

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

C.R.A 87 of 2021

Pranab Das

Vs

The State of West Bengal

For the appellants as	:Mr. Angshuman Chakraborty, Advocate
Amicus Curiae	Mr. S.S. Saha, Advocate

For the State	:Mr. Swapan Banerjee, Advocate
	Ms. Purnima Ghosh, Advocate

Heard on	: July 15, 2022
----------	-----------------

Judgment on	: July 25, 2022
-------------	-----------------

Bibhas Ranjan De, J.:-

1. This appeal is directed against order of conviction and sentence dated 19.01.2021 and 20.01.2021 passed by the Additional Session Judge 1st Court, Katwa in Sessions Trial No.06/2014 arising out of Sessions Case No. 38/ 2013 in connection with Katwa Police Station Case No. 141/2012 dated under Section 498A/306 of the Indian Penal Code (for short IPC) read with

Section 3/4 of Dowry Prohibition Act, convicting the appellant under Section 498-A/304-B of the IPC and sentencing him to rigorous imprisonment for ten years (10) for the offence under Section punishable 304-B of the IPC without imposing any separate sentence for the offence under Section 498-A IPC in view of the principle enunciated in ***Shanti vs. State of Haryana (1991) Criminal Law Journal 1713 (SC)***.

2. According to prosecution case, after the marriage of appellant Pranab Das with Anita Das, deceased 8/9 years back, she was being harassed and ill treated by the appellant and his other relatives in connection with demand of Rs. 20,000/- for business purpose, as a result of which she committed suicide by consuming poison on 16.05.2012. The written complaint was lodged by PW-1 Smt. Pratima Das before the Officer in charge at Katwa Police Station. After inquiry, on 16.05.2012 FIR (Exhibit-4) was registered against the appellant under Section 498A/306 of IPC. During investigation inquest (Exhibit-2) was performed over the dead body. Post Mortem (Exhibit-6) on the dead body of the deceased was conducted by the doctor (PW-11) attached to Katwa Sub Divisional Hospital District Burdwan who noticed the cause of death was due to cardio respiratory failure in case of organo phosphorus poison. Sketch map was prepared vide Exhibit -7, certain articles were seized (Exhibit-8) and statements of witnesses were recorded.

3. After completion of usual investigation, charge sheet was filed against all seven (7) appellants under Section 498A/306 of the IPC read with section 3/4 Dowry Prohibition Act. The Trial Court framed charge under section 498A/306 of the IPC against all seven (7) accused persons, which was denied by them. They pleaded innocence and claimed to trial.

4. To prove the charge, the prosecution examined as many as 12 witnesses i.e. PW-1 Pratima Das, PW-2 Ramdulal Das, PW-3 Khudu Das, PW- 4 Naba Kumar Das, PW-5 Laxman Das, PW-6 Puspa Das, PW-7 Narayan Das, PW-8 Dulal Chakraborty, PW- 9 Ram Ranajan Patra, PW-10 Constable C/950 Swapan Kumar Majhi, PW-11 Dr. Rabindranath Mandal and PW-12 S.I Rahul Dutta (I.O). Statement of the accused persons were also recorded under section 313 of Criminal Procedure Code (for short Cr.P.C) in which they denied the incriminating circumstances appearing against them in the trial, pleaded innocence and false implications. However, no evidence was adduced by the accused person in their defence.

5. Ld. Trial Court after hearing Counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant only but acquitted all rest accused persons of this case.

6. Mr. Angshuman Chakraborty, Ld. Advocate appearing on behalf of the appellant submits as follows:

6.1. According to First Information Report allegation was made against all six (6) accused persons.

6.2. None of the witnesses could segregate the appellant from other accused persons who are acquitted by the impugned judgment.

6.3. None of the witnesses has deposed anything in particular against the appellant to make him stand in a different footing. The witnesses examined on oath did not support their statement recorded under Section 161 Cr.P.C.

6.4. There is no evidence on record to prove the demand of dowry made by the appellant soon before death of victim/ house wife.

6.5. Though PM Doctor opined that death was due to cardio respiratory failure in case of organo phosphorus poison but in cross-examination doctor admitted that his opinion is on the basis of the smell of the contents of stomach. No FSL report was collected to show that it was actually a case of poisoning. I.O has not seized any poison from the place of occurrence.

7. Per contra, Mr. Swapan Banerjee, Ld. advocate appearing on behalf of the State has relied on the evidence on record and supported the judgment passed by the Ld. Trial Court. He submitted that conviction of the appellant is in accordance with law and there is no infirmity in the same warranting interference by this Court.

8. Before evaluating the prosecution case and evidence thereon we may extract below the provision of Section 304-B of the IPC that depicts “dowry death”:

“304B (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 1996).

(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.”

9. Therefore, to prove the charge under Section 304B of the IPC, the following ingredients are required to be proved beyond reasonable doubt:

9.1. Death of the woman concerned is by any cause other than in normal circumstances.

9.2. Death of the woman concerned occurred within seven years of her marriage.

9.3. She was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

10. The offence under Section 498A of the IPC is attracted qua the husband or his relative if she is subjected to cruelty. The explanation of this Section explains “cruelty” as:

(i). any willful 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) or

(ii). 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.

11. Section 113-B of the Evidence Act enjoins a statutory presumption as to dowry death in the following terms:

“113-B 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 has 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)”

12. Therefore, the presumption as to dowry death would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated pre-requisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

13. Keeping in view of the above settled legal position, we proceed to appreciate the evidence, oral and documentary, available on record.

14. In this case, it is not disputed that marriage of the deceased Anita Das was solemnized with appellant Pranab Das and she died in her matrimonial home on 16.05.2012 and this fact has been proved by the evidence of PW-1, PW-2, PW-3, PW-6 and PW-7.

15. PW-1, sister of the deceased, who initially put the law in motion in this case has stated in her evidence that accused person created disturbance for want of more money otherwise Pranab Das would marry elsewhere and whenever her sister (deceased) fell ill and could not perform household work accused persons taunted her that she was not brought to pass time idle.

She could not say as to why Anita (deceased) took poison. On receiving the information regarding death of his sister they went to her matrimonial home but the dead body was removed to hospital.

16. This witness (PW-1) was declared to hostile by the prosecution. During cross-examination by the prosecution she could not recollect the amount of money spent in the marriage and fact of torture and also the amount of money demanded by the accused persons. During cross-examination on behalf of the appellant she also could not remember the contents of the written complaint which she lodged. In cross-examination she stated that all accused person were in the matrimonial home when they went to their house after death of Anita (deceased). She further stated that there were visiting terms between the two families.

17. PW-1 in her cross-examination has specifically stated as follows:

“ Our father is a strict person in nature and he raises objection if we do some thing bad. My sister could not tolerate if any false thing is produced before her. She was adamant in nature. My sister Anita since her child hood is very sentimental in nature. There is one submersible pump in the field in front of my father’s house.

.....

Then says my said sister washed her hand and face with soap at the said pump and then my father cautioned her as to why she did it or that due to such scolding by my father for taking bath at the said pump she came back to her in-laws house and took poison.”

18. PW-2, father of the deceased, has testified that at the time of marriage there was demand of one by-cycle, wrist watch and cash Rs. 15,000/- and total cost of Rs. 40,000/- including articles and cash of Rs. 15,000/- were

given to the accused persons. He has further deposed accused persons used to assault her and abused her in filthy language. Deceased used to report of torture and demand. In cross-examination PW-2 deposed that she couldn't say the exact reason for taking poison. He has further stated that on different occasions deceased along with her husband used to visit different relatives and before death of his daughter he never made any complaint before any authority or respectable person of the village of the accused persons. He has further stated that the complainant (PW-1) did not consult any of her family members before lodging the complaint and all decisions regarding their family are always taken by his daughter Pratima Das (PW-1).

19. PW-3 another relative of complainant has stated in his evidence that during her stay at her matrimonial home the accused person misbehaved with Anita (deceased). The Accused person used to assault her and did not provide food.

20. PW-4 and PW- 5 have stated in their evidence that they could not say about any misbehavior of the accused person towards Anita (deceased) during her stay at her matrimonial home.

21. PW-6, mother of the deceased, has testified that at the time of marriage ornaments, by-cycle were given in the marriage and according to agreement Rs. 10,000/- was due and that was paid to the accused persons subsequently but she was further subjected to tortured upon her daughter. Her daughter used to report them about such torture. She died about 4 years back at her matrimonial home after consuming poison. In cross-examination she has deposed that she was not present at the time

of giving Rs. 10,000/- . She did not disclose about torture before anybody else.

22. PW-7, has deposed in her examination in Chief that at the time of marriage father of Anita gave Rs. 40,000/ to the accused person and Rs. 20,000/- was due as per agreement of dowry. Anita (deceased) was mentally and physically tortured by the accused persons due to non-payment of said amount of Rs. 20,000/- and he committed suicide by taking poison at her matrimonial home. In cross-examination he has stated that he heard that father of deceased gave Rs. 40,000/- . He has further admitted in cross-examination that he stated everything as he heard from Pratima (PW-1).

23. PW-8, proved the marriage between Anita Das (deceased) according to Hindu Rights and Customs. PW-9 prepared formal FIR on receipt of written complaint. PW-10 accompanied S.I Rahul Dutta (PW-12) to Katwa Hospital to conduct the inquest over the dead body of the deceased. After inquest body was sent to morgue for Post Mortem examination. The dead body challan was admitted in evidence as Exhibit – 5.

24. Doctor Rabindranath Mondal, (PW-11) attached to Katwa SD Hospital as medical Officer conducted Post Moretem on the dead bojdy of Anita Das in connection with Ktwa PS UD case No.118/12 dated 16.05.2012, identified by S.I Rahul Dutta (PW-12). According to his opinion cause of death was due to cardio respiratory failure in case of organo phosphorus poison. Post Mortem report was admitted as exhibit- 6. In cross-examination he has stated as follows:

“ On the basis of the smell of contents of stomach I have provisionally opined that it was a case of organo phosphorus poisoning. There is no noting in the PM Report whether any poison were detected in the wearing apparels of the deceased. I did not find any froth in the face of the deceased. In PM Report it was not mentioned that the viscera was sent after proper sealing, labelling etc or to whom the same was handed over”

25. PW-12, Investigating Officer of this case has testified that on 16.05.2012 he was posted as S.I at Katwa PS. On that day he took up investigation of Katwa PS Case No. 144 dated 16.05.2012. He visited PO, prepared rough sketch map, recorded statements of available witnesses under Section 161 Cr.P.C and prepared inquest report (Exhibit-2). He received viscera from constable Swapan Majhi (PW-10) by a seizure list (Exhibit -8) and transmitted the same for forensic examination but he could not collect the Forensic Expert Report. In cross-examination I.O stated that he seized nothing except viscera. He has further stated that Ramdulal Das (PW-2) did not state to him that accused persons demanded wrist watch and by-cycle at the time of marriage. PW-2 stated before him that accused persons inflicted torture upon the deceased and at the time of holding inquest no one stated to him about demand of dowry.

26. Now looking into the evidence of PW-1 Pratima Das, PW-2 Ramdulal Das and PW-6 Puspa Das, family members of the deceased, it appears that they could not say why Anita (deceased) took poison. There are

contradictions about demand of dowry. PW-1, sister of the deceased, could not say the specific amount alleged to have been demanded by the appellant and moreover this witness was declared hostile by the prosecution. PW-2 father of the deceased, did not speak about any particular amount demanded by the appellate. PW-6 mother of the deceased, deposed that Rs. 10,000/ was due and that was paid to the accused persons subsequently but still her daughter was subjected to torture. It also appears from the evidence of PW-6 that she was not present at the time of giving Rs. 10,000/-. Therefore, we find hardly any consistency in the evidence regarding demand of dowry. PW-7 another relative of the deceased spoke about giving of Rs. 40,000/- at the time of marriage and Rs. 20,000/- was due as per agreement of dowry which was not supported by PW-1, PW-2 and PW-6. It is further admitted by the witnesses they have not even reported the factum of torture to any respectable person residing in the village of accused. It is needless to mention that no effort was taken from the side of the deceased relatives for amicable settlement.

27. In this case, the death of deceased Anita admittedly took place within seven (7) years of her marriage, otherwise than under normal circumstances, i.e by commission of suicide, but there appears to be no reliable evidence that the appellant had subjected her to cruelty or harassment in connection with demand for dowry or otherwise. According to medical evidence (PW-11) no injury external or internal was noticed by the doctor who conducted Post Mortem except a smell of contents of stomach. Here, it is pertinent to mention that though viscera was sent to

the Forensic Laboratory but Forensic Examination Report was not collected in this case and for that reason cause of death has not been ascertained. In these circumstances, presumption under Section 113-B of the Evidence Act cannot be invoked as there is nothing on record to show that soon before her death the deceased was subjected to any kind of torture in connection with demand of dowry. That apart, no such allegation was made by the family members of the deceased who were present at the time of inquest of the dead body of Anita.

28. PW-1 during his cross-examination on behalf of the accused has specifically stated that Anita took poison as her father scolded her for taking bath by the water of Submersible Pump in the field in front of house of PW-2.

29. It is settled proposition of law that mere factum of unnatural death in matrimonial home within seven (7) years of marriage is not sufficient to convict any accused under Section 304-B and 498-A IPC unless prosecution proves beyond doubt that deceased was subjected to cruelty in connection with dowry demand soon before her death, and in that case only, presumption under Section 113-B can be involved.

30. In our case, evidence of PW-1 clearly shows that victim was a lady of hypersensitive and furthermore she was scolded by her father for taking bath in open field before her death. This apart, conduct of the appellant prior to the incident and after the incident also does not appear to be suspicious as there was usual visiting terms between the families and appellant used to visit his in-laws house and that of other relatives along with Anita.

31. In view of the discussion made above, the conviction of the appellant under Section 304-B of the IPC cannot be sustained in the absence of any evidence to show that the deceased committed to suicide because of dowry harassment.

32. In the result, the appeal is allowed. Conviction and Sentence imposed on the appellant under Section 304-B of the IPC is set aside and he is acquitted of the said charge. The appellant is reported to be on bail, therefore, his bail bond shall continue for a period of six (6) months from today in view of the provisions of Section 437-A of the Criminal Procedure Code.

33. Let a copy this judgment along with the Trial Courts record be sent back forthwith.

34. All parties shall act on the server copies of this judgment duly downloaded from the official website of this Court.

35. Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[BIBHAS RANJAN DE, J.]

36. I Agree.

[DEBANGSU BASAK, J.]