

State Vs. Jane Alam and anr.

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Court : Kolkata

Decided On : Mar-11-2004

Reported in : 2004(3)CHN171

Judge : Nure Alam Chowdhury and ;Arun Kumar Bhattacharya, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 498A

Appeal No. : G.A. No. 1 of 1994

Appellant : State

Respondent : Jane Alam and anr.

Advocate for Def. : No one appears

Advocate for Pet/Ap. : Asimesh Goswami, ;Minati Gomes and ;K.J. Ahmed, Adv.

Disposition : Appeal dismissed

Judgement :

Nure Alam Chowdhury, J.

1. The present appeal is directed against the order of acquittal passed by the Id. Additional Sessions Judge, 1st Court, Burdwan in Sessions Case No. 303/1991 (S. T. 19/1993) on 11.01.1994. The prosecution case, in brief, is that the de facto

complainant's daughter Alina Bibi @ Kali, aged about 22 years, was given in marriage with accused Jane Alam about 1 1/2 years ago according to Mahomedan rites, and at that time Rs. 21,000/- as dowry, gift and ornaments were given. She was subjected to torture by the said accused for more money. On 20.01.1989 at about 3.00 p.m. on coming to learn about her serious injury due to burn, they had been to Katwa Hospital on the next morning and on query she reported that the above accused Jane Alam and her parents-in-law caused her to wear terricot saree, blouse & petticoat and they set fire on her person resulting in her burn injuries. On 23.01.1989 she was transferred to Burdwan Hospital where she expired at about 10.45 p.m. Hence, all the three accused persons were charged under Sections 498A/304B IPC.

2. The defence case, as suggested to P.W.1, P.W, 6 & P. W. 10, is that accused Jane Alam did not demand a TV set and motorcycle. The letter alleged to have been written by Jane Alam on behalf of the victim is a manufactured one. The victim did not report about the incident or that the accused persons set fire on her person. The present case has been filed at the instance of step-mother Amena Bibi.

3. 14 witnesses were examined on behalf of the prosecution, while none was examined on behalf of the defence, and after considering the facts, circumstances and materials on record, the Id. Court below found the accused persons not guilty and as such acquitted them of the charge under Sections 498A/304B IPC.

4. Being aggrieved by and dissatisfied with the said order of acquittal, the present appeal has been preferred by the State.

5. All that now requires to be considered is whether the Id, Court below was justified in passing the said order of acquittal.

6. Mrs. Minati Gomes, Id. Counsel for the appellant, on referring a decision reported in 2003 SCC (Cri 1965 and on drawing Court's attention to the evidence of P.Ws. advanced argument contending that the materials on record are sufficient to substantiate the charges under Sections 498A/304B IPC, and if the evidence of M. O. (P.W.13) is taken into consideration, then the accused persons should have

been convicted at least under Section 498A IPC.

7. Let us consider how far the above contention is sustainable.

8. 'Cruelty' within the Explanation to the said Section 498A means any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide, or such wilful conduct which is likely to cause grave injury or danger to life, limb or health whether mental or physical of the woman, or harassment to the woman where such harassment is with a view to coercing her for any property or valuable security. : [1988]1SCR1010 In other words, the expression 'cruelty' postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life [1995 Cr. L J 340 (Bom)]. Due to insertion of Section 113B of the Evidence Act, if a bride commits suicide within 7 years of her marriage, and if there is evidence of ill-treatment by the husband or other members of the in-laws' family led by the prosecution, the Court shall presume that such person or persons had caused the dowry death [1996 Cr. LJ 1875 (SC)]. So, the said presumption under the above provision can be drawn when (a) the suicide has been committed within 7 years of marriage, (b) the husband or relatives of her husband had subjected her to cruelty which cruelty must conform to the type of cruelty mentioned in Section 498A IPC, and (c) the question of cruelty must be determined having regard to all other circumstances of the case.

9. Out of 14 witnesses examined on behalf of the prosecution, the evidence of P.W. 1 (father), P. W. 2 (neighbour), P. W. 3 (step-mother), P.W. 6 (neighbour), P.W. 10 (brother) & P.W 13 (M.O.) appears to be vital.

10. According to the FIR (Ext. 3) lodged on 24.01.89, the marriage of the victim, who was aged about 22 years, took place with accused Jane Alam about 1 1/2 years ago i.e. in or about July, 1987. The evidence of P. W. 1 (deposed on 6.9.93), who is a Primary School Teacher, in this regard is that her marriage took place 6 1/2 years ago which is buttressed by his wife P. W. 3, but according to the evidence of P. W. 2, her marriage took place about 7 years back. That her marriage took place about 6 1/2 years ago, as deposed by P. W. 1, there is no denial of it in his cross-examination. Though P. W. 1 could not say the date, month

or year of her marriage, there is hardly any reason to discard his above testimony. Considering the said, evidence, the month and year of the victim's marriage come to about March, 1997 which is 4 months earlier than that as mentioned in the FIR. Even on giving a grace of a few more years the marriage appears to have taken place within 7 years from the time of her death.

11. It is the evidence of P. W. 1 that his son-in-law and his parents used to demand motorcycle and TV set from him and also his daughter, and as he could not meet up the same, his daughter was killed which does not find place in the FIR. It is his frank submission that he divulged the above fact for the first time in Court, It was within his knowledge about the said demand at the time of lodging the FIR which thus leads to show that the story of alleged demand is a subsequent development to give a credible look to the case. P. W. 3 deposed that after marriage, her daughter used to visit her house and tell her about misbehaviour of her parents-in-law and that if TV and a motorcycle were not given to her husband, misbehaviour and beating would continue. If that be so, P. W. 1 being her husband would have obviously known it, but there is no such evidence on his (P. W. 1) part nor it has been reflected in the FIR. Moreover, her cross-examination as also the evidence of I. O. (P.W.14) reveal that there was no earlier statement on her behalf that her daughter was misbehaved by her husband and parents-in-law or that her daughter informed her that if a motorcycle and TV set were not given to her husband, misbehaviour and beating would continue or that she went to her daughter's house six days before her death. So, her said evidence being a contradiction due to omission on vital point, it may be excluded from consideration. P. W. 6 in the same tune of P.W. 3 stated that Kali during here visit to their village told that she was subjected to torture by her husband and parents-in-law, that they asked to bring TV set and motorcycle from her father, otherwise, torture would continue. But there is no such evidence on the part of P. W. 1. Furthermore, the said evidence cannot be taken into consideration on account of contradiction due to omission on vital point, since there is no such earlier statement under Section 161 Cr. PC on his part, as is evinced from the evidence of P. W. 14. as per evidence of P. W. 10, his brother-in-law used to create pressure upon his sister by asking her to bring TV set, motorcycle etc. from his father which he is divulging in Court for the first time. He is totally silent about the alleged demand by parents-in-

law or torture by any of the accused. So, considering the nature of evidence, as discussed above, there is no scope to sustain the charge under Section 498A IPC.

12. As regards the other offence, P.W. 1 stated that Jane Alam, Golam Idris and his wife Rokeya Bibi killed his daughter by setting fire on her person. His daughter who could speak with great difficulty at Katwa Hospital, told him in presence of his wife (P.W.3), maternal uncle (P.W. 2), other relatives and Dr. Manna (P. W. 13) that the accused persons had set fire on her person. Similar is the evidence of P. W. 2 and P. W. 3. But in the absence of any earlier statement in that regard on their behalf, as is evident from the evidence of P. W. 14 and cross-examination of P.W. 3, that part of their evidence may be excluded from consideration. That apart, the said evidence is totally belied by the single testimony of P.W. 13 who deposed that as stated by the patient, she sustained burn by accidentally catching fire. Therefore, on the face of above evidence, there being no element to substantiate the charge under Section 304B IPC, this charge too fails.

13. In the premises, in the light of the above discussion, there being no material to interfere with the findings of the Id. Court below, the present appeal fails.

14. Accordingly, the appeal be dismissed on contest. The impugned order acquitting the accused persons of the charge under Sections 498A/304B IPC passed by the Id. Additional Sessions Judge, 1st Court, Burdwan in Sessions Case No. 303/1991 (S. T. 19/1993) on 11.01.1994 is hereby confirmed.

15. Let a copy of this order be sent down at once to the Id. Court below.