
(2010) 04 CAL CK 0070
In the Calcutta High Court
Case No : C.R.A. 798 of 2005

Jhantu Sardar and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 235, 313
Evidence Act, 1872 — Section 106, 113A, 113B, 154
Penal Code, 1860 (IPC) — Section 304, 304B, 306, 498A

Citation : (2010) CriLJ 3012 : (2010) 4 Crimes 357 : (2011) 7 RCR(Criminal) 529

Hon'ble Judges : Kishore Kumar Prasad, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Satarup Purkayastha, Minakshi Gupta and Sambuddha Dutta, for the Appellant; S.K. Mahato, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—In or about 2000 Batasi Das (Sardar) got married with Jhantu Sardar, the appellant No. 1 being the son of other two appellants. According to the prosecution, Batasi was subjected to torture by her in laws on the issue of insufficient dowry. Fact remains, both the families were poor; however, the financial condition of Batasi's parents was little better than her in laws. Her father-in-law was a day labourer, mainly engaged in painting, her mother-in-law used to work as maid servant, her husband was a drunkard and gambler. Batasi's father P.W.3 purchased a Rikshaw Van for his son-in-law, the appellant No. 1. The appellant No. 1 sold the vehicle and siphoned off the sale proceed by way of drinking and gambling.

2. On January 12, 2004 Batasi came to her parents and complained that she was beaten up. Her condition was worse. On the next date, i.e., on January 13, 2004, Batasi was persuaded by her parents to go back to her in laws. She went there. This time, however, her parents or her brother Tarak Das could not pay her any money. Batasi was subjected to torture both mentally and physically. Being not able to sustain such prolonged torture, Batasi committed suicide on January 15,

2004 by hanging herself from the ceiling of her room. Her brother lodged a written complaint with the police on January 18, 2004. However, prior thereto the police started an unnatural death case being U.D. case No. 12 dated January 16, 2004 under Diamond Harbour Police Station. Sri Subrata Pakhira, Assistant Sub-Inspector attached to the said Police Station held an inquest and submitted a report appearing at pages 6 to 8 of the paper book. The police arrested Manik Sardar, the father-in-law, Urmila Sardar, the mother-in-law and Jhantu Sardar, husband. The learned Sessions Judge, Fast Track Court, 1st Court, Diamond Harbour framed charges as against all three accused under Sections 498A/304B of the Indian Penal Code. All three accused pleaded innocence and faced trial.

3. P.W.1 Tarak was the brother of the victim whereas P.W.2 Durga Das was the mother and P.W. 3 Rabi Das was the father. All three, more or less, corroborated each other on the incident. According to them, their sister Usha gave a phone call at about 11 O'clock in the night on January 15, 2004 and informed them that Batasi was subjected to torture by her in-laws. Fact remains, Batasi died at 3 P.M. on the said date. Upon receipt of the phone call the witnesses rushed to the victim's in-laws' place on the next day morning. However, when they were approaching Netra railway station, they found that the body was being brought by her in laws by train for the purpose of taking it to the Diamond Harbour hospital. When they reached Diamond Harbour hospital, they found that the in laws left the dead body and fled away from the place.

4. On the issue of dowry Tarak deposed that Rs. 20,000/- in cash and ornaments were gifted to the couple at the time of wedding. In addition, a Van Rickshaw was purchased for Jhantu. A tea stall was arranged for him. Jhantu could not succeed in either of the businesses, as he was a habitual drunkard and gambler and spent all money for the said purpose. Tarak explained the delay in filing the complaint, as according to him, the police advised them to make complaint after receipt of the post mortem report.

5. The mother, Durga Das deposed that during her last visit Batasi complained that Jhantu demanded money from her, however, they could not arrange money and persuaded Batasi to go back to her husband. On 15th, they received the phone call from Usha as stated above. When Manik was given a specific suggestion that the accused were poor, he answered, "since they were poor I purchased a rickshaw van to them and also used to give money to my daughter, keeping in view her problem."

6. P.W.4 Usha Mistry was the aunt of the victim. She was also the neighbour of the accused. During her examination in chief, she deposed that she would not be able to tell how the accused persons behaved with Batasi since marriage. There used to be quarrel between them, but she was not aware of the reason. She was then declared hostile. The prosecution was permitted to cross-examine her. The defence also cross-examined her. During cross-examination Usha broke down and started giving detailed narration how torture was being inflicted upon the victim. She admitted to have told the Investigating Officer that few days after

the marriage, the accused persons started torturing the victim. She was even deprived from taking her meal. Batasi used to tell her grievance to Usha. Batasi's father purchased a Rickshaw van. Her husband was a drunkard and gambler and sold away the Rickshaw van. She also admitted to have told the police that on January 15, 2004 her mother-in-law, one of the appellants Urmila Sardar started assaulting Batasi during noon hours and being unable to bear the torture, she committed suicide. During cross-examination by the defence Usha deposed that Batasi told her on two to four occasions that the accused used to assault her. Once she complained as such before the birth of the child and twice after the birth of the child. On the fateful day someone called her over phone in the night to inform that Batasi was being subjected to torture. She immediately informed Batasi's parents.

7. P.W. 5 and 6 were the neighbours. They were declared hostile as they pleaded their ignorance about the incident. They also denied having disclosed the details of the incident to the police when they were examined. According to P.W.6, the accused family was very poor.

8. P.W.7 was the Doctor, who conducted the post mortem. According to him, death was due to Asphyxia followed by anti mortem hanging. He, however, did not find any mark of violence on the dead body.

9. P.W.8, Assistant Sub-Inspector conducted inquest whereas P.W.9 was the Investigating Officer. He gave details about the investigation as discussed above.

10. All three accused were examined u/s 313 of the Code of Criminal Procedure. All of them pleaded innocence and denied having any involvement in the incident. Jhantu however stated, "In spite of the fact that she was in love with another lad, they gave her in marriage with me, I did not understand it at that time. She did not live with me. I am innocent."

11. Urmila stated, "they took my son away by force and forced him to marry and they did not give any gold. All are false statements."

12. The defence did not adduce any evidence.

13. The Learned Additional Sessions Judge vide judgment and order dated October 7, 2005 held all of them guilty of the offences punishable under Sections 498A/304B of Indian Penal Code. The learned Judge heard the accused/convicts on the question of sentence u/s 235 of the Code of Criminal Procedure. Jhantu stated, "dispute arose on account of Van". Manik stated, "he works as labourer and returns home in the evening, he knows nothing regarding the incident. He would accept whatever sentence is imposed by the court against him."

14. The learned Judge sentenced Jhantu to suffer rigorous imprisonment for ten years u/s 304B of the Indian Penal Code and his parents Urmila Sardar and Manik Sardar to suffer rigorous imprisonment for seven years for the same offence. No separate sentence was imposed u/s 498A of the Indian Penal Code.

15. Being aggrieved, the appellants preferred the instant appeal, which was heard by us on the above mentioned dates.

16. Mr. Satarup Purokayastha, learned Counsel appearing for the appellants being ably assisted by Ms. Minakshi Gupta and Mr. Sambuddha Dutta, learned Counsel for the appellants contended as follows:

i) The incident occurred on January 15, 2004, at about 3 p.m. whereas prosecution witnesses 1, 2 and 3 consistently deposed that they got a phone call from PW-4 at 11 p.m. that the victim was being subjected to torture.

ii) The incident occurred at 3 p.m. on January 15, 2004 whereas the complaint was lodged by the PW-1 on January 18, 2004 and such delay was not properly explained by the prosecution and the so called reason, assigned by the PW-1, was not tenable.

iii) Apart from PW-1, 2 and 3 being interested witnesses, the prosecution miserably failed to produce any independent witness to support the case of torture and/or demand of dowry.

iv) Even according to the prosecution, the victim committed suicide, hence the charge framed u/s 304B was not tenable.

v) Even assuming that the victim committed suicide, there was no evidence to the effect that the accused provoked her to commit suicide. Hence the pre-requisite of Section 306 was conspicuously absent.

vi) Even assuming that the appellant No. 1 was a drunkard or gambler that would not, per se prompt the Court to hold him guilty of the offence in absence of cogent evidence being adduced by the prosecution.

vii) Even assuming that there was demand of dowry, there was no proof that such demand was made soon before the death of the victim. Hence, the ingredient of the offence punishable u/s 304B of the Indian Penal Code could not be attracted.

viii) PW-1 was not examined u/s 161. Hence, his evidence should be discarded as the defence could not get any opportunity to confront him with the anomalies, if any, that could arise in case of his examination u/s 161.

ix) The scribe of the FIR was also not tendered during the trial.

17. Mr. Purokayastha prayed for setting aside of the conviction and sentence and consequent acquittal of the accused.

18. Opposing the appeal, Mr. S.K. Mahato, learned Counsel appearing for the State contended that from the evidence on record, few facts stood admitted which would lead to presumption that the appellants were involved in the crime and consequently they were liable for conviction.

19. To elaborate his argument Mr. Mahato contended that admittedly victim was

married less than seven years before her death. She committed suicide in her in-law's place. Even the hostile witness, being PW-4 deposed that she was subjected to torture on account of dowry that was sufficient to draw a presumption u/s 113B of the Evidence Act which would automatically lead to conviction u/s 304B of the Indian Penal Code. Mr. Mahato further contended that when the death occurred in her in-law's place the accused were duty bound to unfold the narrative as to how the death occurred. They were examined u/s 313 and were given adequate opportunity to unfold the narrative either by themselves or by adducing evidence. They did not choose to do so. Hence, adverse inference must be drawn u/s 106 of the Evidence Act.

20. With regard to the submission advanced by the Learned Counsel for the appellants Mr. Mahato contended that all the witnesses being PW-2, 3, 4, 5 and 6 were examined by the Police u/s 161 of Criminal Procedure Code. They could not be confronted by the evidence. They could not be shaken during cross-examination.

21. While replying for the appellants, Ms. Gupta, Learned Counsel contended that the assistance so extended by the victim's parents were all along voluntary and to boost up the economic condition of the in-law's family and for the paramount interest of the victim for her well being. Those could not be termed as dowry. She also contended that since such voluntary assistance could not be termed as dowry the element of Section 304B was absent and the conviction could not be sustained.

22. To support the rival contentions the parties cited the following decisions:

- i) Shri Rabindra Kumar Dey Vs. State of Orissa, Page-439.
- ii) Periasami and Another Vs. State of T.N., Page-219.
- iii) Surinder Kaur and Anr. v. State of Haryana reported in 2004 SCC (Cri) 926.
- iv) Biswajit Halder @ Babu Halder and Ors. v. State of West Bengal reported in 2007 II Cal Cri LR (SC) 19.
- v) State of Andhra Pradesh v. Rayaneedi Sitharamaiah and Ors. reported in 2008 18 SCALE 259.
- vi) Narayanamurthy v. State of Karnataka and Anr. reported in 2008 8 SCR 403.
- vii) Raman Kumar Vs. State of Punjab, Page-3034.

23. Before dealing with the case in hand let us first discuss the law on the subject as decided in the precedents.

24. Out of the seven precedents, cited above, four decisions were cited on domestic violence. Those are -

- i) Surinder Kaur and Anr. v. State of Haryana (Supra)

- ii) Biswajit Halder @ Babu Halder and Ors. v. State of West Bengal (Supra).
- iii) Narayanamurthy v. State of Karnataka and Anr. (Supra).
- iv) Raman Kumar v. State of Punjab (Supra).

25. In the case of Raman Kumar (Supra), the Apex Court found that there were enough evidence to show that the in-laws of the victim was not dissatisfied about dowry. In fact the prosecution witness PW-5 admitted to the said extent. The Court disbelieved the evidence of PW-7 to the effect that the victim made a dying declaration before him that her mother in-law had poured kerosene on her. PW-8, on the other hand, being the brother of the deceased deposed that the appellant being the husband of the victim was demanding a sum of Rs. 100000/- and she was burnt in the night intervening 15/16 August, 1992. The Doctor, who treated her, proved the bed head ticket where no dying declaration was recorded. The Apex Court, considering those facts, held that there was no evidence to support the conviction u/s 304B to the effect that soon before her death the victim was subjected to torture.

26. In the case of Narayanamurthy (Supra), PW-1 and 2 deposed about the dowry. However, they did not make any statement with regard to torture. PW-3 brought the issue of torture which was contrary to PW-1 and 2. The landlord couple being PW-4 and 16 on the other hand deposed that the couple was living happily. The victim disclosed to her that she was not keeping in good health and wanted to go to her parents. Considering such evidence, the Apex Court was of the view that there was not enough evidence to hold the appellants guilty of the offence either u/s 498A or u/s 304B.

27. In the case of Surinder Kaur (Supra), the husband was convicted and sentenced to suffer rigorous imprisonment for life. The husband did not prefer any appeal. The parents in-law were acquitted. The appeal to Supreme Court was filed by two sisters in-law who were sixteen and eighteen years old respectively at the time of incident. The Apex Court was of the view that it was improbable that those two youngsters would either insist for dowry or torture the victim, specially when their parents were acquitted by the Trial Court from the identical charges.

28. The last case on domestic violence cited was in the case of Biswajit Halder (Supra). There also the Apex Court after scanning the evidence came to a conclusion that there was "practically no evidence" to show that there was any cruelty or harassment for or in connection with the demand of dowry. The Apex Court observed, "this deficiency in evidence proves fatal for the prosecution case".

29. In the decision in the case of Periasami and Anr. (Supra), the Apex Court considering the evidence held that there was no pre-plan in committing such offence and it happened on the spur of the moment and as such modified the conviction u/s 304, Part-II of the Indian Penal Code.

30. In the case of State of Uttar Pradesh (Supra), two groups belonging to two different castes in Andhra Pradesh became involved in a fight followed by a general election. In Paragraph 22, the Apex Court observed that it would not be safe to rely on the "sole witness" to base the conviction on his evidence specially when he was not examined u/s 161.

31. In the case of Rabindra Kumar Dey (Supra), the Apex Court discussed the issue of hostile witness. While doing so, the Apex Court observed:

Section 154 of the Evidence Act confers a discretion on the court to permit a witness to be cross-examined by a party calling him. The section confers a judicial discretion and must be exercised judiciously and properly in the interest of justice. The court will not normally allow a party to cross-examine his own witness and declare the same hostile unless the court is satisfied that the statement of the witness exhibits an element of hostility or that he has resiled from a material statement which he made before an earlier authority.

Merely because a witness in an unguarded moment speaks the truth which may not suit the prosecution or which may be favourable to the accused, the discretion to allow the party concerned to cross-examine his own witnesses cannot be allowed. The contingency of permitting the cross-examination of the witness by the party calling him is an extra-ordinary phenomenon and permission should be given only in special cases.

32. We have considered the rival contentions of the parties. Let us now apply the law as discussed above in the present scenario.

33. There is no straight jacket formula to the extent that relative witness could not be believed per se. What is required is to find corroboration from any other witnesses to strengthen the conviction. However, mere absence of any independent witness to come forward to support prosecution case would not per se lead to acquittal of the accused. In the present case, PW-1, PW-2 and PW-3 being the brother, mother and father of the victim consistently deposed about the dowry as well as torture. PW-4 being the aunt of the victim as also neighbour of the accused was declared hostile as she initially concealed what she had stated before the police during her examination u/s 161. However, during the cross-examination, she broke-down and admitted everything. From her evidence it is clear that the victim was subjected to torture on account of dowry. PW-4 could not be shaken on that score by the defence. In fact, in reply to a defence question, PW-4 categorically stated that at least on four occasions the victim complained to her about torture.

34. The victim committed suicide. Such fact was proved by medical evidence. Inquest report proved that she committed suicide in her in-laws' place. In our considered view, the appellants being her in-laws were duty-bound to unfold the narrative, which was within their special knowledge. The appellants did not do so while being examined u/s 313. They did not even adduce any evidence. The appellant No. 1 on the other hand tried to make aspersion on the victim that she

had extra marital affair, although the defence did not lead any evidence on that score. The other accused Urmila could not check her grievance and categorically stated that they did not get any gold out of dowry.

35. The learned Judge held the appellants" Nos. 1 and 2 guilty under Sections 304B/498A of Indian Penal Code. Taking a sum total of the facts, followed by consistent evidence of PW-1, PW-2, PW-3 and PW-4 being corroborated by each other, we do not find any scope to hold it otherwise, specially in case of appellants No. 1 and 2. We, however, find that the evidence on record which is held reliable to convict the appellants Jhantu Sardar and Urmila Sardar for the offence u/s 498A of Indian Penal Code clearly makes out a case for offence of abetting suicide u/s 306 of Indian Penal Code with the aid of Section 113A of the Evidence Act 1872. The facts of this case do not support the conviction of the appellants u/s 304B of Indian penal Code.

36. The appellant No. 3 Manik Sardar was a day-labourer. There was no direct evidence against him that he was present at the house. Since, there was no direct evidence against him with regard to the demand of dowry or torture, we wish to give him benefit of doubt.

37. The appellant No. 1, Jhantu Sardar and appellant No. 2, Urmila Sardar are thus convicted under Sections 498A/306 of Indian Penal Code. They are sentenced to rigorous imprisonment for seven years together with a fine of Rs. 500/- each and in default to suffer further two months imprisonment for the offence punishable u/s 306 of Indian Penal Code. No separate sentence is awarded for the offence punishable u/s 498A of Indian Penal Code.

38. Appellant No. 3, Manik Sardar is acquitted from charges brought against him. Let him be set at liberty if not wanted in connection with any other case.

39. Appellant No. 1 Jhantu Sardar is in jail. Let him suffer the remaining part of the sentence as awarded by us. Appellant No. 2 Urmila Sardar is on bail. Her bail bond is cancelled. Let her surrender before the Court below forthwith for suffering remaining part of the sentence as awarded by us.

40. The learned trial Court is directed to issue necessary revised jail warrant as required by the Rules.

41. With the above modifications, the appeal is disposed of.

42. Let lower Court records be sent down before the Court below along with a copy of this judgment at once for information and necessary action.

43. Urgent xerox certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

Kishore Kumar Prasad, J.

44. I agree.