

(2007) 12 GAU CK 0020

Gauhati High Court

Case No: Criminal Appeal No. 112(J) of 2005

Malin Debnath

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Dec. 4, 2007

Acts Referred:

- Evidence Act, 1872 - Section 113B, 113B
- Penal Code, 1860 - Section 304B
- Penal Code, 1860 (IPC) - Section 304B

Citation: (2008) 4 GLR 836

Hon'ble Judges: H.Baruah, J

Bench: Single Bench

Advocate: B.Baishya, D.Das, Advocates appearing for Parties

Judgement

1. Heard Mrs. B. Baishya, learned amicus curiae, for and on behalf of the appellant, and also heard Mr. D. Das, learned Public Prosecutor, for and on behalf of the respondent, the State of Assam.

2. Appellant, Sri Malin Debnath was tried by the learned Advocate Indian Penal Code. He was convicted and sentenced to suffer rigorous imprisonment for 7 (seven) years.

3. Being aggrieved by and dissatisfied with the impugned judgment and order, dated 16.6.2007, passed in Sessions Case No. 13 of 2003, this present appeal has been preferred by the appellant challenging its legality and correctness.

4. In this appeal, the main issue for consideration is whether the impugned judgment and order has been rendered on the basis of the legal evidence sufficient to warrant conviction. It has been argued by the learned amicus curiae that there is no legal evidence available on record to render such a judgment by the learned trial court. According to learned amicus curiae, there is no eyewitness to the occurrence

and the evidences, which are available on record also do not show any forces of complicity of the appellant that it was the appellant, who had committed murder of his wife due to her failure to satisfy the demand of dowry. Appreciating the situation and the evidence on record, it would be apposite for this court to examine the case of the prosecution, which virtually set the criminal law in motion.

5. Informant, Sri Chand Mohan Sutradhar (PW1) is the father of the victim, who lodged FIR, (Ext.I). In the FIR it was contended that the appellant, Malin Debnath in the month of Bohag, 1995 according to Hindu social customs. It is also contended that since their marriage, the appellant, Malin Bebnath had been demanding dowry and cash of Rs. 2,000 from the parents of the deceased for which on the fateful night the deceased had been killed by pouring kerosene and setting fire to her body for her failure to satisfy his demand.

6. On being lodged such an information, the Ext. 1, police registered a case and conducted investigation. The dead body of the deceased, Pranati Debnath had been sent to RNB Civil Hospital, Kokrajhar for postmortem examination by the Investigating Officer (PW9). During investigation police seized one blouse, a pink sari and a kerosene oil container (five litres capacity) having black mark of burning vide Ext. 4 in presence of Manik Debnath. During investigation, police also examined witnesses including the mother (PW3) of the victim as per provisions of section 161 of Code of Criminal Procedure. The Investigating Officer having completed investigation laid charge sheet, (Ext. 3) against this appellant. The case was committed to the Sessions Court and the learned ad hoc Additional Sessions Judge framed charges under section 304B of the IPC when made over. Altogether, 9 (nine) witnesses were examined in favour of the prosecution case. No defence witness either oral or documentary had been adduced. At the conclusion of the trial, learned trial court convicted the appellant as (sic).

7. The judgment and order of conviction rendered by the learned trial court has been carefully scrutinized as well as the evidences available in the record both oral and documentary. There is no dispute that deceased Pranati was not the wife of the appellant. There is also no dispute that death had not been caused within 7 (seven) years from the date of marriage. The most pertinent question to be determined in this case is whether there was any illtreatment on the deceased from the side of the appellant for nonfulfilment of demand of dowry by the victim herself as well as her mother. In this context, the evidence of PW3, Minati Sutradhar, the mother of the deceased would be most relevant. It is her (PW3) categorical statement that deceased Pranati Debnath had been given in marriage with the appellant and since some days after her daughter's marriage, the appellant had been demanding money amounting to Rs. 2,000. It is also in her evidence that the deceased during her lifetime along with the appellant visited her house and asked for money. Since she was a very poor woman, it was not possible on her part to satisfy the demand and the demand remained unfulfilled. Her evidence also goes to show that to attend

the "jamai sasthi", she had sent her son to the house of the appellant, who came back and reported that before 5 (five) days of his visit, the sister had died as a result of burn injury. It is interesting to note at this stage that the appellant being the soninlaw of PW3 did not care to report PW3. PW3 Minati Sutradhar came to know about the death of her daughter only after 5 days from her son, who visited the house of the deceased. According to the learned Public Prosecutor, the conduct of the appellant gives rises an inference that appellant in cool and sound mind had committed the offence. The other witnesses, who have been examined as prosecution witnesses do not give a clear picture about the demand of dowry. The crossexamination of PW3, the mother, makes it palpably clear that the appellant resorted to assault on the deceased for nonfulfilment of his demand. In the crossexamination, it is also found that the deceased was assaulted by the appellant for nonfulfilment of his demand of dowry.

8. Therefore, the contention so raised by the learned amicus curiae that there is no legal evidence to state that deceased had not been tortured before her death is not accepted. Learned amicus curiae drawing attention of this court in respect of some of the evidences appearing in this case argued that the relation was not strained in between the deceased and the appellant and there was assault or illtreatment meted on her from the side of the appellant.

9. It is found from the evidence that deceased died as a result of bum injury and this aspect has been proved by PW8, Dr. Jahiruddin Ahmed, who conducted autopsy on the dead body of deceased Pranati 05.1999 he conducted postmortem examination on the dead body the deceased Pranati Debnath being identified by Constable No. 395, Sri Praneswar Brahma and found 100% burn injury over the dead body. Soft tissues were almost burnt to charn. Intestines were coming out and bones were present. PW8 opined that the death was due to shock as a result of 100% burn injury. It has not been elucidated by the defence by crossexamining the witnesses that deceased Pranati Debnath died otherwise than burn injury. There is also no evidence to show that deceased committed suicide by pouring kerosene on her body and ablazed herself.

10. Section 304B of the IPC defines dowry death as under :

"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 7 (seven) years of marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by the husband or any relative of her husband, for, or in connection with any demand for dowry, such death shall be called "dowry death" and such husband or relative shall deemed to have caused her death.

(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."

Subsection (2) of the section provided punishment for dowry death and the punishment as it provides shall not be less than 7 (seven) years but which may extend to imprisonment for life.

11. In a case under section 304B of the IPC, it is the duty of the prosecution to prove the following points :

(i) Whether the deceased was subjected to cruelty or harassment for demand of dowry by the appellant, and

(ii) Whether the death had been caused to the deceased within 7 (seven) years of her marriage.

From the evidence on record, we do not find any dispute in these two aspects. The evidence on record very clearly shows that the appellant married deceased Pranati Debnath and had been demanding money from the family members of the deceased soon after the marriage. The evidence on record also found very much clear in respect of death of the deceased within 7 years.

12. The evidence of PW 1 and PW2 in combination of the evidence of PW3 ostensibly proves that the appellant husband demanded dowry and for her failure to satisfy the demand, the appellant resorted to torture both physically and mentally. So, there can be no ambiguity in respect of torture on the deceased by the appellant. There is rather no rebuttable evidence to show that the physical and mental for nonfulfilment of the demand for dowry. Section 113B of the Indian Evidence Act, 1872 reads as under :

"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."

13. In the case at our hand, from the evidence available on record, we do not find therein a room for a second thought that the appellant did not subject to cruelty or harassment to his deceased wife for demand of dowry. The death of the deceased is an undisputed fact. So, from the combined reading of the facts and the evidence on record clearly shows that it was the appellant, who caused the death of his wife on the relevant point of time by pouring kerosene on her body and set fire on her.

14. The factum of seizure of kerosene oil container of 5 litres capacity from the place of occurrence also proves the prosecution case beyond all reasonable doubt that kerosene had been used for causing the death of the deceased.

15. From a close reading of evidence on record with reference to the facts narrated, the following three aspects are found to have been proved by the prosecution beyond all reasonable doubt and these aspects were considered by the learned trial

court while rendering the impugned judgment and order of conviction against the appellant:

(a) that the deceased was the wife of the appellant, (b) that the appellant demanded money from her, and

(c) that on her failure to satisfy his demand, she was subjected to ill treatment both mental and physical and, that she died as a result of burn injury.

16. This court has already discussed hereinbefore that there is no plausible evidence on record to show that the appellant did not resort to assault on the deceased for nonpayment of dowry. The death of the deceased on the relevant night coupled with the evidence on record and the demand for dowry make the entire episode opaque/transparent the appellant was responsible for the death of his wife.

17. Learned amicus curiae in support of her contention for raising presumption as regards dowry death relies on a decision in a case between Kunhtabdulla and Another v. State of Kerala and Ors., AIR 2004 SC 1731 wherein in Paragraph 11 of the judgment, the hon"ble Apex Court held as under :

"11. A conjoint reading of section 113B of the Evidence Act and section 304B, IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances." The expression "soon before" is very relevant where section 113B of the Evidence Act and section 304B, IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under section 113B of the Evidence Act. This expression "soon before her death" used in the substantive section 304B, IPC and section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to expression "soon before" used in section 114, Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft" is either the thief, or has received the goods knowing them to be stolen, unless he can account for its possession. The determination of the period which can come within the term "soon before" is theft to be determined by the court. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be

existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

18. Further learned amicus curiae has also relied on the decision in the case between Gautam Saha v. State of Assam, 2005 (2) GLT 583, wherein in Paragraph 9 of the judgment, hon"ble High Court held as follows :

"9. In the present case, we find prior to the marriage there was no demand for dowry and after the marriage also or even before the death there was no demand for dowry from the side of the accused appellant. In order to raise presumption under section 113A or 113B of the Evidence Act the prosecution must establish that the deceased woman was subjected to cruelty or harassment by the accused appellant for or in connection with any demand for dowry. In the instant case there is no iota of evidence as regards the alleged harassment or cruelty in connection with any demand for dowry. The death of the young housewife within seven years of her marriage is no doubt very unfortunate and painful but in order to rope in or put the blame on the husband there must be something on the ingredients for drawing the presumption under section 113A or 113B of the Evidence Act. We have no hesitation to hold that the prosecution has miserably failed to do so. Merely because the young housewife had died or committed suicide in a suspicious circumstance the husband cannot be held responsible for the said death."

19. Learned amicus curiae taking aid of the case laws submitted that prosecution is bound to prove the essential ingredients for the offences and for raising presumption as provided under section 113B of the Evidence Act. It is, according to her, there must be proof of cruelty or harassment soon before the death and when prosecution fails to prove this aspect, the conviction and sentence cannot sustain in the eye of law.

20. We do not see any force in the argument so advanced by the learned amicus curiae, which has been made on the basis of the case laws. Presumption as provided under section 113B of the Evidence Act can be well drawn as against the appellant in view of the facts and evidence available on record. We do not see any ground to accept her submission.

21. Learned Additional Public Prosecutor while arguing this case, mostly relies on the evidence of PW3, the mother. It is argued by him that normally in criminal case, for proof of an offence, no number witness. Conviction can be warranted against the accused. Section 34 of the Evidence Act provides that no number of witness is required to be examined for proof of an offence.

22. Having considered the facts and circumstances of the case and the law laid down by the hon"ble Supreme Court and the High Court, and also the submissions

advanced by the learned counsel of either party, this court finds that the judgment and order so rendered by the learned trial court does not suffer from any error or illegality, which does not warrant any interference from this court. The judgment and order of conviction so assailed of is accordingly affirmed. We do not see any ground for reduction of the sentence as prayed for by the learned amicus curiae.

23. In the result this appeal fails.

24. Learned amicus curiae be paid Rs. 3,500 for rendering her service to this court. The amount shall be paid by the State. "