

MANU/WB/0439/2011

Equivalent Citation: 2012CriLJ808, II(2012)DMC19

**IN THE HIGH COURT OF CALCUTTA**

CRA No. 86 of 2005

Decided On: 01.07.2011

Appellants: **Sekhar Ray and Ors.**  
**Vs.**

Respondent: **The State of West Bengal**

**Hon'ble Judges/Coram:**

*J.N. Patel, C.J. and Asim Kumar Roy, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: P.S. Bhattacharya, Partha Banerjee and Ranjit Sanyal, Advs.*

*For Respondents/Defendant: Ranjit Kr. Ghosal, Adv.*

**JUDGMENT**

**J.N. Patel, C.J.**

**1 .** This appeal arises out of the judgment and order dated 20/12/2004 and 21/12/2004 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Alipurduar, Jalpaiguri in Sessions Trial No. 23 of 2004 arising out of Sessions Case No. 35 of 2004.

**2 .** The Appellants were tried on a charge of having subjected Smt. Shanti Roy to cruelty to compel her to meet their demand for dowry due to which she committed suicide within a period of 7 years from marriage and thereby committed offences under Section 498A I.P.C., 306 I.P.C. and 304B I.P.C. The Appellants pleaded not guilty and came to be tried. It was their case that Smt. Shanti Roy committed suicide as she was not happy with the marriage and at the time of incident none of them were present at home and that they have been falsely implicated by the relatives of the deceased. The trial court on conclusion of the trial found the Appellants/accused guilty of having committed offence under Section 498A of I.P.C. and sentenced them to suffer R.I. for 3 years with a fine of Rs. 1000/-, in default, to suffer imprisonment for 3 months. The trial court also found them guilty of having committed offence under Section 306 of I.P.C. and sentenced them to suffer R.I. for 10 years with a fine of Rs. 3000/-, in default, to suffer imprisonment for 6 months and for having committed offence under Section 304B of I.P.C. sentenced them to imprisonment for life with a fine of Rs. 5000/-, in default, to suffer imprisonment for one year. Substantive sentences were directed to run concurrently and they were also given set off.

**3 .** It is the prosecution's case that Shanti Roy, who was the daughter of Late Satyapriya Saha and Smt. Satyabati Saha, was married to Shri Sekhar Roy on 20/02/1994. It was a settled marriage. In marriage a sum of Rs. 16000/- was given in cash to Sekhar Roy demanded as dowry and in addition thereto wooden cot, dressing table, alna and gold ornaments like chain, churi, hair ring, utensils, B. P. L. black and white T.V. and other household items were given. In spite of having given sufficient dowry within a short time additional demand of Rs. 5000/- was made and

as family members of Shanti Roy could not arrange for a sum of Rs. 5000/-, she was treated with cruelty to the extent of causing her physical torture. The deceased Shanti Roy disclosed the fact to her brother, mother and other relatives and even requested one acquaintance of her parents to provide a sum of Rs. 5000/-. But as the demand was not fulfilled, she continued to suffer at the hands of her husband and in-laws. At the time of the incident she was pregnant carrying 8 months' old foetus and she was not provided with food and treated with cruelty. As a result, on 31/07/1995 she committed suicide in the toilet of her in-laws by pouring kerosene and setting herself on fire. The incident attracted the neighbours who came to her rescue but by the time the neighbours rushed towards the place of occurrence she was burnt to death. On coming to know her relatives came to the village and learnt that the neighbours had taken her to Alipurduar S. D. Hospital where she was declared dead by the doctor. F.I.R. (Exbt. 1) came to be lodged by Chitta Ranjan Saha (P.W. 1), husband of maternal cousin of the deceased. The police prepared an inquest report under Section 174 of Code of Criminal Procedure and the dead body was sent for post-mortem examination.

**4.** Dr. Suprobhat Jana, P.W. 9, conducted the post-mortem examination on the dead body of Smt. Chaya Saha @ Shanti Roy on 01/08/1995. According to him the dead body was identified by C/. No. 879 Aswani Kr. Barman. The whole body was almost burnt with swelling and congestion of face, eye lids and lip. Line of demarcation and vesication present. No external injury was seen, lung was congested. Uterus about 28 weeks' pregnancy containing dead female foetus. In his opinion, the case appears to be the case of ante-mortem burns and the cause of death was kept pending till the report of viscera was received. The carbon copy of the P.M. report prepared by him in the same process and signed by him was marked (Ext-5). The viscera report ( Exbt. 6) shows that there was no presence of poison detected in the viscera of the deceased Chaya Saha @ Shanti Roy. Thus in his opinion the cause of death was due to ante-mortem burns. In the cross-examination, nothing has been brought on record to show that the opinion given by Dr. Jana as to the cause of death was incorrect. Therefore, we can safely conclude that the deceased Chaya Saha @ Shanti Roy died due to ante-mortem burns.

**5.** It is the contention of the learned Counsel for the Appellants that the deceased committed suicide as she was not happy with her marriage and that the allegations against the Appellants/accused that in the marriage the husband Sekhar Roy and his relatives demanded dowry is not correct as no dowry in the form of cash and household articles was ever demanded or given and that question of demanding a sum of Rs. 5000/- is an afterthought mainly to implicate the Appellants/accused. It is further contended that all the witnesses examined by the prosecution were relatives of the victim and their evidence before the court is hearsay in nature. It is submitted that the fact that the victim did not have food and committed suicide by setting herself on fire is a clear indication that she was not happy with her marriage and was in depression due to which she committed suicide and that there is no evidence to show against the Appellants/accused having aided or abetted her to commit suicide. It is contended by the learned Counsel for the Appellants/accused that at the time Shanti Roy committed suicide there was no one at home and that is why the neighbours rushed to the place of occurrence to rescue the victim. The Appellants/accused having learnt about the incident rushed to their home and found that the victim had burnt herself which was duly informed to her relatives.

**6.** It is submitted that the prosecution witnesses contradict each other in respect of the demand of dowry and have tried to falsely implicate the Appellants/accused who are innocent and that no case has been made out by the prosecution that the Appellants/accused having treated the victim with cruelty to coerce her to fulfill the

demand for Rs. 5000/- as dowry due to which the victim committed suicide. Therefore, the Appellants/accused deserve to be acquitted.

**7.** On the other hand, the learned Counsel appearing on behalf of the State has stated that the fact that the victim committed suicide within 7 years of marriage is not disputed and it is sufficiently established by the prosecution that the reason for the same was that she was treated with cruelty in order to extort dowry i.e. the sum of Rs. 5000/-. It is further submitted that the prosecution having established the case against Appellants/accused by examining the relatives of the victim and neighbours that she was treated with cruelty in order to extort dowry due to which she committed suicide and therefore necessary presumption will have to be drawn as to abetment of suicide by the husband of the victim and her relatives as provided under Section 113-A of the Evidence Act. It is submitted that the trial court has rightly come to the conclusion that the Appellants/ accused are guilty of having committed offences under Section 498A, 306 and 304B of I.P.C. Therefore, they do not deserve any sympathy particularly in the backdrop that the victim was pregnant and carrying a foetus of 8 months and therefore, the trial court was justified in sentencing them to suffer imprisonment for life. Now let us examine as to whether the prosecution has proved that the victim was subjected to cruelty by the Appellants who are the husband and relatives of the deceased and that such harassment was with a view to coerce her and her relative to meet any unlawful demand of Rs. 5000/-.

**8.** In this case apart from the near relatives the prosecution has examined the neighbours who had come to the rescue of the victim but could not save her and can be considered to be natural witnesses such as Smt. Jhuma Sengupta P.W. 2, Rajesh Sengupta P. W. 3 and Suranjan Bose P.W. 11. Smt. Jhuma Sengupta has deposed before the court that at the time of incident which was around 10-30 A.M. while she was cleaning fish near the tube well, she found smoke coming out of the bath room of Shanti Roy, so she called her father-in-law Pranoy Sengupta and drew his attention to the smoke. On this her father-in-law shouted for help but no one responded from the house of the accused person. However local persons, assembled there and a young boy opened the door of the bath room and she found Shanti burning and so she lost her senses. She has specifically stated that being a neighbour she has noticed that the accused person used to quarrel. She has also stated about the fact that the mother and brother of Shanti Roy used to visit her and that on the day of her death in the morning Shanti Roy told her that she has not taken food; so she advised her to take food. Though the witness was declared hostile but from her evidence it is quite clear that the accused person used to quarrel with the deceased and on the day of the incident the deceased was without food. Next important witness is Rajesh Sengupta P.W.3, who actually made an attempt to rescue the victim. In his evidence he stated that they were playing carom board and at 11 A. M. he heard Pranoy Sengupta shouting; so he rushed to the house and it was pointed out to them that smoke was coming from latrine of the house of Sekhar Roy, as he saw smoke coming out from the latrine of the accused person and the door which was of tin-sheet was close and therefore he tried to open the door with the help of log and the tin-sheet was broken and saw the lady was burning. Fire Brigade came there and they removed the body and took her to the hospital and he came to know the body was of Sekhar's wife and she has died. This witness is also signatory to the inquest report. The other neighbour who has been examined is Suranjan Bose P.W. 11 whose attention is also attracted on hearing hue and cry 'fire-fire' from the house of Sekhar Roy. He found the wife of Sekhar burning. In order to put down the fire he wanted blanket like material from the sisters of Sekhar but they could not provide the same. He found one jute sack (sic) bag lying nearby and got the same drenched with water and tried to put down (extinguish) fire, then he poured water on her body and succeeded in putting down (extinguishing) fire. The body was sent to S. D. Hospital,

Alipurduar. He has also deposed to the effect that he learned from local people that the accused person used to pressurize the lady which prompted her to commit suicide. One thing is clear that the prosecution is able to bring on record by examining the neighbours particularly Suranjan Bose that the sisters of the Appellant/accused Sekhar Roy were present in the house when his wife got burnt in the toilet. Therefore, the stand taken by the Appellants/accused that they were not present in the house at the time of incident does not appear to be correct. Therefore if one considers the evidence of these 3 neighbours it becomes clear that the accused person used to quarrel with Shanti Roy and on the day of the incident the victim was without food and that she was found burning in the toilet. The prosecution has examined the relatives of the victim namely Madhab Saha P.W. 5, brother of the victim and Satyabati Saha P.W. 14, mother of the victim, who have in clear terms stated that in the marriage there was the demand of Rs. 16000/- in cash and so it was given to Sekhar along with other household articles and T.V. as dowry. Shanti Roy disclosed to her brother as well as mother Satyabati Saha that she was being physically tortured by Sekhar and her family members who were demanding Rs. 5000/- during his visit to them on one occasion to bring his sister. Madhab Saha even assured the accused Sekhar Roy and his family members that he will pay a sum of Rs. 5000/- to them on his sister's return to their house but Madhab Saha could not fulfill the promise when he sent back his elder sister to the matrimonial home after 2 1/2 months. It has come in his evidence that the accused person asked him to collect the money as soon as possible and after about 7 months when he visited his sister she told him that the accused persons were going to kill her if the money was not provided and they also behaved very badly with him. He requested them for further time to give the money. On his return, he disclosed the fact to his maternal brother-in-law Chitta Ranjan Saha P.W. 1. On the last occasion when his sister visited them they could not pay Rs. 5000/- and she was sent back to her matrimonial home. Within 15/20 days thereafter they learnt about their sister having died due to burn. Madhab Saha stands corroborated by P.W. 1 Chitta Ranjan Saha who is his maternal cousin's husband; so also Khokon Dutta P.W. 7 who was asked to help them. Even the victim pleaded with Khokan Dutta to lend money so that it can be paid to the Appellant/accused. The mother of the victim Satyabati Saha P.W. 14 has also in her evidence narrated the same facts. Therefore, the evidence clearly goes to show that since the time of marriage till the victim died due to burn injuries her in-laws i.e. the Appellants/accused continued to torture her to fulfill the demand for a sum of Rs. 5000/- and whenever the victim came to visit her parents' home she was persuaded to go back to her matrimonial home with an assurance to in-laws i.e. the Appellants/accused that the demand would be fulfilled. This sufficiently goes to show that the prosecution has established that the death of Shanti Roy has been caused by burns she having committed suicide and that it has occurred within 7 years of her marriage and soon before her death i.e. till her last visit to her parents she was subjected to torture by the Appellant/accused i.e. the husband and his relatives in connection with demand for dowry i.e. sum of Rs. 5000/-. Therefore, the trial court was justified in holding the Appellants/accused guilty of having committed offence under Section 304B i.e. dowry death. Further taking into consideration that the victim was pregnant, she was tortured, harassed by words and deeds, not served and allowed to take food as the demand for dowry was not fulfilled, leaving no option which led the deceased to commit suicide by pouring kerosene on herself in the latrine of her husband's house and setting herself on fire, constitute all the ingredients of abetment to commit suicide. Therefore, we have no hesitation to hold that the prosecution has established beyond reasonable doubt that all the Appellants/accused having treated the victim with cruelty with a view to coerce her and her relatives to meet the unlawful demand of Rs. 5000/- ultimately drove her to commit suicide.

**9.** On the point of sentence, we find that the trial court was of the considered view that this is a case which requires harsh punishment, keeping in mind the brutality and similar nature of such offences increasing in the society and considering the helpless condition of the victim of dowry death i.e. the victim like Shanti Roy was forced to commit suicide and therefore imprisonment for life and a fine of Rs. 5000/- was sufficient and justified and therefore proceeded to sentence all the accused for imprisonment for life and fine for having committed offence under Section 304B I.P.C. In our view though the offence committed by the accused person does not call for any sympathy of this Court but then the court should also keep in mind the principle of proportionality while imposing the sentence. Therefore considering their age and family background in our view punishment for having committed offence under Section 304B I.P.C. can be reduced to R.I. for 10 years and a fine of Rs. 5000/-, in default, to suffer imprisonment for 2 years as this would be just and proper and sufficient to act as deterrent to potential offenders of the class to which Appellants/accused belong. On other counts we find that the sentence imposed is appropriate and does not call for any interference. Therefore, we partly allow the appeal to the extent of reducing the sentence to imprisonment for 10 years and a fine of Rs. 5000/-, in default, to suffer imprisonment for 2 years for the offence under Section 304B I.P.C. with a further direction in case the Appellants/accused pay the fine imposed on them on all counts it shall be paid to the mother (P.W. 14 Satyabati Saha) of the victim by way of compensation.

**10.** The Appellants/accused 2, 3 and 4 whose substantive sentences came to be suspended by this Court pending appeal by its order dated 17/05 /05 shall surrender to their bail bonds and undergo the remaining sentence.

**11.** The appeal stands disposed of accordingly.

**Asim Kumar Roy, J.**

**12.** I agree.

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