

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**C.R.A. 372 OF 2021
With
IA No.: CRAN 1 of 2022**

**Prabir Ganguly & Anr.
VS.
The State of West Bengal**

For the Appellants : Mr. Abhra Mukherjee
Mr. Sauradeep Dutta
Mr. S.K. Mondal

For the State : Ms. Zareen N. Khan
Mr. Ashok Das

Heard on : January 31, 2023

Judgment on : January 31, 2023

DEBANGSU BASAK, J.:-

1. In assailement is the judgment of conviction dated December 6, 2021 and the order of sentence dated December 7, 2021 passed by the learned Additional District and Sessions Judge, Fast Track Court No.2, Purulia in Sessions Trial No.19/2021 arising out of Sessions Case No.35/2021 convicting the appellants under Section 304B of the Indian

Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961.

2. By the impugned order of sentence, the appellants were sentenced to suffer simple imprisonment for ten years for the offence punishable under Section 304B of the Indian Penal Code, 1860 and simple imprisonment for six months for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961 and a fine of Rs.5,000/- and, in default, to suffer imprisonment for another six months. The sentence were directed to run concurrently. The periods of detention undergone by the appellants during investigation and trial were directed to be set off under Section 428 of the Criminal Procedure Code.

3. At the trial, the case of the prosecution was that, Roma Ganguly was given in an arranged marriage with Prabir Ganguly in the year 2015. At the time of the marriage, Prabir and his mother demanded a sum of Rs.2 lakhs from the father of Roma as dowry. Father of Roma failed to give such money. Since completion of one year of marriage, Prabir and his mother used to quarrel with Roma and used to say that they

would kill her if she failed to pay the money. Roma used to complain about the same to her parents at her parental home. The parents of the Roma went to Mumbai to work to earn the money for the dowry. Roma used to confide with the de facto complainant with regard to the torture meted out to her. According to the prosecution, Prabir murdered Roma by strangulation and thereafter bring her to Purulia Sadar Hospital where Roma was declared dead by the doctor attending her.

4. On completion of the investigations, police submitted a charge sheet against the appellants. The Court framed charges against the appellants under Sections 498A/304B/302/34 of the Indian Penal Code, 1860 and under Sections 3 and 4 of the Dowry Prohibition Act, 1961 on July 29, 2021.

5. The appellants pleaded to be not guilty and claimed to be tried. At the trial, the prosecution examined twelve witnesses and relied upon documentary and material evidences. On conclusion of the evidence of the prosecution, the appellants were examined under Section 313 of the Criminal Procedure

Code where they claimed themselves to be innocent and falsely implicated. They declined to adduce any defence witness at the trial.

6. Learned Advocate appearing for the appellants submits that the prosecution failed to prove the case beyond all reasonable doubt. He submits that, the prosecution failed to produce any eyewitness of the incident. The prosecution relied upon circumstantial evidence. According to him, the chain of circumstances were not proved beyond all reasonable doubts and not completed so as to allow an inference of guilt of the appellants.

7. Learned Advocate appearing for the appellants submits that, the identity of the body of the victim sent for post-mortem is in doubt in view of the contents of the two inquest reports and the post-mortem report. He submits that, two inquests were performed on the dead body of the victim; one by the police and the other by the Magistrate. In both the two inquest reports, one injury on the body was noted whereas, during the course of post-mortem examination, the post-mortem doctor found eleven injuries. He refers to the

deposition of the post-mortem doctor being P.W.11 and submits that, in his cross-examination, he stated that he did not verify the identity card on the dead body. Consequently, the benefit of the doubt should be afforded to the appellants.

8. Learned Advocate appearing for the State submits that the prosecution was able to prove the case beyond all reasonable doubts. He refers to the deposition of the prosecution witnesses. He contends that, the dead body of the victim was identified by the elder sister of the victim. He refers to the deposition of the post-mortem doctor being P.W.11 in this regard. Therefore, according to him, there was no doubt as to the identity of the dead body. He refers to the contents of the post-mortem report and the deposition of the post-mortem doctor being P.W.11. According to him, the victim suffered an unnatural death. The appellants could not give any explanation as to the death of the victim at the matrimonial home. The appellants failed to discharge their onus under Section 106 of the Evidence Act. Therefore, the conviction of the appellants under Section 304B of the Indian Penal Code should be sustained. So far as the charges under

Sections 3 and 4 of the Dowry Prohibition Act, 1961 are concerned, learned Advocate appearing for the State submits that, the prosecution was able to prove that there were demands for dowry made to the family of the victim within two years of marriage and that such demand for dowry continued over a period of time. Therefore, according to him, the conviction under the provisions of Section 4 of the Dowry Prohibition Act, 1961 was correct.

9. P.W. 1 is the elder sister of the victim who lodged the police complaint. She narrated about the demand for dowry that the appellants used to make to the victim and onwards to the parental family of the victim. She stated that she was told about the demand for dowry and the torture meted out on the victim by the victim herself on a number of occasions. She stated that on October 2, 2020, the mother-in-law of the victim did not give the victim any food and kept her unfed. From the morning of October 3, 2020, both the appellants started severe torture upon the victim. She tendered the written complaint in evidence which was marked as Exhibit-1. She identified her signature on the police inquest report which

was marked as Exhibit-2/1. She also identified her signature on the magisterial inquest report which was marked as Exhibit-3/1. She identified her signature on the seizure list which was marked as Exhibit-4/1.

10. In cross-examination, P.W.1 stated that, the parents of the victim could not make payment of Rs.2 lakhs as demanded by Prabir. She said that, the victim left a male child whose age was five years as on August, 2021.

11. P.W.2 is a neighbour of the appellants. He said in his testimony that, he saw Prabir to take victim on his lap by a Toto. He identified his signature on the seizure list dated October 6, 2020 which was marked as Exhibit-5/1. In cross-examination, he stated that his house was at a distance of approximately 60 cubits from the matrimonial house of the victim.

12. A maternal uncle of the victim deposed as P.W.3. He narrated about the trouble in the married life of the victim and her husband. He stated that, the victim alleged to his sister that she was not getting sufficient food. There were troubles in the family. Moreover, the appellants used to assault her.

In cross-examination, he stated that he never made complaint to any of the neighbours regarding the torture and insufficient food of the deceased at her matrimonial home.

13. A sister of the victim deposed as P.W.4. She stated that at the time of marriage, it was settled that Rs.2 lakhs would be given to Prabir later when possible. The mother of Prabir subsequently began to demand that money from the victim and threatened in default she would kill the victim. She claimed that the appellants killed the victim by strangulation on October 3, 2020.

14. In cross-examination, she stated that she did not witness the incident. However, she noticed a mark on the throat of the victim.

15. The husband of the de facto complainant deposed as P.W. 5. He narrated as to how the police complaint was lodged.

16. The father of the victim deposed as P.W. 6. He stated that, at the time of marriage, the appellants demanded a sum of Rs.2 lakhs from him. When he expressed his inability to meet the demand, the appellants told him to make payment

later and allow the marriage to be solemnized. After marriage, the victim went to her matrimonial home and started to reside there with the appellants. The victim resided peacefully for about one year after marriage. Thereafter, the victim used to tell him that he should give the amount of Rs.2 lakhs to the appellants as per demand. He, however, expressed his inability to meet such demand. Thereafter, he went to Mumbai for earning money. On October 3, 2020, the victim told him over phone that the appellants were telling her that Prabir would marry again and that he selected another lady for marriage if the demand was not met. At around 3 PM, Prabir told him over phone that he killed the victim. At that time, he was in Mumbai. After receiving such phone call, he called the neighbours of his elder daughter. He identified both the appellants in Court.

17. In cross-examination, he stated that he spoke to Prabir on October 3, 2020 at first at 11 AM and for the second time at 3 PM. He did not file any written complaint to any authority regarding the torture of his daughter. The marriage of his daughter was solemnized without giving any dowry. He

further stated that excepting the admission of Prabir of killing the victim, there was no personal knowledge whether the victim died due to accident or committed suicide.

18. A constable who identified the dead body of the victim at the time of postmortem deposed as P.W. 7. He identified his signature on the dead body challen which was marked as 'Exhibit-6/1'. He stated that after the postmortem examination, he made over the dead body along with the wearing apparels of the victim and other items to his officer, who seized the same. He identified the signature on such seizure list. It was marked as 'Exhibit-7/1'.

19. The police personnel who performed the inquest on the dead body of the victim deposed as P.W. 8. He tendered the inquest report which was marked as Exhibit-2.

20. A police personnel who accompanied the P.W. 8 to Purulia, and held the inquest over the death of the victim deposed as P.W. 9. The police personnel who signed on two seizure lists deposed as P.W.-10.

21. The postmortem Doctor who performed the postmortem examination on the dead body of the victim deposed as P.W.-

11. He stated that, the dead body was brought and handed over by the police constable being P.W. 7 and identified by the elder sister of the victim being P.W.-1. He noted 11 external injuries on the dead body of the victim. He opined that, the death was due to the effect of manual strangulation which was ante-mortem and homicidal in nature.

22. In cross-examination, P.W. 11 stated that, he did not identify the Identity Card of the victim prior to the conduct of the postmortem. The police personnel who conducted the investigations deposed as P.W.-12. He narrated about the investigations in the police case.

23. As noted above, in the examinations of the appellants under Section 313 of the Criminal Procedure Code, the appellants claimed themselves to be innocent and falsely implicated. Prabir claimed that he loved the victim very much. He claimed that the marriage happened only by exchange of garlands. Kalpana also claimed her innocent and to be falsely implicated in her examination under Section 313 of the Criminal Procedure Code.

24. The postmortem report of the victim being Exhibit-9 read with testimony of the Doctor conducting the postmortem of the victim being P.W.-11 establishes that, the victim died an unnatural death.

25. Evidence of prosecution witness being P.W-1, squarely implicates both the appellants in the demand for dowry and/or torture being meted out to the victim during her lifetime for the failure of the parents of the victim to pay the demand. P.W. -1 stated that, the victim used to confide in her about the torture meted out to her by the appellants as well as the demand for dowry made. Other prosecution witnesses being prosecution witness nos. 3, 4 and 6 corroborated such statements of P.W.-1.

26. Therefore, according to us, the prosecution was able to prove that there was demand for dowry made by the appellants to the victim. The prosecution was also able to establish that, the victim was subjected to torture on the ground of demand for dowry.

27. The marriage between Prabir and the victim took place on May 9, 2015. The victim was found dead on October 3, 2020.

Therefore, the incident was within six years of the date of marriage.

28. The contention on behalf of the appellants that, the postmortem report was suspect in view of the postmortem Doctor finding 11 injuries as against one injury in the two earlier inquest reports as well as the fact that the dead body of the victim was not identified prior to the conduct of the postmortem examination, with the deepest of respect, cannot be sustained in the facts and circumstances of the present case.

29. Inquests are not performed by professional experts. The person conducting the inquest may miss out injuries on the dead body which may be discovered on a postmortem examination by a professional Doctor. In the facts of the present case, there were two inquests, one by the police and one by the Magistrate prior to the postmortem being conducted. None of them were professional medical experts.

30. The dead body of the victim was identified by police constable being P.W. 7 as well as by the elder sister of the victim, being de facto complainant, P.W. 1, Therefore, there is

no material to doubt the identity of the dead body of the victim. The suggestion put to the postmortem Doctor in cross-examination as to whether the Doctor checked the Identity Card of the victim is preposterous.

31. In such circumstances, we find no ground to interfere with the impugned judgment of conviction and the order of sentence.

32. We affirm the same.

33. Period of detection undergone by the appellants during investigations, trial and the pendency of the appeal be set off under Section 428 of the Criminal Procedure Code.

34. The sentences will run concurrently.

35. CRA 372 of 2021 is dismissed.

36. In view of the dismissal of the appeal, nothing survives in the application being, CRAN 1 of 2022, which is disposed of accordingly.

37. Trial Court records be remitted to the appropriate Court forthwith.

38. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak,J.)

39. I Agree.

(Md. Shabbar Rashidi, J.)