

(2002) 05 GAU CK 0011
In the Gauhati High Court
Case No : Criminal Appeal No. 312 of 2000

Shambhu Paul and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 304(B), 498

Citation : (2002) CriLJ 3359 : (2003) 2 GLR 122 : (2002) 2 GLT 674

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : A.B. Choudhury, A. Abedin, R. Das, A. Mahanta and I. Rafique, for the Appellant; K. Munir, PP, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—I have heard Mr. AB Choudhury, learned counsel for the appellants and Mr. K Munir, learned P P Assam.

2. This appeal has been carried from the Judgment and order dated 19.12.2000 passed by the learned Sessions Judge, Karimganj in Sessions Case No. 27/98 convicting the two appellants namely Sambhu Paul and Bhola Paul u/s 498A/304B read with Section 34 IPC and sentencing them to rigorous imprisonment for three years and a fine of Rs. 5000 each, in default, rigorous imprisonment for one year for offence u/s 498A, IPC and also rigorous imprisonment for seven years u/s 304B, IPC. The sentences of imprisonment are to run concurrently.

3. The prosecution case, in brief, is that late Shyma Paul was married to appellant No. 1, Sambhu Paul on 14.12.1994. Since her marriage the appellant No. 1 along with his mother brother and sister, being not satisfied with the usual gifts given at the time of marriage, used to assault and inflict torture on her. On 22.9.1995, the Younger brother of the appellant No. 1, one Shri Chutan Paul (since acquitted by the trial Court) left the deceased in her parents' house at her

advance stage. During her stay at her parental home she had to be admitted to a Hospital namely, "Life Line Nursing home" at Silchar where she delivered a still born baby. It was also alleged during her stay at Hospital the appellant No. 1 the husband of the deceased did not care to inquire about her health, rather on request being made by the family members of the deceased, he flatly refused to see his ailing wife (deceased). While the deceased was in Hospital, the appellant No. 2 also went there to tell her that his brother, i.e., the appellant No. 1 was not willing to bring her back. It was also alleged that the appellant No. 1 used to talk with the deceased on telephone of their neighbour Bipul Bihari Senapati (PW-3), and threatened her on various ways. The deceased sister told the informant and others that she would be taught extreme lessons by her husband if she desired to go to his house. It was on 20.11.1995 when the appellant No. 1 talked to the deceased over telephone informing her that he was going to remarry another woman and would abandon her and hearing the same the deceased lost her mental balance. Eventually, on the night of 22.11.1995 she became untraced from the dwelling house of the informant and only on 23.11.1995 the dead body of the deceased was found floating in the pond of PW-3 (Bipul Behari Senapati). Later it was learnt that she committed suicide with a fastening pitcher tied around her neck. Due to the torture meted out to her by the appellants and the family members, the deceased Shyma Paul compelled to commit suicide and the same was revealed from the suicidal note left by the deceased which was found under the pillow of the deceased.

4. There were two FIRs lodged in the case. The first FIR was lodged by one Motilal Bhattacharjee (PW-2) on 23.11.1995 with the Police of Tarapur Out Post under Silchar Police Station informing that the dead body of sister Shyma Paul was found on 23.11.1995 floating on a pond water after being reported to be missing and the Police registered a case of unnatural death as Silchar Police Station U/D case No. 135/95. Thereafter the second FIR was lodged on 24.11.1995 by the PW-1 (Chayan Paul), brother of the deceased, with Karimganj Police Station narrating the factual position on the basis of which the prosecution's case proceeded.

5. Pursuant to the said FIR a case was registered u/s 498A/ 304B, IPC against the appellants along with their brother Chutan Paul, mother Smt. Shefali Paul and sister Shilpi Paul, Police took up the matter for investigation and charge-sheet was finally submitted against all those 5 accused including the appellants, During trial, the prosecution examined as many as 10 witnesses including the doctor, P.W. 10 and the Police officials, PWs 7, 8 and 9 who were responsible for investigation of different stages.

6. Learned Sessions Judge, by the impugned Judgment, after consideration of the evidences, found the appellants guilty for offence under Sections 498A and 304B, IPC read with Section 34 IPC and convicted and sentenced them as aforesaid, but acquitted the other three accused persons, i.e., brother, mother and sister of the appellants. Aggrieved by the said impugned Judgment this

Criminal appeal is before this Court.

7. Learned counsel for the appellants, Mr. AB Choudhury has contended that since the deceased, no doubt, committed suicide in her parents' house, there was no direct evidence that the deceased was subjected to cruelty and harassment by the appellants in order to bring home the charge of offence under Sections 304B and 498A, IPC against them. The present death of the deceased by committing suicide by no stretch of imagination can be said to be a "dowry" death. According to him, the filing of second FIR detailing torture and dowry demand itself goes to show that the prosecution tried to cook up a story of dowry death to indict the appellants. He has also submitted that all the ingredients of Section 304B as well as Section 498A, IPC are not made out and as such, in the absence of any ingredients under those Sections, the appellants ought not to have been convicted. It is also the submission of Mr. Choudhury that the suicidal note (Ext. 1), written and signed by the deceased which was solely relied by the learned Judge, cannot be accepted as an admissible document, not being proved either by other hand writings of the deceased or by sending the same to the hand writing experts. The last submission of the learned counsel is that there was no evidence as adduced by PW-1 (Chayan Paul), PW-3 (Bipul Behari Senapati), PW 4 (Sita Paul) PW 5 (Banika Singha) to prove that the appellants were in any manner responsible for the death of the deceased.

8. Before appreciation of those submissions advanced on behalf of the appellants, it would be appropriate and necessary to have a look on the relevant provisions of law involved in this case.

9. Section 304B IPC runs as follows :

"304B. Dowry death. - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such in death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation - For the purposes of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

10. A close analysis of this Section clearly shows that this has the following ingredients -

"(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances ;

- (2) Such death should have occurred within seven years of her marriage ;
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband ;
- (4) Such cruelty or harassment should be for or in connection with demand for dowry."

Be it mentioned herein that this provision was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combat the increasing menace of dowry deaths. In this section the word "cruelty" has not been defined. On the other hand, the meaning of the word "dowry" as appeared in this section shall have the same meaning of dowry as laid down in Section 2 of the Dowry Prohibition Act, 1961 which defined "dowry" as follows -

"2. "Definition of "dowry" - In this Act dowry means any property or valuable security given or agreed to be given either directly or indirectly -

- (a) by one party to a marriage to the other party to the marriage ; or
- (b) by the parents or either party to a marriage or by any other persons, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

11. Having regard to this object the Parliament introduced a new section being 113B in the Evidence Act in order to raise a presumption as to the dowry death. The same is extracted hereunder :

"113B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation - For the purposes of this section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code."

This section provides that if soon before the death of such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry, then the court shall presume that such person has committed the dowry death.

12. Next provision of law which is important in our present context is Section 498A, IPC which reads as under :-

"489A. Husband or relative of husband of a woman subjecting her to cruelty. - Whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation -- For the purposes of this section, "cruelty" means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman ; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or any person related to her to meet such demand."

13. From the plain reading of the provisions of law above referred, it may be said that the meaning of the word "cruelty" for the purpose of those sections has to be gathered from the language as appeared in Section 498A wherein the cruelty means "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health or such harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand". Again, according to the definition of "dowry" any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of dowry.

14. In this backdrop of the provisions of law, now let me examine the factum of the instant case in the light of the evidence adduced by the witnesses.

15. PW-1 (Chayan Paul) and PW-4 (Sita Paul) being brother and mother respectively, are the interested witnesses. In their deposition they stated that the appellant No. 1, since marriage, started torture and assault upon the deceased in order to compel her to bring Scooter and gold chain from her parents "house. As they could not satisfy the said demand, on 22.9.1995 the brother of the appellant No. 1 (Chutan Paul) took the deceased to their house and left her there though she was, at that time, pregnant. She was hospitalised thereafter and a dead child was delivered by her. After attending the telephone call on 22.11.1995 at the house of PW-3 (Bipul Behari Senapati), the deceased told them that the appellant No. 1 decided to remarry another girl for which she became nervous and ultimately she committed suicide leaving a suicidal note.

16. Strangely, though demand of dowry itself is a crime, the PWs 1 and 4 did not take any initiative either to inform the Police or to go for legal recourse relating to and cruelty or dowry demand till the death of the deceased. On scrutiny of the evidences of these two witnesses from all angles, it appears that the present case of dowry demand was designed immediately after death of the deceased. Because on cross, PW-1 clearly stated that he did not state before the Police that the appellant demanded scooter and gold chain as dowry. The mother, PW-4 came on cross saying that she did not file any case against the appellant for the act of demand of dowry. So much so, the writing of Ext. I (Suicidal note) itself smacks of suspicion and doubt inasmuch as, the same was neither compared from the other hand writings of the deceased nor proved by the hand writing

expert. PW-4 the mother, in her cross, deposed that they were in possession of another letter written under the hand of her daughter and except that letter, they had thrown away all other books and khatas of the deceased after her death. But that another letter was not produced by the prosecution to compare the handwriting of the deceased in the suicide note. This witness did not explain what made her to throw the other books and khatas of the deceased immediately after her death. That being so this Ext.1 cannot be accepted to be a document on which reliances can be placed for conviction of the appellants. On careful perusal of the testimony of these two witnesses, I am of the view that the witnesses PW-1 and 4 are not trustworthy.

17. PW-3 (Bipul Behari Senapati) and PW-5 (Banika Singha) are the neighbours. Going through their evidences, it makes abundantly clear that they failed to prove the case of the prosecution to the effect that the appellants have acted in such a manner which compelled the deceased to commit suicide. No wilful conduct was proved against the appellants. PW 3 merely stated that on 20.11.1995 the deceased Shyma Paul attended a telephone call from her husband in his home and then she told him that her husband had told her over telephone that he was going to remarry for dowry. On cross it was stated that he did not tell the police that on 20.11.1995 the appellant No. 1 gave a telephone call at his house and his daughter received the call and thereafter the deceased was called to attend the same and after telephonic conversation from 2/3 minutes the deceased left with tear in the her eyes. PW-5 (Banika Singha) another neighbour, deposed that she came to know from reliable sources that the deceased's husband demanded a gold chain, scooter and money in the form of dowry and when demands were not met she was subjected to physical and mental torture. But "reliable sources" was disclosed by this witness. Further she deposed that the deceased told her that her husband told over telephone that he was going to perform a second marriage and told her not to return from her parents' house. This piece of evidence cannot be believed due to the fact that this witness failed to divulge when and under what circumstances, she was told by the deceased about the said action of her husband as the telephone call allegedly received by the deceased only on the evening of 20.11.1995 at about 9.30 PM. Thereafter, it appears from the evidence, that she lost her mental balance and was missing since 22.11.1995. Her dead body was found on 23.11.1995. In her cross, she categorically stated that she did not mention to the police that the deceased told her that she was tortured.

18. On careful perusal of the evidences of these witnesses, it appears to me that there is no credibility of the testimony of these two witnesses. Moreso, the learned Sessions Judge in his finding also recorded that as per evidence of the Police Officials, i.e., Jaimuddin Borbhuyan, PW-7, Banika Singha (PW-5) had not stated before him that the deceased reported her about the demand of scooter from her husband. So according to the learned Judge the evidence of this witness did not inspire so much confidence to believe her.

19. Another important aspect of this matter is that the tendency of the prosecution to rope in all the relations of the appellants family in the instant case. But though the learned Sessions Judge found no materials to convict those relatives i.e., mother, brother and sister, appellant No. 2, being one of the brothers of the appellant No. 1, was convicted and sentenced. After going through deposition of PW-1 and PW-4, this Court did not find any evidence against the appellant No. 2. Only part, claimed to be played by him, as deposed by PW-1, was that he went to the Nursing Home and told the deceased that this brother Shambu was not willing to bring her back home. This is simply the over enthusiasm and anxiety on the part of the prosecution to seek conviction for relatives also but such efforts ultimately weaken the case of the prosecution as appears to have happened in this instant case. By mere conjectures and implications, such relations, i.e., appellant No. 2 cannot be held guilty for the offences relating to dowry death.

20. Insofar as lodging of FIR is concerned, the filing of second FIR itself cast doubt as regards the veracity of the prosecution story. When first FIR was lodged on 23.11.1995 by PW 2, the dead body of the deceased was already found. But there was not a single whisper about her death as dowry death. It was only in second FIR lodged on 24.11.1995 by the PW-1, all hue and cry had been made detailing and elaborating a case of dowry death. The narration of events in the FIR itself gives an indications of cooking up a story of after thought and consultation for commission of offence u/s 304B/498A, IPC.

21. On proper appreciation of the evidences of all those witnesses above mentioned, there is no evidence on record to prove the plea of demand of dowry by the appellants nor there is any direct evidence to prove the fact that cruel treatment was ever meted out to the deceased. The prosecution tried to make out a case that deceased was compelled to commit suicide due to the telephonic call from the appellant No. 1 mainly on the basis of the suicidal note. But interestingly no attempt was made by the prosecution to prove the Ext. 1 to make it admissible in the eye of law. The benefit of doubt, arising as a result of consideration of evidences, must accrue in favour of the appellants. Neither "cruelty" nor "wilful conduct" to compel the deceased to commit suicide has been proved in the instant case beyond reasonable doubt.

21. The present conviction of the appellants, in my considered opinion, was only on the basis of vague and inconsistent testimony of those interested witnesses, i.e., mother, brother and particularly the neighbours who even could not prove the demand of dowry and wilful conduct of the appellants leading to the death of the deceased.

22. Consequently the present conviction and sentences of the appellants cannot be sustained and the same is hereby set aside.

23. In the result the appeal is allowed. Appellants are acquitted. Bail bond stands discharged.