

(2023) 04 CAL CK 0027
In the Calcutta High Court
Case No : Criminal Appeal No. 346, 347 Of 2021

Prabir Patar

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 13-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304B, 498A
Code Of Criminal Procedure, 1973 — Section 161, 313
Evidence Act, 1872 — Section 106, 113B

Citation : (2023) 04 CAL CK 0027

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Arnab Chatterjee, Partha Pratim Das, Manasi Roy

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

1. Two appeals have been heard analogously as they emanate out of the same first information report and the same impugned judgement of conviction and the order of sentence.

2. The father of the victim had lodged a written complaint with the police on November 18, 2016 complaining that his daughter was subjected to torture for not fulfilling the demand of dowry of extra Rs. 1 lakh. His daughter had been tortured physically and mentally. He had paid Rs. 20,000 to his son-in-law. He had been informed over telephone at about 4 o'clock in the morning of November 8, 2016 by his relative that his daughter had died. He along with this relative had gone to the matrimonial home of her daughter and found his daughter lying dead. His daughter was 4 months pregnant. He had firmly believed that his son-in-law along with his family members killed his daughter by torturing her physically and mentally.

3. On the basis of such written complaint, police had registered a First

Information Report being FIR No. 91/16 dated November 8, 2016 under Sections 498A/302/304B/34 of the Indian Penal Code, 1860. On completion of the investigations, police had submitted a charge sheet being No. 12/17 dated February 4, 2016 under Section 498A/304B/302 read with Section 34 of the Indian Penal Code, 1860.

4. The court had framed charges against 5 accused on August 31, 2017 under Section 498A/304B/302/34 of the Indian Penal Code, 1860. The appellants had pleaded not guilty and claimed to be tried.

5. The case of the prosecution had been that, the appellants since the marriage of the victim with Prabir Patar (husband) subjected the victim to cruelty both physically and mentally on demand of money. The appellants had caused a dowry death of the victim by subjecting her to continuous mental and physical torture since her marriage. The appellants had in furtherance of the common intention murdered the victim in the early morning of November 8, 2016 at the matrimonial home of the victim.

6. At the trial, prosecution had examined 20 witnesses and relied upon various documentary and material evidences. The appellants had been examined under Section 313 of the criminal procedure code, on the completion of the evidence of the prosecution. The appellants during such examination had claimed to be falsely implicated and innocent. They had declined to adduce any defence witness.

7. By the impugned judgement of the learned judge had found the appellants guilty under offences punishable under Sections 304B/498A/34 of the Indian Penal Code, 1860. The learned judge had given the appellants benefit of the doubt in respect of the offence punishable under Section 302 of the Indian Penal Code, 1860.

8. By the impugned order of sentence, the learned judge had ordered the husband to suffer imprisonment for life and also sentenced him to pay a fine of Rs. 20,000 for the offence punishable under Section 304B of the Indian Penal Code, 1860. The learned trial judge had sentenced all the appellants apart from the husband to suffer rigorous imprisonment for 7 years and to pay a fine of Rs. 20,000 each for committing the offence punishable under Section 304B/34 of the Indian Penal Code, 1860 and in default to undergo further imprisonment for one year each. The learned trial judge had sentenced all the 5 appellants to suffer rigorous imprisonment for 3 years and to pay a fine of Rs. 10,000 and in default to suffer simple imprisonment for 3 months each for the offence under Section 498A of the Indian Penal Code, 1860.

9. The appellants in both the appeals had remained unrepresented at the hearing of the appeals on November 14, 2022, November 17, 2022, November 18, 2022, November 21, 2022 November 22, 2022 November 28, 2022 December 18, 2022 January 4, 2023, January 19, 2023 and March 23, 2023. Consequently, by an order dated March 20, 2023 amicus curiae had been appointed to represent the

appellants. Amicus curiae had appeared on April 4, 2023 and advanced submissions for the appellants.

10. Learned amicus curiae has submitted that, PW 1 had made a statement with regard to the demand for dowry and payment thereof in the written complaint which was different from his oral testimony in court. According to him, the self-contradictory statement allowed an inference that the deposition of PW 1 had been developed subsequently and was totally false. Moreover, PW 1 had claimed that the victim was pregnant at the time of the incident but the post-mortem Doctor did not allude to anything on such issue.

11. Learned amicus curiae has submitted that, the prosecution had failed to establish any demand of dowry made by the relatives of the husband. He has referred to the deposition of PW 2 who stated that, the victim during her lifetime visited the paternal home 5 times. During such visits, she had never disclosed anything against her husband or other in-laws.

12. Learned amicus curiae has submitted that, PW 3 and PW 4 were not interrogated during investigations and therefore their statements during the trial had been made for the first time in court. The scribe of the first information report had not been examined by the prosecution. Therefore, the admission of the written complaint as exhibit 2 had been illegal.

13. Learned amicus curiae has submitted that, independent witnesses such as PW 5, 7, 10, 13, and 15 did not support the case of the prosecution. The prosecution never declared them as hostile witnesses. All of such prosecution witnesses had deposed that the deceased had a good relation with the husband and other in-laws.

14. Learned amicus curiae has referred to the inquest report of the deceased being Exhibit 1. He has submitted that, the proximate cause of death noted in Exhibit 1 as disclosed by the witnesses namely PW 1, 2 and 4 did not allege any demand of dowry. No allegations had been made against the in-laws of the deceased. Even at the time of the magisterial inquest, PW 1 had been present and at that time also there was no allegation of demand of dowry.

15. Learned amicus curiae has submitted that the allegation of illicit relationship between the husband of the victim with his sister-in-law has not been supported by any of the independent witnesses. In any event, such fact has not been disclosed in the first information report.

16. Learned amicus curiae has submitted that, the rough sketch map with index being Exhibit 7 reveals that the place of occurrence was the bedroom of the victim and husband. The other in-laws were having separate rooms. Therefore, according to him, the burden of proving the cause of death in terms of Section 106 of the Indian Evidence Act, 1872 did not fall upon the in-laws of the victim.

17. Learned amicus curiae has submitted that, most of the neighbours as appearing from Exhibit 7 have not been examined by the prosecution at the trial.

According to him ingredients of Section 113B of the Indian Evidence Act, 1872 were not attracted. He has relied upon 2015 Volume 5 Supreme Court Cases 201 (Major Singh and Another versus State of Punjab) in such context.

18. Learned amicus curiae has submitted that the quantum of sentence imposed upon the husband was too severe. In support of such contentions, he has relied upon 2014 Volume 4 Supreme Court Cases 375 (Sunil Dutt Sharma Versus State).

19. Learned Advocate appearing for the State has submitted that, all the 5 appellants had been charged inter-alia under Section 34 of the Indian Penal Code, 1860. He has drawn the attention of the court to the charge sheet dated August 31, 2017.

20. Learned advocate appearing for the State has submitted that, the victim had been found dead at her matrimonial home. He has referred to the deposition of PW 8 and submitted the fact that the victim was staying with her husband at her matrimonial home was established. The victim had been residing at the matrimonial house with her husband and the other appellants who were her in-laws. The death of the victim had been homicidal in nature and the same was established by the doctor conducting the post-mortem. Therefore, under Section 106 of the Indian Evidence Act, 1872, all the appellants had to explain the death of the victim which they had failed to. According to him, the appellants should have been convicted under Section 302 of the Indian Penal Code, 1860.

21. The father of the victim had deposed as PW 1. He had stated that the victim was his daughter and that she was married to Prabir Patar, the appellant in CRA 346 of 2021. He had given the date of marriage. He had stated that, the victim after marriage went to her matrimonial home and started residing there with her husband and the appellants of CRA 347 of 2021 who were her in-laws.

22. PW 1 had identified the appellants in both the appeals in the court. He had stated that, all the appellants used to torture the victim on demand of the sum of Rs. 1 lakh. The victim had informed him about such demand when the victim came to his house. He had paid a sum of Rs. 20,000 against the demand of Rs. 1,00,000 to the father-in-law of the victim but in spite of the same the tortures upon the victim did not reduce. The husband of the victim had a love affair with his sister-in-law. He had stated that, the incident of death of the victim was informed to him by one of his relatives over phone. After getting such news, he along with his other relatives had been to the matrimonial home of the victim where they saw the victim was lying on a cot in a sleeping mode. He had seen the victim lying dead at that time and one pillow was lying beside her dead body on the cot. Thereafter, he had informed the incident to the police station over telephone from the matrimonial home of the victim. Thereafter police had come to the matrimonial home of the victim and caused enquiry about the incident and took away the dead body of the victim to the police station.

23. PW 1 had stated that, inquest of the dead body of the victim had been held

on November 8, 2016. He had identified his signature on such inquest report which was tendered in evidence and marked Exhibit 1/1. He had stated that, he lodged a complaint with the police station. He had identified his signature on the written complaint which was tendered in evidence and marked as Exhibit 2/1.

24. PW 1 had been extensively cross-examined on behalf of the defence. In cross examination, he had been asked whether during marriage of the victim any Lagnapatra (written declaration) had been prepared or not to which he replied that the same was prepared. He had stated that in such Lagnapatra all the gift and the dowry articles which were given from the side of the victim were mentioned. He had stated that he had given a cash amount of Rs. 4 lakhs to the in-laws of the victim for purchasing gold ornaments and other gift materials. Such fact had been mentioned in the Lagnapatra. He had informed the incidence of ill-treatment on the victim by the in-laws to the negotiator of the marriage. On being informed by the victim about the ill-treatment by her in-laws on 3 occasions, he had been to the matrimonial home of the victim to enquire about the incidents. In course of discussions with the parents-in-law of the victim, he had come to learn that the allegations of the victim were true. After knowing about the incidents of torture, he had brought the victim to his house and thereafter sent her back after 3 or 4 days. The victim had informed him about the illicit relationship between her husband and his sister-in-law. He had also informed such illicit relationship to his wife.

25. The mother of the victim had deposed as PW 2. She had corroborated PW 1 with regard to the demand for dowry and the torture being meted out by all the appellants to the victim. She had also corroborated PW 1 with regard to the victim staying at their residence for some time and returning to her matrimonial home for the purpose of leading a peaceful married life with her husband. She had visited the matrimonial home of the victim after receiving the news of the death of the victim. She had witnessed the seizures made by the police on November 18, 2016. Her signature on the seizure list dated November 8, 2016 had been marked as Exhibit 3/1. She had identified her signature on the inquest report which was marked as Exhibit 1/2. She had identified all the appellants in court. In cross examination, she had stated that, the victim did not tell anything against her husband or her in-laws when she had visited their house on the 5 occasions.

26. The younger brother of the victim had deposed as PW 3. She had corroborated PW 1 and PW 2 with regard to the torture meted out by the appellants to the victim. He had stated that, the victim told him that the husband used to assault the victim as he had some affairs with his sister-in-law. He had stated that, whenever the husband of the victim visited their house, he used to go out with him and on such occasions, he heard the sister-in-law of the husband of the victim making phone calls to him. He had identified the appellants in court.

27. In cross examination, he had stated that, sometimes he was present at the time of discussion between the victim and her mother about the relationship

between the victim and her husband and other in-laws. He had stated that, when they talked about any personal matter they used to ask him to leave the place and also to keep quiet. He had acknowledged in cross examination that, whatever he stated before the court about the relationship and the death of his sister was for the first time and that he never disclosed it before any other forum.

28. The uncle of the victim had deposed as PW 4. He had stated that, initially the victim was well in her matrimonial home but later on she was upset. Whenever the victim had used to visit her paternal home she used to tell him that she was not well at her matrimonial home. He had identified his signature on the seizure list dated November 20, 2016 which was marked as Exhibit 3/2. He had also identified his signature on the inquest report which was marked as Exhibit 1/3. He had identified the appellants in court.

29. A neighbour of the appellants had deposed as PW 5. He had identified the appellants in court. He had stated that the accused used to behave well with the victim at her matrimonial home.

30. Prosecution had tendered PW 6 in evidence. The defence had declined to cross examine him.

31. Another neighbour of the appellants had deposed as PW 7. He had identified the appellants in court. He had stated that the victim was happy and that the in-laws of the victim used to behave well with the victim.

32. Another neighbour of the appellants had deposed as PW 8. He had corroborated the deposition of PW 7.

33. A seizure list witness had deposed as PW 9. He had stated that the police seized a pillow from the house of the appellants on November 20, 2016 in presence of Prabir Patar. He had identified his signature on such seizure list which was marked as Exhibit 4/1.

34. Another neighbour of the appellants had deposed as PW 10. He had stated that, so far as he knew the marital relationship between the victim and her husband was cordial. He had signed the seizure list dated November 20, 2016. His signature had been tendered in evidence and marked as Exhibit 4/2.

35. The priest who had conducted the marriage of the victim with her husband had deposed as PW 11. He had stated that, such marriage was performed as per Hindu rites and customs. He had identified the husband of the victim in court.

36. Another priest who was present at the time of the marriage had deposed as PW 12.

37. Another neighbour of the appellants had deposed as PW 13. He had identified the appellants in court. He had stated that after marriage the victim used to reside at her matrimonial home.

38. The police constable who had brought the dead body of the victim for post-

mortem examination deposed as PW 14. He had identified his signature on the dead body challan which was marked as Exhibit 5.

39. Another neighbour of the appellants had deposed as PW 15. He had identified the appellants in court. He had stated that after marriage the victim used to reside at her matrimonial home and that she was well there. The victim had died at the matrimonial home on November 18, 2016.

40. The first investigating officer had deposed as PW 16. He had stated that, he received a written complaint from PW 1 on the basis of which, he started the police case. He had identified his signature on the written complaint which was marked as Exhibit 2/2. He had filed the formal first information report which was tendered in evidence and marked as Exhibit 6. He had taken up the investigation of the case. During investigations he had visited the place of occurrence, prepared the rough sketch map with index of the place of occurrence, recorded the statements of the available witnesses under Section 161 of the criminal procedure code. He had arrested 4 accused persons and forwarded them before the Learned Additional Chief Judicial Magistrate. Thereafter being transferred from the police station, he had handed over the case diary to his successor. He had tendered the rough sketch map and the index of the place of occurrence prepared and signed by him which was marked as Exhibit 7 and 7/1 respectively.

41. The Doctor who had conducted the post-mortem examination over the dead body of the victim deposed as PW 17. He had stated that he found multiple bruises being present on the dead body. He had opined that the death was due to the effects of violent asphyxia death with the possibility of smothering not been ruled out, ante mortem and homicidal nature along with the attempt to hang the body post-mortem. The post-mortem report prepared and signed by him had been tendered in evidence and marked as Exhibit 8.

42. The person who had held the magisterial inquest over the dead body of the victim deposed as PW 18. He had tendered the inquest report in evidence which was marked as Exhibit 9. He had stated that, he came to know from a neighbour of the victim that the death was due to family feud and that the relation between the victim and her in-laws were not good.

43. The 2nd investigating officer had deposed as PW 19. He had described the course of investigations. He had submitted the charge sheet. He had prepared seizure lists which were tendered in evidence and marked as Exhibit 10 and Exhibit 11.

44. On completion of the evidence of the prosecution, the appellants had been examined under Section 313 of the criminal procedure code. They had stated that, they were falsely implicated and innocent. They had declined to adduce any defence witness. They did not offer any explanation as to the cause of death of the victim.

45. Prosecution had established that, the death of the victim was homicidal

nature through the post-mortem report of the victim being Exhibit 8 prepared by PW 17 as well as the oral testimony of PW 17 with regard to the cause of death of the victim. The appellants have not challenged the opinion of PW 17 as to the cause of death of the victim.

46. Prosecution had also established at the trial that, the death of the victim occurred within 8 months of her marriage. The victim had died at her matrimonial home.

47. Appellants had introduced the written declaration (Lagnapatra) with regard to the marriage between the victim and her husband in the cross-examination of the father of the victim being PW 1. In cross-examination, PW 1 had stated that, the written declaration (Lagnapatra) had enumerated the gifts and the dowry materials which were given by the family of the bride to the family of the groom. Consequently, the prosecution had been able to establish that, there had been demand for dowry made on the part of the appellants.

48. Parents and brother of the victim had consistently stated that all was not well in the matrimonial home of the victim and that there were constant demands for further dowry. Inquest report being Exhibit 9 had also spoken about matrimonial disputes and that the death was due to family feud.

49. Consequently, in our view, prosecution had been able to establish that, dowry had been demanded and taken at the time of marriage and that further dowry was being demanded after marriage. The victim had been subjected to harassment, ill-treatment, torture and cruelty on account of demand for dowry subsequent to her marriage. The death had occurred within 8 months of marriage. Prosecution had been able to establish reasonable nexus between the torture and harassment and the death of the victim.

50. Major Singh and Another (supra) has in the facts and circumstances of that case held that, the demands of dowry were not established and that the deceased was subjected to ill-treatment was also not established. Consequently, the conviction of the accused under Section 304B of the Indian Penal Code, 1860 had been reversed.

51. In the facts and circumstances of the present case, the appellants had introduced the written declaration (Lagnapatra) detailing the gifts and the dowry given by the paternal family of the victim to the family of the husband. Therefore, the demand for dowry had been established. Further demand for dowry made by the family of the husband of the victim had been established by oral testimonies. The death had occurred within 8 months of marriage and therefore, prosecution had been able to establish reasonable nexus between the demand for dowry, torture and the death. The death was homicidal in nature and the victim had suffered bodily injuries as will appear from Exhibit 8 being the post-mortem report. All the appellants had been present at the matrimonial home of the victim. None of the appellants had offered any explanation as to the cause of the homicidal death of the victim. They had failed to rebut the

presumption under Section 113 B of the Indian Evidence Act, 1872.

52. Sunil Dutt Sharma (supra) has held that the principles evolved with regard to death penalty should also apply to sentencing of an accused found guilty of the offence under Section 304B of the Indian Penal Code, 1860. In the facts of that case, on applying the principles that would be relevant to judge the crime and the criminal test, it was held that, maximum punishment of life imprisonment was not called for and that taking into account the injuries on the deceased, and the fact that there was a child born out of the wedlock, the minimum sentence prescribed had been found inadequate. Therefore, the Supreme Court has awarded a sentence of 10 years rigorous imprisonment. The facts and circumstances of the present case are different.

53. In the facts of the present case, the victim had suffered bodily injuries as will appear from Exhibit 8 being her post-mortem report. Prosecution had established nexus between her death and demand for dowry. Learned Trial Judge had found the appellants guilty of offences punishable under Section 304B/498A/34 of the Indian Penal Code, 1860. Learned trial judge had imposed life sentence on the husband and rigorous imprisonment for 7 years on the other appellants for the offence punishable under Section 304B/34 of the Indian Penal Code, 1860.

54. The evidence of PW 5, 7, 10, 13 and 15 about alleged good relationship between the victim and her in laws is of no consequence as those had been based on hearsay.

55. While adjudicating on the quantum of punishment to be imposed on the appellants individually, the learned trial judge had taken into account that, the death was due to dowry. He had taken note of the fact that dowry was a menace to the society. The offence had been committed within the 4 walls of the domestic house. He had noted that the punishment should be adequate and proportionate with the offence committed. He had noted that the involvement of the husband emerged as that of the principal accused.

56. In the facts of the present case, the appellants had tried to pass off at the death by the smothering as one of suicide. Exhibit 8 being the post-mortem report of the victim had noted a ligature mark on the neck of the victim which was not ante mortem in nature. The victim had suffered a number of bodily injuries before her death. Therefore, the imposition of life sentence on the husband of the victim cannot be said to be inappropriate or disproportionate, in the facts and circumstances of the present case.

57. In view of the discussions above we have found no reason to interfere with the impugned judgement of conviction and the order of sentence. We affirm the same.

58. Period of detention suffered by the appellants prior to the commencement of the trial, during trial and post the trial shall be set off against the substantive sentences imposed.

59. A copy of this judgement and order along with the trial court records be sent to the appropriate court expeditiously.
60. CRA 346 of 2021 and CRA 347 of 2021 are disposed of accordingly.
61. Urgent Photostat certified copy of this judgement and order be supply to the parties, if applied for, on completion of all formalities.
62. I agree.