

GAHC010107382011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./111/2011

RATAN DEB NATH AND ANR.
S/O LATE JOGESHWER DEB NATH

2: SMTI. MAKHANI DEB NATH
D/O LATE JOGESHWER DEB NATH
BOTH ARE OF VILL. HAILAKANDI TOWN
WARD NO. 5
BHOWMIK PARA
P.O. HAILAKANDI
P.S. HAILAKANDI
DIST. HAILAKANDI
ASSAM

VERSUS

STATE OF ASSAM

Advocate for the Petitioner : MRH I CHOUDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 29-08-2023

1. Heard Mr. H.I. Choudhury, learned counsel for the appellant and Mr. R.R. Kaushik, learned Addl. PP, appearing for the State of Assam.

2. The present appeal is directed against the judgment and conviction dated 09.05.2011 passed by the learned Sessions Judge, Hailakandi in Sessions case No.59/2006 under sections 304(B)/34 IPC convicting the accused appellants and sentencing them to suffer rigorous imprisonment for 7 (seven) years each.
3. The prosecution case was launched on the basis of an ejahar dated 16.07.2005 filed by the PW-4 (Sunil Debnath) inter alia alleging that his sister who was found dead with burn injuries in a naked condition and she has been killed by the accused persons named in the FIR.
4. On receipt of the FIR, the officer in charge, Hailakandi PS registered Hailakandi PS Case No.0225/2002 under sections 304 B/34 IPC for investigation. Accordingly, the investigation was conducted and thereafter charge sheet was filed under sections 304 (B)/34 IPC. The accused persons are the husband, brother in law and sister in law of the victim. After investigation, investigating officer laid charge sheet, however, the brother in law was not sent for trial for want of evidence.
5. Thereafter, committal court committed the matter to the learned Sessions Judge, Hailakandi. Charges were framed on 04.11.2006 against the appellants and was read over and explained to the accused, to which they pleaded not to be guilty and claimed to be tried. Accordingly the trial was commenced.
6. To bring home the charges, the prosecution examined as many as 11 witnesses. The statement of the accused was recorded under section 313 Cr.P.C and the defence side examined one witness.
7. On the basis of the aforesaid evidence/materials, the learned Appellate court concluded that the appellants are guilty of the offences

and accordingly, pass the impugned judgment as discussed herein above.

8. Before determining the legality and validity of such conviction, let this Court now examine the deposition of the witnesses so as to arrive at a just and fair decision.

9. The star witnesses for the prosecution to prove the case are the PW-1 (Maya Deb), PW-2 (Sisir Dasgupta), PW-3 (Nandalal Debnath) and informant PW-4 (Sunil Debnath).

I. PW-1 Maya Deb who claims to be President of Mahila Samiti deposed in her evidence that she knows the accused persons as well as the victim and she is also aware of the marriage of the accused No.1 with the deceased which was performed nearly 2 years before the date of occurrence. She further deposed that she heard from some local people that a quarrel took place between the victim and the accused No.1. According to her on the fateful day the informant came to her house and informed that both the accused persons tortured the victim by not giving her food and driving her out from the house of the accused persons. According to her, as she was a President of the Mahila Samiti, she advised the brother of the victim to take back the victim from the house of the accused persons and asked PW-2 (Sisir Dasgupta) and PW-5 (Ranjit Debnath) to assemble at her house and when they came to her place the victim disclosed before her and PW-5 that she was tortured by the accused for the reason of her inability to fetch Rs.20,000/- from her brother.

According to her, thereafter the victim PW-2 Ranjit Debnath and PW-4 Sunil Debnath went to the house of the accused and at the house of the accused, the accused No.2 Makhani Debnath gave a forceful push to the victim and the victim fell on the ground and therefore, the PW -1 rebuked the accused No.2. She further deposed that she advised the informant i.e., PW-4 Sunil Debnath to pay some money for the safety of the victim and accordingly and amount of Rs.5,000/- was paid which was informed to her by PW-4. She deposed that the accused persons continued to torture the victim and finally they drove the victim out of the matrimonial house and after 8 months, the brother of the victim brought the victim back to her matrimonial home. Thereafter, after 1½ months the accused Ratan Deb Nath who is the husband of the victim came to her place and informed that the victim committed suicide by pouring kerosene and burn injury. PW-1 deposed that she saw burn cloth on the body of the victim and her tongue was oozing out from her mouth and she was lying almost like dead. Seeing the body the PW-1 she presumed that the victim was killed by the accused by throttling and some half burn cloth have been put on her body after causing her death.

II. To question the credibility of the evidence of PW-1, the defence put certain question regarding her antecedents and she admitted that she lodged an FIR against one Krishna Prasad for attempt to sexually abuse her and during trial she compromised the case. She also admitted during cross

examination that she was an accused in a case under NDPS Act. She also stated that she deposed before the court as witness in many cases. During her cross examination she further stated that the accused Makhani Deb Nath gave a slap on the cheek of the deceased after pushing the deceased. Such statement was contradicted by a suggestion that she did not depose the fact of slapping the victim by accused No.2 before the police and it is an improvement of her statement.

III. PW-2 (Sishir Dasgupta) is the person whose name was referred by PW-1 and stated that when the deceased complained before her against her in-laws, PW-2 was also present. PW-2 deposed that the accused drove the deceased out of his residence and subjected her to torture and thereafter a village meeting was called to adjudicate the dispute, which was attended by both the victim as well as the accused and in that meeting the victim disclosed that she was subjected to torture by the accused person on demand of money and for non-payment of the same. The villagers who attended the meeting requested the accused persons not to demand any money in future and to take back the victim to their house and live with her as husband and wife. After such decision, the accused husband took the victim to his house and they including Sishir Dasgupta (PW-2) also accompanied them to the house of the accused and in the house of the accused he requested the accused No.2 not to assault the victim and this accused in the presence of them assaulted the victim. According to him, the accused No.2

knocked out the victim from the house of the accused rebuking her. After keeping the victim at the house, PW-2 left the house of the accused and according to him he left for some other place for marketing and after coming back he came to learn that the victim has been killed at the house of the accused by setting fire on her body. He did not hear as to who set fire on the body of the victim and he also did not know who pressed the neck of the victim. He also deposed in the examination in chief that two days before the occurrence, the accused drove out the victim from his house subjecting her to torture. During cross-examination, PW-2 deposed that the informant i.e. the brother of the victim was dealing with business of selling country liquor. During cross-examination he deposed that after village meeting, the PW-1 took the victim to the house of the accused. It is also deposed during cross-examination that his statement was recorded by the police four days after the occurrence. He denied the suggestion that he has not seen the accused No.2 knocking out the victim from her house by giving a push.

IV. PW-3 Nandalal Deb Nath is the neighbour. According to him, about 2 years ago at about 8.00 in the morning while he was at his house he heard the accused No.2 raising a loud cry saying " fire fire" and hearing it, he rushed to the house of the accused persons and saw the dead body of the victim lying at the backside of the house of the accused persons and saw burn injuries on her body. He also saw the accused No.2 near the dead body. Thereafter the villagers arrived at the house of the

accused. Prior to such occurrence he heard the accused and the victim quarreling inside the house of the accused and he saw the accused No.1 assaulting the victim in the course of quarrel. He further deposed that as the plinth of his homestead land is little higher, so standing on his homestead everything can be seen at the compound of the accused persons. During cross examination he deposed that he stated before police the fact that he saw accused Makhani very often subjecting the victim to torture but he do not know whether police has recorded his statement. The suggestion that he did not state before the police that quarrel took place between the victim and accused Ratan also was denied. During cross examination he further deposed that he visited the house of the accused at about 8.30 am and did not see accused Ratan (accused No.1) in his house. He saw Makhani (accused No.2) uttering with loud voice taking the son of the victim on her lap. The body was found at a distance of 2/3 cubits from the door of the kitchen house of the accused. He denied the suggestion that he falsely deposed before the court.

V. PW-4 Sunil Deb Nath is the informant and the brother of the victim. According to him after marriage, his sister and his brother-in-law lived peacefully for about a year. However, thereafter both the accused persons subjected the victim to torture on demand of money and the victim reported the said fact to him. He further deposed that whenever the victim used to come to his house after torture by the victim, he used to help the victim by taking money from some local people and paying

the same and settle the differences and keep the victim in her matrimonial home. According to him he paid money to the accused on 3-4 occasions. Ranjit Deb Nath and Sishir Deb Nath used to negotiate the dispute between the accused persons and the victim. He further deposed that about 2 years ago at about 8-8.30 am, the accused No.1 came to his shop and informed that something happened to his sister at the house of the accused and hearing that the PW-4 visited the house of the accused and saw the victim lying dead at the compound of the house of the accused persons. On enquiry both the accused persons informed him that they were not present at the time of occurrence. He saw burn injury on the body of the victim. Thereafter he informed PW-1 Ranjit Deb Nath and then Ranjit Deb Nath and others visited the house of the accused and saw the dead body of the victim lying there. As per advice of PW-1 and Ranjit Deb Nath he lodged the ejahar against the accused persons. Thereafter police came and took the dead body and sent the dead body to Hailakandi hospital for autopsy. Thereafter body was handed over to him and no person from the house of the accused went to the police station and the police recorded his statement. He also deposed that prior to the occurrence both the accused persons very often subjected the victim to torture on demand of money.

VI. During cross examination he reiterated that accused No.1 came to his residence and informed him that his sister sustained severe burn injuries in the kitchen. He reiterated the

facts narrated in his examination in chief that he reached the place of occurrence, saw the accused Makhani Deb Nath shouting for help keeping the child in her lap. He also deposed that he is doing country liquor business without any license. He denied the suggestion that the accused never demanded dowry and never tortured his sister to meet such demand. He also deposed during cross that the accused has not married for second time after the death of his sister and the child is still with him. He admitted that the PW-1 is doing ganja business. He further deposed that he cannot say how his sister sustained burn injuries. He denied the suggestion that he has filed the case against the accused persons as instigated by the PW-1 as she has got enmity with the accused Ratan Deb Nath. During cross examination he denied that it is a fact that the accused persons never demanded any money by way of dowry and they never tortured his sister to meet the dowry demand and he denied the suggestion of the defence that death of his sister was due to accident and he lodged the FIR against the accused persons as instigated by PW-1. He also denied the suggestion that the accused person never demanded any money by way of dowry.

VII. PW-5 Ranjit Debnath is the neighbour of the victim. He also deposed in a similar line that initially the marriage was happy and thereafter the accused started harassment and for which the victim had to leave the house of her husband. She left her husband's house on 3-4 occasions and every time they compromised the matter and the husband used to take her back

to his house but eventually he came to know that victim died at her husband's house. He deposed that as on the same date his father also expired he could not go to the house of the accused to enquire into the matter. He deposed during cross examination that the victim was weak and hot tempered and it was difficult to understand her. During cross examination he further deposed that the accused No.1 used to financially help the informant for establishing his business and for maintaining her family. During cross examination he deposed that the accused never demanded any dowry from the deceased. The informant i.e., the brother of the victim has no such position and capacity to meet dowry demand.

VIII. PW-6 Ajit Debnath who is another brother of the victim, deposed in the same line that he is not aware of reason of such quarrel. After quarrel his sister used to leave the house of her husband for which he used to give advice to her to go to her husband's house and to live peacefully. Such fact happened on three occasions and thereafter he came to learn that his sister expired. He went to the house of his brother in law and saw the dead body which was lying by the side of the river and thereafter his brother Sunil Deb Nath lodged the FIR.

IX. During cross-examination he also deposed that the accused went to their residence and informed about the occurrence and thereafter the other brother lodged the FIR. He also deposed that the accused also accompanied the others to the police station. he deposed that after giving birth to the first

child she became very weak and hot tempered. During cross examination also he admitted that he used to advice his sister to go back to her husband's house and not to quarrel. He further deposed that his sister used to make quarrel with his brother in law and used to come to his house.

X. PW-7 Gobinda Deb's evidence is not important as he is a hearsay witness. He learnt from somebody that the victim expired. However, according to him he saw Ratan Deb Nath coming to the tea stall of Sunil i.e, the informant and reported Sunil that his sister was indisposed and he was required to go to their house. According to PW-7 he was taking tea in the tea stall at that point of time along with the informant. During cross-examination he deposed that he went to the house of the accused and found the dead body of the wife of the accused Ratan lying near the backdoor of the kitchen.

XI. PW- 8 Sajal Debnath also deposed in similar tune as that of PW-7. During cross examination he deposed that witness Maya Deb is known to him and she is dealing with contraband ganja and she was prosecuted and imprisoned and the informant was dealing with illegal country liquor.

XII. PW-9 Dr. K.Z. Choudhury is the doctor who performed the post mortem upon the dead body. During his examination in chief, the doctor deposed that amongst others that smell of kerosene were present in the hair of the dead body. The burn injury is deep in nature and of 98.8% of the total surface area of the body. The larynx and upper part of trachea

shows black soot particulars on the mucosa. The teeth and mucosa of the mouth are covered with flesh soot particulars. The doctor opined that the death was caused due to shock following 98.8% grievous deep burn injuries.

XIII. During cross examination he deposed that remaining unburnt portion of the body was in soles and also in palm of the hand. He further deposed during cross examination that he did not preserve any part of the burned hair. He also deposed that he did not find any wearing apparel on the body of the deceased.

XIV. PW-10 Arun Kumar Das is the scribe who drafted the FIR. He deposed that the FIR was written by him as per the version of the informant. The contents of the FIR were read over to the informant. He admitted the contents of the FIR as correct and thereafter put his thumb impression in the FIR. He proved his signature as a writer. During cross examination he deposed that the FIR was written in the bar library office and informant is not personally known to him. The informant was accompanied by one Maya Deb who is known to him. He denied the suggestion that the informant did not put the thumb impression rather somebody else put the signature.

XV. PW-11 Dilip Kumar Chanda is the I/O who deposed that at the place of occurrence he saw the dead body of the victim lying in front of the kitchen of the house and it was found in a burnt condition. Accordingly inquest was done. He examined the witnesses, send the body for post-mortem,

collected the post-mortem report, draw sketch map and filed the charge sheet. During cross examination the I/O deposed that he examined Sunil Debnath, Sishir Dasgupta, Nandalal Debnath, Dipak Chanda and Maya Deb. During cross examination he deposed that PW-1 Maya Deb did not state before him during investigation that she had seen accused Makhani Debnath giving slap to the victim. He further deposed that PW-2 did not state before him that the accused persons subjected the victim to cruelty by demanding money. He also has not deposed that he had asked the accused persons not to place demand of money to the victim.

XVI. The defence examined one Ratul Debnath, son of accused No.1. According to him on the fateful day, he was a student of class V and he was enjoying TV along with his brother at the house of his next door neighbour ie., his aunt. At that time, his father was at the market who is having business of cloth. Accused Makhani is his aunt and accused Makhani was at that time cleaning utensils at Rammadhav Akra which is situated near their house. Thereafter hearing the cry he and his aunt (accused No.2) came out and keeping his younger brother at the custody of his aunt and he ran towards his house and found his step mother burning. The said witness was cross examined by the prosecution. During cross examination he deposed that at the time of the incident he visited the house of one Sapan Debnath which is situated adjacent to their house. He further deposed that the incident took place at about 9.00 AM. Hearing

the halla and cries he returned to his house. He further deposed that during his absence he cannot say as to who visited their house. He also cannot say the circumstances under which the fire caught the body of his step mother.

10. Section 304-B(1) IPC defines dowry death of a women. The essential pre condition in terms of the aforesaid section is that such death of the women is caused by burning or bodily injuries or same occurs otherwise than a normal circumstance. It is a further condition that such incident has happened within 7 years of the marriage. In addition to the aforesaid the prosecution is also to prove that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband, in connection with demand of dowry.

11. Section 113 B of the Indian Evidence Act, 1872 deals with a presumption as to dowry death. According to the said provision of Indian Evidence Act, 1872 when a question arises whether a person has committed offence of dowry death of a women and it is shown that soon before her death such women has been subjected by such person to cruelty or harassment or in connection with any demand of dowry, the court is to presume that such person has caused such dowry death. In the context of aforesaid provision and principals of law, now let us examine the present case with the evidence available on record in the following manner:-

I. The PW-1 in her deposition made certain vital statements that the younger brother of the victim came to her house and

intimated her that accused person tortured the victim by not giving her food and drove her out of the house of the accused person. According to her, they came to her place as being the President of Mahila Samiti and she advised the brother of the victim to take back the victim from her matrimonial home and thereafter she asked the accused person to come to her house. When she asked the victim why she has been tortured, the victim deposed that she has been tortured due to her inability to fetch Rs.20,000/- from her brother as demanded by the accused. She further deposed that an amount of Rs.5,000 was paid to the accused person to avoid such torture on the advice of the PW-1. Thus according to her the victim herself has intimated that there is a demand of dowry of Rs.20,000/-. During her cross examination she deposed that she herself saw accused No.2 assaulting the victim. The PW-4 who is brother of the victim also deposed that prior to the occurrence both the accused persons often subjected the victim to torture for demand of money and he paid such amount. PW-1 also deposed of she witnessing payment of Rs.500/-. Such fact also finds corroboration in the testimony of PW-2.

II. From the evidence of PW-2 it is clear that the two days before the occurrence, the accused drove the victim out of the house by subjecting her to torture and the victim intimated the PW-2 that she was subjected to torture by the accused for demand of money and for non-payment of the same, she was driven out of the house. The village people requested the

accused No.1 not to demand money in future and to take back the victim to his house. Accordingly, the accused took the victim back to his house. It is also established from his evidence that after the village decision the accused took the victim to his house accompanied by the PW-2 and while reaching the matrimonial house the accused No.2 again beat her up. Thereafter keeping the victim at the house of the accused, Pw-2 and the other villagers left after coming back from the residence of the accused he was informed that the victim has been killed by setting fire on her body. During cross examination he reaffirmed that he along with Pw-1 and one Ranjit Debnath took the victim to the house of the accused. His aforesaid statement regarding the demand of dowry and beating up the victim by the accused No.2 remained unshaken during cross examination.

III. The PW-3 first saw the burn injury on the body of the victim. He specifically deposed that both the accused persons were assaulting the victim during quarrel. He further deposed that the plinth of his house is little higher and he saw everything from his homestead. Such deposition also remained unshaken during the cross examination. From the evidence of the PW-1, PW-4, PW-5 and PW-6 it is established beyond reasonable doubt that the marriage took place two years prior to the death of the victim. It is also established beyond reasonable doubt that from the aforesaid witness that on the date of the incident itself the victim was physically assaulted by both the accused persons

IV. From the deposition of PW-2, PW-4, PW-5 and PW-6, it

is established beyond reasonable doubt that the victim was subjected to physical torture for demand of dowry.

V. From the evidence more particularly the evidence of PW-1, 2, 3, 4 it is established beyond reasonable doubt that the body of the victim was found near the kitchen of the matrimonial home of the victim in a burnt condition and that the cause of death is of burn injury is also established through the corroborative evidence of the PW-9 the doctor and the post mortem report exhibit – 2.

12. It is true that the presumption under section 113 B is a presumption of law. When it was established that the victim was subjected to cruelty by accused No.1 and 2 i.e., her husband and sister in law and when it was also established beyond any reasonable doubt, as discussed herein above that such cruelty/assault was in connection with demand of dowry and the establishment of the fact that on the date of the alleged incident itself the victim was tortured for demand of dowry, the court is bound to presume that the offence under section 304 B has been committed by the two accused inasmuch as section 113 B of the Evidence act uses the word "shall and not the word may". Such presumption therefore is a presumption of law. Thus in view of the proof of the essential conditions of the offence under section 304 B being proved beyond reasonable doubt the learned trial Court below was bound to draw the presumption under section 113 B of the Evidence act. Such view of this court is supported and based on the principles as laid down in the case of *Nem Chand v. State of Haryana*, (1994) 3 Crimes 608 (SC).

13. This court with the evidence available is having unhesitant conclusion that the prosecution has been able to proof beyond reasonable doubt that the victim was met with cruelty and harassment continuously at the hands of the accused persons for demand of dowry.

14. Soon before her death, in fact it was proved beyond reasonable doubt, on the day of the death she was physically assaulted by both the accused persons and the reason for such assault was her failure to meet the demand of dowry and the marriage was solemnized two years prior to the incident.

15. Now coming to the argument of the learned counsel for the accused appellants regarding reliability of the testimony of Pw-1 on the ground that many cases are pending against her and PW-1 compromising cases lodged on her cannot be a ground for disbelieving her evidence so far the same relates to the present incident and her deposition inasmuch as the defence has failed to shake her evidence.

16. Regarding the argument of contradiction of deposition of PW-1 to the extent that she found the body of the victim at the house of the accused with no burn injury whereas as per deposition of P.W. 9 (Medical Officer), death was due to shock following 98.8% grievous deep burnt injuries cannot be treated as an material contradiction inasmuch as the doctor's evidence that death was due to burn injury remained firm and also the other witnesses including the defence witness establishes that victim was found in a burnt condition at her matrimonial home. The accused no.1 not entering into second marriage cannot be a ground for disbelieving the entire story, therefore such argument also found no favour from this court.

17. The argument of the counsel for the petitioner that the victim was hot tempered and there is no eye witness to the burn cannot be a ground to acquit the accused inasmuch as, even if the evidence of the PW-1 is discarded, from the testimony of PW-2, PW-4, PW-5 and PW-9 as discussed herein above the demand of dowry was proved beyond reasonable doubt and it was also established beyond doubt that the marriage took place prior to two years of the occurrence and that the victim was beaten up on the date of the alleged incident for demand of dowry and it was also established that such demand of dowry continued since after one year from the date of marriage and a part of such demand was also met by the brother of the victim.

18. The judgment relied on by the learned counsel for the appellant in the case of ***Kashmir Kaur Vs. State of Punjab*** reported in ***AIR 2013 SC 1039*** will be of no help to the appellant rather the same will help the case of the prosecution inasmuch as, as discussed herein above the ingredients which was required to be proved beyond reasonable doubt as discussed at paragraph 16 of the said case Kashmir Kaur (supra) are established beyond reasonable doubt in the present case.

19. There is no quarrel on the proposition of law as advanced by the learned counsel for the appellant that the presumption under section 304 B and section 113 B are rebuttable presumption, hence the further argument that such presumption have duly been rebutted by the defence though the defence witness also finds no favor of this court.

20. If we look into the defence witness i.e, the step son of the victim, who deposed that at the time of the incident he was watching TV at the house of his neighbor and his father was not in the house. After

hearing the cry he came out towards his house and found that his step mother was burning. During cross-examination he deposed that he cannot say as to who visited his house and how the fire caught the body of his step mother. Therefore such defence witness is of no value for rebutting the facts of period of marriage and the incident of burn and cruelty and demand of dowry.

21. In view of the aforesaid, this Court finds not merit in the present appeal and is of the unhesitant opinion that the learned trial court has rightly convicted the accused persons. Accordingly, the present appeal stands dismissed. The accused be taken to custody to undergo the sentence.

22. The LCR be sent back forthwith.

JUDGE

Comparing Assistant