
(2010) 02 GAU CK 0069
In the Gauhati High Court
Case No : Criminal Appeal No. 196 of 2007

Umesh Sarma and Another	Vs	APPELLANT
State of Assam		RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Evidence Act, 1872 — Section 113B, 4
Penal Code, 1860 (IPC) — Section 304B, 306, 34, 498A

Citation : (2010) 3 GLR 13 : (2010) 2 GLT 417

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : J.M. Choudhury, B.M. Choudhury and K. Borah, for the Appellant;
B.B. Gogoi, for the Respondent

Judgement

P.K. Musahary, J.

"Oh, brave new world, that hath such people in it!"

1. The prosecution story reminds me what Shakespeare, long ago, said through Miranda in Tempest.

2. A young married woman in her early twenties was found dead inside her bedroom suspended from ceiling fan by her "chadar". Her husband Sri Umesh Sarma informed the Sipajhar Police Station that in the evening, at around 7.30 p.m. of 30.9.2005, his wife Sanjumoni Devi committed suicide by hanging. On receipt of the said information, police registered U.D. Case No. 20/05 dated 30.9.2005, conducted inquest on the dead body and sent the dead body to Mangaldoi Civil Hospital for post mortem examination. On 4.10.2005, Chitra Ranjan Sarmah, brother of the deceased, lodged written Ejahar with the said police station alleging that his younger sister Sanjubala Devi @ Sabita, who was married to accused Umesh Sarma about one and a half year ago, immediately after marriage, has been subjected to physical and mental torture by accused Umesh Sarma, his mother and relative Hareswar Sarmah and in the evening of

29.9.2005, at about 6 p.m., he came to know that as a result of such torture, his sister Sanjubala committed suicide by hanging. On the basis of the said information, a police case being Sipajhar P.S. Case No. 161/2005 was registered under Sections 304B/34, IPC. The police, thereafter, started investigation and during the course of investigation, examined some witnesses, recorded their statements and also collected the S.C.D., inquest report and post mortem report. On completion of the investigation, charge sheet was submitted against the accused persons, namely, Umesh Sarma, Hareswar Sarmah and Smt. Jayanti Devi, u/s 304B, IPC. The case was committed to the Court of Sessions and charges u/s 304B/34/ 306, IPC were framed against the accused persons. The charges being read over and explained to them, the accused persons pleaded not guilty and demanded trial.

The prosecution, in order to establish the charges, examined as many as 10 witnesses while the defence examined 2 witnesses. After completion of the trial, the learned trial court pronounced the impugned judgment and order dated 6.9.2007 in Sessions Case No. 65(DMFT)/06 acquitting accused Sri Hareswar Sarmah but convicting the present accused appellants, namely, Umesh Sarma and Smt. Jaymati Devi @ Jayanti Devi, under Sections 304B/34/306, IPC and sentencing each of them to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 2,000 and in default, to undergo rigorous imprisonment for another 6 months for each count and providing both sentences would run concurrently. This appeal is preferred against the above judgment and order.

3. Heard Mr. J.M. Choudhury, learned senior counsel, assisted by Mr. B.M. Choudury and Ms. K. Borah, learned Counsel, for the accused appellants. I have also heard Mr. B.B. Gogoi, learned Additional. Public Prosecutor for the State of Assam.

4. Mr. Choudhury, learned senior counsel, submits that the learned trial court erred in law in convicting the accused appellants under Sections 304B/34, IPC inasmuch as there is no evidence to show that soon before the death of the deceased, she was subjected to cruelty by the accused appellants in connection with demand of dowry as a result of which she committed suicide. The learned senior counsel taking me through the evidence of PW1 Sri Chitra Ranjan Sarmah and PW4 Sri Ajit Kr. Sarmah, submits that they are brothers of the deceased woman and therefore, they are interested witnesses. In his deposition, PW1 stated that after 3 months of the marriage, her deceased sister informed that her husband Umesh Sarma, his brother Hareswar Sarmah and mother have been torturing her demanding more furniture and ornaments as because she could not bring sufficient furniture and ornaments as dowry at the time of marriage. PW4 deposed in a similar manner but he stated that his sister Sanjumoni informed him that the accused persons tortured her demanding golden chain. According to the learned senior counsel, there is a contradiction in the depositions of P Ws1 and 4 in regard to demand of dowry inasmuch as PW4 did not mention the demand of more furniture. PW 2 Smt. Parul Dekha is the President of Anchalik

Manila Samity while PW5 Smt. Rohila Deka is a member of the said Samity. PW2 (Smt. Parul Deka) deposed that the informant Sri Chitra Ranjan Sarmah (PW1) informed her about one year ago that his sister Sanjumoni was killed in a planned manner and her dead body was kept hanging. In the cross-examination PW2 (Smt. Rohila Devi) stated that she never visited the house of the accused persons. PW5 deposed that before about one and a half year, she met Sanjumoni Devi near Doha Shiva Mandir and enquired why her health was deteriorating. The deceased told PW5 that she has been tortured by the members of her husband's family demanding Godrej, Necklace, etc. This witness (PW5) spoke about demand of Godrej which was never mentioned by P Ws 1 and 4. According to Mr. Choudhury, PW5 did not disclose that she met Sanjumoni near Doha Shiva Mandir and she came to know from her about the torture committed by the accused persons demanding dowry. The evidence of P Ws 2 and 5, therefore, does not corroborate the evidence of P Ws 1 and 4 and on the basis of such uncorroborated and inconsistent evidence of P Ws 1, 2, 4 and 5, no conviction can be recorded against the accused appellants. The learned senior counsel further submits that PW3, namely, Sri Hareswar Sarmah is the immediate neighbour of accused Umesh Sarma. According to this witness, he has no knowledge about any quarrel amongst deceased Sanjumoni and the accused appellants or anything about torture upon her. This witness also deposed that Sanjumoni was living in her husband's house peacefully. The learned trial court failed to appreciate this piece of evidence of PW3 and was swayed by the uncorroborated and inconsistent evidence of P Ws 1, 2, 4 and 5.

5. Mr. Choudhury, learned senior counsel, also submits that the learned trial court has erred in law in convicting the accused appellants under the aforesaid Section inasmuch as there is no incriminating evidence against them to raise presumption u/s 113B of the Indian Evidence Act, 1872, so as to rope in or put blame on the accused appellants that the deceased has committed suicide as a result of demand of dowry by the accused appellants and as such, the conviction and sentence is liable to be set aside. For his aforesaid submissions, Mr. Choudhury refers to Kaliyaperumal and Another Vs. State of Tamil Nadu, He, however, further submits that since the dowry demand has not been proved beyond reasonable doubt, the court may convict the accused appellants u/s 498A, IPC for subjecting the deceased by the husband or relative of the husband of a woman to cruelty for which punishment with imprisonment for a term which may extend to 3 years and fine, may be awarded. The accused appellant Umesh Sarma has already served 21/2 years sentence and he may be set at liberty by convicting him u/s 498A, IPC with sentence of imprisonment already undergone. The other accused appellant No. 2, namely, Smt. Jaymati Devi @ Jayanti Devi is on bail and she is aged about 66 years.

6. The prosecution, in order to prove the dowry demand, has examined P Ws 1 and 4, both brothers of the deceased. From the cross-examination of these two witnesses, it is found that the accused appellants have taken the defence that they did not demand any dowry and they did not instigate the deceased to

commit suicide and they did not hang the dead body after killing her. But the evidence of P Ws 1 and 4, particularly on dowry demand and torture, could not be demolished. It has not been suggested by the defence counsel that the deceased committed suicide by herself. It has also not been suggested that the deceased before her death, did not tell her brothers (P Ws 1 and 4) regarding dowry demand and torture committed by the accused appellants. It would, therefore, mean that the defence did not deny the fact that the deceased before her death, disclosed the demand of dowry and torture on her. The answer to suggestions put to PW1 as translated from Assamese to English, would read like this-"...It is not a fact that the accused persons did not demand dowry from Sanjumoni. It is not a fact that the accused persons did not instigate Sanjumoni to commit suicide demanding dowry. It is not a fact that the dead body of Sanjumoni was not kept hanging after murdering her...." The defence also could not demolish the evidence of PW2 that she was told by Smt. Rohila Deka, member of the Anchalik Mahila Samity, about the dowry demand and torture on Sanjumoni. The defence put a suggestion to PW2, who, as per English rendering, answered like this-".... It is not a fact that Rohila Deka did not tell me that Sanjumoni did not tell Rohila about the dowry demand and torture...". The defence while cross-examining PW5 (Smt. Rohila Deka) put a suggestion, who, as per English rendering, answered -"....It is not a fact that while giving statement before the Daroga, I did not make statement to the effect that while I met Sanjumoni near Doha Shiva Mandir 15 days before the incident, she did not tell me that the members of her husband's family did not torture her demanding Godrej and Necklace as dowry. It is not a fact that Sanjumoni did not tell me that the members of her husband's family did not torture her demanding Godrej and Necklace...". But the defence counsel did not put suggestion to PW5 that she did not meet Smt. Parul Deka and tell her that she did not meet the deceased and was told by her about the dowry demand and torture. From the nature of cross-examination and suggestion put to PWS, it is found proved that PW5 met PW2 and told her whatever she learnt from deceased after she met her near Doha Shiva Mandir before the incident.

7. The defence by putting aforesaid suggestions to PW2 and 5 admitted the fact that PWS met the deceased before the incident and PW5 relayed the information of dowry demand and torture to PW2. The evidence of PW2 and 5 corroborate each other and it lends corroboration to the evidence of P Ws 1 and 4 who were also similarly told by their deceased sister about the allegation of dowry demand and torture by the accused appellant. Having found the evidence of P Ws 1, 2, 4 and 5, corroborated, there is no escape for the accused appellants from the charge that there was a dowry demand from their side and consequent torture on the deceased.

8. According to the defence, the death of Sanjumoni Devi is suicidal. If it is so, it is to be proved that there are some reasons for committing suicide. No evidence has been led by the defence to prove that it was a case of suicide. It is difficult to fathom as to why a young married woman in her early twenties with a baby girl

of about 5 months would commit suicide unless she was under some extreme compulsion. Nothing has been brought on record that she was suffering from any mental derangement or that on earlier occasions attempts were made by her to commit suicide or she was behaving abnormally before the death. The death of Sanjumoni Devi is shrouded by mystery and it can be said that her death was an unnatural death. Such death under unnatural circumstances can be related to dowry demand, cruelty and harassment which has been proved by P Ws 1, 2, 4 and 5 as discussed earlier. The defence could not disprove the allegation of demand of dowry and torture on the deceased. The defence is simply trying to do away by saying that the evidence of P Ws 1, 2, 4 and 5, is not corroborated by any independent witness from the neighbourhood. Here again, one has to appreciate the fact that a married woman normally would not like to disclose to any unrelated neighbour or person about the dowry demand and torture she has been receiving from her husband and in-laws for fear of enraging them and further deterioration of the situation. She would rather prefer to tolerate such incidents for a certain period and when it becomes unbearable, she would disclose to her parents or guardians or to her near and dear ones. This is how the deceased could tell her brothers who have come forward and deposed before the learned trial court about the dowry demand and torture as told by their deceased sister before few days of the occurrence of the incident. I am not persuaded to accept the submissions of Mr. Choudhury, learned senior counsel that the accused appellants could not be convicted u/s 304B, IPC on the basis of the evidence of interested witnesses, namely, P Ws 1 and 4. The submission of the learned senior counsel is that the death of the deceased woman is unrelated to dowry demand and it was an unnatural death. If the death occurred in unnatural circumstances, Section 4 of the Indian Evidence Act, would come into play. This has been discussed in *Shamnasheb M. Multtani Vs. State of Karnataka*, wherein it has been clearly explained as to under what circumstances, the court should press into service the provisions of Section 4 of the Evidence Act. Paragraph 28 of the judgment in the abovementioned case be reproduced for the said purpose:

28. u/s 4 of the Evidence Act: Whenever it is directed by this Act that the court shall presume the fact, it shall record such fact as proved unless and until it is disproved so that court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However, it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses or by adducing evidence on the defence side or by both.

9. In the above case, it has been further held that the peculiar circumstances in respect to an offence u/s 304B, IPC is that the court has a statutory compulsion merely on the establishment of the two factual positions, namely - (i) death of a wife should have occurred otherwise than under normal circumstances within 7

years of her marriage; (ii) soon before her death, she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry, to presume that the accused had committed dowry death. If any accused wants to escape from the said catch, the burden is on him to disprove and if he fails to rebut the presumption, the court is bound to act on it.

From the above, it has become abundantly clear that once the defence has projected the case of suicidal death, burden has been shifted to it to prove the same. In the instant case, defence had made no attempt to discharge its burden by adducing evidence in this respect and it remained satisfied by taking a plea that the prosecution had no independent witness, at least, some neighbours to prove the charge u/s 304B, IPC. From the evidence of prosecution, it is enough to presume that deceased Sanjumoni was driven to commit suicide due to dowry demand and torture.

10. Further, I would like to refer to State of Karnataka Vs. M.V. Manjunathgowda and Another, wherein the Apex Court discussed in what circumstances presumption u/s 113B of the Evidence Act would come into operation. It has been held that presumption u/s 113B of the Evidence Act would operate if the prosecution is able to establish the circumstances set out in Section 304B, IPC. Referring to provision u/s 304B, IPC, it has been further held in paragraphs 22 and 23, as under:

22. The aforesaid legal position, as it stands now, is that in order to establish the offence u/s 304B, IPC, the prosecution is obliged to prove that the death of a woman is caused by burns or bodily injuries or occurs otherwise than normal circumstances and such death occurs within 7 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. Such harassment and cruelty must be in connection with any demand for dowry.

23. If the prosecution is able to prove the aforesaid circumstances, then the presumption u/s 113B of the Evidence Act will operate. It is the rebuttable presumption and the onus to rebut shifts on the accused.

In Kaliyaperumal (supra), cited by Mr. Choudhury, the Apex Court held that presumption u/s 113B of the Evidence Act is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. It is further held that the essentials required to be proved for raising the said presumption are that - (i) the question before the court must be whether accused has committed the dowry death of a woman; (ii) the woman was subjected to cruelty or harassment by her husband or his relatives; (iii) such cruelty or harassment was for, or in connection with any demand for dowry; and (iv) such cruelty or harassment was soon before her death.

11. Thus, the clear legal position, by now, is that for conviction u/s 304B, IPC the prosecution is obliged to prove - (a) the death of a woman was caused by burns

or bodily injuries or occurred otherwise than under normal circumstances; (b) such death should have been occurred within 7 years of her marriage; (c) the deceased was subjected to cruelty or harassment; (d) such cruelty or harassment should be for or in connection, with dowry demand; and (e), the deceased should have been subjected to such cruelty or harassment soon before her death.

12. The present case comes under "death otherwise than normal circumstances" and it occurred within 11/2 years of her marriage and it has been proved by sufficient evidence that soon before her death, she was subjected to cruelty/harassment by her husband and in-laws on dowry demand.

13. The alternative submission of the learned senior counsel that the appellants may be convicted u/s 498A of the IPC in my considered view, merits no consideration inasmuch as it is found that the prosecution has been able to prove the charge u/s 304B, IPC against the accused appellants.

14. Having considered the materials and evidence available on record and in the light of the law laid down by the Apex Court for conviction u/s 304B, IPC I find no legal infirmity in the conviction and sentence recorded by the learned trial court in the impugned judgment and order dated 6.9.2007 passed in Sessions Case No. 65(DMFT)/06 warranting interference in appeal by this Court. The instant appeal must fail and accordingly, the same stands dismissed. The conviction and sentence handed down by the learned trial court to the present accused appellants stands upheld.

15. The appellant No. 2 Smt. Jaymati Devi @ Jayanti Devi shall make herself available to serve the sentence forthwith failing which the learned court below shall take necessary steps in accordance with law.

16. Send down the records to the court below immediately.