

Form J(2)

In the High Court at Calcutta
Criminal Appellate Jurisdiction
Appellate Side

Present : **The Hon'ble Mr. Justice Bibek Chaudhuri**

IA No.:CRAN/1/2018 (Old No.:CRAN/1536/2018)
in
CRA 274 of 2018

Manik Chowdhury
-Vs.-
State of West Bengal

For the appellant : Mr. Pawan Kumar Gupta, Adv.,
Mr. Sudip Guha, Adv.

For the respondent : Mr. Ranabir Ray Chowdhury, Adv.,
Ms. Sukanya Bhattacharyya, Adv.,
Md. Kutubuddin, Adv.

Heard on : 25.11.2021, 26.11.2021.

Judgment On : 26.11.2021.

Bibek Chaudhuri, J.:

The instant appeal is directed against the judgment and order of conviction passed by the learned Additional Sessions Judge, Mal, Jalpaiguri in Sessions Trial No. 46(08)/2016 arising out of Sessions Case No. 392 of 2015 (CIS SC 308/2015). One Nani Oraon had a relationship with the accused/appellant. The accused used to visit the

house of Nani Oraon, a widow for medical treatment of her minor daughter. During such visit, the accused got intimate with the said Nani Oraon. He proposed her to marry. At the time of marriage, Nani Oraon came to know that the accused was a Mohammedan by faith. However, marriage between the two took place before the Kazi under Mohammedan Personal Law and they started living together as husband and wife. In the said wedlock, she gave birth to a female child. After the birth of the said child, the accused started to treat the Nani with cruelty, he assaulted her, throttled her even tried to kill her by setting her in fire. Subsequently, he left the house with another lady and married her. The accused started living with the said lady as husband and wife renouncing his wife, Nani Oraon.

Failing to bear such act of deception and cruelty, Nani Oraon lodged a written complaint before the Officer-in-Charge, Mal Police Station on 7th September, 2014 on the basis of which Mal Police Station Case No. 522 of 2014 under Sections 498A/323/417/307 of the Indian Penal Code was registered. Police took up the case for investigation and on completion of investigation submitted charge-sheet against the accused.

The case was committed to the Court of Sessions for trial as the offence under Section 307 of the Indian Penal Code was exclusively triable by the Court of Sessions.

During trial, prosecution examined as many as eight witnesses. Some documents were also marked exhibits which I propose to refer subsequently.

The learned Trial Judge on due consideration of evidence on record and the submission made by the learned counsels for the parties convicted the accused for committing offence under Section 323 of the Indian Penal Code and sentenced him to suffer imprisonment for three months and also to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for a month.

The appellant has assailed the said judgment and order of conviction and sentence in the instant appeal.

During trial, the *de facto* complainant, Nani Oraon deposed as P.W. 1. It is found from her evidence that the accused used to come to her house to treat her daughter medically and during such time he expressed his weakness and love for the *de facto* complainant. With the consent of the *de facto* complainant they also met physically before the marriage once or twice. Subsequently, on 20th November, 2011, the accused filled up a form for registration of marriage in the Marriage Registrar office at Maynaguri. Subsequently, the *de facto* complainant came to know that the accused was a Mohammedan by faith. So, the accused married to the *de facto* complainant as per Mohammedan rites and customs before the Kazi. After few days of

marriage, the accused started to torture her physically. It is deposed by the *de facto* complainant that the accused assaulted her by 'lathi', once he throttled her, he also tried to commit murder with the help of knife. This led the *de facto* complainant to file complaint. It is ascertained from the cross-examination of the *de facto* complainant that she had been residing at No. 6, Oodlabari Hindi High School which is the house of the accused person. The accused left the house on 18th September, 2014. That the accused used to assault her is known to the local people and on many occasions local people saved the *de facto* complainant from the hand of the accused.

Pointing out the relevant portion of the cross-examination of P.W. 1, it is submitted by the learned advocate for the appellant that the *de facto* complainant herself admitted that on the date of her deposition she had been residing in the house of the accused. Therefore, she was not driven out from the house of the accused. The accused married the *de facto* complainant and he gave due honour and status of his wife to the *de facto* complainant. The allegation made by the *de facto* complainant in his written complainant is false and concocted. It is further submitted by the learned advocate for the appellant that the charge under Section 417 of the Indian Penal Code does not arise at all because the appellant never cheated the *de facto* complainant. There was a relationship between him and the *de facto*

complainant which culminated to solemnization of marriage. The *de facto* complainant at the time of marriage did not raise any objection for the accused being a Mohammedan by faith.

It is further submitted by the learned advocate for the appellant that P.W. 2, Md. Debaru, P.W. 3, Azida Begam, P.W. 4, Jahira Khatun, P.W. 5, Anwara Begam, P.W. 6, Rajesh Munda and P.W. 7, Sahedul Ali are the neighbours of the *de facto* complainant. They all stated that the *de facto* complainant was subjected to physical cruelty by the accused on and from the date when he was involved with the maternal aunt of the *de facto* complainant. Even the accused started leaving the *de facto* complainant to reside with her maternal aunt as husband and wife. This is the bone of contention between *de facto* complainant and the accused. The learned advocate for the appellant is very candid and fair in his submission when he urged that P.W. 2 to 7 are independent witnesses having no relationship with the *de facto* complainant. They in same tune deposed that the *de facto* complainant was subjected to physical torture by the accused. Therefore, relying on the evidence of the *de facto* complainant which was corroborated by the above-named independent witnesses, the accused was convicted and sentenced to imprisonment for three months and to pay fine of Rs.1,000/- for committing offence under

Section 323 of the Indian Penal Code. In respect of other charges he was acquitted.

It is submitted by him with reference to Clause (b) of Sub-Clause (iii) of Section 386 that the Court of Appeal can modify the sentence in appeal and he prays for imposition of fine amount at a higher rate in lieu of substantive punishment of imprisonment.

Learned P.P.-in-Charge, on the other hand, submits that the nature of the accused is not at all normal and satisfactory. From the evidence it is found that he established relationship with the *de facto* complainant who was a widow having two children. Then during subsistence of his marriage the accused even did not leave her maternal aunt and started living with the *de facto* complainant as husband and wife. Thus, the accused is a man of immoral character though immorality is not an issue to be adjudicated upon under the touchstone of legal principles. Ethics and law are two different subjects and operates differently. What is immoral, may not be illegal and *vice versa*.

Be that as it may, it is established on careful perusal of evidence that the victim was subjected to physical assault time and again by the appellant. Even she was once throttled. She was medically examined at the Sub-Divisional Hospital after being injured due to throttling by the accused. The doctor found tenderness on her

thyroid cartilage. The throat was compressed and she was advised to x-ray and medication.

Therefore, considering the nature of offence perpetrated by the appellant upon the *de facto* complainant, this Court is of the view that the learned trial Judge considering all aspects of the matter rightly passed the order of sentence and there is no reason or ground to alter the sentence by this Court.

The appeal is, therefore, dismissed on contest. The judgment and order of conviction and sentence passed by the learned trial Court in Sessions Case No.392 of 2015 and in Sessions Trial No.46(08) of 2016 on 23rd February, 2018 is affirmed.

The accused is directed to surrender before the trial Court within 15 days from the date of this judgment to serve out sentence.

A copy of this judgment be sent to the learned Court below forthwith along with the lower Court record.

The parties are at liberty to act on the server copy of the judgement.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)

Srimanta/Suman
A.Rs. (Court)