
(2008) 01 CAL CK 0017
In the Calcutta High Court
Case No : CRA No. 59 of 1990

Rabindra Nath Maity and Another

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 306, 498A

Citation : (2008) 2 CALLT 107

Hon'ble Judges : Kalidas Mukherjee, J

Bench : Single Bench

Advocate : Tapan Dutta Gupta, for the Appellant; R.K. Ghosal and Swapan Kumar Mallick, for the Respondent

Final Decision : Allowed

Judgement

Kalidas Mukherjee, J.—This criminal appeal is directed against the judgment and order dated 23.12.1989 passed by learned Additional Sessions Judge, Midnapore in Sessions Trial No. XII of April, 1989, G.R. No. 300 of 1986, Tamluk, convicting the accused/appellants u/s 498A and 306 IPC and sentencing each of them to suffer R.I. for two years and to pay a fine of Rs. 1,000/- in default to suffer R.I. for six months more u/s 498A IPC and to suffer R.I. for six years and to pay a fine of Rs. 1,000/- in default to suffer R.I. for six months more u/s 306 IPC with the direction that both the sentences shall run concurrently.

2. Khudiram Khan lodged F.I.R. with the Panskura P.S. alleging that his daughter Kabita Maity was married with Rabindra Nath Maity of Kumarara village. As the informant could not deliver the dowry articles as stipulated, the husband of the victim, her mother-in-law and brother-in-law used to commit torture upon the victim physically and mentally. This was known to many persons of the village and the victim also used to disclose about the torture before them. On 22.02.1986 at about 6.00 A.M. the victim committed suicide by taking poison being unable to endure the torture meted out to her by her husband, mother-in-law and brother-in-law. Upon receipt of the complaint, Panskura P.S. Case No. 16

dated 22.03.1986 was started and after completion of investigation; charge sheet was submitted against the husband Rabindra Nath Maity and mother-in-law Gouri Maity. The charge was framed u/s 498A and 306 IPC to which the appellants pleaded not guilty and claimed to be tried.

3. The learned Trial Judge upon consideration of the materials on record was pleased to pass the impugned judgment of conviction and sentence holding that from the evidence on record it was clear that deceased Kabita was subjected to systematic torture and ill-treatment by the accused persons for the non-payment of dowry. The learned Judge held that the contradictions between the evidence of the P.Ws and the statement made before the I.O. were trifling in nature and could safely be ignored. It was held by the learned Judge that there was no element of false implication and from the facts and circumstances of the case and materials on record it was convincingly proved that Kabita committed suicide by taking kerosene oil. The learned judge ultimately held that Kabita was forced to commit suicide being unable to bear the cruel treatment perpetrated on her by the accused persons by way of physical and mental torture and they abetted the commission of suicide by Kabita. The learned Judge thus held both the appellants guilty u/s 498A and 306 IPC and passed the order of conviction and sentence as stated above.

4. Mr. Tapan Dutta Gupta, the learned Counsel appearing on behalf of the appellants submits that 10 P.Ws were examined by the prosecution before the learned Trial Judge and out of them P.W. 1 is the father, P.W. 6 is the mother and P.W. 7 is the brother. It is submitted that no independent witness was examined by the prosecution to prove the alleged torture and cruelty and the non-payment of dowry. Mr. Dutta Gupta contends that it is not a case of dowry death and the charge has been framed u/s 498A/306 IPC. It is contended that from the evidence on record it would appear that the I.O. did not send the viscera to the chemical examiner for examination and the evidence of the autopsy surgeon was that the victim died either by taking endrine or kerosene oil. It is contended that no question was put to the accused as to the opinion of the doctor. Mr. Dutta Gupta submits that the cause of death was not clear.

5. As regards the alleged torture, Mr. Dutta Gupta submits that the particulars of torture have not been stated in the F.I.R. and from the evidence of P.W. 6 it would appear that both the deceased and her husband came to attend the "Annaprasan" ceremony of the grand son of P.W. 6 and there was nothing to show that the relation between the deceased and her husband was strained one. Mr. Dutta Gupta contends that P.W. 6, being the mother, did not state anything in favour of the prosecution and there was no allegation with Panchayat or police at any stage regarding the alleged torture. It contended that there were vital contradictions between the evidence of the P ,Ws and the statements made before the I.O. regarding the alleged torture and, therefore, the evidence of the P.Ws regarding torture being made for the first time at the time of trial, ought not to have been relied upon by the learned Trial Judge. Mr. Dutta Gupta

contends that the I.O. did not find any incriminating material at the P.O. and the omnibus statements regarding the alleged torture are not sufficient to bring home the charges levelled against the appellants. Mr Dutta Gupta contends that the test of proximity in time also does not come in the aid of the prosecution, in as much as, from the evidence of the P.W. 6 it would appear that one day prior to the date of alleged incident, both the husband and the deceased came to attend the "Annaprasan" ceremony and there was nothing to indicate that there was any ill relation between them. Mr. Dutta Gupta contends that the allegations as levelled against the appellants do not constitute the abetment as defined in Section 107 IPC and; therefore, the appellants ought not to have been convicted u/s 498A/306 IPC Mr. Dutta Gupta has referred to and relied on the decisions reported in All India Criminal Law Reported 2007(3) 846 (Kisori Lal v. State of M.P.) para 6 and All India Criminal Law Reporter 2007(4) 584 (K. Ramakrishnappa v. State by Bandur Camp Police Station, Davanagere).

6. Mr. Swapan Kumar Mallick, learned Counsel appearing on behalf of the State, submits that the incident occurred eight months after the marriage of the deceased and from the evidence of the P.Ws. it is clear that there was dowry demand and because of non-fulfillment there of, the victim was subjected to systematic torture and cruelty. Mr. Mallick submits that it would appear from the evidence of P.W. 4 who was the match maker in the marriage, that the appellants abetted the commission of suicide. It is contended that the autopsy surgeon has stated that the deceased consumed something which was injurious to health. It is submitted that the learned Trial Judge was perfectly justified in passing the impugned judgment of conviction and sentence and there is no ground to interfere with the same.

7. The prosecution has examined as many as 10 P.Ws. including the parents, brother of the deceased, the matchmaker of the marriage, the cousin brothers of the accused, the autopsy surgeon and the I.O. In the F.I.R. the informant made a general allegation of torture upon his daughter on the ground of non-payment of dowry. P.W. 1 in his examination-in-chief has stated that before marriage there was a talk with the accused persons to pay Rs. 2,001/-, two "bhories" of gold ornaments and other utensils as dowry. He has further stated that during stay of his daughter in the matrimonial home, she was subjected to physical and mental torture by the accused persons and they used to tell her to die after taking poison very frequently. It is also in his evidence that the ground of torture was due to the fact that he could not pay the entire dowry as claimed by the accused persons.

7.1 P.W. 2 has stated that accused Rabindra Nath Maity is his cousin brother and for non-payment of gold ornaments as agreed, Kabita was subjected to physical torture and ill treatment as a result of which she committed suicide by taking poison.

7.2 P.W. 3 has stated that accused Rabindra Nath is his cousin brother and there was frequent quarrel between Kabita and the accused persons and he once saw

accused Gouri assaulting Kabita with a stick.

7.3 P.W. 4 has stated that Gouri used to tell Kabita to die by taking poison as there was payment of insufficient dowry.

7.4 P.W. 5 is the A.S.I, of the police, P.W. 6 is the mother of the deceased who was tendered by prosecution and in the cross-examination she has stated that prior to the date of occurrence Kabita along with her husband came to their house to attend "Annaprasan" ceremony of her grand son and that on the same evening accused Rabindra Nath wanted to go back to his house with Kabita, but, the accused did not care to listen and he left her house with Kabita against her will.

7.5 P.W. 7 is the brother of the deceased and stated that Kabita once came to their house and reported about the systematic torture by the accused persons on Kabita for non-payment of sufficient dowry. He has stated that Kabita came to their house for the last time on 7th Chaitra, 1392 B.S. along with her husband.

7.6 P.W. 8 is, the I.O. P.W. 9 is the Autopsy Surgeon, who has stated that, he held autopsy on the dead body of one Kabita Maity in connection with Panskura P.S. U.D. Case No. 20 of 1985. In the cross-examination he has stated that endrine is a poison and it is like kerosene oil; death of Kabita Maity might have been caused by taking endrine. He has stated that he has kept his opinion reserved till the receipt of viscera report; the viscera was preserved by him. He opined that it might be the deceased died due to taking kerosene oil.

7.7 P.W. 10 is the constable who identified the dead body of Kabita Maity before the Autopsy Surgeon.

8. As regards the alleged torture, ill treatment and non-payment of dowry it is in the cross-examination of P.W. 1 that he did not report to his relatives about the torture on his daughter by the accused persons and that he did not report the incident of torture upon his daughter to the Anchal Pradhan of the village of the accused persons. He has also stated that before lodging the complaint, he did not report the incident of the torture to the P.S.; he could not remember the dates when his daughter reported to him about the torture upon her by the accused persons. It is in his cross-examination that after marriage for a few months the accused Rabindra Nath was at Calcutta for the purpose of working as a cook; on 7th Chaitra i.e. before the date of incident, accused Rabindra Nath came to his house with his wife to attend the "Annaprasan" ceremony of his grand son; they reached his house at about 8/9 a.m. and his son-in-law went back to his house with Kabita on that date in the evening as he was supposed to leave for Calcutta on the next day; in spite of his request his son-in-law and daughter did not stay at his house on that date.

9. P.W. 3 in his cross-examination could not say the date of quarrel between Kabita and the accused persons. It is in his evidence that about 4/5 persons were present when Gouri assaulted Kabita in the field "But " it appears that none was

examined to that effect. P.W. 4 in his cross-examination has stated that he did not state to I.O. that Kabita reported to him about the assault upon her by the accused persons and that the mother-in-law used to tell Kabita to die by taking poison for non-payment of sufficient dowry. The I.O. (P.W. 8) has stated in his cross-examination that Khudiram Khan (P.W. 1) did not state before him that accused Gouri used to tell Kabita to die by taking poison so that her son would be remarried; Nemai Maity did not state before him that Gouri used to assault Kabita and Binod Bera did not state to him that accused persons used to assault Kabita.

10. Now from the evidence as discussed above it is clear that there is omnibus statement of the witnesses regarding the alleged torture. Neither in the F.I.R. nor in the evidence of the P.W.s., the particulars of torture were mentioned. The evidence of P.W. 1 about the payment of Rs. 2001/- and two bhories of gold ornaments as agreed upon did not find place in the F.I.R. It is evident from the evidence of P.W. 1 that no complaint was ever lodged with the P.8. nor any report Pradhan regarding the alleged torture. P.W. 1 also did not report about this alleged torture to any of his relatives which is not in consonance with the ordinary human conduct. The most significant factor is that P.W. 6 i.e. the mother of the deceased did not speak a single word against the present appellants.

11. It is in the evidence of P.W. 1 and P.W. 6 that the deceased with her husband went to their house one day prior to the date of occurrence. It is in evidence that the incident occurred on 8th Chaitra and the accused Rabindra Nath with his wife went to the house of P.W. 1 to attend the "Annaprasan" ceremony on 7th Chaitra. It is in the evidence of P.W. 1 and P.W. 2 that they came to the house of P.W. 1 in the morning and left in the evening as the accused Rabindra Nath was supposed to leave for Calcutta on the next day.

12. This incident does not in any way speak in favour of the prosecution, in as much as, it does not indicate any strained or ill relation between accused Rabindra Nath and his wife. The visit of accused Rabindra Nath with his wife to the house of P.W. 1 one day prior to the date of occurrence does not come in the aid of the prosecution. From the standpoint of proximity in time the said visit to the house of P.W. 1 cannot be viewed to be a circumstance having any direct link with the commission of suicide by Kabita. The evidence on record does not show that there was any instigation or intentional aiding on the part of the present appellants towards the commission of suicide by Kabita within the meaning of Section 107 IPC. In order to bring home the charge, the prosecution must establish that there was direct nexus between the act complained of and the commission of suicide. As regards the allegation that accused Gouri used to tell Kabita to die taking poison, it is clear from the evidence of P.W. 8 i.e. the I.O. that the witnesses did not state to the I.O. about the alleged torture and asking Kabita to take poison. Such being the position, the statements of the witnesses regarding alleged torture and harassment being made for the first time at the

time of trial, cannot be relied upon

13. Moreover, regarding the evidence of P.W. 7 as to the systematic torture. I have already pointed out that in the F.I.R. there was no mention about the particulars of torture and the dowry. In the instant case, the evidence of the P.W.s. with regard to the alleged torture and harassment for non-payment of dowry does not inspire confidence and the same cannot form the basis of Conviction.

14. As regards the death of Kabita, it appears from the evidence of the Autopsy Surgeon P.W. 9 that it might be the deceased died due to taking kerosene oil. It is in the evidence of I.O. (P.W. 8) that he did not send the viscera to the chemical examiner for report; that the same was preserved by the Autopsy Surgeon. P.W. 2 has stated that the sister of accused Rabindra Nath brought a small bottle of endrine. But the I.O. has stated that he did not find any incriminating material at the P.O. Be that as it may, it is evident from the evidence of P.W. 9 that Kabita died by consuming something which was injurious to health.

15. Considering the evidence on record and having regard to the submissions made by the learned Counsels of both sides, I am of the considered view that the prosecution failed to establish the charge u/s 498A and 306 IPC against the appellants herein. The learned Trial Judge was not justified in passing the impugned judgment of conviction and sentence. There is merit in the appeal and the same is allowed. The impugned judgment of conviction and sentence is set aside. The appellants are found not guilty of the charges levelled against them. The appellants are acquitted of the charges and discharged from the bail-bonds.

16. Let a copy of this order along with the L.C.R. be sent to the learned trial Court immediately. Urgent Xerox certified copy, if applied, be handed over to the parties as early as possible.