

In Sessions Case No.85/1999 the present appellant Dipak Das and his mother Smti Prohabati Das were tried by the learned Additional Sessions Judge, Dhubri for commission of offence under Section 304-B and 498(A) IPC. During the trial, as many as 8 witnesses were examined by the prosecution. On conclusion of trial vide impugned judgment the learned trial Court convicted accused Prohabati Das under Section 498(A) IPC and sentenced her imprisonment for three months and to pay a fine of Rs.500/-, in default, to undergo further imprisonment for 15 days. The present appellant Dipak Das was convicted under Section 4 of the Dowry Prohibition Act and sentenced to undergo imprisonment for two years and to pay fine of Rs.5000/-, in default, to undergo further imprisonment for three months. The present appeal was filed by both the accused, but during pendency of the case, the appellant No.2 Prohabati Das died and, as such, the case against her stands abated.

2. We have heard Mr.S.C.Biswas, learned counsel for the appellant and Mr.P.G.Gayan, learned Public Prosecutor, Assam for the State Respondent.

3. Soma Das, the deceased, was married to the accused appellant Dipak Das on 30.01.1996 and within a period of one and half year, to be specific, on 27.05.1997 she committed suicide by setting her ablaze after pouring kerosene on her body. She also left behind a suicide note. Postmortem was conducted by Dr. Debamay Sanyal who found this to be a case of 95% burn injury. The doctor did not find any external injury except burn and in the opinion of the doctor the death was due to asphyxia and shock resulting from the burn injury.

4. From the oral and material evidence on record the prosecution case is that this is a case of commission of suicide by a young housewife within the two years of her marriage. However, the trial Court did not record any finding that the present accused appellant committed cruelty on the wife or that he is responsible for causing dowry death and the charge under Section 304-B IPC held to be not proved against him. This is not a case of homicide. The evidence on record shows that the brother of the deceased had come to the house of his sister to take her to her parent's place and the deceased was also willing to go. However, the mother-in-law Prohabati Das was reluctant to allow her to go and told that she should not go and expressed that she may go later on with her husband.

5. Ext.-7 is the suicide note left behind by the deceased and we have perused the same. The same has been brought on record by the prosecution and we find that in Ext.7 the deceased did not make any allegation of demand for dowry or harassment for dowry by the accused husband Dipak; On the contrary, she has clearly stated that her husband is no way responsible for her death. Thus, we find vide Ext.7 the wife has given a clean chit to the husband, i.e. the accused appellant.

6. The accused has been convicted under Section 4 of the Dowry Prohibition Act, for short 'the Act'. Section 4 of the Act reads as under:-  
\4. Penalty for demanding dowry- If any person demands, directly or indirectly, from the parents or other relatives of guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months\

7. The trial Court has recorded three instances of demand for dowry, they are- (1) at the time of marriage a sum of Rs.12,000/- was collected by the bridegroom party towards bus fare for carrying 'Bor-yatri'; (2) furniture given by parents of the bride were later on replaced as allegedly they were not expected quality; and (3) a sum of Rs.10,000/- was sought for running the grocery shop.

8. So far the bus fare is concerned, it is submitted that there is no dispute that it is an usual practice and custom amongst the Bengali that the bride side bears expenses for carrying bridegroom and his party. The trial Court has recorded that although a sum of Rs.7000/- was earlier fixed as bus fare, but a sum of Rs.12,000/- was realized at the time of marriage. Explanation given by the defence is to the effect that although the bus fare was fixed at Rs.7000/- but later on the bus owner demanded Rs.12,000/- as fare and accordingly the same was paid and the amount was reimbursed by the bride side and this cannot be treated as a demand for dowry. We find some force in the submission.

9. The bride had brought some furniture, but the mother-in-law was not satisfied with them and made some complaint about its quality whereupon the father of the deceased got the same replaced. There is no materials on record to show that this accused Dipak was in any way involved in the above replacement of furniture.

10. PW-1 is the mother of the deceased and PW-2 is the father of the deceased. PW2 has not stated about any demand for Rs.10,000/-, but the PW-1 has stated that the accused demanded Rs.10,000/- for the purpose of running a shop. It is, however, not clear as to whom the demand of Rs.10,000/- was made. It is also not clear which of the two accused person, who were facing trial, demanded dowry of Rs.10,000/- as stated by the PW-1 before the Court. Evidence of PW-3 Sujit Das also does not disclose as to which of the two accused person demanded Rs.10,000/-. We also find that the learned trial Court has heavily relied on Exts. 3, 4, 5 and 6 i.e. four letters, written by the deceased to her father. We have also perused the above letters available on record and find that in all these letters grievances of the writer was against her mother-in-law only and we do not find any whisper or complaint by the deceased against her husband. The deceased was not satisfied with the behaviour and other things of her mother-in-law. However, the learned trial Court being guided by surmises and conjectures held that these letters reflected the conduct of the present accused appellant and his involvement in the matter and as such inflicted the punishment under Section 4 of the Act. This being a criminal case, the burden lies heavily on the prosecution to establish the charge beyond reasonable doubt and there is no scope for any presumption against the accused person, only because he is the husband of the deceased. Prosecution witnesses having stated nothing about the demand for dowry by the accused appellant, we have no hesitation to hold that the accused appellant has not committed any offence under Section 4 of the Act. Accordingly, the appeal is allowed.

11. The impugned order of conviction and sentence is set aside and the accused is acquitted of the offence charged. Bail bond, if any, stands discharged.

Send down the records.