

(2007) 12 CAL CK 0015
In the Calcutta High Court
Case No : C.R.A. No. 107 of 1994

Sarwan Kumar Korel and two Ors.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 464
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : 112 CWN 761

Hon'ble Judges : Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Sekhan Kumar Basu, Milon Mukherjee, Rudradipta Nandi, Rajdeep Mazumdar and Mangaljib Mukherjee, for the Appellant; L.M. Dutta and Ms. Hasi Saha, for the Respondent

Judgement

Girish Chandra Gupta, J.—This appeal is directed against a conviction and sentence passed by the IV Bench of the City Sessions Court at Calcutta on 25.04.94 in Sessions Trail No. 1/93 arising out of Sessions Case No. 65/92 on 25th April, 1994. The accused persons were convicted under sections 498A / 304B of the Indian Penal Code. Babulal Korel and Shanti Devi Korel were sentenced to suffer simple imprisonment of three years as also to pay a fine of Rs. 2,000/- in default to suffer further simple imprisonment of one year u/s 498A and further simple imprisonment for 7 years u/s 304B of the Indian Penal Code accused. Both these sentences were allowed to run concurrently. The advised Sarwan Kumar Korel was sentenced to suffer rigorous imprisonment for three years as also to pay fine at Rs. 2000/- in default to suffer further rigorous imprisonment for one month u/s 498A of the Indian Penal Code and further rigorous imprisonment for a period of 10 years u/s 304B of the Indian Penal Code. Both these sentences were however allowed to run concurrently. The case of the prosecution appearing from the First Information Report briefly stated is as follows:

The deceased Sarita. daughter of Kishan Lal Soni was given in marriage to the

accused Sarwan Kr. Korel, son of Babulal Korel and Shanti Devi Korel on 30th November 1989. On 2nd October 1990 a male child was born out of the aforesaid wedlock. On 1st September 1991 Sarita committed suicide. It is alleged that about six months prior to the incident Sarwan Kr, Korel asked his deceased wife Sarita to bring a lakh of rupees from her parents in order to help him start a new business. Sarita asked her parents to provide this sum which they were unable to do. Physical and mental torture thereafter was commenced upon the deceased Sarita by her in-laws including the mother-in-law Shanti Devi Korel and the husband Sarwan Kr. Korel. The torture included physical assault, abuse, misbehaviour, insults and threats with active approval of the father-in-law Babulal Korel.

2. The matrimonial house of Sarita was situate within walking distance of about five minutes from her parental house. On every 3rd/4th day Sarita would come to her parents house and complain about the torture indicted upon her. In order to settle the matter a meeting was held about three months prior to the date of incident. Kishan Lal Soni, Shri Ram Soni and Shri Poonam Chand Soni (maternal uncle of the deceased) attended the meeting on behalf of the deceased bride.) The accused persons including one Hanuman Prasad Korel participated in the meeting on behalf of the bridegroom. In the meeting the in-laws of Sarita assured her father and uncles that tortures would no more be inflicted. But the respite was short-lived.

3. Sarita repeatedly requested her father to allow her to remain in her parental house to which the complainant, P.W. 2 could not agree considering the social customs.

4. On the Raksha Bandhan day i.e. 25th August 1991 Sarita came to her parents and informed that she was feeling insecure, as he asked her father to give the demanded sum of rupees one lakh to her husband in order to save her from constant beating and cruelty.

5. On 31st August 1991 the complainant sent for his daughter Sarita to his place. The in-laws did not send her but sent the new bom child instead. On 1st September 1991 at about 12.30 hours the accused Shrawan came to the shop of the complainant and demanded a sum of Rs. 1.00,000 against security of ornaments of the deities. The complainant expressed his helplessness. He however reminded Sarwan not to torture Sarita. Sarwan left the shop of the complainant saying that there would be no further complaints.

6. At 14.30 hrs. that is to say within two hours thereafter the complainant received a message from his brother-in-law Poonam Chand Soni, that Sarita had committed suicide. The complainant immediately rushed to the matrimonial home of Sarita. He found that the police had already reached there. A suicidal note written by Sarita in her own handwriting had been recovered and seized by the police. He told the police about continuous mental and physical torture and cruelty meted out to the poor girl by her in-laws who according to him, had

compelled her to commit suicide because he could not meet their demand for a sum of Rs. 1,00,000/-.

7. The police recorded his statement at 15.10 hrs. on 1st October 1991 itself and arrested the accused from their house. The accused persons were later charged under Sections 498A and 304B of the Indian Penal Code. They pleaded not guilty and were tried.

8. The FIR case has been fully supported by Kishan Lal Soni at the trial. The evidence of P.W.2 as regards the acts of cruelty and harassment inflicted upon the deceased Sarita in connection with the demand for dowry has been corroborated by the evidence of Sreeram Soni a relation of the deceased. Bhagawati Devi another relation of the deceased, Sumitra Devi wife of P.W.4, P.W.9 Poonam Chand Soni paternal uncle of the deceased, P.W. 10 Shivnarayan Tashniwal an acquaintance of the deceased and P.W. 12 mother of the deceased.

9. It has been revealed from the evidence of P.W. 12 the mother of the deceased Sarita that the daughter of her brother Nemichand was given in marriage about 15 years ago to one of the brothers of the accused Sarwan. It also appears from the evidence that the Korel brothers were living under the same roof.

10. The acts of cruelty and harassment meted out to the deceased in connection with a demand for dowry deposed to by the aforesaid witnesses is further corroborated by the following facts:

(a) A meeting between the members of both the families was held about three months before the date of incident in order to put an end to the constant acts of cruelty and harassment. Not only the fact that such a meeting was held for such a purpose has been accepted but also the following suggestions were given to Sreeram Soni:

"It is not a fact that Nemi Chand went to the meeting as he is respectable and faithful man so we are saying that he did not go to the meeting. It is not a fact that Nemi Chand went to the meeting."

(b) P.W.2 in his cross-examination stated as follows:

"On 31st August, 1991 I sent my son Jitendra Kr. Soni to bring my daughter from her father-in-law's house but the accused persons did not send her. They sent the new born child. But I sent the child back to their house in the evening."

11. The accused Shanti Devi admitted this fact in her examination u/s 313 Criminal Procedure Code. The question No. 23 and the answer thereto read as follows:

"Q.23. P.W.2. Kishanlal Soni, has stated that, on the 31st of August, 1991 Eng. Last, he had sent his son. Jitendra to bring Sarita from her in-law's house and you all had not allowed Sarita to go and had only sent the new born baby. What do you have to say about this?

A.23. Had not gone as there was a religious ceremony."

12. The accused Babulal however had a different story in this regard to tell which would appear from the question No. 23 and the answer thereto put to him u/s 313 Criminal Procedure Code read as follows:

"Q.23. P.W.2 Kishanlal Soni, has stated that on the 31st of August, 1991 Eng. Last, he had sent his son, Jitendra, to bring Sarita from her in-law's house and you all had not allowed Sarita to go and had only sent the new born baby. What do you have to say about this ?

A.23. There had never been no such occurrence."

(c) The accused Sarwan in answer to questions No. 32 and 52 put to him in his examination u/s 313 Criminal Procedure Code has admitted that a suicidal note was recovered and seized by the police.

(d) Handwriting of the deceased Sarita in the suicidal note has been proved by the P.W. 2 which has been marked exhibit 7:

A large number of other writings of the deceased were also seized by the police which have been marked exhibit 8 and material exhibit VIII etc.

P.W. 18 the Director of Questioned Document Examination Bureau, C.I.D. West Bengal, after examining the handwriting of the deceased as also comparing with the undisputed documents confirmed that the suicidal note was authored by the deceased Sarita.

(e) It would at this stage be useful to notice the suicidal note in extenso which is written in Hindi.

"Main marne ja rahi hoon. Main is ghar mein ekdam tang aachuki. Mere pati aur meri sas ke karan mar rahi hoon. Mujhe in dono mein bahoot sataya hai. Mere pati mujhe rozana mara karte the. Mere marne ka baad mere pati aur mere sas ko itni kadi saaza di zaye taaki woh kisi pati aur par yeh julm na kar sakey. Hardam meri sas kahana ki tumahre bap ney yeh nehi diya who nehi diya aur pati ko mere khilaph bharka deti tatha woh mujhe marne aajo. Yeh log duniya mein to bahoot achhe kahlate hein lekin yeh manke itne kale hain ki yeh to sirf mein hi jannti hoon. Mere marke ke baad mere ladke ko meri manni ki yahan bhej diya jaye kyunki yahan par is ki dekhbhal karne wala koi nahi hai tatha mere maike se aayi hui sab sampatti mere maa baap ko wapas de di jaye."

13. At the time when suicidal note was recovered and seized by the police signature of all the accused persons were obtained and the left thumb impression of the accused Shanti Devi was also obtained.

14. From the evidence discussed above we have no doubt that the charges against the accused persons have duly been proved.

15. Mr. Sekhar Basu, learned Counsel appearing for the appellants submitted as follows:

I. Babulal Korel the father-in-law of the deceased Sarita died during the pendency of this appeal and therefore the appeal to that extent has abated. The death certificate was however not produced by him.

II. The torture, according to him, alleged in this case is of two types: mental and physical. He submitted that the mental torture has been attributed to the parents-in-law and the physical torture to the husband. According to him in a case like this the degree of culpability of all the accused persons cannot be the same.

He further submitted that during the pendency of the appeal the accused Sarwan has once again married and begotten two daughters. Therefore, the court should consider the fact in deciding the quantum of punishment. As regards the accused Shanti Devi he submitted that she is very old and the court should consider this fact.

III. On merits he submitted that some letters, allegedly written by the deceased Sarita were sought to be tendered in evidence but they were not exhibited.

IV. Lastly he submitted that the charge u/s 304B was not properly framed.

16. The submission of Mr. Basu, on merits of the case should be considered first.

17. We do not find any substance in the submission that the charge u/s 304B is defective. There are two charges. One u/s 498A and the other u/s 304B. Both the charges read together give sufficient notice to the accused persons as to the case they have to meet. They, as a matter of fact, understood the allegations against them and availed the fullest opportunity of cross-examining the witnesses. They chose not to adduce any evidence in defence. We therefore are not impressed by this submission. Regard being had to Section 464 of the Criminal Procedure Code we are not inclined to entertain this submission. Moreover we are satisfied that there has been no failure of justice.

18. The submission that letters allegedly written by Sarita were sought to be tendered but not allowed is equally without any basis. No witness was called on behalf of the defence. These letters allegedly written by Sarita were shown to the P.W.2 and he explained that the daughter of Shri Hanuman Prasad Korel, a brother of the accused Sarwan is also known as Sarita and these letters might have been written by her. He further deposed that these letters marked for identification as A, B, C and D did not contain the handwriting of the deceased Sarita. These letters were also, it appears, shown to the P.W. 18 who deposed that without examining the documents in the laboratory it was not possible for him to say with authenticity whether these letters contained any identical feature with the standard writing of the deceased. Another reason why we are unable to countenance this submission is that the case sought to be hinted at by these alleged letters was never put to any of the witnesses examined on behalf of the prosecution nor did any of the accused persons in his examination u/s 313 Criminal Procedure Code make out any such case. These letters, we cannot but

say, are calculated to add insult to injury.

19. The submissions made by Mr. Basu as regards the quantum of punishment, we are sorry to say, have not impressed us. Punishment has a public purpose to serve which would not be furthered nor advanced by interfering with the punishment inflicted by the learned trial Judge for we are satisfied that the learned trial Judge has" himself adopted a humane approach.

20. For the reasons indicated above the appeal is dismissed confirming the conviction and sentence imposed upon the appellants by the learned trial court. The accused persons are directed to surrender forthwith before the learned Chief Judge, City Session Court, Calcutta at Bichar Bhawan for the purpose of serving out their rest of sentences. Bail granted to the accused persons is cancelled. Since no document, in support of the submission that the appellant Babulal Korel died during the pendency of this appeal, was produced we direct the learned Chief Judge, City Sessions Court, Calcutta to hold an enquiry in this regard and to pass an appropriate order.

21. Lower Court Records with a copy of this judgement to go down forthwith to the learned Chief Judge, City Sessions Court, Calcutta, for information and necessary action. Urgent xerox certified copy of this judgment, if applied for, be delivered to the learned Advocates for the parties, upon compliance of all formalities.

Kishore Kumar Prasad, J.

I agree.