

MANU/WB/0549/2007

Equivalent Citation: 2008(1)CHN1066

IN THE HIGH COURT OF CALCUTTA

CRA No. 512 of 2005

Decided On: 16.10.2007

Appellants: **Sayed Nasiruddin**
Vs.

Respondent: **State of West Bengal and Ors.**

Hon'ble Judges/Coram:

P.S. Datta, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Siladitya Sanyal and Sanjab Kumar Das, Advs.

For Respondents/Defendant: Debabrata Roy, Adv.

JUDGMENT

P.S. Datta, J.

1. Feeling aggrieved, the appellant assails his conviction under Section 498A/304B of the IPC and sentence of two years rigorous imprisonment with fine of Rs. 2,000/- with default stipulation under Section 498A IPC and of RI for 7 years on account of the charge under Section 304B of the IPC as was recorded by the Id. Additional Sessions Judge, Fast Track Court at Bolpur in the district of Birbhum on 18.06.2005 in Sessions Case No. 173 of 2004 corresponding to T.R. No. 2 (12) of 2004.

2. P.W. 11 Smt. Golenur Bibi, the mother of the victim Mokramma Bibi lodged an FIR with the Ilambazar PS on 07.06.2000 alleging that her daughter who was given in marriage with the appellant sometime in the year of 1406 BS was subjected to assault and torture on demands of dowry. She had paid Rs. 2,000/- in consideration of the happiness of the daughter but torture continued unabated. In Falgun 1406 BS her daughter filed a case for maintenance but subsequently at the intervention of Pradhan of Ilambazar an amicable settlement was reached as a result of which the appellant took his daughter to his home and it was agreed that the maintenance case would be withdrawn. But the degree of torture took a horrible turn with a demand of Rs. 20,000/- for construction of a house by the appellant. The appellant was made to understand that some amount of money could be collected. On 06.06.2000 she got the information of death of her daughter and it was ascertained by her that she died an unnatural death.

3 . The Ilambazar Police Station recorded the PS Case No. 55 of 2000 dated 07.06.2000 under Section 304B of the IPC and upon completion of investigation chargesheet was submitted against the appellant under the said Sections of the law.

4 . On the facts as aforesaid, the Id. Trial Court framed charges under Section 498A/304B of the IPC, examined in all 12 witnesses, examined the appellant under Section 313 Cr.PC and then passed the judgement and order impugned.

5 . Of the 12 witnesses, examined by the prosecution it is the evidence of P.W.1 Mohd. Ebrahim, P.W. 2 Amar Kaviraj and P.W.11 Gulenur Bibi that call for serious

consideration in view of the fact that their oral testimonies go to the merit of the charges, while other witnesses are mostly formal ones and some of them do not have any direct knowledge as to the facts-in-issue.

6. Without analysis of evidence it is fairly established that the deceased had earlier married one Dr. Hasmat Mullah and lived with him for about 3 years and then the marriage was dissolved. Whereafter, the appellant married the deceased on 30.07.99 corresponding to 23rd Shravan, 1406 BS before the Muslim Marriage Registrar in observance of the Islamic rites and customs and she died on 06.06.2000. Thus, her married life with the appellant subsisted for a period of only 10 months and 6 days.

7. As it appears from evidence of P.W. 10 Dr. A. Adhikary, who conducted the post-mortem examination of the victim's body the death of the victim was due to suicidal poisoning and the post-mortem report and the final report on the cause of death were marked Exts. 5 and 6 respectively.

8. P.W.1 Mohd. Ibrahim, who is the scribe of the FIR says that the mother of the deceased used to tell him off and on that the appellant had been torturing her daughter on demands of money. On 06.06.2000 an information was received to the effect that the daughter of P.W.11 died an unnatural death at her inlaws house. Then he alongwith others came to the morgue of Bolpur Hospital at about 10.00 p.m. but could not find the deadbody and then proceeded to Ilambazar Police Station with P.W.11 and lodged a complaint, being written by him and signed by P.W.11 after it was read over to her. It has come out in cross-examination of P.W.1 that he never visited the house of the appellant and he did not see the appellant ill-behaving with the victim or torturing her. He fails to say the exact date or dates when he came to know from P.W.11 about perpetuation of torture caused on the deceased by the appellant. Evidence of P.W.2, though he was declared hostile by the prosecution, is nonetheless relevant because of the fact that in cross-examination by the prosecution he admitted having told the IO that after marriage the appellant used to create pressure upon the victim to fetch a cash of Rs. 20,000/- as dowry from her father's house and that torture was both physical and mental and further that concerning the unhappiness of the victim a village meeting was held in the presence of the Pradhan of the Gram Panchayat, where the appellant undertook not to cause further torture upon the victim but despite that he went on committing torture upon her on demands of money. Even if we leave aside the statement of P.W.2 as it transpires in cross-examination by the prosecution, some relevant facts, which could not be demolished by any amount of cross-examination are that at one time the Pradhan of the Panchayat and other persons namely Jagannath Bagdi, Jadab Bagdi, Hemanto Ghosh and he himself tried to settle the dispute and there the mother of the victim alleged against the appellant saying that the appellant had concealed his first marriage and that he had not disclosed that he was a quack doctor. In his cross-examination by the defence it has come out that in the village meeting the mother of the victim lodged complaint with the allegation against the appellant that appellant had demanded Rs. 20,000/- as dowry and she has paid Rs. 4,000/- to the appellant. On 04.06.2000 or thereabout the victim, the appellant and the deceased came to his house after quarrel and he told them that he would look into the matter and asked them to return home. But on 06.06.2000 in the evening he received the news of death of the victim. P.W.31 says in her evidence that after marriage the appellant would assault her daughter asking her to fetch money from her and then she had been to the house of the appellant and gave Rs. 2,000/- with request not to cause assault on her further. But again the appellant started assaulting her daughter and he drove her out of home. Then she filed a case of maintenance and after that the appellant persuaded her daughter to accompany him to the matrimonial home assuring her of not causing any further assault on her. On 23rd of Jaistha, 1407 BS

he heard that the appellant had killed his daughter. It has come out in cross-examination of this witness further that prior to marriage, the appellant had visited her house 2/4 times and after marriage he also came to her house with her daughter and she also visited the house of the appellant 1/2 times although she cannot say the exact specific date of her visit to the house of the appellant after marriage. In cross-examination she has said further that she saw the appellant assaulting her daughter when she went to the house of the appellant before the death of her daughter although she did not lodge any complaint with the PS but consoled her daughter. She reiterated in her cross-examination that the appellant asked her daughter to fetch Rs. 20,000/- for construction of house but cannot say the date of such demand. P.W.3 Asit Sengupta, the Pradhan of the Panchayat, who according to P.W.2 was present in the village meeting turned hostile and his evidence revealed no significant feature save the fact that he was a witness to the inquest on the body of the deceased. P.W.4 Jagannath Bagdi also turned hostile denied having told the IO that the appellant would assault the victim on demands of money. In his examination-in-chief he said that the victim and the accused would quarrel with each other and subject-matter of quarrel was not known to her. P.W.5 Hemanta Ghosh also turned hostile denying having told the IO that on demand of Rs. 20,000/- the appellant treated the victim cruelly both mentally and physically. P.W.6 Rabindra Nath Ghosh gives hearsay evidence and his evidence is quite irrelevant. P.W.7 Nitai Das also turned hostile denying having said to the IO that the appellant would torture the victim physically and mentally on demands of dowry. P.W. 8 Tapan Kumar Samanta is an Executive Magistrate, who held magisterial inquest vide Ext.4. P.W.9 Uday Mukherjee, ASI of Police carried the deadbody of victim to the hospital for post-mortem examination. P.W. 12 is the IO of the case.

9. It has been the submission of the learned Defence Counsel that the Id. Trial Court failed to appreciate the evidence of the prosecution witnesses in proper perspective and failed to notice that P.W.2 has said in his evidence that both the victim and the appellant used to quarrel with each other and both came to him on 04.06.2000 after having quarrel and this piece of evidence shows that the cause of death of the victim was not the alleged torture perpetrated upon her by the appellant.

10. It is further submitted with reference to the evidence of P.W.II that the alleged non-disclosure by the appellant of his first marriage and of him being a quack doctor fails to come within the ambit of Section 304B of the IPC. It is submitted by the Id. Counsel for the appellant that the Id. Trial Court overlooked the evidence of the hostile witnesses and simply because of the fact that they turned hostile it cannot be said that their evidence is untrustworthy. It is submitted that the impugned order of conviction and sentence is against the weight of evidence and is an outcome of total non-consideration of evidence and facts and circumstances of the case. Argument further goes that the evidence of the prosecution witnesses are mutually exclusive and the Id. Trial Court ought to have come to a contrary findings and it wrongly applied the presumption under Section 113B of the Evidence Act.

11. Id. Advocate for the State respondent argued with reference to the evidence of the witnesses that the Id. Trial Court upon appropriate analysis of evidence of witnesses has recorded the finding of guilt, which can in no way be successfully assailed of and a few witnesses turning hostile is quite insignificant because evidence of P.W.2 and P.W.11 are quite sufficient to view that appellant subjected the deceased to assault and torture on the demands of money and since the money could not be paid to him by the deceased's mother torture found its culmination in the death of the deceased on 06.06.2000. It was argued that evidence of P.W.2 and P.W.11 would show that even the village people had to intervene and even after settlement was reached and even after the victim was taken back to her matrimonial

home by the appellant, the demand of money was renewed and money having not been paid, the victim died an unnatural death. It is argued that it is wrong to say that merely because of the quarrel between the victim and the appellant, the victim chose to end her life.

12. Having heard the Id. Advocates for the parties and considered the totality of evidence of the witnesses, it has to be said that evidence of the witnesses particularly P.W.2 and P.W.11 with respect to the charges under 498A/304B of the IPC has been the evidence of legal character and having considered their evidence, it cannot be said that the Id. Trial Court misdirected itself to the appreciation of their evidence. Simply because of the fact that P.W.1 happens to be the mother of the victim, it cannot be said that her evidence has to be discarded and this is more so, because as mother of the victim it was quite possible on her part to say as to what had transpired between her daughter and the appellant and it is not that her evidence is a hearsay evidence. That the victim died an unnatural death within 10 months of her marriage is a matter of fact. The span of the married life has been so short that it cannot be said that effect of cruelty based on alleged demand and the concerned death had no proximity to each other and it also cannot be said that the statement of the victim to P.W.11 alleging that she was subjected to torture by her husband on demand of dowry had no proximity to her death. A careful reading of the evidence of the witnesses would reveal the following features:

- 1.** The appellant subjected the victim to cruelty sometime after marriage on demands of dowry from P.W.11.
- 2.** P.W.11 had been to the house of the appellant and offered him Rs. 2,000/-
- 3.** The appellant yet caused assault on her and drove her out.
- 4.** The victim filed a case of maintenance against the appellant after being driven out.
- 5.** The appellant took her to her matrimonial home with the assurance of not causing assaulting her.
- 6.** In the presence of P.W.2, P.W. 5, P.W.3 a meeting took place. In the said meeting the mother of the deceased complained that the appellant was demanding Rs. 20,000/- from her.
- 7.** P.W.11, as it appears from her cross-examination had been to the house of the appellant after marriage and found the appellant assault her daughter.
- 8.** In her cross-examination P.W.11 had said that her daughter told her that the appellant had asked her to bring Rs. 20,000/- to build his house.
- 9.** The demand of dowry and torture as consequence of failing to meet up the demand is there in the FIR and it cannot be said that the demand of dowry is a new development foreign to the prosecution case in the FIR.

13. The above evidence and circumstances have unassailably come out in evidence and taken them together in their totality it cannot be said that the victim did not die a dowry death. It is well-settled that demand of money after solemnization of marriage also comes within the purview of definition of dowry as provided in Section 2 of the Dowry Prohibition Act, 1961. It is fairly established that soon before her death the victim was subjected to cruelty or harassment and that too in connection with the

demand of dowry. The victim reported the demand of dowry to her mother when she came to her mother's house. The mother went to her matrimonial home and paid some money. Still then torture continued unabated. The victim was driven out of matrimonial home after causing assault on her whereafter, she filed a maintenance case. She was taken back to the matrimonial home with the pretext that no torture would be further caused upon her. But the assurance was broken. A village meeting was convened where in the presence of the appellant P.W.11 reported to the members of the meeting that on demands of dowry of Rs. 20,000/- her daughter was subjected to be beaten by her husband. It was her daughter who told her that she was subjected to ill-treatment on demands of money. The factum of the village meeting on the allegation of torture over demands of dowry comes to be corroborated by P.W.2 and a few witnesses turning hostile fails to impeach the veracity of the evidence of the two witnesses.

14. As has been laid down in *Kalyaperumal v. State of Tamil Nadu* MANU/SC/0624/2003 : 2003CriLJ4321 and also *Yashoda v. State of Madhya Pradesh* MANU/SC/0099/2004 : (2004)3SCC98, there must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequences. It has been the law settled therefore that the determination of the period which can come within the term 'soon before' is left to be decided by the Courts depending upon facts and circumstances of each case and the expression soon before would normally imply that the interval should not be much between cruelty or harassment and death in question.

15. There is in the instant case proximity between cruelty and death. There is again a proximity between death and report of the victim to P.W.11. The village meeting and the death of the victim has no long distance to be travelled. In the circumstance, presumption arising out of Section 113B of the Evidence Act fully operates and the defence could not rebut the statutory presumption. In the decision in *Harjit Singh v. State of Punjab* 2006 C Cr. LR(SC) 414, it has been held that from a conjoint reading of Section 304B of the IPC and Section 113B of the Evidence Act, it will be apparent that a presumption arising thereon will operate if the prosecution is able to establish the circumstances as set out in Section 304B of the IPC. In the instant case, the circumstances set out in Section 304B of the IPC are distinct and manifest. On the evidence as is found it has been established that the victim has been subjected to cruelty within the meaning of Section 498A of IPC. Situated thus, I find that the prosecution case was well built. The victim died in her matrimonial home. Death was unnatural. In *Ganesh Lall v. State of Maharashtra* as reported in 1992 Cr. LJ 1545, it has been observed that it is settled law that conduct of the accused in an offence previous and subsequent to the incident are relevant facts. In the reported case the Hon'ble Supreme Court held that when death occurs in the custody of the accused the accused was under obligation in Section 313 Cr.PC statement at least to give a plausible explanation for the cause of her death. In the instant case no explanation has been given.

16. In the circumstances, I find the appeal to be devoid of merit. As to sentence I cannot say that the same is disproportionate to the gravity of the offence.

17. The appeal fails and is dismissed.

18. The judgement and order of the learned Trial Court is affirmed.

19. The appellant is directed to surrender to the learned Trial Court within two month

from the date of this order failing which the learned Trial Court will take appropriate step for apprehension of the appellant so as to have the sentence executed according to law. A copy of this judgement shall be sent to the learned Trial Court for information and necessary action. Xerox certified copy may be provided to the parties, if applied for.

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