CASE DETAILS

BUDDHADEB SAHA & ORS.

v.

THE STATE OF WEST BENGAL

(Criminal Appeal No. 1692 of 2022)

SEPTEMBER 13, 2023

[J. B. PARDIWALA AND PRASHANT KUMAR MISHRA, JJ.]

HEADNOTES

Issue for consideration: Whether the High Court committed any error in passing the impugned judgment holding the husband and in-laws guilty for the offence punishable u/ss. 498A, 304B read with 34 IPC.

Evidence – Circumstantial evidence – Dowry demand by husband and in-laws – Commission of suicide by victim-wife on account of consumption of poison – However, post mortem report silent as to the exact cause of death and the viscera report silent as to traces of poison being found therein – Effect of, on prosecution case:

Held: Considering the overall evidence on record, in the absence of any positive viscera report, it could not be said that the prosecution failed to establish its case – Absence of detection of poison in the viscera report alone need not be treated as a conclusive proof of the fact that the victim has not died of poison – Intrinsic evidence on record to indicate that the case is one of suicide by poison – Deposition of Medical Officer who performed the post mortem that odour material with pungent smell found in the stomach – Expert opined that in cases of consumption of poison, such kind of pungent smell would be found – Furthermore, viscera was received by the FSL for chemical analysis after five months – Medical Officer admitted that if there is any delay in forwarding the viscera sample for chemical examination, the poison may not be detected – In view thereof, the concurrent findings by the courts below holding the husband and the in-laws guilty for the offence punishable u/ss. 498A, 304B read with 34 IPC not interfered with. [Paras 23, 26, 27, 30, 38, 39]

LIST OF CITATIONS AND OTHER REFERENCES

Mahabir Mandal v. State of Bihar [1972] 3 SCR 639 : (1972) 1 SCC 748; *Raghav Prapanna Tripathi v. State of U.P.* [1963] SCR 239 : AIR 1963 SC 74 – referred to.

Modi's Medical Jurisprudence and Toxicology, 23rd Edition, Editors : K. Mathoharan and Amrit K Patnaik; Ken Kulig MD, in Critical Care Secrets (Fourth Edition) 2007 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1692 of 2022.

From the Judgment and Order dated 23.07.2019 of the High Court at Calcutta in CRA No. 26 of 2018.

Appearances:

Md. Apzal Ansari, V. N. Raghupathy, Advs. for the Appellants.

Avishkar Singhvi, Ms. Astha Sharma, Shreyas Awasthi, Vivek Kumar, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

ORDER

1. This appeal is at the instance of four convicts and is directed against the judgment and order dated 23rd July, 2019 passed by the High Court at Calcutta in Criminal Appeal No. 26 of 2018, by which the High Court dismissed the appeal filed by the convicts (appellants herein) and thereby affirmed the judgment and order of conviction and sentence passed by the Additional sessions Judge, 2nd Court, Katwa, Burdwan, West Bengal in the Sessions Trial No. 13 of 2014 holding the appellants guilty for the offence punishable under Sections 498A, 304B read with 34 of the Indian Penal Code, 1860 (for short, "the IPC"). The Trial Court sentenced them to suffer rigorous imprisonment for three years with a fine of Rs. 5,000/- each for the offence punishable under Section 498A of the IPC and rigorous

imprisonment for a period of seven years for the offence punishable under Section 304B of the Indian Penal Code.

CASE OF THE PROSECUTION:-

2. The appellant No.1 (Buddhadeb Saha) is the son of the appellants Nos. 2 and 3 resply. The appellant No.4 is the younger brother of the appellant No.1. The appellant No.1 was married to the deceased, namely, Tuli Shah. The marriage was solemnized on 24.02.2011.

3. On 19th September, 2011, the de facto complainant-Uma Shankar Shah (PW-1) lodged an First Information Report at the Ketugram Police Station stating that his niece Tuli Shah was married to the appellant No. 1 past couple of months. He further stated that as the parents of Tuli Shah passed away while she was of a very young age, it is he who took care of Tuli Shah and brought her up. At the time of marriage, cash and gold ornaments were given to the family of the husband of Tuli Shah. However, within a short time, the appellants started harassing the deceased for want of more dowry.

4. It is the case of the prosecution that on 16th September, 2011, the deceased committed suicide by consuming poison on account of incessant harassment by the appellants at her matrimonial home.

5. Upon completion of investigation, chargesheet was filed for the offences enumerated above. The Trial Court framed charge for the offence punishable under Sections 498A, 304B read with 34 of the Indian Penal Code. The accused persons pleaded not guilty and claimed to be tried.

6. In the course of the trial, the prosecution examined as many as 11 witnesses and also led documentary evidence.

7. The Trial Court upon appreciation of the evidence on record came to the conclusion that the prosecution had successfully established its case against the accused persons beyond reasonable doubt and accordingly held them guilty.

8. The appellants herein being dissatisfied with the judgment and order of conviction and sentence passed by the Trial Court, went in appeal before the High Court. The High Court thought fit to affirm the judgment and order of conviction passed by the Trial Court and dismissed the appeal accordingly.

9. In such circumstances, the appellants are here before this Court with the present appeal.

10. We take notice of the fact that the appellant No.3 Pratima Saha (Mother-in-law) of the deceased passed away during the pendency of this appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:-

11. The learned counsel appearing for the appellants vehemently submitted that the Trial Court as well as the High Court committed a serious error in holding the appellants guilty of the offence they were charged with. According to the learned counsel this is a case of no evidence.

He laid much emphasis on the fact that the prosecution has not been able to establish the exact cause of death. He would argue that if it is the case of the prosecution that the deceased committed suicide due to incessant harassment, then prosecution has to establish on the basis of evidence on record as to what was the exact cause of death.

12. The learned counsel laid much emphasis on the fact that the post-mortem report does not say anything about the exact cause of death.

13. He further submitted that even the histopathology report is silent about any traces of poison in the viscera. In such circumstances, according to the learned counsel, the prosecution has not been able to establish that the case on hand is one of unnatural death.

14. He further submitted that the appellants have already undergone almost six years of sentence. He would submits that assuming for the moment that there was harassment for the purpose of dowry, at best, they could have been convicted for the offence punishable under Section 498A of the Indian Penal Code, but, in any event, not under Section 304B of the Indian Penal Code.

15. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same be allowed and the appellants be acquitted of all the charges.

SUBMISSIONS ON BEHALF OF THE STATE:-

16. On the other hand, this appeal has been vehemently opposed by Mr. Avishkar Singhvi, the learned counsel appearing for the State of West Bengal. He would submit that no error not to speak of any error of law could be said to have been committed by the Courts below in holding the appellants guilty of the offence with which they were charged.

17. The learned counsel laid much emphasis on the fact that within couple of months from the date of marriage, the deceased died at her matrimonial home under suspicious circumstances. According to him, there is thumping evidence on record to indicate that there was incessant harassment to the deceased by all the appellants for want of dowry.

18. The learned counsel invited the attention of this Court to Section 113B of the Indian Evidence Act, 1872 (for short, "the Evidence Act") which raises a presumption against the accused. Section 113B of the Evidence Act reads thus:-

> *"Section 113B. 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."*

19. The learned counsel drew a fine distinction between Sections 113A and 113B resply of the Evidence Act. In Section 113A, the Legislature has thought fit to use the word "may". Therefore, in a given set of facts, the Court may presume whereas under Section 113B of the Indian Evidence Act the word used is "shall". In view of the word "shall", the Court is left with no other option but to draw the presumption.

20. He would submit that there is intrinsic evidence on record to indicate that the deceased died on account of consumption of poison. He would submit that there was long delay in forwarding the sample of viscera collected during the course of post-mortem to the Forensic Science Laboratory and perhaps on account of delay, the histopathology report is silent in so far as any traces of poison being found in the viscera.

21. In such circumstances referred to above, Mr. Avishkar Singhvi, the learned counsel prayed that there being no merit in this appeal the same may be dismissed.

22. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment.

ANALYSIS

23. Indisputably, the post mortem report is silent in so far as the exact cause of death is concerned. There is no escape from the fact that the viscera report is also silent in so far as any traces of poison being found therein.

24. However, the Trial Court in its judgment has discussed the aforesaid aspect of the matter in a quite satisfactory manner, which reads as under:-

> *"It is the opinion of Modi that in some cases, which had definite signs of death from poisoning, the Chemical Examiner failed to detect any poison and in that case the duty of the Judge is to weigh the evidences, the symptoms, post-mortem appearances etc., to reach to the just conclusion. It was also the opinion of Modi that unsuitable samples, incorrect sampling sites, delayed storage, delay in examination of the viscera, use of wrong analytical technique may frustrate or distort proper analysis and the final outcome may be wrong. I have gone through the observations made by Modi & HWV Cox in this regard. I have gone through the observations made by them in respect various poisons and the symptoms. As per the inquest report (Ext-2), the police officer had noticed that froth was coming out from the right nostril. The skin color noted by the police officer was whitish. During post mortem it was noticed that Rigor Mortis was not present, the eyes were half closed, froth was coming out from the nose and mouth. On opening of the body the Oesophagus, lungs, trachea and bronchial trees were found congested. In the stomach the doctor found food particles and fluid with pungent smell. On analysis of various cases Modi & Cox had framed a guideline of detection of poison from the symptoms. According to them, white froth may come out from mouth and nose in case of Opium or its alkaloids. It was also their opinion that in that*

case all the internal organs like stomach or lungs may be congested. They have also opined that if on opening of stomach detectable smell may found, that may be the effects of the poison like organophosphorus compounds, opium, formaldehyde etc.

Here, in this case the post mortem observations shows that it was definitely a case of death due to poisoning. It is fact that the nature of poison could not be ascertained but all the symptoms proves that the death of Tuli was due to consumption of poison and there is no other probable cause of her death. Obviously the death was caused otherwise than under the normal circumstances."

(Emphasis supplied)

25. The aforesaid findings recorded by the trial court were looked into by the High Court in paragraph 13 of its impugned judgment discussed as under:-

"The accused persons in vain sought to set up a futile plea by way of suggestion to the prosecution witnesses that Tuli died under normal circumstances due to illness and not by consuming poison. This plea could not be substantiated by any iota of evidence. Section 106 of the Indian Evidence Act provides that when any fact is specially within the knowledge of any person, the burden of providing that fact is upon him. It is not in dispute that Tuli was married to the appellant No.1 on 24th February, 2011. The fact that Tuli died in her matrimonial house within seven months of her marriage has not been denied. From the evidence of PW-9 Dr. N. Ghatak it transpires that no poison was found in the viscera sample of deceased which was received on 22nd February, 2012. PW-10 is the medical officer who held post-mortem examination over the dead body of Tuli on 17th September, 2011. This witness testified in his evidence that on visceral examination "odour material with pungent smell was found in the stomach". PW-10 opined that if anyone takes poison, such kind of pungent smell may be found. PW-10 did not give any conclusive opinion as to the cause of death since the viscera was sent for chemical examination. Being quizzed in course of evidence, PW-10 admitted that if delay is caused in sending viscera sample for chemical examination, the poison might not be

found. In the present case, the viscera was received for chemical examination on 22nd February, 2012 that is, after five months. There is nothing on record to show that the viscera sample was preserved properly during the aforesaid period. Though no poison could be detected in the viscera sample of the deceased, the factual position of the case in hand substantiated by the evidence of the witnesses and the inquest report go to show that death of Tuli had occurred "otherwise than under normal circumstances". The inquest report lends credence to the prosecution case as it appears therefrom that death of Tuli was caused by consuming poison. At the time of inquest it was noted that froth was coming out from the mouth and nose of the deceased. The expression "normal circumstances" apparently means natural death. In other words, the expression "otherwise than under normal circumstances" means death not being in the usual course but apparently under suspicious circumstances. In the case of Bhupendra Versus State of Madhya Pradesh reported in 2013(4) Crimes 480(Supreme Court) it was held that chemical examination of viscera is not mandatory in every case of dowry death. For the purpose of Section 304 B IPC mere fact of an unnatural death is sufficient to invite a presumption under Section 113B of the Evidence Act. The relevant paragraph 26 of the judgment in Bhupendra's case (supra) is quoted hereinbelow:

> *"26. These decisions clearly bring out that a chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable under Section 304-B of the IPC or under Section 306 of the IPC takes place; in a case of an unnatural death inviting Section 304-B of the IPC (read with the presumption under Section 113-B of the Evidence Act, 1872) or Section 306 of the IPC(read with the presumption under Section 113- A of the Evidence Act, 1872) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary.*

Reverting to the case in hand, from the evidence on record it is clear that death of Tuli had occurred otherwise than under normal circumstances."

(Emphasis supplied)

26. There is intrinsic evidence on record to indicate that the case on hand is one of suicide by poison. The PW-10 (Medical Officer) who performed the post mortem has deposed that "odour material with pungent smell was found in the stomach". The expert opined that in cases of consumption of poison, such kind of pungent smell would be found. The PW-10 admitted that if there is any delay in forwarding the viscera sample for chemical examination, the poison may not be detected.

27. Unfortunately, in the case on hand, the viscera was received by the FSL for chemical analysis on 22nd February, 2012 that is after a period of almost five months.

28. In a research article titled, "Negative viscera report and its medico-legal aspects", it has been mentioned that in many cases, the viscera report is negative on three major basis, namely it can be procedure based, sample based or lab based. The said research paper reveals that there are circumstances in which viscera test may not reveal the presence of compounds from the following circumstances:—

1. Sample quantities received by FSL much less than those prescribed for optimal analysis;

2. Required quantity and quality of preservative not used during sampling;

3. Appropriate temperature, time and container not maintained for preservation of sample;

4. Difficulty in detection of poison due to vomiting, purging or elimination from the system by the kidneys or due to prolonged stay in the hospital immediately prior to the death;

5. Not sending stomach wash (gastric lavage) and vomit along with viscera for examination;

6. Some organic poison decompose due to improper preservation or temperature control;

7. Site of sample collection on the body also play an important role;

8. In postmortem decomposition, many poisons present in the tissue undergo chemical changes which cannot be detected in routine toxicological analysis;

29. This Court in *Mahabir Mandal v. State of Bihar,* (1972) 1 SCC 748, looked into the observations found at page 477 of the Modi's Medical Jurisprudence and Toxicology (Seventeenth edition) and held that under some circumstances, if the whole of the poison has disappeared from the lungs by evaporation, or has been removed from the stomach and intestines by vomiting and purging, and after absorption has been detoxified, conjugated and eliminated from the system by the kidneys and other channels, it is possible that there may not be traces of poison.

30. Thus, the absence of detection of poison in the viscera report alone need not be treated as a conclusive proof of the fact that the victim has not died of poison.

31. In *Mahabir Mandal* (supra), this Court has ob- served as under:-

"Empty reference has been made by Mr.Chari to report dated December 23, 1963 of the Chemical Examiner, according to whom no poison could be detected in the viscera of Indira deceased. This circumstance would not, in our opinion, militate against the conclusion that the death of the deceased was due to poisoning. There are several poisons particularly of the synthetic hyp- notics and vegetable alkaloids groups, which do not leave any characteristic signs as can be noticed on post mortem examination."

(Emphasis supplied)

32. The above observation of this Court was based on the reference made in the Modi's Medical Jurisprudence and Toxicology. Those references were also referred to by this Court, which are as follows:-

"It is quite possible that a person may die from the effects of a poison, and yet none may be found in the body after death, if the whole of the

poison has disappeared from the lungs by evaporation, or has been removed from the stomach and intestines by vomiting and purging, and after absorption has been detoxified, conjugated and eliminated from the system by the kidneys and other channels. Certain vegetable poisons may not be detected in the viscera, as they have no reliable tests, while some organic poisons, especially the alkaloids and glucosides, may be oxidation during life or by putrefaction after death, be split up into other substances which have no characteristic reactions sufficient for their identification."

(Emphasis supplied)

33. As pointed out by this Court in a number of cases, where the deceased dies as a result of poisoning, it is difficult to successfully isolate the poison and recognise it. Lack of positive evidence in this respect would not result in throwing out the entire prosecution case, if the other circumstances clearly point out the guilt of the accused.

34. According to Modi's Medical Jurisprudence and Toxicology, 23rd Edition, Editors : K. Mathoharan and Amrit K Patnaik, the preserved materials should be sent to the concerned Forensic Science Laboratory, through the concerned police station as quickly as possible. Otherwise, the poison may not be detected during the analysis of the vis- cera, even though they may contain some poison.

35. Ken Kulig MD, in Critical Care Secrets (Fourth Edition), 2007 states that the gastric lavage must be performed soon after ingestion to be at all effective in removing the drugs from the stomach. For this reason, many clinicians do not lavage patients who have overdosed if more than 1 hour has elapsed since ingestion.

36. We are conscious of the legal proposition that while dealing with a case of circumstantial evidence, the Court has to be circumspect. A note of caution was sounded by a Constitution Bench of this Court in *Raghav Prapanna Tripathi v. State of U.P.* [AIR 1963 SC 74] quoting (AIR p. 89 para 60) from *R. vs. Hodge* [(1838) 2 Law CC 227].

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious

the mind of the individual the more likely was it, considering such matter, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

37. Thus, the Court should not unwittingly fall into the same dangerous trap which the Constitution Bench has cautioned to be guarded against.

38. Considering the overall evidence on record, we find it difficult to take the view that in the absence of any positive viscera report, the prosecution could be said to have failed to establish its case.

39. For the foregoing reasons, we have reached to the conclusion that we should not interfere with the concurrent findings recorded by the two Courts below.

40. In the result, this appeal fails and is hereby dismissed.

41. Pending applications, if any, stand disposed of.

Headnotes prepared by:
Nidhi Jain

Appeal dismissed.