
(2005) 05 GAU CK 0057
In the Gauhati High Court
Case No : Criminal Application No. 257 of 2003

Gautam Saha

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Evidence Act, 1872 — Section 113A, 113B
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2006) 1 GLR 727 : (2005) 2 GLT 580

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : J.M. Choudhury, R. Shekhar and S. Choudhury, for the Appellant;
B.S. Sinha, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—In Sessions Case No. 96/2002 the Sessions Judge, Dhubri tried the three accused persons for alleged commission of offence u/s 498A/304B of the Indian Penal Code. During trial, prosecution examined as many as 12 witnesses and thereafter vide impugned judgment the trial court acquitted the accused Brajananda Saha and Bhavarani Saha and convicted and sentenced the present accused appellant Gautam Saha u/s 498A as well as u/s 304B IPC. Hence the present appeal.

2. This is a case of death of a young housewife Susmita Saha. She had a love affair with the present petitioner Gautam Saha and thereafter the couple eloped and got married at Bagribari Temple. While the couple was living together, the deceased committed suicide by hanging herself to a ceiling fan. There is oral evidence on record as regards the commission of suicide by Susmita Saha the deceased and we also find that at the time of commission of the suicide the present appellant was not in the house as he was attending his duties. P.W. 8 is Dr. Nur Mehboob Ahmed who held the autopsy over the dead body and found as follows :

An average built female dead body is examined. Rigor Mortis present. Bluish colouration of lips, face, nail beds present. Eye and mouth were partially closed. Tip of tongue was clenched between her jaw. Stains of blood disrups from both nostrils of nose. On examination an oblique non-continuous ligature mark shows whitish tissue glislenching parchmentation. On dissection of thorax shows healthy parts with congestion of lungs. Heart show right chamber contained darkish blood while left chamber is empty.

On abdominal dissection shows organs congested and liver spleen, kidneys were healthy with congestion. The ligature marks described were ante mortem in nature. Uterus was normal in size.

In the opinion of the doctor the death was due to asphyxia as a result of hanging by the deceased.

3. The trial court has recorded a finding that this is a case of death of Susmita Saha. Although there were certain defects in carrying out the investigation these are immaterial as the death as such has not been disputed or challenged. The moot question for determination is whether the accused appellant harassed the deceased as regards the demand for dowry and whether the accused committed cruelty on the deceased.

4. So far the demand for dowry is concerned the evidence of Tarapada Mondal P.W. 1 father of the deceased is that at the time of negotiation of the marriage there was no demand for dowry from the side of the accused persons. But the witness, however, claims that 15 days prior to the marriage Brajananda Saha (since acquitted) father of the present accused called him and demanded a sum of Rs. 40,000 towards dowry. There is absolutely no evidence that the present accused appellant had at any point of time demanded dowry. Further, we find that this is not a case of negotiated marriage. The accused appellant and the deceased were in love and they wanted to marry but somehow the parents were at logger heads as regards various formalities and on being fed up the couple eloped and got themselves married and they used to reside separately in a rented house. The accused appellant is an employee of the LIC and he used to work there. We, therefore, find force in the submission of the learned Counsel for the appellant that under such circumstances there was no scope for any presumption as regards the demand for dowry or harassment for dowry.

5. In this case, we find that the trial court has relied on the evidence of P.W. 11 the brother-in-law of the deceased. However, we find that this witness was admittedly not present at the time when the marriage was solemnized between the parties. Further, we find that the witness has made a categorical statement in his cross-examination "I did not visit the house of the accused person, at any time after the marriage of Susmita till her death, father and mother of Susmita also did not meet her after her marriage till her death."

6. In view of the above, we hold that this witness cannot have any knowledge or information as regards any demand for dowry. Further, we find that the witness

has tried to make obvious development in his statements before the court and these contradictions were brought on record by the defence.

7. The trial court has also taken into consideration certain letters Ext. 6 series, which were between P.W. 1 and the father of the present accused appellant Brajananda Saha. There are certain letters and correspondence between the couple prior to the marriage and as such we find that these documents are of no help.

8. In this case, the trial court has also drawn certain presumptions u/s 113A of the Evidence Act. Section 113A reads as follows :

113A. Presumption as to abetment of suicide by a married woman. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

9. In the present case, we find that prior to the marriage there was no demand for dowry and after the marriage also or even before the death there was no demand for dowry from the side of the accused appellant. In order to raise presumption u/s 113A or 113B of the Evidence Act the prosecution must establish that the deceased woman was subjected to cruelty or harassment by the accused appellant for or in connection with any demand for dowry. In the instant case there is no iota of evidence as regards the alleged harassment or cruelty in connection with any demand for dowry. The death of the young housewife within seven years of her marriage is no doubt very unfortunate and painful but in order to rope in or put the blame on the husband there must be something on record to show that he was responsible for the death of the deceased. The prosecution was required to establish the ingredients for drawing the presumption u/s 113A or 113B of the Evidence Act. We have no hesitation to hold that the prosecution has miserably failed to do so. Merely because the young housewife had died or committed suicide in a suspicious circumstance, the husband cannot be held responsible for the said death.

10. On consideration of the materials and evidence on record, we hold that the prosecution has failed to bring home the charge against the accused appellant. The accused appellant Gautam Saha is, therefore, acquitted and set at liberty forthwith. The order of conviction and sentence entered into by the trial court is set aside. The appeal stands allowed. The accused person shall be released forthwith if not wanted in any other case. Send down the records.