

(2017) 04 CAL CK 0032
In the Calcutta High Court

Case No : 282 of 2016?With?C R A N No 1048 of 2017

Sk. Rabi @ Rabiul

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#) - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 498A](#)/
[Section 304B](#) - Husband

Citation : (2017) 04 CAL CK 0032

Hon'ble Judges : Siddhartha Chattopadhyay

Bench : SINGLE BENCH

Advocate : Debasish Roy, ?Anirban Mitra, ?Nipa Mallick, ?Issita Paul, ?Prasun Kr. Dutta, ?Aniket Mitra, ?Imran Ali

Judgement

1. The appellants herein challenged the judgment and order of conviction dated 07.04.2016 and 08.04.2016 passed by the Additional Sessions Judge 1st Court, Contai, Purba Medinipur in Sessions Trial No. X/March 2011. From the impugned judgment, it appears that the learned trial court found the appellants guilty and they were directed to suffer rigorous imprisonment for seven years each for committing the offence under Section 304B of I.P.C. and also to suffer rigorous imprisonment for two years each for the offence committed under Section 498A of I.P.C.

2. According to the appellant, the learned trial court ought to have held that there was no dowry death at all in view of the ingredients as laid down in Section 304B of I.P.C.

3. To appreciate the grievance of the appellants, the prosecution case needs to be revisited. The prosecution case in a capsulated form is such that marriage between the victim and the appellant No. 1 was held on 22.10.2008 as per Muslim Rites and Ceremonies. At the time of said marriage, the victim's father

had given valuables and cash of Rs.50,000/- as demanded by the appellant No. 1 and also promised to pay of Rs.10,000/- more after the said marriage. After a few days the appellant No. 1 started assaulting the victim for non-payment of Rs.10,000/-. Time to time the appellants provoked her to bring that money from her parents' house. Considering the poverty of the complainant, victim initially did not divulge her agonies to her parents. However, after coming to know about the alleged torture for dowry, the parents and some other villagers went to the house of the appellants to pacify them. On 15.02.2009, the victim found the appellant No. 1 in a compromising position with his boudi (appellant No. 6). Being aggrieved at it, the victim reported this ill-episode to her mother. Out of grudge, for such disclosure of that ill-episode, the appellant No. 1 mercilessly had beaten her up. On the next day, the complainant came to know that her daughter breathed her last.

4. After registration of the F.I.R. the investigating agency came into operation. In course of investigation, the Investigating Officer recorded the statement of the available witnesses under Section 161 Cr.P.C., collected inquest report and post mortem report and thereafter submitted chargesheet under Section 498A/304A of I.P.C. Pursuant to the charge-sheet submitted by the Investigating Officer, the accused persons were put on trial.

5. To come to a finding we should have a look upon the evidence of the prosecution witnesses. Prior to going through the evidence it has to be kept in mind that to constitute the offence under Section 304B of I.P.C., the death of woman must be otherwise than under normal circumstances and it must be within seven years of her marriage and at the same time it has to be 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. The dowry as mentioned in Section 304B of I.P.C. shall have the same meaning as in Section 2 of the Dowry Prohibition Act 1961.

6. On perusal of the evidence of all the prosecution witnesses two ingredients of the offences have been amply proved. Nobody disputed that the victim died within a few months from the date of her marriage. Post mortem report goes to suggest that it was a suicidal death caused by hanging i.e. otherwise in normal circumstances. So these two ingredients have been established from the prosecution witnesses.

7. At the same time to constitute the offence under Section 304B it has to be shown that soon before her death she was subjected to cruelty or harassment by her husband and other relatives and that must be for any demand for dowry. In such circumstances, evidence of prosecution witnesses in regard to this aspect is to be scrutinized very meticulously.

8. The P.W. 1 is the father of the victim. In course of examination-in-chief, he stated that he had gifted the articles in the marriage of his daughter and that there was a demand of Rs.50,000/- but he had paid Rs.40,000/- in cash and

assured that remaining 10,000/- would be paid later. But since that was not paid the victim was subjected to torture physically and mentally. Thereafter, the appellants demanded 40,000/- more and the victim was pressurised for bringing of Rs.40,000/- + former dues of Rs.10,000/-. After such demand was made by the appellants, the de facto complainant and his villagers went to the house of the accused persons and called for interference of the local panchayat. The appellants assured that torture will not be perpetrated upon her. But their assurance was not given effect to. She was again tortured. The de facto complainant sought for intervention of local panchayat again. All these happened within three months of the marriage. Thereafter, on 3rd Falgun of 1415 BS the victim noticed that her husband had illicit affairs with his Boudi. She reported this incident to her father-in-law and also her mother and at that time the appellants assaulted her. In course of cross-examination the de facto complainant made contradictory statements. According to him, after ten to twelve days of victim's marriage, the victim and her husband came to his house for the last time. The victim died within five months from her marriage. If his such statement is taken into consideration then in that case it can be safely hold that his daughter and son-in-law did not visit his house within last four months of their marriage. He also candidly stated that he also visited the house of the appellant just 17/18 days before the death of the victim. It is admitted by this P.W. 1 that when his daughter reported him about the alleged torture and assault, he did not inform local police station or the panchayat, although in his chief he has stated that he sought for intervention of the panchayat. In his cross-examination he also stated that salishi took place for the first time after two months in the house of the appellants. But this part of his such evidence has not been corroborated by any other witnesses. So from his evidence it does not transpire that soon before her death she was subjected to cruelty or harassment by the appellant in connection with any demand for dowry. If at all dowry was demanded that was nearly four to five months back from the death of the victim. He, however, firmly stated about the illicit relationship between the appellant No. 1 and appellant No. 6.

9. The P.W. 2, is the mother of the victim. Her examination-in-chief is almost the replicated version of the F.I.R. But in cross-examination, she categorically admitted that her daughter never informed her demand of money by coming to their house. It also transpired from her evidence that her daughter and son-in-law came to her house only twice from the date of marriage to the date of death. Rest part of her evidence was in the form of denial only.

10. The P.W. 3, deposed in this case and he never claimed that he saw the incident of torture. According to him, there was a salishi in presence of panchayat but no other witnesses stated about any salishi alleged to have been held regarding this family dispute.

11. The P.W. 4, has tried to improve the case by saying in his examination-in-chief that he was present when the victim told her parents about the torture and

that was after two months from the date of marriage. But the evidence of P.W. 1 is something else. According to him, that after ten to twelve days of the victim's marriage, the victim and the appellant No. 1 came to his house for the last time. Therefore, victim's presence in the house of the complainant after two months seems to be unbelievable. He again stated that after five to six days when he was present in house of the complainant, there was a telephonic call from the victim. But his such part of his evidence has not been corroborated either by P.W. 1 or P.W. 2.

12. The P.W. 5, candidly stated that he does not know the cause of her committing suicide.

13. The P.W. 6, has also tried to establish a case that a salishi took place, but it has been negated by the mother of the victim in course of cross-examination. However, he admitted that the victim did not say anything to him.

14. The P.W. 7 and the P.W. 8 are the witnesses to the inquest. P.W. 8 only added that he does not know the cause of her committing suicide.

15. The P.W. 9, is a witness to the seizure. He does not have any personal knowledge regarding the alleged incident.

16. The P.W. 10, held inquest of the victim and proved the same. P.W. 11, is the scribe. According to him, as per instruction of the complainant he had detained it.

17. The P.W. 12, is the Investigating Officer of this case. In course of cross-examination, he candidly stated that the P.W. 2 never told him that after getting the information about the death of her daughter, he went to the house of the accused persons along with local people nor did she say that there was a demand of Rs.60,000/- out of which Rs.50,000/- was paid and Rs.10,000/- was due. He has further stated that P.W. 2 never told him that any demand of Rs.40,000/- was made. According to him, P.W. 4 never told him that after the demand of money by the accused persons, he along with the victim's parents went to the house of the appellants. The said P.W. 4 never told him that after five to six days of settlement of the dispute he was present in the house of the complainant and at that time he received a telephone call. Therefore, the evidence of P.W. 2 and P.W. 4 cannot be accepted as a gospel truth because there are vital omissions and contradictions in their testimonies. Practically there is no evidence that soon before her death (i.e. suicide) the victim was physically and mentally tortured for dowry. It is in evidence that nearly four months back, since the date of incident, the victim was tortured. But there is no evidence that at that point of time she was tortured due to non-fulfilment of payment of dowry. It is true that in Section 304B of I.P.C. there is no time limit as to when it will be presumed as "soon before her death". At the same time the words used in the section "soon before her death she was subjected to torture for demand of dowry". Therefore, if at all any dowry demand was placed four months back and the victim committed suicide after four months from the alleged demand of dowry that does not come within the purview of "soon before her death". On the contrary, it is established

from the evidence that the appellant No. 1 had illicit affairs with the appellant No. 6 and the victim had seen the appellant No. 1 with a compromising position with his boudi. She might have divulged this incident to her kiths and may be to her matrimonial inmates. A newly married lady when sees her husband is having an extra-marital affairs with a lady, she might have suffered a huge mental shock which might have led her to commit suicide. It is not unusual because it depends on the mental perception and level of tolerance of a person concerned. But such extra-marital affairs cannot come within the purview of Section 304B of I.P.C.

18. Considering all these aspects, I am of the view there is no evidence that soon before her death she was subjected to torture for demand of dowry. The learned Trial Court has lost sight of this aspect. Having regard to the facts and circumstances of the case, this Court is of the view that the prosecution hopelessly failed to substantiate the ingredients of "dowry death" in terms of Section 304B of I.P.C.

19. Accordingly, the judgment and order of conviction recorded by the learned trial court are hereby set aside. The appellants are in custody and so they be set at liberty at once. Since the appeal is disposed of the application bearing no C.R.A.N. 1048 of 2017 has become infructuous and it is also disposed of.

20. Let a copy of this order be sent to the learned trial court for information and taking necessary action. He is further directed to send a copy of this judgment to the jail authority for release of the appellants, unless their detention is required in connection with other cases, if any. Let the L.C.R. be sent down at once.

21. Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.