
(2014) 11 TP CK 0031
In the Tripura High Court
Case No : Criminal Appeal No. 06 of 2013
Jiban Sukla Das VsThe State of Tripura

Date of Decision : 27-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 306, 498(A)

Citation : (2014) 11 TP CK 0031

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : A. Roy Barman, L. Sarkar, R. Chakraborty and S.K. Banerjee,
Advocate for the Appellant; R.C. Debnath, Addl. P.P, Advocate for the Respondent

Judgement

S.C. Das, J.—This criminal appeal, under Section 374 of Cr.P.C., is directed against the judgment and order of conviction and sentence, dated 08.03.2013, passed by learned Addl. Sessions Judge, Khowai in connection with Sessions Trial Case No. ST 12(WT/K) of 2012.

2. Heard learned Counsel Mr. A. Roy Barman for the appellant and learned Additional Public Prosecutor Mr. R.C. Debnath for the State-respondent.

3. Prosecution case, is that one Sri Mandhan Das of village North Durganagar, P.S. Khowai lodged a written ejahar on 29.05.2011 alleging that about a year ago his daughter Pratima Das was given in marriage with accused-appellant Jiban Sukla Das, S/o. Lt. Jatindra Sukla Das of Tablabari, P.S. Khowai. A few months after marriage, his daughter's husband Jiban Sukla Das and his mother together started inflicting physical and mental torture upon his daughter on different pretext. He counseled her daughter's husband and her mother-in-law but torture was increased. On 29.05.2011 at about 7-00 a.m. he came to know that his daughter committed suicide by hanging. Hearing the information he went to the house of her son-in-law and found his daughter in hanging position in one of the rooms of the house and he alleged that his daughter was compelled to commit suicide on account of torture inflicted by her husband and mother-in-law.

3.1 O.C., Khowai P.S. on receipt of the ejahar, registered Khowai P.S. Case No. 43

of 2011 and entrusted the investigation to S.I. Manoranjan Das. After completion of investigation I.O. submitted charge-sheet against the accused Jiban Sukla Das and Smt. Sati Bala Das (Sukla Das) for commission of offence punishable under Section 498(A) and 306 of IPC.

4. Cognizance was taken on the basis of the police report and in course of trial, learned Addl. Sessions Judge, Khowai framed charges against the accused appellant and his mother Smt. Sati Bala Das (Sukla Das) for commission of offence punishable under Sections 498(A) and 306 of IPC to which the accused persons pleaded not guilty and claimed to be tried.

5. In course of trial, prosecution examined 9(nine) witnesses.

6. After closure of the prosecution evidence, accused was examined under Section 313, Cr.P.C. and in his turn, accused declined to adduce any defence evidence. Defence case is that Pratima Das, W/o. accused Jiban Sukla Das committed suicide by hanging because of her own mental depression and she was never physically or mentally tortured by the accused-appellant.

7. Learned Addl. Sessions Judge at the conclusion of trial acquitted both the accused of the charge under Section 306 of IPC but convicted accused Jiban Sukla Das for commission of offence punishable under Section 498(A) of IPC and sentenced him to suffer R.I. for 3(three) years and pay a fine of Rs. 10,000/- in default of payment of fine to suffer further S.I. for 6(six) months.

Accused Sati Bala Das (Sukla Das) was acquitted of the charge under Section 498(A) of IPC also.

8. Felt aggrieved, the accused Jiban Sukla Das filed the present appeal.

9. Learned counsel Mr. Roy Barman appearing for the accused-appellant submits that there is no evidence of physical or mental torture or tormentation of the victim in the matrimonial home to drive her to commit suicide or to cause grave injury or danger to her life, limb or health and also there is no evidence of harassment on demand of dowry or any other property. The trial Court whimsically arrived at a conclusion of guilty of the accused and hence, the judgment and order of conviction and sentence of the appellant is liable to be interfered and set aside.

10. Learned Addl. P.P. has submitted that there is evidence on record that Pratima was subjected to cruelty in the matrimonial home by the accused-appellant. The evidence no doubt is very scanty but it cannot be said that there is no evidence at all. The trial Court since found the accused guilty of the offence, the judgment and order of conviction and sentence may be maintained.

11. I have meticulously gone through the evidence on record. P.W. 2 Mandhan Das is the father of unfortunate deceased Pratima and he is the informant of the case. P.Ws 4, 5, 6 and 7 are all neighbour of P.W. 2 and claimed to be very close to P.W. 2. P.W. 1 is the neighbour of the accused and P.W. 3 is the brother's wife

of the accused. P.W. 8 is the scribe of the FIR and P.W. 9 is the I.O. of the case.

12. It is not disputed that Pratima Das committed suicide by hanging in the matrimonial home i.e. in the house of appellant Jiban Sukla Das on 29.05.2011. Her marriage with accused Jiban Sukla Das was solemnized about a year before that date. The accused has been acquitted of the charge under Section 306 of IPC. He has been found guilty of the charge under Section 498(A) of IPC.

13. To prove the charge under Section 498(A) of IPC, prosecution is to prove that accused willfully treated the victim wife in his house in such a nature that it was likely to drive the victim wife to commit suicide or to cause grave injury or danger to her life, limb or health or that the accused has harassed his wife Pratima in the matrimonial home to meet any unlawful demand of any property or valuable security.

14. FIR was lodged by the father of the victim. The victim is no longer on the earth to speak about the cause of her death. If she was subjected to cruelty in the matrimonial home, she was the only witness of the occurrence. We cannot expect that the neighbours or the inmates of the matrimonial home will come out to speak against the accused about any torture on the victim. Since the victim is no longer on the earth, what she stated to others is relevant for consideration. It is natural that she will speak about her plight in the matrimonial home to her parents, relatives and close friends. The evidence of such parents, relatives and close friends need to be very carefully scrutinized.

15. The Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, has made an observation in respect of appreciation of evidence of relatives and friends in such cases of torture and that observation is very relevant. In para 48 of the judgment the Court has observed-

"48. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it."

16. Let us now see the evidence on record. P.W. 2 Mandhan Das, father of

deceased Pratima lodged the FIR on 29.05.2011 i.e. on the day Pratima committed suicide. Whatever Pratima reported to her father definitely it was before her death and so her father knew the facts what he learnt from his daughter. It is, therefore, may be normally expected that the informant will narrate the facts what he learnt about torture on his daughter in the FIR. I have already stated hereinbefore what is the allegation made in the FIR. There is no specific allegation of demand of any money or any other property. Only allegation made in the FIR is that from some months after the marriage his daughter's husband Jiban Sukla Das and his daughter's mother-in-law together started inflicting physical and mental torture upon his daughter on different pretext. It is just an omnibus allegation without any basis or root. No allegation made as to why the torture was inflicted and when in what manner the torture was physically inflicted. In his deposition P.W. 2 stated that after 7/8 months of marriage of his daughter, her husband used to torture upon her on demand of money to be brought from his house. Due to that problem of his daughter he somehow managed Rs. 30,000/- and handed over it to accused Jiban Sukla Das. No other allegation made in his deposition. Admittedly, the statement that he paid Rs. 30,000/- to accused Jiban Sukla Das was not made in the FIR and first time before the Court the witness made the statement regarding payment of Rs. 30,000/-.

P.W. 1 is a neighbour of the accused and he stated nothing incriminating. In cross examination he stated that he found the deceased Pratima in a depressed mood and she expressed that since she had no issue, she was depressed.

P.W. 3 also stated nothing incriminating. P.W. 4 stated that he was closed to the informant and he used to visit the house of the deceased often. He stated that the deceased complained to him that she was harassed by accused Jiban on demand of money to be brought from her father's house. He also stated that he came to know from the parents of Pratima about 20 days before her death that she visited her parents' house and requested her mother to arrange treatment of her husband as her husband's penis was very small in size. He has also stated that the accused tortured on Pratima on demand of money of Rs. 50,000/- out of which Rs. 30,000/- was paid and Rs. 20,000/- remained in dispute. In cross examination he admitted that he did not state to the police that there was a demand of Rs. 50,000/- and Rs. 30,000/- was paid and the rest amount was in dispute.

The allegation made by him that the deceased complained to him that she was harassed by Jiban on demand of money to be brought from her father's house is just an omnibus statement and he stated nothing as to where and when that statement was made by the deceased and so such allegation is only to be treated as a hearsay allegation. About the visit of the deceased to her father's house about 20 days prior to her death has not even stated by the P.W. 2, the father of the victim. So this statement of the witness is of no consequence.

17. P.Ws 5, 6 and 7 stated that about 20 days prior to her committing suicide

Pratima visited her parents house whereas P.W. 2, the father of Pratima did not make any such statement. So this statement of P.Ws. 5, 6 and 7 about visit of Pratima to her father's house about 20/25 days prior to the incident, is found to be unworthy of any credit.

18. P.W. 5 further stated that Pratima told that she was tortured by Jiban since she had no issue but no such allegation was made by P.W. 2 who is the father of Pratima. So, there is no corroboration of the allegation made by P.W. 5.

19. P.W. 6 stated that Pratima complained to him that her husband used to torture her since she had no issue and also demanded some money to be brought from her father. P.W. 7 also stated almost in the same tune which has got no corroboration, rather the statement of P.W. 7 is found to be contradicted with his earlier statement.

20. After careful examination of the evidence of all the witnesses, I find no cogent evidence to arrive at a conclusion that Pratima was subjected to cruelty in the matrimonial home for which she committed suicide. Learned Addl. Sessions judge relying on the omnibus statement of the witnesses arrived at a finding of guilt of the accused which is not cogent and consistent and therefore, I am of considered opinion that the judgment and order of conviction and sentence cannot sustain and is liable to be interfered and set aside.

21. Accordingly, the judgment and order of conviction and sentence dated 08.03.2013, passed by learned Addl. Sessions Judge, Khowai, West Tripura, in Sessions Trial No. 12(WT/K) of 2012 is set aside.

22. The accused-appellant is entitled to get benefit of doubt and accordingly the accused-appellant is acquitted of the charge on the benefit of doubt and set at liberty.

23. Send back the L.C. records along with the copy of this judgment.