

GAHC010092022024



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

Case No. : I.A.(Crl.)/428/2024

MD. ABDUL IKRAM
S/O MD. ABDUL MALIK
VILL.- DHAKUAKHANIA GAON
P.S.- PANIGAON
DIST.- LAKHIMPUR
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P.
ASSAM.

2:MD. MUBARAK HUSSAIN
S/O BAPUKAN ALI

R/O HENSUWAGAON
P.S.- PANIGAON
DIST.- LAKHIMPUR
ASSAM
PIN-

Advocate for : MR S M ABDULLAH P
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

13.09.2024

Heard Mr. S. M. Abdullah P., learned counsel for the applicant. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 389 of the Code of Criminal Procedure, 1973, seeking suspension of the Judgment and Order dated 19.03.2024, passed by the learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur, in Sessions Case No. 06(NL)/2022. The order convicted the present petitioner under Section 304(B) of the IPC to undergo rigorous imprisonment for 10 years and under Section 498(A) of the IPC to undergo rigorous imprisonment for 2 years, with a fine of Rs. 3,000/-; in default of payment, an additional 3 months of rigorous imprisonment.

3. Mr. Abdullah P., learned counsel for the applicant, has submitted that the present applicant is innocent and has not committed any of the offences alleged in the FIR. The applicant contends that, on the day of the incident, he and others were watching an IPL match at his house, as adduced by DWs 2 and 3. He further submits that the learned Trial Court held that the deceased was subjected to cruelty by the applicant and her in-laws on the demand for dowry. However, there is no record of any complaints being lodged with any authority regarding such torture. Therefore, in the absence of such evidence, an offence under Section 304(B) cannot be substantiated. Additionally, the statement of P.W.2 i.e. the mother of the deceased, in which she claimed that the petitioner

assaulted the deceased, was surprisingly not recorded by the IO during the investigation. Furthermore, the PWs have not lodged any complaints about the alleged assault or demand for dowry by the applicant and his relatives, which they claim led the victim to commit suicide.

4. He further submitted that the applicant has adhered to all bail conditions throughout the entire bail period and that there are sufficient grounds for succeeding in the connected appeal.

5. In support of his submission, he relies on the decision of the Hon'ble Supreme Court in the case of ***Mustafa Shahadal Shaikh vs. State of Maharashtra***, reported in **(2012) 11 SCC 397**. He emphasizes paragraph 11 of the said Judgment, which states that “to attract the provisions of Section 304(B), one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. Paragraph 11 of the Judgment read as under:

“11. To attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in [Section 304B](#) IPC and [Section 113B](#) of the Evidence Act is present with the idea of proximity test. In fact, learned counsel appearing for the appellant submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to the same while considering the evidence led in by the prosecution. Though the language used “soon before her death”, no definite period has been enacted and the expression “soon before her death” has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no

consequence. These principles have been reiterated in [Kaliyaperumal vs. State of Tamil Nadu](#), AIR 2003 SC 3828 and Yashoda vs. State of Madhya Pradesh, (2004) 3 SCC 98.”

6. He further relies on another decision passed by the Hon'ble Supreme Court in the case of ***Satbir Singh & Anr. vs. State of Haryana***, reported in (2021) 6 SCC 1. In this case, it was observed that “the phrase “soon before” as appearing in Section 304(B), of [IPC](#) cannot be construed to mean ‘immediately before’. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives”.

7. Citing the above judgments, Mr. Abdullah P., learned counsel for the applicant, has submitted that this is a fit case to grant bail to the applicant. He also submits that, being a permanent resident of the address locality, the applicant is unlikely to abscond. Therefore, he prays for the suspension of the sentence till disposal of the connected appeal being numbered as Crl.A.No.133/2024.

8. In this regard, Mr. Das, learned Additional Public Prosecutor, has submitted that there is sufficient incriminating evidence in the testimony of the PWs to support charges under Sections 304(B) and 498(A) of the IPC. He further submitted that P.W.2, i.e. the mother of the deceased, specifically stated that her daughter was subjected to mental and physical torture. According to her evidence, the deceased was physically assaulted the day before her death, but she asked her mother not to disclose this to the applicant's family, and for which no complaint was filed before her death. Additionally, the post-mortem report and the evidence of P.W.6 indicate that the deceased sustained some injuries on her body before her suicide. Mr. Das also acknowledged that there was a delay in lodging the FIR because the family members of the deceased filed it only

after receiving the post-mortem report. He objected to the prayer made by the learned counsel for the applicant accordingly.

9. Considering the above aspects of the case, and after perusal of the case record along with the evidence of the PWs and DWs recorded by the learned Trial Court, it is observed that there are sufficient materials to establish a *prima facie* case against the accused/applicant, particularly based on the evidence of P.W.2 and P.W.6. The Post-Mortem Report indicates that there are seven numbers of injury marks on the deceased's body, including on the nose, left eye, and left maxillary area of the face etc. During cross-examination, doctor (PW6), clarified that due to hanging, there could be a depletion of oxygen levels, which might cause rapid movement of the hands and legs. If these body parts come into contact with a blunt object, abrasions could occur. However, it is very unlikely that such injuries could be sustained on the face while hanging. The doctor confirmed that such injuries are not typically caused by hanging.

10. Considering the evidence on record, particularly the testimony of the doctor (PW6), I find that it is not a fit case to grant bail by suspending the sentence imposed on the applicant by the Judgment and Order dated 19.03.2024, passed by the learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur, in Sessions Case No. 06(NL)/2022. Accordingly, the application is rejected.

11. The interlocutory application stands disposed of in terms above.

JUDGE

Comparing Assistant