

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRA 166 of 2019

Joydeb Shil & Ors.

-Vs-

The State of West Bengal

For the appellant: Mr. Suman Sehanabis Mondal, Adv.,
 Mr. Atulya Sinha, Adv.

For the State: Mr. Saibal Bapuli, Adv.,
 Mr. Arani Bhattacharya, Adv.

Heard on: December 07, 2021.

Judgment on: December 16, 2021.

BIBEK CHAUDHURI, J. : –

1. In Sessions Trial No.1(7) of 2016 corresponding to Sessions Case No.50 of 2016, the appellant being the father-in-law of deceased Priyanka Shil with other matrimonial relations of the deceased were convicted under Section 498A/304B of the Indian Penal Code and sentenced to suffer imprisonment for a terms term of seven years each for the offence punishable under Section 304B of the Indian Penal Code. However, no separate sentence was awarded for committing offence under Section 498A of the Indian Penal Code. The said judgment and order of conviction

and sentence was passed by the learned Additional Sessions Judge, 3rd Court at Cooch Behar on 28th January, 2019.

2. Convict Joydeb Shil and other convicts have preferred the instant appeal challenging the aforesaid judgment and order of conviction and sentence.

3. It is found from the written complaint submitted by one Nikhil Ch. Dey before the Officer-in-Charge, Kotwali P.S at Cooch Behar on 12th August, 2015 that her minor daughter Priyanka had love relationship with one Rabi Shil, son of the appellant. The said Priyanka was eloped by Rabi on 18th May, 2014. The father of Priyanka lodged a missing diary and Rabi was arrested. After he was released from judicial custody on bail he again left the village with Priyanka and married her. Initially, they used to live in Gujarat and after few months of marriage they returned to the village and started residing in a rented house. At that time the defacto complainant came to know that the husband of Priyanka used to put pressure upon his wife asking her to bring Rs.2 lakhs from the defacto complainant. Over the said illegal demand there was quarrel between them. Priyanka was subjected to physical torture and mental pressure by her husband. Few days before her unnatural death both Priyanka and Rabi started residing in a room at her matrimonial home. In the matrimonial home Priyanka was subjected to physical torture and mental cruelty not only by Rabi but also by the appellant and other matrimonial relations. It is alleged in the written complaint that on 12th August, 2015 the defacto complainant rushed to the matrimonial house of Priyanka and

found that she was hanging from the roof of a room in her matrimonial home. He did not find her husband Rabi Shil. The defacto complainant was of the opinion that the husband of Priyanka and her other matrimonial relations committed murder and hanged her from the wooden plank of the roof of the room where Priyanka used to stay.

4. On the basis of the said complaint, police registered Kotwali P.S Case No.802 on 12th August, 2015 under Section 498A/302/34 of the Indian Penal Code against the husband of the deceased and all other matrimonial relations.

5. The investigation culminated in filing charge-sheet against the accused persons under Section 498A/304B/34 of the Indian Penal Code.

6. From the date of the incident, Rabi was in absconding and he could not be traced out even during the trial of the case. The father-in-law, mother-in-law, brother-in-law and sister-in-law Priyanka faced trial under the charges of 498A/302/34 of the Indian Penal Code, alternatively under Section 304B of the Indian Penal Code. On conclusion of trial the accused persons were convicted and sentenced accordingly.

7. The present appellant, namely, Joydeb Shil is the father-in-law of the deceased. He has challenged the impugned judgment and order of conviction and sentence in the instant appeal.

8. During trial of the case, prosecution examined 13 witnesses. According to the status of the witnesses and their relationship with the deceased, they are grouped in the following manner:-

A. Relative of the deceased:-

- i. PW1, Nikhil Ch. Dey, father of the deceased.
- ii. PW2, Moumita Dey is the cousin sister of the deceased.
- iii. PW3, Smt. Pratima Dey is the mother of the deceased.
- iv. PW4, Babita Dey is the aunt of the deceased.
- v. PW5, Ananda Ch. Dey is the uncle of the deceased.
- vi. PW6, Jagannath Dey is also the uncle of the deceased.

B. Neighbours:-

PW7, Rakhal Ch. Dey

C. Medical Witness:-

PW10, Subrata Haldar

D. Police and Executive Officer:-

- i. PW8, A.S.I Uttam Chetri.
- ii. PW9, Sanjay Tashi Dukpa.
- iii. PW11, S.I Pradip Chakraborty.
- iv. PW12, S.I Sanjib Sankar.
- v. PW13, S.I Jitendra Nath Roy.

9. It is found from the evidence of the defacto complainant and other witnesses who are the relatives of the deceased that Priyanka had love affair with Rabi. Both of them fled away from the village and were living together in Gujarat. Subsequently, on the strength of a missing diary they were arrested. But Priyanka wanted to stay with Rabi. Therefore, her marriage was solemnised with Rabi and they started living in a rented

house in the same village. The witnesses also stated in their deposition that Rabi used to inflict torture upon Priyanka on demand of Rs.2 lakhs from her father. He used to ask his wife to bring the said money from her father. About one month before the unfortunate death of Priyanka both Rabi and Priyanka were brought to her matrimonial home by the father of Rabi and they started to reside in a room in the house of the appellant. Repeatedly they also tortured Priyanka both physically and mentally on demand of a sum of Rs.2 lakhs. Failing to bear such torture Priyanka committed suicide in her room in the matrimonial home.

10. The evidence of other related witnesses are more or less the same. it is important to note that PW2 Maumita Dey who is the cousin sister of the deceased stated in her evidence that one day she saw Rabi assaulting Priyanka in her presence on demand of Rs.2 lakhs. Except PW2 no witnesses who are the near relatives of Priyanka had the direct knowledge about torture and illegal demand of money from the father of Priyanka. Their evidence essentially is hearsay in nature. It is also pertinent to note that the said witnesses mostly made allegation of physical and mental torture and demand of dowry against Rabi and not against the matrimonial relations of Priyanka. It is also important to note that the said related witnesses never stated about the source of their knowledge that Priyanka was physical and mental torture on illegal demand of dowry.

11. Before lodging the complaint and initiation of Kotwali P.S Case No.802 dated 12th August, 2015, police got the information of unnatural

death of deceased Priyanka Dey and UD Case No.309 of 2015 was started. ASI Uttam Chetri conducted inquiry under Section 174 of the Code of Criminal Procedure in respect of the above mentioned UD Case and submitted his report. The inquiry was done in presence of the father of the deceased who put his signature in the inquest report. The said report which was marked exhibit during trial of the case is the first information in respect of the circumstances of unnatural death of Priyanka. The inquest Police Officer recorded in his report:-

“During preliminary investigation it was learnt that about one year three months ago deceased got married to Rabi Shil. They used to live in Gujarat. About one month ago they returned to the locality and used to live in the house of one Shanti Ranjan Dey as the tenant. About 12 days ago they shifted in their house i.e., house of father of Rabi and since then they were staying there. Since last three days both were having hot altercation. On 11.08.2015 at about 21:00 hours, deceased and her husband again led a hot altercation. Then as usual they closed the door of the house. On 12.08.2015 at about 10:00 hours when door was not opened, her family members broke the door and found deceased in hanging condition and the husband Rabi Shil was absent in the house”.

12. I have already stated that the inquest report was prepared by A.S.I Uttam Chetri (PW8) on the date of occurrence between 13.10 hours to

15.05 hours. The written complaint was lodged at 20.45 hours on the same day. In the inquest report there is no knowledge about demand of dowry by the husband or other matrimonial relations of the deceased. Involvement of the appellant and other matrimonial relations in the family affairs of Rabi and Priyanka was also not disclosed. The father of Priyanka could have stated before the inquest officer about the cause of unnatural death of the deceased.

13. At the risk of repetition it is recorded that except the defacto complainant no other witness who are the close relatives of the deceased did not make any allegation against the appellant and other matrimonial relations of the deceased. For example PW3 Smt. Pratima Dey who is the mother of the deceased stated in her evidence that Rabi asked her daughter to bring Rs.2 lakhs from their house as they failed to pay that amount, her daughter was murdered by him. PW4 Babita Dey stated in her evidence that Rabi demanded money from Priyanka they were unable to made the demand of Rabi. Priyanka was tortured by Rabi for non-payment of money. PW5 who is the uncle of the deceased stated on oath that during stay in the rented house and also at her matrimonial house, Priyanka was asked to bring Rs.2 lakhs. Priyanka refused to bring money and as a result they were physically and mentally tortured. The said allegation is also pointing at Rabi.

14. There is no direct evidence against the appellant in support of the charge under Section 498A and Section 304B of the Indian Penal Code. It is found from the evidence of the witnesses that Rabi and Priyanka used

to stay in a rented house of one Shanti Ranjan Dey after their marriage. Therefore, the said Shanti Ranjan Dey being the landlord of the tenanted house of Rabi might have direct knowledge as to whether Priyanka was subjected to torture on illegal demand of money by her husband but the said Shanti Ranjan Dey was not examined in the instant case.

15. Learned trial judge held the appellant and other matrimonial relations of the deceased guilty for committing offence under Section 498A and 304B of the Indian Penal Code taking the aid of the law of presumption under Section 106 of the Indian Evidence Act. Under Section 106 runs thus:-

“106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

Illustrations

“(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

16. It is trite that Section 106 of the evidence Act cannot be construed to mean that the accused has by reason of the circumstance that the facts are especially within his knowledge to prove that he has not committed the offence. It is for the prosecution to prove that he has committed

offence and that burden is not in any manner whatsoever displaced by Section 106 of the Evidence Act. From the inquest report it is ascertained that on previous night of the date of occurrence there was hot altercation between Rabi and Priyanka. Then they closed the door of their room. At about 10 am of the following day when the room of Rabi and Priyanka was found to be closed from inside the relatives of Priyanka broke open the door and found that Priyanka was hanging from the roof and Rabi was absent. Thus, when an incident took place inside a closed room in presence of the husband and on the following morning the wife is found to have committed suicide and the husband was missing, the burden of proof the circumstances under which Priyanka committed suicide might have been placed on Rabi because he was alone in the room with Priyanka on the previous night and he was found absent when the dead body of Priyanka was noticed by her relatives breaking open the door.

17. Thus, the question of involvement of the appellant in unnatural death of his daughter-in-law has not been proved. It is alleged by the defacto complainant that during her life time Priyanka was subjected to cruelty by her matrimonial relations including her parents-in-law, brother-in-law and sister-in-law along with her husband on demand of Rs.2 lakhs. However, during the life time of Priyanka the defacto complainant did not take any attempt to solve the dispute between Priyanka and her husband and other matrimonial relations. No complaint was filed in the local police station alleging such fact. In case of dowry death or even unnatural death of a married woman a tendency has

developed to rope in as many relations of the deceased husband as possible. However, other relations of the husband cannot be held guilty unless some overt act is attributed to them and proved at the trial. Except the omnibus allegation against the appellant there is no evidence as to any overt act attributed to them. If a married woman commits suicide inside a closed room where she was staying with her husband onus of proof may be shifted upon the husband to prove under what circumstances the deceased committed suicide. The special knowledge as the circumstances of commission of suicide cannot be attributed to the appellant.

18. For the reasons stated above and on independent appraisal of the evidence on record, I do not find any ingredient under Section 498A/304B of the Indian Penal Code against the appellant in the instant case.

19. Therefore, the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 3rd Court, Cooch Behar in Sessions Trial No.10(07)2016 corresponding to Sessions Case No.50/2016 is set aside.

20. The appeal is allowed on contest.

21. The appellant be released at once if they are in custody. Let a copy of this judgment be sent to the trial court with the lower court record immediately.

22. The parties are at liberty to act on the server copy of the judgment.

(Bibek Chaudhuri, J.)