
(2014) 11 TP CK 0032
In the Tripura High Court
Case No : Crl. Appeal No. 13 of 2011
Gouranga Debnath VsThe State of Tripura

Date of Decision : 27-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Dowry Prohibition Act, 1961 — Section 2
Penal Code, 1860 (IPC) — Section 302, 304(B), 304B, 32, 34

Citation : (2015) 3 CCR 168 : (2015) CriLJ 964 : (2015) 2 DMC 541 : (2015) 1 GLT 413

Hon'ble Judges : Deepak Gupta, C.J.;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : S. Kar Bhowmik, Advocate for the Appellant; R.C. Debnath, Addl. P.P. and Somik Deb, Advocate for the Respondent

Judgement

Utpalendu Bikas Saha, J.—In the instant appeal, challenge is to the judgment dated 30.09.2010 in ST 37(ST/U)/2009 passed by the learned Sessions Judge, South Tripura, Udaipur wherein the learned Sessions Judge acquitted the accused-respondents, Chandan Das and Nimai Das from the charges leveled against them under Sections 498(A)/ 304(B) and 302 IPC.

2. Heard Mr. S. Kar Bhowmik, learned counsel for the appellant, father of the victim and Mr. Somik Deb, learned counsel for the accused-respondents. Also heard Mr. R.C. Debnath, learned Addl. PP for the State.

3. The prosecution story before the learned trial court was, inter alia, as follows:-

Mr. Gouranga Debnath, PW 1, lodged a written complaint before the Officer-in-Charge of the Maharani Police Outpost stating inter alia, that his daughter, Pooja Debnath @ Mani (since deceased) was married to the accused Chandan Das, S/o. Late Ananta Das of Vill-Maharani (Chaygharia) about 2-3 years back prior to her death, according to Hindu rites and customs and since her marriage the accused persons and their family members started inflicting torture upon his daughter both physically and mentally in order to take money amounting to Rs. 50,000/- from him. He had given Rs. 20,000/- to the husband of his daughter, accused

Chandan Das in two installments but despite that, her husband and other in-laws were not satisfied with such amount and continued to torture upon her and ultimately, unable to bear such torture inflicted by them, she was compelled to leave her in-laws house and take shelter in her parental house. Thereafter, her husband and other in-laws threatened him, his wife and their daughter of dire consequences. Not only that, Chandan Das, Nandan Das, Tapan Das, Ratan Das and Nimai Das also threatened him saying that if they did not send their daughter with money then they would kill her. On 14.11.2006 (Tuesday) at about 5.30 p.m. while he and his wife were absent from their house, the accused persons along with others entered into his house and killed Pooja by throttling and when they were fleeing away, his wife PW 9, Smt. Namita Debnath could recognize two persons out of them. His wife suspected the remaining persons to be the other family inmates. Upon entering into the room, his wife could find this incident and on hearing her cries the neighboring people came there and removed Pooja to the hospital where the doctor on examination declared her dead.

4. Upon receipt of the aforesaid complaint of Sri Gouranga Debnath, a police case was registered being RK Pur P.S. Case No. 458/2006 under Sections 498A/ 304B IPC against the accused-respondents.

5. PW 13, Sri Dipak Kumar, SDPO, Udaipur took up the investigation of the case and in course of his investigation he visited the place of occurrence and prepared the hand sketch map of the P.O., examined the material witnesses and recorded their statement under Section 161 CrPC. Thereafter, the case was entrusted to PW 14, Sri Rati Ranjan Debnath, SDPO, Udaipur on 11.04.2007. On that day, he took up further investigation of the case and finally submitted charge sheet against the accused-respondents, Chandan and Nimai under Sections 498A and 304B IPC. Since the offences alleged to have been committed by the accused persons was exclusively triable by the Court of Sessions, learned Judicial Magistrate, 1st Class, Udaipur, South Tripura committed the case to the Court of Sessions. The learned Sessions Judge, after hearing the parties and on perusal of the record, framed charges under Sections 498A/ 304B IPC against the accused-respondents but after conclusion of the prosecution evidence the learned trial court added charges under Sections 302/ 34 IPC against the accused-respondents.

6. Prosecution examined as many as 14 witnesses including the official witnesses for proving its case and also exhibited some documents. The accused were examined under Section 313 of the Cr.P.C. The case of the defence before the trial court was of total denial and they did not examine any witness in support of their case as according to them they were falsely implicated. The learned trial court after considering the evidences acquitted the accused persons from the charges leveled against them.

7. The State respondents being satisfied with the findings of the trial court did not prefer any appeal but the present appellant being the father of the deceased

victim, impugned the said judgment and order of acquittal.

8. Mr. Kar Bhowmik while urging for setting aside the judgment and order of acquittal and convicting the accused-respondents for the charges leveled against them would contend that the learned trial court failed to consider the evidence on record, more so, in his judgment while he was acquitting the accused-respondents, even did not say anything about the charges under Sections 498A and 304B IPC. He has further contended that even if it is considered that a case of murder is not made out by the prosecution, but obviously a case under Sections 498A and 304B IPC is proved. Thus, the trial court ought to have convicted the accused-respondents under the aforesaid sections while acquitting them from the charge under Section 302 IPC.

9. In support of his aforesaid contention he has relied upon the evidence of the informant, PW 1, Gouranga Debnath, PW 7, Dr. Debasish Pal and PW 9, mother of the deceased, Smt. Namita Debnath and contended that the chain of circumstantial evidence has been completed by the evidence led by the prosecution irrespectively pointing at the guilt of the accused respondents under Sections 498A and 304B IPC though not under section 302 read with Section 34 IPC.

10. Mr. Deb, learned counsel for the accused respondents while supporting the impugned judgment and order of acquittal passed by the learned trial court would contend that on proper scanning of the evidence on record it would be evident that the prosecution failed to establish any case against the accused respondents either under Section 498A or 304B IPC, far to Section 302 IPC. He further submits that in the instant case, the prosecution also failed to show any evidence that the informant at any point of time had given any money to either accused Chandan or his family members as a consideration of marriage which amounts to dowry.

11. He also submits that there is no direct evidence against the accused respondents for committing cruelty, i.e. offence under Section 498A or committing an offence of dowry death under Section 304B IPC. The whole case of the prosecution is on suspicion and in a criminal case no person can be punished on the basis of suspicion.

12. Mr. Debnath did not submit anything against the judgment and order of acquittal as the State did not prefer any appeal.

13. The rival contentions of the parties can hardly be analyzed unless a brief journey is made through the evidence of PW 1, Gouranga Debnath, PW 7, Dr. Debasish Pal and PW 9, Namita Debnath as the prosecution case is mainly based on the evidence of those witnesses.

14. PW 1, Sri Gouranga Debnath, the father of the deceased victim, in his deposition has stated inter alia, that they had given marriage of Pooja with the accused Chandan and after marriage, Chandan started torturing on Pooja with a

view to coerce her parents to give dowry, at the instigation of his brother Nimai, Ratan and Tapan and also put pressure on her to fetch Rs. 50,000/- from her parents. He also stated that considering the future of their daughter they gave 20,000/- in two installments but even after payment of such amount Chandan was not satisfied and on two occasions he drove Pooja out from his house and as a result Pooja had to take shelter in her parental house. About one and half months prior to her death Chandan drove her out from his house after beating and assaulting her and she then came to her parental house and told them that she would not return to her husband's house if Rs. 30,000/- is not paid to her and at that time she stayed in their house for about 20 days. Then again she was sent back to her husband's house. About seven days prior to her death Pooja came to their house and started to live with them. During her stay in their house, on 14.11.2006 in the afternoon at about 4.30 p.m. he went to his meat shop at Maharani Market leaving his daughter Pooja along with one Sampa Chakraborty, PW 10, as his wife had already left the house for Maharani for selling clothes. At around 5 pm when he was in his shop an employee of PW 3, Dipankar Saha, informed him that Chandan and Nimai were assaulting his daughter in his house and on hearing the same he rushed to his house and found that many people had assembled there and after entering into the house he found his wife, PW 9, Namita Debnath was crying and Pooja was lying on the ground. Then he took Pooja to the hospital at Maharani where on examination the doctor declared her dead.

15. In his cross, this witness stated that he did not mention in the FIR that about one and half year after the marriage of his daughter, at the instigation of Nimai, Ratan and Tapan, Chandan put pressure on Pooja to bring Rs. 50,000/- from him to purchase Auto. He also did not mention in the FIR that he handed over the amount in installments to Tapan and Chandan Das. He also did not specifically mention in the FIR that even after payment of Rs. 20,000/- the accused persons drove Pooja out of their house and about one and half months prior to her death the accused persons drove her out of their house for payment of the rest amount of Rs. 30,000/-.

16. PW 2, Hira Rani Saha and PW 3, Dipankar Saha, are not the witnesses of the alleged incident relating to dowry and death of the victim. PW 4, Dinesh Chakraborty, has been declared hostile by the prosecution as he did not support his earlier version given in the 161 statement. PW 5, Bipin Debbarma, is the police officer who prepared the inquest report. PW 6, Hossain Miah and PW 8, Arati Saha are hearsay witnesses. PW 10, Sampa Chakraborty, though is a material witness but declared hostile by the prosecution. This witness did not say anything about the accused respondents. PW 11, though stated that after marriage Chandan began to torture on Pooja and put pressure on her to bring Rs. 50,000/- from her parents and her parents gave Rs. 20,000/- in two installments to Chandan but even after payment of that money Chandan was not satisfied and continued to put pressure on Pooja but this witness did not disclose the source of his such information PW 12, Sanjit Kr. Singha is the scribe of the

FIR. PW 13, Dipak Kumar and PW 14, Rati Ranjan Debnath are the investigating officers. Now remains the evidence of PW 7, Dr. Debasish Pal and PW 9, Namita Debnath.

17. PW 7, Dr. Debasish Pal, is the medical officer who conducted the post mortem examination over the dead body of Pooja at TSD Hospital Morgue and stated regarding the injuries found on the body of Pooja. According to him, the cause of death was due to asphyxia following ante-mortem strangulation and homicidal in nature.

18. PW 9, Namita Debnath is the mother of the victim and is the star witness of the prosecution who claims that she had seen both the accused persons running away from her house. She stated that when she entered into the room after opening the door she found Pooja lying on the floor and 2-3 persons were running towards the eastern direction after opening the southern door of the house and she could recognize Chandan and Nimai in the electric light of their house. This witness also stated that at the time of marriage cash of Rs. 50,000/-, furniture and other house hold articles were presented to the bride groom according to her ability and after one year of the marriage of Pooja, Chandan put pressure upon her to bring cash of Rs. 50,000/- from them and started torture upon her both mentally and physically and considering the future of their daughter they paid Rs. 20,000/- to Chandan in two installments.

19. In her cross, she stated that they have not paid Rs. 50,000/- at the time of marriage. She also stated that she did not state to darogababu that Pooja on several times left her matrimonial home and stayed in their house and on every occasion they sent her back to her matrimonial home after pacifying her and on one occasion she remained for 20-25 days and again they sent her back after pacifying her. She also stated that she had not stated to darogababu that 4-5 days prior to her death Pooja again came to their house and started to reside in their house and at that time she refused to go back to her marital house as she complained that she was severely tortured by her husband and he also broke her conch.

20. To prove an offence under Sections 498A/ 304B IPC, the prosecution has to prove that the alleged cruelty, if any, was on the demand of dowry and also just immediate before the death, which is totally absent in the prosecution case though the said fact has not been considered by the learned trial court. The learned trial court should have discussed regarding the charge under Sections 498A and 304B IPC which he failed to do. It also appears from the record that PW 1 and PW 9 have only stated what, according to them, was told by the deceased victim to them with respect to the harassment meted out to her by the accused Chandan. None of those statements come within the purview of Section 32 of the Indian Evidence Act. Thus, those statements are not at all admissible in evidence. More so, they are not the direct witnesses of the alleged cruelty and/or dowry death.

21. In *Satvir Singh and Others Vs. State of Punjab and Another*, the Hon'ble Apex Court considered the definition of "dowry" as defined under Section 2 of the Dowry Prohibition Act, 1961 with reference to the offence under Section 304B of the IPC and held that it should be any property or valuable security given or agreed to be given in connection with the marriage. Customary gift or payment in connection with birth of child or other ceremonies unrelated to the marriage ceremony, held, do not fall within the ambit of "dowry". The Apex Court also stated that there are three occasions related to dowry. One is before the marriage, second is any time after marriage and third occasion may appear to be an unending period. But the crucial word is "in connection with the marriage of the parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry".

22. In the instant case, there is no such evidence that any money was given to the accused Chandan or his family members in connection with the marriage between Pooja and Chandan. Rather it appears from the statement of PW 1, Gouranga Debnath that Chandan asked for Rs. 50,000/- for purchasing an Auto. Such demand, though not proved, even if believed, would not come within the purview of dowry.

23. This Court being the court of first appeal obviously has the power to review the evidence recorded by the learned trial court but at the same time we have to consider whether the order of acquittal passed by the learned trial court has caused any miscarriage of justice or not.

24. In *State of Haryana Vs. Shibu @ Shivnarayan*, 2008 AIR SCW 5400, it is stated that there is no embargo on the appellate court for reviewing the evidence upon which an order of acquittal is passed. As a matter of fact, in an appeal against acquittal, the High Court as the court of first appeal is obliged to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though it has to act with great circumspection and utmost care before ordering the reversal of an acquittal. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favorable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

25. Upon going through the evidence of PW 1, Gouranga Debnath and PW 9,

Namita Debnath it appears that their statements are contradictory to each other. Not only that, their statements in the Court was, for the first time, rather an improved version and for that reason no reliance can be placed on their evidence for convicting the accused persons.

26. For the foregoing discussions and observations, we are of the considered opinion that the judgment of the learned trial court which is impugned herein is not illegal or unjustified as alleged by the appellant and does not call for any interference. In the result, this appeal fails being devoid of merit. Accordingly, the same is dismissed. Send down the LCR.