

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. 36 of 2016

Tarak Nath Das @ Tarak Das
-Vs-
State of West Bengal

For the Appellant : Mr. Anjan Bhattacharya, Adv.
For the State : Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.
Heard on : 21st April, 2022
Judgment on : 21st April, 2022

Joymalya Bagchi, J. :-

The appellant has assailed judgment and order dated 30.03.2015 and 31.03.2015 passed by the learned Additional District & Sessions Judge, Fast Track, 2nd Court, Calcutta, in connection with Sessions Case No. 84 of 2008 corresponding to Sessions Trial No. 54(04)2013 arising out of Burtolla P.S. Case No. 222/2008 dated 03.08.2008 convicting the appellant for commission of offence punishable under Section 498A/302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for three years and to

pay fine of Rs. 2,000/-, in default, to suffer further simple imprisonment for two months for the offence punishable under Section 498A of the Indian Penal Code and to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- in default, to suffer simple imprisonment for six months more for the offence punishable under Section 302 of the Indian Penal Code, both the sentences to run concurrently.

Prosecution case:-

Victim Sagarika had a love affair with the appellant Tarak. She wanted to marry him. Her family members were not initially agreeable but after some time agreed to the marriage. Unfortunately, soon after the marriage Sagarika realized she had committed a mistake. Tarak was ill tempered and mentally and physically tortured Sagarika. 2 to 3 weeks prior to her death, Sagarika went to the residence of her matrimonial uncle, Saradendu (P.W. 4), with whom she used to reside prior to her marriage and remained there for 10 to 12 days. She was unwilling to return to her matrimonial home as Tarak had been assaulting her. Tarak assured he would not torture Sagarika in future and took her back. 7 to 8 days prior to the incident Sagarika again came to the house of her mother Rupashree (P.W. 3) and complained of torture. Tarak again took her back to his residence. On 02.08.2008, P.W. 3 received telephonic information from Tarak that Sagarika had expired. Kartick Ghosh, grand-father of the appellant also came to the residence of Saradendu (P.W. 4) and informed that Sagarika died due to

heart attack. Rupashree (P.W. 3), Saradendu (P.W. 4) and his wife, Chhabi (P.W. 5) went to the matrimonial home of Sagarika and found her lying dead on the verandah of the house of Kartick Ghosh. Appellant told them Sagarika had died due to heart attack. In the meantime, ASI, Rabindra Nath Dutta, who was on patrolling duty, saw a commotion in front of the house of the Kartick Ghosh and came to the spot. He intimated Shakespeare Sarani Police Station. S.I. Rabin Halder (P.W. 14) along with Additional Officer-in-Charge, Amitava Guha, came to the place of occurrence. Body of the victim was taken to the medical college and hospital where doctor opined victim had been brought dead. Inquest was held over the body of the victim and statement of Rupashree Sarkar, mother of the victim (P.W. 3) was recorded which was treated as F.I.R. Post mortem was held over the body of the deceased and the post mortem doctor, Dr. Prabir Chakraborty (P.W. 13) opined that the victim had died due to strangulation by ligature mark ante mortem and homicidal in nature. Appellant was arrested and on his showing a leather belt in a black plastic packet was recovered from a nearby park, named Jatindramohan Park in the presence of the witnesses. In conclusion of investigation charge-sheet was filed against the appellant. Charges were framed under Section 498A/302 of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried.

Defence Case:-

In the course of trial prosecution examined 14 witnesses. Defence of the appellant was to the effect that Sagarika suffered from gynaecological problems and was medically treated. She was unable to bear child. Out of depression, she committed suicide. In support of his defence, appellant examined two witnesses, namely, Debasish Ghosh (D.W. 1) and Chaya Banerjee (D.W. 2).

Opinion of the trial Court:-

In conclusion of trial, learned trial Judge by the impugned judgment and order convicted and sentenced the appellant, as aforesaid.

Rival versions at the Bar:-

Mr. Bhattacharya, learned Counsel appearing for the appellant argues there is no direct evidence to show that the appellant committed the murder. During lifetime of Sagarika no complaint was lodged with regard to ill treatment. On the other hand, Sagarika had been treated for gynaecological problems. D.W. 1 and D.W. 2 proved the victim was found hanging from the ceiling fan with the help of saree. This probabalises a case of suicidal hanging. Mr. Bhattacharya further submits there are inconsistencies in the findings of post mortem doctor and his opinion with regard to cause of death as homicidal strangulation cannot be taken as gospel truth. Recovery of the belt from the park has not been witnessed by local people. Hence, the

prosecution case is riddled with improbabilities and the appellant ought to be given the benefit of doubt.

Mr. Das, learned Counsel appearing for the State, submits Sagarika had been murdered within 7 months of marriage. No medical papers was placed on behalf of defence to show that she was unable to bear child. Mere treatment for gynaecological problems cannot lead to such inference. On the other hand, consistent evidence of the witnesses show victim was subjected to torture by the appellant. She repeatedly took refuge at the residence of her matrimonial uncle (P.W. 4) and her mother (P.W. 3). Post mortem doctor opined death of the victim was due to homicidal strangulation. Large number of injuries were found on the body of the victim as well as appellant clearly establishing a scuffle between them on the date of the incident corroborating case of homicidal death. Conduct of the appellant in giving out a false explanation with regard to the cause of death namely heart attack to the relations of the victim soon after the incident also adds to the chain of circumstance pointing to his guilt. Appellant did not come out with the case of suicidal hanging immediately after the incident. He conjured up such defence in the course of trial. In support of such defence, appellant set up two defence witnesses, one of whom was his relation and another was a tenant under his grandfather. Both the witnesses appear to be untruthful and the trial Judge rightly rejected their evidence. Recovery of the waist belt used as ligature was recovered on

the showing of the appellant. Hence, prosecution case is proved beyond doubt.

Prosecution evidence:-

P.Ws. 3, 4 and 5 are the relations of the deceased.

P.W 3, Rupashree Sarkar is the mother of the deceased and the first informant. She deposed Sagarika had a love affair with Tarak. Initially she did not agree to the match. However, subsequently she consented and social marriage was held on 27.01.2008. Couple started residing at 27/1, Durga Charan Mitra Street, Kolkata-6. Appellant was an ill tempered and obstinate person. He used to ill treat and assault Sagarika. 2 to 3 weeks prior to her death, Sagarika took refuge at the residence of her maternal uncle and remained there for 10 to 12 days. Tarak assured he would not misbehave with Sagarika and on such assurance she returned to her matrimonial home. 7/8 days prior to the incident, Sagarika took refuge at her residence. Again Tarak came and on his insistence Sagarika returned to her matrimonial home. On 02.08.2008 she received a phone call from Tarak that Sagarika had expired. She along with her brother Saradendu (P.W. 4) and his wife, Chhabi (P.W. 5) went to her matrimonial home. They noticed injuries over her body and ligature mark round her neck. Upon query, Tarak stated Sagarika died due to heart attack. Police personnel came to the spot. Saradendu (P.W. 4) and others took Sagarika to the hospital where she was declared dead. She made statement before police which

was treated as F.I.R. In cross-examination, she admitted Sagarika had some gynaecological problems and was treated for that purpose.

P.W. 4 (Saradendu Pal) is the maternal uncle of Sagarika. Prior to her marriage Sagarika used to reside with P.W 4. He corroborated P.W. 3, mother of Sagarika. He took the body of Sagarika to the hospital. Medical officer declared her dead.

P.W. 6 Rabindra Nath Dutta is a police officer who was attached to Battala police station. On 02.08.2008 at 1 a.m. while on patrol duty he found a commotion in front of a house at 26, Dugra Charan Mitra street. He stopped at the place and saw a lady lying on the cemented floor. He also saw a lady weeping who was identified as the mother of the victim. He informed the local police station. The duty officer along with additional officer in charge of the police station came to the spot.

P.W. 7 (Nil Ratan Mitra) is a homeopathy practitioner. He deposed around 10.30/10.45 p.m. he was requested by father of the appellant to come to his residence for an urgent call. He went to the residence of the appellant and found the latter's wife lying on the bed in the first floor of their room. On examination, he found no response and victim appeared to be unconscious. He advised them to take the victim to hospital without losing time.

P.W. 8 (Nirmal Chandra Tripathy) was the emergency Medical Officer at Medical College and Hospital, Kolkata who examined the deceased after she was brought to hospital by her maternal uncle, P.W. 4. He stated she was brought dead. He noted bruise marks on the body

of the deceased and anterior aspect of neck. He referred the body for post mortem examination.

P.W. 9 (Satyaranjan Roy) was the Assistant Commissioner of Police at the material point of time. He held inquest over the body of the victim and found following injuries:

“Nature of Injuries: One bruise dark colour 1 ½” was present at the left side of the throat, one inch left from the middle of the throat.

Two parallel marks of injuries of bruise continuous about 7” in the frontal aspect of the throat.

One bruise on the back side about ¾” of spinal cord, 2/3” upper from the hip.

One bruise was found on the left elbow.

One mark of pressure on the neck backside.”

Post mortem was held over the body of the victim by P.W. 13. He found the following injuries :

- (1) scratch abrasion 6 inch long over antero medial aspect of left arm, four and half inch below from left shoulder joint
- (2) scratch abrasion 3 inch long over antero lateral aspect of left elbow joint
- (3) three scratch abrasion of 2 inch, 1 inch, 1 inch in length closely present over dorsal aspect of left hand, 3 inch below from left wrist joint
- (4) bruise 2 inch x one and half inch over postero medial aspect of left elbow joint
- (5) abrasion 4 inch x 2 inch over right side of the posterior abdominal wall half inch away from midline and 3.7 inch above from right iliac crest
- (6) bruise half inch x half inch over anterior aspect of right leg 5 inch below from right knee joint
- (7) ligature mark 8.5 inch x 1.5 inch brownish present

around neck 1 inch below from right angle of mandible, 3 inch below from chin, 2 inch below from left angle of mandible, 2 and half inch below from left mastoid process, 4 inch below and half inch left from midline, ligature mark is more prominent over anterior and left side of the neck.

On dissection, ligature mark seen to harden, glistened, whitened, condensed, parchmented and evidence of extravasation 1 inch x 1 inch over left anterior aspect of neck in subcutaneous tissue below the ligature mark (8) scalp hematoma one inch in diameter over right parietal area of skull (9) evidence of subluxation of left cornu of hyoid cartilage with area of extravasation in surrounding tissues.”

He opined death was due to strangulation by ligature, ante mortem and homicidal in nature. He stated the waist belt which was produced in Court could have been used to strangle the victim. He also examined the appellant and found number of injuries on his body. On query from the investigating agency he stated that injuries were produced by nail scratches and were 3/5 days old at the time of examination. He was extensively cross examined with regard to injuries noted by him as well as his opinion. He however remained steadfast to the opinion stated by him during chief.

P.W. 14 (Rabin Halder) is the investigating officer of the case. He deposed at the midnight around 1.20 a.m of 03.08.2008 A.S.I. Rabindranath Dutta (P.W. 6) reported the incident at the police station. P.W. 14 along with additional O/C Amitava Guha went to the place of occurrence. He found a lady lying on the veranda. Her mother identified

the victim. Victim was taken to Kolkata Medical College and Hospital where she was stated to be brought dead. Photographs of the deceased were taken at the hospital. Thereafter he came to the place of occurrence and recorded the statement of Rupashree (P.W. 3) which was treated as FIR. The body was sent for post mortem examination. He examined witnesses. He went to the place of occurrence with the plan maker and photographer of DD, Lalbazar and photographs and plan of place of occurrence were taken by P.Ws. 1 and 2 respectively and produced in court. He collected post mortem report. He arrested the appellant. He interrogated the appellant and on his statement he recovered a leather waist belt in a black plastic packet from Jatindramohan Park, J.M. Avenue in presence of P.W.s 11 and 12. He submitted charge sheet.

Defence evidence:-

Defence examined two witnesses. D.W. 1 Debasish Ghosh is a relation of the appellant. He used to reside in the ground floor of 27/1 D.C Mitra Street. He deposed hearing hue and cry, he came upstairs and found wife of the appellant hanging from ceiling fan with the help of a saree. He helped Tarak to bring down the body. Doctor came and advised Tarak to take his wife at hospital. In cross-examination, he admitted he did not go to the hospital along with Tarak because at that time he was suffering from cerebral attack and high blood sugar. Tarak and his family members had taken his wife to hospital but again brought her back without permission of doctor.

D.W 2, Chaya Banerjee was a tenant under the maternal uncle of the appellant in the same building. She corroborated D.W 1 that the body of the deceased was seen hanging from the ceiling fan.

Torture on Sagarika-whether proved:-

Evidence of P.Ws. 3, 4 and 5 would show the victim during her short matrimonial life was subjected to continuous torture and assault by the appellant. P.W. 3 stated the appellant was a short tempered and violent man. He regularly assaulted his wife. On two occasions, the victim took refuge at the residence of her maternal uncle (P.W.4) and that of mother (P.W. 3) and refused to return to her matrimonial home. On both occasions appellant assured he would not misbehave and brought back the victim. The evidence on record unequivocally shows the short matrimonial life of the victim was riddled with brutal torture by the appellant.

Mr. Bhattacharyya's contentions evidence of the relations with regard to torture ought not to be believed, as they did not lodge complaint, is of little substance. Whenever the victim had complained of torture to her relations, the appellant assured she would not be tortured in future. Expecting the appellant would mend his ways, the relations did not take the matter to police. Such conduct on their part is most natural and would not render their version relating to continuous torture on the victim improbable.

Whether the death was homicidal?

Admittedly, victim died under unnatural circumstances at her matrimonial home on the night of 02.08.2008.

The moot question is whether her death was homicidal?

P.W. 3 and other witnesses upon reaching the matrimonial home found the victim lying unconscious on the verandah with nail scratch marks on her face and body and ligature mark round her neck. P.W.8 emergency doctor attached to Medical College & Hospital, who declared the victim 'brought dead' also noted bruises over her body and on the anterior aspect of neck. Inquest report prepared by P.W.9 noted bruise marks on the throat, neck, back side of hip and elbow. P.M. doctor found not less than 6 injuries apart from the ligature mark on the body of the victim. He opined death was due to strangulation by ligature ante-mortem and homicidal in nature. Mr. Bhattacharyya relying on the deposition of D.Ws. 1 and 2 would argue the victim had been found hanging from the ceiling fan with a saree which improbabilises the prosecution case of homicidal death. Evidence of the defence witnesses D.Ws.1 and 2 ought to be taken with a pinch of salt. D.W.1 is a relation of the deceased. He admitted in cross he was suffering from cerebral attack and high blood sugar. It is unlikely a person with such health condition would upon hearing hue and cry rush to the spot. Moreover, presence of D.W.1 at the place of occurrence has not been noted by D.W.2. D.W.2 admitted he was a tenant for 17 years under the maternal uncle of the appellant. He, however, was unable to produce any rent

receipt. This shows he is indebted to the family of the appellant and had deposed in court in order to protect the appellant from legal punishment. Furthermore, plea of suicidal hanging was raised belatedly in the course of trial. Immediately after the relations of the deceased come to the spot the appellant had claimed that the victim died due to a heart attack. However, during trial appellant changed stance and claimed his wife owing to depression had committed suicide. It was contended victim suffered from gynaecological problems and was informed she would be unable to bear child. Out of depression she committed suicide. No doubt some evidence has come on record victim had been treated for gynaecological problems. Apart from a bald claim of the appellant during his cross-examination under Section 313 Cr.P.C. nothing is placed on record to show doctor had opined she would not be able to bear a child. Matrimonial life was barely for seven months and it is absurd to presume that during such short matrimonial life the victim would suffer from depression due to inability to bear child. It is also pertinent to note neither the appellant nor her father had come out with the case of suicide before the Homeopathy doctor (P.W.8) who had been summoned at the first instance to treat the victim. These circumstances expose the hollowness of the defence plea of suicide.

Mr. Bhattacharyya, strenuously argues the opinion of P.M. doctor with regard to homicidal death appears to be inconsistent with reference to medical treatises.

Trial Court had considered the issue at length. He referred to the chart enumerating the differences between hanging and strangulation in Modi's Text Book of Medical Jurisprudence and Toxicology (21st edition). Trial Judge held characteristics set out in point Nos. 6, 8, 9, 12 and 14 of the chart corresponding to strangulation has been noted by the post mortem doctor in the present case.

Point Nos. 6, 8, 9, 12 and 14 in the said chart distinguishing strangulation from hanging are as follows:

Hanging	Strangulation
*** *** ***	*** *** ***
6. Bleeding from the nose, mouth and ears very rare.	6. Bleeding from the nose, mouth and ears may be found.
8. Abrasions and ecchymoses round about the edges of the ligature mark, rare.	8. Abrasions and ecchymoses round about the edges of the ligature mark, common
9. Subcutaneous tissues under the mark, white, hard and glistening.	9. Subcutaneous tissues under the mark, ecchymosed.
12. Fracture of the larynx and trachea, very rare and that too in judicial hanging.	12. Fracture of the larynx and trachea, often found also hyoid bone.
14. Scratches, abrasions and bruises on the face, neck and other parts of the body, usually not present.	14. Scratches, abrasions finger nail marks and bruises on the face, neck and other parts of the body, usually present.

Scanning the evidence post mortem doctor (P.W.13) it appears he had found bleeding from nose and mouth of the deceased which corresponds to point No. 6 of the chart. Doctor had also noted extravasation in subcutaneous tissues over left anterior aspect of neck and in subcutaneous tissue below ligature mark. He explained the word

‘extravasation’ means characteristics akin to strangulation as per ‘ecchymoses’ establishing points Nos. 8 and 9. Subluxation of hyoid bone was also found which is common in strangulation as per point No. 12. But, the most vital sign with regard to homicidal death relates point No. 14 in chart, i.e., presence of scratches, abrasions and nail marks all over body of the deceased. Not only the deceased but the appellant upon being examined was found to have a number of abrasions arising out of nail scratches on his body. This vital circumstance undeniably gives rise to the inference there was scuffling between the appellant and the deceased at the time of occurrence which ultimately led to her homicidal death.

Thus, I am unable to accept the contention on behalf of the appellant that the opinion of the P.M. doctor with regard to homicidal death is unreliable. On the other hand, I find sufficient corroboration from attending circumstances supporting his conclusion of homicidal death.

Thus, I am of the view, the homicidal death of the appellant has been proved beyond doubt.

Recovery of the ligature:-

P.W.14 deposed he arrested the appellant. During police custody, appellant led the police to Jotindramohan Park where he brought out a black plastic packet containing a waist belt which was used as ligature. Recovery was witnessed by P.Ws. 11 and 12 who were gossiping in the park. Mr. Bhattacharyya argued the independent witnesses are not

local people. Hence, the recovery is suspect. P.W.11 is a hawker while P.W.12 is a taxi driver. They stated they were gossiping in the park when they saw the appellant bring out the seized belt. The witnesses have explained under what circumstances they were present at the time of recovery which does not appear to be unnatural. Post mortem doctor (P.W.13) opined the seized belt could be used to strangle the victim. Thus, recovery of the ligature, i.e., waist belt on the showing of the appellant has been proved beyond doubt.

False explanation by the appellant - an additional circumstance:-

False explanation with regard to the cause of death and his conduct in taking the victim to the hospital and thereafter bringing her back without permission of the doctor as appearing from the mouth of D.W.1 gives rise to an adverse inference that the appellant was seeking to obfuscate the truth.

Incriminating circumstances - complete chain is formed:-

In the light of the aforesaid materials on record, I am of the opinion prosecution has been able to establish the following circumstances against the appellant beyond reasonable doubt:-

- (a) Appellant was a violent and ill tempered man.
- (b) He was married to Sagarika and during her short matrimonial life of eight months the victim was subjected to brutal torture and assault.
- (c) Unable to bear torture, two to three weeks prior to the incident Sagarika came the residence of her maternal uncle (P.W.4) and

refused to return to her matrimonial home. Upon assurance by the appellant she came back to her matrimonial home.

- (d) Seven/eight days prior to the incident, she again took refuge at the residence of her mother (P.W.3) but was brought back by the appellant on similar assurance.
- (e) On 02.08.2008 she suffered unnatural death at the matrimonial home.
- (f) Relations of Sagarika (P.Ws. 3, 4 and 5) found nail marks over her body and ligature marks around her neck.
- (g) However, appellant gave a false explanation with regard to her death and stated she had died due to heart attack.
- (h) P.M. doctor opined death was due to strangulation by ligature, ante mortem and homicidal in nature.
- (i) During trial appellant changed his stance and claimed Sagarika had committed suicide out of depression.
- (j) Plea of suicide is found to be out and out false as would appear from the opinion of the P.M. doctor and other attending facts and circumstances of the case.
- (k) On the showing of the appellant the ligature, i.e., waist belt was recovered.

False and inconsistent pleas with regard to the cause of death of the victim housewife and the conduct of the appellant that he took his wife to the hospital and brought her back without permission of the

doctor are additional links which complete the chain of circumstances that irresistibly point to his guilt.

Conclusion:-

In the light of the aforesaid discussion, I am of the opinion prosecution case has been proved beyond doubt and conviction and sentence of the appellant does not call for interference.

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.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)