

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 1 of 2011

CRAN 3 of 2013 (old CRAN 2721 of 2013)

Sudhangshu Pathak & Ors.

Versus

State of West Bengal

For the Appellants	: Mr. Navanil De, Adv., Mr. Rajeshwar Chakrabarty, Adv., Mr. Srinjan Ghosh, Adv., Mr. Subhrojet Dey, Adv.
For the Respondent	: Mr. Binoy Panda, Adv., Mr. Narayan Prasad Agarwala, Adv., Mr. Pratick Bose, Adv.
Hearing concluded on	: 17 th August, 2022
Judgment on	: 1 st September, 2022

Siddhartha Roy Chowdhury, J:-

1. This appeal is directed against the judgement and order of conviction passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Purulia in S.C. No. 75 of 2008 (S.T. No. 20 of 2008) directing Pradip Pathak, Sudhangshu Pathak and Nunki @ Kalavati Pathak to undergo rigorous imprisonment for 7 years for committing offence under Section 304B of the I.P.C. and rigorous imprisonment for 3 years for having committed offence punishable under Section 498A of the I.P.C. and to pay fine of Rs. 1000/- each. Both the sentences are to run concurrently.

2. Briefly stated, Ganesh Pandey of Sarishakuri within P.S. Chandankeari, Bokaro set the criminal administration of justice into motion by informing the Officer-in-charge of Purulia (M) Police Station in writing about the unnatural death of his niece Purnima Pathak. The informant disclosed that Purnima was given marriage to Pradip Pathak of Surulia, District-Purulia. At the time of marriage a sum of Rs. 51,000/- was given in cash together with furniture and gold ornaments weighing about 2.5 vori but they could not give dressing table, sofa and steel almirah at the time of marriage which they agreed to give during negotiation. After Asthamangala, Pradip, his parents Sudhungshu and Nunki, sister Amrita and younger brother Sanjib Pathak started inflicting torture both physically and mentally upon Purnima as her family members failed to give sofa, almirah and dressing table, as promised. They even asked for a sum of Rs. 50,000/- in order to construct a house. On 13th October, 2007 at about 8.00 a.m. Purnima told the informant Ganesh Pandey over phone about her plight in her matrimonial home and expressed her apprehension to get killed even as her family members failed to give promised furniture. On that very morning she was physically harassed and she committed suicide in the afternoon. The informant along with his other family members rushed to the matrimonial home of Purnima and found her lying dead on the bed.
3. The information since disclosed offence cognizable in nature Purulia (M) P.S. Case No. 108/07 was registered, police took up investigation which culminated into submission of the charge sheet against the accused persons.

4. After considering the materials on record learned Trial Court framed charge under Section 498A/304B of the I.P.C. and the accused persons having pleaded their innocence to the charges claimed to be tried.
5. To crown success prosecution examined as many as 23 witnesses while the accused persons examined two persons as defense witnesses.
6. Learned Trial Court after considering the evidence was pleased to record the impugned order of conviction.
7. Being aggrieved by and dissatisfied with the impugned judgement and order of the conviction the appeal has been preferred under Section 374 (2) of the Code of Criminal Procedure.
8. Assailing the impugned judgement learned Advocate for the appellants Mr. Navanil De submits that learned Trial Court could not have any reason to record an order of conviction when prosecution failed to prove the charges beyond the reasonable doubt. There is no evidence to substantiate the allegation that any demand was ever made by the convicts/appellants which can be considered as dowry demand. Even there is no evidence to show that the victim was ever tortured mentally or physically in her matrimonial home; rather from the evidence of prosecution witnesses it has transpired that the victim used to visit her parents' house with her husband and both of them spent nights over there on different occasions. According to Mr. De, learned Advocate for the appellants, on the fateful day the couple got entangled in quarrel and the husband made an attempt to commit suicide by taking sedatives/or poison; as a fall out of such attempt by husband scared Purnima committed suicide by hanging herself.

9. Drawing our attention to the oral testimony of prosecution witnesses Mr. De learned Counsel, adverted that though death of Purnima, a young married lady, was unfortunate but in absence of any evidence to suggest that she was treated with cruelty or was tortured soon before her death, Learned Trial Court had no reason to record order of conviction under Section 498A or 304B of I.P.C.
10. Refuting such contention learned Advocate representing the respondent State submits that the marriage between Purnima and Pradip was solemnized on 13th May, 2007 after negotiation, and promise was made to present steel almirah, sofa and dressing table apart from gold ornaments, household articles, cash of Rs. 51,000/-. They could not give those furniture as they failed to arrange fund but promised to present those articles at a later point of time. Purnima was treated with cruelty and killed herself, as her family members could not give the articles as promised. On 13th October, 2007, she committed suicide in the afternoon after being tortured in the morning, within the six months of marriage. As the appellants failed to rebut the presumption of Section 113B of the Evidence Act learned Trial Court was justified in passing the impugned judgement.
11. I have carefully perused the evidence on record. From the attending facts of the case it is admitted that the victim Purnima was married to Pradip appellant no. 2 on 13th May, 2007 and she died an unnatural death on 13th October, 2007. She committed suicide by hanging within 6 months of marriage.
12. PW-1 Nikhilesh Pandey, PW-3 Ganesh Pandey, PW-6 Kamala Pandey the mother of the victim, PW-7 Prasad Pandey the father of the

victim, PW-20 Sukhdev Pandey stated that during negotiation of marriage it was decided that the family members of Purnima would give sofa, dressing table and almirah at the time of marriage besides gold ornaments, cash, utensils etc. which they could not give. But they did not disown their promise at any point of time, they requested the accused/appellants to give some more time. From cross-examination of PW-3 the de-facto complainant we find that at the time of marriage they could give a cot. They could not accumulate fund to purchase dressing table, sofa and almirah at the time of marriage. PW-6 is the mother of the victim who stated that the victim in the month of Ashar came their house and informed that besides the furniture her husband demanded mobile phone. In the month of Ashar the mobile phone was given, apart from giving the mobile phone they renewed the promise to give the furniture. But such promise could not protect Purnima from being harassed by the inmates of her matrimonial home and by her husband. These witnesses stood the test of cross-examination.

From the evidence on record we further find that Purnima the victim lady made a phone call around 8.00 a.m. only to say how she was harassed over the demand of dowry, which was received by the de-facto complainant. After receiving the phone call anxious family members discussed among themselves as to how they could meet such demand of dowry. In the afternoon they received the information that Purnima was dead.

In this factual matrix let me now revisit the provisions of Section 304B of the I.P.C. and Section 113B of the Evidence Act.

“304B. Dowry death. -- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

13. Section 304B of I.P.C. as quoted herein above clearly shows that in order to bring the offence within the purview of Section 304B the following ingredients are required to be fulfilled:-

- (i) That the death of woman is caused by burns or bodily injury or occurs other than in normal circumstances.
- (ii) Such death must have occurred within 7 years of marriage.
- (iii) Soon before her death she must be subjected to cruelty or harassment by her husband or any relative of the husband.
- (iv) Such harassment must have a nexus with demand for dowry.

Once these ingredients are fulfilled the death shall be presumed as dowry death. The husband and such other relatives shall be deemed to have caused her death.

14. This provision was incorporated in the Indian Penal Code by Act 43 of 1986 w.e.f. 19th November, 1986. The Evidence Act was accordingly amended by inserting the provision of Section 113B of the Evidence Act by Act 43 of 1986 w.e.f. 1st May, 1986 to deal with presumption of dowry death which reads as under :-

“113B. Presumption as to dowry death. -- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation. For the purposes of this section, dowry death shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).”

The question before the Court must be :

- (a) Whether the accused has committed the dowry death of a woman.
- (b) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (c) Such cruelty or harassment was for or in connection with dowry.

15. A conjoint reading of Section 113B of the Evidence Act and Section 304B of the I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. “Soon before” is a relative term depending upon the circumstances of each and every case. The expression “soon before” would normally indicate the existence of a proximate and live-link between the effects of cruelty ignited by demand of dowry and concern death.

16. Section 2 of the Dowry Prohibition Act, 1961, defines 'dowry' as under:-

"2. Definition of 'dowry'- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly.

a. By one party to a marriage to the other party to the marriage, or

b. By the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

At or before [(Note: Subs. by Act 43 of 1986, sec.2) or any time after the marriage] [(Note: Subs. by Act 63 of 1984, sec.2) in connection with the marriage of the said parties, but does not include] dower or mahr in the case or persons to whom the Muslim Personal Law (Shariat) applied.

(Note: Explanation I omitted by act 63 of 1984, sec.2).

Explanation II - The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."

17. The word 'dowry' in Section 304B of the I.P.C. has to be understood as it is defined in Section 2 of the Dowry Prohibition Act. There are three occasions related to dowry. It can be before marriage, at the time of marriage and at any time after marriage. The third occasion may appear to be for unending period but it has to have in connection with marriage of the said parties.

18. There is another important aspect which should be taken into consideration. Consequence of cruelty which are likely to drive a woman to commit suicide or to cause grave injury whether mental or physical of the woman is required to be established in order to prove

the charge of offence within the meaning of Section 498A of the I.P.C. which read as follows:-

“Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

19. We should not overlook another relevant feature touching the conduct of the appellants. It is found that the accused Pradip and his father fled away from the house after the incident. The Investigating Officer arrested Pradip and Sudhangshu from Village-Patharkata under P.S. Chas (M), District-Bokaro, from the house of Bhaktipada Pandey on 17th November, 2007. A plea was taken that Purnima committed suicide as her husband consumed sedative after having quarrel with her and lost his sense.

20. DW-1, Dr. Ashim Sinha stated that on 14th October, 2007 he attended Pradip at Purulia Sadar Hospital who was unconscious. He was found by the side of road with bleeding injury at his nose and mouth which could have been caused either by head injury or as an

effect of consuming poison. But the doctor made it clear that such type of injury could not have been caused by taking any sedative drug. DW-2, Dr. Narendra Kumar Das examined patient at Bokaro General Hospital on 14th October, 2007 when he was brought to hospital with head injury. One Mr. B.K. Pandey a resident of Bokaro Steel City brought him to hospital reportedly he was lying on the road side. The patient was unconscious with blood pressure 110/70. He was discharged on 22nd October, 2007.

21. Therefore, the defense case, that as a fall out of quarrel between the husband and wife, having found Pradip consuming sedatives, Purnima committed suicide, is not holding the water. Even if it is assumed that Pradip was admitted to hospital with head injury and was in an unconscious state, he was discharged on 22nd October, 2007 but he did not go back to his home and there is no explanation. His father was also fled away from his house and both of them were arrested from Bokaro by the Investigating Officer on 17th November, 2007. This conduct of the appellants also becomes relevant under Section 8 of the Evidence Act and it lends further support to the prosecution case, when such conduct is considered from the point of view of human probability.

22. Section 304B and Section 498A of the I.P.C. cannot be held to be mutually inclusive. Cruelty is common essence in both the Sections. Here in this case it has been established from the prosecution witnesses that at the time of negotiation the family members of Purnima promised to present almirah, sofa and dressing table which they failed to give at the time of marriage but promised to give the

same at a future point of time. The appellants however, considered those articles more precious than that of the life of a young lady who was harassed and even tortured physically. It has been established further that on the fateful day i.e. 13th October, 2007 in the morning Purnima was tortured and in the afternoon she died by hanging herself. Hon'ble Supreme Court in ***Satvir Singh vs. State of Punjab*** reported in **(2001) 8 SCC 633** observed that suicidal death of married woman within 7 years of marriage is covered by the expression 'death of woman is caused or occurs otherwise than under normal circumstances" as expressed in Section 304B of I.P.C.

23. Therefore, in my humbly opinion, prosecution was successful in establishing that Purnima was treated with cruelty within the meaning of Section 498A of the I.P.C. and presumptive Section 113B of the Evidence Act is sufficient to hold that the unnatural death of Purnima within six months of marriage was because of such harassment for dowry. Unnatural death of Purnima is nothing but dowry death within the meaning of Section 304B of the I.P.C.

24. Hence, I do not find any reason to interfere with the impugned judgement. The appeal is devoid of merit and is dismissed.

Let a copy of the judgement be sent to learned Trial Court.

25. Petition being CRAN 3 of 2013 (Old CRAN 2721 of 2013) for bail of the convicts/appellants filed on 5th September, 2013 is found to have been pending. From the report of Superintendent, Correctional Home, Purulia, it appears that the appellant Pradip was transferred to Midnapore Correctional Home and other two appellants were released for expiry of sentence on 19th October, 2016 and 15th July, 2016

respectively. In such circumstances, the application being CRAN 3 of 2013 (Old CRAN 2721 of 2013) appears to be infructuous and disposed of accordingly.

26. Urgent Photostat certified copy of this judgment, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Siddhartha Roy Chowdhury, J.)