

SUPREME COURT OF INDIA

Tapas Kumar Ghosh

Vs.

State of West Bengal

Crl.A.No.1615 of 2007

(B.S. Chauhan and Swatanter Kumar JJ.)

07.06.2011

ORDER

1. The present Appeal is directed against the judgment of the High Court of Judicature at Calcutta dated 27th November, 2006 vide which the High Court affirmed the order of conviction passed by the learned trial court, but reduced the sentence to ten years, from that of life awarded to the accused under Section 304B read with Section 498A and Section 34 of the Indian Penal Code.

2. In addition to the present appeal, his own brother namely Shyam Sundar Ghosh, was the co-accused. However, he was acquitted by the trial Court. The State did not prefer any appeal against the order of acquittal of that accused before the High Court and the same has also not been questioned before this Court. Thus, in the present Appeal, we are only concerned with the conviction and sentence awarded to the Appellant herein. Vide its order dated 07th December, 1995 the Appellant herein was charged by the learned Sessions Judge as follows:

I, Shri D.K. Chatterjee, Sessions Judge, Hooghly hereby charge you 1. Tapas Kumar Ghosh @ Nantu and 2. Shyam Sundar Shosh @ Bua, Accd. As follows:

First: That you, on or about the period from 26-11-93 to 27-1-94 at Bosepara, Durga Charan Rakshit Road under P.S. Chandernagore, Dist. Hooghly you in furtherance of your common intention subjected Smt. Putul Ghosh @ Ira to cruelty and thereby committed an offence punishable under Section 498A read with Section 34 of the Indian Penal Code and which the cognizance of this Court session.

Secondly: that you, on or about the 27th day of January, 1994 on the railways track in between Chandernagore Railway Station and Mankundu Railway Station under P.S. Chandernagore, Dist. Hooghly or at some unknown place, the death of one Putul Ghosh @ Ira was caused by bodily injury or occurred otherwise then under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty and harassment by you in pursuance of yours common intention in connection with demand for dowry and thereby committed an offence punishable under Section 304B read with Section 34 of the Indian Penal Code and within cognizance of this Court of session. And I hereby direct that you be tried by the said court on the said charge.

Alternatively:

That you on or about the 27th day of January, 1994 on the railways track in between Chandannagore and Mankundu Railway Station under P.S. Chandernagore, Dist. Hooghly or at some unknown place in pursuance of your common: intention did commit murder by intentionally or knowingly causing the death of Putual Ghosh @ Ira and thereby committed an offence punishable under Section 302 read with Section 34 of the Indian Penal Code within the cognizance of this Court of Session.

And I hereby direct that you be tried by the said court on the said charges.

Dated this 7th Day of December, 1995.

Dictated and corrected by me:
Sd/D.K. Chatterjee,
7-12-95

3. The prosecution story is that the Appellant was married to Smt. Putul Ghosh and within a few months of her marriage, she died an unnatural death. Her dead body was found on the railway track in a severely injured condition. Thereafter investigation was conducted. It was found that the Appellant had treated the deceased with cruelty and had demanded dowry. The Appellant thus was charged with the above offences and was tried. The learned trial court specifically recorded in its judgment that the court was not considering the alternative charge under Section 302 of the Indian Penal Code and found him guilty of an offence under Section 304B read with Section 498A of the Indian Penal Code and sentenced him

to undergo life imprisonment and to pay fine. This judgment of the trial court, as already observed, was affirmed by the High Court, however, reducing the period of sentence awarded to the accused.

4. The question raised before us is that having framed an alternative charge under Section 302 of the Indian Penal Code, the Appellant could not have been held to be guilty of an offence under Section 304B IPC inasmuch as the essential ingredients of both the offences are distinct and different. The onus in the case of Section 304B IPC shifts to the accused, unlike under Section 302 IPC where the onus continues to be on the prosecution and it is expected to prove the case beyond any reasonable doubt.

5. Having examined the evidence on record, we do not propose to deal with this legal issue at any greater length. Suffice it to note that no prejudice had been caused to the present Appellant inasmuch as the trial court neither considered the alternative charge nor punished the accused for that offence. Thus, we leave this question open.

6. The charge against the accused under Section 304B IPC read with Section 498B has been proved and, in our opinion, there is no reason for us to interfere with the concurrent finding recorded upon proper appreciation of evidence by both the courts.

7. The learned Counsel appearing for the Appellant emphasised that it was an unfortunate case as the Appellant was a young person at the time of alleged commission of the offence, the incident is more than 18 years old; that the Appellant has suffered the protracted trial; and that the Appellant has already undergone about five years actual imprisonment. It is further contended that at the relevant time the Appellant was an employee of the railways but lost his job and, in all likelihood, he may not get any employment again now.

8. Considering the peculiar facts and circumstances of the case, we consider it appropriate to reduce the sentence awarded by the High Court further to a period of seven years, which is the minimum sentence provided for an offence punishable under Section 304B of the Indian Penal Code. The conviction of the Appellant under Section 498A IPC is maintained with the sentence awarded. The sentences awarded shall obviously run concurrently.

9. The Appeal is partly allowed.