

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.A. 419 of 2001
with
CRAN 1 of 2001 (Old No. CRAN 1048 of 2001)**

**Mahadeb Sarkar @ Bapi Sarkar & Anr.
-Vs-
The State of West Bengal**

For the Appellants	: Mr. Prabir Majumdar
For the State	: Mr. Debashish Roy Mr. Avishek Sinha
Heard on	: 09.02.2024, 28.02.2024, 21.05.2024, 03.10.2024
Judgment on	: 07.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 19.06.2001 and sentenced dated 21.06.2001 passed by the Learned Additional Sessions Judge, 2nd Court, Nadia in Sessions Trial No.III(June), 2001 arising out of Sessions Case No.13(II)2000 convicting the appellants of an offence punishable under Section 498A of the Indian Penal Code and sentenced the appellants to suffer simple imprisonment for 3 years and to pay a fine of Rs.1000/- each in default to suffer simple imprisonment for 1 month.

2. The prosecution case precisely stated that the informant's sister (deceased) was married to one Mahadeb Sarkar @ Bapi around 4 years ago. After sometime of the said marriage the appellants used to inflict torture upon the deceased girl. On the day before the incident, the informant came to know that the deceased girl was assaulted by her husband Mahadeb Sarkar @ Bapi and her mother-in-law namely Gita Sarkar. Thereafter, on the very next day i.e., 14.02.1998 at around 06:00 a.m., the informant came to know that his sister had died at her in laws house. After hearing the same the informant went to the alleged place and upon being asked by Bapi Mondal, Subir Dey, Prasanta Kr. Basak, Gopal Biswas and many others of the locality, the informant came to know that Mahadeb Sarkar @ Bapi told that his mother killed the deceased girl. The informant alleged that the deceased girl had died due to the assault caused by Mahadeb Sarkar @ Bapi and Gita Sarkar.
3. On the basis of the aforesaid complaint, the Police initiated Kotwali P.S. Case No.55/98 dated 14.02.1998 under Sections 498A/304/34 of Indian Penal Code against the appellant's no.1 and 2.
4. Charges were framed against the appellant under Section 498A/304/34 of Indian Penal Code to which they pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 9 witnesses and exhibited certain documents.

8. Learned Advocate representing the appellant submitted as follows:-

- i. In the First Information Report lodged by PW-1, Basudeb Dey stated that when local people informed him about deceased death, upon visiting the house of appellants, he found that her sister Ashima was lying dead and Mahadeb and Gita were blaming each other for the cause of Ashima's death. But nowhere in the First Information Report he stated that the death news was conveyed by a minor girl. The scribe of the complaint, Bapi Mondal, who happens to be a local resident of Mahadeb's para, was not examined by the prosecution. Although as per the First Information Report, Bapi Mondal was present at the place of occurrence.
- ii. PW-2, Kali Dey wife of the de-facto complainant stated in her cross examination that she was not examined by the Investigating Officer.
- iii. None of the prosecution witnesses came forward to the Court with definite information to the effect that they had any knowledge regarding any kind of torture, inflicted upon the deceased by the appellant. Therefore, without any proper evidence one cannot be convicted under Section 498A of the Indian Penal Code.
- iv. According to Dr. Patra, PW-7, he observed that there was a Lower Lip injury and a ½” -inch bruise mark. Otherwise, nothing significant was found and no traces of external injury were found. According to Dr. Patra, if there were any history of assault, hyoid bone of Ashima would have been found broken or fractured but it was clearly evident

- from the post-mortem report that Hyoid bone of Ashima was intact. Cause of death mentioned in the Post-mortem report is "Acute Fluid Loss" and "Ante-mortem" and as per Dr. Patra, this acute fluid loss can be caused by symptoms of Diarrhea, Dysentery, or vomiting.
- v. Suchitra Chanda, PW-3 being the sister-in-law of the de- facto complainant and para resident of the appellants, stated in her cross-examination that she did not hear about any dispute between Mahadeb and Ashima prior to Ashima's death.
 - vi. Prasanta Kr. Basak, PW-5 was the immediate neighbor of the appellants stated in his cross-examination that he did not see any kind of dis-harmony between Mahadeb and Ashima. Also, stated that Ashima had a history of illness after the childbirth. That statement of PW-5 regarding Ashima's illness totally matches with the statement of PW-7, Dr. Patra who opined that death of Ashima was due to acute fluid loss and this kind of fluid loss could happen due to diarrhea, dysentery, or vomiting. In other words, the allegations of physical assault brought up against PW-1, PW-2, and PW-3 against the Appellants herein turns out to be absolutely vague.
 - vii. Dwijendra Nath Seal, PW-6, stated that on the morning of the alleged incident, Mahadeb visited his house and requested a tablet for gastric problem and after a while, he came to learn that Ashima had died. Somehow, Mahadeb visiting house of PW-6 and requesting a tablet for gastric problem suggests that Ashima might have suffered a

gastrointestinal problem in the morning due to which Ashima died. This perspective of Ashima's death comes after the opinion of PW-7, Dr. Patra, regarding Ashima's death, i.e., Death is caused due to acute-fluid loss and this kind of fluid loss can happen due to diarrhea, dysentery, or vomiting.

- viii. Dr. Patra, PW-7 suggested that no foreign particles were found in Ashima's body which means, there was no case of administration of any foreign particles, to be specific, poison. Dr. Patra further suggested that if there was any kind of throttling, Ashima's hyoid bone might have been broken but during post- mortem, Ashima's hyoid was found intact. Also, Dr. Patra observed that before death, Ashima's condition was very feeble which was due to the fluid loss caused by diarrhea, dysentery, or vomiting.
- ix. The investigating officer of this instant case, PW-9 stated in his cross-examination that he did not enquire about any of the para men whose name transpired in the First Information Report. Also, he did not inquire about the adjacent house holders of Mahadeb. Also, the persons who were examined by him under Section 161 of the Code of Criminal Procedure, 1973, did not divulge anything about the dowry demand by the Appellants herein. Also, PW-9 did not enquire the minor girl, either formally or informally from whom PW-1, PW-2, and PW-3 got the death news of Ashima.

- x. Family members of Ashima, PW-1, PW-2, and PW-3 alleged that she was subjected to physical assault before her death but these allegations were never been established by the prosecution, only hearsay things are not enough to convict a person. The de-facto complainant clearly stated that Ashima's death was due to strangulation or asphyxia but as he was cross-examined by the defense, he stated that he did not see the incident with his own eyes.
- xi. It has been more than a decade that Kotwali Police Station Case No. 55 of 1998 dated 14.02.1998 under Sections 498A/304B/34 of the Indian Penal Code, 1860 has commenced and the Appellants have suffered a mental agony especially Mahadeb, who lost his wife. Gita being the mother-in-law of Ashima has also suffered the similar amount of mental trauma.
- xii. Basudeb Dey, the de-facto complainant of that case was examined as PW-1. In his Examination-in-Chief, he stated that after sometime of the marriage of his sister Ashima and Mahadeb, a dispute arose and for that reason he visited appellant's house to reconcile the same. But in his cross-examination, he categorically stated that prior to that alleged incident he never informed about the said dispute neither to the local Police Station nor to the local people of the said locality. He also stated that he did not see any incident in his own eyes.
- xiii. Kali Dey, wife of the de-facto complainant was examined as PW-2. She stated in her examination-in-chief that when she and Basudeb went

to the matrimonial house of Ashima after getting the news from a minor girl, she found that Ashima was lying dead and Ashima's son was sitting on her chest.

- xiv. Suchitra Chandra, sister of Kali Dey was examined as PW-3, her house is 10/12 houses apart from the house of Mahadeb Sarkar@Bapi. In her cross-examination, she stated that she did not hear about any dispute between Mahadeb and Ashima prior to Ashima's death. She also stated that Mahadeb and Gita were sitting beside the dead body of Ashima.
- xv. Prasanta Kr. Basak, the immediate neighbor of Mahadeb Sarkar was examined as PW-5. During his examination-in-chief, he was declared hostile by the prosecution but in his cross-examination by the prosecution, he stated that he saw the good relation of Mahadeb and Ashima and on the night before Ashima's death, there was no disharmony in the house of Mahadeb. Ashima was suffering from illness after the child delivery. Prasanta also stated that when Police visited the place, Police also uttered that they will teach a lesson.
- xvi. Another resident of the same para, Digendra Nath Seal was examined as PW-6. In his examination-in-chief, he stated that in the morning of the alleged incident, when he was washing his face, Mahadeb visited his house and demanded tablet for gastric issues. After a while, he came to know that Ashima had died. In his cross-examination, he stated that he had a very good relation with Basudeb, PW-1 being the

de-facto complainant of this instant case and he did not see any assault on Ashima by Mahadeb in her matrimonial house.

- xvii. Dr. Nirendra Nath Patra, the doctor who conducted Post-mortem over Ashima's dead body was examined as PW-7. In his examination-in-chief, Dr. Patra stated that there was a bruise mark 1/2" in length in the Lower Lip. Otherwise, no external injury was found. There was no foreign material found in larynx or Trachea and even the collar bone, hyoid was also intact. According to Dr. Patra, death was due to shock and the nature was ante mortem.
- xviii. In his cross examination, he stated that if there was any kind of throttling or assault, hyoid would have been broken. The injury in the lower lip was due to dashing against any hard substance or falling against any hard substance. Condition of the patient was very feeble before the death. The fluid loss suffered by Ashima prior to death was due to diarrhea, dysentery or vomiting. Dr. Patra concluded his statement by saying that he did not find any apparent injury in Ashima's body.
- xix. The investigating officer of this case, Harendra Nath Koley was examined as PW-9. In his cross-examination, he stated that in the First Information Report, the episode of minor girl informing PW-1 about Ashima's death was not mentioned. Also, he did not find any happening relating to demand of dowry against the Appellants herein. He further stated that he did not find the name of the minor girl who

reported the incident to the de-facto Basudeb, PW-1. Also, after arresting the Appellants, PW-9 did not enquire about the cause of Ashima's death from Appellants.

9. The Learned Advocate representing the appellants concluded lapse on the part of the prosecution to prove its case should acquit the appellants.
10. The Learned Advocate presenting the State with utmost humility submitted the death of the victim to be natural and candidly expressed the failure on the part of the prosecution to cite independent witnesses to prove the proximate demand of dowry for being subjected to physical and mental torture resulting in the death of the victim. He further submitted that certain prosecution witnesses turned hostile. Though the death was within two years of marriage, however, it occurred in natural course of events due to loss of fluid/diarrhea and not due to criminal act of the appellants.
11. A circumspection of the prosecution witnesses revealed as follows:-
 - i. PW-1, the father of the deceased deposed with anguish that his daughter was subjected to repeated cruelty at the hands of her husband (appellant no.1 and in-laws). He categorically stated that she was married nearly 2 years ago and began to face harassment soon thereafter. The evidence of PW-1 suggested the deceased to have been deprived of basic amenities and marital care and subjected to sufferings in silence. Although, he was not an eye witness to the incident of death, he reached the house of the accused persons being informed and witnessed his daughter lying

dead. He had no knowledge of any medical intervention or the presence of any independent witnesses at the relevant time.

- ii. PW-2, the sister-in-law of the deceased narrated to have rushed to the matrimonial home of the deceased being informed of the incident by a minor girl. Her account alludes to a large gathering of locals, who according to her version, heard the accused persons confessing to their crime. She referred to the presence of 100 -150 at the place of occurrence and attributed a verbal confession to the appellants, a fact that remain uncorroborated by independent witnesses.
- iii. PW-3, sister of PW-1 echoed the allegations, claiming to have learnt from the crowd that appellant no.1 and his mother were responsible for the death of the deceased. She was informed by the same minor girl as PW-2, yet the prosecution did not endeavor to examine the said minor creating any evidentiary continuity. Her statement that appellant no.2 confessed before confessed his criminality before the police and assembled persons appeared to be generalized and devoid of specific corroboration.
- iv. PW-4 a trolley van driver, deposed to have transported the body of the deceased to the police station, denying any personal knowledge of the fateful incident.
- v. PW-5 was declared hostile by the prosecution negating the assessment of his testimony.
- vi. PW-6, a neighbor asserted the existence of tension and harmony between the deceased lady and her mother-in-law when they

residing together resulting in the appellants being ousted from the locality. While PW-6 testified to past discord, no proximate cause of cruelty prior to the death of the victim could be established through him.

- vii. PW-7, the Medical Officer who conducted the post-mortem, deposed the cause of the death to be shocks arising from acute fluid loss. He ruled out external injuries except minor bruise and confirmed that the death was ante-mortem. He found signs of petechial hemorrhage over the kidneys but there was no sign of throttling or sexual assault. The post-mortem findings had been suggestive of a death by natural causes or medical complexity rather than homicidal violence.
- viii. PW-8, a constable formally identified the dead body and corroborated the transport of the deceased to the hospital. His evidence added procedural compliance rather than substantive value.
- ix. PW-9, the Investigating Officer deposed to have recorded the statements under Section 161 of the Criminal Procedure Code, arrested the accused and filed the charge-sheet. However, during cross-examination he candidly admitted that he did not examine the neighbours or ascertain the identity of the minor girl whose statements triggered the chain of events. He also conceded to have failed in recording any statements alleging dowry demands as in the complaint or otherwise. Most significantly, he did not question the

appellants or any other person regarding the cause of death of the victim nor conducted any local inquiry.

- x. PW-10, a neighbor and acquaintance of the appellants stated his ignorance of day to day affairs in the family of the deceased victim and the appellants. He neither witnessed any cruelty nor had any personal knowledge of dowry demand. His testimony lacked incriminating material without any substantive value to excel the prosecution case.
 - xi. PW-11 and PW-12 being the witnesses to the seizure-list had no role to play in implicating the appellants being unaware of the dispute in question.
 - xii. PW-13, a formal witness merely proved certain documents and registers maintained at the police station in a mechanical manner.
 - xiii. PW-14 after completion of investigation submitted charge-sheet. While he was reiterated the procedural steps undertake during investigation and prove the forwarding of the case under Section 498A/304/34 IPC, he did not supplement the material already brought on record nor did he examine any independent witnesses omitted by the First Investigating Officer. There was no notable improvement accorded by him in the investigation regarding cause of death, dowry demand or alleged cruelty.
12. Upon cumulative assessment of the evidence on record, it appeared that although the prosecution alleged of dowry related cruelty culminating in the unnatural death of young married woman. Certain

deficiency on the part of the prosecution rendered the evidentiary value of the prosecution witnesses to be unreliable. The evidence of the close relatives of the deceased victim being PW-1, PW-2 and PW-3 palpably marked absence of corroboration from neutral disinterested witnesses, especially those residing in the vicinity of the matrimonial home. The minor girl repeatedly cited as the source of information regarding the alleged death was neither identified nor examined. The omission to record her statement or secure her presence during trial created a vacuum in the chain of events. The Investigating Officers i.e. PW-9 admitted several lapses including the non-examination of neighbours, failure to question the accused on the cause of death and absence of investigation into prior instances of cruelty.

13. The post-mortem report and testimony of PW-7 suggested death due to acute fluid loss and shock possible medical or accidental in nature without clear indication of physical assault or poisoning in absence of detection of homicidal injury.
14. The Hon'ble Supreme Court in ***Kaliya Perumal Vs. State of Tamil Nadu***¹ observed that *"to attract Section 304B IPC the prosecution must establish (i) death of a woman must be caused by burns or bodily injury or otherwise that under normal circumstances, (ii) within seven years of marriage, (iii) and must be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for, or in connection with demand of dowry."*

¹ (2004)9 SCC 157

15. In the instant case the test of 'soon before death' could not be fulfilled by the prosecution which failed to produce independent, credible evidence of cruelty or dowry demand proximate to the death. 'Mere allegation of harassment or cruelty is not sufficient unless it is shown to be linked with a dowry demand.'
16. The presumption under Section 113B of the Evidence Act is rebuttable and does not automatically lead to conviction. This had been observed by the Hon'ble Supreme Court in the decision of ***Baijnath vs. State of Madhya Pradesh***².
17. In the present case, the Investigating Officer's failure to examine key independent witness and the absence of material proof of dowry demand rebuts the presumption under Section 113B of the Evidence Act. It was further observed by the Hon'ble Supreme Court in ***Gurcharan Singh vs. State of Punjab***³:- "*when the medical evidence suggests a natural or accidental cause of death, and not homicide and there is no proximate evidence of harassment or cruelty the accused is entitled to the benefit of doubt.*"
18. PW-7's medical evidence ruled out external injuries or poisoning suggesting death due to fluid loss and shock directly weakening the possibility of committing an offence under Section 304B of Indian Penal Code.

² (2017) 1 SCC 101

³ (2017) 1 SCC 433

19. The Hon'ble Supreme Court further observed in **Narayana Murthy Vs. State of Karnataka**⁴ that: *“failure of the prosecution to examine material witnesses such as neighbours or independent witnesses is fatal. Hostile witnesses and inconsistencies entitled the accused to acquittal.”*
20. In the instant case the Investigating Officer did not examine the neighbor and the minor girl who reportedly informed of the death to the prosecution witnesses who deposed to have been informed by her.
21. In view of the above infirmities, this Court is constrained to observe that the prosecution has not succeeded in establishing the charges under Section 498A/304B/34 of the Indian Penal Code beyond reasonable doubt. The chain of circumstances is incomplete and the evidence on record is neither cogent nor credible to sustain a conviction. The benefit of doubt in accordance with the settled principles of criminal jurisprudence must therefore enure to the appellants.
22. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 419 of 2001 is allowed.
23. Under such facts and circumstances, the judgment and order of conviction dated 19.06.2001 and sentenced dated 21.06.2001 passed by the Learned Additional Sessions Judge, 2nd Court, Nadia in Sessions Trial No.III(June), 2001 arising out of Sessions Case No.13(II)2000 is set aside.
24. Accordingly, the instant criminal appeal being CRA 419 of 2001 stands disposed of.

⁴ (2008) 16 SCC 512

25. There is no order as to costs.

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

27. 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.)