

IN THE COURT OF SESSIONS JUDGE BAKSA, MUSHALPUR

Present : Shri C. Das, AJS.
Sessions Judge,
Baksa, Mushalpur

(Committed on 26/5/10 by learned SDJM (S),
Nalbari in GR Case No.04/2009(B))

JUDGMENT IN SESSIONS CASE NO.241/18(SESS NO.57/10[OLD])

u/s 304-B IPC

State

-versus-

1. Sri Siby Ch. Dey,
2. Smti. Santana Dey,
3. Smti. Anjali @ Anjana Dey
..... Accused

Appeared : For the State : Mr. R. Chetri, PP. Baksa,
: For the accused : Mr.T.U.Ahmed, J. Islam, Advocates

Date of recording evidence : 23/12/10, 30/7/11, 27/9/11, 13/6/12, 19/11/12, 7/4/14,
21/6/17

Date of argument : 19/6/18

Date of judgment : 29/6/18

JUDGMENT

1. The case of the prosecution as unfolded from the record is that on 4/1/09, the complainant Sri Khagen Sarkar lodged a FIR beofre the Officer-in-charge of Tamulpur police station, alleging inter-alias that his niece Sabita Sarkar was married by the accused Siby Dey on 10/5/05. But on 2/1/09, he came to know that his niece was killed by pouring kerosene oil over her body. He alleged that after the marriage, the accused persons jointly used to torture his niece for fulfilling their dowry demand.

2. The police accordingly, registered the Tamulpur PS. Case No.04/09


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and started the process of the investigation. During the investigation, the I/O visited the place of occurrence, examined the witnesses and sent the dead body of the deceased for post-mortem examination. At the end of the investigation, the I/O having found prima-facie case well established, submitted the charge-sheet against the accused persons to stand trial in the court.

3. The accused persons after their appearance in the court, were furnished with the relevant copies of the case as required u/s 207 CrPC. Having found the offence was exclusively triable by the court of sessions, learned Sub-Divisional Judicial Magistrate (S), Nalbari, committed the case to the Sessions Court for trial. Subsequently, a separate sessions case was registered to proceed with the case.

4. After hearing both the parties and on perusal of the material on record, the charge u/s 304-B IPC., was framed against the accused persons. The charge was read over and explained to the accused persons who pleaded not guilty and claimed to be tried.

5. The prosecution during the course of trial, examined as many as, eight(8) witnesses including the I/O and M/O to support its case. The accused persons in the statement recorded u/s 313 CrPC., denied the all accusations levelled against them in the evidence. However, the accused persons declined to adduce any defence evidence. The argument of the parties was heard at length.

POINT FOR DETERMINATION :

6. Whether on 2/1/09 at about 9 am., at village- Kaulee, the accused persons had caused death of Sabita Sarkar by burning, causing bodily injury and that had not occurred under normal circumstances within 7 years of marriage of her with the accused Sibu Ch. Dey and she becomes subjected to cruelty and harassment by the accused persons, caused death of Sabita Sarkar in connection with demanding dowry and as a result of that it will be deemed to have caused death of Sabita Sarkar for dowry;

DECISION AND REASON THEREFORE :

7. It is a case where the prosecution alleged of causing dowry of a woman by the accused persons by setting fire and the deceased was admittedly married by the accused Sibu Ch. Dey.

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8. Learned Public Prosecutor at the out set of the argument submitted that if the evidence of the witnesses of the prosecution is carefully perused, it would disclose that the entire evidence goes against the accused persons which proved that the accused persons caused physical torture upon the victim woman since after her marriage and within 7 years of her marriage, the such heinous crime was took place and thus it shows that the accused persons committed the offence as alleged. The accused persons only denied the allegetions of the prosecution. No other evidence is placed to prove their innocence. Therefore, the accused persons are liable to be convicted in the light of provision of relevant law. It is relied the decision so reported in **Suresh Kumar vs. State of UP (2009) 17 SCC 243** wherein, it was observed that Indiputedly, in order to attract sec.304B, it is imperative on the part of the prosecution to establish that cruelty or harassment has been meted out to the deceased 'soon before her death'. There cannot be any doubt or dispute that it is a flexible term. Its application would depend upon the factual matrix involved in a particular case. No fixed period can be indicated therefor. It however, must undergo the test known as 'the proximity test'. What, however, is necessary for the prosecution is to bring on record that the dowry demand was not too late and not too stale before the death of the victim.

9. Per contra, learned counsel for the accused persons submitted that the prosecution examined as many as eight witnesses to bring home the charge against the accused persons. But none of them were eye witness of the occurrence when the occurrence took place during day time and there was closed neightbours resided near the house of the accused persons who did not find anything foul or untowards incident at the place of occurrence and on the fateful day, at the relevant time, only the accused Santana Dey was present in the house who is a disabled person while other accused persons were away from home. He submitted that after knowing the incident, the accused Sibuh Ch. Dey immediately, rushed to the spot and took the victim woman to the hospital. In no circumstances, if the husband of the victim was guilty of the offence, would take such steps for his wife which is absolutely normal.

10. He submitted that the ingredients of offence u/s 304-B IPC require that soon before the occurrence, it must show that the victim woman was subjected to mental and physical torture by the accused persons and her death was occurred in not a normal circumstances however, unfortunately, the death of the victim woman was admittedly, occurred not in normal circumstances which was