

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 31 of 2013

Kharendra Nath Sarkar

-Vs-

State of West Bengal

Amicus Curiae : Mrs. Manasi Roy, Adv.

For the State : Ms. Amita Gaur, Adv.
Ms. Sreeparna Das, Adv.

Heard on : 6th July, 2022

Judgment on : 6th July, 2022.

Joymalya Bagchi, J. :-

The appeal is directed against judgment and order dated 12.10.2012 passed by learned Sessions Judge, (Newly Created), Sadar, Coochbehar, in Sessions Case No. 5 of 2011 corresponding to Sessions Trial No. 4(2) of 2012 convicting the appellant for commission of offence punishable under Sections 498A/306 of the Indian Penal Code and sentencing him to suffer simple imprisonment for eight years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for one month more for the commission of offence under Section 306 of the

Indian Penal Code and to suffer simple imprisonment for a period of three years for the commission of offence under Section 498A of the Indian Penal Code. Both the sentences run concurrently.

Prosecution case is to the effect that appellant was married to the victim Anjali Sarkar 3 and ½ years ago. A female child was born to the couple. Appellant developed illicit relationship with one Pratima Sarkar. When the victim Anjali Sarkar protested, appellant and Pratima Sarkar assaulted her. Unable to bear torture, victim committed suicide at 1.30P.M. by consuming poison. Manu Baria, father of the victim, lodged written complaint against the appellant and the aforesaid Pratima Sarkar at the police station resulting in registration of Tufanganj Police Station Case No. 253 of 2009 dated 01.08.2009 under Sections 498A/306 of the Indian Penal Code.

In conclusion of the investigation, charge-sheet was filed against the accused persons and charge was framed against them under the aforesaid provisions of law.

Accuseds pleaded not guilty and claimed to be tried. In the course of trial prosecution examined 13 witnesses to prove its case. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order convicted and sentenced the appellant, as aforesaid. However, Pratima Sarkar was acquitted of the charges levelled against her.

Nobody appears on behalf of the appellant Mrs. Manasi Roy, learned lawyer empanelled with the High Court Legal Services Authority is requested to appear on behalf of the appellant. Secretary, High Court Legal Services Authority, is requested to regularise her appointment.

Mrs. Roy, submits allegation of torture is general and omnibus in nature. Ingredients of offence punishable under Section 306 of the Indian Penal Code are not disclosed.

On the other hand, Mrs. Gaur, learned Counsel appearing for the State submits appellant developed illicit relationship with Pratima Sarkar. He physically and mentally tortured the victim. As a result, Anjali committed suicide.

We have considered the evidence on record.

P.W. 1 (Manu Baria) is the father and de facto complainant. He stated that his daughter was married to the appellant. Appellant developed illicit relationship with one Pratima Sarkar. He physically and mentally tortured his daughter. As a result she committed suicide. On receiving news of death of his daughter he came to her matrimonial home. He found her daughter had been shifted to Alipurduar Hospital. He went to the hospital and saw the dead body of his daughter. He lodged written complaint.

P.W. 4 (Ayswari @ Iswari Baria) is the mother of the victim. She has corroborated her husband (P.W. 1) about the illicit relationship between the appellant and Pratima Sarkar and the fact that the

appellant subjected her daughter Anjali to torture over this issue. As a result, Anjali Sarkar committed suicide.

P.W. 2 (Suchitra Sarkar), sister of the deceased, P.W. 3 (Subhash Gayen @ Bayen), cousin of the deceased and P.W. 5 (Uttam Gayen), uncle of the deceased, also corroborated her parents regarding torture upon the victim housewife by the appellant when she protested against the illicit relationship of her husband.

P.W. 7, (Girendra @ Gajendra Seal) neighbour, also supported the prosecution case.

P.W. 6 (Dr. Sujan Kumar Das) conducted post mortem over the body of the deceased. He found ash grey turbid fluid with strong odour in the stomach of the deceased which corroborates the prosecution case of death by poison.

P.Ws. 12 and 13 (S.I. Sankar Adhikari) and (S.I. Prasanta Das) are the investigating officers.

From the evidence on record it is proved that the appellant was married to deceased Anjali Sarkar 3 and ½ years ago. She resided at the matrimonial home and a girl child was born to the couple. Appellant developed illicit relationship with one Pratima Sarkar. When his wife protested he subjected to her mental and physical torture. As a result, she consumed poison and died. Evidence of the relations with regard to torture is corroborated by an independent witness, namely, P.W. 7. Hence, torture upon the housewife and her suicide within seven

years of marriage is proved. No explanation with regard to commission of suicide is offered by the appellant during his examination under Section 313 of the Code of Criminal Procedure to rebut the presumption under Section 113A of the Evidence Act.

Under such circumstances, I am of the opinion that conviction and sentence of the appellant does not call for interference.

The appeal is, accordingly, dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of section 428 of the Code of Criminal Procedure.

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

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

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)