

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.A. 301 of 2013

Sudipta Sarkar

Versus

The State of West Bengal & Ors.

For the petitioner : Mr. Krishnendu Bhattacharjee
Ms. Priyanka Ganguly

For the State : Mr. Swapan Banerjee
Mrs. Purnima Ghosh

Heard on : 07.01.2021

Judgment on : 05.02.2021

JAY SENGUPTA, J:

1. This appeal is directed against a judgment and order of conviction and sentence dated 26.03.2013 passed by the learned Additional Sessions Judge, Fast Track Court-III, Krishnanagar, Nadia in Sessions Trial No. XI

(February), 2011, thereby convicting the present appellant on a charge under Section 498A of the Penal Code and sentencing him to suffer simple imprisonment for three years and to pay a fine of Rs. 5,000/-, in default to suffer simple imprisonment for two months. It is germane to mention that by the same order, the three other accused in this case were acquitted of all charges and the present appellant was acquitted of the charges under Sections 302 and 306 read with Section 34 of the Penal Code.

2. On 07.03.2010, PW 1, the elder sister of the victim deceased, lodged a First Information Report against the present appellant and four others under Section 302 read with Section 34 of the Penal Code. It was alleged that the appellant and the victim were both teachers in the same school. They fell in love and got married. After marriage the couple started residing in the house of PW 4. The accused started inflicting mental cruelty on the victim. They wanted the victim to leave the job of teaching at Santipur and to join at Karimpur. On 07.03.2010 at about 1 p.m. information came that there was a dispute in the matrimonial home of the victim. After going there, the defacto complainant found the victim dead.

3. PW 13 held inquest on the dead body of the victim in the presence of PWs 1, 3, 10 and another. A magisterial inquest was subsequently conducted by PW 8 in the presence of PW 10. On 08.03.2010, PW 7 conducted the post mortem examination on the victim deceased. He cited asphyxia following ante-mortem hanging, which was suicidal in nature, as the cause of death. After completion of investigation, a charge-sheet was

submitted against all the accused under Section 302 read with Section 34 of the Penal Code.

4. On 03.03.2011, charges were framed against the appellant and the other co-accused, namely, the father-in-law, the mother-in-law, the sister-in-law and the husband of the sister-in-law of the victim under Section 498A, Section 306 read with Section 34 and Section 302 read with Section 34 of the Penal Code. The accused pleaded not guilty and claimed to be tried.

5. The prosecution examined as many as 13 witnesses to establish its case. The defence of the accused was a denial of the prosecution case as would be evident from the trend of the cross-examination and the examination of the accused under Section 313 of the Code.

6. During trial, the elder sister of the victim/deceased deposed as PW 1. She stated regarding the marriage of the couple. On the date of the incident the victim's father-in-law called up the victim's mother (PW 9) stating that some disputes were going on between the couple and that they should come. After reaching the victim's matrimonial home, she was found dead. Several persons assembled. The quarrels had started between the couple within a year of the marriage. The in-laws primarily wanted the petitioner/the victim to leave her job. The husband even physically assaulted the victim. The victim narrated about such torture to her relatives. In fact, the in-laws had come for a settlement. PW 1 was also a witness to the inquest by the police. In her cross-examination, PW 1 admitted that the purported Salish was not

put down in writing. She did not narrate about the quarrels to anyone outside. The other accused instigated the husband to commit the crimes. She further admitted that they rarely visited the victim's house and that they came to victim's place a few days before the incident and took away the victim's bank passbook with them. She denied the suggestion that she had demanded money from the victim. PW 2 was the uncle of the victim lady. He gave out only a hearsay account. PW 3 was the landlady of the couple. She stated that the relation between the two was generally good. However, on one or two occasions they were found quarrelling with each other. On the fateful day the appellant came and told that the victim was not opening in the door of her room. In her presence the husband broke open the door and they found the victim hanging. PW 5, a neighbour, and the husband brought down the dead body. PW 3 was also a witness to a seizure. PW 4 was the landlord of the couple and the husband of PW 3. He could not say anything about the relationship between the couple. He admitted that the relatives of both sides used to come to visit the couple. PW 5 was a local witness who had cut the rope when the dead body was taken down. PW 6 was the Assistant Sub-Inspector of police who recorded the First Information Report. PW 7 was the post-mortem doctor who opined that it was a case of suicidal hanging. PW 8 was the Magistrate who held an inquest over the dead body. PW 9, the victim's mother, deposed for the first time in Court. She said that the victim was not treated well by her husband and her in-laws. They wanted the victim to shift to another school elsewhere. This led to problems, which continued. On the date of the incident, the father-in-law of the victim

called up and stated about the continuation of a misunderstanding between the two. In the cross-examination, PW 9 stated that his elder son was the secretary of the school where the couple taught. There were two rooms in the rented house of the couple. PW 9 denied any suggestion about demanding money from her daughter, the victim. PW 10 was the brother of the victim. He deposed that the petitioner was subjected to both mental as well as physical torture. The prime cause for such cruelty was the in-laws' wish that the victim should leave her job and take it up elsewhere. At one point there was a temporary settlement. He also deposed about the telephone call of the father-in-law on the date of occurrence. He was a secretary of the school where the two taught. He was a witness to both the inquests. In his cross, he admitted that he did not know the exact cause of death of her sister. He also denied any suggestion about demand for money from her sister by them. PW 11 was a neighbour who practically said nothing. PW 12 was the father of the victim lady. He deposed that the victim was treated badly by the husband and the in-laws. He also deposed about the pressure of the accused upon the victim to seek a transfer of her job and also about the telephone call made by the father-in-law on the fateful date. PW 13 was the Investigating Officer of the case. However, the cross-examination of the Investigation Officer primarily dealt with PW 10.

7. Learned Counsel appearing on behalf of the appellant submitted as follows. While the other charge-sheeted accused were acquitted of all charges, the present appellant was also exonerated of the charges under Sections 302 and 306 read with Section 34 of the Penal Code. Even if one

had to invoke the presumption under Section 113B of the Evidence Act, the same could not be done in the present case because there was no prima facie material indicating that the accused had inflicted cruelty upon the victim any time before the incident. It was unfortunate that the victim's death took place after about a year from the marriage of the couple. However, some evidence should be there to haul up the accused as responsible for such death. Coming to the charge at hand, none of the two types of cruelty as envisaged in Section 498A of the Penal Code could be established here. First, there was no allegation of demand for dowry. Secondly, even on the question of infliction of cruelty that could lead a married woman to commit suicide or cause any harm to herself, no case could be made out. There was no independent witness supporting the prosecution case. The most important independent witnesses who were examined in this case were the landlord (PW 4) and the landlady (PW 3) of the couple. However, nothing adverse to the appellant came up from their evidence. Even the evidence of the related witnesses, namely, the elder sister (PW 1), the mother (PW 9), the brother (PW 10) and the father (PW 12) of the deceased had several inconsistencies and in any event, their evidence did not clearly establish the charge under Section 498A of the Penal Code. PW 9 was examined for the first time in Court. Her evidence should be taken with the pinch of salt. The victim's father PW 12 hardly said anything substantial to support the prosecution. PW 1, the elder sister, remarkably improved upon the version she gave in the FIR. PW 10, the brother, was the only related witness who ventured to say that besides mental cruelty, there was

also physical assault inflicted by the appellant. This rather inconsistent improvement cannot be trusted. On the whole, the allegations of mental torture was rather vague and bereft of material particulars. The prime cause for inflicting such cruelty was that the appellant and the in-laws purportedly wanted the victim to leave her job as a teacher at Santipur and join a similar job at Karimpur. There was no demand that the victim should totally leave her job. As such, this could hardly come within the purview of cruelty within the meaning of Section 498A of the Penal Code. On the contrary, suggestions were given on behalf of the Defence that family members of the victim were demanding money from the victim deceased. In fact PW 1, the victim's elder sister, admitted that a few days before the incident she and other family members had come to the victim and had taken away her bank pass book. Therefore, the suicide of the victim girl could have been due to any reason. The prosecution has failed to prove its case beyond reasonable doubt.

8. Learned Counsel appearing on behalf of the State submitted as follows. The evidence of related witnesses could very well be relied upon. They make out a prima facie case against the appellant, at least, for bringing home a conviction under Section 498A of the Penal Code. Moreover, there is no reason as to why the close relatives of the victim deceased would lie and falsely implicate the present petitioner and his family members.

9. I have heard the submissions of the learned counsels appearing on behalf of the appellant and the State and have perused the petition of appeal, the evidence and the other materials of record.

10. This is an unfortunate case where although the appellant and the victim had fallen in love and got married, soon thereafter things came to such a pass that the victim was compelled to commit suicide. After trial, the appellant and the other in-laws were all exonerated from the charges under Section 302 and 306 read with Section 34 of the Penal Code and the in-laws were also acquitted under Section 498A read with Section 34 of the Penal Code and the said acquittals have not been challenged.

11. Section 498A of the Penal Code entails two kinds of cruelty, one which is for demand of dowry and the other which is of such nature that would drive a married woman to commit suicide or to cause serious harm to herself.

12. In the present case admittedly, there is no question of demand of dowry.

13. The prime contention of the prosecution is that the husband and the in-laws wanted the victim to leave her job as a teacher at Shantipur where she was working and join a similar job at another place at Karimpur. Although certain improved, unspecific and incoherent versions about physical assault also came out in evidence, which, thus, cannot be trusted, the main thrust is on this pressure upon the lady to shift her job. In this, there is hardly any difference in the footing on which the present appellant and the other acquitted accused stand.

14. In the absence of any convincing evidence of torture that could attract Section 498A of the Penal Code, a mere assertion that pressure was being

applied on the victim lady to shift a job does not seem to be sufficient to sustain a conviction under Section 498A of the Code.

15. On the contrary, suggestions were given by the defence that the victim's own blood relations were pressurizing her to shell out money. In fact, PW 1, the victim's sister and defacto complainant of the case admitted in her cross-examination that they had visited the victim's place a few days before the incident and took away the victim's bank passbook with them. Taking away of the victim's bank passbook by her elder sister casts a further shadow of doubt on the prosecution case.

16. The best witnesses to the incident would be PWs 3 and 4, the couple in whose house the appellant and the victim were staying as tenants. Their independent evidence do not support the prosecution case.

17. In view of the paucity of cogent evidence appearing against the appellant, the lack of support from independent witnesses and the strong suggestions posed by the defence, it would be unsafe to convict the appellant under Section 498A of the Penal Code. Accordingly, the appeal is allowed and the conviction and sentence ordained by the Learned Trial Court in respect of the present appellant under Section 498A of the Penal Code are set aside.

18. A copy of the judgment along with the Lower Court records shall be sent down to the learned Trial Court forthwith by a Special Messenger for information and necessary action.

19. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J)