

Manik Datta Vs. State of Tripura

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Court : Guwahati

Decided On : Sep-05-1998

Judge : A.K. Patnaik, J.

Acts : Evidence Act - Sections 60, 113A and 113B; [Dowry Prohibition Act, 1961](#) - Sections 2; Code of Criminal Procedure (CrPC) - Sections 161, 232, 232(1), 233(1) and 374; [Indian Penal Code \(IPC\), 1860](#) - Sections 304B, 306 and 498A

Appeal No. : Criminal Appeal (J) No. 15 of 1998

Appellant : Manik Datta

Respondent : State of Tripura

Advocate for Def. : A. Ghosh, Public Prosecutor

Advocate for Pet/Ap. : B.B. Deb, D. Guaha and A.K. Deb, Advs.

Disposition : Appeal allowed

Judgement :

A.K. Patnaik, J.

1. This is an appeal under Section 374 of the Cr. P.C. against the judgment dated 24-2-1998 of the learned Sessions Judge, West Tripura, Agartala in Session Trial No. (W.T.A) 38/97 convicting the appellant for the offence under Section 498A of

the IPC and sentencing him to R. I. for 3 years and a fine of Rs. 2000/-, in default to R.I. for 15 days, and convicting him also for the offence under Section 304B, IPC and sentencing him to suffer R.I. for 7 years.

The facts briefly are that on 11-10-1995 the appellant lodged an information with the Officer Incharge of Lembucheri Police Out Post, Airport, West Tripura that in the morning at 5-30 a.m. when he got up from sleep he found that his wife, Swapna was not present on the bed and was instead hanging on the ceiling fan with a sari. The police came and brought down the dead body of Swapna and she was cremated. Thereafter, FIR was lodged by Smt. Chayya Das, the mother of the deceased, on 20-10-1995 before the Officer Incharge of the Airport Police Out Post, West Tripura, Narsingar. In the said FIR, she alleged that the appellant and her daughter Swapna had a love affair and the appellant gave a proposal for marriage, but she did not initially agree because there was no money for the marriage. Thereafter on 10 Vadra, Sunday, the appellant along with 4 to 5 persons came to her house situated at Isanpur with a Commander Jeep and said that he would marry the same day at the Laxmi Narayan Bari and the marriage took place at the Laxmi Narayan Bari. She further stated in the said FIR that although the appellant did not demand any dowry at the time of marriage, soon after the marriage the appellant started demanding Rs. 15,000/- and some gold articles and also informed her that his father would allow Swapna in his house only if the said demand was fulfilled. Then she informed the appellant through her second son Sri Pradip Das on 10-10-1995 that he would give the appellant one finger ring and Rs. 2000/- but the appellant did not agree and instead started altercation with Pradip regarding the demand. The same night at 10 p.m. Pradip came out from the appellant's house and slept in the house of her elder daughter which was nearby. Early in the morning the following day on 11-10-95 the appellant came from his house and informed Pradip and her elder daughter that Swapna was seriously ill and that they should go and see her and then her elder sister and her husband Pradip went and saw that Swapna's body was hanging in one of the ceiling fans'. Pursuant to the aforesaid FIR, investigation was carried out by the police and a charge-sheet was filed and the learned Sessions Judge, West Tripura, Agartala, framed charges against the appellant under Sections 498A, 304B and 306, IPC. The appellant did not plead guilty and the trial was conducted. In the trial, 19

witnesses were examined on behalf of the prosecution and by the impugned judgment the learned Sessions Judge held that the appellant is guilty of the offences under Sections 498A and 304B, IPC and imposed the sentences.

2. At the hearing of this appeal, Mr. B. B. Deb, learned counsel for the appellant submitted that the appellant does not dispute the fact that the deceased was his; wife. But the evidence on record would show that it was a simple case of suicide committed by the deceased on 11-10-95. He argued the prosecution case that the deceased committed suicide because of demand of dowry and torture by the appellant should be disbelieved because no such complaint was made by PW. 4, the brother of the deceased, who was present at the house of the appellant on 11-10-95 when the body of the deceased was brought down from the ceiling fan by the Police. Mr. Deb pointed out that PW-1, the mother of the deceased, lodged the FIR nine days thereafter on 20-10-1995 making allegations of demand of dowry and torture by the appellant and submitted that such delay in lodging the FIR shows that the allegations of dowry and torture are totally false. He further argued that PW. 1 has admitted in her cross examination that she has never visited the house of the deceased nor did the deceased come to her house before her death and therefore she had no direct knowledge of any cruelty committed by the appellant on deceased or on any demand of dowry by the appellant from the deceased. Similarly PW-2, the father of the deceased, had no direct knowledge of demand of dowry and torture by the appellant and his knowledge was derived from his two sons Keshab and Pradip, PW-3 and PW-4. Thus, the only evidence against the appellant are the evidence of PW-3 and PW. 4. Mr. Deb vehemently contended that PW. 3 Keshab Das has stated that after about 10/ 12 days of the marriage of the appellant with the deceased he had gone to the house of the appellant to see the deceased and the deceased told him that the appellant used to torture her for demanding money and gold ornaments, but no statement had been made by the PW-3 under Section 161 of the Cr. P.C. that he had gone to the house of the deceased after a few days after marriage. Mr. Deb contended that PW-3 Pradip Das has stated that alter 15/20 days of marriage he went to the house of his elder sister (PW. 6) and from there he along with the husband of his elder sister (PW-5) went to the house of the deceased in the afternoon and that the deceased told him that the appellant wanted Rs. 15,000/- and that he had

assaulted her, but PW. 5 has denied that the deceased told any such thing to PW-4 and instead has stated that the relationship between the deceased and the appellant was quite good. Mr. Deb also pointed out that PW-6 has also deposed that the relationship between the deceased and the appellant was good and that she did not hear about any quarrel between them and further PW-4 after returning from the house of the deceased had not informed about any dispute between them. Mr. Deb argued that the PW. 5 and PW. 6 were not only the close relatives of the deceased but also her neighbours and their testimony to the effect that there was good relationship between the appellant and the deceased casts serious doubt on the prosecution case that the appellant made demands of dowry from the deceased and tortured her. Mr. Deb also relied on the evidence of the three other neighbours of the deceased examined at PW. 7, PW. 8 and PW. 12 to the effect that the relationship between the appellant and the deceased was good. He cited the judgment of the Supreme Court in the case of *State of Maharashtra v. Ashok Chotelal Shukla* (1997) 11 SCC 26 : 1997 Cri LJ 3761 for the proposition that where the prosecution fails to establish beyond reasonable doubt that the accused had committed the acts of harassment of cruelty as contemplated by Section 498A and Section 304B of the IPC, the accused was entitled to acquittal. Mr. Deb contended relying on the decision of the Kerala High Court in *Sivamani alias Sivan v. State of Kerala* 1993 Cri LJ 23 and the decision of the Karnataka High Court in *Kumar Naik v. State of Karnataka* 1976 Cri LJ 925 that where the Court finds that there is some evidence connecting the accused with the commission of offence and does not acquit the accused under Section 232, Cr. P.C. the court will have to pass an order under Sub-section (1) of Section 233, Cr. P.C. calling upon the accused to enter on his defence and adduce any evidence he may have in support thereof, but no order was passed by the trial Court in terms of the Sub-section (1) of Section 233, Cr. P.C. calling upon the accused to enter on his defence and adduce evidence in support of his defence. As a result, the appellant did not think it necessary to adduce any evidence. Mr. Deb submitted that in the event in this appeal it is held that the appellant was not entitled to acquittal, the case should be remanded back and the trial Court should pass an order calling upon the appellant to enter on his defence and adduce evidence in support of such defence.

3. In reply, Mr. A. Ghosh, learned Public Prosecutor, contended that the records of the trial Court would show whether any order was passed in terms of the Sub-section (1) of Section 232, Cr. P.C. by the trial Court calling upon the appellant to enter on his defence and adduce evidence in support of such defence. Mr. Ghosh submitted that PW. 3 and PW. 4 had clearly stated in their evidence that the deceased had told them about the demand of dowry and the torture by the appellant and that the cross-examination of the aforesaid two witnesses has not shaken such evidence establishing the guilt of the appellant. He further pointed out that the said evidence of PW. 3 and PW-4 about the demand of dowry and torture by the appellant had been corroborated by the PW. 1. He referred to Section 113B of the Evidence Act, whereunder the Court has to draw a presumption that a person has caused dowry death once 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. He cited the decision of the Supreme Court in the case of *State of West Bengal v. Orilal Jaiswal* AIR 1994 SC 1418 : 1994 Cri LJ 2104 for the proposition that the testimony of close relatives of the deceased relating to physical and mental torture inflicted by an accused under Section 498A should not be discarded simply on the score of absence of corroboration by independent witnesses such as tenants or neighbours living in adjoining portion of the house because ordinarily it is not expected that physical torture or the abuses on the wife would be made by the husband in such a way as to be noticed by such tenants or neighbours. Mr. Ghosh argued that the evidence of PW. 3 and PW. 4 as corroborated by PW. 1 was sufficient for conviction of the appellant under Sections 498A and 304B, IPC. He relied on the decision of the Supreme Court in the case of *Smt. Shanti v. State of Haryana* AIR 1991 SC 1226 : 1991 Cri LJ 1713, for his submission that once cruelty to the deceased by the accused is established, the question whether the death of the deceased was homicidal or suicidal was irrelevant and the accused was liable to be convicted under Section 304B, IPC. He also relied on the decisions of the Andhra Pradesh High Court in *Vadde Rama Rao v. State of Andhra Pradesh* 1990 Cri LJ 1666 and of the Bombay High Court in *Sarojakshan Shankaran Nayar v. State of Maharashtra* 1995 Cri LJ 340, in which the objects of Section 304B and Section 498A, IPC and Section 113B of the Evidence Act have been discussed.

4. Sections 304B and 498A of the Indian Penal Code and Section 113B of the Evidence Act are extracted herein below :

Section 304B IPC: 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 seven 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 for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purpose of this subsection 'dowry' shall have the same meaning as in Section 2 of the [Dowry Prohibition Act, 1961](#) (28 of 1961).

(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.

Section 498A, IPC : Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband or a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, 'cruelty' means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 113B, Evidence Act : 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.

Explanation.- For the purposes of this section 'dowry death' shall have the same meaning as in Section 304B of the IPC (45 of 1860).

The underlined portion of Section 304B, IPC makes it clear that when the husband is accused of the offence, it has to be shown that soon before the death of the woman, the woman was subjected to cruelty or harassment by her husband for or in connection with any demand for dowry. Similarly, it will be clear from the underlined portion of Section 498A, IPC that the offence of cruelty as defined in the said section is said to be committed by the husband only when such husband subjects the woman to cruelty. The word 'cruelty' has been defined in the explanation to Section 498A(a) and (b), Clause (b) of the said explanation indicates that harassment of a woman where such harassment is with a view to coercing her to meet any unlawful demand for any property or valuable security or is on account of failure by her to meet such demand constitute cruelty. Thus to bring home the charge against the husband under Sections 304B and 498A, the prosecution has to prove that the husband subjected his wife to cruelty or harassment for or in connection with a demand for dowry. This is what has also been held by the Supreme Court in the case of Smt. Shanti v. State of Haryana (supra) cited by Mr. Ghosh, learned P.P. In paragraph 6 of the judgment as reported, AIR 1991 SC 1226: 1991 Cri LJ 1713, the Supreme Court observed :

However, we want to point out that this view of the High Court is not correct and Sections 304B and 498A cannot be held to be mutually exclusive. These provisions deal with the two distinct offences. It is true that 'cruelty' is a common essential to both the sections and that has to be proved.

Section 113B of the Evidence Act does not take away this burden of prosecution to prove cruelty on the part of the husband towards his wife. Rather it provides that the Court shall presume that a person has caused dowry death, if it is shown that soon before the death of the woman, the woman had been subjected to cruelty or harassment by the accused for or in connection with any demand for dowry. In

other words, the presumption as contemplated by Section 113B of the Evidence Act arises only after it is established by the prosecution that soon before the death of the woman, the woman has been subjected to cruelty or harassment by the accused for or in connection with demand for dowry.

5. Moreover, such cruelty on the part of the husband towards his wife by the prosecution has to be proved beyond reasonable doubt and Section 113B of the Evidence Act does not alter this requirement of strict proof in criminal cases. In the case of *State of West Bengal v. Orilal Jaiswal* (supra) cited by Mr. Ghosh, the Supreme Court held in Paragraph 14 of the judgment as reported in AIR 1994 SC 1410 : 1994 Cri LJ 2104 :

We are not oblivious that in a criminal trial the degree of proof is stricter than that is required in a Civil proceeding. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot be in the realm of surmises and conjunctures. The requirement of proof beyond reasonable doubt does not stand altered even after introduction of Section 498A, IPC and Section 113A of Indian Evidence Act. Although the Court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidence adduced in the case and the materials placed on record. Lord Denning in *Bater v. Bater* (1950) 2 All ER 458 at p. 459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particulars subject-matter.

In the *State of Maharashtra v. Ashok Chotelal Shukla* (1997) 11 SCC 26 : 1997 Cri LJ 3761 the Supreme Court found that the High Court had acquitted the accused in that case under Sections 304B and 498A, IPC after recording findings that the prosecution had failed to establish beyond reasonable doubt that the accused has

caused the death of the deceased or that the deceased committed suicide because of ill treatment and cruelty by the accused and the Supreme Court did not interfere with the said judgment of the High Court even though it found that the conduct of the accused in that case soon after the incident was unusual and that the accused has failed to explain some incriminating circumstances creating a strong suspicion about his involvement. What is to be examined, therefore in this case is whether the prosecution has established beyond reasonable doubt that the appellant has committed any act of cruelty or harassment on the deceased for or in connection with the demand of dowry.

6. The trial court has held the appellant guilty of the offences under Sections 304B and 498A, IPC on the basis of the evidence of PWs. 1,2,3 and, PW 1 has admitted in cross examination that before the death of the deceased, she did not come to her house nor she visited the house of the deceased. PW 1, therefore, had neither witnessed the demand for dowry or the torture or harassment on the deceased by the appellant. In fact, in her evidence she has stated that her son PW 3 returned from the house of the deceased and reported to her about the payment of Rs. 15,000/- and some gold ornaments and the torture by the appellant. Similarly, PW 2 had no direct knowledge about the payment of dowry and physical torture by the appellant and he has stated that he learnt from PWs 3 and 4 that the appellant used physical torture on the deceased after the marriage in connection with demand for money and gold ornaments. Section 60 of the Evidence Act states that oral evidence must, in all cases whatever, be direct and if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it and if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. Thus the fact that the appellant made demand of dowry and harassed the deceased for or in connection with such dowry cannot be established by the evidence of PWs 1 and 2 who had not seen such demand of dowry and harassment on the deceased by the appellant. Similarly, the fact that the deceased had told PWs 3 and 4 that the appellant was demanding Rs. 15,000/- and gold ornaments from the deceased and was torturing her for such dowry also cannot be established by the evidence of PWs 1 and 2 who had not heard that the deceased made the aforesaid statement to PWs 3 and 4.

7. Coming now to the evidence of PW 3, he has stated that after 10 to 12 days of the marriage, he went to the house of the appellant to see the deceased and the deceased told him that the appellant used to torture her often for money and gold ornaments. He has not stated any details of what the deceased has told her relating to the demand of money and ornaments and the torture by the appellant. But it appears that in his examination under Section 161, Cr.P.C. no statement that he had gone to the house of the deceased after some days of the marriage had been recorded. PW 1, however, has stated in her evidence that she has sent PW 3 to the house of the appellant to see the deceased but in the FIR lodged by PW 1 on 20-10-95, PW 1 had nowhere stated that PW 3 went to the house of the appellant and came back and reported about the demand of gold ornaments and money and the torture on the deceased by the appellant in connection with the said demand. Further, PW 3 has in his evidence stated that on the day he visited the house of the deceased after the marriage he went to the nearby house of his elder sister and informed his elder sister about the torture on the deceased by the appellant, but his elder sister who has been examined as PW 6 has nowhere stated about the visit of PW 3 to the house of the deceased after few days of the marriage and has instead stated that her brothers never informed her any time that the appellant was demanding any money or gold ornaments or putting pressure for realisation of the same. Considering the material omissions in the FIR lodged by PW 1 and the statement of PW 3 recorded under Section 161, Cr.P.C. discussed above and the material discrepancies in the evidence of PW 3 and PW 6 it is difficult for the Court to rely on the evidence of PW 3 that he visited the house of the deceased 10 to 12 days after the marriage when the deceased told him that her husband used to torture her often for money and gold ornaments.

The only other evidence against the appellant is that of PW 4. Since PW 4 visited the house of the deceased on the day before the date of death of the deceased and is the main witness of the prosecution. The relevant portion of his testimony is extracted herein below :-

After about 15/20 days of the marriage I went to the house of my elder sister Sova Das residing at Lembucherra. From there I along with Sailesh Bhowmik husband of my elder sister went to the house of my sister Swapna in the afternoon. Then

my sister Swapna told us that the accused wanted from her a sum of Rs. ,15,000/- and for that demand he assaulted her. Then we told him that it was not possible for us to give such amount. We told him that at best we can give him Rs. 2000/- in the month of Agrahayan. Then I and Sailesh Bhowmik returned to my elder sister's house and stayed the night there. In the morning accused Manik Dutta came to that house and informed me that Swapna was lying ill. Then myself and Sova and her husband rushed to the house of Swapna Das. On going there we found the dead body of Swapna was hanging from the Ceiling fan and her toes were found only about 2 inches above the ground. The P.M. examination was held at B.M. Hospital and after that the dead body was taken to Lembucherra and cremation was done.

It would be clear from the aforesaid testimony of PW 4 that he went along with Sailesh Bhowmik, the husband of his elder sister, to the house of the deceased and the deceased told them that the appellant wanted from her a sum of Rs. 15,000/- and for that demand he has assaulted her and that they told the appellant that it was not possible for them to pay such an amount and that at best they could pay him Rs. 2000/- in the month of Agrahayan and then PW 4 and Sailesh Bhowmick returned to the house of the PWs 6 and 4 Stayed the night there. Sailesh Bhowmick who accompanied PW 4 has been examined as PW 5 and has stated that he went along with PW 4 to the house of the deceased to see her but she did not tell them anything and that the relationship between the deceased and the appellant was quite good. Thus the only witness to the alleged statement of the deceased to PW 4 that the appellant wanted from her a sum of Rs. 15,000/- and for that demand the appellant had assaulted her and that the appellant was told that he could be given only Rs. 2000/- in the month of Agrahayan does not support the version of PW 4 and has instead denied that any such statement was made by the deceased about the demand of dowry and torture by the appellant and has rather stated that the relation between the appellant and the deceased was good. Hence, the evidence of PW 4 about the statement of the deceased that the appellant was demanding Rs. 15,000/- and the assault by the appellant stand uncorroborated, rather contradicted by the only other witness who was said to be present along with PW 4 when the said statement was made by the deceased to PW 4 and when PW 4 told the appellant that they were willing to pay Rs. 2000/-

only. Moreover, the very next day, early in the morning, PW 4 was present when the police brought down the dead body of the deceased from the ceiling fan but there is no evidence to show that any complaint was made by PW 4 to the police on that date about the demand of dowry and the assault or the harassment on the deceased by the appellant, and it was only after 9 days that the FIR was lodged on 20-10-95 by PW 1 alleging demand of dowry and torture on the deceased by the appellant.

8. The evidence of PW 6, the elder sister of PW 4 and the deceased, also raises reasonable doubts above the evidence of PW 4, PW 6 has stated that the relation between the appellant and the deceased was quite good and he did not hear about any quarrel between them. She has also stated that on return from the house of the deceased PW 4 or PW 5 did not tell her anything about the dispute between the appellant and the deceased. In her cross-examination by the defence, she has further testified that after the marriage, the deceased used to stay very close to her house and her children used to visit the house of the deceased every now and then and her children used to tell her that the deceased was living happily with her husband. She has further stated that she was having good relation with her husband and that her parents or brothers never informed her any time that the appellant was demanding money or ornaments or creating pressure for realisation of such ornaments and money. She has also stated that the deceased never told her about any such demand.

9. Both PW 5 and PW 6 have been declared hostile and have been cross-examined by the prosecution and have been confronted with their contradictory statements recorded under Section 161, Cr.P.C. but they have denied to have made the contradictory statements before the police. It has been held by the Supreme Court in the case of Karuppanna Thevar v. State of Tamil Nadu AIR 1976 SC 980 : 1976 Cri LJ 708, that a hostile witness may not be rejected outright but the Court has at least to be aware that prima facie, a witness who makes different statements at different times has no regard for truth and the Court should be slow to act on the testimony of such a witness and normally it should look for corroboration to his evidence. The versions of PWs 5 and 6 who were hostile witnesses therefore cannot be accepted by the Court as true and correct, but on a

reading of the evidence of PWs 5 and 6 who were close relatives as well as the neighbours of the deceased, any reasonable and just man would have reasonable doubts about the evidence of PW 4 that the appellant demanded money and gold ornaments and harassed the deceased in connection with the said demand soon before the death of the deceased.

10. There are other material facts which add to the aforesaid doubts of the Court regarding the prosecution case. PW 1 has stated in her FIR as well as in her evidence that the appellant made no demand of dowry whatsoever at the time of his marriage with the deceased. According to the said FIR and evidence of PW 1, the marriage of the appellant and the deceased was as a result of. love affair between the two. It is also stated by PW 1 in the said FIR and in her evidence that the parents of the deceased did not initially agree to the marriage as they had no money for the marriage. The appellant, therefore, had full knowledge that the parents of the deceased were very poor and did not have the resources to meet any demand of dowry and yet the appellant married the deceased. Unfortunately, the deceased died about 21 days after the marriage. During these few days of marriage, no one has seen the appellant torturing or harassing the deceased. There is thus no direct evidence of cruelty or harassment by the appellant towards the deceased. PW 6 who carried out the Post Mortem on the body of the deceased has stated that besides the ligature mark and bruises on her neck, other organs were found normal and there was no other injury on the body. It is therefore difficult to hold that the prosecution has established beyond reasonable doubt that the appellant had committed any act of cruelty towards the deceased or subjected her to any harassment for or in connection with demand of dowry and was guilty of the offences under Section 498A and 304B, I.P.C.

In the result, this appeal is allowed and the conviction of the appellant and the sentences imposed by the impugned judgment are set aside and the appellant is acquitted of the charges and is set at liberty.