

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

Before:

The Hon'ble Mr. Justice Shivakant Prasad

C.R.A. 236 of 2015

Rajendranath Das

-Vs.-

The State of West Bengal

For the appellant	:	Mr. Ananta Ghosh Mr. Siddhartha Paul
For the State	:	Mr. Saswata Gopal Mukherjee Mr. Imran Ali Mr. M.F.A. Begg
Heard on	:	10.08.2021
Judgement delivered on	:	10.08.2021

Shivakant Prasad, J. :

The instant appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 has been preferred on behalf of the appellant-husband of the deceased who is in custody since his conviction and sentence. The judgment and order dated 30.03.2015 and 31.03.2015 passed by the learned Additional

Sessions Judge, 17th Court, Alipore in Sessions Case No. 13(10)2009 and Sessions Trial No. 02(07)2010 is under challenge before this Court which resulted in conviction and sentence of the appellant for the charge under Sections 304B, 498A and 34 of the Indian Penal Code and for which he was sentenced to suffer rigorous imprisonment for seven years.

The instant appeal was being un-represented. So, Mr. Ananta Ghosh, learned advocate appearing for the appellant submits that he has been appointed by State Legal Services Authority, West Bengal.

The background leading to the instant appeal is that on 4th February, 2009 one Aruna alias Ruby Ghosh, daughter of Kalipada Ghosh of 6/3 Nakuleshar Bhattacharjee Lane got married to Rajendra Nath Das alias Raja. At the time of marriage Rs.25000 Cash along with Furniture and Gold ornaments costing around one lakh fifty thousand were given in the marriage. But right after the marriage another Rs.50000 was asked for by Manindra Nath Das father of the appellant. As Mr. Kalipada Ghosh could not give it, torture was inflicted upon Aruna Ghosh alias Ruby. On 08/05/2009 Manindra Babu father of Rajendra Nath Das made a call to Kalipada Ghosh and informed him

that Aruna hanged herself. According to Kalipada Ghosh her daughter was either murdered first and then hanged or compelled to commit suicide.

Based on the aforesaid written complaint lodged by one Kalipada Ghosh, Tollygunge Police Station registered a case for investigation being Case No.88 dated 04.05.2009 under Sections 498A, 304B and 34 of the Indian Penal Code.

After conclusion of the investigation, the charge-sheet under Section 498A, 304B and 34 of the Indian Penal Code dated 29.07.2009 was submitted against the appellant and his father. The appellant faced the trial but the father of the appellant expired during trial and the case against the deceased accused was filed forever by the Trial Court.

The prosecution examined as many as 15 witnesses and also adduced in evidence documents to substantiate charges under Sections 498A, 304B and 34 of the Indian Penal Code to which the appellant had abjured the guilt.

After conclusion of the trial and upon hearing learned advocate for the parties, the Trial Court was pleased to convict and sentence the appellant by the impugned judgment which is under appeal on the grounds, *inter alia*, that the learned Judge has failed to appreciate that all allegations of torture and

cruelty meted out to the deceased lady was not against the appellant but against Manindra Nath Das, the father in law of the deceased lady who inflicted mental and physical torture to the deceased lady which caused the lady to go into the depression, as a result, she committed suicide by hanging. It is submitted by Mr. Ghosh that there is no single eye witness of the alleged incident and the First Information Report which has been lodged is full of concocted stories and the de facto complainant was confused about the involvement of the present appellant and the written complaint minutely read upon, it would reveal that the de facto complainant the father of the deceased lady has not levelled direct allegation of torture for demand of dowry against the appellant.

It is also pointed out that the de facto complainant or the mother of the deceased lady never reported any incident of mental or physical torture on their daughter for demand of dowry to any close relative or to the police or to the Anchal Pradhan prior to incident as in order to seek conviction under Section 304B I.P.C. against a person for the offence of dowry death, the prosecution is obliged to prove that: (a) the death of a women was caused by burns or bodily injury or had occurred otherwise than under normal

circumstances ; (b) such death should have occurred within 7 years of her marriage; (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband; (d) such cruelty or harassment should be for or in connection with the demand of dowry; and (e) to such cruelty or harassment the deceased should have been subjected soon before her death. It is reflected from the evidence on record that some of the prosecution witnesses have stated on oath that the relationships between the appellant and the deceased wife of the appellant was good and some of the witnesses for the prosecution, later on, exaggerated in their evidence stating that the appellant had a common intention with his father for demand of dowry of Rs.50,000/- and some of the witnesses were examined in Court for the first time but they were not examined by the Investigating Officer.

Thus, it is submitted by Mr. Ghosh that there is no evidence of prosecution to reveal direct involvement of the appellant to corroborate the material particulars of the case of harassment or torture upon the deceased lady and the allegation against the appellant appears to be omnibus.

Mr. Ghosh submitted that there are gross contradictions in the statement of the prosecution witnesses and they cannot be relied upon to base

conviction against the appellant. Accordingly, Mr. Ghosh urged to set aside the impugned judgment and order of conviction and sentence against the appellant as bad in law and in fact.

At the outset, my attention is invited to the observation made by learned Trial Judge who has based the conviction taking the presumption under Section 113B of the Evidence Act as the provision being a great help to conclude that the appellant has caused dowry death upon the victim. Learned Court having regard to the fact that the deceased lady committed suicide by hanging in her matrimonial home within three months of her marriage with the appellant based conviction on the assumption that the accused appellant did not raise any objection when his father tortured the victim for demand for money as there was no evidence led by accused appellant to rebut the presumption or the trend of cross-examination of the prosecution witnesses does not reflect that the appellant took any step to forbear his father not to cause such sort of torture on the victim for demand of money and the appellant did not also console his wife not to remain with pensive mind or morose state of mind. In my view it is wishful thinking on the part of the learned Judge to conclude that had the accused appellant would console his

wife and prohibit his father for demand of dowry, perhaps, his wife would not have taken extreme step to commit suicide. Such observation to base conviction by taking cue from the provision under Section 113B of Evidence Act, in my opinion, is not in the context of the factual aspect of the case. It is true, that Section 4 of Indian Evidence Act explains the principle 'Shall Presume' that the court does not have any discretionary power in the course of presumption of 'Shall Presume' rather the Court has presumed facts and regard as if they are proved until rebutted. Presumption of fact is certain and uniform. Presumption of law is always rebuttable and goes away when explained or rebutted by positive proof but solely based on presumption, conviction should not lie.

Mr. Imran Ali, learned Advocate for the State invited my attention to the evidence of the prosecution to submit that there is evidence against the appellant as well concerning demand of dowry because there is no statement of denial being made by the accused while he was examined under Section 313 Cr.P.C., but equally, based on no denial or no evidence being adduced from the side of the defence, it cannot be the basis of conviction unless there is conclusive proof. On sifting the chaff from the grains, evidence on record does

not convince the judicial mind to hold that the appellant ever caused mental or physical injury for demand of dowry inasmuch as some of the prosecution witnesses has candidly stated on oath that there was good relationship between the spouse. It is pointed out that the deceased lady was sentimental by nature because the learned Judge has reflected the observation from the evidence of P.W. 3 that the victim was sentimental and so the demand of money might create long lasting sentiment to the victim, but the fact remains on evidence that there is no demand ever made by the appellant and such allegation is writ large against the father of the appellant. It would be apt to take note of the written complaint (Exbt. 1B) which mentions that for the marriage, an amount of Rs.25,000/- in cash along with gold ornaments and furniture worth of Rs.1,50,000/- was given to them as gift, but after eight days of marriage, they demanded again a sum of Rs.50,000/- and his daughter was being mentally and physically tortured as because they were unable to pay the demanded amount and his daughter had informed him about the matter and the complainant repeatedly consoled her to adjust and told her that everything will be alright after some days and all that was communicated to Rajendra Nath Das, the appellant herein who used to tell him that they are fine and the

complainant bought a mobile phone for Rajendra Nath Das for getting information about his daughter. Such statement made at the first instance reveals that spouses were living happily. The allegation of demand of dowry is only against the father in law of the deceased lady which finds corroboration by direct evidence of P.W. 1 that Manindra Nath Das, the father in law of the deceased lady used to tell filthy words and disconnected phone lines when he called him, although he was informed over the phone that the complainant's daughter had hanged herself by the neck with a rope on 4.5.2009. After visiting the spot, the father of the deceased had assumed that his daughter was killed by them, but such fact is no way in corroboration by the medical evidence. The Autopsy Surgeon has given his opinion after postmortem examination over the dead body of the deceased daughter of the complainant P.W. 1 that the death in his opinion was due to hanging and ante mortem and suicidal. The inquest report also reflects that there was no injury over the body except one ligature mark visible on left side under neck which has been extended approximately 1"x 6". The postmortem report (Exbt. 7) also reflects that there was no injury on the body though there has been allegation that the father in law of the deceased lady used to inflict physical injury by

means of a heated khunti (cooking tool), but there was no burn mark noted by the Executive Magistrate or by the Autopsy Surgeon. The deposition of P.W. 1 and the written complaint as against the appellant are omnibus allegation and the learned Court ought not to have taken presumption as against the appellant in the given facts of the case. On behalf of the defence during cross-examination, certain questions have been put to P.W. 1 to ascertain whether the amount given and the gifts in the form of gold ornaments and furniture worth of Rs.1,50,000/- were supported by any receipt. Admittedly, there was no receipt placed before the Trial Court on behalf of the prosecution in respect of the valuable articles. The seizure list in respect of the ornaments would reflect that the ornaments which appeared to be golden and they were like gold ornaments. The P.W. 1 has no bank account even to show that he had given sum of Rs.25,000/- from his bank account or the expenditure meted out by P.W. 1 out of the fund deposited in the account. The P.W. 1 stated in his written complaint that he had given a mobile to his son in law, but there is no whisper in the evidence that the mobile was given to the appellant on his demand for conveying information about the daughter of the complainant and

admittedly there is no receipt of purchase of a mobile to substantiate the fact that such a mobile was given to appellant.

P.W. 2, the mother of the deceased lady deposed otherwise that in the said marriage, they had given gold ornaments, almirah and cash of Rs.25,000/- to their son in law, but this is bit deviation from the statement of P.W. 1. The P.W. 2 has made a severe departure in her statement by stating that on another day, she herself with her husband and her son went to the matrimonial home of her daughter for bringing her and they had brought her back to the house and at that time of their visit, her son in law and his father claimed further sum of Rs.50,000/- from them. This is factually a variance in her statement from that of P.W. 1 because P.W. 1 in his complaint and in his deposition in clear crystal term has pointed out that it was Manindra Nath Das, the father of the appellant, who had allegedly demanded sum of Rs.50,000/- from them and father in law of the deceased had caused burn injury by iron rod but that does not find any corroboration from the inquest report, postmortem report or by any medical paper discussed above on evidence. P.W. 3 is the brother of the deceased lady whose evidence prima facie finds corroboration of the statements of P.W. 1 and P.W. 2 about the gift they have given in the marriage

of his sister, but he had simply heard about the physical and mental torture from his sister. The cousin sister of the appellant, namely Smt. Kalpana Das P.W. 4 reflects about allegation against the father of the appellant who was negotiator of their marriage and in their marriage as per demand of appellant's father, jautuk (gifts) such as utensils, almirah and sum of Rs.25,000/- and gold ornaments were given to the bride and bridegroom and 19 days after the marriage, the deceased told her that she was tortured both physically and mentally on demand of money by the appellant's father.

She also stated during cross-examination that Rajendra Nath Das @ Raja, the appellant herein had no sufficient income, however, she had no knowledge, if his father used to dominate him. PW-4 Kalpana Das in unequivocal term stated that there was good relation between the appellant and his deceased wife.

PW-5 was an invitee in the marriage being a neighbour of PW-1 who stated about the giving of gifts as stated by PW-1, PW-2, PW-3 and PW-4 but in cross examination he stated that Police had not interrogated him in course of investigation. If that be so, then no amount of evidence adduced by him can be relied because at the initial stage of the investigation at the outset he was

not examined by the Investigating Officer as deposed by himself so the evidence for the first time before the Court should not be relied upon. Be that as it may, his evidence in chief relates to witnessing the marriage attending the marriage ceremony and with regard to payment and giving of gifts. In common knowledge an invitee in a marriage being a neighbour is not supposed to be a witness to giving of gifts etc. Subrata De is witness to seizure list in respect of seized orna (scarf) and wooden tool which was used for the purpose of commission of suicide by the deceased lady and also in regard to Stridhan properties seized by the Investigating Officer from the house of the appellant to which he is a witness in the seizure list but during cross examination stated on oath that there was good relationship between Rajendra Das, appellant herein with his wife the deceased lady.

PW-7 is also a neighbour of PW-1 who is also a witness to the said seizure list as PW-6 but his evidence about the torture meted out to the deceased lady is hearsay.

PW-8's evidence is identical to the evidence adduced by PW-6 and 7 who is scribe of the complaint but he has no knowledge about the case. This witness was also not examined by the investigating officer.

PW-9 stated on oath that Aruna Ghosh, had committed suicide by hanging and he had seen her in hanging condition and he is also a witness to the seizure in the spot in respect of wooden tool and the orna (scarf) but he has specific knowledge that there was good relationship between Rajendra Das and his wife.

PW-10 is a Constable in Detective Department, Kolkata Plan Making Section and he has proved the sketch map of the PO with expalanatory index, Exhibit-5 and PW-11 a Constable had taken snaps of the place of occurrence and its surrounding proved as exhibit-6 series.

PW-12 is the cousin brother of the father of the appellant. His evidence is hearsay evidence and has no personal knowledge about the ill behaviour but he had a family dispute with Manindra Nath Das the deceased father of the appellant.

PW-13 Dr. Uma Prasanna Ghosh has deposed that there was no injury seen on the body save and except the ligature mark and opined that the death of the deceased was ante mortem and suicidal.

PW-14 the Inspector of Enforcement Branch was the then SI of Police in Ballygunge Police Station.

PW-15 is the investigating officer who has proved the formal FIR the written complaint and sketch map of the PO with explanatory index and after conclusion of the investigation he submitted charge sheet.

A question is posed by learned Advocate for the State, as to why a newly wedded wife would commit suicide in her matrimonial home and further submits to confirm the judgment impugned. I do agree with the contention of the learned advocate for the State that why a lady would commit suicide within three months of her marriage. The answer is evident on record that it was because of mental and physical torture for the demand of Rs.50,000/- by Manindra Nath Das, the father of the appellant who had also inflicted burn injury to the deceased by heated 'Khunti' (cooking tool). This behaviour of her father in law must have made her more sentimental which compelled her to commit suicide but this court does not find any direct evidence of such allegation against the appellant.

On critical analysis of the evidence on record and giving an anxious consideration to the facts and circumstances of the case as discussed above in the foregoing paragraphs, I hold that the learned trial Judge has committed an error in taking presumption under Section 113B of the Evidence Act read with

Section 304 B of Indian Penal Code and the judgement impugned is not tenable in law and in fact as against the appellant. Ergo, the appellant be acquitted of the charges under Sections 498A, 304B and 34 of the Indian Penal Code and be set at liberty at once on being released from the jail custody.

In the result the appeal being CRA 236 of 2015 is allowed.

A copy of this judgment together with LCR be sent down to the learned Trial court forthwith for necessary note in the Sessions Trial Register and for doing the needful. An extract of this judgment be also sent to the Superintendent, concerned Correctional Home for his information and for needful action.

All parties shall act in terms of copy of this judgment downloaded from the official website of this Court.

(Shivakant Prasad, J.)

KS/SD/BM