

Form J(2)

In the High Court at Calcutta
Criminal Appellate Jurisdiction
Appellate Side

Present : **The Hon'ble Mr. Justice Bibek Chaudhuri**

IA No.:CRAN/2/2017 (Old No.:CRAN/4861/2017)
in
CRA 272 of 2010

Haradhan Maity & Anr.
-Vs.-
State of West Bengal
CRA 271 of 2010

Amit Maity @ Biswajit Maity
-Vs.-
State of West Bengal

For the appellants : Mr. Dipankar Aditya, Adv.
Ms. Tina Biswas, Adv.

For the respondent : Mr. Saswata Gopal Mukherjee, Adv.,
Mr. Partha Pratim Das, Adv.,
Mrs. Manasi Roy, Adv.

Heard on : 18.11.2021, 22.11.2021

Judgment on : 22.11.2021.

Bibek Chaudhuri, J.:

The above-mentioned two appeals are taken up for hearing together as both the appeals have been filed against one and same

judgment passed by the learned Additional Sessions Judge, Fast Track, 2nd Court, Uluberia, Howrah and this Court disposes of the appeals by the following common judgment.

One Namita Santra, sister of Sayamal Santra was given marriage with Amit Maiti, sole appellant of CRA 271 of 2010. The appellants of CRA 272 of 2010 are the parents of the said Amit Maiti. Within four and half months of marriage, the said Namita had met with an unnatural death at her matrimonial home.

Following a written complaint, filed by the said Sayamal Santra, elder brother of the deceased, a police case was initiated. After investigation, police submitted charge-sheet against the appellants. The case was committed to the Court of Sessions and subsequently, it was transferred to the learned Trial Court for trial and disposal.

The learned Trial Judge on perusal of the charge-sheet and other documents in the case diary, framed charge against the accused persons/appellants under Sections 498A/304B/34 of the Indian Penal Code. As the accused persons pleaded not guilty when the charge was read over and explained to them, trial of the case commenced.

During trial, prosecution examined as many as 24 witnesses. Some documents were marked exhibits. The witnesses on behalf of the prosecution were cross-examined by the defence. The accused

persons then were examined under Section 313 of the Code of Criminal Procedure.

It is assessed from the cross-examination of the witnesses on behalf of the prosecution and examination of the accused persons under Sections 313 of the Code of Criminal Procedure that the deceased knew before her marriage that she would not be able to bear any child due to her physical defect and medical treatment was going on before her marriage. Therefore, she was under tremendous physical stress, which led her to commit suicide at her matrimonial home and the appellants are not in any way involved in causing unnatural death of the deceased.

The learned Trial Judge on appreciation of evidence in her own way held the accused persons/appellants guilty for committing offence under Section 498A/304B/34 of the Indian Penal Code and convicted and sentenced them accordingly.

The said judgment and order of conviction and sentence is assailed in these two appeals. Be it mentioned here that during the pendency of appeal, appellant no. 2, Ranu Maity expired and the appeal is filed for ever as against Ranu Maity.

Being the Court of appeal it is the solemn duty of this Court to re-appreciate the evidence on record in its own way to come to a finding as to whether the learned Trial Judge correctly held the

appellants guilty for committing such offence on the basis of the evidence on record and the established principles of law or not.

Out of 24 witnesses on behalf of the prosecution, 8 witnesses being P.W.1 to P.W.7, P.W.11 and P.W.12 are near relatives of the deceased. P.W.8 is the matchmaker and P.W.14 is the Barber of the marriage between Namita and Amit. Other witnesses are seizure list witnesses, medical officers and the Investigating Officer of the case.

The FIR was lodged on 3rd December, 2005 by P.W.1 who is the elder brother of the victim. It was alleged in the said written complaint that since after marriage, the husband and parents-in-law of his sister used to treat her with cruelty. She was subjected to physical assault and mental torture. She was also pressurized to bring more money from her paternal home. When her sister refused to accept such proposal made by the accused persons, her husband Amit assaulted her under the influence of liquor at night and threatened her to sever the marital tie between them. The victim failed to bear such torture and on 3rd December, 2005 she committed suicide by hanging. From his examination-in-chief as well as cross-examination, it is found that the de facto complainant could not state the specific date and time when the accused persons allegedly inflicted torture upon the victim on demand of dowry. On the other hand, it is ascertained from the evidence of P.W.1 as well as the parents of the deceased and other

related witnesses that during short span of their marriage, the deceased and her husband visited the paternal home of the deceased on various social and religious occasions. The deceased offered gift to P.W.1 on the occasion of "Bhaiphota". They also visited the house of the accused persons' house and a normal relation was prevailing between the parties.

I have carefully gone through the evidence of all the witnesses who are closely related to the deceased. Not a single witness including the parents of the deceased stated the amount of money allegedly demanded by the accused persons towards dowry. It is also important to note that in the FIR, it was stated by the de facto complainant that the accused persons started torturing the deceased immediately after marriage. Surprising to note that a newly married girl was being tortured at her matrimonial home immediately after her marriage but the parents and the elder brother and other relatives never tried to solve the dispute between the parties during the lifetime of the deceased. There is absolutely no evidence that during the lifetime, the relative of the deceased requested the accused persons to refrain from torturing the victim girl. Only P.W.4 Sumitra Mondal stated on oath that on one occasion when she went to the matrimonial home of the deceased, the deceased complained her of infliction of torture by her parents-in-law over household work and by her husband under

influence of liquor. She did not state that the torture was perpetrated on demand of dowry. In her cross-examination, she admitted that the deceased was a lady of introvert nature and she was not in the habit of talking with others. I have already recorded that all the relatives of the deceased made parrot like statement during their depositions because P.W. 7 clearly admitted in his cross-examination that he never visited the house of Namita after her marriage. She came to know from others that Namita was not offered with proper food at her matrimonial home and her husband used to assault her under the influence of liquor. Thus, also from the evidence of P.W. 7 we do not find any allegation as to demand of dowry and consequent torture when the deceased failed to satisfy their demand.

Other evidences except the evidence of the Medical Officer, namely, Dr. Dipak Roy who held post mortem report over the dead body of the deceased are not material and need not be discussed at length. It is found from the evidence of P.W. 20, Dr. Dipak Roy that he conducted post mortem examination over the dead body of the victim and found broad ligature mark around the neck gaping of 3" below the left ear. He found extravasation of blood around the ligature mark upto breast and abdomen. According to the Medical Officer, the cause of death was acute cardio respiratory failure due to hanging, anti mortem and suicidal in the nature. This being the evidence on

record, in short, the Court is to decide as to whether the conviction and sentence to the appellants were legal and legitimate under the facts and circumstances of the case.

In a recent decision of the Division Bench of this Court in the case of ***Abhijit Mondal & Ors. –Vs.- State of West Bengal*** reported in ***2019 SCC online Cal 7972 : (2019) 2 Cal LT 115***, the Division Bench on appreciation of the evidence observed that none of the prosecution witnesses have particularized the date as well as the nature of demand of dowry or the torture meted out to the victim for non-fulfilment of such demand in the course of their depositions. Refusal on the part of the appellants to permit the victim and her child to stay at her matrimonial home as per FIR occurred more than a month before her unnatural death. Oral depositions of witnesses with regard to such incident is not only inconsistent with the FIR, but also contradictory to one another and non-specific with regard to the date of the incident. Hence, there is a snap in the live link between the alleged incident and suicide of the victim. On the contrary, prosecution has not explained why the victim was not at the residence of P.W. 6 the previous night prior to her suicide. Hence, the Division Bench is of the opinion that the prosecution has failed to establish the conditions precedent necessary to attract statutory presumptions

under Sections 113A/113B of the Indian Evidence Act in the facts of the case.

The factual aspect of this case is somewhat different from the above-mentioned report. However, there is no dispute on the question that under Section 113A of the Evidence Act presumption as to abetment of suicide by a married woman can be applied when the woman commits suicide, secondly, such suicide has been committed within a period of seven years from the date of her marriage and the husband or his relatives who are charged had subjected her to cruelty. In ***Hemraj –Vs.- State*** reported in **(2004) 12 SCC 257** the Hon'ble Supreme Court was pleased to hold that the nature of presumption under Section 113A is discretionary in the sense that from the mere fact that the wife committed suicide within seven years of marriage and that she has been subjected to cruelty by the husband, there will be no automatic presumption that the suicide has been abetted by the husband. Court is to look into all other circumstances of the case and must also consider the nature of cruelty to which the woman was subjected.

With regard to an offence under Section 304B of the Indian Penal Code, law of presumption is dealt with under Section 113B of the Evidence Act. The *sine quo non* for the applicability of Section 113B and raising of presumption of dowry death, it must be shown that the

victim was subjected to cruelty or harassment by the accused for or in connection with any demand for dowry "soon before" her death. The term "soon before" is not of course synonymous with the term "immediately before". The said term would normally imply that the interval should not be much between the perpetration of cruelty or harassment concerned and the death in question, i.e., there must be existence of proximate and live link between the two. The determination of the period which can come within the term "soon before" is a matter for the Court, depending upon the facts and circumstances of the case. No straightjacket formula can be laid down by fixing any time limit in this regard. But presumption under the Section would not be drawn if it is shown that after the alleged demand, cruelty or harassment the disputes stood resolved or that the deceased and her husband lived a normal life before the death.

In the instant case, it is vehemently urged by the learned Public Prosecutor-in-Charge that marriage of Namita and Amit was solemnized only four and half months before her unfortunate death. All the witnesses stated that she was subjected to torture on demand of dowry. The entire time period of four and half months should be treated as "soon before" her death. There may not be any evidence that the victim was tortured "immediately before" her committing

suicide but the torture inflicted upon her was the proximate cause for her unfortunate, unnatural death.

I am not in a position to accept such submission made by the learned Public Prosecutor-in-Charge. Let me assign the reason. None of the related witnesses would state even approximately the date and manner of torture allegedly inflicted upon the deceased before her death. The FIR as well as the witnesses were silent about the amount of dowry allegedly demanded by the accused persons.

On careful perusal of the impugned judgment, this Court is of the view that the learned Trial Judge herself was utterly confused under what penal provision the accused persons had committed offence. Let me quote a relevant portion of the impugned judgement. *"considering the evidence of prosecution as well as cross-examined of defence and the discussion as made above it appears the deceased committed suicide within very short period of her marital life, who went to her in-law's house with proper presentation of her father, with a very hope of family life and the said dream demolished within very short period of time for the greed and behavior of the member of in law's house and ended as suicide, there is no reason to disbelieve that the said suicide had been **abetted** by her husband and relatives. Accordingly, there is no bar to presume, having regard to all other*

circumstances of the case, that such suicide have been abetted by the accused".

Thus, the learned Trial Judge held that the accused persons abetted commission of suicide and in that case they ought to have been convicted and sentence under Section 306 of the Indian Penal Code and not under Section 304B of the Indian Penal Code.

Moreover, in order to prove abetment requirement of Section 107 is necessary. In the instant case, there is absolutely no such evidence on behalf of the prosecution.

Considering the materials-on-record, evidence adduced by the witnesses on behalf of the prosecution and the law on the subject this Court concludes that the learned Trial Judge commits patent illegality in convicting the accused persons under Section 304B of the Indian Penal Code and they are entitled to be acquitted from the charge under Section 304B of the Indian Penal Code.

However, with regard to the charge under Sections 498A/34 of the Indian Penal Code this Court is of the view that the evidence on record is absolutely clear, sufficient, cogent and unblemished that the deceased was treated with cruelty, both physically and mentally in such a manner which drove the victim to commit suicide. Thus, explanation (a) of Section 498A is squarely applicable against all the appellants.

Accordingly, the appeals are partly allowed. The conviction and sentence for committing offence under Section 304B of the Indian Penal Code is set aside. However, the appeals are dismissed and the judgement and order of conviction under Sections 498A/34 of the Indian Penal Code against the appellants are allowed.

So far as the sentence is concerned, this Court is of the view that the appellants are facing trial since 2005. For last 16 years they have faced tremendous mental agony. At the same time, I am not unmindful to note that a young life came to an abrupt end with commission of suicide. Thus, considering both aggravating and mitigating circumstances as to infliction of sentence this Court is of the view that rigorous imprisonment of one year and fine of Rs.1,000/- each, in default, to suffer further imprisonment for one month each just and proper sentence. Therefore, the appeals against conviction under Sections 498A/34 of the Indian Penal Code filed by the appellants are dismissed on contest. However, under the facts and circumstances of the case the period of imprisonment is modified as hereunder:-

The appellants, namely, Haradhan Maity and Amit Maity @ Biswajit Maity are sentenced to rigorous imprisonment for one year each and further to pay fine of Rs.1,000/- each, in default, to suffer

sentence for further one month each for the offence punishable under Sections 498A/34 of the Indian Penal Code.

The period of imprisonment already undergone by the convicts shall be set off under Section 428 of the Code of Criminal Procedure against the term of sentence.

The appellants, however, are acquitted from the charge under Sections 304B/34 of the Indian Penal Code.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)

Srimanta/Mithun
A.Rs. (Court)