

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 86 of 2004

**Sankar Prasad Gope & Ors.
-Vs-
The State of West Bengal**

For the Appellant : Mr. Amartya Ghosh
(Amicus Curiae)

For the State : Mr. Faria Hossain
Mr. Anand Keshari

Heard on : 31.01.2024

Judgment on : 28.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 11.12.2003 passed by the Learned Additional Sessions Judge at Cooch Behar in Sessions Trial No. 1(8)/03 in connection with Sessions Case No. 139 of 2000, arising out of Dinhata, P.S. U/D Case No. 68/97 dated 06.07.1997 convicting the appellants under Sections 498A/306 of the Indian Penal Code.
2. The appellants were tried by the Learned Additional Sessions Judge at Cooch Behar on charge of subjecting the wife by the husband and relatives of husband under Section 498A of the Indian Penal Code and abatement of

suicide under Section 306 of Indian Penal Code and found the appellants/petitioners guilty and they have been convicted on 11th December, 2003 under Sections 498A/306 of the Indian Penal Code and sentenced under Section 235(2) of the Criminal Procedure Code to suffer rigorous imprisonment for 3 years each and to pay fine of Rs.1,000/- each in default to suffer rigorous imprisonment for 3 months more the offence under Sections 498A of the Indian Penal Code and they are further sentenced to suffer rigorous imprisonment for 5 years each and to pay fine of Rs.2,000/- each and in default to suffer rigorous imprisonment for 6 months more for the offence under Section 306 Indian Penal Code.

3. The prosecution case precisely stated as follows:-

The accused Sankar Gope married Smt. Anita Ghsoh, the daughter of the de-facto complainant in 1994. An amount of Rs.1,000/-, certain ornaments, a bicycle and other articles had been given in the marriage as dowry by Anita's father. Anita went to her matrimonial home after marriage and had started living with her husband. The other accused persons – Monor Prasad Gope and Smt. Chinibala Gope, father and mother of Sankar, used to reside in the same house. Anita lead a good matrimonial life for a year. Thereafter the accused persons started torturing Anita physically and mentally to realize Rs.5,000/- in cash from Anita's father as further dowry. The accused persons further stated to Anita that until and unless Anita's father paid them the aforesaid money, they would not allow Anita to live in their house. Just one month prior to the present complaint all the accused persons assaulted mercilessly and drove Anita out of their house. Being driven out

from the matrimonial home Anita took shelter in her parental home. After the said incident Anita's father had taken Anita to the village of Anita's matrimonial home and asked for intervention Anita was allowed to return to the matrimonial home. Suddenly, thereafter, in the morning of 6th July, 1997 Anita's father got an information that the accused persons had killed Anita and hanged the dead body of Anita. Anita's father having received such information rushed to the house of the accused persons and came to know that Anita had been starved and assaulted seriously by the accused persons for 3/4 days which resulted in the death of Anita. Thereafter, Anita's father Sudhir Ghosh submitted a written complaint at Dinhata Police Station on 7th July, 1997.

4. On the basis of the written complaint the present case had been started. During investigation it was revealed that Anita had been subjected to ill-treatment and torture in her matrimonial home by the accused persons due to which Anita had committed suicide. Accordingly, the charge-sheet under Section 498A/406 of the Indian Penal Code had been submitted against the accused persons after completion of investigation.
5. The case was investigated by Dinhata Police Station and after completion of investigation the police submitted the charge-sheet against the appellants under Sections 498A/406 of the Indian Penal Code.
6. On considering the materials on record and upon hearing the arguments advanced by both the parties, the Learned Additional Sessions Judge framed the charge under Sections 498A/406 of the Indian Penal Code to which appellant pleaded not guilty and claimed to be tried.

7. The prosecution examined 16 witnesses and exhibited certain documents and the defence examined none.
8. The Learned Amicus Curiae for the appellants submitted that:-
 - i. The Learned Additional Sessions Judge erred in not considering the evidence of PW-2, PW-3, PW-4, PW-5, PW-6, PW-7, PW-8, PW-9, PW-10 and PW-11 proving beyond doubt that there was ingredient of any of the alleged offences to convict the appellants.
 - ii. None of the villagers of the Anita's matrimonial village had supported the prosecution case of torture upon Anita as such the prosecution case had not been established at all.
 - iii. None of the witnesses had themselves seen the alleged torture upon Anita by any of the accused persons as such the allegations of torture should not have been relied upon to convict the appellants.
 - iv. At no point of time Anita made any information to her parents with regard to the allegation of being subjected to torture by the appellants after her marriage.
 - v. There was no evidence that Anita was driven out from the matrimonial home after being subjected to torture by the accused persons.
9. The Learned Advocate for the State submitted that the victim committed suicide within 7 years of marriage drawing the presumption under Section 113B of the Indian Evidence Act. Moreover, in view of the provisions of Section 106 of the Indian Evidence Act. In absence of independent witnesses, the incident to have taken within the periphery of the matrimonial home, it was incumbent upon the appellants to prove otherwise

which they failed miserably. Apart from the evidence of the father of the victim there was no independent witnesses too. The Investigating Agency failed to establish the ingredients under Section 306 of the Indian Penal Code. However, the presumption as aforesaid constituted offence under Section 498 A of the Indian Penal Code.

10. The circumspection of the prosecution witnesses reveals as follows:-

- a. The inquest report did not depict any marks of injury on the body of the deceased. The primary investigation disclosed that the victim was married to the appellant Sankar Gope, about four/four and a half years ago and had given birth to a child one/ one and a half years old on the relevant date. On 5/7/1997 at 7pm when the husband had been to the mill for husking paddy, the victim committed suicide by hanging with the rope belonging to a goat. P.W-1, the father of the victim stated to have been informed by a person that the appellants had assaulted and killed her daughter and thereafter hanged her dead body. He could not find the dead body at her matrimonial house, Dinhata Police Station and also Dinhata S.D. Hospital. P.W-1, further submitted that the husband demanded cash of five thousand from him and she was driven out of her matrimonial house about one and a half/two months prior to her death. P.W-1 expressed his inability to provide the same since he had earlier paid a sum of ten thousand rupees in cash, a bicycle, gold ornaments and other valuable articles after selling his landed property. He further stated that the victim was ill-treated, tortured and starved for four days prior to her death.

However, he did not lodge any complaint at the police station nor file any case on such torture inflicted on his daughter.

- b. P.W-2, P.W-3,P.W-4 were declared hostile by the prosecution who had unanimously stated that the appellants had good relationship with the victim. P.W-5, P.W-6, P.W-7 could not comment on the reason of the death of the victim. P.W-10, a villager of the father of the victim stated that the victim had narrated the incident of torture to him though he did not have any direct knowledge about any incident of the family of the accused persons. P.W-9, a co-villager of P.W-1 in similar terms reiterated the terms of P.W-8. The evidence of P.W-10 and P.W-11 was based on hearsay. P.W-12 had taken the dead body from Dinhata Police Station to Cooch Behar M.G.M. Hospital and identified the same in front of the autopsy surgeon. He had not seen any mark of injury on the dead body. P.W-13 was the scribe to the written complaint marked as exhibit 1 and his signature was marked as exhibit 1/1. P.W-14 prepared the inquest report signed by him which was marked as exhibit 2/1 and the dead body challan prepared and signed by him identified as exhibit 3 and his signature marked as exhibit 3/1. P.W-15 had been the investigating officer who stated before the court that P.W-2, P.W-3, P.W-4 had narrated the incident of torture inflicted upon the victim on demand of Rupees Five Thousand and she was expelled from her matrimonial house.

11. Section 113-B of the Indian Evidence Act, 1872 stated as follows:-

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).

12. In **Maharashtra v. Rajendra**,¹ the Hon'ble Supreme Court held the following:-

27. The presumption under Section 113-B of the Evidence Act with respect to dowry death can be raised only on the proof of the following four essential conditions:

- (i) The woman was subjected to cruelty or harassment;
- (ii) by the husband or his relatives;
- (iii) for or in connection with any demand for dowry;
- (iv) soon before her death.

Refer *Kaliyaperumal v. State of T.N.* [(2004) 9 SCC 157 : 2004 SCC (Cri) 1417 : AIR 2003 SC 3828]

28. Section 113-B of the Evidence Act reads as under:

“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 purpose of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Penal Code, 1860.”

¹ (2014) 12 SCC 496

29. *In dowry death cases direct evidence may not be available. Such cases may be proved by circumstantial evidence. Section 304-BIPC read with Section 113-B of the Evidence Act indicates the rule of presumption of dowry death. If an unnatural death of a married woman occurs within 7 years of marriage in suspicious circumstances, like due to burns or any other bodily injury and there is cruelty or harassment by her husband or relatives for or in connection with any demand for dowry soon before her death then it shall be dowry death.*

13. The Hon'ble Supreme Court in ***Mustafa Shahadal Shaikh v. State of Maharashtra***², held the following:-

11. *To attract the provisions of Section 304-B, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned counsel appearing for the appellant submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to the same while considering the evidence led in by the prosecution. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and*

² (2012) 11 SCC 397

live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. These principles have been reiterated in Kaliyaperumal v. State of T.N. [(2004) 9 SCC 157 : 2004 SCC (Cri) 1417 : AIR 2003 SC 3828] and Yashoda v. State of M.P. [(2004) 3 SCC 98 : 2004 SCC (Cri) 671]

14. The following was observed by the Hon'ble Supreme Court in **State of**

M.P. v. Jogendra³:-

17. *In the above context, we may usefully refer to a recent decision of a three-Judge Bench of this Court in Gurmeet Singh v. State of Punjab [Gurmeet Singh v. State of Punjab, (2021) 6 SCC 108 : (2021) 2 SCC (Cri) 771] that has restated (at SCC pp. 111-12, para 9) the detailed guidelines that have been laid down in Satbir Singh v. State of Haryana [Satbir Singh v. State of Haryana, (2021) 6 SCC 1 : (2021) 2 SCC (Cri) 745] , both authored by N.V. Ramana, C.J. relating to trial under Section 304-BIPC where the law on Section 304-BIPC and Section 113-B of the Evidence Act has been pithily summarised in the following words : (Satbir Singh case [Satbir Singh v. State of Haryana, (2021) 6 SCC 1 : (2021) 2 SCC (Cri) 745] , SCC p. 13, para 38)*

“38.1. Section 304-BIPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

38.2. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-BIPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B of the Evidence Act operates against the accused.

³ (2022) 5 SCC 401

38.3. The phrase “soon before” as appearing in Section 304-BIPC cannot be construed to mean “immediately before”. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-BIPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.”
(emphasis in original and supplied)

15. In the instant case, the element to constitute an offence under Section 306 had been absent. None of the prosecution witnesses mentioned about a proximate incident of instigation or abetment on the part of the appellants to compel her to commit suicide. However, the presumption under Section 113-B of the Evidence Act cannot be disregarded since the victim lady giving birth to a child aged one/one and a half years will not necessarily commit suicide, leaving her child at the disposal of the perpetrators. There have been evidence of the victim being subjected to cruelty to her prejudice within seven years of marriage.
16. In the instant case, there is no reason that the evidence of the related witnesses shall disbelieved.
17. In view of the above discussions, the instant criminal appeal is allowed in part. The present appellants are acquitted of Section 306/498A of the Indian Penal Code. The appellant no. 1 has expired and vide order dated

30.06.2023, the instant appeal got abated against the appellant Sankar Gope.

18. Accordingly, the CRA 86 of 2004 stands disposed of.

19. There is no order as to costs.

20. I record my appreciation for the able assistance rendered by Learned Advocate Mr. Amartya Ghosh, as Amicus Curiae in disposing of the appeal.

21. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

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

(Ananya Bandyopadhyay, J.)