

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)

Present:

The Hon'ble Justice Joymalya Bagchi

and

The Hon'ble Justice Krishna Rao

CRA 266 of 2017

With

CRAN 4 of 2019 (Old CRAN 3223 of 2019)

With

CRAN 5 of 2020 (Old CRAN 65 of 2020)

1. Mongal Mondal

2. Ajit Mondal

3. Sasthi Mondal.

Versus

State of West Bengal & Anr.

For the Appellants : Mr. Ratan Das, Advocate.

For the State : Ms. Amita Gaur, Advocate

Heard on : 01.12.2021

Judgment on : 15.12.2021

Krishna Rao, J.: On the basis of the statement of one Sujit Roy, P.W.3, the police of P.S. Barasat registered F.I.R No. 1632/2011 dated 24.08.2011 under Section 498A/304B/34 IPC read with Section 3/4 of D.P. Act against Mongal Mondal who is the husband of the deceased and father-in-law (Ajit Mondal, Appellat No.2) and mother-in-law (Smti Sasthi Mondal) of the deceased Sharmistha Roy (Mondal). After registration of the case the police of P.S. Barasat had started an investigation and the appellants were arrested. In the written report it is stated that the youngest daughter of P.W.3 namely Sharmistha Roy (Mondal) aged about 19 years got married to Mongal Mondal of Hemanta Basu Nagar, 1. No. Mathpara P.O. Kadambagachi, P.S. Barasat on 5th Asardh, 1417 (according to Bangali era) as per Hindu rites and custom. At the time of marriage the bride groom was provided with gold ornaments and cash as per their claim. After marriage, his daughter Sharmistha Roy (Mondal) and Son-in-law Mangal went to live their domestic life at Hemanta Basu Nagar at his Son-in-law's house but as the dowry was not as per his choice, his son-in-law Mangal, on the very next day of their marriage, told his daughter to bring Rs. 20,000/- more. As he was late to give the amount, his son-in-law and the in-laws of his daughter used to abuse and beat her. His daughter would complaint to him at his residence. His daughter came to his house on last Friday. She told by crying that they would not let her lead her domestic life unless he provided the rest amount i.e. Rs. 20,000/-. He made her well comprehended the matter and sent her to her in-laws house. This morning he received phone call from my son-in-law's house and came to know that his daughter was ill. On reaching her matrimonial house he heard that his daughter had

strangled herself with a rope. It was his given belief that his daughter had committed suicide as she could not put up with the physical and mental tortures inflicted upon her by her in-laws and his son-in-law for the rest amount of Rs. 20,000/- as dowry.

During investigation inquest as well as post mortem was conducted on the body of the deceased and the body of the deceased handed over to the complainant for cremation. On completion of investigation police has submitted charge-sheet against all the appellants for the aforesaid offences. The appellants faced trial before the Learned Court of Additional Sessions Judge, 7th Court Barasat, North 24-Parganas. During trial the prosecution has examined all together 14 witnesses including PW-3 Sujit Roy (Father of the Deceased), P.W.9 Nuton Maholder (Sister's husband of the deceased), P.W.10 Sati Roy (Mother of the deceased) and P.W-13 Avijit Roy (Brother of the deceased). On completion of trial the Learned Additional Sessions Judge, 7th Court Barasat, North 24-Parganas has convicted the appellants for the offence punishable under Section 498A of the IPC and sentenced to suffer rigorous imprisonment of 2 years and fine of Rs. 10000/- each in default further rigorous imprisonment for 10 months each. The appellants were also convicted for the offence under Section 304B of the IPC and sentenced to suffer rigorous imprisonment for 10 years. The appellants were also convicted for the offence punishable under Section 4 of the Dowry Prohibition Act and sentenced to suffer RI for one year and fine of Rs. 2000/- in default to suffer further RI for two months.

Being aggrieved and dissatisfied with the judgement dated 27.03.2017, 28.03.2017 & 29.03.2017 the appellants have preferred the instant appeal.

The Counsel for the appellant argued that the Ld. Judge has passed the judgement and conviction against the appellants only on the evidence of the relatives of the deceased and no independent witnesses were examined to prove the case of the prosecution. The Counsel for the appellant submitted that the victim had a love affairs with one Jeet and the said defence had been proved but the Additional Sessions Judge failed to consider the same. Counsel for the appellant has further argued that the prosecution failed to prove the case against the appellant with regard to cruelty as well as demand of dowry from the deceased. Counsel also argued that the Ld. Judge without considering the evidence and the cross-examination of the witnesses has wrongly convicted the appellants and thus the appellants are liable to be acquitted from the case.

The Ld. Public Prosecutor had submitted immediately after the death of the deceased, a complaint was lodged to the police station of Barasat and accordingly on the statement of Sujit Roy, the police had registered the case against the appellants and during the investigation, the Investigating Officer had collected sufficient evidence against the appellants and had submitted charge-sheet against the appellants. The prosecution witnesses have supported the case of the prosecution and had narrated the incident before the Court at the time of their evidence and have corroborated the evidence from each other, wherein it has been categorically established that even

after getting sufficient articles at the time of marriage, the appellants were not satisfied with the same and demanded further amount of Rs. 20000/- from the deceased but the father of the deceased was not able to fulfil the demand of the appellants. The deceased inform the inability to her husband and in-laws (the appellants herein) and due to the torture caused by the appellants, the victim had committed suicide. The Ld. Public Prosecutor submitted that the Ld. Trial Judge has rightly convicted the appellants. And the judgment passed by the Ld. Trial Judge does not require any interference and prayed for dismissal of appeal.

We have considered the submissions made by the respective parties, evidences, and the materials available on record. It is found from the evidence of P.W. 3 i.e, the father of the deceased that he got information about the death of the deceased and immediately rushed to the matrimonial house of the deceased and on reaching they didn't find the deceased and thereafter they rushed to the police station but there also they didn't find the deceased and thereafter they went to morgue and came to learn that the body of the deceased was lying there. He further stated that he didn't see any member of the matrimonial house of his daughter at the morgue. After completion of post mortem examination on the body of the deceased the same was handed over to them and thereafter they took away the dead body and made necessary arrangements for cremation. He made a written complaint to the Poilice of P.S.Barasat which was written by one Prosanta Roy and he has put his signature in the said written complaint. He has identified his signature in the written complaint which was marked as

exhibit 3/a. P.W. 3 has stated that the death of his daughter took place just after two months from the date of her marriage. He also identified his signature in the inquest report which was marked as exhibit 4/a. During the investigation police has seized some articles from P.W. 3 under the seizure memo and the signature in the said seizure memo was duly identified by the P.W. 3 as 5/a. In Court, P.W. 3 has supported the complaint dated 24.08.2011 on the basis of which the FIR was initiated against the appellants. P.W. 3 has categorically stated that the marriage between the deceased and the appellant no. 1 was arranged marriage. At the time of marriage they had been given gold ornaments, cash and the other articles but the appellants were not satisfied with those articles. After marriage the deceased Sharmistha went to her husband's house and the members of the matrimonial house were not happy with the dowry which they had received at the time of marriage. For that reason, members of the matrimonial house used to inflict torture upon his daughter. He has further stated that the members of the matrimonial house used to ask his daughter for bringing further cash of Rs. 20000/- from her father's house. P.W. 3, has further stated that in a friday Sarmistha came to their house and she was crying and told them that the members of the matrimonial house ask her to bring further cash of Rs. 20000/-. After some advise he had sent the victim to her matrimonial house. After 1 or 2 days they got telephonic call and heard that Sharmistha committed suicide. On receipt of said information, P.W. 3, his elder son-in-law namely, Nuton Mohaldar, his elder sister's husband namely, Anil Sana and others went to the matrimonial house of Sharmistha where they came to know that the dead body of

Sarmistha was taken to the police station and accordingly, they reached to the Police Station. On reaching Police Station they didn't see the dead body and thereafter they went to morgue and when they reached the police morgue, they didn't see any members of the matrimonial house of Sharmistha and on completion of post mortem examination the body was handed over to them and they have arranged for cremation. P.W. 3 has further confirmed that death of his daughter took place just after two months from the date of her marriage. From the cross-examination of P.W. 3 it reveals though suggestion with regard to the love affairs of the deceased with one Jeet was given but P.W. 3 had categorically denied the suggestion. P.W. 3 was cross-examined at length but his evidence remained unshaken. Evidence of P.W. 3 was duly corroborated by P.W. nos. 9, 10 & 13.

P.W. 9 is Nuton Mohaldar who is the son-in-law of P.W.3. In his evidence has categorically stated after marriage, Sharmistha went to her husband's house and she was not well at her matrimonial house because they were dissatisfied with the articles given by them. P.W. 9 further stated that the appellants claimed further cash of Rs. 20000/- from the father of Sharmistha who could not give the same. Due to this reason, the appellants used to inflict physical torture upon the deceased. P.W. 9 further stated that the victim came to his house and narrated all the facts. P.W. 9 further stated that before death, Sharmistha came to their house and disclosed she was tortured in connection with demand of further dowry. From the cross-examination of P.W. 9 it has further come on record that P.W. 9 and his wife along with the deceased went to the house of P.W. 3 and on the same day all

3 persons returned back to their house and on the next day, the wife of P.W. 9 took Sharmistha to her matrimonial house and left her in the matrimonial house.

P.W. 10 Sati Roy who is the mother of the deceased has also corroborated the statement of P.W. 3, 9 & 13. P.W. 10 has stated that the appellants were not satisfied with the articles which were given at the time of marriage and the appellants claimed further cash of Rs. 20000/- but they were not able to pay. P.W. 10 further stated Sharmistha returned to her matrimonial house with her elder son-in-law (P.W.9) and elder daughter (P.W. 13) and thereafter P.W. 10 heard the news of death of her daughter Sharmistha.

P.W. 13 Avijit Roy is the brother of deceased. He has corroborated the evidence of P.W. Nos. 3, 9 & 10. During his evidence he has categorically stated at the time of marriage cash, gold ornaments and other articles were given to the appellants but the appellants were not satisfied with it. They started claiming further cash of Rs. 20000/-. P.W. 13 has further stated that they failed to pay the said amount of Rs. 20000/- and due to non payment of the said amount, the appellants used to inflict torture upon his sister Sharmistha. P.W. 13 has further stated that his elder sister brought Sharmistha to their house and the said witness heard the conversation about the demand of dowry by the appellants from Sharmistha. P.W. 13 has further stated that Sharmistha told that the appellants were claiming Rs. 20000/- and requested his father to pay the said amount but their father expressed his inability to pay the same. P.W. 13 has further stated

that his father had sent Sharmistha back to her matrimonial house with her sister expressing his inability and thereafter the elder sister had taken Sharmistha to her matrimonial house and one day later Sharmistha committed suicide. P.W. 14 is the Investigating Officer and on completion of investigation has submitted charge-sheet against the appellants finding sufficient materials against the appellants for the offence under Section 498A/304B/34 IPC read with Section 3/4 Dowry Prohibition Act.

From the trend of cross-examination and the answers given by the appellants at the time of recording their statement under Section 313 of the Cr.PC it reveals that the appellants claimed to be innocent and they were falsely implicated in the said case. Though the counsel for the appellant during the cross examination tried to make out a defence with regard to love affair of the deceased with one Jeet but the appellants failed to prove such outrageous defence.

We have perused the statements of witnesses and documents available on record. As per the statement of PW.3, the marriage between the deceased and the appellant no. 1 was arranged marriage. At the time of marriage they had been given gold ornaments, cash and the other articles but the appellants were not satisfied with those articles. After marriage the deceased Sharmistha went to her husband's house and the members of the matrimonial house were not happy with the dowry which they had received at the time of marriage. For that reason, members of the matrimonial house used to inflict torture upon his daughter. He has further stated that the members of the matrimonial house used to ask his daughter for bringing

further cash of Rs. 20000/- from her father's house. P.W. 3, has further stated that in a Friday Sharmistha came to their house and she was crying and told them that the members of the matrimonial house ask her to bring further cash of Rs. 20000/-. After some advice he had sent the victim to her matrimonial house. After 1 or 2 days they got telephonic call and heard that Sharmistha committed suicide. P.W. 9 in his evidence has categorically stated after marriage, Sharmistha went to her husband's house and she was not well at her matrimonial house because they were dissatisfied with the articles given by them. P.W. 9 further stated that the appellants claimed further cash of Rs. 20000/- from the father of Sharmistha who could not give the same. Due to this reason, the appellants used to inflict physical torture upon the deceased. P.W. 9 further stated that the victim came to his house and narrated all the facts. P.W. 9 further stated that before death, Sharmistha came to their house and disclosed she was tortured in connection with demand of further dowry. P.W. 10 Sati Roy also corroborated the statement of P.W. 3, 9 & 13. P.W. 10 has stated that the appellants were not satisfied with the articles which were given at the time of marriage and the appellants claimed further cash of Rs. 20000/- but they were not able to pay. P.W. 10 further stated Sharmistha returned to her matrimonial house with her elder son-in-law (P.W.9) and elder daughter (P.W. 13) and thereafter P.W. 10 heard the news of death of her daughter Sharmistha. P.W. 13 has corroborated the evidence of P.W. Nos. 3, 9 & 10. During his evidence he has categorically stated at the time of marriage cash, gold ornaments and other articles were given to the appellants but the appellants were not satisfied with it. They started claiming further cash of

Rs. 20000/-P.W. 13 has further stated that they failed to pay the said amount of Rs. 20000/- and due to non payment of the said amount, the appellants used to inflict torture upon his sister Sharmistha. P.W. 13 has further stated that his elder sister brought Sharmistha to their house and the said witness heard the conversation about the demand of dowry by the appellants from Sharmistha. P.W. 13 has further stated that Sharmistha told that the appellants were claiming Rs. 20000/- and requested his father to pay the said amount but their father expressed his inability to pay the same. P.W. 13 has further stated that his father had sent Sharmistha back to her matrimonial house with her sister expressing his inability and thereafter the elder sister had taken Sharmistha to her matrimonial house and one day later Sharmistha committed suicide.

As per the complaint made by P.W.3 on the basis of which the the above case was initiated in the said complaint P.W.3 had stated that his youngest daughter namely Sharmistha Roy (Mondal) aged about 19 years got married to Mongal Mondal of Hemanta Basu Nagar, 1. No. Mathpara P.O. Kadambagachi, P.S. Barasat on 5th Asardh, 1417 (according to Bangali era) as per Hindu rites and custom. At the time of marriage the bride groom was provided with gold ornaments and cash as per his claim. After marriage his daughter Sharmistha Roy (Mondal) and Son-in-law Mangal went to live their domestic life at Hemanta Basu Nagar at his Son-in-law's house but as the dowry was not as per his choice, his son-in-law Mangal, on the very next day of their marriage, told his daughter to bring Rs. 20,000/- more and when his daughter failed to fulfill his demand the son-in-law started causing

torture upon his daughter but at the time of evidence before the Court PW.3, PW.9, PW.10 and PW.13 have deviated from their statement by implicating the in-laws i.e., appellant no.2 and appellantn no.3 in the said case by stating that Mongal, his father and mother claimed further cash of Rs.20000/- which is not established against the appellant no. 2 and 3. though in the complaint it was the specific allegation only against the husband with regard to demand of dowry of Rs. 20,000/- from the deceased by her husband.

In the light of aforesaid discussion, we are of the opinion that the Ld. Trial Judge failed to consider the aspect that the witnesses have embellished their evidence before the Court by implicating the appellants no. 2 and 3 though in the initial complaint there is a specific allegation against only against the appellant No. 1 who is the husband of the deceased with regard to demand of dowry and thus allegation against the appellant no. 2 and appellant no.3 is not established. Therefore, the conviction and sentence against the appellants no. 2 and 3 are set aside and quashed. Accordingly the Appellants no. 2 and 3 are acquitted from all the charges levelled against them. However, in view of the evidence of demand of dowry and cruelty upon the deceased by the appellant no.1 as stated above, we uphold the conviction of the appellant no.1.

Comming to the issue of sentence of the appellant no.1, we find that the incident was occured on 24.08.2011 and the appellant no.1 is in custody since 27.03.2017 i.e. from the date of judgment and is aged about 30 years and there is no criminal antecedents. Accordingly, we reduce

sentence imposed by the trial court upon the appellant no.1 in respect of the offence punishable under section 304B of the Indian Penal Code and direct that he shall suffer rigorous imprisonment for seven (7) years and pay fine of Rs. 2000/- in default to suffer rigorous imprisonment for three months more in place of sentence imposed by the trial court. Other sentences imposed upon the appellant no. 1 by the trial court on the score of section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act respectively remain same. All the sentences shall run concurrently.

The Appeal is allowed to the aforesaid extent. Appellants no. 2 and 3 are discharged from their respective bail bonds.

The appeal being CRA No. 226 of 2017 is thus disposed of.

In view of disposal of the appeal, the connected applications being CRAN 4 of 2019 (Old CRAN 3223 of 2019) and CRAN 5 of 2020 (Old CRAN 65 of 2020) are also disposed of.

Period of detention of appellant no. 1, if any, undergone by the appellant no. 1 during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree

(KrishnaRao,J.)

(Joymalya Bagchi, J.)