

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. 45 of 2021
with
CRAN 1 of 2021

Sk. Azaharuddin
-Vs-
State of West Bengal

For the Appellant	:	Mr. Kallol Mondal, Adv. Mr. Krishan Ray, Adv. Mr. Souvik Das, Adv. Mr. Anamitra Banerjee, Adv.
For the State	:	Mr. Prasun Kumar Datta, learned APP Mr. Santanu Deb Roy
Heard on	:	04.02.2022 & 24.03.2022
Judgment on	:	24.03.2022

Joymalya Bagchi, J. :-

Paper books are ready. With the consent of the parties, appeal is taken up for final hearing.

The appellant has assailed the judgment and order dated 10.12.2020 and 11.12.2020 passed by the learned Additional District & Sessions Judge, Fast Track Court, Haldia, Purba Medinipur, in Sessions Trial No. 95 of 2016 arising out of Sessions Case No. 18(04) of 2016

convicting him for commission of offences punishable under Sections 498A and 304B of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act and sentencing him to suffer rigorous imprisonment for life for the offence punishable under Section 304B of the Indian Penal Code with a further direction he shall serve the sentence for the rest of his life. No separate sentence was awarded for the offences punishable under Section 498A of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act.

Prosecution case as alleged against the appellant and the other accused persons is to the effect that the victim Aleya Bibi was married to the appellant two years ago according to Muslim Shariat Law. At the time of marriage, gold and silver ornaments and cash were given to the appellant and other in-laws. Initially, the couple lived happily for a year. A daughter was born to the couple. Thereafter, the appellant and other in-laws subjected the victim housewife to torture over further demands of money. She was assaulted by them and pressurized to bring money. It is alleged on the fateful day i.e. on 15.03.2015 the appellant assaulted and murdered his wife and thereafter hanged her with a rope. He was assisted by other in-laws. Written complaint was lodged by Margina Bibi, mother of the deceased, (P.W. 1) against the appellant and other in-laws viz. Rashida Bibi (mother-in-law), Ranu Khatun (unmarried sister-in-law), and Saleha Bibi (married sister-in-law) of the victim. In conclusion of investigation, charge-sheet was filed against the appellant, Rashida Bibi and Ranu Khatun but not against Saleha Bibi. Charges were framed

against the appellant and two co-accused persons under Sections 498A/304B/302 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act. Accused persons pleaded not guilty and claimed to be tried. In the course of trial prosecution examined fourteen witnesses. Post mortem doctor was not examined but on consent report was exhibited marked as "Exhibit-4" under Section 294 of the Code of Criminal Procedure. Defence of the accused persons 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. Other co-accused persons were acquitted of the charges levelled against them.

Mr. Mondal with Mr. Ray appearing on behalf of the appellant argues the prosecution case with regard to torture has not been proved beyond doubt. Evidence of P.W. 1 is general and omnibus regarding cruelty upon her daughter. No contemporaneous complaint was lodged by her at the police station. P.W. 9 had inimical relationship with the appellant and his family members and the evidence of P.W. 11 suffers from embellishment. Post mortem doctor was not examined and cause of death has not been proved beyond doubt. Hence, prosecution case has not been proved beyond doubt and the appellant is entitled to an order of acquittal.

On the other hand, Mr. Datta, learned Additional Public Prosecutor along with Mr. Deb Roy appearing for the State argues the evidence of the mother of the deceased (P.W. 1) is corroborated by P.Ws. 9

and 11. They unequivocally depict continuous torture on the victim over demands of dowry. Victim suffered unnatural death within two years of marriage. Post mortem report shows ligature mark injuries on the neck of the deceased clearly establishing unnatural death of the victim. Hence, ingredients of the offence punishable under Section 304B of the Indian Penal Code has been proved beyond doubt. Hence, appeal is liable to be dismissed.

Prosecution case essentially hinges on P.Ws. 1, 9 and 11.

P.W. 1 is the mother of the deceased. She deposed her daughter Aleya Bibi was married to the appellant two years prior to the incident as per Muslim rites and customs. At the time of marriage, money and gold ornaments were gifted to her. She was happy for a year. A daughter was born to the couple. After birth of child, the victim was tortured over demands of more money. She was assaulted by her husband and other in-laws. She showed marks of injury to P.W. 1. On the date of the incident in 2015, neighbouring people informed her that the accused persons had killed her daughter. She went to the matrimonial home and found her daughter hanging in the dalan. Her feet were touching the floor. P.W. 1 suspected accused persons had strangled her daughter with a nylon rope and hanged her. She lodged complaint. She also signed on the inquest report. In cross-examination, she stated her daughter had been married earlier to one Sk. Kutub. A son named Akbar was born to the couple and ordinarily resided with her. She stated she used to regularly visit her daughter's matrimonial home.

P.W. 9, Most. Asamal @ Asmatara Khatun, is a neighbour of the appellant. She was earlier residing in village Dhanyakhola and upon purchase of a portion of the property from the appellant from 2015 started residing there. She deposed after birth of child Aleya Bibi was tortured and assaulted on the ground she had given birth to a girl child as well as over further demands of money. Aleya used to work and her husband withdrew money deposited by her in her account. On the day of the incident as well as on the preceding day she had been mentally and physically tortured by the appellant and other in-laws. Aleya showed her marks of injury to P.W. 9. When P.W. 9 confronted the appellant, he stated that he had assaulted Aleya over demand of money. Body of Aleya was brought down by two persons of the locality. She called a van puller and Aleya was shifted to the hospital. In cross-examination, she however, admitted two criminal cases had been lodged against her by the appellant and his elder brother.

P.W 11, Sk. Samirul Islam, another villager who resided 2/3 minutes away from the appellant deposed one year after marriage Aleya was subjected to mental and physical torture. She was tortured by the appellant and other in-laws over further demands of money. She informed of such cruelty to her mother. Her mother was poor and was unable to meet the demands. The appellant used to regularly assault Aleya. On the date of the incident, Aleya was killed by throttling and thereafter her body was hanged with rope around her neck.

Mr. Mondal, learned Counsel for the appellant, submits the evidence of the aforesaid witnesses are unreliable. There was dispute in the matrimonial home of Aleya as her son from the earlier marriage, that is, Akbar used to visit her. I am unable to accept such contention. Suggestion to that effect given to P.Ws. 1 and 11 had been denied. P.W. 1 clarified that the son of Aleya from her earlier marriage was ordinarily residing with her. Hence, it cannot be said that dispute in the matrimonial home of Aleya had cropped over Akbar visiting her mother at the residence of the appellant. On the other hand, evidence of P.W. 1 regarding cruelty upon her daughter on further demand of dowry is corroborated by P.W. 11, an independent witness. Mr. Mondal, learned Counsel, submits P.W. 11 has embellished his version in the court. No contradiction was taken for the said witness with regard to his previous statement to the police. Cross-examination with regard to omission in his earlier statement to investigating officer (P.W. 13) are vague and generic and does not wholly discredit his deposition in court. I have, however, chosen not to rely on P.W. 9 as the possibility of the said witness making false statement against the appellant cannot be ruled out due to pending criminal cases between them. However, P.Ws. 1 and 11, read conjointly, prove mental and physical torture upon the housewife which continued till her death over demands of dowry.

Post mortem doctor noted in the report a ligature mark on the neck of the victim. The post mortem doctor had not been examined but his report was marked as "Exhibit-4" on consent. Under such

circumstances, his opinion with regard to cause of death may be inadmissible but the injuries noted by him. Post mortem report are in law¹. Ligature mark and other internal injuries in and around the neck of the deceased leave no doubt in one's mind that the housewife had suffered unnatural death. However, in the absence of direct evidence with regard to throttling by the appellant and non-examination of post mortem doctor to clarify his ambiguous opinion regarding cause of death, it is unsafe to come to a conclusion that the death was homicidal in nature.

In the light of the aforesaid discussion, I am of the opinion conviction of the appellant under section 498A/304B I.P.C. and under section 4 of the Dowry Prohibition Act ought to be upheld.

Coming to the issue of sentence I note the trial court had imposed maximum sentence of rigorous imprisonment for life for the offence punishable under section 304B IPC. The court further recorded that the sentence shall be for the rest of the life of the appellant. I am unable to understand the import of the observation, namely, "*he shall suffer the sentence rest of his life*". Life imprisonment in the light of section 45 of the Indian Penal Code means till the end of natural life of the convict (see **Gopal Vinayak Godse Vs. State of Maharashtra And Others**²).

Hence it was not necessary for the trial court to specify that the imprisonment for life shall continue for the rest of the life of the convict.

¹ Himanshu Mistri Vs. State of West Bengal (2002) C Cr LR (Cal) 805

² AIR 1961 SC 600 (para 5)

The trial court is not empowered to impose a penalty of life imprisonment without remission as envisaged in section 433 Cr.P.C.

In ***Union of India Vs. V. Sriharan Alias Murugan And Others***³ a Constitution Bench held the power to impose life imprisonment without remission vests with the Supreme Court and the High Court when such courts are inclined to convert a death sentence to one of life imprisonment. Such power cannot be said to vest in the trial Court⁴. Be that as it may, in the factual matrix of the case, as the cause of death is unclear, I am of the view imposition of the maximum sentence of life imprisonment is disproportionate and may be converted to rigorous imprisonment for 10 years with a fine of Rs. 5000/-, in default to suffer rigorous imprisonment for one year more.

With the modification as to sentence, the appeal is disposed of.

In view of disposal of the appeal, connected application being CRAN 1 of 2021 is also disposed of.

Copy of this judgment be sent down to the trial Judge for his appraisal that the trial court is not empowered to impose sentence of life imprisonment without remission for the offence under section 304B of the I.P.C.

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

³ (2016) 7 SCC 1

⁴ Gauri Shankar Vs. State of Punjab, (2021) 3 SCC 380

Lower court records along with copies of this judgment be sent down at once to the learned trial court as well as the Superintendent of Correctional Home 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.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

tkm/sdas/PA (Sohel)