

Chhotu Hazra Vs The State of West Bengal

Court: Calcutta High Court

Date of Decision: Oct. 16, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) & Section 313
Penal Code, 1860 (IPC) & Section 306, 34, 498A

Hon'ble Judges: Raghunath Bhattacharya, J

Bench: Single Bench

Advocate: Nirmal De, for the Appellant; S. Sanyal and Mr. Soumik Ganguly for the State, for the Respondent

Final Decision: Allowed

Judgement

Raghunath Bhattacharya, J.

This appeal is directed against the judgment and order of conviction passed by Sri U.C. Nag, Additional

Sessions Judge, 5th Court, Paschim Midnapore on 29.06.2005 thereby convicting the accused Nilu Hazra to suffer one year and fine of Rs. 500/-

in default further R.I. for three months for commission of offence u/s 498A/34 I.P.C. and accused convicted Chhotu Hazra is hereby sentenced to

suffer R.I. for five years and fine of Rs. 1000/- in default of payment to suffer further R.I. for one year for the charge u/s 306 I.P.C. He is also

sentenced to suffer for one year and with fine of Rs. 500/- in default of payment to suffer further R.I. for three months for the charge u/s 498A/34

I.P.C. Shortly put, the prosecution case is that Sankari Dolai, niece of defacto complainant Kalipada Dolai was married to accused Chhotu Hazra

on 29th Asar 1411 B.S. according to Hindu rites and customs. During marriage sufficient dowry was given to Sankari but she was subjected to

physical and mental torture in the house of her in-laws as Shankari was a fatty woman with black complexion and was not like of her husband

Chhotu and also a written complaint was lodged to the Ghatal P.S. case was instituted u/s 498A/306/34 I.P.C. Hence the prosecution case.

The defence case as it appears from the trend of the cross-examination of the prosecution witnesses and answer given by the accused person to

their respective examination u/s 313 Cr.P.C. is that of absolute innocence.

2. In order to bring home the charge from the side of the prosecution as many as eighteen witnesses are examined. P.W. 1 is a defacto

complainant of this case. P.W. 2 Panchanan Dalui was a relation of the victim Sankari. P.W. 3 Banshi Dalui is the near relation of the victim

Sankari. P.W. 4 Rabindra Hazra is a relation of the accused. P.W. 5 Haru Rana is a local witness and he was acted as a barbar in the marriage

ceremony of Sankari and Chhotu and he is almost a formal witness. P.W. 6 Sandhya Dalui is also near relation to the victim. P.W. 7 Sumitra Dalui

is also near relation of the victim. P.W. 8 Tapan Chakraborty is a local witness and was a priest who perform the marriage between Sankari and

Chhotu and he was a formal witness and it is needless to discuss the evidence in details P.W. 9 Kumari Padma Dalui happens to be a relation of

victim. P.W. 10 Sankar Hazra is a near relation of accused. P.W. 11 Shyamapada Hazra is also a distant relation of accused Chhotu. P.W. 12

A.K. Chakraborty is an Executive Magistrate who perform the inquest on the deadbody of Shankari and he found some marks on the body of

Shankari. P.W. 13 P.K. Ghosh is a medical officer who perform the P.M. examination on the dead body of Sankari and he found a ligature mark

on the neck of the victim. P.W. 14 Sk. Khalil Ali, a constable of Ghatal P.S. who took the dead body to the autopsy surgeon for holding P.M.

Examination and is a formal witness. P.W. 15 Hare Krishna Majhi drafted the petition of complaint as per the dictation of Kalipada Dalui and he is

a law clerk and a formal witness. P.W. 16 Dipali Hazra is the Pradhan of Sultanpur Gram Panchayat. He has no personal knowledge about the

occurrence he learnt from some persons that Sankari committed suicide and as a Pradhan she reported the matter to the O.C. of Ghatal Police

Station. P.W. 17 Jayanta Chakraborty is the S.I. of Police and posted as O.C. of Ghatal P.S. at the relevant time. He started the U.D. Case on

13.09.2004 for the unnatural death of Sankari as O.C. and thereafter on receipt of the specific complaint against Chhotu Hazra he started the

Ghatal P.S. Case No. 93 of 2004 u/s 498A/306/34 I.P.C. and P.W. 18 is I.O. of this case.

3. I have already stated the prosecution case in broad outlines. P.W. 1 Kalipada Dalui, informant, P.W. 2 Panchanan Dalui, P.W. 3 Banshi Dalui,

P.W. 6 Sandhya Dalui, P.W. 7 Sumitra Dalui, P.W. 8 Padma Dalui are the near relation of the victim. In addition to this P.W. 4 Rabindra Hazra is

also a near relation of the deceased and on going through the evidence and the prosecution has put its strong reliance on their testimony. According

to their evidences I have not going to discuss their evidences separately but conjointly they have stated that Sandhya is a fatty woman with black

complexion and Chhotu is used to call her as Kala Hati and which is really humiliating call from a husband to his wife. Moreover, Sankari, the

victim was subjected to physical and mental torture by her husband. The petition of complaint was drafted by P.W. 15 as per the dictation of

Kalipada. P.W. 1 and he not only prove the signature of Kalipada but also the petition of complaint. So, it is hardly to disbelieve that petition of

complaint was not drafted as per the dictation of Kalipada. Regarding the demand of dowry I like to mention that P.W. 1, the near relation of the

deceased stated that accused paid Rs. 10,000/- out of Rs. 13,000/- and some gold ornaments, utensils etc to Sankari at the time of marriage. This

part of evidence more or less remain unshaken during the course of the cross-examination. So, it can be safely concluded that this is a case of

dowry death. It is not disputed that the deceased Sankari was a fatty woman with black complexion and whereas for the said reason accused

Chhotu could not accept her as his wife wholeheartedly and used to taunt her as Kala Hati. This is nothing but a mental torture upon a married

lady. It is argued that Sankari was subjected to physical torture and same was reflected from the ocular version of P.W. 3 and according to P.W. 3

once she met Sankari in a public booth of the bazar and after discussion between them and at that time Sankari informed that Chhotu used to

torture her and she was uttered that there was no peace in her matrimonial home. Now it is the specific case of the prosecution that the accused

acted as abettor in the commission of suicide by Sankari but it is more or less apparent from the conduct of the accused i.e. behaviour after the

death of his wife is quite unnatural one. He did not call the neighboring people or lodged complain to the local P.S. or hospital or informed the

police. Though learned Trial Court opined that Chhotu did not express his pain and grief to anybody, yet his conduct indicated that he was not

affected on account of death of Sankari. But I am not in agreement with the finding of learned Trial Court as it is the mental condition which varies

from man to man, woman to woman etc. It is hardly to disbelieve that when Sankari committed suicide then he and Chhotu was in her home and

so, it is hardly to disbelieve that Chhotu did not know anything. From the evidence I find that Sankari lived happily in her matrimonial home about

two to three months after her marriage. Since then she was subjected to physical and mental torture mainly by his husband but so far the physical

and mental torture by her mother-in-law is not so visible. On the other hand most of the witnesses has deposed against the husband Chhotu but not

against her mother.

4. In view of the aforesaid discussion the appeal is allowed in part. The order of conviction of Smt. Nilu Hazra is hereby set aside whereas the

order of conviction passed against Chhotu is hereby confirmed.

5. At the time of argument it was pointed out by the learned Lawyer for the prosecution that accused Chhotu is in jail and he has already served

the sentences awarded by the Trial Court but there is no document to that effect if that be so the learned C.J.M. is hereby directed to call for a

report from the correctional home and pass necessary order in accordance with law.

6. This appeal is allowed in part. The order of conviction of Smt. Nilu Hazra is hereby set aside whereas the order of conviction of Chhotu is

hereby confirmed.

7. Let copy of this judgment along with Lower Court Record be sent down to the Court below at once. Urgent photostat certified copy, if applied

for, be handed over to the parties as early as possible.