
(2014) 02 GAU CK 0039

In the Gauhati High Court

Case No : Criminal Appeal Case No. 171 of 2005

Bisa Sheikh, Kadam Ali and Kadbanu Bibi

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161 313

Evidence Act, 1872 — Section 113(B)

Penal Code, 1860 (IPC) — Section 304(B)

Citation : (2014) CriLJ 2451 : (2014) 3 GLD 405 : (2014) 2 GLT 83

Hon'ble Judges : C.R. Sarma, J

Bench : Single Bench

Advocate : S.K.N. Mahammad, Mr. S. Rahman and Mr. N. Bakhsh, for the Appellant;

Final Decision : Partly Allowed

Judgement

C.R. Sarma, J.—Heard Mr. S. Rahman, learned counsel appearing for the appellants. Also heard Ms. A. Begum, learned Additional Public Prosecutor, Assam and perused the records. This appeal is directed against the judgment and order, dated 30.07.2005, passed by the learned Sessions Judge, Kamrup, Guwahati, in Sessions Case No. 116(K)/2003 u/s 304(B) of IPC. By the impugned judgment and order, the learned Sessions Judge convicted the appellants for the offence u/s 304(B) of IPC and sentenced, each of them, to suffer R.I. for 7 years.

2. Aggrieved by the said judgment and order, the convicted persons, as appellants, have come up with this appeal on the grounds that the learned Sessions Judge committed error by failing to properly appreciate the evidence, on record and that the conviction cannot stand due to absence of sufficient corroboration in the evidence, adduced by the prosecution.

3. The prosecution case, in brief, is that the deceased, who was the daughter of P.W. 2 and P.W. 4, was given in marriage with Mr. Kadam Ali, S/o Bisa Sheikh and Musstt. Kadbanu Bibi, 8 (eight) months prior to the occurrence. The appellants,

being the husband and parents-in-law of the daughter of P.W. 2, subjected her to torture in connection with demand of dowry for amount of Rs. 3,000/- (Rupees three thousand only). Due to the said torture, the wife of Kadam Ali, committed suicide by hanging herself on 19.11.2001. P.W. 1, who was the cousin of the deceased, lodged an F.I.R. with the police on the next day and on receipt of the F.I.R. police registered a case u/s 304(B) of IPC.

4. At the close of the investigation, the police submitted charge-sheet u/s 304(B) of IPC and forwarded the appellants to the Court of Sessions to stand trial. The offence, u/s 304(B) of IPC, being exclusively triable by Court of Sessions, in due course, the case was committed. Accordingly, the learned Sessions Judge framed charge u/s 304(B) IPC against the appellants. The charge was read over and explained to the accused persons, to which they pleaded not guilty. Their plea was a denial one. The prosecution, in order to prove its case, examined as many as 11(eleven) witnesses including the Investigating Officer (P.W. 9) and the Medical Officer (P.W. 11).

5. At the close of the evidence, for the prosecution, the accused persons were examined u/s 313 Cr.P.C. They denied the allegations, brought against them and examined one witness as defence witness. Considering the evidence, on record, the learned Sessions Judge convicted and sentenced the appellants as indicated above. Hence this appeal.

6. Mr. S. Rahman, learned counsel appearing for the appellants, taking this court through the evidence, on record, and referring to the contradictions, found in the evidence of the prosecution witnesses, has submitted that there is no substantive evidence to show that the appellants had demanded any dowry and that the deceased was subjected to torture, compelling her to commit suicide. It is also submitted that the learned trial Judge failed to properly appreciate the evidence, on record and committed error by holding the appellants guilty of the offence u/s 304(B) of IPC.

7. Ms. A. Begum, learned Additional PP, supporting the impugned judgment and order, has submitted that there are sufficient evidence indicating involvement of the appellants and that the learned Sessions Judge has rightly convicted the appellants u/s 304(B) of IPC.

8. In order to appreciate the arguments, advanced by the learned counsel appearing for both the parties, I feel it appropriate to, briefly, examine the evidence, on record. There is no dispute that the deceased committed suicide in her husband's house, after 8 months of her marriage. Therefore, her death was an unnatural one that too within one year of her marriage. The informant (P.W. 1), who lodged the F.I.R., had no personal knowledge about the demand of dowry or torture meted out to the deceased. He, in his evidence, given as P.W. 1, stated that the deceased had once told him that her husband's relatives had demanded Rs. 3,000/- (Rupees three thousand only) and that for non-payment of the said amount her parent-in-laws had rebuked and tortured her. In his cross-

examination this witness stated that he came to know about the demand of dowry from his uncle and that he did not see, himself, any assault committed on the deceased.

9. From the evidence of this witness it cannot be concluded that the deceased was subjected to cruelty or harassment in connection with demand of dowry, soon before her death. This witness did not state as to when the deceased had told him about the assault, committed by the accused persons. What this witness stated was that he came to know about the torture etc. from his uncle i.e. the father of the deceased.

10. The father of the deceased, deposing as P.W. 2, stated that at the time of marriage of his daughter, the father of his son-in-law i.e. Md. Bisa Sheikh had demanded Rs. 6,000/- (Rupees six thousand only) and that he had paid Rs. 3,000/- (Rupees three thousand only). This witness, further, stated that his daughter, during her visit to his house, told him that the accused persons had demanded Rs. 3,000/- (Rupees three thousand only) and that failing to pay the said amount, though he had proposed to give them half of a Bigha of land, the proposal was refused by Md. Bisa Sheikh. This witness, further, stated that the accused persons refused to allow his daughter to visit his house. He, further, stated that he had sent his wife (P.W. 4) to the house of his daughter, but Md. Bisa Sheikh had refused to allow her to meet their daughter, till the demand was fulfilled. He also stated that, 7 days after the visit of his wife, he himself visited the house of the appellants and that Md. Bisa Sheikh refused to send his daughter along with him. He also stated that his daughter had informed him that Md. Bisa Sheikh and Musstt. Kadbanu Bibi had tortured and rebuked her for non-payment of the money. According to this witness, on the next day of his visit, the deceased committed suicide and that he saw the dead body of his daughter lying in the courtyard of the accused persons. In his cross-examination, this witness denied the suggestion that he did not state, before the police that the appellants had demanded Rs. 6,000/- (Rupees six thousand only) and that they had refused to allow his daughter to visit his house for non-payment of remaining Rs. 3,000/- (Rupees three thousand only). He also denied the suggestions that he did not state before the police that on his visit to the house of his daughter, Md. Bisa Sheikh refused to send his daughter along with him, due to non-payment of money. He also denied the suggestion that he did not tell the police that his daughter had told him that Bisa Sheikh and Kadbanu Bibi tortured his daughter.

11. The I/O (P.W. 9), in his cross-examination, stated that witness Kafiluddin (P.W. 2) did not state before him, during his examination u/s 313 Cr.P.C. that the accused had demanded Rs. 6,000/- (Rupees six thousand only) from him. The I/O also stated that the P.W. 2 did not tell him that his daughter had reported him that accused Bisa Sheikh had demanded money and that his daughter was not allowed to visit his house. The said contradictions, put to the P.W. 2, have been proved through the Investigating Officer (P.W. 9). Failure of this witness, to disclose such vital information before the police, at the initial stage, raises doubt

about the veracity of his evidence. That apart, he failed to state as to what type of torture was committed by the appellants. Therefore, it cannot be concluded that the parents-in-law of the deceased had compelled her to commit suicide.

12. Mr. Yasuf Ali, the only independent witness, deposing as P.W. 3, stated that there was discord regarding payment of dowry between the parties. In his cross-examination, this witness stated that the deceased passed her life in peace. He denied the suggestion that he did not tell the police that there was discord regarding the payment of dowry. This contradiction, on the part of the P.W. 3, has been proved through the I/O, P.W. 9. The I/O stated that the P.W. 3 i.e. Yasuf Ali, during his examination, did not tell him that there was any discord between the parties regarding dowry. The failure of the P.W. 3 to disclose about the discord i.e. regarding demand of dowry at the earliest possible opportunity i.e. at the time of examination u/s 161 Cr.P.C., raises doubt about the credibility of his evidence. Therefore, it cannot be believed that P.W. 3 had any knowledge regarding demand of dowry. However, the evidence of P.W. 3 that the deceased passed her life in peace, negates the prosecution version that the deceased was subjected to torture in connection with demand of dowry.

13. The mother of the deceased, deposing as P.W. 4, stated that her daughter, after her marriage with Kadam Ali, used to live with him and that she was tortured mentally and physically with demand for more dowry. She also stated, that on her visit to her son-in-law's house, she was not allowed to meet her daughter. She, further, stated that during her said visit, the deceased had told her that she was subjected to mental torture. In her cross-examination, this witness stated that her husband i.e. P.W. 2 took their daughter to their house for several times and during that period they had good relation with Md. Kadam Ali and his family. She stated that the relation of her daughter with the appellants became strange since prior to the one and half of a month of the occurrence. According to this witness, the accused persons did not provide her daughter with articles, which were required for her day to day life. From the evidence of this witness, it appears that the husband of the deceased used to torture the deceased mentally and physically in connection with demand of more dowries. This witness did not state anything regarding torture committed by the parents-in-law of the deceased. She also did not narrate the nature of torture. From her evidence it cannot be concluded that the parents-in-law of the deceased had compelled her to commit suicide.

14. P.W. 5, who was the brother of the P.W. 2 i.e. father of the deceased, stated that he had visited the house of the appellants and on his such visit Bisa Sheikh had told him that he would not allow the deceased to visit her father's house unless Rs. 3,000/- (Rupees three thousand) was paid. This witness did not state anything indicating that the deceased was tortured either physically or mentally by the appellants. He denied the suggestion that the deceased committed suicide due to quarrel between Bisa Sheikh and her father.

15. P.W. 7, who was the Circle Officer, conducted the inquest in respect of the

dead body of the deceased.

16. P.W. 8, who was the uncle of the deceased, stated that at the time of marriage of the deceased, a decision was taken to pay Rs. 3,000/- (Rupees three thousand only) to her husband and that Kadam Ali i.e. the husband of the deceased did not allow his wife to visit her parent's house due to non-payment of the said amount. He, further, stated that he, on being requested by the parents of the deceased had visited the house of Kadam Ali, but accused Kadam Ali refused to send the deceased to her parent's house. He, further, stated that the deceased died 15 days after his said visit to the house of Kadam Ali. This witness, who was a close relative of the deceased and the brother of the P.W. 2, did not whisper anything against the parent-in-laws of the deceased. What he stated was that the husband of the deceased i.e. Kadam Ali demanded the said amount and that due to non-payment of the same the husband of the deceased refused to send her to her parent's house. The said evidence, given by P.W. 8, negates the evidence, given by the parents of the deceased, regarding involvement of the parents-in-law of the deceased.

17. P.W. 9 and P.W. 11 are the Investigating Officer and Medical Officer respectively. P.W. 11 also partly conducted the investigation and submitted the charge-sheet.

18. From the above discussed evidence, it is clearly found that the deceased committed suicide i.e. met with un-natural death within 8 months of her marriage. There is also sufficient materials, on record to show that her husband i.e. Kadam Ali demanded an amount Rs. 3,000/- (Rupees three thousand only) being balance amount of dowry and he refused to allow his wife to visit her parents due to non-payment of dowry. Therefore, the parents of the deceased implicated the parents-in-law of the deceased. The P.W. 8, who was the uncle of the deceased i.e. brother of P.W. 2, failed to corroborate the evidence of P.W. 2 and P.W. 4 (i.e. the parents of the deceased) regarding demand of dowry by the parent-in-laws of the deceased. There is nothing, on record, to show that the said parents-in-law had subjected her to physical and mental torture. From the evidence of P.W. 8, it is clearly found that the husband of the deceased i.e. Kadam Ali demanded the remaining amount of Rs. 3,000/- and that he refused to allow her visit to her parents' house for non-payment of the said amount. Therefore, there is sufficient evidence to show that the husband of the deceased had subjected her to torture in connection with demand of dowry.

19. As the deceased died within a period of 7 years of her marriage, under suspicious circumstances i.e. by hanging herself, I find sufficient material to draw presumption against the husband of the deceased u/s 113(B) of the Evidence Act. The husband of the deceased has failed to explain the circumstances under which the deceased committed suicide. In the absence of any other compelling circumstances, there is no difficulty in understanding that the deceased, being unable to bear the treatment, meted out to her by her husband, committed suicide.

20. In view of what has been discussed above, I am inclined to hold that the prosecution has successfully proved that the husband of the deceased subjected her to torture in connection with demand of dowry and thereby compelled her to commit suicide. I, therefore, find that the learned Sessions Judge rightly held Mr. Kadam Ali i.e. the husband of the deceased guilty of the offence u/s 304(B) of IPC.

21. Accordingly, I find that the learned Sessions Judge committed no error by convicting and sentencing Md. Kadam Ali for the said offence. However, the above discussed evidence does not inspire confidence to believe that the parents-in-law i.e. Md. Bisa Sheikh and Musstt. Kadbanu Bibi subjected the deceased to cruelty or harassment in connection with demand of dowry. Therefore, the conviction and sentence, awarded to them, cannot be maintained. Accordingly, I set aside the conviction and sentence recorded against Md. Bisa Sheikh and Musstt. Kadbanu Bibi. They are acquitted and set at liberty forthwith, if not required in any other case. Their bail bonds shall stand discharged.

22. With the above, the appeal is partly allowed and conviction and sentence, recorded against Mr. Kadam Ali, is upheld and affirmed. Return the L.C.Rs.