

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

Before:

The Hon'ble Mr. Justice Rabindranath Samanta

C.R.A. 76 of 1990

Bhairab Chandra Manna & Anr.

Vs.

State of West Bengal

For the Appellant:

Ms. Payel Ghosh (Amicus Curiae)

For the State:

Mr. Narayan Prasad Agarwala
Ms. Manisha Sharma

Heard on:

18.02.2022

Judgement delivered on:

18.02.2022

Rabindranath Samanta, J. :-

Despite service of administrative notice, none appears for the appellants.

The respondent, State of West Bengal is represented by Mr. Agarwala with Ms. Sharma, learned advocates. Their appointments be regularized by the concerned authority.

Despite best endeavour on the part of the Court, the appellants could not be brought on record.

I feel that the appellants should be represented by a learned lawyer of this Court.

Accordingly, Ms. Payel Ghosh, learned advocate is appointed as amicus curiae to represent the appellants.

Heard Ms. Payel Ghosh, learned appearing for the appellants as amicus curiae.

Heard Mr. Agarwala assisted by Ms. Sharma for the respondent.

This appeal has been preferred against the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 2nd Court, Birbhum, Suri in Sessions Trial No. 1(11)1989 arising out of Sessions Case No. 123 of 1986 whereby and whereunder, the appellants Bhairab Chandra Manna and Smt. Mangal Moyee Manna were convicted for commission of the offence punishable under Sections 498A/306 IPC. The appellant Bhairab Chandra Manna was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default, to suffer further rigorous imprisonment for a period of three months for the offence punishable under Section 498A of the IPC and sentenced to suffer rigorous imprisonment for 6 years and to pay a fine of Rs.1000/-, in default, to suffer R.I. for 6 months more for the offence punishable under Section 306, IPC. The appellant Mangal Moyee Manna was sentenced to suffer S.I. for 1 year and to pay a fine of Rs.500/-, in default, to suffer S.I for two months more for the offence punishable under Section 498, IPC and sentenced to suffer S.I. for 3 years and 6 months and to pay a fine of Rs.500/-, in default, to suffer S.I. for two months more for the offence punishable under Section 306, IPC. Both the sentences are directed to run concurrently.

The prosecution case, in a nutshell, may be stated as under:-

On 5.11.1986 corresponding to 19th Kartick, 1392 B.S., Garabi Manna, daughter of Narayan Mondal was married to the appellant no. 1, Bhairab Chandra Manna according to Hindu Rites and Customs. After her marriage, she went to her matrimonial home at village Kurigar, Police Station – Rajnagar, Birbhum. Sometime after her marriage, her husband Bhairab Chandra Manna and her mother-in-law Mangal Moyee Manna along with the other relatives of them, namely, Nemai Chandra Manna, Mithil Chandra Manna, Nirod Manna, Pradip Manna, Smt. Bina Pani Manna, Smt. Menoka Manna and Smt. Maya Rani Manna subjected Garabi to physical and mental torture. The torture inflicted upon her went to such an extent that unable to bear with the torture, she committed suicide by hanging. On the basis of the complaint lodged by Narayan Mondal, the father of the deceased Garabi Manna, at the local police Station, a Rajnagar Police Station Case was registered against the accused persons for investigation. After taking up the investigation, the Investigation Officer arrested some of the accused persons and forwarded them to Court. Later on, the rest accused persons surrendered before the Court. After the accused persons were detained in judicial custody for some time, they were released on bail.

During the course of investigation, the I.O. examined the available witnesses under Section 161 Cr.P.C. and recorded their statements. The I.O. collected the inquest report and post mortem examination report. After completion of the investigation, the I.O. submitted a charge sheet against the accused persons under Section 498A/306 IPC. After the case was committed to the Court of learned Sessions Judge, Birbhum, learned Sessions Judge

transferred the case to the Court of learned Additional Sessions Judge, 2nd Court, Birbhum, Suri for trial.

Charges under Sections 498A/306 IPC were framed against the accused persons who pleaded not guilty to the charge and claimed to be tried. Hence, the trial commenced.

To bring home the charge, the prosecution examined as many as 17 witnesses. Some documents produced by the prosecution have been marked as exhibited documents. On analyzing and appreciating the evidence as adduced by the prosecution and after hearing the learned counsel appearing for the parties, the learned Trial Judge convicted the accused persons, namely, the appellants Bhairab Chandra Manna and Smt. Mangal Moyee Manna and acquitted the rest accused persons of all the charges.

The appellants assail the impugned judgment and the order of conviction on the grounds that the judgment and the order of conviction passed by the learned Trial Judge is vitiated with illegalities and irregularities.

Now, the question is whether the judgment and the order of conviction passed by the learned Trial Judge is sustainable on facts and in law.

Since this appeal is a first appeal before this Court, I have scrutinized the ocular and documentary evidence as adduced by the prosecution.

As recorded by the learned Trial Judge, I find from the evidence of P.W. 1, Narayan Mondal, the father of the deceased Garabi Manna that sometime after her marriage, her husband and the mother-in-law used to torture her physically and mentally. His daughter used to narrate her sorrowful plight in her matrimonial home to him. He states that unable to bear with the torture,

his daughter was compelled to commit suicide. From the evidence of other relevant prosecution witnesses, I find that evidence is forthcoming to this effect that the appellants inflicted torture upon the deceased Garabi. As evidence of the prosecution witnesses suggest there is no convincing evidence by which it can be inferred that the other relatives of the deceased, i.e. the rest accused persons either tortured the deceased Garabi Manna or abetted her to commit suicide. It appears from the post mortem examination report that deceased committed suicide by hanging.

On assessment of the evidence with care and circumspection, I find that learned Trial Judge was justified in convicting the appellants for commission of the offences as noted above.

So, I do not find any justification to interfere with the conviction recorded by the learned Trial Judge.

Now, the question is what will be the quantum of sentence to be imposed upon the appellants.

The Rajnagar Police Station Case was registered for investigation on 17.11.1985. Since then, the criminal proceeding proceeded and ultimately the trial came to an end by passing the judgment and order of conviction by the learned Trial Judge on 15.2.1990.

What I find from the case record, the appellants were arrested and taken into judicial custody on 24.1.1986 and thereafter they were remanded to judicial custody. Ultimately, by an order passed by this Court, they were released on bail on 4.2.1986.

It is discerned that during the continuance of the proceedings since 1985 and continuance of the instant appeal since 1990, the appellants have

gone through mental agonies and worries. By these, they have already suffered a lot.

Having considered the age of the criminal proceedings and the instant criminal appeal and considering the present age of the appellants, I feel that if the appellants are sentenced to the detention already undergone by them, it will sub-serve the interest of justice.

Accordingly, the sentence as imposed by the learned Trial Judge is reduced to the sentence already undergone by the appellants for the aforesaid period in exercise of the power under Section 482 of the Code of Criminal Procedure.

In view of the above, the appeal is dismissed.

The appellants be released from the bail bonds and they be set at liberty.

Send down the Lower Court Records along with the copy of this judgment to the learned Court below forthwith.

(Rabindranath Samanta, J.)

S.D