

(2017) 11 GAU CK 0001
In the Gauhati High Court
Case No : 67 of 2008

Siraj Uddin Borbhuiya S/O Late Gulzar Ali, & Ors. APPELLANT
Vs
State of Assam RESPONDENT

Date of Decision : 01-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 313](#), [Section 374\(2\)](#)
a> - Examination of witnesses by police - Power to examine the accused - Appeals from convictions<B

Citation : (2017) 11 GAU CK 0001

Hon'ble Judges : Hitesh Kumar Sarma

Bench : SINGLE BENCH

Advocate : KA Mazumdar, BJ Dutta

Final Decision : Allowed

Judgement

1. This appeal, under Section 374(2) of the Cr.P.C., is preferred against the judgment and order, dated 18-12-2007, passed by learned Sessions Judge, Hailakandi, in Sessions Case No. 01 of 2006, convicting the accused-appellants, under Sections 304(B)/34 of the IPC and sentencing them to undergo rigorous imprisonment for 3 (three) years each and to pay a fine of Rs.1,000/- each, in default, to suffer rigorous imprisonment for 15 days.

2. I have heard Mr. KA Mazumdar, learned counsel appearing on behalf of accused-appellant. I have also heard Mr. BJ Dutta, learned Additional Public Prosecutor, Assam.

3. I have perused the judgment of the learned trial Court as well as the evidence of 8 witnesses examined by the prosecution and one witness, examined by the defence.

4. The prosecution case, in brief, is that on 17-06-2004, the accused-appellants assaulted the deceased Ruma Begum. The accused-appellants are the in-laws of

the deceased. The accused-appellants earlier demanded dowry from the deceased following which there was village "Salicha". Thereafter, on the date of occurrence, the victim was assaulted and then administered poisonous substance, namely, Aldrin causing her death. The dead body was taken in a pushcart (thela) out of the house of the accused-appellants, which the informant, who is the father of the deceased, saw while he was coming to the house of the accused-appellants, after getting the information that the deceased died after consuming poison. Thereafter, PW1/father of the deceased took the dead body of the deceased to the civil hospital, where post mortem was done. On the next date, i.e. on 18-06-2004, he lodged the FIR with the Hailakandi Police Station. Hailakandi Police Station registered a case, being No. 153/2004, under Section 498(A)/302/34 of the IPC.

5. On receipt of the FIR, on the above facts, after registration of the case, investigation was carried out and during investigation, the Investigating Police Officer examined the witnesses under Section 161 of the Cr.P.C., collected the post mortem examination report and inquest report, prepared sketch map of the place of occurrence, and after completion of investigation, laid charge-sheet against the accused-appellants.

6. The learned trial Court, after exhausting all the required formalities, framed formal charge initially under Sections 302/34 of the IPC, and thereafter, charge was altered to that of Section 304(B)/34 of the IPC.

7. After completion of the trial, the learned trial Court convicted the accused-appellants, as indicated above.

8. In this case, prosecution examined as many as 8 witnesses, including the doctor, who performed the post mortem examination as well as the Investigating Police Officer. The defence examined one witness. The defence case is of total denial. In the statement, recorded under Section 313 Cr.P.C., the accused-appellants denied the fact of commission of the offence alleged.

9. I have scanned the evidence of the prosecution witnesses as well as the defence witness.

10. This Court is now to see, on the basis of the evidence on record, whether the death of the deceased, Ruma Begum, occurred otherwise than under normal circumstances within 7 years of her marriage, after being subjected to cruelty or harassment by the accused-appellants, who are the relatives of her husband, being in-laws, in connection with demand of dowry.

11. The evidence of PW1, who is the father of the deceased/Ruma Begum, is that, the deceased was married to one Abdul Mannan son of the accused appellant Siraj Uddin Laskar and Mayajan Bibi about 6/6 1/2 years back, and at the time of marriage, some articles were given as gift, but thereafter also, she was subjected to torture at her in-laws house due to failure on her part to meet the demand for dowry. On the date of occurrence, the accused appellant Mayajan

Bibi went to their house and informed that their daughter/deceased committed theft in respect of some rice following which, she was assaulted by the accused appellants. While accused appellant Mayajan Bibi was telling the matter of the deceased about the commission of theft of rice by the deceased, her son appeared there, and informed that the deceased consumed some poisonous substance and wanted his mother/accused appellant Mayajan Bibi to leave for her home, and she left accordingly. Thereafter, the informant/father of the deceased was on his way to the house of the accused appellants and found in the midst that the dead body of her daughter/deceased was being brought in a pushcart (thela) covered by white cloths and when he removed the white cloth, he found the dead body of his daughter/Ruma Begum.

12. PW2 is found to have stated in her evidence that the deceased Ruma Begum was married to Abdul Mannan, i.e. the son of the accused appellants Siraj Uddin Laskar and Mayajan Bibi about 6 years back from the date of the alleged occurrence and that deceased Ruma Begum was subjected to torture by the inmates of the house of her husband on demand of dowry and following which a village meeting was held. At the time of occurrence, he heard hue and cry in the house of the accused appellants, on a Thursday, at about 11:00 am while she was out to a pond to fetch water. Then she came to the house of the accused appellants and found that the accused appellant Siraj Uddin and others inflicting fist and blows on the person of the deceased/Ruma Begum confining her in a room. The deceased was heard crying at that time. She is very specific in her evidence to say that the accused appellant Siraj Uddin gave a forceful blow with his leg on the body of the deceased/Ruma Begum and Ruma Begum became senseless and suspecting her to be dead, the accused appellant Mayajan Bibi brought some bottle and poured some liquid substance in her mouth, and seeing the same, she raised alarm. Thereafter, PW3 arrived at the place of occurrence. He also saw the deceased/Ruma Begum succumbed to her injuries inflicted by the accused appellants. He also stated in tune with PW2, that the occurrence took place about 2/3 years back at about 11:00. He came to the house of the accused appellants after hearing the alarm raised by the PW2, but the accused appellants prevented him from entering into their house. Accused appellant Abdul Sattar was wielding a dao at that time and restrained him from further proceeding. He also saw that the accused appellant taking the body of the deceased in a pushcart (thela). He also saw that the accused appellants pouring of Aldrin in the mouth of the deceased. PW5 is also found to have stated in her evidence that the marriage took place 6/7 years back between the deceased and Abdul Mannan Laskar, i.e. the son of accused appellants Siraj Uddin Laskar and Mayajan Bibi. On the date of occurrence, while he went to collect some firewood in a tea garden jungle, he heard some hue and cry in the house of the accused appellants following which, he proceeded to their house although the accused appellant Abdul Mannan prevented him from entering into their campus with a sharp weapon in his hand at that time. He also saw a women running out of the house of the accused appellants who was caught hold of by the accused

appellants and saw them assaulting her, following which, she fell down with further assertion in his evidence that he found the accused appellants pouring some poisonous substance in the mouth of the deceased/Ruma Begum on the direction of the accused appellant/Abdul Sattar. It has also come out from his evidence that the accused appellant/Mayajan Bibi went to the house of the deceased to inform that the deceased had committed theft in respect of some rice for which she was assaulted by the accused appellants. While she was talking in the parental house of the deceased, her son came there and informed that deceased/Ruma Begum was lying almost dead at their house and wanted the accused appellant Mayajan Bibi to go back to their house, and accordingly, she hurriedly went back. This witness also smelt poisonous substance in the dead body of the deceased/Ruma Begum. There is further evidence by this witness, in conformity with the evidence led by PW2, that there was a village bichar sometime back in connection with the torture meted out to the deceased by the accused appellants in their house on demand of dowry.

13. PW4 is the doctor, who performed postmortem examination of the deceased and found as follows : The stomach of the deceased was full of undigested rice particle mixed with milky white liquid substance having typical odour of organo-phosphorous pesticide and duodenum contained partially digested food stuff mixed with white liquid substance having typical odour of organo phosphorous pesticide.

Opinion : the death of the deceased was due to intake of organo phosphorous pesticide.

He has exhibited the postmortem vide Ext.1.

14. The evidence of PW6 and PW7 also makes it appear, consistent with the evidence of PW1, PW2, PW3 & PW5, that they all heard hue and cry in the house of the accused appellants, came to the place of occurrence, and were resisted by the accused appellant Abdul Sattar from entering into their house (place of occurrence) and that they saw the dead body of the deceased was being taken in a thela after pouring Aldrin in her mouth. The evidence of PW8, Investigating Officer of this case, is in respect of the investigation of the case although during his cross-examination, defence made some suggestions as to the fact on which the witnesses did not make any statement under Section 161 Cr.PC.

15. The evidence on record appears to be consistent so far the hue and cry in the house of the accused appellants raised by the deceased is concerned and also in respect of assault on her person by the accused appellants, except accused Mayajan Bibi. The evidence is also found to have tallied with each other so far pouring Aldrin as poisonous substance in the mouth of the deceased is concerned. In spite of the fact that the informant, in the First Information Report, stated that the marriage between the parties took place 10 years back yet, during in his evidence, on oath, and of the other non-official witnesses are found to have stated that the marriage took place 6/7 years back from the date

of occurrence. This fact has not been disputed by the defence either in the cross-examination or even by the defence witness. So, such evidence, that the deceased died within 7 years of her marriage, is a fact remains corroborated and unshackled.

16. Now, the question is that, whether there is any demand for dowry and whether the death was otherwise than under normal circumstances ?

17. The expression "soon before the death", appearing in Section 304(B) IPC speaks of a nexus between the inflection of the dowry related harassment and cruelty on the women and the death.

18. In the instant case, although there is evidence that the deceased was subjected to torture by her in-laws, i.e. the accused appellants due to her failure to meet the demand of dowry about 2/2 1/2 years, for which a village meeting was held, yet, what transpired immediately before the date of occurrence to bring out the proximity of the death to the demand, has not come out.

19. In *Mustafa Shahadal Shaikh vs State of Maharashtra*, reported in (2012) 11 SCC 397, the Hon'ble Supreme Court while outlining the ingredients of Section 304B IPC held as under:-

"9. In order to convict an accused for the offence punishable under Section 304-B IPC, the following essentials must be satisfied:

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with, demand for dowry".

When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death.

20. So, the undisputed fact is that, the death occurred within 7 years of her marriage in the house of her in-laws as a result of torture committed on her person by them. Now, the question, as stated above, whether "soon before the death", the deceased was subjected to cruelty or harassment by her husband or any relatives of her husband and whether the same was for demand of dowry. It has come out from the evidence on record that there was demand for dowry 2/2 1/2 years back. There is a meeting in the village of the village people to settle the issues between them in respect of torture meted out to her owing to her failure to meet the demand of dowry and the evidence of the PW1/father of the victim also makes it appear that she was continued to be tortured by in-laws,

meaning thereby, that the torture was because of failure to meet the demand of dowry before death of the deceased.

21. This presumption has to be drawn in the instant case in view of the fact that when assault and pouring of Aldrin on the person of the deceased is found to have been proved, there is no other tangible reason comes out from the evidence on record that she was assaulted, ultimately causing her death for reasons other than dowry demand, and even if the proximity of the demand of dowry, with the death of the deceased has not specifically come out yet, the fact remains that the circumstances under which she died was not normal.

22. The defence, during the cross of PW1, attempted to stage a story that the deceased was assaulted because of commission of theft of rice which fact has not been established and even the defence witness did not utter a single word to make such story probable.

23. The evidence on record, on consideration as a whole, does not make it believable that the accused appellant Mayajan Bibi, who had been in the parental house of the deceased had any role in causing the death of the deceased, in view of the fact that she was informed, while in the parental home of the deceased, by her son that the deceased was lying on the ground counting her moments, meaning thereby, that before reaching her house back, the deceased died.

24. That being so, in the considered view of this court, the evidence of the prosecution, as discussed above, does not make it appear that the accused appellant/Mayajan Bibi, was one of the persons who committed the offence of causing death of the deceased/Ruma Begum. So far the other accused appellants are concerned, there is consistent, corroborative and unshaken evidence. That being so, the prosecution has not been able to prove the case against the accused appellant/Mayajan Bibi and has been able to prove the case against the remaining accused appellants.

25. Let me now see whether the defence witness, examined by the accused appellants, has been able to demolish the prosecution case. While the defence witness is found to have admitted in his evidence that there was a village meeting for settling the issues between the deceased and her in-laws so far the torture on her person is concerned and in the absence of any other evidence, the defence fails to demolish the prosecution case.

26. That being so, there is no ground made out by the accused appellants, except the accused appellant/Mayajan Bibi, to interfere with the order recording their conviction as well as the sentence, as indicated above. Therefore, the conviction and sentence, in respect of the accused appellants, except Mayajan Bibi, is affirmed, and in respect of accused appellant/Mayajan Bibi, the appeal is allowed.

27. It deserves a mention here that the sentence imposed by the learned trial court is rigorous imprisonment for 3 years to the accused appellants, which is

less than the minimum punishment prescribed under Section 304(B) IPC. There is no appeal preferred by the state, and therefore, this court cannot interfere with the sentence to raise the same.

28. Accused appellants, except accused appellant Mayajan Bibi, are directed to surrender before the learned trial court to serve out the sentence. The period of detention of the accused appellants, except accused appellant Mayajan Bibi, during the investigation and trial, if any, be set off against the substantive sentence.

29. Accordingly, the appeal is, partly allowed.

30. Send down the LCR along with a copy of this judgment.