

MANU/WB/0137/2010

Equivalent Citation: (2010)2CALLT273(HC)

**IN THE HIGH COURT OF CALCUTTA**

C.R.A. No. 93 of 2005

Decided On: 08.04.2010

Appellants: **Pinku Das**  
**Vs.**

Respondent: **The State of West Bengal**

**Hon'ble Judges/Coram:**

*G.C. Gupta and Kishore Kumar Prasad, JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: S.K. Kapoor, Sr. Adv., Sarvapriya Mukherjee, Rohitendra Chandra Deb and K.S. Bose, Advs.*

*For Respondents/Defendant: K.S. Bose and Kalyan Moitra, Advs.*

**JUDGMENT**

**G.C. Gupta, J.**

**1.** This appeal is directed against a judgment and order dated 30th and 31st August 2004 passed by the learned Judge (EC Act) and Additional District Judge, Alipure, 24 Parganas (South) in ST 3(7) of 2001 whereby the appellant was convicted for commission of an offence punishable Under Section 498A and 304B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years as also to pay a fine of Rs. 5000/-, in default to suffer further rigorous imprisonment of six months and further sentencing him to undergo rigorous imprisonment for life for the aforesaid offences respectively. Both the sentences were however directed run concurrently.

**2.** The facts and circumstances of this case briefly stated are as follows:

The appellant Pinku Das married the deceased Mina, aged about 19 years, on 31st January 2000 according to Hindu rites. On 26th June 2000 her dead body was found on a railway bridge near her matrimonial house. The cause of death, based on the inquest report, was initially supposed to have been strangulation and subsequent burning of the body. The Autopsy Surgeon however opined that the cause of death was ante mortem burns which has been endorsed by a number of scientists including the P.W.34 Dr. Rabindra Basu, a Professor and Head of the Department of Forensic and State Medicine and Vice-Principal of N.R.S. Medical College and Hospital. The appellant, his mother Basanti, his sister Manju, her husband Sundeshwar and one Bubun were the accused in this case. Bubun absconded. The case was therefore split up and filed for the present against the absconder Bubun. The balance four accused persons were tried. Three of them were acquitted and the appellant was convicted and punished as indicated above.

**3.** When the appeal was taken up for hearing, it appeared that there was no representation on behalf of the appellant. An administrative notice in the circumstances was sent to the appellant who was and still is in jail. On 28th March

2008 the appellant made a prayer to this Court through the Superintendent of the Presidency Jail for engaging a lawyer to represent him at the cost of the State. Based on his aforesaid prayer this Court on 24th July 2008 requested Mr. Kapoor, learned Senior Advocate and a former Additional Solicitor General of India to represent the appellant. Mr. Kapoor took up the assignment in the right earnest. True to the best traditions of the bar he made thorough research in the bundle of facts and law assisted by Ms. Sarbopriya Mukherjee, Rohitendra Chandra Dev and K.S. Bose, learned Advocates of this Court. The matter was heard on a number of days. Mr. Kapoor at the conclusion of the hearing prayed for outright acquittal of the appellant. Mr. Mallick assisted by Mr. Kalyan Mitra appearing for the State however prayed for affirmation of the order under challenge. We shall have occasion hereafter to notice the submissions advanced by the learned Advocates at a later stage in some detail.

**4.** The learned Trial Judge correctly realised the points for determination which he summed up as follows:

I have to examine whether the essential ingredients to attract application of under Section 304B are that (i) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances, (ii) such a death should have occurred within 7 years of her marriage, (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband, (iv) such cruelty or harassment should be for or in connection with demand for dowry, and (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death. Vide 2004 Supreme Court Cases (Cri) at page 1417.

**5.** So far as the first and second points for determination are concerned they present no difficulty whatsoever. The difficulty indeed lies in finding a suitable answer to the 3rd, 4th and 5th points for determination.

**6.** Mr. Kapoor submitted that there is no credible evidence with regard to either of these points. With respect to the third and fifth points for determination the witnesses are the relatives of the deceased and the neighbours of the appellant. With respect to the fourth point for determination the witnesses are only the relatives of the deceased. We think that the fourth point should be taken up for consideration first because the foundation for conviction under Section 304B of the IPC depends upon an affirmative answer to that question. Therefore that question is of greater importance as far as the present appeal is concerned.

**7.** With respect to cruelty or harassment by the appellant in connection with a demand for dowry the learned Trial Judge has advanced the following findings:

Let us now taken up the condition No. 4 viz. such cruelty or harassment should be for or in connection of demand of dowry.

The neighbours are not competent to say what was the provocation for such assault and harassment and even attempt to kill Mina by fire. In order to understand this aspect viz. whether the harassment and cruelty was for or in connection with demand of dowry. I should turn my eyes on the evidence of P.W.3 Amar Ch. Khan who is the eldest brother of deceased Mina, has stated in his evidence that he came to know from his sister that Pinku assaulted Mina and she was being pressurised to bring money but P.W.3 and other brother failed to pay the money. The other two accused persons viz. Mother-in-law and mother of mother-in-law of Mina used to instigate Pinku to assault Mina and put pressure upon Mina to bring money. At page 5 of his examination in chief the witness has stated that about a month before the

death of Mina his wife received a telephone call from Mina that if the witness and other members of the family fails to meet the demand of the money they would kill Mina. Thus the demand of dowry or the pressure for dowry was the main reason of torture and assault upon Mina. (a) This evidence of P.W.3 is corroborated by the evidence of his wife Baby Khan. Baby Khan P.W.4 who received the telephone where Mina told her to meet up the demand of dowry otherwise she would be killed. P.w.5 Samar Khan has stated in his evidence that when he met Mina in her matrimonial home she told him that the accd. persons desired money from them as a consideration of marriage and began to torture her to give pressure to bring money. He has stated that in making such torture Pinku's mother encouraged Pinku. Thus this witness also stated about a demand of dowry. (b) P.W.7 Rekha Jana also stated Mina was assaulted by the accused persons and was not offered adequate food and assault was due to pressurised her to bring money. This witness is so truthful that she heard about the torture from the mouth of Mina which is most probable. Mina also reported that the accused persons demanded money from her parents family. (c) P.W.9 Rina Das another elder sister of Mina who also supported about the torture and demand of dowry. (d) P.W.24 Rita Jana is another elder sister of deceased Mina. She has categorically stated that accused Pinku demanded money from Mina and if money was not paid to him, he would go to Bombay. But the brothers failed to fulfil the said demand. She also stated that Mina was not offered adequate food and being assaulted and once as a result of such assault she received cut mark on the head and her conch (sanka) were broken. She ascertain the above facts while she visited Mina's in-laws house as she used to visit Mina's in-laws house, to see Mina frequently as her in-laws house is situated not far away from Mina's in-laws house. All these clearly suggest that there was constant demand of dowry by the accused Pinku. (e)

Considering the above evidence it is proved beyond reasonable doubt that there was demand of dowry and the assault and harassment was to give pressure upon Mina to bring dowry from her brothers.

a) The learned Trial Judge missed the meat of the matter in not noticing that the written complaint, on the basis which a formal FIR was drawn up, as originally drafted did not contain any allegation that the harassment, assault and torture inflicted upon the deceased was in connection with any claim for any dowry. The reason on the contrary as indicated therein was that she was not liked by the appellant. The ground as regards demand of dowry as a basis of cruelty and harassment was indeed added subsequently by a rider by introducing an arrow which is a very significant fact which the learned Trial Judge failed to notice. The written complaint was scribed by the P.W.17 Prabhat and signed by the P.W.3 Amar the eldest brother of the deceased. The P.W.3 had no personal knowledge of the matter. He, as a matter of fact, deposed "I came to know from them that my sister was being assaulted by Pinku and she was being pressurized to bring money". The P.W.3 did not visit the matrimonial house of her sister Mina at any time after the marriage except on the occasion of boubhat which is a festival closely followed by the wedding according to the Bengali culture. It is difficult to believe that the P.W.3 after knowing about torture upon his sister in connection with demand of dowry remained unperturbed and did not even try to enquire about the matter himself. This conduct of the P.W.3 affects the credibility of his evidence to a great

extent.

b) It is true that the P.W.3 deposed that his wife Baby (P.W.4) received a telephonic call from the deceased in connection with the demand of money about a month before her death. But the strange part of it is that the P.W.4 deposed that she informed about the telephonic message not to her husband but to her brothers-in-law one of whom only entered the witness box as P.W.5. The P.W.5 in his examination in chief did not utter a word about any such telephonic message allegedly received by the P.W.4 from the deceased about a month prior to her death. In his cross-examination he deposed that "my sister-in-law Baby Khan stated to me that Mina made telephone to her neighbour's house named Buly Bhandari for 4/5 times". Compare this deposition of P.W.5 with that of the P.W.4 in that regard who confirmed in her cross examination that "I had telephone talk with Mina only for once i.e. before one month of her death. She talked with me only for about 2/3 minutes". The reported version of the deceased herself when she came down to her parental house shall be noticed after a little while.

c) The learned Trial Judge, it appears, was impressed by the evidence of P.W.7 Rekha, a sister of the deceased, but he missed the point that the deceased had told her about torture but the addition that it was in connection with a demand for dowry was Rekha's own imagination.

d) P.W.9 Rina, another sister of the deceased, in her deposition made reference to a demand for dowry in a very casual manner. Her specific deposition was that the deceased was tortured.

e) The evidence of the P.W.24 Rita, still another sister of the deceased, does not have the requisite ingredient of the offence under Section 304B for which the appellant was charged.

**8.** Moreover the evidence of these near relations is not borne out by the reported version of the deceased herself which would be evident from a further scrutiny of the evidence of these relations.

P.W.3 Amar the eldest brother of the deceased in his examination in chief deposed inter alia as follows:

While my sister was brought by us from her marital place before 2 months of her death then she was telling all these things as above in presence of me, my wife, my mother, my elder brother and younger brother.

**9.** The younger brother referred to by the P.W.3 did not turn up to depose. The wife of the P.W.3 is the P.W.4 in this case. According to her all that the deceased reported was as follows:

While Mina came on 8th day of her marriage to our house she did not make complaint against the accused persons. But before 2 months of death of Mina she came to our house lastly before her death while she said that her husband Pinku Das was (illegible) marry for her and her mother-in-law did not offer adequate food and said about assault upon her by Pinku Das and I witnessed the marks of assault on her person below the neck, her sister-in-law Bubun and to instigation Pinku to assault her. Her sister-in-law and her

mother-in-law to abuse her filthy as Mina had squinted eye and her teeth were big and unsettled.

All that the eldest brother of the P.W.3, who is P.W.5 in this case, deposed in that regard is as follows:

Mina came for the first time after her marriage on the 8th day of her marriage. Thereafter I brought my sister after one and half or two months after her marriage to our house of Thakurpukur. I found marks of assault on the neck of my sister Mina while she came to our house at Thakurpukur after one and 1/2 or 2 months after her marriage.

**10.** The mother of the P.W.3 did not utter a word about any such reported version of the deceased in her examination in chief. In her cross-examination she deposed as follows:

Mina never said anything regarding torture against her by coming to my place.

**11.** The important pieces of evidence tabulated above were altogether ignored by the learned Trial Judge. The resultant effect was that he reached a wrong conclusion. We, therefore, are inclined to hold that the cruelty or harassment, if any, inflicted upon the deceased was not in connection with any demand for dowry. The fourth point for determination is accordingly answered.

With respect to the third and the fifth points for determination Mr. Kapoor, learned Senior Advocate took us through the evidence of the P.Ws.21,25,26,27 and 29 and made strenuous effort in order to convince us that these witnesses were thoroughly tutored and had no regard for truth. In a desperate attempt to procure a conviction they perjured themselves which, according to him, would be evident from the general nature of the deposition which is not backed by any particulars and the versions of the witnesses were lacking in uniformity and are also not backed by appropriate follow up on the part of the investigating agency. We do appreciate the attempt of the learned defence counsel but we are unable to agree with him in that regard and our reasons are as follows:

a) We already have noticed that the written complaint lodged by the P.W.3 was that the deceased was not liked by her husband the appellant before us.

b) From the evidence of the P.W.4, the sister-in-law of the deceased, it appears that the deceased had a squinted eye; her teeth were big and uneven.

c) P.W.7 Rekha, a sister of the deceased, in her cross-examination deposed, inter alia, as follows:

My sister Mina was looked somehow but she was having a bit squinted eye ("Lakshmi tera"). She was having a Caplexia(?) of not fail and not dark. They used to say that Mina was looked like the goddess "Maa Kali.

d) P.W.21, a neighbour of the appellant, deposed, inter alia, as follows:

The wife of Pinku has squinted eye and few number of her teeth was also unarranged and elevated and for that Pinku and his mother used to abuse her and also they threatened to assault her.



e) The following significant suggestions were given on behalf of the defence to the witnesses related to the deceased. P.W.3 Amar was given the following suggestions:

Not a fact before marriage Mina used to mix up with so many young boy friends.

Not a fact that Mina was mixing with one Muslim young boy of Baruipur named Jackie.

P.W.4 was given the following suggestions on behalf of the defence:

I do not know any person named jackie.

Not a fact that Mina had illicit connection with this Jackie who was a Muslim boy.

The following case was suggested to the P.W.5:

I do not know any Jackie of Baruipur. I do not know whether my sister Mina had any love affairs with one Muslim gentleman named Jackie and she told my mother before her marriage that she would go away with him.

I do not know whether Mina went to the house of my other sister Rina and stated to her that she still loved Jackie and her love was ruined and saying that she started running to the railway track to commit suicide.

**12.** The following case was suggested to the P.W.7 Rekha:

Not a fact that the garage being run by my elder brother Amar and one young boy named Jacky who used to visit his garage and he used to come to our house frequently. I have never heard that said Jacky visited our house. Not a fact that there was illicit love affairs with Jacky and my sister Mina determined to leave her parental place.

The following case was suggested to the P.W.9 Rina:

I have not heard that Mina had love affairs with one young boy, resident of Baruipur.

**13.** The case suggested on behalf of the defence noticed above may or may not have been true but the fact remains that the appellant and his near relations entertained that belief. On the top of that Mina unfortunately was not favoured in her looks by the nature. These two factors taken together probabilise the story of the P.W.21 which in main has been endorsed by the P.Ws.25,26,27 and 29. The deposition that the dispute between the couple on one occasion took a violent turn and the appellant attempted to burn her down and the deceased was rescued by the neighbours and thereafter they wanted to take steps but ultimately refrained from doing so because of the plea of mercy both by Pinku and his mother Basanti is highly probabilised by the following suggestion given to the P.W.7 on behalf of the defence:

Not a fact that Mina went to her parental place and stated to my mother, brothers and sisters that a trouble with her always happened in marital place of Mina but subsequently it was settled.

**14.** The evidence of the neighbours of the appellant and the relatives of the deceased discussed above finds tremendous corroboration from the case suggested on behalf of the defence and establishes unmistakably that she was continuously harassed and treated with cruelty in her matrimonial home. We are therefore unable to brush aside the evidence of the neighbours being P.Ws.21,25,26,27 and 29 or the relations of the deceased. The law in this regard may be noticed which was succinctly laid down in the case of *Rammi v. State of M.P.* reported in MANU/SC/0596/1999 : AIR 1999 SC 3544 wherein Their Lordships opined as follows:

When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

Reference in this regard may also be made to the judgment in the case of *Leela Ram v. State of Haryana* reported in MANU/SC/1168/1999 : (1999) 9 SCC 525 wherein Their Lordships opined as follows:

It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.

**15.** In this backdrop when the reported version of the deceased herself deposed to by her near relations which we already have noticed while considering the fourth point the conclusion is irresistible that the deceased was subjected to cruelty both physical and mental by her husband the appellant before us. Mr. Kapoor contended that the allegation as regards cruelty and harassment are directed against the husband and his near relatives. When the near relatives have been acquitted there is no reason why the appellant should not get the same benefit. He in this regard referred to a judgment in the case of *Surinder Kaur v. State of Haryana* reported in MANU/SC/0167/2004 : 2004(4) SCC 109. This judgment it would appear has no manner of application to the facts and circumstances of this case. The learned Trial Judge had in that case convicted the husband, his parents and his sisters. The High Court had acquitted the parents. The Supreme Court was hearing an appeal by the sisters whereas the husband had not preferred any appeal at all. Therefore this judgment does not really lend any assistance to the appellant. Moreover it is not the object of the Court to declare innocent, a guilty person, relying on rules of technicality. There is positive evidence before us with respect to the continuous harassment including assault upon the deceased by the appellant. On the day this incident took place what had actually transpired has been deposed to by the P.W.26 Amina Khatun. Her evidence is as follows:-"At about 10 P.M. in the night i.e. on the night before the day of occurrence I found Mina was sitting on the door of her room

and I asked her why she was sitting there during that time. In reply she said that her husband Pinku was taking drink with his friends in the room i.e. why she was sitting there outside the room at the door. I then asked her to go and stop that but she said that it would not be possible for her to stop them. Mina is no more. On the next dawn at about 6 A.M. I heard a hue and cry that people were saying that woman was lying dead on the railway bridge No. 2. On hearing that I along with others of the locality rushed to that spot and found that Mina was lying there on her nose and there was no wearing apparel on her person and she was burnt all through her body. We could recognise Mina by seeing her conch on her hands and the right side portion of her hairs and face.

**16.** There is no cross-examination directed against this part of her evidence which lends assurance to the Court that this evidence is true. Mr. Kapoor submitted that this goes to show at the highest that there was a certain lack of consideration shown to the wife. We are unable to view the matter so lightly. That possibly could have been done had this been a solitary incident but this was backed by continuous harassment and cruelty both mental and physical. In that back ground this incident deposed to by Amina and not disputed by the defence goes to establish the mental make up, attitude and behaviour of the appellant towards his wife.

Mr. Kapoor wanted to take away the wind from the sail of the prosecution by relying upon the following part of the evidence of the P.W.23 the mother of the deceased who in her cross-examination deposed that "Mina never said anything regarding torture against her by coming to my place.

**17.** It is well-settled that the evidence has to be assessed as a whole. A conclusion cannot be arrived at on the basis of one sentence from the evidence of one of the witnesses. Sight should also not be lost of the fact that the P.W.23 a grief-stricken 72 years old widow was giving evidence. In her cross-examination she uttered the aforesaid sentence whereas her evidence in chief as also in cross-examination has been that Mina was treated with cruelty and was continuously harassed in her matrimonial house. We therefore are unable to place any reliance on this sentence de hors the weight of evidence on the record which we already have discussed above. We are therefore of the view that the finding of the learned Trial Judge as regards the third requirement of an offence under Section 304B cannot be interfered with.

From the evidence of Amina Khatun we already have noticed that the victim was sitting outside the room at 10 P.M. in her matrimonial house while the husband and his friends were taking drinks inside the room. This part of the evidence of Amina has been corroborated by the evidence of Ashok Das (P.W.21). He saw the victim between 12 P.M. and 1 A.M. in the lane situate within premises No. 4 Chhatubabu Lane where the matrimonial house of the deceased was situate. His evidence in this regard is as follows:

On the fateful night of death of Pinku's wife at about 10 P.M. in the night Pinku's mother was witnessing T.V. installed in my room by pushing aside curtain of my room. Thereafter around 11 P.M. we went to bed after closing the door. When I rose up in the night at about 12/1 A.M. on that night I found that Pinku's wife was standing in a lane situated within the premises No. 4 Chhatu Babu Lane. Thereafter I again went to bed and slept. On the next morning at about 6 A.M. I heard a hue and cry and people around saying that Pinku's wife died.

**18.** There is no cross-examination directed against this part of the evidence which lends assurance to the Court as to its truth. We therefore have evidence before us to



show that the victim was left to loiter outside her matrimonial house by the appellant till the dead part of the night and she was noticed loitering in the lane at 1 A.M. What happened thereafter can best be ascertained from the evidence of Rina, an elder sister of the deceased, P.W.9 who deposed as follows:-"I got the information on 26.6.2000 that my sister Mina died. Firstly, on 26.6.2000 at about 4 A.M. Pinku and his mother came to my place at 4, Ram Mohan Bera Lane and informed us that since 3 A.M. last my sister Mina was missing.

Soon thereafter charred dead body of the deceased was located in or around the railway tracks of the railway bridge.

All the requirements of an offence except the fourth one that is to say that the cruelty or harassment should have been in connection with a demand for dowry have thus been proved and the findings of the learned Trial Judge are endorsed by us. But the result of this discussion is that the conviction under Section 304B cannot be sustained. It was not a dowry death. It was an unnatural death but not a dowry death on the basis of the evidence adduced by the prosecution. The offence under Section 498A of the Indian Penal Code has been duly proved and the findings of the learned Trial Judge are endorsed by us. In is in that background we have to consider what other offence was committed by the appellant besides an offence under Section 498A of the Indian Penal Code. No one has suggested that the victim contacted fire accidentally. The evidence of the forensic experts including the autopsy surgeon has been that they smelt kerosene in the remains of the victim during the postmortem. Therefore only conclusion which can be arrived at is that she herself took her life to put an end to the continuous agony. This conclusion is permissible in law. If any authority is needed reference can be made to the judgment in the case of Pawan Kumar v. State of Haryana reported in MANU/SC/0167/2001 : (2001) 3 SCC 628, wherein their Lordships opined as follows:

If the accidental injury is ruled out and which we also feel the same way as the other two courts, the obvious conclusion would be suicidal death and on that issue a further question arises as regards abetment.

**19.** It is now well-settled that if it is not possible to sustain conviction under Section 304B of the Indian Penal Code and there are sufficient materials to convict the accused in terms of Section 306 IPC read with Section 498A the conviction may suitably be converted. If any authority is needed reference may be made to the judgment in the case of Hiralal v. State Government of NCT (Delhi) reported in MANU/SC/0495/2003 : 2003(8) SCC 80. In the present case the finding as regards the offence under Section 498A is already there and therefore with the aid of Section 113A of the Evidence Act the appellant is held guilty of a further offence under Section 306 that is abetting suicide of his wife the deceased Mina.

Maximum punishment provided under Section 306 is imprisonment for a period of 10 years. The appellant, it appears, was taken into custody on 26th June 2000 itself. He was never granted bail by the Trial Court. Prayer for suspension of sentence was rejected by this Court by an order dated 14th September 2005. The appellant is thus in prison for slightly less than 10 years. We are of the considered opinion that the appellant has already undergone adequate punishment. He should therefore be released at once if his detention is not required in connection with any other case. With this modification, the appeal is partly allowed.

**20.** The learned Registrar General of this Court is directed to communicate the operative part of this judgment to the concerned learned Trial Court under Chapter XI Rule 8 of the Appellate Side Rules of this Court for information and necessary action.

Lower Court Records with a copy of this judgment to go down forthwith to the concerned Trial Court for information and necessary action.

Urgent xerox certified copy of this judgment, be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

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