

CASE NO.:
Appeal (crl.) 1067 of 2001

PETITIONER:
Alamgir Sani

RESPONDENT:
State of Assam

DATE OF JUDGMENT: 20/12/2002

BENCH:
S. N. VARIAVA & B. N. AGRAWAL.

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

This Appeal is against a Judgment dated 25th April, 2001 by which the High Court has confirmed the conviction, by the learned Sessions Judge, under Section 304-B of the Indian Penal Code.

Briefly stated the facts are as follows:

The Appellant got married to Dr. Anjum Ara on 31st May, 1994. On 14th February, 1995, the Dispur Police Station received a telephonic message from one Dr. Kalpana Sharma (P.W. 1) that a woman had died under suspicious circumstances. On the basis of this information a diary entry was made. The police then went to the place of occurrence. There they found Dr. Anjum Ara lying dead on the bed. The father of the deceased, who is the Sub Divisional Officer, was informed telephonically about the death. The police initially arrested the Appellant (who is the husband of the deceased) as well as one Bhaskar Ali (P.W. 3), who was a servant in the house. The father of the deceased gave information, which is treated as FIR, that his daughter had reportedly committed suicide "by hanging inside the bathroom". The diary entry dated 15th February, 1995 records that the father of the deceased had informed in writing that he does not have any suspicion and that it was purely a case of suicide. The diary entry records that after post-mortem, the body would be taken to their home town Gopalgunj and that he (i.e. the father-in-law) would take his son-in-law also with them.

During post-mortem examination. the Doctor (P.W. 8) found the following injuries:
"Injuries

- (1) Abrasion '5cm x '3cm size present at 2 cm above the tip of nose and '5 cm left to midline.
- (2) Abrasion '7 cm x '3 cm size on front of lower end of left ear 1 cm below the tragus (projecting part of ear).
- (3) Contusion '7 cm x '5 cm size present just below the lower jaw 4 cm right to midline.
- (4) Contusion 1 cm x 1 cm size present at 1.5 cm below the mid point of chin.
- (5) Abrasion 1 cm x '5 cm in size present at 1 cm below the lower jaw at 1.5 cm right to midline.
- (6) Contusion 2 cm x 1.5 cm in size present on lower border of lower jaw 4 cm left to midline.

- (7) Bite mark oval in shape 3.5 cm x 2 cm size on back of left forearm 2 cm above wrist joint at middle.
- (8) Bite mark oval in shape 4 cm x 3 cm in size on back of right forearm 1.5 cm above the wrist joint at middle.
- (9) Abrasion 1.5 cm x .5 cm in size on the back of right elbow joint on ulnar side.
- (10) Contusion 2.5 cm x 1.5 cm size on outer aspect of right arm 8 cm above lateral epicondyle (on elbow).
- (11) Contusion 2.5 cm x 1.5 cm size on front of left leg just above the patella at middle.
- (12) Contusion 4 cm x 1.5 cm size on inner side of right knee joint 1 cm below the patella.
- (13) Scratch abrasion 3 cm x 2 cm size on the outer aspect of left wrist joint 1 cm above the styloid process of left radius.
- (14) Bite marks oval in shape 2 cm x 3 cm in size on outer aspect of right forearm 2 cm above the styloid process of radius of right hand.

All the contusions were read in colour.

- (15) One oblique and non continuous ligature mark measuring 25 cm in length and 1.5 cm in breadth present high up on the neck. In front the ligature mark touches just above the thyroid prominence at midline and on left side ligature mark, extends upto a point 1 cm below the lower end of left ear lobe and on the right side the upper end of ligature mark extends upto the midline 4 cm below the occiput. The upper border of ligature mark on right side shows grazed abrasions .5 to 1 cm wide directing upwards and backwards."

The Doctor opined that the injuries were ante-mortem and homicidal in nature. The Doctor opined that the injuries were not self inflicted or accidental.

After receipt of the post-mortem report on 22nd February, 1995 the father of the deceased gave a second report to the police. Now he alleged that his daughter had been murdered by her husband. He alleged that she had been so murdered for non-fulfillment of demand of dowry made by the Appellant. The Appellant was therefore charged under Sections 302 and 304-B of the Indian Penal Code. The Appellant pleaded not guilty and claimed to be tried.

The prosecution led the evidence of 12 witnesses. P.W. 5, one Jahida Khatun, is a relation of the deceased, P.W. 6 one Mohd. Kasim, was a friend of the family of the deceased as well as of the family of the Appellant, P.W. 7 is the father of the deceased, P.W. 9 is the mother of the deceased. P.Ws. 10 and 11 are the brothers of the deceased. These witnesses gave evidence of the demand for dowry made by the Appellant and his brothers after the marriage was solemnised.

P.W. 2, one Kamla Devi also gave evidence to the effect that one day prior to the date of death she had seen the deceased crying. P.W. 3, who was the servant, gave evidence to the effect that on the date of the occurrence all the other persons/family members had gone out of house; that the deceased and the Appellant were alone in the room till

about 12.00 in the afternoon; that round about 12.00 the deceased came out of the room and then went back into her room. He further gave evidence that after some time he went into the room, saw the deceased was sleeping and the Appellant was sitting on the bed reading a magazine. He gave evidence to the effect that he gave some snacks to the Appellant in the room. He gave evidence that at 2.20 p.m. he saw the Appellant sitting in the drawing room reading a newspaper and on being asked he told that the deceased was in the bathroom. When the younger brother of the deceased Sakil (P.W.4) came back from the school P.W.3 told P.W.4 that the deceased was in the bathroom for a long time. Therefore P.W.4 knocked the door of the bathroom which seemed to be locked and called the deceased by name but did not get any response. On this they got suspicious and P.W. 4 asked the servant to climb a pipe and see what had happened. The servant therefore climbed a pipe and peeped into the bathroom through a gap in the wall. He found the deceased in a sitting position with head stooping down. The deceased appeared to be dead. The servant informed P.W. 4 about it. Immediately the Appellant went to the bathroom and brought the body of the deceased out and put it on to the bed. Thereafter the neighbour, a doctor, was called in, who declared the deceased to be dead and who then informed the police.

The above evidence shows that the deceased was last seen alive with the Appellant in the bedroom occupied by them. The bathroom in which the deceased was found was attached to the bedroom. Even though the deceased was in the bathroom for an indefinitely long time the Appellant showed no concern or anxiety. The brother (P.W.4) and the servant (P.W. 3) got concerned and discover that she appears to be dead. On such discovery the Appellant immediately brings out the body and lays it down on the bed. The trial Court still thought it fit to acquit the Appellant of the charge under Section 302 I.P.C. As no Appeal was filed by the State we make no comment about this acquittal. The trial Court however convicted the Appellant of the charge under Section 304-B I.P.C. The trial Court sentenced the Appellant to life imprisonment. The High Court considered the entire evidence in detail and confirmed the conviction of the Appellant by the trial Court.

Mr. Jaspal Singh submitted that the evidence of demand for dowry could not be believed at all. He submitted that if there had been a demand for dowry the father of the deceased would never have given a report that he did not suspect any foul play. Mr. Jaspal Singh relied upon the case of Ravindra Pyarelal Bidlan and Ors. v. State of Maharashtra reported in (1993) CrL.L.J. 3019. In this case the Bombay High Court refused to believe evidence of ill treatment, beating and demand of various articles because the father of the deceased did not make any statement to that effect for three full days. This Judgment is based on facts of that case. If the authority were laying down that in all cases where immediately a statement about ill-treatment or beating or demand for various articles is not made, then such evidence cannot be accepted then it would have to be held that it is laying down bad law. Human nature is very complex. Different persons react differently under pressure or in times of sudden bereavement or grief. The shock suffered by a parent having seen his daughter dead in an unnatural manner can in some cases prevent immediate outpouring of reasons. Each case would have to be tested on its own facts and no hard and fast rule can be laid down in this behalf.

Mr. Jaspal Singh submitted that there were contradictions in the versions given by the father and the two brothers of the deceased regarding the demand for dowry made after marriage. However we find that the contradictions sought to be relied upon are not material. Mr. Jaspal Singh next submitted that the father of the deceased lodged the second report after a lot of delay. He submitted that the statements of P.Ws. 5, 6 and 7 were recorded after a lot of delay. He submitted that as a result of the delay there was strong possibility of embellishment as a result of after thought. He submitted that the

possibility of embellishment is very high in this case as the initial reaction of the father, as evidenced by the FIR and the station diary, show that there was no suspicion.

In support of his submissions, Mr. Jaspal Singh relied upon the cases reported in Thulia Kali v. State of Tamil Nadu reported in AIR 1973 SC 501, Ram Kumar v. State of M. P. reported in AIR 1975 SC 1026 and Balaka Singh v. State of Punjab reported in AIR 1975 SC 1962. There can be no dispute with the legal proposition laid down therein. The main question in all such cases is whether the testimony of witnesses can be believed or not. Ultimately all these principles deal with methods of testing veracity of witnesses. The trial Court which had the benefit of watching the demeanor of the witnesses is the best judge in this behalf. More importantly the above principles may cast a doubt on the veracity of the testimony of the father (P.W.7). But the testimony of the father is corroborated by testimony of P.Ws. 5, 6, 10 and 11. Both the trial Court and the High Court have believed the evidence of these witnesses.

Mr. Jaspal Singh further submitted that, in any event, the Appellant has been acquitted under Section 302 I.P.C. He submitted that this shows that there was no intention or knowledge to cause death. He submitted that such an acquittal necessarily means that the Appellant is held not responsible for the death of the deceased. He submitted that once the Appellant has been acquitted under Section 302 I.P.C., the presumption under Section 113-B of the Evidence Act stands rebutted.

We are unable to accept the submissions of Mr. Jaspal Singh. In an Appeal under Article 136 of the Constitution this Court will not re-appreciate and/or re-appraise the evidence to arrive at a different conclusion, unless it is shown that the Courts below have not taken into consideration some relevant facts or have not appreciated the evidence in a correct perspective or this Court finds serious infirmities in the findings of the Courts below. In our view, both the Courts below have correctly relied upon the evidence of P.Ws. 5, 6, 7, 10 and 11 to come to the conclusion that there had been demands for dowry. P.Ws. 5 and 6 are independent witnesses. P.W. 6 is a friend of the family of the Appellant also. Therefore, there is no reason why he would give false evidence. We therefore find no flaw or fallacy in the reasoning adopted by the Courts below.

We also see no substance in the submission that merely because the Appellant had been acquitted under Section 302 I.P.C the presumption under Section 113-B of the Evidence Act stands automatically rebutted. The death having taken place within seven years of the marriage and there being sufficient evidence of demand of dowry, the presumption under Section 113B of the Evidence Act gets invoked. There is no evidence in rebuttal.

We therefore see no reason to interfere. The Appeal stands dismissed.