

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 353 of 2005

**Ujjala Ghorui
-Vs-
State of West Bengal**

For the Appellant : Mr. Akash Dutta
Ms. Sayantani Sengupta

For the State : Mr. Anand Keshari

Heard on : 04.10.2023, 12.12.2023, 22.01.2024, 07.02.2024,
24.04.2024

Judgment on : 14.05.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 10th May and 11th March, 2005 passed by the Learned Additional Sessions Judge, Fast Track Court, 1st Court, Diamond Harbour, 24-Parganas (South) in Sessions Trial No. 16(4) of 2004 arising out of Sessions Case No. 34(3) of 2004 arising out of G.R. No. 1151 of 2003 found the accused/appellant guilty and convicted for the offence under Sections 498A/304B/306 of the Indian Penal Code and sentenced her for 7 (seven) years rigorous imprisonment under Section 304B of the Indian Penal Code.

2. The prosecution case precisely stated a complaint to have been lodged by the father of the victim, inter alia, stating that his daughter was married to the accused no. 1 on 17.04.03 and he had granted a cash amount as gift as well as dowry at the time of the marriage. After a lapse of one and a half month of the marriage, the accused persons subjected his daughter to physical and mental torture for gleaning further money. The complainant had met the demand of the accused persons on an assumption of future happy married life of his daughter. However, the intensity of torture did not diminish but aggravated with time which was tried to be resolved through the intervention of local people but in vain. On last Durga Puja, while his daughter had told accused no. 1 to go to his house along with her, accused no. 1 went to Kolkata in his relative's house without taking his daughter. On searching for the reason why accused no. 1 did not go to his house at Kolkata along with his daughter, he came to know that work place of accused no. 1 was at Kolkata and he did not take the complainant's daughter to Kolkata due to his illicit relationship with some other lady. On last 19.10.2003 as per English calendar at about 8 a.m. in the morning the complainant's daughter had a quarrel with accused no. 2 and 3 in this regard and then the quarrel had been started between the complainant's daughter and accused no. 2 and accused no. 3. During that dispute, the accused no. 3 had beaten the complainant's daughter extreme violently and due to that his daughter became senseless and then neighbours had rescued his daughter and while they had taken initiative for her treatment accused no. 3 started saying abusive language and as such neighbours had gone away. It was the

complainant's assumption that either accused no. 2 or 3 poured poison into his daughter's mouth while she was in worst condition or his daughter had compelled to commit suicide by consuming poison being irritated on their torments.

3. Based on the complaint as aforesaid Raidighi P.S. case No. 110 dated 20.10.03 under Sections 498A/304B of the Indian Penal Code was registered.
4. On completion of the investigation, charge-sheet was filed. Subsequently, charges were framed to which the appellant pleaded not guilty and claimed to be tried.
5. Considered the submissions of the Learned Advocate for the appellant as well as the State.
6. A circumspection of evidence of the prosecution witnesses revealed as follows:-
 - i. Brojohari Niyea, father of the deceased filed a written complaint on 20.10.2003, inter alia, stating that on 19.10.2003 he came to know about the death of her daughter by suicide. He further stated that on such date, a quarrel ensued between the deceased and appellant herein and husband of appellant and he alleged that appellant had beaten the deceased extreme violently and also alleged that due to such incident her daughter committed suicide.

While the Surathal Report as well as the post mortem report clearly stated that no mark of any wounds or injuries were found in the body of

the deceased. Thus, statements made in the written complaint were contradictory.

- ii. Brojohari Niyea (PW-1), father of the deceased, stated that on reaching the house of the appellant on the date of death of his daughter, he came to know that from the locals that there used to be quarrel between her and her husband on account of her refusing to take her to Kolkata at her father's place. Section 304B of I.P.C states as follows:-

“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.”

Thus, for a liability to arise under this section the essential ingredient was that soon before the incident of death the victim was subjected cruelty in connection with dowry, but here as stated earlier, soon before death quarrel and dispute arose in respect of visiting Kolkata during Durga Puja, not in connection with demand for dowry.

- iii. Sujit Naskar (PW-2), neighbour of the appellant herein as well as Sri Hori Niyea, parental uncle of the deceased and PW-4 herein, stated in their respective deposition that the deceased after her marriage stayed

at the house of the appellant, i.e., in her matrimonial house, for very short period of time during her short married life. PW-2 clearly stated that “Most of the time I found that she was not staying in the house of the accused persons”. B. K. Sardar, then S.I of Raidighi Police Station and PW-13 herein, also stated that PW-1 father of deceased told him that “only 6 ½ months ago Mithu got married and during this period, she lived with his elder brother and him”. Both PW-1 and PW-4 earlier stated that the deceased was once sent to their home by the appellant for treatment of her skin disease of which she was cured within 1 month of treatment.

- iv. Sri Hori Niyea (PW-4), parental uncle of the deceased, stated that during her stay in the house of PW-4 for treatment of her skin disease, Mithu, the deceased, told her uncle that she was perpetually rebuked by her mother-in-law, i.e. the appellant in connection with her household work. Thus, the deceased herself on prior occasion stated that the dispute in her matrimonial home was regarding her household work not in respect of demand for dowry by her in-laws.
- v. Brojohar Niyea, in his written complaint, alleged that the deceased was subjected to mental and physical torture from one to one and a half month after her marriage in connection with demand for dowry but Sri Hori Niyea, PW-4, stated that one month after the marriage of the deceased, her in-laws deceased’s incapacity to perform certain household work. Thus, no demand for dowry was so made and yet again

the dispute was regarding the incapacity of the deceased to perform household work not in regard to demand for dowry.

- vi. Brojohari Niyea (PW-1) and Sri Hori Niyea (PW-4) stated that after the marriage of the deceased, on several occasions, the family or relatives of the deceased stayed at the house of the appellant and the petitioners also used to visit the house of PW-4 and PW-1. Thus, indicating cordial relations between the two families, which was unusual given the alleged scenario whereby the deceased was being tortured and rebuked in connection with demand for dowry.
- vii. Pasupoti Baidya, maternal cousin of Brojohari Niyea and Sri Hori Niyea and also PW-5 acting as Ghatak in the marriage between the deceased and husband Sujit, son of petitioner. Pasupoti Baidya alleged that after one month of such marriage, a dispute and trouble arose on account of demand for dowry. He further stated that “Then we went to the house of the accused persons and called Jaiytha and Kaka of Surojit and got the matter settled. Thus, dispute alleged regarding demand for dowry was settled way before the date on which the deceased committed suicide. Even though taking into consideration of the alleged statements, the essential of subjection of the victim to cruelty in connection with demand for dowry “soon before”, death as provided under Section 304B of IPC does not arise.

Pasupoti Baidya (PW-5) earlier stated that the deceased on earlier occasion told him that on account of not meeting dowry and monetary demand, she was being subjected to torture. But B. K. Sardar, then S.I of

Raidighi Police Station and PW-13 stated that PW-5 never told him anything about the fact that he learnt from the deceased that she was subjected torture for demand for money/dowry by her in-laws. Thus, there was contradiction in statements given by PW-5.

- viii. Sujit Naskar (PW-2) and Protima Bar (PW-11) stated that on receiving the news that the deceased had consumed poison, when he rushed there to help, he alleged that the appellant when asked for mustered oil, she refused having any in store but later on the daughter of the appellant gave him mustard oil. On the basis of this fact, it was alleged that she was never willing to save the deceased in the first place. But it was pertinent to mention that PW-2 himself stated that it was the appellant who informed PW-2 about the incident of the deceased consuming poison also Protima Bar (PW-11) another neighbour of the appellant also stated that it was the petitioners who alarmed the neighbours regarding the incident of her daughter-in-law consuming, if she didn't wanted to save her daughter-in-law she would have never alarmed the neighbours about such incident and asked for help. PW-11 further stated that when she asked the sister-in-law of the deceased to give some tamarind, in order to rescue Mithu, she asked her mother, i.e. the appellant, and the appellant readily gave the key to her daughter to bring out the tamarind.
- ix. Mrityunjoy Mondal (PW-7), owner of a radio repairing shop; 10 minutes away from the house of the appellant, stated that he never heard of any incident of torture on the deceased.

- x. On several occasions, it was stated by the PWs that the appellant “inflicted torture on her” and that she couldn’t bear her daughter-in-law and that the deceased “consumed poison on account of torture that the accused persons inflicted upon her” but it was never stated that all such were in direct connection with demand for dowry. It was admitted that there were quarrels and disputes between the mother-in-law and the deceased, like most other household but nothing was established onto the fact that all such dispute and torture on the deceased amounting therefrom had anything to do with demand for dowry. Thus, provision of 304B of IPC as to “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 should be called “dowry death” – was not applicable in this instant case.
- xi. In the impugned judgment it was observed that “the complainant occasionally gave her money.....”
- xii. While nowhere in the complaint it had been mentioned that the complainant used to give her money occasionally on the pretext of dowry.
- xiii. In the judgment it was also observed the cause of quarrel and direct action of assault was the illicit relationship. In the judgment it was observed as per statements of the PWs that the poison was kept in the plastic bag and the purpose of keeping poison was for agriculture, hence the direct nexus of aiding and or forcing her to consume poison

gave an unclear picture of any intention or motive or any reasons for the accused to commit such offence.

7. In **Hira Lal v. State (Govt. of NCT), Delhi**¹, the Hon'ble Supreme Court held the following:-

“8. ...Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

“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 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 304-B of the Penal Code, 1860.”

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on “Dowry Deaths and Law Reform”. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of “dowry death” in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned

¹(2003) 8 SCC 80

must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand of dowry”. Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of the woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death.

9. *A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and*

that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test...

10. *The evidence of PWs 1, 5, 10 and 11 shows that at the time of marriage there was no demand for dowry. But subsequently, the demands were made, and ill-treatments were meted out. The crucial question is whether they were soon before the death. PWs 10 and 11 stated that grievances were made before the Crime Against Women Cell and the authorities brought about reconciliation. It, however, was candidly admitted that there was no mention about any dowry aspect while the differences were ironed out. The settlement arrived at on 30-11-1998 was essentially for separate residence. Therefore, there is no definite evidence about ill-treatment to the deceased at any time having immediate proximity to the date of death of the deceased on 14-4-1999, about ill-treatment by the accused persons to attach culpability under Section 304-B IPC. Therefore, the basic requirement of cruelty or harassment soon before the death to bring application of Section 304-B is absent.*

11. *Further question is whether a case under Section 498-A has been made out, even if accusations under Section 304-B fail. Section 498-A reads as follows:*

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, ‘cruelty’ means—

(a) any wilful 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) of the woman; or
 (b) 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.”

Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498-A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498-A. Substantive Section 498-A IPC and presumptive Section 113-B of the Evidence Act have been inserted in the respective statutes by the Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304-B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that has to be proved. The Explanation to Section 498-A gives the meaning of “cruelty”. In Section 304-B there is no such explanation about the meaning of “cruelty”. But having regard to the common background of these offences it has to be taken that the meaning of “cruelty” or “harassment” is the same as prescribed in the Explanation to Section 498-A under which “cruelty” by itself amounts to an offence. Under Section 304-B it is “dowry death” that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. A person charged and acquitted under Section 304-B can be convicted under Section 498-A without that charge being there, if such a case is made out. If the case is established, there can be a conviction under both the sections (See *Akula Ravinder v. State of A.P.* [1991

Supp (2) SCC 99 : 1991 SCC (Cri) 990 : AIR 1991 SC 1142]). Section 498-A IPC and Section 113-A of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-A of the Evidence Act is seven years; presumption arises as to dowry death when a woman committed suicide within a period of seven years from the date of marriage.”

8. The same was held by the Hon’ble Supreme Court in ***Kaliyaperumal v. State of T.N²***.
9. In order to constitute an offence under Section 304B of the Indian Penal Code the death should have occurred within 7 years of marriage for demand of dowry. The cruelty, ill-treatment or harassment inflicted upon the victim should be proximate for demand of dowry.
10. In the instant case the prosecution case failed to prove the appellant to have wrecked any kind of cruelty or harassment imminently prior to the death of the victim. The evidence of the prosecution witnesses apart from the official witnesses alluded the instances wherein the victim was subjected to cruelty by the appellant concerning domestic affair. If at all there was a dispute between the victim and her husband on refusal to her desire to be taken to Kolkata the appellant could have presumably resolved the issue rather than intensifying the same. Subsequent action of the appellant as described by the prosecution witnesses raises suspicion on her inherent, abominate and scornful attitude towards the victim. The victim might have been emotionally fragile and verbal abuse by the appellant provoked her to commit suicide.

²2004) 9 SCC 157

11. In the instant case the prosecution failed to establish the commission of offence under Section 304B however the cruelty meted out to the victim under Section 498A of the Indian Penal Code cannot be ruled out.
12. The criminal appeal is allowed in part.
13. The appellant is acquitted of the offence charge under Section 304B of the Indian Penal Code but convicted under Section 498A of the Indian Penal Code.
14. The sentence is modified to suffer two years imprisonment instead of seven years of imprisonment and the other conditions remaining the same in terms of the Learned Trial Court's order.
15. There is no order as to costs.
16. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
17. 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.)