

MANU/WB/0566/2008

Equivalent Citation: 2009CriLJ407

IN THE HIGH COURT OF CALCUTTA

C.R.A. No. 187 of 1989

Decided On: 01.08.2008

Appellants: **Sanat Panja and Ors.**

Vs.

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

Hon'ble Judges/Coram:

A.K. Banerjee and Tapas Kumar Giri, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Y.J. Dastoor and Sayan Dey, Advs.

For Respondents/Defendant: R.R. Biswas and Ratna Ghosh, Advs.

JUDGMENT

A.K. Banerjee, J.

1. Sanat Panja resident of village Jash Dighi under Indus Police Station in the District of Bankura married Smt. Puspanjali Panja on 18th Jaistha, 1393 B.S. Puspanjali gave birth to a male child out of the said wedlock on 10th Baishakh 1394 B.S. Unfortunately Puspanjali died an unnatural death on 18th Baishakh 1394 B.S. just eight days after giving birth to the male child.

2. As per the complaint lodged by the brother of Puspanjali being PW-1 the marriage was fixed for a consideration of Rs. 46,000.00 in cash as dowry along with other usual gifts like utensils, wristwatch, etc. At the time of marriage father of Puspanjali could arrange for Rs. 34,360.00. It was agreed that the balance sum of Rs. 11,640.00 and a tape recorder would be given later on. Puspanjali suffered physical and mental torture in her in-laws' place for the balance sum. Her father could arrange the said sum on a later date and paid the said sum to her father-in-law Krishna Chandra Panja who received the said sum and granted receipt being Exhibit 6/6. Tape recorder, however, could not be given.

3. Letters were disclosed as exhibits. We have perused the letter of Puspanjali addressed to his father wherefrom we would find that her in-laws were pressing her for cash amount in exchange of tape recorder so that they could purchase a television set. Her mother-in-law also wrote to her while she was in her paternal house wherein she categorically stated that unless the dowry dispute was settled Pushpanjali would not be taken to her in-laws' place. In another letter the mother-in-law asked Puspanjali that she should come back with the articles.

4. On perusal of those letters the factum of dowry was conclusively proved. Pushpanjali died at her in-laws' place. There was no eye-witness to the incident. Unfortunately she could not even celebrate her first marriage anniversary. She was found dead by taking poison. Whether she committed suicide or she was given poison by anyone is, however, not clear from the evidence. PW-1 deposed that Pushpanjali visited their house in Ashwin, Kartik, Falgun of 1393 B.S. She disclosed that her father-in-law, mother-in-law and the husband used to torture her both

physically and mentally during her stay at her in-laws' place as her parents could not satisfy the in-laws on the dowry issue. PW-2 was a neighbour of Pushpanjali's parents. He deposed that Pushpanjali used to tell him that she was tortured both physically and mentally for non-payment of balance of dowry. Another neighbour PW-3 deposed in the same line. PW-5 the father of the victim girl also deposed in the same line. He also proved the letters being exhibited. PW-6 another neighbour also deposed that Pushpanjali was being tortured by her in-laws for not satisfying the balance amount of dowry. PW-7 another neighbour of her in-laws was declared hostile. He, however, proved the seizure list being witness thereof. PW-8 was the sister in-law of the victim girl. She corroborated the prosecution case. PW-9 accompanied Harimohan to the Police Station and then to the place of occurrence after the incident. PW-10 was a quack doctor. He deposed that Krishna Chandra brought Puspanjali to him. He disclosed that his daughter-in-law swallowed Endocyn. PW-10, however, did not examine her. PW-11, the Constable identified the dead body to the doctor at the time of post-mortem. PW-12, the doctor held post-mortem. After consulting the viscera report from the Forensic Science Laboratory he opined that the death was due to poison and was suicidal in nature. PW-13 was the officer of the Forensic Laboratory who examined the glass bottle containing viscera of Puspanjali. PW-15 was the Investigating Officer who made inquest of the dead body. According to him, there were reddish marks on her neck. Blood was found coming from her nose and mouth. He seized the glass bottle containing poison. He also seized the letters produced by the complainant. He also deposed that he approached the learned SDJM, Bishnupur and obtained appropriate permission to collect specimen signature of Krishna Chandra at Bishnupur Sub-Jail. However, Krishna Chandra refused to give his specimen signature. The Police arrested Krishna Chandra, Sanat as well as his mother Jogmaya. During examination under Section 313 of the Code of Criminal Procedure all the three accused pleaded not guilty and wanted to face trial. They, however, did not offer any explanation as to the cause of death.

5. The learned Judge by judgment and order impugned in this appeal held all of them guilty of the offence under Section 304B(2) of the Indian Penal Code and convicted all of them. Ultimately they were sentenced to suffer ten years rigorous imprisonment. Hence, this appeal by the appellants.

6. Mr. Y. J. Dastoor, learned Counsel appearing for the appellants contended before us that even if the letters those came as exhibits including the purported receipt were taken into account it would conclusively prove that the entire amount of dowry was paid well before the date of occurrence. According to Mr. Dastoor the story of tape recorder was not told to the Investigating Officer at the time of preliminary investigation as came out from the deposition of the Investigating Officer. Mr. Dastoor also contended that it was obligatory on the part of the prosecution to prove beyond doubt that those letters and/or receipt were written and signed by the accused and/or the victim as the case may be, in absence of such proof the learned Judge erred in holding the accused guilty of the offence. Mr. Dastoor also contended that there was no circumstantial evidence which would complete the chain of events wherefrom the court could conclusively hold that the accused only were responsible for the incident. In support of his contention Mr. Dastoor cited four Apex Court decisions which are as follows:

(i) 2004 SCC (Criminal) 2057 : AIR 2005 SC 1504 (Balwant Singh and Anr. v. State of Punjab)

(ii) MANU/SC/2495/2005 : AIR2005SC4429 (Tirath Kumar alias Raj Rani and Anr. v. State of Haryana).

(iii) MANU/SC/8541/2006 : AIR2007SC107 , (Kailash v. State of M.P.).

(iv) MANU/SC/7650/2007 : 2007CriLJ3420 (Bhagwan Das v. Kartar Singh and Ors.)

7. Mr. R. R. Biswas, learned Counsel appearing for the prosecution being assisted by Ms. Ratna Ghosh while opposing the appeal contended that since the incident occurred within one year from the date of marriage duty was cast upon the accused to come with a plausible explanation how the death was caused. In absence of such explanation it was to be presumed that the accused were responsible for the occurrence. In this regard he relied on the provisions of Sections 113-A and 113-B of the Evidence Act read with Section 304-B of the Indian Penal Code.

Mr. Biswas in support of his contention relied on the Apex Court decisions in the case of Smt. Shanti and Anr. v. State of Hariyana reported in MANU/SC/0507/1991 : 1991CriLJ1713 and Biswajit Haider alias Babu Haider and Ors. v. State of West Bengal reported in MANU/SC/1480/2007 : 2007CriLJ2300 .

8. On a sum total of the evidence that came out in the trial and on perusal of the exhibits we are convinced that the victim girl was subjected to torture, at least mentally, for payment of the balance amount of dowry. It is true that the balance amount was paid on Magh 13, 1393 B.S. Hence, the balance amount was paid after about eight months of marriage, till then the victim suffered torture, at least mentally. From her letter to her parents we find that her in-laws were pressing her for cash amount in lieu of tape recorder so that they could purchase a television set. Nothing came out in evidence that such amount was paid. From the letter of Jogmaya we would find that she advised her to come to her in-laws' place with articles. She also cautioned the victim that she must not divulge such letter to her father-in-law meaning thereby such letter was written confidentially by Jogmaya without consulting Krishna Chandra. Hence, the fact of torture on account of dowry, in our view, was conclusively proved.

9. Lot of emphasis was put by Mr. Dastoor on the phraseology "soon before her death". According to Mr. Dastoor since money was paid after eight months being three months prior to her death such period could not be said to be "soon before her death". Hence, the presumption under Section 304B could not be availed. In the case of Bhagaban Das (Supra) the deceased was married in 1992. She gave birth to a girl child in 1999. Till then she suffered torture. After the birth of the girl child the husband was paralysed in an accident. The victim was then taunted for giving birth to a girl child. According to prosecution such continued torture led her to commit suicide. The Apex Court observed that dispute and difference in matrimonial home and/or mere harassment of wife by husband due to differences per se does not attract Section 306 of Indian Penal Code if the wife commits suicide. The Apex Court in this judgment, however, observed that if the suicide was due to demand of dowry soon before her death Section 304B may be attracted. Hence, this judgment, in our view, would rather support the prosecution. In the case of Tirath Kumar alias Raj Rani (supra) the Apex Court laid down the guidelines to be followed under Section 304B of the Indian Penal Code read with Section 113-B of the Indian Evidence Act. The Apex Court was of the view that three ingredients are necessary to invoke the aforesaid sections. Such ingredients are quoted below:

(a) the death of a woman is caused by burns or bodily injury or occurs other than under normal circumstances within seven years of her marriage;

(b) it must be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative;

(c) Such cruelty or harassment must be in connection with the demand of dowry.

10. In the case of Balwant Singh (supra) the Apex Court dealt with the phraseology "soon before her death". The Apex Court in paragraph 9 considering their earlier decisions observed that "soon before her death" would normally imply that the interval should not be much between cruelty and harassment and the death in question. The Apex Court also observed, "there must exist a proximate and live link between effect of cruelty based on dowry demand and the death of the victim". Such basic ingredients as above were again observed by the Apex Court in a recent decision in the case of Biswajit Haider (supra).

11. On a combined reading of the Apex Court decisions and on a close reading of Section 304B read with Section 113-B we would find that it was the consistent view of the Apex Court that to attract Section 304B the element of dowry was a must. If on a difference of opinion the wife commits suicide such provision could be of no avail. In the instant case the element of dowry was admittedly present for about eight months from the date of marriage. The dowry means not only cash but also kind. Issue of tape recorder was quite germane till the victim girl died an unnatural death. Whether she committed suicide or she was made to swallow poison is not material. Her torture was proved by chronological events. She died in the eleventh month of her marriage. Even if we leave aside the issue of tape recorder we would find that she died on the 84th day after the balance dowry was paid. That cannot be said to be a stale incident of torture and 84 days, in our view, could well come within the definition of "soon before her death".

12. The learned Judge rightly convicted the appellants and we do not find any scope of interference.

13. The appeal fails and is hereby dismissed.

14. The bail bond is cancelled. Accused are directed to surrender before the Court below. In default, sureties are directed to produce the accused in court.

15. Let the lower Court records be sent down along with a copy of the judgment. Urgent xerox certified copy will be given to the parties, if applied for.

Tapas Kumar Giri, J.

16. I agree.

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