-Charge of the concerned police station for getting back dead body of his daughter. He was also present at the time of inquest. He did not make any allegation against the appellants in his application dated 14.10.1998 and also at the time of inquest over dead body of Chandana Ghosh. His evidence further reveals that his daughter used to write letters to him and others after her marriage. His daughter visited his house 3/4 times after her marriage and his son-in-law also came to his house with Chandana. His evidence further gives us the picture that occasionally his son-in-law Amal stayed in his house and even attended school staying in his residence at night. It is clear from his evidence that his son-in-law

Amal Ghosh is a school teacher of Anandanagar S.C. Roy High School. His daughter and son-in-law Amal came to his house at the time of Durgapuja and Amal left his house keeping Chandana in his house during Durgapuja. He took away the parents of his son-in-law to Mayapur once after marriage. His daughter left his house last time on 5.10.1998 and died on 13.10.1998 and during this period he did not meet Chandana. He stated that he does not know whether Amal made Chandana nominee in his LIC policy which he started on 28.9.1998. His cross-examination reveals that he lodged the FIR as 4/5 days after death of Chandana when it struck into his mind that he should lodge the FIR.

17. Evidence of P.W. 3 reveals that he was the priest in the marriage of Chandana and Amal Ghosh. He learnt from Sachin Babu (P.W.I) that family members of Chandana used to torture her. P.W. 1 in his evidence did not state anything disclosing that he reported to P.W. 3 about torture on Chandana by her-in-laws. The evidence of P.W. 3 thus amounts to hearsay and the materials disclosed in evidence of P.W. 3 being vague, bald and omnibus we place no reliance on the evidence of P.W. 3.

18. Evidence of P.W. 4 reveals that after marriage he met with Chandana 2/3 times and he learnt from her that she was not well at her matrimonial home. He learnt from Chandana that she was passing her days through family problems. His evidence reveals that after receiving news of death of Chandana he came to the matrimonial home of Chandana and was a witness of inquest. Evidence of P.W. 4 does not reveal any element of torture on Chandana demanding dowry by the accused persons. Family dispute cannot be equated with torture demanding dowry.

19. P.W. 5 acted as barber in the marriage of Chandana Ghosh with Amal Ghosh. He in his evidence stated that Chandana was subjected to torture by the accused persons which he learnt from Chandana when he met Chandana some days after her marriage. His evidence reveals that Chandana told him that the accused persons demanded a motor cycle and gold ornaments from her father and concerning that matter their relation turned hostile.

20. We have already discussed the nature of evidence of P.W. 4 and expressed our opinion that evidence of P.W. 4 does not prove elements of torture on Chandana demanding dowry. Moreover, it appears from his cross-examination that though he was present at the time of inquest on the body of Chandana he did not make any allegation or complaint to police against appellants for the death of Chandana. His evidence further reveals that he saw parents of Amal Ghosh once or twice in the house of P.W. 1. Evidence of P.W. 3 and P.W. 5, the priest and barber respectively in the marriage of Chandana in our opinion are hardly believable. P.W. 3 practically stated nothing relating to torture on Chandana demanding dowry. His evidence in cross-examination reveals that during Durgapuja he saw Chandana and her husband in the house of P.W. 1. P.W. 5 had no visiting term with P.W. 1. It is difficult to believe that Chandana would talk with P.W. 5 who is a barber and that too on road. His evidence reveals that he met with Chandana 7/8 months after the marriage and before that he had no talk with her. It appears from the evidence of P.W. 11, the I.O. that this witness did not state to him that for want of motor cycle and gold ornaments Chandana was facing trouble in her in-laws house. This shows that P.W. 5 Introduced story of torture on Chandana demanding dowry for the first time in Court which was not disclosed by him to I.O. earlier. Such evidence of a person who did not disclose vital materials to I.O. earlier cannot be relied upon when we find that he had no special relation or intimacy with Chandana so that there was scope of Chandana to divulge anything to this witness.

21. P.W. 6 is a neighbour of father of Chandana. He in his evidence stated that at the time of Durgapuja Chandana came to her father's house and he asked her as to how she was at her matrimonial home and learnt from her that she was not well there. Chandana told him that her father gave gold ornaments which was 4 tollas less. She further stated to him that the accused persons also demanded a motor cycle and for that she was not well at her husband's place. The husband, his elder brother and parents used to ill-treat her at her matrimonial home.

22. Evidence of P.W. 6 in cross-examination reveals that he had talk with Chandana while he was passing by the side of her father's place and at that time no other person was with him. His evidence shows that he for the first time disclosed in Court relating to family matter of Chandana and he did not tell anything to the parents of Chandana. Evidence of P.W. 11 reveals that this witness did not state anything to him relating to torture on Chandana which he stated in Court. On the same analogy like P.W. 5, the evidence of P.W. 6 does not inspire confidence in our mind and in our opinion it would be too risky to rely on evidence of such a witness.

23. P.W. 7 is the aunt of Chandana Ghosh. She in her evidence stated that after marriage of Chandana the accused persons demanded gold ornaments weighing 4 tollas and a motor cycle from father of Chandana and Chandana was not happy at her matrimonial home. Chandana used to tell her the story of her sad life at her matrimonial home and she further stated that Chandana used to weep before her. She stated that Chandana committed suicide by hanging as she was subjected to torture by the accused persons.

24. Cross-examination of P.W. 7, the aunt of Chandana reveals that Chandana came to her father's house 3/4 times after her marriage. She saw her husband Amal at P.W. 1's house 2/3 times when he came to bring back Chandana. She saw Amal last time on the date of Laxmi Puja when Amal came to his father-in-law's house to take back Chandana. She saw parents of Amal once at P.W. 1's house. She admitted in cross-examination that she saw Amal to stay in the house of P.W. 1 for 1/2 nights. From the house of father-in-law of Chandana "tatta" i.e. presentation were sent to the house of Sachindra Ghosh (P.W. 1) and she saw what were the articles sent as presentation from the house of father-in-law of Chandana which were brought by AJoy Ghosh, brother of Amal Ghosh. After marriage of Chandana she invited Chandana and her husband Amal Ghosh in her house for lunch and they attended the lunch but, she does not remember the date.

26. Evidence of P.W. 8 reveals that the husband and other relatives of Chandana used to behave well with Chandana. He was declared hostile by the prosecution as he did not support the prosecution case. He stated that during inquest on the body of Chandana Ghosh P.W. 1 and his relatives made no complaint before the police against the accused persons. Though P.W. 8 was declared a hostile witness, the law is that the Court may accept at least some portion of evidence of a hostile witness if the Court finds that such portion of evidence is acceptable in coming to proper decision.

26. P.W. 9, the mother of deceased Chandana in her evidence stated that her daughter was not happy in her matrimonial home. After a lapse of two months of marriage her daughter used to express that she was tortured by the accused persons and the accused persons alleged that gold ornaments given in marriage were of less weight and other articles of gift were not up to the standard. She further stated that Chandana told her that Amal Ghosh had love affair with another girl. Her son-in-law also demanded one motor cycle from them through Chandana. She met her daughter for the last time 7-8 months after marriage of Chandana. At that time she had ill-

feeling with Chandana's husband and her husband Amal even slapped Chandana in her presence at her house. She stated that Chandana had committed suicide to get rid of the torture perpetrated on her by the accused persons in her matrimonial home.

27. The cross-examination of P.W. 9, the mother of the deceased Chandana Ghosh reveals that during the marriage ceremony of her two sisters on different dates both Chandana and Amal Ghosh attended the said two marriage ceremonies. Her son-in-law Amal Ghosh occasionally attended his school staying at their house and at that time her daughter Chandana also stayed with them. During the Durgapuja her son-in-law told to her that he was trying to find out a rented accommodation at Chandannagore. She also stated that relating to torture on Chandana she did not lodge any complaint before the police station or the local Panchayat authority before the incident. Her evidence further reveals that none of her family members visited the matrimonial home of Chandana after she left her house at the end of Durgapuja and before her death. She visited the house of her daughter only and that too before 1/1½ months prior to death of her daughter. She also stated in cross-examination that her daughter had no demand from them after her marriage. It appears from the evidence of I.O. (P.W. 11) that he did not examine P.W. 9 during investigation and did not record statement of P.W. 9 under Section 161 of the Cr.P.C.

28. Evidence of P.W. 13, the post-mortem surgeon reveals that he held post-mortem examination over the dead body of Chandana Ghosh and the post-mortem report prepared by him is ext. 7. He opined that cause of death was due to hanging which was ante-mortem in nature. We find that this doctor in his evidence did not state what injuries were found by him on the body of deceased Chandana Ghosh at the time of post-mortem examination which resulted into her death. Without mentioning anything in evidence as to the result of post-mortem examination found on different parts of body including any marks of ligature etc. the simple statement that cause of death in the opinion of the doctor was due to hanging which was ante-mortem in nature cannot be regarded as proper evidence on the part of post-mortem surgeon. The post-mortem surgeon must mention in his evidence nature of injuries he found on the body of the deceased during examination as a result of which he formed such opinion. The learned trial Judge should have been cautious in this matter when the post-mortem surgeon was examined and it appears to us that neither the learned Public Prosecutor-in-Charge of the case nor the learned trial Court took pains to adopt proper procedure for examination and recording of evidence of postmortem doctor.

29. In evidence some of the witnesses did not even identify the accused persons. Some of the witnesses did not state anything against all the appellants. P.W. 2, P.W. 3, P.W. 4, P.W. 5 and P.W. 8 did not identify in Court any accused. P.W. 1 did not state any; thing against the appellant Ajay Ghosh concerning torture and demand of dowry, P.W. 3, P.W. 4, P.W. 5 and P.W. 7 made general allegation against all the appellants. P.W. 6 stated about torture by husband and his elder brother. P.W. 9 stated about torture by the husband and also giving of a slap by the husband to her daughter which was not corroborated by P.W. 1. In their evidence nothing particulars of torture came out except general and omnibus allegation of torture. The name and address of the woman with whom the husband allegedly had love affair was not disclosed in evidence. Absence of any previous complaint and failure to produce letters of Chandana showing torture on her establishes that there was no such perpetrated torture demanding dowry on the deceased Chandana.

30. The appreciation of evidence of the witnesses as discussed above would reveal that prosecution story of torture on the deceased demanding dowry after marriage for 4 tollas gold and a scooter has not been proved convincingly. The evidence reveals

that the father of the deceased (P.W. 1) since marriage till death of Chandana Ghosh did not lodge any complaint or general diary before the police station or any other authority alleging that his daughter was subjected to perpetrated torture by the appellants for non-fulfilment of the demand of dowry for 4 tollas gold and a scooter. The evidence of P.W. 7, the aunt and P.W. 9, the mother is almost same with P.W. 1 and proper appreciation of evidence of P.W. 1, P.W. 7 and P.W. 9 reveals that there was normal relationship between deceased and her husband and other in-laws and not only that, there was normal relationship between the appellants and the parental family members of deceased Chandana Ghosh.

31. The evidence of the aforesaid witnesses clearly reveal that the husband Amal Ghosh occasionally stayed in his matrimonial home, that is, in the house of P.W. 1 and even attended his school staging several nights in the house of P.W. 1. We have found in the evidence of P.W. 1 that his daughter used to write letters to him and others after her marriage. No such letter or any other writing was produced in Court to prove that in the said letter or letters or any other writing there was allegation made by Chandana Ghosh relating to perpetrated torture on her by the appellants demanding further dowry of gold and scooter. During Durgapuja, the husband Amal Ghosh came to his house and dropped Chandana and after the Lakshmi Puja the husband took away Chandana to his house. P.W. 1 could not state whether Amal Ghosh made Chandana nominee in his LIC Policy which was started by him on 28.9.1998. It further transpired in evidence that on 14.10.1998 P.W. 1 submitted a prayer before the Officer -in-Charge of Kalna P.S. for releasing the dead body of Chandana Ghosh and in the said letter there was no allegation at all against the appellants concerning torture on Chandana Ghosh demanding dowry.

32. The evidence of P.W. 7 reveals that after marriage Chandana Ghosh visited her father's house 3/4 times. After Lakshmi Puja the husband Amal Ghosh came to his father-in-law's house to take back Chandana. She also admitted that Amal Ghosh stayed in the house of P.W. 1 for 1/2 nights. She once invited Chandana and her husband Amal Ghosh in her house for lunch though she does not remember the said date. Her evidence reveals that 'tatta' i.e. presentation were sent to the house of P.W. 1 from the house of the appellants during the pujas.

33. Evidence of mother, P.W. 9 reveals that during marriage ceremony of two of her sisters on different dates both Chandana and her husband Amal Ghosh attended the said marriage ceremonies. Her son-in-law Amal Ghosh sometimes attended his school staying at their house with Chandana. Not only that during Durgapuja her son-in-law disclosed to her that he is trying for a rented accommodation at Chandannagore. This disclosure was made as stay at Chandannagore would be convenient to attend his school and it indicates that he had the desire to stay with his wife Chandana at Chandannagore in rented accommodation. This witness did not lodge any complaint against the appellants anywhere before the incident.

34. We have already discussed that the evidence of P.W. 2, P.W. 3, P.W. 4, P.W. 5 and P.W. 6 is not trustworthy being the type of hearsay and they had no such intimacy or special relation either with Chandana or her father to enquire about the married life of Chandana in her matrimonial home.

35. If the prosecution case of torture demanding dowry was true and acceptable the husband of Chandana Ghosh would not have stayed in his matrimonial home for few days to attend his school and would not have spent several nights in his matrimonial home. The 'tatta' i.e. presentation would not have been sent by the appellants to the house of P.W. 1 during the pujas. The evidence that after Lakshmi Puja the husband took away Chandana coming to house of P.W. 1 also shows normal relation between

the two families united through the marriage ceremony between Chandana Ghosh and Amal Ghosh. Had there been such story of perpetrated torture on Chandana Ghosh by the appellants demanding dowry for 4 tollas gold and scooter. P.W. 1 would have definitely lodged complaint either to police or to other authorities. It is clear from evidence that P.W. 1 even did not lodge any general diary also concerning torture on her daughter on account of demand of further dowry. From evidence it has also been revealed that deceased Chandana used to write letters to P.W. 1 and others after marriage but no letter or any other writing was produced before the Court to prove that in those letters or writing deceased Chandana ever indicated torture on her demanding dowry. Considering the entire evidence we find that there was a happy and normal relationship between the appellant's family and the family members of P.W. 1. For this reason P.W. 1 did not lodge any complaint against the appellants on 14.10.1998 immediately after he found that his daughter had committed suicide. P.W. 1 lodged the FIR eight days after the Incident and in evidence stated that he lodged the FIR subsequently as it struck into his mind that he should lodge FIR.

36. We are unable to agree with the views of Mr. R.B. Mahato that Section 113-B of the Evidence Act is clearly applicable in this case and the appellants by leading evidence could not rebut the presumption. Section 113-B of the Evidence Act runs as follows:

-B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code.

37. The intention of the legislature was not that unnatural deaths of all housewives within seven years of marriage would automatically end in conviction of the husbands and other relatives of the matrimonial homes. In the instant case before us it is undoubtedly true that the deceased Chandana Ghosh died within 9 months of her marriage. Incident is definitely very unfortunate and exposes a very sad state of affairs and we fully share the grief and sorrow of P.W. 1. Still the law is that the prosecution has to prove its case beyond all reasonable doubts and thereafter, the prosecution can lay emphasis on the presumption of Section 113-B of the Evidence Act for the failure of the appellants or accused to lead proper evidence to rebut the presumption under Section 113-B of the Evidence Act.

38. In the instant matter there is no evidence before the Court to prove that 'soon before her death' the deceased Chandana Ghosh was subjected to cruelty, torture or harassment by her husband and other in-laws. It is true that 'soon before her death' should not be interpreted as torture immediately before her death or 2/3 days or 10/15 days before her death. We admit that 'soon before her death' may vary according to facts and circumstances of each case and in appropriate cases the period may be longer to come within the purview of 'soon before her death'. In the instant matter from the nature of the evidence discussed above, we find that there was happy, peaceful and normal relation between the husband and wife and also the family of the appellants and the family of the complainant. Accordingly, in this case the prosecution cannot take advantage of presumption under Section 113-B of the Evidence Act.

39. The examination of the appellants under Section 313 of the Cr.P.C. was also not

proper. There was no evidence that deceased Chandana was murdered but the learned trial Court while examining the accused persons under Section 313 of the Cr.P.C. in question No. 3 put to them that they had murdered Chandana. Putting of a question without any evidence or element is not proper and it causes prejudice to the accused.

40. The above discussion on the basis of evidence and materials on record clearly establishes that the prosecution has failed to prove its case beyond all reasonable doubts against the appellants. It is very unfortunate that a young housewife died within 9 months of her marriage. But we did not find sufficient and cogent evidence against the appellants to come to the conclusion that due to their perpetrated torture demanding dowry for the gold and scooter deceased Chandana Ghosh found no other way but to commit suicide. We have already discussed that evidence discloses normal relation between the two families united through the marital tie and there was no perpetrated torture on deceased Chandana demanding dowry. Accordingly, both the charges levelled against the appellants under Sections 498-A and 304-B of the IPC were not proved and prosecution failed to bring home the charges levelled against the appellants. The appellants are found not guilty under Sections 498-A and 304-B of the IPC. The judgment and order of conviction and sentence passed by the learned trial Court are hereby set aside.

41. The appeal thus stands allowed and the appellants are acquitted of the charge under Sections 498-A and 304-B of the IPC. The appellants who are on bail granted by this Court during pendency of the appeal are hereby discharged from their bail bonds and set at liberty, if not wanted in connection with any other case. This Judgment and order will govern both the appeals being CRA 415 of 2002 and CRA 416 of 2002.

42. Criminal Section is directed to send down lower Court records along with copy of judgment to the trial Court for information and necessary action.

P.S. Datta, J.

43. I agree.

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