
(2009) 07 GAU CK 0056
In the Gauhati High Court
Case No : Criminal Appeal No. 28 of 2005

Sadek Ali

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 304B, 306, 34

Citation : (2010) 1 DMC 277 : (2009) 4 GLT 904

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : S. Chakraborty and R. Chakraborty, for the Appellant; A. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

C.R. Sarma, J.—This appeal is directed against the judgment and order dated 29.03.2005 passed by the learned Additional Sessions Judge, North Tripura, Kailashahar in Case No. S.T. 78 (N.T/K) of 2003. By the impugned judgment and order aforesaid the Appellant Md. Sadek Ali, husband of the deceased, was convicted for the offence u/s 304B of Indian Penal Code (here-in-after called "IPC") and sentenced to suffer rigorous imprisonment for 7 (seven) years.

2. Being aggrieved by the said conviction and sentence, the accused-Appellant has come up with this appeal on the ground that the conviction was made without any sufficient legal evidence.

3. I have heard Mr. S. Chakraborty, learned Counsel for the Appellant and Mr. A. Ghosh, learned Additional Public Prosecutor for the State-Respondent.

4. The prosecution case, in brief, may be stated as follows :

Smt. Sajna Begum (since deceased) daughter of the informant (P.W.1) was married by accused-Appellant. The accused-Appellant and other inmates of his family used to torture Sajna Begum demanding her to bring an amount of Rs.

15,000/- from her father. On 08.07.2001 when the mother and brother of the deceased (P.W.2 and P.W.3 respectively) visited the deceased in her the marital home, they found that she was assaulted by the accused Appellant, Ms. Hatima Begum and Ms. Hatu Begum. The P.W.2 and P.W.3 returned home assuring the in-laws of the deceased that the amount of Rs. 15,000/- would be arranged and that the same would be sent to them within 2/3 months. On the same evening at about 7 p.m., the parents of the deceased came to know that their daughter had committed suicide by hanging. Accordingly a complaint being filed before the learned Chief Judicial Magistrate, Kailashahar, the same was sent to the police and the police registered a case. During investigation, police examined the witnesses and collected post mortem examination report of the deceased. At the close of the investigation, police submitted charge-sheet against the accused-Appellant and 3 others for the offence u/s 304-B and 306 of IPC read with Section 34 of IPC.

5. The offences being exclusively triable by the Court of Session, the case was committed to the learned Sessions Judge and the learned Additional Sessions Judge framed charge u/s 304-B/34 and 306 IPC to which the accused-persons pleaded not guilty

6. In order to bring home the guilt to the accused-persons, the prosecution examined as many as 16 witnesses including the Medical Officer and the Investigating Officer. At the close of the evidence for the prosecution, the accused-persons were examined u/s 313 of CrPC. They denied all the allegations. The defence examined 2 (two) witnesses. The defence plea was a denial one.

7. Considering the materials on record, learned Additional Sessions Judge found the accused-Appellant guilty of the offence u/s 304-B of IPC and accordingly he was convicted and sentenced as aforesaid. The other accused persons, namely, Sadek Ali, Fatu Begum, Atima Bibi and Tamjid Ali were acquitted for want of evidence.

8. Mr. S. Chakraborty, learned Counsel appearing for the accused-Appellant has submitted that the order of conviction and sentence passed against the accused-Appellant was bad for want of legal evidence and that no ingredient of Section 304-B of IPC was proved against him. It is also submitted that as the parents of the deceased had arranged the marriage of the deceased against her will, she, failing to terminate her pregnancy, committed suicide. It is also submitted that the learned Trial Judge committed error by failing to appreciate the evidence of the D.Ws. and committed illegality by convicting the accused-Appellant solely relying on the evidence of the parents and the brother of the deceased. It is further submitted that the conviction was based only on surmise and conjecture and as such the same is liable to be set aside. In order to appreciate the evidence on record I would like to reproduce, in brief, the evidence given by the witnesses:

9. Mr. Sundar Ali i.e. the father of the deceased, who lodged the first information

report deposing as P.W.1 stated that after the marriage of his daughter with the accused-Appellant, her daughter was happy but after about 5/6 months of the marriage, her husband demanded Rs. 15,000/- from him. He further stated that he was informed by some villagers that his daughter was tortured demanding money. This witness further stated that on his visit also his daughter informed him that if Rs. 15,000/- was not paid then she would be killed. He stated that being worried about the condition of his daughter, as she was carrying her pregnancy, he sent his wife and son to his daughter's house and that his wife and son had assured the accused-Appellant that the money would be paid. After the return of his wife and son, on the same evening, some villagers had informed him that his daughter died due to hanging. On being so informed, this witness rushed to the hospital and found the dead body of his daughter.

10. The wife of P.W.1 i.e. the mother of the deceased deposing as P.W.2 stated that the deceased was tortured by the accused-Appellant and other family members demanding Rs. 15,000/- as dowry and that on the fateful day when she and her son visited the deceased, they found that the accused-Appellant, Ms. Hatima Begum and Ms. Hatu Begum were assaulting her daughter, who was crying in pain. According to P.W.2, she returned after assuring them that the sum of Rs. 15,000/- would be paid within 2/3 months, but on the same evening around 7/8 p.m. one person informed her regarding the death of her daughter.

11. P.W.3 Mr. Khoka Miah, the brother of the deceased deposing as P.W.3 stated that the accused-Appellant had demanded Rs. 15,000/- through his sister and that the Appellant as well as the inmates of the family members of the accused-Appellant used to ill-treat his sister. He further stated that on being instructed by his father, he along with his mother went to the house of the accused-Appellant on the fateful day and found that his sister was assaulted by the accused-Appellant and his family members. According to this witness, after assuring that the payment would be made after 2/3 months, they returned home and reported the matter to his father. On the same evening they came to know that his sister died due to hanging.

12. A careful scrutiny of the evidence of P.W.1, P.W.2 and P.W.3 reveals that on the date of occurrence i.e. the day on which the deceased committed suicide, P.W.2 and P.W.3 had visited her and found that she was assaulted by the accused-Appellant and other inmates of his house. These two witnesses returned back in the evening. They went to the house of the deceased on being instructed by P.W.1. P.W.1 nowhere stated that his wife and son i.e. P.W.2 and P.W.3 respectively had seen the accused-Appellant and other inmates of the house assaulting the deceased in their presence. What the P.W. 1 stated was that after the return of his wife and son, in the evening some villagers came and informed him that his daughter died due to hanging. If the deceased was assaulted by the accused-Appellant on the said day, that too in presence of P.W.2 and P.W.3 as stated by P.W., and P.W. 3, then naturally they should have informed P.W. 1 who was the head of the family. If the deceased was assaulted in the alleged way,

there was no reason to withhold the information from the P.W. 1. Of course the P.W.3 stated that they had informed the P.W.1. The silence of P.W.1 in this regard indicates that, probably the P.W. 2 and P.W. 3 did not inform him regarding the assault. This lapse indicates that either there was no such assault or they had intentionally withheld the same. Hence the failure of the P.W. 1 to state that he was reported by his wife and son regarding the assault on the fateful day raises doubt about the evidence of P.W. 2 and P.W. 3 that the accused-Appellant had assaulted the deceased either in their presence or on the day of their visit itself.

13. P.W.4 Smti. Askirannassa, a prosecution witness, was tendered by the prosecution for cross-examination. Due to the reasons best known to the prosecution, this witness was not examined by the prosecution. In her cross-examination this witness, who claimed to be an adjacent neighbour of the accused-Appellant, stated that the accused-Appellant who was known to him from his childhood was a good man and that he loved his wife very much. She stated that as the deceased did not love the accused-Appellant, she was willing to go back to her parents' house. She further stated that at the time of her marriage also, the deceased was not willing to give consent as she was interested to marry another person. This witness further stated that she was present at the time of visit of the mother and the brother of the deceased on the fateful day and that the accused-Appellant was not present in his house at that time. According to this witness, on the same evening the deceased had committed suicide by hanging. She clearly stated that the deceased never complained that she was ever tortured by her husband demanding Rs. 15,000/ -. Admittedly, this witness being the adjacent neighbour of the accused-Appellant had the scope to know about the relationship between the deceased and the accused-Appellant. From her evidence it appears that the accused-Appellant did not torture the deceased. There is nothing on record to show that she had any reason to falsely state in favour of the Appellant. The prosecution did not make any attempt to show that this witness was biased and her evidence was not reliable. If the evidence given by P.W.4 was not correct then the prosecution could have cross-examined her and put certain suggestions denying her evidence. Failure to do so, amounts to admitting the evidence given by the P.W. 4 as true, In view of the above, I find no reason to disbelieve her evidence. Therefore, in view of the evidence of P.W. 4 it cannot be concluded that the Appellant had tortured his wife demanding dowry. Hence the evidence of the P.W.1, P.W.2 and P.W.3 that the deceased was tortured by the Appellant demanding dowry is not free from doubt. Therefore, it is not safe to rely on their evidence to hold the accused guilty.

14. Md. Arphan Tagore, P.W.5 in his cross-examination stated that he attended the marriage of the deceased and that as she was not willing to give her consent (Kabul) she was forced to give consent by her parents.

15. P.W.6, Tahir Khan, a relative of Sundar Ali (P.W.1) stated that the parents of the deceased had told him that the deceased was forced to death by the inmates

of her husband as they could not meet the dowry demand of Rs. 15,000/ -.

16. The evidence of P.W.5 and P.W.6 indicates that they had no personal knowledge about the alleged demand for dowry and the torture. Their evidence does not inspire confidence to hold the Appellant guilty.

17. P.W.7, Abani Malakar stated that 4/5 days prior to the death of the deceased, her father went to inform him that the husband of the deceased was pressing for an amount of Rs. 15,000/ -. This witness further stated that he had advised P.W.1 to arrange the payment. The evidence of P.W. 7 does not indicate that the accused-Appellant had tortured the deceased demanding dowry. As the P.W.7 was informed by the father of the deceased regarding demand of money by the accused-Appellant, the father of the deceased should have informed P.W.7 regarding torture, if any. The silence of P.W. 7 in this regard negates the prosecution story regarding torture compelling the deceased to commit suicide.

18. P.W.8, Mr. Abdul and P.W.9 Mr. Firuj Ali were witnesses to the inquest made by the police. They did not state anything regarding injury on the dead body. P.W.10 Mr. Manoj Kumar Chanda was one of the Investigating Officers. He prepared the inquest report. P.W.11 Mr. Kamal Khan was the scribe of the complaint. He stated that he wrote the complaint on being asked by the complainant.

19. P.W.12 Dr. R. Waddader and Dr. Satyajit Paul, Medical Officers of R.G.M. Hospital stated that on 09.07.2001 they had examined the dead body of Mrs. Aajana Begum and found fracture of cricoid cartilage caused due to hanging. He opined that no external injury was found. The evidence of the P.W. 12 indicates that the deceased died due to suicide. P.W.14 was an investigating officer in the case. His evidence was formal. P.W.15 Mr. Arjun Debbarma, S.D.P.O. submitted the charge-sheet. P.W.16 Mr. Jitendra Debbarma, S.D.P.O. handed over the case diary to P.W. 16 after conducting the investigation in part.

20. The defence also examined two witnesses to disprove the prosecution case. Smt. Ayatun Bibi, a neighbour of the Appellant, deposing as D.W.1 stated that she attended the marriage of the Appellant and that the deceased gave her consent (Kabul) in the marriage after repeated persuasion. She further stated that as she declined to admit "Kabul" her father had assaulted her. According to this witness the deceased told her that she was not happy and that she wanted to leave her husband. D.W.1 further stated on being specifically asked by her regarding any maltreatment at the hands of her husband the deceased replied that her husband did nothing to her. She further stated that the deceased wanted to abort her pregnancy, but she was asked not to do so. From the evidence of D.W. 2 it appears that on the day of visit of the mother and the brother of the deceased, this witness also went to the house of the Appellant on being called by the deceased and that this witness informed the mother and the brother of the deceased about the desire of the deceased for terminating her pregnancy. According to this witness the deceased further told that if she was not allowed to

terminate the pregnancy then she will commit suicide. This witness further stated that on the said day the Appellant was not present in his residence and that the mother and the brother of the deceased left the Appellant's house after persuading the deceased to live peacefully. Md. Ayub Khan deposing as D.W. 2 stated that the P.W. 1 i.e. the father of the deceased was his cousin and that he was present in the marriage ceremony of the deceased. From the evidence of D.W.2 it is found that initially the deceased declined to admit Kabul and that she was compelled to give Kabul by her father by assaulting her. According to this witness during his visit to her house the deceased never made any complaint regarding ill treatment by her husband or mother-in-law. The D.W. 1 and the D.W. 2 were duly cross-examined on behalf of the prosecution, but nothing could be elicited to render their evidence unbelievable. Though the D.W.1 was a neighbour of the Appellant, the D.W. 2 was a relative of the informant and the deceased. From the evidence of D.W. 1 and D.W. 2, it is clearly found that the deceased, during her life time, never made any complaint against her husband and in-laws. The evidence of D.W. 1 and D.W. 2 belies the prosecution version regarding torture etc.

21. The D.W.1 and D.W.2 have negated the evidence of the P.W.1, P.W.2 and P.W.3 regarding torture and dowry death. There cannot be two different standards of weighing the evidence of prosecution witnesses and the defence witnesses. The witnesses have not been discredited by the cross-examination. Their evidence, even if they happen to be defence witnesses, cannot be treated differently. That apart, the evidence of P.W.4 also lends support in favour of the defence. Therefore, I find no reason to disbelieve the evidence of the D.Ws. and P.W. 4.

22. It is settled law that if two inferences are possible i.e. one going in favour of the prosecution and other going in favour of the accused, the inference going in favour of the accused should be accepted. In view of the evidence given by the defence witnesses aforesaid, it is found that the prosecution story is not free from doubt.

23. In the post mortem report the Medical Officer indicated that the deceased died due to aspexcia caused by hanging (suicide). The inquest report i.e. Ext. 1 also reveals that no injury was noticed on the body of the deceased. The Inquest report as well as the medical evidence clearly indicates that the deceased died due to suicide committed by her. Considering the entire evidence on record and in the light of the evidence as discussed above, more particularly, the evidence of P.W. 4, D.W. 1 and D.W. 2, I do not find it safe to conclude that the Appellant had subjected the deceased to cruelty or harassment compelling her to commit suicide. Therefore, I am inclined to hold that the prosecution failed to prove, beyond all reasonable doubt, by adducing sufficient reliable and cogent evidence, that the Appellant committed the offence u/s 304-B IPC.

24. In view of the above, I find sufficient merit in this appeal to interfere with the impugned judgment and order of conviction and sentence and accordingly, I do

so. In the result, the appeal is allowed. The impugned judgment and order dated 29.3.2005 is set aside. The Appellant be released and set at liberty forthwith.