

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO 81 of 2019

Under section 120(B)/498(A)/304(B)/302 of I.P.C.

(Arising out of G. R Case No. 910 of 2017)

State of Assam

-Vs-

1. Md. Habiul Islam
2. Musstt Hayatun Begum Accused persons.

Present : **Smti I. Barman, AJS
Sessions Judge,
Sonitpur, Tezpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor

For the accused : Mr. J. Borah, Advocate.

Date of Argument : 09-02-2021

Date of Judgment : 11-02-2021.

J U D G M E N T

1. This is a case of death of a young woman namely, Reema Saikia (herein after called as the "deceased"), who got married with the accused Habiul Islam. It is alleged that since long the accused and his family members demanding dowry subjected her to cruelty both physically and mentally and lastly on 14-03-2017 at around 7.30 P.M., set her on fire by pouring kerosene oil.

2. Upon receipt of the FIR, from PW 1 Md. Akram Rashul Saikia, the O/C Tezpur PS registered the case being Tezpur P.S. Case No. 476/17 u/s 120(B)/498(A)/326/307 of the IPC read with section 4 of Dowry Prohibition Act, and at the close of investigation, laid chargesheet against the accused Md. Habiul Islam and Musstt Hayatun Begum u/s 120(B)/498(A)/304(B) of IPC read with section 4 of Dowry Prohibition Act.

3. On appearance of the accused persons, Habiul Islam and Musstt. Hayatun Begum, after furnishing necessary copies as required under section 207 Cr.PC, the learned Sub-Judicial Magistrate (S), Sonitpur, Tezpur committed the case to the Court of Session being the offence u/s 304(B) of IPC is exclusively triable by the court of Session. On committal, after going through the police report and hearing both sides, learned Adl. Sessions Judge, Sonitpur, Tezpur framed charge u/s 120(B)/498(A) IPC, alternatively charge u/s 304(B)/302 of IPC was framed against the accused Md. Habiul Islam and Musstt Hayatun Begum and particulars of the charge on being read over and explained to the accused persons, they pleaded not guilty and demanded to stand for trial.

4. In order to bring home the charge, prosecution examined 8 witnesses. In statements recorded u/s 313 Cr.P.C, the accused persons denied all the allegations levelled against them. Accused Habiul Islam also stated that he tried to put out the fire in which, he also sustained injuries. Defence declined to adduce evidence.

5. I have heard the argument of the learned counsel of both sides and also have gone through the evidence on record.

6. The points to be determined in this case is as follows–

1. Whether the accused persons, Md. Habiul Islam and Musstt Hayatun Begum, on 14-03-2017, committed the offence of criminal conspiracy to cause dowry death/murder of Reema Saikia and thereby committed an offence punishable u/s 120(B) of the IPC?

1. Whether the accused persons, Md. Habiul Islam and Musstt Hayatun Begum, since after the marriage of Habiul with Reema Saikia and on 14-03-2017, subjected her cruelty demanding dowry and thereby committed an offence punishable u/s 498(A) of the IPC?

3. Whether the accused persons, 14-03-2017, at around 7.30 P.M., committed dowry death by causing the death of Reema Saikia and thereby committed an offence punishable u/s 304 (B) of the IPC?

4. Whether the accused persons, 14-03-2017, at around 7.30 P.M., committed murder intentionally causing the death of Reema Saikia and thereby committed an offence punishable u/s 302 of the IPC?

7. Mr. Baruah, learned Public Prosecutor appearing for the State has submitted that as death of the deceased occurred within seven years of marriage, presumption could be safely drawn that the accused persons are responsible for her death and there was sufficient evidence implicating the involvement of the accused persons.

8. Refuting the argument advanced by the learned Public Prosecutor, Mr. J. Borah appearing for the accused made a very emphatic argument contending that there is nothing in the evidence on record as regards to alleged torture on the deceased by the accused persons or as to the specific demand and under such circumstances, mere allegation of demand of dowry in FIR cannot be relied upon. The learned counsel also submitted that there is no material on record to establish even a remote nexus between the accused persons and the alleged offence. Mr. Borah further submitted that though the prosecution referring the FIR, made an attempt to prove the guilt, but the prosecution failed to prove the allegation of cruelty by adducing evidence.

9. In order to appreciate the counter argument advanced by the learned counsel appearing for the parties, I deem it appropriate to briefly recapitulate the evidence on record as follows :

10. **PW 7** Dr. Achintya Kumar Baruah, the Medical Officer performed the post mortem on the dead body of Reema Saikia, 20 years, on 16-03-2017, in reference to Tezpur PS Case No. 476/17 u/s 120(B)/498(A)/326/307 IPC read with section 4 of the Dowry Prohibition Act, and found the following:

A young female body of good build in fresh condition with presence of rigor mortis, 90% of dry burn of the body from face to toe, which are ante mortem, other organs were healthy. The doctor opined that the death was due to shock as a result of 90% burn injury. The doctor proved the post mortem report as Ext. 3.

11. **PW 1** Md. Akram Rasul Saikia, the informant as well as the uncle of the deceased, deposed that on the day of the incident hearing hulla in the house of the accused he went there and had seen his niece Rima with burn injuries lying near the door. Thereafter she was taken to TMCH wherefrom she was shifted to Hayat Hospital, Guwahati. After one day she was again brought back to TMCH where on the same day at around 9.30 p.m. she died. Regarding the incident he lodged the FIR, Ext. 1.

During cross, he stated that considering the demand of the situation and as advised by the villagers he lodged the FIR. According to him, marriage of the deceased with Habiul Islam was solemnized 8/9 years back.

12. Deceased's father **PW 2**, Md. Atabul Saikia, deposed that on the day of the incident, at around 7- 7.30 AM, hearing hulla in the house of the accused, he reached there and saw fire on shoulder of his daughter. She was lying in the house. He doused the fire and thereafter took his daughter to TMCH wherefrom she was shifted to GMCH and then to Hayat Hospital, Guwahati. After one day his daughter was brought back to TMCH and on the same day at around 9:30 PM she died.

During cross he stated that the deceased had love affair with the accused Habiul and their marriage was solemnized about 8/9 years back. He stated that the fateful incident might be accidental one.

13. PW 3 Musstt Fatija Ansari, testified that in the morning at around 7.30 A.M seeing fire in the house of Rima Saikia, she went there and saw Rima lying near the door with burn injuries over the body. She also deposed that Rima was taken to the hospital by her father. She further deposed that police seized one gallon (M.Ext.1), a door curtain (M.Ext. 2) and one piece of burnt cloth from the house of the accused vide seizurelist Ext. 2.

During cross she admitted that she did not know how Rima had caught fire. She stated that Rima got married with the accused about 8 years back and she had a 7 years old daughter at the time of incident.

14. Evidence of PW 4 Muktab Ali is that on the day of incident when he was working near the house of the deceased, hearing hue and cry, he rushed there and saw Rima being carried by a vehicle by her father. He saw burn injuries on her body and on next day Rima died. Though police obtained his signature on a paper Ext.2(2) but no any article was shown to him. He did not know how the deceased died.

15. PW 5 Nureja Begum @ Khatun turned hostile. She stated that hearing from people that one Rima Saikia sustained burn injuries, she went to TMCH and saw the deceased with burn injuries.

16. PW 6 Sima Ahmed @ Hima Ahmed stated that on the day of incident, at around 7.30 AM she saw fire in the house of the deceased. She had seen the deceased in TMCH and noticed burn injury over her face.

17. The evidence of PW 7 Md. Abbas Ali , the Investigating Officer is formal in nature. He deposed that on being endorsed him to investigate the case, he visited the place of occurrence and seized one empty gallon of kerosene oil, one piece of burnt cloth and one burnt door curtain. He also recorded the statement of witnesses, conducted inquest (Ext.5) over the dead body of the deceased, forwarded the deadbody to KCH,Tezpur for post mortem and arrested the accused Habiul Islam. On closer of

investigation, SI Bapukon Moran submitted the chargesheet against the accused Md. Habul Islam and Musstt Hayatun Nessa u/s 120(B)/498(A)/304(B) of IPC read with section 4 of Dowry (Prohibition) Act, vide Ext. 6.

18. In this case, it is not in dispute that the death of the deceased was caused due to 90% burn injuries. Now let us discuss as to whether the death of the deceased was a dowry death punishable u/s 304(B) of the IPC. For sake of convenience, both the charge u/s 498(A) IPC and 304(B) IPC are taken together.

19. Here I would like to reproduce the provision of section 498(A) IPC, 304 B of IPC and section 113 B of the Evidence Act, which read as follows:

498A. Husband or relative of husband of a woman subjecting her to cruelty. – Whoever, being the husband or the relative of the husband of 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 purposes 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 an account of failure by her or any person related to her to meet demand.

Section 304 B 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 purposes of this sub-section, '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 113 B of the Evidence Act is reproduced herein which states as follows:

113B. 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 304 B of the Indian Penal Code (45 of 1860).

20. Section 2 of Dowry Prohibition Act, 1961, defines 'Dowry' as follows:

"Dowry" means any property or valuable security given or agreed to be given either directly or indirectly –

(a) by one party to a marriage to the other party to the marriage ; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

At or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

21. To hold a person guilty u/s 498(A) IPC, it must be established that the woman was treated with cruelty within the meaning of section 498(A) IPC and to book a person u/s 304(B), it must be established that the woman was treated with cruelty in commission with demand of dowry soon before her death and that the woman died within seven years from the date of her marriage.

22. On conjoint reading of section 304(B) and section 113(B) of Evidence Act, it is clear that for drawing presumption under section 113 B of the Evidence Act, firstly, there should be death of woman otherwise than in normal circumstances, within 7 years of marriage and the prosecution is to show that soon before her death, she was subjected to cruelty or harassment in connection with any demand for dowry by persons accused of having committed the offence. Unless on until these preliminary facts are established by the prosecution, it is not open to the court to draw a presumption against the accused invoking section 113 B of the Evidence Act.

23. Hon'ble Supreme Court in the case of **Mustafa Shahadal Shaikh Vs. State of Maharashtra**, reported in **(2012) 11 SCC 397**, while outlining the ingredients of Section 304B IPC held as under:-

"9. In order to convict an accused for the offence punishable under section 304-B IPC, the following essentials must be satisfied :

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances ;

(ii) such death must have occurred within seven years of her marriage ;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with demand for dowry”.

In Mustafa (supra) case, it was further held that to attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. It was also held that though the language used is “soon before her death”, no definite period has been enacted and the expression “soon before her death”, has not be defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the Courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

24. In **Bansi Lal Vs. State of Haryana**, reported in **(2011) 11 SCC 359** the Hon'ble Supreme Court held that -

while considering the case under section 304-B, cruelty has to be proved during the close proximity of the time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide. The Apex Court further held that where the cruelty has been proved during the close proximity of the time of death then the provisions of Section 113 B of the Indian Evidence Act, 1872 providing for presumption that the accused is responsible for dowry death, have to be pressed in service."

In para 19 and 20 of the Judgment, the Apex Court further held as follows:

"19. It may be mentioned herein that the legislature in its wisdom has used the word "shall" thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relating to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression "soon before her death" has not been defined in either for the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death."

25. In Baijnath Vs. State of M.P., reported in **(2017) 1 SCC 101**, the Hon'ble Supreme Court, while referring to presumptions under Section 113B of Evidence Act, held that -

the presumption is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

26. In view of the above, let us examine the evidence adduced by the prosecution to see whether the prosecution has been able to discharge its initial burden so as to attract the presumption under section 113 B of the Evidence Act.

27. In the case in hand, it is not disputed that the deceased died due to 90% burn injuries.

PW 1 Md. Akram Rasul Saikia and PW 2 Atabul Saikia, the uncle and father of the deceased respectively, in their deposition recorded on 22-07-2019 categorically stated that the marriage between the accused Habiul Islam and the deceased was solemnized about 8/9 years ago. The alleged incident occurred in the month of March, 2017. In absence of cogent evidence it cannot be safely held that the alleged incident was occurred within 7 years of marriage.

Now, with regard to the cruelty, it was alleged in the FIR that the accused Habiul Islam and his family members subjected the deceased to cruelty both physically and mentally demanding dowry since long but in evidence, the informant PW 1, the uncle of the deceased, did not make a single whisper that the accused persons tortured her in any way. PW 2, the deceased's father also remained silent in that respect. Only evidence of PW 1 and PW 2 as well as other PWs that on the day hearing hulla in the house of the deceased, they reached there and saw burn injuries over her body. The PWs nowhere stated that any of the accused tortured her either physically or mentally on any day during their conjugal life, rather the informant himself stated that the incident of fire might be accidental one. There is also no iota of evidence as to how she caught fire or whether soon before her death or on the fateful day she was subjected any type of cruelty or harassment by her husband or his family members. In the above, the ingredients of cruelty stands disproved in this case.

The evidence adduced in this case as discussed above is inadequate and inconclusive in nature. The death of the deceased in the present case is undoubtedly a tragic incident. But under system of justice, none can be punished unless legal proof is adduced to establish that the accused persons committed the offence for which they have been charged. Suspicion howsoever, strong does not amount to legal proof. There is no any direct or circumstantial evidence that the accused set her on fire. It is also brought to my notice that the accused persons did not make any attempt to run away from the place of occurrence. From the

evidence of the witnesses adduced by the prosecution, possibility of accidental fire cannot be ruled out.

28. In view of the above, it is found that the prosecution failed to substantiate by adducing evidence that the accused Habiul Islam and Musstt. Hayatun Begum had made any demand or tortured her anyway during conjugal life. Therefore, presumption under section 113 B of the Evidence Act could not have been drawn. The PWs did not make a single whisper against the accused persons with regard to alleged demand or torture. The entire evidence on record and the facts and circumstances lead to the irresistible conclusion that prosecution failed to establish the offence u/s 120(B)/498A/304 B/302 of the IPC beyond reasonable doubt, not to speak of beyond all shadow of reasonable doubt. Accordingly, both the accused persons Habiul Islam and Musstt. Hayatun Begum are acquitted and set them at liberty forthwith. Their bail bonds shall remain in force till next six months.

Destroy the seized articles, in due course.

29. Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the 11th February, 2021.

**(I. Barman)
SESSIONS JUDGE
SONITPUR:TEZPUR**

Dictated and corrected by me.

**(I. Barman)
SESSIONS JUDGE,
SONITPUR :: TEZPUR.**

APPENDIX

Prosecution Witness

1.	Prosecution Witness No.1	:-	Md. Akram Rushul Saikia, informant
2.	Prosecution Witness No.2	:-	Md. Atabul Saikia,
3.	Prosecution Witness No.3	:-	Musstt Fatija Ansari,
4.	Prosecution Witness No.4	:-	Md. Muktab Ali
5.	Prosecution Witness No.5	:-	Musstt Nureja Begum @ Khatun,
6.	Prosecution Witness No.6	:-	Musstt Sima @ Hima Ahmed,
7.	Prosecution Witness No.7	:-	Dr. A.K. Baruah, Medical Officer.
8.	Prosecution Witness No.8	:-	Md. Abbas Ali, I.O.

EXHIBITS

1.	Exhibit No.1	:-	FIR
2.	Exhibit No.2	:-	Seizure list.
3.	Exhibit No.3	:-	Post mortem report.
4.	Exhibit No.4	:-	Sketch map
5.	Exhibit No. 5	:-	Inquest report
6.	Exhibit No. 6	:-	Chargesheet
7.	Exhibit No. 7	:-	Relevant statement of portion of PW5

MATERIAL EXHIBITS

Material Ext. 1	:	Gallon
Material Ext. 2	:	Door curtain

(I.Barman)
SESSIONS JUDGE
SONITPUR: TEZPUR