Supreme Court of India
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Uday Chakraborty & Ors. vs State Of West Bengal on 8 July, 2010
Author: S Kumar
Bench: B.S. Chauhan, Swatanter Kumar
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1733 of 2008

Uday Chakraborty & Ors. ... Appellant (s) Versus

State of West Bengal ...Respondent (s) JUDGMENT

Swatanter Kumar, J.

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1. The learned Additional Sessions Judge, Arambagh convicted all the five accused persons namely, Uday Chakraborthy, Smt. Anandamoyee Chakraborthy (Appellant No. 3), Sukumar Chakraborthy (Appellant No. 2), Smt. Bela Rani Chakraborthy (Bhattacharjee) and Madhab Chakraborthy for an offence punishable under Sections 498A/304B of the Indian Penal Code (hereinafter referred to as `IPC') and sentenced them for 7 years rigorous imprisonment. No separate sentence was awarded under Section 498A of IPC on the ground that the accused persons were awarded sentence for the substantive offence of murder under Section 304B of IPC. Aggrieved from this judgment, the accused persons preferred an appeal before the High Court of Calcutta and the Bench 2

allowed their appeal in part and order of conviction and sentence passed against Madhab Chakraborthy and Bela Rani Chakraborthy (Bhattacharjee) was set aside. However, the conviction and sentence of Uday Chakraborthy, Sukumar Chakraborthy and Smt. Anandamoyee Chakraborthy was confirmed vide its judgment dated 18th of April, 2007. Aggrieved therefrom these three appellants have filed the present appeal before this Court under Article 136 of the Constitution of India praying for setting aside the order of conviction and sentence and for an order of acquittal.

2. Now, we may examine the facts giving rise to the present appeal. One Ms. Mina was married to Uday Chakraborthy on 5 th of 3

June 1994. The appellant No. 2 is the brother-in-law while appellant No. 3 is mother-in-law of deceased Mina. According to the case of the prosecution, Kanailal, the father of the girl, Mina, who was later examined as PW 1 lodged a written complaint to the Officer-in- Charge, Police Station, Arambagh, Hooghly on 19th April, 1996. The complaint reads as under:-

"To

The O.C. Arambagh Police Station,

Arambagh, Hooghly.

Sir,

My humble submission is that, I gave

my daughter Mina's marriage with Uday

Chakraborty, elder son of Sri Lakshminarayan Chakraborty of village & P.O. Golta, P.S. Arambagh, District Hooghly two years before. Frequently after her marriage her father-in- law, mother-in-law, sister-in-law and the

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brothers-in-laws used to torture my daughter both physically and mentally, because my

son-in-law did not stay at the house. I went to my daughter's house for a few times. I

requested her father-in-law, mother-in-law and other members of the family. I arranged for the settlement of the quarrel. After that suddenly on the last 18.4.96 (Eng) she had a feud with her husband Udaychand Chakraboty, father-in-law-Sri, Lakshminarayan Chakraborty, sister-in-law- Belarani Chakborty (Banerjee) and brother-in- law-Sukumar Chakraborty at her father-in-

law's house and the aforesaid persons

admitted her at Arambagh Subdivisional

Hospital after burning her on the last night, and my daughter died at that night only. My firm confidence is that the household

members at her in-law's place forcibly burnt my daughter to death. Therefore, I humbly

pray before you to arrange for the punishment of such heinous criminals by the law and

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request reveals the actual reason of the death of my daughter.

Yours faithfully,

Sd/- Kanailal Bhattacharya"

xxx xxx xxx xxx The couple has not even completed a period of two years of their marriage when, on 18th April, 1996, it was alleged that because of dowry, the accused and other family members tortured Mina physically and mentally and forcibly burnt her. She was taken to hospital in emergency ward and examined by Dr. Subhsh Hazra, PW

29. At that time she was conscious and able to speak. The parents of Mina were informed on that very date. Unfortunately, Mina expired 6

on 19.4.1996 at 5.30 AM. It was noticed on the prescription written by Dr. Subhamoy Sidhanta, PW 19, that the burn was accidental. After receiving the complaint and registering the FIR (Ex.12), K.K. Hazra, the Investigating Officer (PW-31) started inquest proceedings and her body was subjected to post-mortem, which was conducted by Dr. Mona Mukherjee (PW-18), who declared the cause of death, as death due to deep burn injury. On 11.5.1997, the investigation was transferred to another Investigating Officer when PW 31 was transferred from that police station. However, because of certain lacuna in investigation or even otherwise, it appears that on 4th of June 1997, the investigation of the case was transferred to CID and Amol Biswas (PW 30) was appointed as the new Investigating 7

Officer. After investigating the matter and examining number of witnesses, the Investigating Officer filed the charge sheet against 6 persons namely, Uday Chakraborthy (husband), Lakshmi Narayan (father-in-law), Sukumar Chakraborthy (brother-in-law), Madhab Chakraborthy (brother-in-law), Anandmoyee Chakraborthy (mother- in-law) and Bela Rani Chakraborthy (Bhattacharjee) (sister-in-law), in the Court for an offence under Sections 304B and 498A of IPC on 31st October, 2000. The statement of accused persons under Section 313 of the Code of Criminal Procedure (hereinafter referred to as `Cr.P.C.') was recorded in August 2002. During the pendency of the proceedings, accused Lakshmi Narayan had expired and, therefore, proceedings against him abated. The learned Sessions 8

Court found all the five accused persons guilty under Sections 498A/304B of IPC and sentenced them accordingly. Aggrieved therefrom, the accused preferred an appeal in the High Court. The High Court acquitted two persons and convicted three persons, who have filed the present appeal before this Court.

3. The main argument addressed before this Court by the appellant is that the learned Trial Court as well as the High Court have failed to examine that the ingredients of the offence under Sections 304B and 498A of IPC were not satisfied in the present case and as such they could not be held guilty of the said offences. 9

The complaint lodged by the father of the deceased did not contain any allegation of demand of dowry, therefore, there was no basis whatsoever to prosecute the appellants. The judgments of these courts suffer from basic infirmity of law. In the alternative, it was also contended that the entire family of the appellant has been behind the bars for a considerable time and thus, the appellants could be released on the basis of the sentence already undergone by them. We are unable to find any merit in either of the contentions raised on behalf of the appellants. According to the father of the deceased (PW-1), at the time of marriage he had given the gifts and cash amount which were reduced in writing, however, a sum of Rs. 10,000/- remained to be given subsequently. The statement of 10

PW 1 was fully corroborated by Shyam Sunder, the younger brother of deceased (PW 2), who specifically referred to the recording of "Chuktiparta". There is no dispute raised during the trial and even now that Mina had died because of burn injuries and she caught fire at the matrimonial home. Even, during the course of hearing, there was hardly any dispute that a "Chuktiparta" was written prior to or at the time of marriage. However, according to the appellants there was no reference of the gold chain in that "Chuktiparta". It is the contention of the appellants that the prosecution witnesses have made improvement on their statements subsequently and have added the description of the gold chain. Thus, the story of the prosecution is unbelievable.

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4. The marriage itself has survived for a period of less than two years and PW-7, who appeared as prosecution witness, was working as water carrier during the marriage ceremonies of the parties. The complaint by PW 1, of course, did not refer to particular items, but it was categorically stated in the complaint that after the marriage, the father-in-law, mother-in-law, sister-in-law and brother-in-laws used to torture Mina both physically and mentally because his son-in-law did not stay at the house and he had even tried to settle the issue and according to him, she was forcibly burnt by the appellants. It is true that in the complaint, specific allegations of demand and dowry have not been made, but during the course of investigation these facts 12

have come to light from the evidence on record and from statements of various persons made to that effect. The question of the father (PW-1) having not given correct and detailed information, has been dealt with by the High Court and, in that reference, the following lines have been recorded:

"Ld. Advocate for the appellants vehemently argued that this claim of demand of dowry by the accused persons is nothing but an

afterthought, since there was no such mention in the First Information Report. In this respect, he has placed reliance upon the

decision reported in AIR 1975 SC page 1026 (Ram Kumar Pande-vs.-State of Madhya

Pradesh), wherein it has been held by the

Hon'ble Apex Court that omission of important facts, affecting probabilities of the case are 13

relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case. So far as the present case is

concerned, there cannot be any doubt that

there was no mention of the dowry claim in the First Information Report. Naturally, this omission must be treated to be an important factor for judging the veracity of the

prosecution case. But whether only because of this omission it can be said that the entire prosecution case should be disbelieved, that is to be considered after considering the other circumstances of the case. So far as this

case is concerned, it appears that the First Information Report was lodged by the de facto complainant, who is the father of the

deceased, few hours after the death of the deceased. We can very well imagine the

mental condition of the bereaved father while he was dictating the written complaint to

another person. In fact, if we look into the evidence of this de facto complainant, then it 14

will appear that he has also stated in his evidence to the effect, "As I was mentally upset so I could not write each and every

thing elaborately in the First Information Report like demand of dowry, rest cash of Rs. 10,000/- or gold chain and more dowry or Rs. 20,000/- for the purpose of business by

Uday." The explanation as given by the PW 1 in this respect appears to be proper and

satisfactory and I think that the ld. Trial Judge was perfectly justified is not giving much importance upon this omission in the First Information Report."

4. The prosecution has examined as many as 31 witnesses including the Investigating Officer, Doctors, servants of the family and relatives of the deceased. The cumulative effect of the documentary and oral evidence on record clearly shows that the appellants have 15

been rightly found guilty of the offence by the High Court. The Learned Counsel appearing for the appellant has not been able to bring to our notice any evidence or piece of material thereof which has not been considered by the Courts below in its correct perspective. The mere fact that "Chuktiparta" does not contain some items of dowry which have been referred by PW 2 in his statement given in the Court, would not give any advantage to the appellants, in the facts of the present case. The father of the girl who lodged the complaint, can hardly be blamed for not lodging an elaborate and specific complaint at that time, as it was a tragic moment for him being the period immediately after the death of his daughter. That time was of

pain and agony for him and the accused can not take 16

any advantage of this submission or fact, as the subsequent statements of different witnesses have fairly established on record that she was tortured and harassed for satisfying the demand of dowry. We are of the considered view that execution of the "Chuktiparta" itself demonstrate that there was a clear intention on the part of the appellants to take dowry in and as consideration for marriage. Gifts were given at the time of marriage and some items were also agreed to be given subsequent to the marriage. This itself would be an appropriate fact to be taken into consideration and is, in any case, completely in line with the case of the prosecution. The learned counsel appearing for the appellants relied upon the case of the Hazarilal v. State of Madhya Pradesh, [(2009) 13 SCC 783]. This 17

was a case which fell in the class of cases where, the Court recorded the finding of conviction on the basis of surmises and conjectures. The Trial Court have acquitted accused on the basis, that after giving birth to a child in the normal course she could not have entertained the idea of committing suicide unless she was being harassed. This judgment of the Court has no application on facts and law to the case in hand. The use of expression `could have been' or drawing of a presumption of a fact does not arise in the present case, as the prosecution has been able to establish its case beyond reasonable doubt. The death, as already noticed, is not disputed and large number of witnesses have made specific allegations of dowry demand and the harassment to which the deceased was being 18

subjected during the short period for which the marriage survived. We are also unable to find any merit in the contention of the learned counsel for the appellants who relied upon the judgment of this Court in Arulvelu v. State [(2009) 10 SCC 206], to contend that the findings of the trial court as well as the High Court are perverse finding as they were against the weight of evidence as well as against the evidence itself. There cannot be a dispute with regard to the legal preposition advanced on behalf of the appellant in the facts of the present case, the judgment is hardly of any avail to the appellants. By and large the statement of prosecution witnesses are on similar lines and all the material and crucial aspects stand duly corroborated. Particularly, the statements of the father of the deceased, relatives of 19

the deceased and the Investigating Officer, when examined in their entirety, clearly established the charge against the appellants. Thus, we have no hesitation in dispelling the argument of the appellants. The offence under Sections 304B read with 498A of IPC is made out in this case and has been proved by the prosecution beyond any reasonable doubt. The period of two years in a marriage itself is a very short period. In fact, the deceased had died in less than two years of marriage. The expression `soon before her death' has to be given its due meaning as the legislature has not specified any time which would be the period prior to death, that would attract the provisions of section 304B of IPC. The concept of reasonable time would be applicable, which would primarily depend upon the facts of 20

a given case, the conduct of the parties and the impact of cruelty and harassment inflicted upon the deceased in relation to demand of dowry to the cause of unnatural death of the deceased. In our considered view, the marriage itself has not survived even for a period of two years, the entire period would be a relevant factor in determining such an issue.

5. The Court has to examine the cumulative effect of the evidence on record and analyze the same in its true context. Once, the appellant had ensured execution of "Chuktiparta" at the time of marriage then this itself would fully support the version of the prosecution and statement of witnesses that there was demand of 21

dowry. These statements cannot fall outside the zone of consideration for the Courts, in the present case. It cannot be said that the `Chuktiparta" executed at the time of marriage is not a material and relevant piece of evidence and cannot be relied upon or taken into consideration by the Courts.

6. Learned counsel appearing on behalf of the appellants, with some emphasis, contended that the Investigating Officer (PW-30), who took over the investigation at the subsequent stage upon transfer of investigation to the CID, ought to have relied and referred only to the statements recorded under Section 161 of Cr. PC by the 22

earlier Investigating Officer. In other words, he had no jurisdiction to record fresh statement of the witnesses. We do not find any force even in this argument. Firstly, for the reason that it is settled principle of law that the statements under Section 161 of Cr.P.C. recorded during the investigation are not substantive piece of evidence but can be used primarily for a very limited purpose that is for confronting the witnesses. If some earlier statements were recorded under Section 161 Cr.P.C. then they must be on the police file and would continue to be part of police file. However, if they have been filed on judicial record they would always be available to the accused and as such no prejudice is caused to anyone. Secondly, when the case was transferred to CID for investigation, it obviously 23

meant that in the normal course, the authorities were not satisfied with the conduct of the investigation by PW 31 and considered it appropriate to transfer the investigation to a specialized branch i.e. CID. Once, the direction was given to PW 30 to conduct the investigation afresh and in accordance with law, we see no error of jurisdiction or otherwise committed by PW 30 in examining the witnesses afresh and filing the charge sheet under Section 173 of Cr.P.C. stating that the appellants and other accused had committed the offence and were liable to face trial under Sections 304B and 498A of IPC. The last contention raised on behalf of the appellant is that the accused, even if found guilty by this Court, could be now released on the basis of sentence already undergone, in other words, 24

the prayer is for reduction of sentence. This contention has no merit and can be noticed only for the purpose of being rejected. The minimum sentence provided under law for an offence under Section 304B of IPC is 7 years of rigorous imprisonment and that is the sentenced awarded by the High Court. Thus, the question of accepting this contention, raised before this Court, does not arise even for consideration.

8. For the aforesaid reasons, we find no merit in the appeal and hence, the appeal is dismissed.

.....J. [DR. B.S. CHAUHAN]

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.....J. [SWATANTER KUMAR]

New Delhi

July 8, 2010

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