

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble JUSTICE JOYMALYA BAGCHI
And
The Hon'ble JUSTICE BIVAS PATTANAYAK

C.R.A. 403 of 2016
(CRAN 3 of 2020)

Firoj Sk.

-Vs-

The State of West Bengal.

For the Appellant: Mr. Deb Kumar Sharma, Adv.

For the State: Ms. Zareen N. Khan, Adv.
Ms. Amita Gaur, Adv.

Heard on: 30.11.2021

Judgment on: 22.12.2021

BIVAS PATTANAYAK, J. : -

1. This appeal is directed against the judgement dated 18.03.2016 and order dated 19.03.2016 passed by Additional District and Sessions Judge, Fast Track 1st Court, Berhampore, Murshidabad in Sessions Trail no. 09(06)09 arising out of Sessions Serial no. 183 of 2009 convicting and sentencing the appellant for offence punishable under Section 498A of the Indian Penal Code for a period of

3 years and to pay fine of Rs. 1000/- in default to suffer simple imprisonment for a further period of one month and also for offence punishable under Section 302 of the Indian Penal Code for rigorous imprisonment for life and to pay fine of Rs. 10,000/- in default to suffer simple imprisonment for a further period of six months.

2.The prosecution case in brief is that on 09.11.2008, one Hayat Sk lodged a complaint with officer-in-charge, Rejinagar Police Station with the allegation that his daughter namely Jannati Bibi, aged about 19 Years, was married to the appellant three months back and both of them stayed in his house in the intervening night of 08.11.2008 and 09.11.2008. At around 6 AM in the morning of 09.11.2008 his younger son discovered his elder sister Jannati Bibi was hanging in a kneel down position with a red cloth tied to her neck which was also tied to the bamboo of the thatched room and his brother-in-law i.e. the appellant had fled away from the room. Upon entering the room they found that the victim had already expired. It is further alleged that his daughter was subjected to both physical and mental torture and there was a further demand of money to the tune of Rs. 20,000/-. On the basis of the aforesaid complaint Rejinagar Police Station case no. 168 of 2008 dated 09.11.2008 under Section 498A/304B of the Indian Penal Code was started against the appellant.

3. Upon completion of investigation charge-sheet was submitted under Section 498A/304B of the Indian Penal Code with adding Section 302 of the Indian Penal Code against the appellant.

4. After complying formalities as per provisions of law the case was committed to the Court of Session which was subsequently transferred to the Court of Additional District and Sessions Judge, Fast Track 1st Court, Berhampore, Murshidabad for trial and disposal.

5. Charge under Section 498A/302 of the Indian Penal Code was framed against the appellant which was read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

6. The prosecution in the course of trial examined 24 witnesses and proved some documents. The defence did not adduce any evidence. However, the case of the defence is of falsity in the prosecution case and plea of innocence.

7. Upon consideration of the evidence and other materials on record submitted on behalf of the prosecution, the learned trial court convicted and sentenced the appellant as aforesaid.

8. Mr Sharma, learned Advocate for the appellant submitted that there is no direct evidence against the appellant establishing the charge brought by the prosecution beyond doubt. The entire case of the prosecution is based on weak circumstantial evidence which does not tend towards the guilt of the appellant. Moreover, the evidence shows that on the fateful date the appellant was staying in the in-laws house with the wife and therefore, the question of discord in relationship is farfetched. Further there is no such clinching evidence that on the night of incident the appellant was with the deceased. The evidence of the prosecution witnesses is contradictory to one another. There is no independent

corroboration of the evidence of the witnesses who are relatives of the deceased, who are interested parties and as such their evidence should be discarded. In view of his above submissions he prayed that the appeal be allowed and the appellant be acquitted from the case.

9. Ms Khan, learned Advocate appearing on behalf of the State submitted that **PW 3**, Hayat Sk (father of the deceased), **PW 9**, Sohanur Rahaman(brother of the deceased) and **PW 11**, Lalbanu Bibi (mother of the deceased) have consistently deposed in their evidence about demand of dowry and the subsequent strained relationship between the spouses and such facts have been corroborated by other prosecution witnesses. Prior to two days of the incident the husband and the wife (deceased) came to the in-laws house and in the night they slept together and subsequent thereto in the morning the wife was found dead in the said room and accordingly such circumstances clearly and irresistibly indicate the guilt of the appellant. Moreover, during trial the appellant has failed to provide any explanation regarding the unnatural death of the deceased-wife with whom he was sleeping in the night prior to the reported date of incident. The medical evidence of the doctor namely **PW 23**, Dr Santosh Kumar Bhunia shows that this appellant tried to pass the homicidal death of the deceased into one of suicide. In the light of her above submissions Learned Additional Public Prosecutor prayed that the appeal be dismissed and conviction and sentence passed by the learned trial court against the appellant should be upheld.

10. In the present case the appellant has been convicted for the offence punishable under Section 498A of the Indian Penal Code and Section 302 of the Indian Penal Code.

10.1. Let me at first analyse and assess the evidence on record with regard to the charge under section 498A of the Indian Penal Code.

In order to bring home the aforesaid charge under Section 498A of the Indian Penal Code the prosecution has to prove the following essential ingredients of the offence.

(i) A woman was married;

(ii) She was subjected to cruelty;

(iii) Such cruelty consisted in-

(a) any wilful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;

(b) harassment to such woman with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security or is on account of failure of such woman or any of her relations to meet the unlawful demand;

(c) The woman was subjected to such cruelty by her husband or any relation of her husband.

Now in the light of aforesaid ingredients the evidence of the prosecution is to be analysed. It is undisputed that the deceased was married to the appellant. The prosecution has adduced the evidence of the complainant **PW 3**, Hayat Sk (father of the deceased) who deposed in his evidence- in- chief that at the time of marriage of his daughter with the appellant he gave a cash of Rs 50,000/- as dowry and in spite of the same the appellant demanded a further sum of Rs. 20,000/- as additional dowry and there was quarrel and dispute in between the appellant and his daughter Jannati (deceased) over the issue of demand of such additional sum of money. Upon going through the cross-examination of this witness it is found that neither the above evidence has been shaken or rebutted nor there are any contradictions. It is also noted that this witness who is the complainant, in his written complaint (**Exhibit 2**) had also stated that after marriage the appellant used to torture his daughter over demand of extra sum of money to the tune of Rs.20,000/-. Thus the evidence of **PW 3**, Hayat Sk is very much consistent of the fact that over the issue of demand of extra sum of money to the tune of Rs.20,000/- there was dispute, differences and quarrel between his daughter and the appellant.

PW 11, Lalbanu Bibi (mother of the deceased) in her evidence-in-chief deposed that at the time of marriage a cash amount of Rs.50,000/- was given to the appellant and an another amount of Rs.10,000/- was paid to the appellant and thereafter the appellant again demanded a sum of Rs. 20,000/- which they failed to meet and then her daughter was abused and assaulted on that night. Although this witness stated that an amount of Rs.10,000/- was paid to the

appellant but that has neither been averred in the complaint nor deposed by **PW 3**, Hayat Sk (complainant) and hence it appears to be over exaggeration of facts. Be that as it may, on extensive cross-examination her evidence of demand of a further sum of Rs.20,000/- by the appellant and the act of cruelty inflicted on her daughter by the appellant on failure to meet such demand has remained consistent and unshaken and there are also no contradictions to the said evidence of this witness.

So it is found that the **PW 11**, Lalbanu Bibi (mother of the deceased) corroborated the evidence of **PW 3**, Hayat Sk (father of the deceased) with regard to the fact of giving money in cash during marriage as well as the additional demand of Rs. 20,000/- by the appellant and the discord, quarrel and strained relationship between the appellant and the deceased-wife that ensued over the issue of failure to meet such demand.

PW 9, Saharun Rahaman (brother of the deceased), aged about 14 years, is a child witness and after assessing his competence the learned trial court has recorded his evidence. In his deposition in-chief he stated that about two days ago from the date of death of his sister she was abused and assaulted by the appellant on demand of money and in cross-examination he deposed that he has stated of such fact to the police during interrogation. However, from the deposition of **PW 24**, SI Shyamal Kumar Ghosh (Investigating Officer) it is found that there are contradictions in the aforesaid evidence of the witness. Further although this witness deposed that his father namely **PW 3** gave

money to the appellant but such fact has been contradicted by **PW 24** (Investigating Officer) and moreover such fact has never been stated by **PW 3** either in his complaint or in his evidence before the court. Thus the aforesaid evidence of the witness with regard to payment of money to the appellant appears to be embellishment. Thus, so far as the aspect of demand of money is concerned this witness fails to lend support to such fact. Be that as it may, it is pertinent to note that he has categorically deposed in cross-examination that his sister came to their house after making quarrel with the appellant. Hence this witness supports the evidence of his father namely **PW 3** and mother namely **PW 11** to the extent of quarrel relating to discord and differences between the deceased-wife and appellant-husband.

Further **PW 5**, Asad Ali Sk (uncle of the deceased) as well as **PW 10**, Imdadul Sk (cousin brother of the deceased) have consistently deposed of the fact of demand of an amount of Rs.20,000/- by the appellant and of infliction of cruelty upon the deceased over the said issue, such evidence of **PW 5** and **PW 10** has remained unshaken in cross-examination and further there are no contradictions with regard to the said evidence of these witnesses as well. Although these witnesses have not stated of their source of knowledge yet they being the immediate relations of the deceased and resident of the same village where the complainant ordinarily resides, their knowledge of such additional demand by the appellant and discord, differences leading to cruelty over the said issue is quite natural. Accordingly, it is found that these witnesses have

also corroborated the evidence of **PW 3**, Hayat Sk (father of the deceased) in such regard.

The other prosecution witnesses namely **PW 6**, Anisur Rahaman, **PW 8**, Year Nabi, **PW 12**, Doyabox Sk, **PW 14** to **PW 19** are hearsay evidence.

PW 13, Abdul Latib Sk, a co-villager, although stated of demand of money by the appellant but he has not disclosed his source of knowledge. The complainant **PW 3**, father of the deceased, did not state that he stated of such fact to **PW 13**. Hence his evidence is nothing but hearsay and cannot be relied upon.

PW 20, Piar Box and **PW 21**, Baijid Sk did not state anything with regard to the factum of demand. **PW 7**, Matalab Sk and **PW 22**, Haru Sk have been declared hostile by the prosecution.

In view of the impeccable evidence of **PW 3**, complainant and father of the deceased, with regard to demand of further sum of Rs. 20,000/- by the appellant and subsequent quarrel, discord and differences in relation to such demand, corroborative evidence of **PW 11**, his wife and mother of the deceased, evidence of **PW 9** regarding quarrel and also the evidence of **PW 5**, uncle of the deceased, and **PW 10**, cousin brother of the deceased corroborating the fact of demand of money and cruelty, I am of the view that the prosecution has been able to establish that the deceased-wife was subjected to cruelty on demand of additional sum of money and therefore the charge against the appellant under Section 498A of the Indian Penal Code is well founded.

It has been strenuously argued on behalf of the appellant that as there is no independent corroboration of the evidence of relatives of the deceased, who are interested witnesses hence the same is to be discarded. The Hon'ble Apex Court in its decision passed in ***Myladimmal Surendran and others versus State of Kerela*** reported in **(2010)11 SCC 129** observed that if such a wide proposition was to be accepted the evidence of all witnesses who are relatives of a victim of violent crime would be rendered unacceptable. In this regard I am of the opinion that merely because the witnesses are relatives cannot be a ground to discard their evidence until and unless the credibility of such witnesses is impeached. It is noted that nothing has been shown on behalf of the appellant to discount the evidence of those witnesses on the ground of their lack of credibility and hence such argument does not stand to reason.

10.2 With regard to charge under Section 302 of the Indian Penal Code the prosecution is required to prove the following essential ingredients:

- (i) death of human being was caused.
- (ii) such death was caused by or in consequence of the act of the accused.
- (iii) such act was done-
 - (a) with the intention of causing death.
 - (b) that the accused knew it to be likely to cause death.
 - (c) that the injury was sufficient in the ordinary course of nature to cause death.

Keeping in mind the aforesaid ingredients, let me analyse the nature of death to the extent as to whether the victim died of suicide or homicide or accident or otherwise. The prosecution in order to establish the nature of death of the deceased has examined **PW 23**, Dr Santosh Kumar Bhunia and also produced the post-mortem of the deceased which has been proved by autopsy surgeon **PW 23** and is marked as **Exhibit 6**.

PW23, Dr. Santosh Kumar Bhunia in his deposition-in-chief made before the court stated that during post-mortem he found that following ligature mark over the neck of the deceased.

(i) Transverse disposed deep lacerated ligature mark over its lower part fully encircled in neck.

(ii) Obliquely disposed ligature mark around upper part of the neck, going upward towards right side and faded of that side.

The autopsy doctor namely **PW 23** has opined that the death of the deceased was due to asphyxia as a result of homicidal ante-mortem strangulation. He also clarified that the ligature mark no. 2 is post-mortem hanging marks perpetrated by the assailant to make it an incident of hanging. Upon perusal of the post-mortem report (**Exhibit 6**) it is found that the death was due to asphyxia as a result of homicidal ante-mortem strangulation and it has also been noted that the ligature no. 2 was post-mortem hanging mark perpetrated by the assailant to pass the homicide as a suicidal hanging incident. Accordingly, from the above medical evidence it is apparently clear that the

death of the deceased was a homicidal one which the assailant tried to pass on as suicide.

Now the pertinent question which requires to be explored is whether the appellant had any role in the homicidal death of the deceased. There is no eye-witness to the occurrence and the case is based upon circumstantial evidence. At this juncture it is to be seen whether any circumstance irresistibly point towards the guilt of the appellant. The circumstance pressed by the prosecution against the appellant is that in the night just prior to the death of the deceased, she and the appellant slept in a room in parental home of the deceased, which the in-laws house of the appellant.

I may profitably refer to the evidence of **PW 3**, Hayat Sk, father of the deceased, **PW 9**, Sahanur Rahaman, brother of the deceased and **PW 11**, Lalbanu Bibi mother of the deceased who are the members of the in-laws house of the appellant.

PW 3, Hayat Sk, father of the deceased, in his evidence-in-chief categorically deposed that in that night his daughter went to sleep in the room with his son-in-law Firoj Sk. i.e. the appellant. This witness has been extensively cross-examined. However his aforesaid evidence has remained unshaken in cross-examination. It is further noted there are no such contradictions of the aforesaid evidence of the witness.

PW 9, Sahanur Rahaman, brother of the deceased, who is a child witness deposed in his evidence-in-chief, which was taken in question-answer form, in

reply to the question where his '*Jamaibabu*' (appellant herein) was in that very night stated in that very night his '*Jamaibabu*' (appellant herein) was with his elder sister i.e the deceased-wife. The aforesaid deposition was objected to on behalf of the defence. It is, however, noted that the grounds of objection has neither being asserted before the trial court nor before this court during hearing. This witness has also been extensively cross-examined however his aforesaid evidence has remained unchallenged during the cross-examination. Moreover, there are no such contradictions noted of the aforesaid evidence of this witness.

PW 11, Lalbanu Bibi, mother of the deceased, deposed that on that date the appellant stayed in their house and in that particular night slept with her daughter in a room. She denied the suggestion put to her in course of her cross-examination as follows:-

“ not a fact that I did not state before the police that my son-in-law Firoj came to our house prior to the date of death of my said daughter and stayed at our house and in that particular night he slept in a room with my daughter.”

Upon going through cross-examination **PW 24**, SI Shyamal Kumar Ghosh, the Investigating Officer of this case, it is found that there is material contradiction in the evidence of **PW 11** to the extent that she did not state before him that her son-in-law i.e the appellant came to their house before the date of death of her daughter and stayed in their house. Thus, in the light of aforesaid

contradiction her evidence that in that particular night the appellant slept with her daughter in a room becomes improbable and cannot be relied upon.

However, from the aforesaid consistent evidence of **PW 3** (father of the deceased), **PW 9**(brother of the deceased) who are also members of the parental home of the deceased it is manifestly clear that on the night of the fateful date the appellant slept in a room with his wife(deceased).

Further **PW 9**, Sahanur Rahaman, brother of the deceased, deposed that in the morning at about 6 AM he asked for toothpaste from his mother, who told him to get it from his elder sister and when he knocked the room he did not receive any response and thereafter on entering the room he found his sister in kneel down condition and a red colour 'sari' was tied to her neck. This witness is the first person to see the deceased in such a position. **PW 3**, Hayat Sk, father of the deceased, deposed that the appellant called him and told him about the death of the deceased and immediately he went to the said room where he found his daughter hanging in a kneel down position from the bamboo thatch of the room with the help of a 'sari'. **PW 11**, Lalbanu Bibi, mother of the deceased also stated on such date in the morning her son asked for toothpaste and she told him to go to his sister's room for such toothpaste. Thereafter her son called her as he found his sister hanging by a 'sari' in kneel down position and when they entered the room they also witnessed that the victim was sitting in kneel down position and hanging by a 'sari' from the bamboo of the room.

The above evidences of the aforesaid witnesses have remained unchallenged in cross-examination and there are also no contradictions.

PW 5, Asad Ali Sk and **PW 10**, Imdadul Sk are post occurrence witnesses. Both these witnesses deposed that getting information they rushed to the house of the complainant and found the deceased in kneel down position and her neck was tied with a 'sari' in the room in hanging condition and she was brought down from that room. The aforesaid evidence of these witnesses has remained unchallenged in cross-examination. Further there are also no contradictions to such evidences.

Accordingly, from the above evidences of prosecution witnesses it is quite clear that the deceased was found hanging by a 'sari' from the bamboo of the thatched room in kneel down position in the room, in which she slept with the appellant-husband on the last night.

PW 3, father of the deceased, **PW 9**, brother of the deceased, categorically stated that the appellant was absent from the room. **PW 5** and **PW 10** who came to the house of the complainant on hearing about the incident also deposed that they did not find the appellant in the house at that time.

Accordingly, upon analysis of the aforesaid evidences the following facts has been established by the prosecution:

(i) On the intervening night the deceased-wife and the appellant-husband slept together in a room in the house of the complainant (PW 3, father of the deceased).

(ii) On the subsequent morning the deceased was found hanging by a 'sari' from the bamboo of the thatched room, in kneel down position in the room where she slept with the appellant-husband.

(iii) The appellant was not found in the house of the complainant after the incident.

(iv) The death of the deceased was homicidal ante-mortem strangulation.

(v) The ligature no. 2 was post-mortem hanging mark perpetrated by the assailant to pass the homicide as a suicidal hanging incident.

Now as the death of the deceased was homicidal as per medical evidence and the appellant-husband slept with the deceased-wife in the room where the victim-wife was found hanging by a 'sari' from the bamboo of the thatched room, in kneel down position on the subsequent morning and the presence of another ligature mark on the deceased being post mortem in order to show the death to be suicidal, the appellant had the special knowledge of the circumstances leading to the homicidal death of the deceased. Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him and hence in the instant case as per requirement of law there will be corresponding burden on

the appellant being the husband to provide a cogent explanation as to how the crime was committed. During the course of trial or at the time of his examination under section 313 of the Criminal Procedure Code, the appellant did not tender any explanation regarding such unnatural homicidal death of the deceased-wife. Absence of any such explanation by the appellant-husband would lead to an inference of commission of the crime and nothing else. When the prosecution has been able to show that the deceased-wife on the fateful night was in the room along with the appellant-husband the onus shifts upon the husband to show under what circumstance death or the injuries leading to death was caused to his wife **(See *Narendra versus State of Karnataka* reported in AIR 2009 SC1881).**

Hence, the circumstantial evidences led by the prosecution unerringly point towards the guilt of the appellant in causing death of the deceased and the charge under section 302 of the Indian Penal Code against the appellant has been established beyond doubt.

11. In the light of the above discussion, I have no manner to dissent from the conclusion arrived at by the learned trial court and accordingly, conviction and sentence passed by the learned trial court is upheld.

12. The instant appeal is, accordingly, dismissed.

13. CRAN No.3 of 2020, accordingly, stands disposed of.

14.Copy of the judgement along with the lower court records be sent down to the learned trial court at once.

15. Urgent Photostat Certified copy of this judgement, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Joymalya Bagchi,J)

(Bivas Pattanayak,J)