

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 13 of 2003

Uttam Chakraborty

-Vs.-

The State of West Bengal

For the appellant	:	Mr. Pratip Kumar Chatterjee, Mr. Somopriyo Chowdhury
For the State	:	Md. Anwar Hossain Ms. Sujata Das
Heard on	:	11.04.2022, 25.04.2022 & 04.05.2022
Judgment on	:	19.04.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order dated 20.09.2002 passed by the learned Additional Sessions Judge, 1st Court, Suri, Birbhum in Sessions Case no. 125/1998 wherein the learned Court was pleased to hold the appellant guilty for the offences punishable under Sections 498A/306 of Indian Penal Code and sentenced him to suffer as follows:

- i) Rigorous imprisonment for three years for commission of offence under Section 498A of the Indian Penal Code and pay a fine of

Rs.500/- (Rupees Five Hundred Only), i.d. to further R.I for six months;

- ii) Rigorous imprisonment for three years for commission of offence under Section 306 of the Indian Penal Code and pay a fine of Rs.500/- (Rupees Five Hundred Only), i.d. to further R.I. for six months.

On the basis of a complaint lodged by one Sukumar Chattopadhyya (brother of deceased Laxmi Chakraborty) with the Officer-in-Charge, Rajnagar Police Station, Birbhum, case no. 10/1995 dated 16.02.1995 was registered for investigation under Section 498A/306 of the Indian Penal Code. It was alleged in the letter of complaint that on or about 26th of Falgoon, 1396 B.S., the sister of the complainant was married to Uttam Chakraborty, the elder son of Sarat Chakraborty of village Adampur, P.S. Rajnagar, Dist:- Birbhum as per Hindu rights and customs. At the time of marriage a sum of Rs. 20,000/- was paid as per demand of dowry, however, after marriage the inmates of her matrimonial home started torturing her for further dowry. Such incidents were informed by the deceased to her parents but due to their inability no further money could be paid and as a result her father-in-law, her husband, mother-in-law, husband's brothers and sisters and son of husband's uncle and elder brother tortured her both physically and mentally. Unable to bear such torture, the complainant's mother brought his sister to their house and on 07.02.1995 her father-in-law took the deceased to their house by mediating through the village panchayat. On that night she was assaulted severely by the inmates of the

matrimonial home and as a result she committed suicide on the next day by setting herself on fire. As a result of the burn injuries suffered by her she died at Suri Sadar Hospital. The letter of complaint could not be addressed in due time as the members of the family were disturbed by the sudden loss of said Laxhmi Chakraborty and after her Sradh ceremony the complaint was lodged. The complainant held the following persons to be responsible: 1. Uttam Chakraborty, Husband; 2. Sarat Chakraborty, father-in-law; 3. Chanchala Chakraborty, mother-in-law, wife of Sarat Chakraborty; 4. Dilip Chakraborty, husband's brother, son of Sarat Chakraborty; 5. Rekha Chakraborty, elder sister of husband, d/o Sarat Chakraborty; 6. Kumari Sikha Chakraborty, husband's younger sister, d/o Sarat Chakraborty; 7. Jagadish Chakraborty, husband's elder brother, son of Sudhir Chakraborty; all are of village- Adampur, P.S.- Rajnagar, Dist.- Birbhum.

On completion of investigation police filed charge-sheet against 7 accused persons under Sections 498A/306 of the Indian Penal Code. In order to prove its case the Investigating Authorities also relied upon 19 witnesses of whom 2 were doctors associated with the medical examination and post-mortem of the deceased and 3 Police Officers who were associated with the investigation of the case.

The case was thereafter committed to the Court of Sessions and the Learned Additional Sessions Judge, 1st Court, Suri, Birbhum was assigned the responsibility of trial and disposal of the said case. By an order dated

07.08.1999 charge was framed against the accused persons under Section 498A/306 of the Indian Penal Code, the contents of the charge were read over to the accused persons to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case in course of the trial relied upon 16 witnesses and number of documents.

PW1 Bhabani Charan Ghosh, PW2 Bharat Chakraborty, PW3 Kanai Ghosh, PW4 Hemanta Ghosh the residents/neighbour/villagers of the matrimonial home of the deceased turned hostile. All these witnesses stated that they knew nothing about the cause of death of Laxmi Chakraborty.

PW5 Pratima Chatterjee, mother of the deceased deposed before the Court that her husband died one year after the death of Laxmi and her son Sukumar Chatterjee (who lodged the complaint) died after three years of the death of Laxmi Chakraborty. According to the witness the deceased was the youngest daughter and her marriage was solemnized with the appellant in accordance with the Hindu religious rites and custom and a sum of Rs.80,000/- was spent in the marriage for dowry, ornaments, utensils etc. After marriage the couple resided at their matrimonial home at Adampur and one daughter was born out of the wedlock. After about three years of marriage the incident of un-natural death of Laxmi took place when she sustained extensive burn injuries. The witness explained to the Court that during the period of three years the deceased used to visit the paternal home intermittently and in course of such

visit she used to narrate regarding the torture of physical assault being inflicted upon her by her husband and his two sisters and his brother Dilip as well as her mother-in-law for procuring more money and other articles. Once when the witness had been to the matrimonial home of the deceased she showed a deep cut injury measuring about three inches at length at the thigh of her right leg and it was stated to her that she was attacked with 'Boti' by her husband. After coming to know of such torture the witness had taken the deceased at her house where she stayed for about a year when Sarat Chakraborty, father-in-law of the deceased during Swarasati Puja came to their house and in presence of Shyamal Banerjee, Diljan, Swapan Ghosh, Nibaran, Manimala and some respectable persons of the locality assured that they would not inflict any further ill-treatment of the deceased and on such assurance Laxmi was sent back to her matrimonial home along with her father-in-law and on the next day her son Sukumar received an information from a person of Adampur that Laxmi was lying at hospital after sustaining extensive burn injuries and on hearing such news her son Sukumar immediately rushed to Suri Hospital and one of his friend came and informed the matter to her and other family members. She along with respectable persons referred above had been to Suri Hospital and found that Laxhmi was groaning in pain after sustaining extensive burn injuries. The witness also stated that Laxmi stated to them that she was severely assaulted by her two sisters-in-law namely, Sikha and Rekha with broom and as the torture was unbearable she had set fire to herself for committing suicide. The witness also stated that after about 3 days

Laxmi succumbed to her injuries and her dead body was handed over to Sukumar after the post-mortem examination and the same was thereafter cremated. The witness also stated that she had lost her vision and as such she was unable to identify the witness and she was not examined and interrogated by any Police Officer regarding the unnatural death of Laxmi. The witness was cross-examined on the point of the injuries sustained by Laxmi on her right thigh, however, the witness confidently stated regarding the trouble which cropped up and assigned the reason that in order to avoid further trouble the matter was settled.

PW6, Shyamal Banerjee stated that in the year 1995 he was one of the members of Adampur Gram Panchayat. The witness stated that after about 4 years of marriage Laxmi stayed for about a year at her paternal home and it was reiterated by her brother, Sukumar to the members of the Panchayat that she sustained physical torture at her matrimonial home at Adampur. At the intervention of the Panchayat members, father-in-law of the deceased came at Adampur Gram Panchayat on 06.02.1995 and produced a letter written by Pradhan of Tatipara Gram Panchayat. A meeting was held at the house of Santiram Chatterjee, on being requested by the Anchal Pradhan some other persons of the locality namely, Diljan, Swapan Ghosh, Manimala Ghosh were also present and on an assurance of Sarat Chakraborty that there would be no trouble or any ill-treatment upon the deceased, Laxmi was allowed to accompany her father-in-law at her matrimonial home. On 08.02.1995 immediately after returning from work the witness heard from Sukumar that

after sustaining extensive burn injuries Laxmi was admitted at Suri Hospital and subsequently she succumbed to death. The witness also stated that the inquest was prepared in his presence.

PW7, Nibaran Mondal, narrated in the same tune as PW6 and added that he was present in the meeting for settling the issue relating to the trouble which accrued at the matrimonial home of Laxmi.

PW8, Manimala Ghosh, also narrated in the same tune as PW6 and PW7.

PW9, Sk. Diljan and PW10, Swapan Ghosh, reiterated the facts deposed by PW6, PW7 and PW8.

PW11, Srishtidhar Chatterjee, was attached to Suri Police Station and he accompanied A.S.I. Dilip Banerjee for conducting inquest over the dead body of the deceased in connection with the unnatural death case.

PW12, Dilip Banerjee, was A.S.I. of Police who conducted inquest. The said witness marked the inquest report as Ext.2.

PW13 is Dr. G.S. Dey who stated that he was on leave when the patient was admitted on 11.02.1995 at about 4.00 P.M. and during that period the patient was under the care and supervision of Dr. S. K. Saha and Dr. D. Samanta. The bed head tickets were presented to the Court which were marked as Ext.3. According to the witness, Dr. Samanta had found extensive burn injuries on the person of the patient. In cross-examination the witness stated that in the bed head tickets there is a specific note in the handwriting of Dr. D.

Samanta that the patient Laxmi had stated that her cloth accidentally caught fire from 'Chulla' (oven).

PW14, is Sub-Inspector of Police Sailaja Singha, who conducted the concluding part of the investigation and only prepared the charge-sheet against the accused persons and submitted the same before the Court.

PW15, is Dr. Ranjit Kr. Mondal, who conducted post-mortem over the dead body of Laxmi Chakraborty. The doctor opined that death was due to shock caused by burn injury which was anti-mortem in nature, there was extensive burn injury of 90% over the entire body except the lower half of both legs. An important aspect of the evidence deposed by this witness is as follows:

"The injuries so found on the dead body might be caused if the wearing apparels of a woman catches fire accidentally in course of cooking from the leaping flames of oven.

Then says - In the case of accidental fire there would not be such extensive burn of 90% when the victim is a normal healthy woman as because she would immediately try to put off her burning wearing apparels.

Any victim having extensive burn injury of 90% may have the capacity to speak.

In such cases both the Kidneys of the victim may get damage."

PW16, Investigating Officer of the case narrated the various stages of the investigation. One of the important aspects of the deposition of the

Investigating Officer is that in cross-examination he has categorically stated as follows:

“Smt. Pratima Chatterjee (P.W.5) in course of her statement u/s. 161 of Cr.P.C. had stated to me that she found that Laxshmi Rani had no capacity to utter any word. She (P.W.5) in course of her statement u/s. 161 Cr.P.C. did not state to me that Laxshmi Rani on being beaten and assaulted with broom stick by her husband and two sisters-in-law had committed suicide by setting fire to her body as the said torture was intolerable to her.”

On an assessment of the evidence which has surfaced in course of the trial there is a consistent version of PW5 regarding torture being inflicted upon the deceased at her matrimonial home and she having returned back to her parental home and having stayed there for a substantial period of time and one salish was held wherein the panchayats were involved (both of the matrimonial home and the paternal home) and on an assurance of the father-in-law, Sarat Chakarborty that no further ill-treatment would be inflicted upon her, the deceased returned to her matrimonial home. This fact has been corroborated by PW5, PW6, PW7, PW8 and PW9. The prosecution evidence reflects that on 07.02.1995 the deceased returned to her matrimonial home and she suffered burn injuries on 08.02.1995. The evidence of the prosecution witnesses are in a divided version so far as the burn injuries which was suffered by the deceased/victim, while one set of witnesses stated that she had set herself on fire, on the other hand rest of the witnesses stated that while preparing tea the wearing apparels of deceased Laxmi caught fire and as a result of which she

suffered burn injury. Another distinctive feature is regarding the medical opinion also, according to the doctor (PW13) Dr. G.S. Dey, the deceased at the time of admission divulged that she sustained burn injuries because of her wearing apparels being engulfed in fire, on the other hand the doctor in his opinion has also stated before the Court that the nature of burn injury which has been suffered do not support the version of sustaining burn injury by way of wearing apparels being set in fire accidentally. However, none of the evidence of the witnesses reflected any version, as to whether there was any quarrel, dispute, differences in the intervening night of 07.02.1995 and/or 08.02.1995 which could have compelled the deceased to set herself on fire and as such I am of the opinion that there is no evidence of the charge of abatement for commission of offence under Section 306 of the Indian Penal Code. The reasons assigned by the trial Court to that extent after discussing the evidence is vague and is based on conjectures and surmises which cannot be the foundation for arriving at a finding of guilt. As such the order of conviction and sentence so imposed by the learned Trial Court under Section 306 of the Indian Penal Code against the appellant is hereby set aside.

Learned advocate appearing for the appellant stressed on availability of documents and truthfulness regarding the factum of salish and the deceased having stayed at her parental home for a considerable period of time (which is almost one year) as has been deposed by a number of prosecution witnesses. PW5, Pratima Chatterjee, in her evidence categorically deposed that there were injuries which were sustained by the deceased and which the deceased

divulged being inflicted by her husband and for which PW5 being the mother got the deceased treated by a local doctor. Those version of injury are in addition to the amount of Rs.80,000/-, ornaments, utensils which were on demand by way of dowry and given at the time of marriage. The witness was cross-examined on this particular point regarding the injury sustained by the deceased prior to her returning to the paternal home almost one year before the incident and primarily she stated that the deceased at that time was treated by Dr. Biren Banerjee of the said village and in answer to the question raised in cross-examination regarding any information of such incident informing to anybody, it was stated that in order to avoid family trouble the matter was settled at the relevant time.

Having regard to the nature of evidence which has surfaced so far as mental and physical torture being inflicted upon the deceased at her matrimonial home, I am of the opinion that the petitioner is to be held liable and is guilty of the offence punishable under Section 498A of the Indian Penal Code.

However, considering that the incident is of 1995 and almost 27 years have passed in the meantime, I am of the opinion that the sentence so imposed under Section 498A of the Indian Penal Code requires to be modified, accordingly the appellant is directed to undergo Rigorous Imprisonment for 6 (six) months for the offence under Section 498A of the Indian Penal Code with the fine amount and default sentence remaining un-altered.

Accordingly, CRA 13 of 2003 is partly allowed.

The appellant is on bail, his bail bond stands cancelled. He is directed to surrender before the learned Chief Judicial Magistrate, Birbhum within a period of 30 days, in the alternative the learned Chief Judicial Magistrate, Birbhum would issue process for compelling the appellant to serve out the sentence.

Department is directed to send back the Lower Court Records and communicate this order to the learned Trial Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)