

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHITTA RANJAN DASH

AND

HON'BLE JUSTICE PARTHA SARATHI SEN

CRA 663 of 2009

1.Subrata Nath@ Bapi Nath

2.Sadananda Nath.

Vs.

State of West Bengal

For the appellants:

Mr. Mrinal Kanti Mukherjee, Adv.,
Mr. Dipanjan Biswas, Adv.,
Ms. Purnima Panda, Adv.

For the State:

Mr. Prasun Kumar Datta, APP,
Md. Kutubuddin, Adv.,
Mr. Santanu Deb Roy, Adv.

With

CRA 777 of 2015

Tapan Nath @ Tapan Kumar Nath

Vs.

State of West Bengal

With CRAN 3 of 2023

For the appellant:

Mr. Dipanjan Chatterjee , Adv.,
Mr. Avinaba Patra , Adv.,
Mr. Dipayan Kundu , Adv.

For the State:

Mr. Prasun Kumar Datta, APP
Md. Kutubuddin, Adv.,
Mr. Santanu Deb Roy, Adv.

Last Heard on : 05.03.2024
Judgment on : 15.03.2024

PARTHA SARATHI SEN, J. :-

1. In these two appeals the judgement of conviction dated 06.08.2009 and order of sentence dated 20.08.2009 as passed in S.T No. 4 of June 2005 (Sessions Sl. no. 819 of 2003) by the Learned Additional Sessions Judge, 1st Fast Track Court, Berhampore, Murshidabad has been assailed. By the impugned judgement the learned trial court found the four accused persons guilty of commission of offence under Sections 498A/304B/34 IPC and thus sentenced them to suffer R.I for three years each and to pay a fine of Rs.5000/- each i.d. to suffer R.I for 4 months each for commission of offence under Section 498A IPC. Learned trial court also sentenced convicts Subrata Nath@ Bapi Nath and Sadananda Nath (appellants in CRA 663 of 2009) and Bimla Nath (deceased appellant in CRA 663 of 2009) to suffer R.I for 7 years each for commission of offence under Section 304B IPC and also Tapan Kumar Nath (at present sole appellant in CRA 777 of 2015) to suffer R.I for life for commission of offence under Section 304B IPC.

2. The aforementioned four convicts felt aggrieved and thus preferred the instant two appeals.

3. It is pertinent to mention herein that during the pendency of the instant appeal one of the convicts namely; Bimla Nath (one of the appellants in CRA 663 of 2009) took her last breath and accordingly an order of abetment was recorded as against her.

4. Since these two appeals have been preferred against a common judgement and since identical questions of facts and laws are involved in

both the appeals, we propose to dispose of the instant two appeals by a common judgement.

5. For effective disposal of the instant two appeals the facts leading to the initiation of the aforesaid Sessions Trial is required to be dealt with in a nutshell.

6. One Monchora Debnath (PW1) being the father of the deceased lodged a written complaint dated 30.12.1999 with the Officer-in-Charge of the jurisdictional Police Station stating inter alia, that marriage of his daughter Sulekha Nath , since deceased was solemnized with one Tapan Kumar Nath(appellant in CRA 777 of 2015) in the month of Jaistha 1405 B.S and in the said marriage as per demand of bride groom several nuptial gifts and dowry was given. It is the version of the informant that after leading a peaceful conjugal life for 5/6 months the accused persons who are her husband and family members of her husband started pressurizing her to bring more dowry and on account of her failure she was subjected to torture, both physical and mental at her matrimonial home at the instance of the accused persons and they used to threaten her by saying that they would commit murder of her and also insisted and abated her to commit suicide for non-fulfilment of their demand. On the relevant day in the morning he came to learn that his said daughter is no more and when he rushed to the house of the accused persons, he noticed her said daughter Sulekha in dead condition and thus in his written complaint he expressed his apprehension that his said daughter might have been murdered by the accused persons.

7. On the basis of such written complaint, the jurisdictional P.S after lodging FIR started investigation and on completion of the same charge sheet has been submitted under Sections 498A/304B/306/302IPC. After commitment and transfer the case record was placed before the learned trial court who on consideration of the entire materials framed charges under two heads namely; under Sections 498A/34 IPC and under Sections 304B/34 IPC against the accused persons. In order to bring home the charges the prosecution has examined 11 witnesses in all and several documents have been exhibited on their behalf. Though before the learned trial court no evidence has been adduced on behalf of the accused persons but from the trend of cross-examination as well from the answers as given by the accused persons in course of their respective examinations under Section 313 CrPC it reveals that defence case is based on clear denial and false implication. As discussed earlier learned trial court on appreciation of the evidence both oral and documentary found the accused persons guilty under the aforesaid sections as mentioned (supra) and thus convicted them as has also been mentioned (supra).

8. For effective adjudication of the instant appeals this Court considers that a prior discussion regarding identity of the prosecution witnesses in the aforementioned Sessions Trial is necessary. The informant and the father of the deceased was arrayed as PW1 while PW1's son's father-in-law and the deceased's mother have been arrayed as PW2 & PW3 respectively. PW4 is the brother of PW1. On perusal of the

evidence of PW5 and PW6 however the identity of the said prosecution witnesses could not be ascertained. PW7 is the autopsy surgeon who performed post mortem over the dead body of the deceased. PW8 is an ASI of police who performed inquest over the dead body of the deceased. PW9 is the I.O of the said case. PW10 is a co-villager of the accused persons and PW11 is the R.O.

9. In course of his argument Mr. Chatterjee, learned advocate for the appellant in CRA 777 of 2015 at the very outset draws attention of ours to the evidence of PW7 i.e. the Autopsy Surgeon. It is argued by him that the evidence as adduced by PW7 with regard to the cause of death of the deceased is doubtful in view of the fact that though the said doctor opined that the death of the victim was due to asphyxia caused by strangulation and was ante mortem and homicidal in nature but he also noticed that hyoid bone of the deceased was intact. Mr. Chatterjee, thus argued that if a person died on account of manual strangulation there is least possibility of remaining his hyoid bone intact. It is thus argued that a serious shadow of doubt has cast upon the opinion as expressed by PW7 with regard to the actual cause of death of the deceased. Drawing attention to inquest report of the deceased being Exhibit 2/3 it has been argued by Mr. Chatterjee, that in the said inquest PW1 and PW4 have been cited as 'witnesses' but at the earliest opportunity they had not disclosed the probable cause of death before the inquest maker and that subsequently in course of their respective depositions they have developed their versions to make out a case under Sections 498A/304B/34 IPC.

10. Drawing attention to the evidence of the prosecution witnesses more specifically evidence of PW1, PW2, PW3 and PW4 vis-à-vis the provisions of Section 304B IPC it is argued by Mr. Chatterjee that from the evidence of the aforesaid four witnesses it would reveal that the said four prosecution witnesses who are relatives of the deceased have miserably failed to establish that soon before her death the deceased was subjected to torture on account of demand of dowry at the instance of the present appellants. It is further argued by Mr. Chatterjee that the evidence of the said four relative witnesses are either exaggerated or full of contradiction and/or omission. Drawing attention to the written complaint being Exhibit 3/2 conjointly with the evidence adduced by PW1 to PW4 it is further argued by Mr. Chatterjee, learned advocate for the appellant in CRA 777 of 2015 that the factum of visitation of the deceased with her husband at her paternal home soon before her death and alleged demand of dowry by his client at the house of the PW1 is surprisingly missing in the testimonies of the said prosecution witnesses which clearly indicates that those testimonies are afterthoughts. It is thus argued by Mr. Chatterjee that the learned trial court has failed to visualize the aforementioned discrepancies in the evidence of the prosecution witnesses and thus passed a wrong judgement which cannot be sustained in the eye of law. Mr. Chatterjee, thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned judgement.

11. In course of his submission Mr. Mrinal Kanti Mukherjee, learned advocate for the appellants namely; Subrata Nath and Sadananda Nath in CRA 663 of 2009 echoed the version of Mr. Chatterjee.

12. Per contra, Mr. Prasun Kumar Datta, learned APP duly assisted by Md. Kutubuddin and Mr. Deb Roy, learned counsels of the State argued before this Court that there cannot be any justification to disbelieve the unchallenged testimony of the prosecution witnesses. It is further argued by Mr. Datta that considering the peculiar nature of the crime under the provisions of Section 498A/304B IPC it is difficult to get any independent witnesses and there cannot be any justification to disbelieve the testimonies of the relative witnesses since it is the consistent version of the prosecution witnesses that prior to her death the deceased used to communicate them regarding infliction of torture by the present appellants on account of demand of dowry. Mr. Datta, Learned APP further argued that considering the fact that FIR is not an encyclopaedia of evidence and also considering the consistent evidence as adduced by PWs regarding the visitation of the deceased with her husband in her paternal home followed by demand of dowry by her husband may not disbelieved considering the facts and circumstances as involved in these appeals. Mr. Datta, learned APP thus submits that it is a fit case for dismissal of the instant appeals.

13. The factual matrix in which the appellants came to be prosecuted and convicted has been set out in detail by the learned trial court in the impugned judgement. Therefore, we did not recapitulate the same all over

again except to the extent it is necessary to do so for disposal of the instant appeal.

14. At this juncture we propose to have a glance towards the provisions of Section 498A IPC and Section 304B IPC which are reproduced hereunder in verbatim:-

“Section 498A:-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.”

“Section 304B.Dowry death. -- (1) *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.*

*Explanation.*For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

15. Keeping in mind the aforementioned legislative provisions we now propose to look to the evidence of PW7 i.e. the doctor who conducted autopsy over the dead body of the deceased. The relevant portion of the deposition of PW7 is reproduced hereinbelow in verbatim:-

“ I also found ligature mark around the middle of neck disposed transversely, interiorly and the ends going backwards slightly , obliquely, towards the nape of the neck where the mark was indistinct under the hairs.

On examination I found trachoea congested, Hyoid-intact, both lungs congested and bluish black. I found that the stomach contained materials of food articles.

In my opinion the death was due to asphyxia caused by strangulation and was ante mortem and homicidal in nature.”

16. Though Mr. Chatterjee, learned advocate for the appellant in CRA 777 of 2015 strongly criticized such finding of the autopsy surgeon but from the trial court record it reveals that on behalf of the defence cross-examination of PW7 was declined and therefore as per rules of evidence the testimony of PW7 remains uncontroverted and thus the present appellant at this stage cannot challenge such testimony on the ground that the view expressed by PW7 in his testimony and/or his finding in the post mortem report (Exhibit 6) is faulty and/or has no basis in the eye of law. In view of the discussion made hereinabove, we thus hold that at this juncture the present appellants cannot agitate that the death of the deceased had not occurred other than normal circumstances.

17. Since Mr. Chatterjee, learned advocate for the appellant in CRA 777 of 2015 was very vocal with regard to the non-disclosure of the actual cause of death at the time of inquest of the dead body of the deceased by

PW1 and PW4 who are also inquest witnesses, we propose to look to some reported decisions regarding evidentiary value of an inquest report. In the reported decision of **Aftab Ahmed Ansary vs. State of Uttaranchal** reported in **(2010) 2 SCC 583** the Hon'ble Apex Court had occasion to consider the purpose of conducting inquest and in doing so the Hon'ble Apex Court expressed the following view:-

“31. The basic purpose of holding inquest on the dead body is to ascertain prima facie the nature of death and to find out whether there are injuries on the dead body or not. The inquest panchnama cannot be treated as statement of the witness recorded under Section 161 of the Code of Criminal Procedure wherein he is supposed to narrate the facts seen by him. Therefore, it is not true to say that he had maintained silence and had not told the investigating officer at the time of holding of the inquest that he had seen the appellant running away from near the place where the dead body was lying. The so-called silence on the part of this witness cannot be considered to be unnatural at all nor the same makes this testimony doubtful in any manner”

18. The same view was taken by the Hon'ble Apex Court in the reported decision of **Guiram Mondal vs. State of West Bengal** reported in **(2013) 15 SCC 284** where the Hon'ble Apex Court expressed the following:-

“12. The inquest report normally would not contain the manner in which the incident took place or the names of eyewitnesses as well as the names of accused persons. The basic purpose of holding an inquest is to report regarding the cause of death, namely, whether it is suicidal, homicidal, accidental, etc. Reference may be made to the judgments of this Court

in Pedda Narayana v. State of A.P. [(1975) 4 SCC 153 : 1975 SCC (Cri) 427] and Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] .

13. *In Radha Mohan Singh v. State of U.P. [(2006) 2 SCC 450 : (2006) 1 SCC (Cri) 661] this Court held that the scope of inquest is limited and is confined to ascertainment of apparent cause of death. Inquest is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal, and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. The details of overt acts need not be recorded in the inquest report. The High Court has rightly held that the manner and approach of the trial court in disbelieving the prosecution story by placing reliance on the inquest report was erroneous and bad in law.”*

19. On perusal of the propositions of Law as cited above, this Court has no hesitation to hold that non-disclosure of some material facts i.e. the alleged torture of the deceased at her matrimonial home by the present appellants on account of demand of dowry and /or the alleged visitation of the deceased along with her husband 2-3 days back to her paternal home where also her husband demanded dowry from his in-laws before the inquest maker are of no relevance.

20. At this juncture we propose to make a comparative study of the evidence of those prosecution witnesses which are necessary for a logical conclusion of the instant appeal. In his examination-in-chief PW1 being the informant and father of the deceased testified that he had to pay Rs.75,000/- as dowry at the time of marriage of his daughter which however found no corroboration from the ‘lagnapatra’ (Exhibit 4) which has been prepared at the time or soon before marriage of the deceased.

21. From the trial court record it reveals that PW1 being the father of the deceased testified that three days before the death of his daughter, his said daughter and his son-in-law came to his house and at that time his said daughter disclosed regarding infliction of torture for non-fulfilment of demand of dowry which he tried to pacify by some soft words. However, on perusal of evidence of PW3 it reveals that PW3 testified categorically that three days before the death of her daughter, her said daughter along with her husband came to her home and asked /requested to pay Rs. 1 lakh to her in order to fulfil the dowry demand as made by the accused persons.

22. At this juncture if we look to the evidence of PW2 who is a close relative of PW1 and PW3 we find no whisper about the alleged demand of dowry of Rs.1 lakh either by the deceased or by her husband. We thus find complete variance and/or meaningful exaggeration in the evidence of the PW1, PW2 and PW3 so far as the alleged demand of dowry by the appellant in CRA 777 of 2015 soon before the death of the deceased. At this juncture if we again look to the evidence of PW2 and PW4 we find that in their evidence though they were very vocal about the alleged demand of dowry by the accused persons but they made no whisper regarding the alleged torture by the accused persons upon the person of the deceased. We also noticed some material omission in the evidence of PW3 since in her cross examination she had testified that she did not state to the I.O that her daughter along with her husband came to her house just before three days of her death. The evidence of PW4 who is the

brother of the deceased and who had testified in the same tune of his mother (PW3) has also become doubtful since in course of his cross-examination it has been testified by PW9 (I.O) that the said PW4 never stated to him that the deceased along with her husband came to his father's house and expressed her dissatisfaction about the non-fulfilment of demand of Rs.1 lakh by her father. This omission in considered view of this Court tantamounts to material contradiction in view of the proviso of Section 162 CrPC read with Section 145 of the Evidence Act.

23. At this juncture we also propose to look to some celebrated decisions regarding dowry death as well as regarding cruelty by husband or relatives of husband of a woman as defined in Section 304B IPC and 498A IPC respectively. In the reported decision of **Ashok Kumar vs. State of Haryana** reported in **(2010) 3 CCrLR (SC) 62** the Hon'ble Apex Court expressed the following view:-

"In a case under Section 304 IPC, the following ingredients are to be satisfied:-

- 1. The question before the Court must be whether the accused has committed the dowry death of a woman;*
- 2. The woman was subjected to cruelty or harassment by her husband or his relatives;*
- 3. Such cruelty or harassment for or in connection with ,any demand of dowry;*
- 4. Such cruelty or harassment was soon before her death.*

Once these ingredients are satisfied, it would be called the 'dowry death' and then by deemed fiction of Law, the husband or the relatives would be deemed to have committed that offence."

24. In the reported decision of **Amar Singh Vs. State of Rajasthan** reported in **(2010) 3 CCrLR (SC) 446** the Hon'ble Apex Court while

dealing with a case under Section 498A/304B IPC expressed the following view:-

“ A prosecution witness who merely uses the word ‘harassed or tortured’ and does not describe the exact conduct of the accused which , according to him, connected to harassment or torture may not be believed by the Court in cases under Section 498A/304B IPC.

Where accusation of dowry deaths are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths.....A tendency has developed for roping in all relations of the in-laws of the deceased wives in the matter for dowry deaths which, if not discouraged, is likely to affect the case of prosecution even against the real culprits.”

25. The proposition of law as discussed in the aforesaid two reported decisions if considered in the context of the present lis as involved in this appeal we find that none of the prosecution witnesses had not testified specifically regarding the exact conduct of the accused persons which according to the prosecution tantamounts to harassment or torture within the meaning of Sections 498A/304 B IPC.

26. In considered view of this Court the prosecution before the learned trial court has failed to prove the specific overt act(s) on the part of the accused persons in inflicting the alleged torture upon the deceased soon before her death and therefore the learned trial court is not at all justified in convicting the present appellants under the aforesaid two Sections. In view of the discussion made hereinabove this Court thus finds sufficient merit in the instant two appeals and accordingly the instant two appeals are allowed.

27. All connected applications are disposed of.

28. Consequently the impugned judgement as passed in S.T No. 4 of June 2005 (Sessions Case no. 819 of 2003) by the Learned Additional Sessions Judge, 1st Fast Track Court, Berhampore, Murshidabad is hereby set aside.

29. The appellants of the instant two appeals are thus found not guilty under Sections 498A/304B/34 IPC in connection with Sessions Trial no. 4 of June 2005 (Sessions Case no. 819 of 2003) as disposed of by the learned trial court.

30. The appellants in CRA 663 of 2009 namely; Subrata Nath@ Bapi Nath and Sadananda Nath are stated to be on bail and accordingly they are discharged from their respective bail bonds and be set at liberty at once if not, wanted in connection with any other case.

31. The appellants in CRA 777 of 2015 i.e.; Tapan Kumar Nath is stated to be still in custody. He be released at once in connection with S.T No. 4 of June 2005 (Sessions Sl. No. 819 of 2003) if not, wanted in connection with any other case.

32. Department is directed to forward a copy of this judgement forthwith to the learned trial court along with the trial court record.

33. Department is further directed to forward a copy of this judgement at once to the Secretary, DLSA, Murshidabad who on receipt of the same shall take up the matter with the Superintendent of the Correctional Home where the appellant Tapan Kumar Nath is detained now for his immediate release if, he is not wanted in connection with any other case.

34. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)