

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 231 of 2013

Farhad Sk & Ors.

-Vs-

State of West Bengal

For the Appellants : Mr. Arnab Saha, Adv.
Mr. Abhimanya Banerjee, Adv.

Mr. Avik Ghatak, learned Advocate appears as Amicus Curiae

For the State : Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : March, 29, 2022

Judgment on : March 29, 2022.

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 25.02.2013 and 26.02.2013 passed by learned Additional Sessions Judge, 1st Fast Track Court, Rampurhat in Sessions Trial No. 5th November, 2011 arising out of Sessions Case No.122/2011 convicting the appellants for commission of offence punishable under Section 498A/304B of the Indian

Penal Code and under Section 3,4 of the Dowry Prohibition Act sentencing them to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for two years for the offence punishable under Section 304B of the Indian Penal Code, to suffer rigorous imprisonment for three years and to pay fine of Rs. 3000/- each, in default, to suffer further rigorous imprisonment for one year for the offence punishable under section 498A of the Indian Penal Code, to suffer rigorous imprisonment for five years and to pay fine of Rs. 15,000/- each, in default, to suffer further rigorous imprisonment for 2½ years for the offence punishable under Section 3 of Dowry Prohibition Act and to suffer rigorous imprisonment for two years and to pay fine of Rs. 5,000/- each, in default, to suffer further rigorous imprisonment for 1½ years for the offence punishable under Section 4 of the Dowry Prohibition Act; all the sentences shall run concurrently. Fine amount, if paid, fifty percent of the same be handed over to the de-facto complainant as compensation.

Prosecution case as levelled against the appellants is to the effect that Farhad Sk (appellant No.1) was married to Rejina Bibi on 15.03.2011. After marriage Farhad Sk (appellant No.1), Sekandar Sk. (appellant No.2 and uncle-in-law of the deceased), Manu Sk. (appellant No.3 and stepfather-in-law of the deceased), Doli Bibi (appellant No.4 and mother-in-law of the deceased), Sabana Bibi (appellant No.5 and sister-in-law of the deceased) and the brothers-in-law of the deceased being Milan

Sk. (appellant no.6) and one Firoz demanded Rs. 50,000/- from Rejina. As her father Gaffar Sk. (P.W.1) was poor and unable to pay, she was subjected to torture. Gaffar consoled his daughter and told her to bear the torture promising things to become settled in the future. Unfortunately nothing changed, and on 20.04.2011 at 6 A.M. he received a telephonic message, that his daughter had died. He went to her matrimonial home and found his daughter lying on the ground. He informed Rampurhat police station and his daughter was taken to the Rampurhat Sub-divisional Hospital. He lodged a written complaint at the Rampurhat Police Station resulting in Rampurhat P.S. Case no. 55/11 dated 21.04.2011 under Sections 498A/304B/34 of the Indian Penal Code which was registered against the appellants and one Firoz Sk.

In the course of investigation, charge-sheet was filed. Charges were framed under Section 498A/304B/306/302/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act against the appellants and Firoz Sk. Appellants pleaded not guilty and claimed to be tried. During trial, Firoz Sk. expired. The prosecution examined 11 witnesses and exhibited a number of documents to prove its case.

Defence of the appellants was one of innocence and false implication. In conclusion of trial, the Trial Judge by the impugned judgment and order dated 25.02.2013 and 26.02.2013 convicted and sentenced the appellants, as aforesaid. Hence, the present appeal.

During the pendency of the appeal, appellant No.2 Sekandar Sk. expired. Hence, the appeal abates so far as the appellant No.2 is concerned.

Mr. Arnab Saha, learned Advocate appearing for the appellants submits that prosecution evidence with regard to torture upon the housewife over dowry demands is not proved. P.W.1 embellished his version with regard to torture, in Court. P.W.2, during cross-examination, stated money was demanded in order to enable her husband to divorce his wife. P.Ws.5 and 7 made general and omnibus allegations of torture against the appellants. Hence, the prosecution case with regard to cruelty upon the housewife over dowry demand has not been established. He accordingly prays for acquittal of the appellants.

Mr. Avik Ghatak, learned Advocate appearing as Amicus Curiae accepted the submissions of Mr. Saha. He submits, from the tenor of the evidence of P.Ws.1 and 2, it appears there was no dowry demand. On the other hand, matter related to payment of den mohor which, under Muslim law, was required to be paid by the husband, i.e. appellant no.1 and not the relations of the wife. Thus, prosecution case with regard to dowry demand is not proved. It is further contended that prosecution witnesses have sought to rope in all the in-laws of the deceased regarding cruelty upon the deceased housewife. Their versions suffer from various contradictions, embellishments and inconsistencies and ought not to be believed.

On the other hand, Mr. Partha Pratim Das, learned Advocate appearing for the State submits evidence of P.W.s 1, 2, 5 and 7 are clear, convincing and consistent. Rejina was given in marriage to appellant No.1 Farhad on 15.3.2011. Soon thereafter a sum of Rs.50,000/- was demanded. As the money was not paid, appellants subjected the housewife to cruelty. She narrated the incident to her father P.W.1. P.W.1 sought to mediate with the appellants but they continued the torture which ultimately resulted in the unnatural death of the housewife. Hence, the prosecution case is proved beyond doubt and the appeal is liable to be dismissed.

P.Ws. 1, 2, 5 and 7 are the relations of the deceased housewife. They have narrated the unfortunate and painful incidents during the short matrimonial life of the poor lady.

P.W.1, Gaffar Sk. her father deposed Rejina was given in marriage to Farhad on 15.3.2011. On Astamangala i.e. 8th day of her marriage she came to her parental home and complained that her in-laws had demanded Rs.50,000/- from her. P.W.1 failed to pay the money. Fifteen days later, her daughter again returned home and stated that her in-laws were assaulting her over such demand. P.W.1 told his daughter to tell her husband that the demand would be fulfilled in future. Twenty five days after marriage, P.W.1 went to the matrimonial home and sought to mediate with her husband and in-laws. They abused her daughter in his presence. Five days later, her daughter again came to his residence and

complained about the said demand. He requested his daughter to go back to her matrimonial home. Four days later, he received the news that his daughter had died. He went to the matrimonial home and saw his daughter lying dead in the verandah. Police came to the spot and took his daughter to the hospital where she was declared dead. Police conducted inquest over the body of his daughter. On the next day, he lodged complaint which was scribed by P.W.4.

In cross-examination, he stated that his daughter was the second wife of appellant no.1. All the appellants are his relations and were known to him from before. Prior to marriage, the parents-in-law of his daughter had come to see her. Mother-in-law of his daughter had demanded money. Firoz and Manu resided in separate houses in the same courtyard. His son-in-law and his parents used to demand Rs.50,000/- from his daughter. In the month of Chaitra all the accused persons demanded Rs.50,000/- from him which was fixed as den mohor.

P.W.2, Jabbar Sk is the brother of the deceased Rejina Bibi. He stated that his sister told him that her in-laws demanded Rs.50,000/- and as his father failed to fulfil the demand, they were not behaving well with her. His sister made similar complaints whenever she came to the parental home.

In cross-examination, the witness stated that accused persons demanded money mentioned in the Kabilnama from his sister and Farhad told her that he would divorce her.

P.W.5, Mohid Sk is the uncle of Rejina. He also stated her in-laws had demanded Rs.50,000/- and they were misbehaving with her over such demand. He specified that parents-in-law, husband, husband of Nanad, Nanad and grandfather-in-law of Rejina committed torture.

P.W.7, Hossain Sk. is a cousin of P.W.1. He stated that husband, Nanad, mother-in-law and other family members demanded Rs.50,000/- and subjected the housewife to torture.

P.W.3, S. Poddar is the post mortem doctor. He found the following injuries:

“One oblique, non continuous ligature mark measuring 10” x ¼” placed high up around the neck with a gap of 1” between tip of right mastoid process and right angle of Mandible. The skin under the ligature mark is brownish, parchmentised, furrowed and abraded at places. On dissection, the subcutaneous tissue under the ligature mark is found whitish, hardened, condensed and glistening in appearance without any extravasation of blood in and around. No other injury could be detected.”

He opined death was due to hanging as noted above which is ante mortem in nature.

From the aforesaid evidence, it is clear that victim housewife had suffered unnatural death barely within a month of her marriage at the matrimonial home.

The next question which arises is whether the housewife was subjected to cruelty soon before her death over demands of dowry.

Learned Counsel for the appellants as well as learned Amicus Curiae argued as per P.Ws.1 and 2 there was no dowry demand. On the other hand both witnesses stated a sum mentioned as den mohor in Kabilnama was demanded. As den mohor is payable by the husband and not family members of the housewife, prosecution case relating to demand appears to be absurd.

I am unable to accede to such submission made on behalf of the appellants. All the prosecution witnesses particularly P.Ws.1, 2, 5 and 7 have unequivocally stated there was a demand upon Rejina and her father to pay Rs.50,000/-. In ***Rajinder Singh v. State of Punjab***¹, the Apex Court held that any monetary demand made by the husband or in-laws before or at any time of marriage, reasonably connected with the death of the housewife will qualify as a 'dowry' demand under Section 2 of The Dowry Prohibition Act, 1961.

Analysis of the evidence of P.Ws.1 and 2 would show appellant no.1 and his parents had devised a ploy of securing the denmohor money recorded in the Kabilnama from the father of the deceased through the aforesaid demand. Upon securing such sum, husband of the deceased Farhad intended to divorce his wife. As P.W.1 was unable to meet their

¹ (2015) 6 SCC 477

demands, torture was perpetrated upon the housewife till she met her unnatural end within a month of her marriage.

In the light of the aforesaid evidence, demand of 50,000/- made by Farhad and his parents, which, when unfulfilled, resulted in torture, leading to the unnatural death, would, in the light of the *ratio* in **Rajinder Singh** (supra), constituted dowry demand attracting penal provisions Section 304B of I.P.C. and Section 3/4 of the Dowry Prohibition Act, 1961.

The role of Farhad and his parents-in-law viz., Manu Sk. and Dolly Bibi in making the dowry demand and subject the victim to cruelty over such demand, is evident from the materials on record. Before the marriage, Dolly Bibi had demanded money. Immediately thereafter, Farhad and his parents reiterated such demand. Farhad told his wife he would divorce her after he had received the money which was equivalent to den mohor quoted in the Kabilnama. The consistent evidence on record, therefore, unequivocally discloses the prominent role played by Farhad and his parents viz., Manu Sk. and Dolly Bibi in demanding a sum of Rs.50,000/- and torturing the victim housewife over its non-fulfillment. A clear and live-link between the cruelty perpetrated by Farhad and his parents upon the housewife over such demand and her unnatural death is thus established. Hence, the ingredients of the charged offences are proved beyond doubt against the appellant Nos.1, 3 and 4 i.e. husband Farhad Sk. and parents-in-law viz., Manu Sk. and Dolly Bibi.

However, with regard to the role played by Appellant Nos.5 and 6 viz., Sabana Bibi (wife of brother-in-law Firoj) and Milan Sk. (another brother-in-law) do not appear to be proved beyond doubt. It is true there are some general and omnibus allegations against them. However, evidence has come on record that the brothers-in-law viz., Firoj and Milan used to reside in different houses though in the same compound. P.Ws.5 and 7 did not name the said appellants as the persons who perpetrated torture upon the housewife over demands of dowry.

In this backdrop, the possibility of roping in all in-laws of the deceased housewife at the behest of an anguished father cannot be ruled out. Distilling the evidence of prosecution witnesses through the prism of probability, I am of the opinion that while specific and overt role of Appellant Nos.1, 3 and 4 i.e. husband and parents-in-law of the victim housewife in the cruelty meted out to her over demand of dowry is established, the evidence against the other in-laws i.e. Appellant Nos.5 and 6 are vague and sketchy in nature and cannot be said to be sufficient to establish their guilt beyond doubt.

Under such circumstances, I am inclined to uphold the conviction and sentence of Appellant Nos.1, 3 and 4 but I set aside the conviction and sentence of Appellant Nos.5 and 6.

At the time of admission of appeal, Rule for enhancement of sentence had been issued. As I am of the view that conviction of appellant

Nos.5 and 6 is liable to be set aside, Rule is discharged so far as the said appellants are concerned.

With regard to Appellant Nos.1, 3 and 4 also I am not inclined to enhance the sentence imposed upon them for the following reasons:

- 1) Firstly, the sentence imposed upon the said appellants cannot be said to be illegal as such sentence is not below the minimum prescribed under the law;
- 2) Secondly, injuries noted by the post mortem doctor i.e. a) one oblique non-continuous ligature mark high up around the neck; b) parchmentised skin below the ligature mark; and c) upon dissection, subcutaneous tissue under the ligature mark was found to be hardened, condensed and glistening in appearance without extravasation of blood, which is indicative of suicidal hanging. (See *Modi: A Textbook of Medical Jurisprudence and Toxicology*, page:154-157)

Thus, I am of the opinion, under the facts and circumstances of the case, the sentence imposed upon the Appellant Nos.1, 3 and 4 is justified and does not require enhancement.

Bail bonds of Appellant Nos.1, 3 and 4 are cancelled and they are directed to surrender forthwith and serve out the remainder of the sentence in accordance with law. If they fail to do so, the trial court shall

issue appropriate processes for their apprehension and execution of the sentence in accordance with law.

Period of detention suffered by the appellant Nos.1, 3 and 4 during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon them in terms of Section 428 of the Code of Criminal Procedure.

The Appellant Nos.5 and 6 shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial court which shall remain in force for a period of six months in terms of section 437A of the Code of Criminal Procedure.

Accordingly, the appeal is allowed in part and the Rule is discharged.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

I express my appreciation for the able assistance rendered by Mr. Avik Ghatak, learned advocate as Amicus Curiae in disposing of the appeal.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)