

27.02.2023

S/L. 12

Court No.12

Suvayan/

Sourav

CRA 343 of 2002

In the matter of: **Tapas Ghosh & Ors.**

....Appellants.

Mr. Partha Sarathi Bhattacharya

Ms. Swarnali Saha

...for the appellants.

Ms. Zareen N. Khan

Mr. Ashok Das

...for the state.

1. Perused the report furnished by Mr. Debashis Nag, SI of Police, Officer-in-Charge, Kalna P.S., Purba Bardhaman to the effect that Madan Ghosh, appellant No. 2 has expired since 30th May, 2016. The report is accompanied by the cremation report issued by the competent authority.
2. In view of such fact the appeal in respect of Madan Ghosh, appellant No. 2 abates. The report submitted by Ms. Z. N. Khan, learned Counsel for the State be taken on record.
3. From the report submitted by Superintendent, Baruipur Central Correctional Home it is found that Tapas Ghosh, appellant No. 1 has since been released on 06.06.2011 after suffering the sentence.
4. Mr. Bhattacharya, learned Counsel for the appellants, therefore, now confine the appeal to appellant No. 3, Pushpa Ghosh, widow of late Madan Ghosh, appellant No. 2 and mother of Tapas Ghosh, appellant No. 1.
5. Heard Mr. Partha Sarathi Bhattacharya, learned Counsel appearing for the appellants and Ms. Zareen N. Khan assisted by Mr. Ashok Das learned Counsel appearing for the State.
6. This appeal arises out of judgment of conviction and order of sentence dated 28.08.2002 passed by learned Additional

Sessions Judge, Kalna in Sessions Trial No. 19/2001 arising out of Sessions Case No. 37/2000 convicting the appellants under Section 498A/304B IPC and sentencing each of them to suffer Rigorous Imprisonment for a period of 3 years and to pay fine of Rs. 5,000/- each, in default to suffer R.I. for 1 year more each for the offence committed by them under Section 498A IPC and Rigorous Imprisonment for 10 years for the offence committed by each of them under Section 304B IPC with a further direction that both the sentences to run concurrently.

7. This is a case of death of the deceased in suspicious circumstance. The occurrence happened on 01.04.1997. On the very next day FIR was lodged by P.W. 1, father of the deceased alleging that one and half year prior to the date of occurrence marriage between appellant No. 1, Tapas Ghosh with his daughter, Tapasi Ghosh (deceased) had been solemnized according to the Hindu Customs and Rites. After marriage, deceased Tapasi Ghosh came to reside in the house of her in laws. At the time of marriage though utensils and other articles including cash of Rs. 50,000/- were given, demand was raised for more dowry after the marriage. For fulfillment of such demand, the appellants, i.e., the husband of the deceased, father-in-law of the deceased and mother-in-law of the deceased subjected the deceased to mental and physical torture and harassment and did not provide her food, etc.

Over the matter, there was a 'salish' between two families by intervention of the local gentry of the village of the

appellants on the basis of the complaint lodged the P.W. 1 (father of the deceased). After the deceased died, P.W. 1 coming to know about such fact rushed to the hospital where she found her daughter to be dead. On the next day he lodged FIR.

The I.O., P.W. 11 took up investigation, such investigation being entrusted to him. He seized the incriminating articles, examined some witnesses and submitted charge-sheet against the appellant and others for offence under Sections 498A/302/34 IPC. In course of framing of charge learned Trial Court, however, framed charge under Sections 498A/304B IPC against all the appellants.

8. Prosecution examined 11 witnesses to bring to whom the charge against the appellants. P.W. 1, is the father of the deceased and the informant. P.W. 2 is one of the co-villager of the appellants. He had attended the 'salish' on the complaint of P.W. 1. P.W. 3 is another co-villager of the appellants but he having not supported the prosecution case was declared hostile. P.W. 4 is also co-villager of the appellants. He had also attended the 'salish' on the basis of complaint by P.W. 1. P.W. 5 is another co-villager of the appellants but his evidence is inconsequential and he has no direct knowledge regarding the incident. P.W. 6 is the A.S.I. who conducted inquest over the dead body in presence of the witnesses and challaned the dead body for postmortem. P.W.s 7 and 8 are two official witnesses to some seizures. P.W. 9 is the constable who had taken the dead body for postmortem. P.W. 10 is the medical

officer who conducted postmortem and proved the postmortem report vide exhibit 7 and the chemical examination report of viscera vide exhibit 8. P.W. 11 is the I.O.

Defence plea is one of complete denial and false implication but no evidence has been adduced by the defence.

9. Learned Trial Court relying on the evidence of P.W.s 1, 2, 4, 10 and 11 has returned the finding of guilt as against the appellants under Sections 498A/304B IPC.

It is pertaining to mention here that the appellant No. 1, i.e., husband of the deceased has already been released from custody after serving sentence including the default sentence. The appellant No. 2, Madan Ghosh, i.e., father of the appellant No. 1 and husband of appellant No. 3 having expired in the meantime, the appeal has abated against him. In view of such development during pendency of the appeal, Mr. Bhattacharya, learned Counsel for the appellants confines the appeal to appellant No. 3, Puspa Ghosh i.e., mother-in-law of the deceased.

10. From the evidence of P.W. 1, it is found that he has made no specific allegation against appellant No. 3 (Puspa Ghosh). His allegation is against the appellant No. 1, Tapas Ghosh in as much as he (P.W. 1) has testified to the effect that during his presence once his son-in-law, Tapas Ghosh had assaulted his daughter Tapasi Ghosh (deceased). The other allegations regarding demand of dowry and subjecting the deceased to physical and mental torture is quite omnibus in nature against all the appellants including appellant No. 3.

11. Though, there are contradictions in the evidence of P.W. 1 in as much as he has omitted many things which he has testified for the first time in Court, in the FIR and such FIR having been confronted to him he has given some evasive reply only. Despite such fact P.W. 1 is stated to have been corroborated by P.W. 2 and P.W. 4 who had attended the 'salish' being the co-villagers of the appellants. P.W. 2 has testified that there were some ill fillings between the spouse and he attended a meeting to settle their ill fillings. He has further testified that he had heard that their dispute was in relation to family matters and dowry. P.W. 2 has never stated that there was ill filling between the deceased and members of the family of her in laws. P.W. 2 is the person who had come to attend the 'salish' on the basis of compliant made by P.W. 1, who is non-other than the father of the deceased. P.W. 2 is very specific about the fact that there was little difference between the spouse. He has never stated anything against appellant no. 3, mother-in-law of the deceased. In view of such specific evidence, the mother-in-law (appellant no. 3) cannot be dragged to be implicated in the offence alleged. P.W. 4 who is another co-villager of the appellants' had also attended the 'salish'. He has specifically testified that he had been to the house of the appellants as there was dispute; following that dispute he (P.W. 1) came to us and made a complaint; they (P.W.s 2, 3 and 4) tried to solve the dispute of the parties. In the cross-examination he has specifically testified that it was a simple family feud. This witness P.W. 4 has not stated anything

about dowry and has made no allegation against appellant no. 3.

12. Both P.W.s 2 and 4, though have stated about family feud/dispute. They have not stated anything about the relationship between the appellants and the deceased and the action of the appellants in subjecting the deceased to physical and mental torture etc. for fulfillment of demand of dowry. They being the co-villagers of the appellants, they could have told impartially about that. They having been invited by P.W. 1 to sit in the 'salish', P.W. 1 could have told them about the physical and mental harassment and torture meted out to his daughter. P.W. 1, it seems, has also not stated anything to P.Ws 3 and 4 about the facts of the deceased being subjected to torture and harassment for fulfillment of demand of dowry.
13. In view of such nature of evidence, we are constrained to hold that appellant No. 3 cannot be held to be liable for offence under Section 498A IPC. Coming to the next question of complicity of appellant No. 3 in the offence under Section 304B IPC it is an admitted fact that the deceased herself had taken poison. Post mortem examination report vide exhibit 7 is indicative of the fact that she was pregnant at that time, though the medical officer, P.W. 10 had not whispered anything about such fact in the Court. The C.E. report, vide exhibit 8 though not proved properly, is indicative of the fact that the death of the deceased was caused by ingestion of poison. There being no external injuries or mark of violence on the dead body of the deceased, it is to be held that the

ingestion of poison by the deceased was voluntary in nature and nobody forced her to take poison. In absence of prove to the effect that soon before her death the deceased had been subjected to harassment by the appellants for in connection with any demand for dowry, presumption under Section 113B of the Evidence Act cannot be raised.

Coming to the question of P.W. 3 committing the offence under Section 304B IPC, we find that no question incriminating the appellant No. 3 has been put to her in her examination under Section 313 Cr.P.C. Such fact would go to suggests that there was nothing on record against appellant No. 3 so far as the offence is concerned and in a formal manner all the appellants have been put the same questions in their statements recorded under Section 313 Cr.P.C.

14. To sustain a conviction under Section 304B IPC, it is the settled law that the phrase "soon before her death" used in Section 304B IPC must be interpreted to be proximately before the death of the wife and not immediately prior to her death. Even we apply the aforesaid test to the facts of the case as obtained on record, we find that there is nothing on record to show that appellant No. 3 was in any manner instrumental to any proximate cause of commission of suicide by the deceased.
15. Regard being had to our discussion (Supra), we are persuaded to hold that the appellant No. 3 is entitled to be acquitted.
16. Accordingly, the impugned judgment of conviction and order of sentence passed against the appellant No. 3, Puspa Ghosh by learned Additional Sessions Judge, Kalna in Sessions Trial No.

19/2001 arising out of Sessions Case No. 37/2000 are set aside.

17. The appellant No. 3, Puspa Ghosh being stated to be on bail, be discharged of the bail bond.
19. Accordingly, the appeal being CRA 343 of 2002 is allowed.
20. Let a copy of this judgment along with LCR be sent down to the Trial Court forthwith.
21. Urgent xerox certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.
22. Judgment dictated in open Court.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)