

GAHC010167372022



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

Crl. A. No. 205/2022

- 1: ABDUL HAQUE @ ABDUL HUSSAIN KHAN AND ANR.
S/O KARIM ALI @ KARIM KHAN,
RESIDENT OF RATNAGIRI PATH, DHIRENPARA,
PO GUWAHATI 781025, DIST KAMRUP M ASSAM.
- 2: MUSSTT. RAJEMA @ ROJEMA BEGUM
W/O KARIM ALI @ KARIM KHAN
RESIDENT OF RATNAGIRI PATH DHIRENPARA
PO-GUWAHATI 781025 DIST KAMRUP (M) ASSAM.

VERSUS

- 1: THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM
- 2: SIRAJ ALI
S/O- LATE JABER ALI
RESIDENT OF WARD NO. 2 VILLAGE- SARTHEBARI
DISTRICT- BARPETA ASSAM PIN- 78103

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Appellant	:	Mr. J.C. Gaur, Advocate	
		Advocate for the Respondent	:
		Addl. P.P.	Mr. M.P. Goswami,
Date of Hearing	:	16.02.2024	
Date of Judgment	:	14.05.2024	

JUDGMENT & ORDER (CAV)

BRIEF FACTS:-

1. This appeal takes an exception to the judgment and order dated 27.07.2022 passed by the learned Sessions Judge, Kamrup (M), Guwahati in connection with Sessions Case No. 256 of 2016 convicting Abdul Haque and Rajema @ Rajia Begum u/s 304B of the Indian Penal Code (IPC in short) and sentencing them to Rigorous Imprisonment for 7 years. The other co-accused who were acquitted from charges u/s 304B IPC. Abdul Haque will also be referred to as A1 or accused and Musstt. Rajema @ Rajia Begum will also hereinafter be referred to as A2 or accused.

2. The genesis of the case was that Nilima Begum (hereinafter also referred to as the victim or deceased) was married to Abdul Haque. Abdul Haque and his family members subjected the victim to cruelty and two months prior to the incident, they demanded Rs. 50,000/- as dowry. As the victim failed to fulfill their illegal demand of dowry, she was subjected to immense cruelty and finally she was eliminated. The victim's sister lodged an FIR with the police which was registered as Fatasil Ambari P.S. Case No. 317 of 2011 and Keshab Ch. Tamuly was entrusted with the investigation.

3. The Investigating Officer (IO in short) embarked upon the investigation. He went to the place of occurrence (PO in short), prepared the sketch-map and

recorded the statements of the witnesses and arrested the accused. After completion of investigation, charge-sheet was laid against the accused, namely, Abdul Haque, Musstt. Rajema @ Rajia Begum, Md. Karim Ali @ Karim Khan and Samir Ali @ Saru Ali.

4. This case was committed by the Judicial Magistrate, 1st Class to the Sessions Judge for trial. At the commencement of trial charge u/s 304B/302 of the IPC was framed and read over and explained to the accused to which they pleaded not guilty and claimed to be tried. To substantiate its stance, the prosecution examined 10 witnesses and the defence cross-examined the witnesses to refute the charges. On the incriminating evidence projected by the prosecution, several questions were asked to the accused-persons u/s 313 of the Code of Criminal Procedure (Cr.PC for short) and the tenor of their answers reflects a plea of total denial.

5. The trial Court delineated the following points to decide the case.

"The points for determination in this case are:-

I. Whether on 18.08.2011, at about 07:00 pm, at Ragunath Path, Dhirenpara, under Fatasil Ambari P.S, the accused persons committed dowry death by causing death of Nilima Begum and thereby committed an offence punishable under section 304(B) IPC?

II. Whether on the same, date, time and place, the accused persons committed murder of Nilima Begum with intent of cause her death and thereby committed an offence punishable under section 302 IPC?

III. If so, what punishment do they deserve?

DECISION OF THE TRIAL COURT

6. It was held by the learned trial Court that the PW-8 is the most vital witness of the prosecution who saw the accused/appellant and the mother-in-law assaulting the deceased on the day of the incident. PW-8 tried to resist the mother-in-law of the victim and tried to snatch away the baby but failed in her attempt, as she was very young at the relevant point of time. It was also held by the learned trial Court that the prosecution could establish from the evidence of PWs-6, 7 and 8 that cruelty and harassment was exerted on the victim "soon before her death" as these witnesses saw the victim sitting outside her house and crying and both the appellants were present at that time. It was also held by the learned trial Court that PWs-1, 2, 4 and 5 could establish the demand of dowry by the appellants. The learned trial Court dismissed the plea of the learned Defence Counsel that the IO did not collect evidence relating to demand of dowry at the time of marriage but the demand of dowry was alleged only after marriage.

SUBMISSIONS OF BOTH SIDES:-

7. Heard Mr. J.C. Gaur, learned counsel for the appellants. Also heard Mr. M.P. Goswami, learned Addl. PP, Assam.

8. The learned counsel for the appellants through the Appeal Memo as well as through his argument has submitted that the evidence of PWs-6, 7 and 8 cannot be relied upon. They are partisan witnesses. The trial Court has erred by convicting the appellants by relying on the evidence of PWs-6, 7 and 8. After the trial, when the learned Sessions Judge asked the accused, if they were willing to adduce evidence in defence, the accused being ignorant about their right to defence, did not adduce any evidence. It is therefore submitted by the learned counsel that this is a fit case to resort to Section 391 of the Cr.PC.

9. Per contra the learned Addl. PP Mr. M.P. Goswami laid stress in his argument that the statements of the witnesses u/s 313 Cr.PC clearly depicts that they had no explanation why the victim had committed suicide. Not only PWs-6, 7 and 8 have implicated the accused, the informant as well as his wife including PW-4 have also implicated that the accused are complicit. Cruelty and domestic violence is writ at large. It is submitted that there is overwhelming evidence that this is a case of dowry death. It is also submitted that appellants were dealt with leniently. This is not a case to resort to Section 391 Cr.PC.

10. In reply to the submissions of the learned Addl. PP, the learned counsel for the appellants laid stress in his argument that A1 and A2, to question No. 11 u/s 313 Cr.PC replied that they have not committed murder or subjected the victim

to cruelty. They have never demanded any money or dowry from the victim. She got married to Abdul (A1) against her will and this is the reason why she used to visit her parental house frequently, leaving behind her minor child under their care. Every time, the victim left for her parental home, her parents used to bring her back. A week prior to her death, she visited her parental home but after she returned, she remained very upset and did not take her meal properly. She committed suicide due to the mental agony she was suffering on account of the conduct of her parents and brother. It is further submitted by the learned counsel for the appellants that the victim, who wanted to marry a boy from Sarthebari was compelled to marry the appellant A1 and this drove her to commit suicide.

DECISION AND CONCLUSION

11. Now the question that falls for consideration is that, whether the trial Court has erred in convicting the appellants A1 and A2 for offence u/s 304B IPC. To decide this case in its proper perspective the evidence is reappraised.

12. The informant Md. Siraj Ali is the victim's brother-in-law. He deposed as PW-1 that the victim was married to A1 as per Islam 'Shariat' at Sarthebari. They had gifted some articles to A1 at the time of his marriage. All the accused

used to reside at Dhirenpara in a rented house. The marriage between A1 and his sister Nilima Begum was solemnized in the year 2008 and after one and a half years of their marriage, they were blessed with a boy who is at present residing with them (PW-1). The child is about 6 years old now.

13. PW-1 further deposed that after their marriage, A1 and his family members demanded Rs. 50,000/- but they failed to pay the amount due to their financial constraints. Then the accused persons tortured his sister. He was informed by his sister that the accused used to assault her. The victim also came to their house and stayed for a few months and returned back to her in-laws house. When he went to Fatasil Ambari PS at Guwahati, he saw the dead body of the victim inside the police vehicle and the police informed him that the victim committed suicide by hanging. He could not believe the police and he had strong suspicion that his sister was killed. He then lodged the FIR with the police at Fatasil Ambari. He further stated that he did not know what was written in the FIR which was read over and explained to him and he affixed the signature on the FIR. He proved the FIR as Ext.-1 and his signature on the FIR as Ext.-1(1). He proved the printed format of the FIR as Ext.-2 and his signature as Ext.-2(1). He further deposed that he went to the accused-person's house after the incident, but not a single family member was present. The victim's son was left abandoned in the house and on instructions by the police, he took the

victim's child to his house.

14. In his cross-examination he deposed that he is a fisherman and when he received the phone call from the mother-in-law of the deceased demanding Rs. 50,000/-, he did not inform the matter to the police.

15. This witness was cross-examined in *extenso* but no contradiction as per Section 145 of the Indian Evidence Act, 1872 (the Evidence Act for short) qua Section 162 Cr.PC could be elicited. He has admitted in his cross-examination that he assured his sister to get married to the A1 as he was from a family with strong financial background. He also admitted in his cross-examination that he could not recall when the victim visited their house for the last time. However, he has denied the question posed to him during cross-examination that the victim did not visit their house and stayed in their house for 7 days prior to her death. He has also admitted in his cross-examination that A1 has brought up a case against him in the Family Court seeking custody of his child. He has denied the suggestion of the defence that his sister committed suicide in the accused-person's house.

16. Eleza Begum, wife of Md. Siraj Ali deposed as PW-2 that the deceased Nilima Begum was her sister-in-law. She was married to Abdul Haque (A1) in the year 2008 as per Islam Shariat. Several articles were gifted to the accused

at the time of his marriage. The accused used to reside in a rented house. For 1 year there was no complaint from the victim, but after a year the accused-persons started to subject the victim to cruelty. They used to assault her and whenever there was any such incident, the victim used to come to their house and stay there for a few days and then return back to her matrimonial home. A year after her marriage, the victim gave birth to a boy who is at present residing in their house. The victim's child is about 7 years old at present and he is a student at Sarthebari.

17. PW-2 further deposed that the accused demanded Rs. 50,000/- to start his business but they failed to pay the amount due to financial constraints. Thereafter, the victim committed suicide by hanging. She went to the accused-persons' house and found that the house was under lock and key and no family member was present. Then they went to the police station and found the body of the deceased in the police station. She saw a rope tied around the neck of the deceased and she had strong suspicion that the accused committed murder of the deceased. Her husband lodged the FIR with the police.

18. This witness was also cross-examined in *extenso*, but no contradictions u/s 145 of the Evidence Act vis-à-vis Section 162 of the Cr.PC could be elicited through cross-examination. It was thus correctly held by the trial Court that the

defence failed to refute the charges levelled against the accused. It is true that it cannot be ignored that all the accused have been implicated by PW-1 and PW-2 in a blanket manner. No specific allegation has been brought up against each and every accused. PW-1 and PW-2 have stated that the victim was subjected to cruelty by the accused. However, it is clear from the evidence of PW-2 that the accused (A1) demanded Rs. 50,000/- to start his business while the evidence of PW-1 reveals that the family members of the accused, meaning the family members of A1 demanded Rs. 50,000/-.

19. The learned Addl. PP has thus submitted that the trial Court has rightly convicted A1 and A2.

20. Md. Sahir Hussain is the Landlord and he deposed as PW-3 that the accused used to reside in his house as tenant. The deceased Nilima Begum was A1's wife. After their marriage she was blessed with a boy who is at present 6/7 years now. The accused had a grill fabricator shop and his father was a government employee, while his mother is a house wife. Their economic condition was good. They used to reside peacefully and on the fateful day the victim committed suicide.

21. It is apt to mention at this juncture that the learned counsel for the appellant laid stress in his argument that the evidence of PW-3 clearly reflects

that they were living peacefully as his tenant. They used to reside in the same building. PW-3 stated that the accused and his wife used to reside in one part of his rented house. Being the landlord PW-3 would have been aware of any family dispute between his tenants but PW-3's evidence has exonerated them. The evidence of the other independent witnesses however refutes this submission of the counsel for the appellant.

22. Sri Niladhar Deka deposed as PW-4 that the deceased Nilima Begum was his neighbour. The accused are known to him. The deceased was married to Abdul Haque in the year 2008 and she died in the year 2011. On the fateful day, Siraj Ali (PW-1) came to his house and informed him that the deceased suddenly took ill. Then he, along with the informant and some other villagers went to the accused person's house situated at Dhirenpara. He did not see the family members in the accused person's house but he noticed one baby aged around 1½ years crying in the house. He then learnt from the owner of the house that the body of the deceased was already taken to Fatasil Ambari PS. He went to the police station and saw the dead body. He did not notice any injury marks on the body of the deceased. The body was taken to the GMCH for post-mortem examination. Thereafter the body was handed over to the informant. Then they all returned with the body and the baby to their village. The police gave custody of the baby to Siraj Ali (PW-1). The body was buried as per Islam

Shariat. Before her death the victim visited her parental home and when he met her, she expressed her agony informing him about her marital discord. An amount of Rs. 50,000/- was demanded from her as dowry. He heard that the victim committed suicide by hanging. The informant then lodged an FIR with the police.

23. This witness was also cross-examined in *extenso*. He has admitted in his cross-examination that he has a good relation with the informant. He occasionally visited the informant's house. He also came to the Court along with the informant and has deposed in the Court according to the narrative of the informant. He did not know if prior to her death, the victim went to her parent's house and stayed there. She had also informed the informant regarding her marital disharmony with her in-laws. At times, the victim used to visit her parental home without informing her husband. Siraj Ali informed him that the accused persons demanded Rs. 50,000/- from him. He too has admitted that the accused has filed a case in the Family Court seeking custody of his child.

24. Although this witness was cross-examined extensively, no contradictions as per Section 145 of the Evidence Act vis-à-vis Section 162 of Cr.PC could be elicited through his cross-examination. His evidence clearly reveals that the victim's marital relationship with her husband was strained. His evidence also

incriminates the victim's in-laws. Just because, he is closely acquainted to the informant does not render his evidence suspect. It has to be borne in mind that no contradictions could be elicited through his cross-examination.

25. The prosecution has failed to refute that Rs. 50,000/- was demanded from the victim's family by the accused-persons by bringing in contradiction as per Section 145 of the Evidence Act. It has to be borne in mind that PW-4 is a neighbour to the informant (PW-1). He has admitted that he was closely acquainted to the informant. The defence failed to refute that the victim has informed him that the accused had demanded Rs. 50,000 from her. The defence also failed to rebut the evidence that the victim was suffering from marital disharmony.

26. Md. Nurul Ahmed deposed as PW-5 that the victim was the informant's sister and A1 was known to him. The deceased was married in the year 2008. Six months after her marriage she was tortured to meet the demand of Rs. 50,000/- by the accused, but she failed to meet his demand due to the financial condition of her family members. After a few days he heard that the victim committed suicide. Then he went to Dhirenpara at Guwahati. He went to the rented house of the accused persons, but did not find any family members in the house. They found the victim's child crying in the house of some other

person. At present, the victim's child is residing with the informant and is about 7/8 years old. The PW-5 further deposed that they all went to the police station and found the body of the deceased. He did not notice any injury marks on the body and the police sent the body for autopsy. When the body was handed back to them, he along with the body of the deceased and her infant, returned to their village. The informant is his neighbour. The deceased used to visit her parental home. Initially, the deceased had a good relation with the accused and she visited her parental home along with her husband. The accused demanded money from the informant who failed to pay and then the victim committed suicide.

27. In his cross-examination PW-5 stated that he had a good relation with the informant and the informant was present in the Court on the day he came to the Court to present his evidence. He has further stated in his cross-examination that he deposed according to the narrative of the informant. He heard that the accused demanded money to start a business. He also heard that there was a marital dispute. He had no personal knowledge if the victim was tortured by the accused to meet their illegal demand of dowry. He has also learnt that the accused has filed a case for custody of his child. He had no knowledge as to why the deceased committed suicide. He has denied that he has given false evidence.

28. The learned defence counsel through the cross-examination of PW-4 and PW-5 tried to project that the evidence given by PW-4 and PW-5 is the narrative of the informant. It is true that both PW-4 and PW-5 have stated in their cross-examination that they gave their evidence on being tutored by PW-1, but at the same time it cannot be ignored that no contradiction could be elicited through their cross-examination vis-à-vis the cross-examination of the IO to rebut their testimony that the accused demanded Rs. 50,000/- from the victim's family members who were unable to pay the amount due to their financial constraints, and after the demand the victim committed suicide. Although PW-4 and PW-5 were cross-examined in extenso, yet the defence refrained from cross-examining PW-4 and PW-5 as well as the IO relating to any initial statement u/s 161 Cr.PC. When an ingenious lawyer cross-examines a witness, the grain has to be separated from the chaff. The defence did not cross-examine that they had given their statement u/s 161 Cr.PC before the IO according to the narrative of the PW-1. The argument of the defence is that they have deposed in the Court according to the narrative of the PW-1. Due to the failure of the defence to contradict the evidence of PW-4 and PW-5 that the accused demanded Rs. 50,000/- from the victim's family members, the argument of the learned counsel for the appellant that PW-4 and PW-5 have been tutored by PW-1 can be safely brushed aside.

29. Abdul Hamid deposed as PW-6 that he used to reside in the same campus as Nilima Begum for a long period of time. The incident occurred about 7/8 years ago in the month of Ramjan. When he returned home after dusk at the time of Iftar, he noticed Nilima Begum (victim) crying. She was sitting outside the rented room and he asked her why she was crying but she did not reply. Then he heard from his wife that Nilima (victim) had informed her that even on the day of Roja she was assaulted by her husband. Nilima also informed his wife that her mother-in-law abused her in filthy language. On that very night, at about 8 PM Nilima Begum (victim) committed suicide by hanging. Her husband was not in the house at that time while her in laws were in the house at that time. When her in laws noticed that she committed suicide they fled away. The baby was abandoned, but they were helpless as this was a police case. When the police arrived, they brought down the dead body on the instruction of the Magistrate. The police recorded his statement and he was forwarded to the Magistrate who recorded his statement. He proved his statement u/s 164 Cr.PC as Ext.-4. In his cross-examination he deposed that he used to reside in the neighbourhood for 2 years. He did not witness any incident of previous assault on the victim but she used to come to their room regularly and she used to cry stating that she had been subjected to cruelty. The door of the victim's room was locked from inside when she committed suicide. He did not notice any

injury on the victim's body.

30. This witness was also cross-examined in *extenso*, but no contradiction could be elicited through the cross-examination of this witness vis-à-vis the cross-examination of the IO. He has proved his statement u/s 164 Cr.PC as Ext.-4. The statement of this witness u/s 164 Cr.PC was avoided by the defence.

31. It is true that there is no time frame to assess "soon before her death" but PW-6's evidence clearly implicates that the victim was crying immediately before the incident. She did not even reply why she was crying. The mental agony of the victim is discernible. That very night when PW-6 found the victim crying, the victim committed suicide. Thus it is clear that the misery of the victim, at the time of the incident drove the victim to take such a drastic step.

32. In his cross-examination too PW-6 has stated that he never witnessed any incident of assault, but the victim used to come to their house regularly and used to disclose that she was being tortured by the accused. The evidence of PWs-1, 2, 4, 5 and 6 is supported and corroborated by the evidence of PW-7.

33. Hasina Begum deposed as PW-7 that they used to reside in the same campus as the victim and the accused. The incident occurred about 7 years ago, in the month of Ramjan. When she returned from a neighbouring house after Iftar, she noticed the victim sitting outside her house near the staircase. She also

noticed blood on her mouth. On being asked, the victim told her that she was observing 'fast', and when she went to take water, she tripped over and sustained the injuries.

34. PW-7 further deposed that she invited the victim to her room for Iftar but the victim did not come. On the same night she went out looking for a mobile charger for her son, and then she noticed the victim in a hanging condition, and her child was touching her feet and crying for his mother. She became unconscious as soon as she witnessed the scene. The mother of the accused (A2) demanded in an aggressive tone as to what was wrong. When the parents of A1 noticed the body from the window pane, they immediately fled the scene. The police came and the body of the victim was brought down. She was produced before the Magistrate for recording her statement. She identified her statement before the Magistrate as Ext.-5.

35. In her cross-examination PW-7 deposed that they were staying in the same neighbourhood as the accused, for 3 years. The accused-persons used to subject the victim to cruelty. One day they were invited to the accused-person's house as guests. They sat together along with the accused-person's mother, two sisters and brother-in-law for food. They were having fish, chicken etc. but the victim was having only some rice with water.

36. Thus the evidence of PW-7 clearly reveals the cruelty meted out to the victim. It has been disclosed through the cross-examination of PW-7 that the victim was given only rice and water whereas the other guests and the family members were having fish, chicken etc. It can thus be manifested, that the morsel of food offered by the accused to the victim was like the food given to a slave on the days of yore. PW-7 also saw the victim sitting outside her house and she was in tears.

37. In sync with the evidence of PWs-6, 7 and 8 Ms. Ruma Begum deposed that Abdul Hamid, PW-6 is her father. They used to reside in the same campus with the deceased. The incident occurred about 7/ 8 years ago in the month of Ramjan. On the fateful day, she witnessed the accused and his mother (A1 and A2) physically assaulting the victim. She came out and tried to prevent the accused and his mother from assaulting the victim and she also tried to snatch away the baby from them, but as she was young she could not resist and she was not allowed to take away the baby. After assaulting the victim, the accused and his parents came out leaving the victim alone at home. At about 8:30 PM, the accused-person's parents and sisters came back and knocked the victim's room, but the victim did not respond. Then she heard a commotion and learnt that the victim committed suicide by hanging. The owner of the house came and informed the police. The police reached the place of occurrence at 12 O'

Clock, midnight, and brought out the body. The police asked her about the incident. The police also produced her before a Magistrate who recorded her statement u/s 164 Cr.PC. She proved her statement as Ext.-6 and Ext.-6(1) as her signature.

38. It is apt to mention at this juncture that no contradictions could be elicited as per Section 145 of the Evidence Act vis-à-vis Section 162 Cr.PC after strenuous cross-examination of PWs-7 and 8. The PW-7 and PW-8 have repeatedly stated in her cross-examination also that as the victim was their neighbour they were aware that the victim was regularly subjected to cruelty. PW-8 also stated in her cross-examination that they used to stay on the first floor and the accused-person with his family used to stay on the ground floor. She always witnessed frequent quarrels between the husband and wife, but they did not inform the house owner about their family squabbles, as she was only 13 or 14 years old at that time. Both PW-7 and PW-8 have stoutly denied that as they have an acrimonious relationship with the accused-persons, they have given false evidence against them. The defence refrained from any cross-examination of PWs-6, 7 and 8 relating to their earlier statements u/s 164 Cr.PC, as well as Section 161 Cr.PC.

39. The IO is a formal witness. He was cross-examined in extenso but no

contradictions could be elicited through the cross-examination of the witnesses vis-à-vis the cross-examination of the IO. Thus it can be safely held that the prosecution could bring home the charges levelled against the appellants and the appellants failed to rebut the evidence and refute the charges.

40. Shri Kesab Chandra Tamuli deposed as PW-9 that he is a retired police officer. On 19.08.2016, during his service tenure, he was posted at Fatasil Ambari PS as Second Officer. He was entrusted with investigation of this case. He went to the place of occurrence at Dhirenpara and recorded the statements of the witnesses. On finding a prima facie case, he submitted charge-sheet against the accused-persons u/s 304(B) IPC. He proved the sketch-map as Ext.-7 and the charge-sheet as Ext.-8.

41. It is pertinent to mention at this juncture that although the learned counsel for the appellants submitted through his argument that the victim had a love affair with another man, yet not a single witness was cross-examined in that context, nor did the accused-persons state u/s 313 Cr.PC that the victim had a love affair with another man. Moreover, the witnesses have categorically stated that the victim was subjected to cruelty after her marriage. Even on the last day of her existence, the victim was subjected to cruelty and this has been witnessed by PW-9. PW-9 was only 13 or 14 years old at the time of the

incident and she had given her statement u/s 164 Cr.PC which she has proved as Ext.-6. The uncontradicted and uncontroverted evidence of PW-8, clearly reveals that the victim was assaulted immediately before her death by A1 accompanied by A-2. The argument of the learned counsel for the appellants that the witnesses have stated in a blanket manner that all the accused have subjected the victim to cruelty holds no water. The account of the incident as narrated by the eye-witnesses reveal that A1 assaulted the victim and he was accompanied by his mother. It cannot be held that A2 is not complicit, but the extent of cruelty meted out to the victim by A2 is of a lesser degree than the extent of cruelty meted out to the victim by A-1. Although the witnesses have stated in a blanket manner that all the accused have exercised cruelty to the victim, yet the other accused have been exonerated by the trial Court because no specific allegation has been levelled against the other accused except against A2.

42. The evidence of the Medical Officer clearly reveals that the death was suicidal in nature. Dr. Khaindra Mohan Saud deposed as PW-10 that on 19.08.2011, he performed post-mortem on the dead body of the victim and according to his opinion death was due to asphyxia as a result of antemortem suicidal hanging. The time of death was 12-24 hours of the incident. He proved the autopsy report as Exhibit-9 and his signature as Ext.-9(1). He identified the

signature of Dr. Gunajit Das as Ext.9(2).

43. As it has been affirmed that the death is suicidal in nature so the discussion on the medical report is not dilated.

44. PW-1 has stated that his sister informed him that she was subjected to cruelty by the accused-persons. PW-2 has stated that she was subjected to cruelty by the accused-persons, who used to assault her. PW-4 has stated that before her death the victim visited her parental house and she informed him that she was suffering from mental agony due to marital discord and a demand of Rs. 50,000/- as dowry. PW-5 has incriminated A1 stating that he demanded money, which the informant failed to pay and then the victim committed suicide. PW-6 has categorically stated that the victim's husband assaulted her. This evidence of PW-6 was not contradicted. PW-8 has stated that the accused and his mother physically assaulted the deceased. This assault as described by the witness was immediately before the victim's death.

45. Considering the extent of cruelty as projected against the A2, I deem it proper to extend the benefit of doubt of offence regarding the dowry death to A2. However, in the wake of my foregoing discussions, it is held that A2 is guilty of subjecting the victim to cruelty. A2 is thereby held guilty of offence u/s 498A IPC.

46. From the foregoing discussions it is discernable that the intensity of cruelty extended by A1 was much more. There is not even an iota of doubt that A2 had usually accompanied A1 during the bouts of cruelty. PW-6 and PW-8 have categorically stated that the victim's husband had assaulted her. PW-8 has deposed that the victim's husband i.e. the appellant, A1 was also accompanied by A2 when she saw them assaulting the victim. In a mechanical manner, A2 cannot be roped in with the offence under Section 304(B) IPC. Section 498A IPC describes cruelty which may not result in death. Section 498A also includes dowry within its fold. After carefully scrutinizing the evidence of the witnesses, it is held that the prosecution could prove that A2 being the mother-in-law subjected the victim to cruelty to such an extent which was likely to drive the victim to commit suicide. A2 also subjected the victim to cruelty to meet their illegal demand of dowry, but she cannot be held guilty of offence relating to cruelty to such an extent, which triggered the incident of suicide. Justice will be met, if benefit of doubt is extended to A2. A2 is hereby held guilty of offence u/s 498A IPC. She is not found guilty of offence u/s 304(B) IPC.

47. Relating to the cruelty extended to the victim, the learned Addl. PP has relied on the decision of this Court in ***Abdul Kalam Sk. Vs. the State of Assam and Another*** in connection with ***Criminal Appeal No. 6 of 2021*** wherein it has been observed that:-

“I would like to reiterate that the evidence of PW-4 and PW-5 about the cruelty extended to the victim has remained uncontradicted. Their evidence cannot be discarded solely because they are related to the victim. In this case the decision of Hon'ble the Supreme Court in *Ram Chander and Others vs. State of Haryana*, reported in (2017) 2 SCC 321 is relevant. It has been observed and held that:-

53) In *Namdeo Vs. State of Maharashtra*, (2007) 14 SCC150, this Court further held:

“38 it is clear that a close relative cannot be characterized as an "Interested" witness. He is a "natural" witness. His evidence, however, must be scrutinized carefully: If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

54) We follow and apply this well settled principle of law for rejecting the submissions of learned counsel for the appellants.

55) In the light of aforementioned twelve reasons, we are of the view that Guddi (PW-9) was rightly held to be an eye- witness and the two Courts rightly relied upon her sworn testimony for sustaining the appellants' conviction.”

48. The learned Addl. PP has relied on the decision of Hon'ble the Supreme Court in ***Mustafa Shahadal Sheikh Vs. State of Maharashtra*** in connection with ***Criminal Appeal No. 406 of 2008 decided on 14.01.2010*** wherein it has been held and observed that:-

“8) 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.

13) Though learned counsel for the appellant contended that all the witnesses relied on by the prosecution are close relatives and no outsider has been examined to prove their case, we are of the view that in a case of this nature i.e. matrimonial death, we cannot expect outsiders to come and depose what had happened in the family of the deceased. We have already highlighted that the death occurred within a period of 7 months from the date of the marriage and she died at her matrimonial home. It has also come in evidence from the prosecution witnesses that on the date of the death, the appellant and his parents alone were in the house. In such circumstances, we reject the contention raised by the counsel for the appellant."

49. Reverting back to this case, it is held that the evidence of the eye-witnesses clearly proves that the appellant is guilty of dowry death. The circumstantial evidence as well as the substantial evidence proves beyond a reasonable doubt that the appellant A1 is guilty of dowry death. It has been proved beyond a reasonable doubt that the death of the victim was not under normal circumstances, but her death occurred otherwise than under normal circumstances within 7 years of her marriage and it has been proved beyond reasonable doubt that immediately before her death she was assaulted by A1

and the cruelty extended to the victim was because she failed to meet the illegal demand of dowry of Rs. 50,000/-. The evidence of the witnesses reveal that the victim died within 7 years of her marriage. Her child is 7 years old now. PW-1 has stated that after one and half years of her marriage, she was blessed with a child who has turned 6 or 7 years as on 18.01.2017. The evidence of PW-2 reveals that the victim gave birth to her child after a year of her marriage who was 7 years as on 18.01.2017. The evidence of PW-4 reveals that the victim was married to Abdul Haque, A1, in the year 2008 and she died on 18.08.2011 i.e. within 3 years of marriage.

50. Before parting with this record, I would like to reiterate that there is overwhelming and clinching evidence against the appellants that they subjected the victim to cruelty to meet their illegal demand of dowry of Rs. 50,000/-. The witnesses have clearly deposed about the cruelty meted out to the victim, who failed to meet the demand of Rs. 50,000/- by the appellants. The uncontradicted and uncontroverted evidence of PW-1 and PW-2 clearly proves beyond any reasonable doubt that after her marriage the victim was subjected to cruelty to meet the illegal demand of Rs. 50,000/-, of the appellants. Their evidence cannot be discarded only because, they are related to the victim.

51. Thus the uncontradicted evidence of PWs-1, 2, 4 and 5 has established

beyond a reasonable doubt that after her marriage, the victim was asked to provide Rs. 50,000/- to the appellants. Further the evidence of PWs-1, 2, 4, and 5, substantiated by the evidence of PWs-6, 7, 8 and 9 could prove beyond a reasonable doubt that soon before her death, the victim was subjected to cruelty as she failed to meet the appellant's demand of Rs. 50,000/-. Thus it has been proved beyond a reasonable doubt that the cruelty or harassment suffered by victim drove her to commit suicide and thus the trial Court has correctly held the appellant (A1) guilty u/s 304(B) IPC. This is a case of its own kind. Usually, domestic violence is prevalent in the confines of the household. Here the domestic violence in the household was witnessed by independent witnesses who did not hesitate to disclose the cruelty meted out to the victim. In this case domestic violence permeated beyond the four walls of the household.

52. In view of my foregoing discussions, the decision of the trial Court convicting the appellant A1 Abdul Haque u/s 304(B) IPC to undergo Rigorous Imprisonment for 7 years is hereby upheld. In view of my foregoing discussions, the decision of the trial Court convicting the appellant, A2, Musstt. Rajema @ Rojema Begum u/s 304(B) IPC is hereby set aside. The appellant A2 is convicted u/s 498A IPC to undergo Rigorous Imprisonment for 3 years and pay a fine of Rs. 1,000/- and in default of payment of fine to undergo Rigorous Imprisonment for 1 month. The period of detention of the appellants during investigation and

trial is set off with the custodial sentence. The minor child of the victim deserves compensation. Therefore, this case is recommended for compensation to be assessed by the District Legal Services Authority, Kamrup (Metro) and after assessment, if the minor child is recommended for compensation, the amount recommended for compensation, as per the Assam Victim Compensation Scheme, 2012, may be kept as fixed deposit, until the minor reaches the age of majority.

53. Send back the original trial court records.

JUDGE

Comparing Assistant