

**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. 61 of 2013

Bablu Gope @ Babulal Gope

-Vs-

The State of West Bengal

For the Appellant : Mr. Tapan Datta Gupta, Adv.
Mr. Kashiswar Ghosal, Adv.

For the State : Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Manoranjan Mahata, Adv.

Heard on : 01.07.2022

Judgment on : 01.07.2022

Joymalya Bagchi, J. :-

Appeal is directed against the judgment and order dated 06.12.2012 and 07.12.2012 passed by the learned Sessions Judge, Purulia in Sessions Trial Case No.5 of 2012 arising out of Sessions Case No.48 of 2011 convicting the appellant for commission of offence punishable under Sections 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of

Rs.5,000/-, in default, to suffer rigorous imprisonment for one year more.

Prosecution case alleged against the appellant is to the effect victim Mithu Gope was married to the appellant three years ago according to Hindu rites and customs. She was physically and mentally tortured by the appellant. On 21.03.2009 Jagannath Gope, father of Mithu (PW1) went to the matrimonial home to bring her back. Appellant prevented Mithu from going to her parental home. Thereafter on 23.03.2009 at 10.00 a.m. Jagannath Gope again came to take his daughter back. An altercation ensued. Appellant rushed into the room of Mithu and throttled her to death. Jagannath lodged written complaint at police station resulting in registration of Kenda Police Station Case No.09 of 2009 dated 23.03.2009 under Sections 498A/302 IPC against the appellant. Subsequent complaint was lodged by Jagannath implicating in-laws of the deceased. Charge sheet was filed against the appellant and the in-laws. Charges were framed against the appellant and the in-laws under Section 498A and under Sections 302/34 IPC. Accused persons pleaded not guilty and claimed to be tried. In course of trial, prosecution examined nine witnesses. Defence of the accused persons was one of innocence and false implication.

In conclusion of trial, trial Judge by the impugned judgment and order dated 06.12.2012 and 07.12.2012 convicted and

sentenced the appellant, as aforesaid. Other accused persons were acquitted of all the charges levelled against them while appellant was acquitted of the charge under Section 498A of the Indian Penal Code.

Mr. Tapan Datta Gupta, learned Advocate appearing for the appellant submits motive to crime has not been proved. Relationship between appellant and his in-laws was friendly. Incident occurred in course of sudden quarrel and appellant did not have intention to murder the victim. Accordingly, he prayed for acquittal. Alternatively, he prayed that the conviction be altered from murder to culpable homicide.

Mr. Madhusudan Sur, learned Additional Public Prosecutor argues appellant had detained his wife and prevented her to return to her parental home. As PW1 (father-in-law of the appellant) was insistent, he became enraged and murdered his wife. P.W.1 is corroborated by other witnesses as well as medical evidence on record i.e. post mortem doctor (PW4). Conduct of the appellant and the nature of injury suffered by the victim clearly discloses his intention to murder her. Hence, the appeal is liable to be dismissed.

PW1, Jagannath Gope, father of the deceased Mithu deposed she was married to the appellant three years ago. On 7th of Chaitra he had gone to the matrimonial home of Mithu to bring her back. It was agreed Mithu would return with him on 9th of Chaitra. On 9th of

Chaitra, he again went to the matrimonial home of his daughter. Appellant and in-laws started an altercation with his daughter over demand of a motor cycle. PW1 was sitting in the verandah. His daughter was getting ready in her room to return with him. At that juncture, appellant went inside the room and he heard a cry from his daughter. He rushed into the room and found his daughter lying dead. He went back to his in-laws house and reported the incident. He lodged complaint at Kenda Police Station which was scribed by Sankar Gope (PW3). Police and BDO came to the spot. They prepared inquest reports. He signed on the reports prepared by police as well as BDO.

In course of cross-examination, he stated he had dinner at the matrimonial home of Mithu.

PW1's deposition is corroborated by his brother-in-law, Sanatan Gope (PW2), maternal uncle of Mithu. He stated on 9th of Chaitra around 10/11 a.m. P.W.1 came to their house and informed appellant had killed his daughter.

PW3, Sankar Gope, another relation of PW1 also heard the incident from him. He scribed the first information report.

PW7, Kalipada Gope is the brother of PW1 while PW8, Mira Gope is his wife and mother of Mithu. They also heard from PW1 that the appellant had murdered his wife.

During cross-examination, PW8 admitted there was visiting terms between them and the appellant.

PW4, Dr. Amal Nath is the post mortem doctor. He found the following injuries on the deceased :-

- “1. Rigormortis was present in fingers;*
- 2. congested face, neck and both upper limbs;*
- 3. eyes were congested and closed;*
- 4. bleeding from nostrils was present;*
- 5. four nail-bite marks and one finger print mark over left side of neck were present;*
- 6. two nail-bite marks over right side of neck were present;*
- 7. brain was congested and intra cerebral hemorrhage over surface of brain was present;*
- 8. Subcutaneous haematoma both sides of the neck was present;*
- 9. trachea was congested and no foreign body;*
- 10. right lung was adhered to chest wall and both lungs were congested;*
- 11. internal organs like liver, spleen, kidney were congested.”*

He opined death was due to asphyxia arising out of strangulation i.e. throttling ante mortem and homicidal in nature.

PW5, Aditya Pati is the Investigating Officer of the case. He deposed Officer-in-charge of Kenda Police Station received written

complaint. Formal FIR was drawn up. He visited the place of occurrence and drew rough sketch map. He found the dead body of Mithu in the bed room. He held inquest over the dead body. He requested the Executive Magistrate to hold inquest over the body. He forwarded the body for post mortem examination. He seized wearing apparels etc. of the deceased. He arrested the appellant. He received another written complaint from PW1 implicating the family members of the appellant. Subsequently, he filed charge sheet against the appellant and other accused persons.

From the evidence on record particularly of PW1 (father of the deceased, Mithu) it appears appellant was married to Mithu three years ago. On 7th of Chaitra PW1 had come to the matrimonial home to take back his daughter. He was told Mithu would be permitted to go on 9th of Chaitra. PW1 stayed at his in-laws' house which was in the same village. On 9th of Chaitra he again went to the matrimonial home of Mithu. There was altercation in the matrimonial home. While PW1 was waiting for Mithu to get ready, appellant went into the room and throttled her to death. PW1 rushed back to his in-laws house and reported the incident to his brother-in-law (PW2) as well as PW3. FIR came to be promptly lodged which was scribed by PW3. Version of PW1 is corroborated by medical evidence of post mortem doctor (PW4). He found injuries on the neck

of the deceased. He opined death was due to asphyxia arising out of throttling.

In light of the aforesaid evidence on record, I have no doubt in my mind that the appellant had throttled his wife to death.

Mr. Datta Gupta strenuously argues incident occurred in course of an altercation and appellant had no intention to commit murder. Demand of dowry was not proved and appellant has been acquitted of the charge under Section 498A IPC.

I am unable to accept such contention. Appellant was unwilling to permit Mithu to return to her parental home. He had objected to such proposal on 7th of Chaitra and asked PW1 to come on 9th of Chaitra to take back of his daughter. Again on the next day he started a quarrel. Such conduct of the appellant had not been prompted by any provocation at the end of the deceased or PW1. On the other hand, he behaved in a most cruel and unusual manner. He objected to his wife returning to her parental home and upon insistence at the end of his wife and her father (PW1) throttled her to death. The aforesaid factual matrix by no stretch of imagination would yield within the mitigating ambit of the exceptions to Section 300 of the Indian Penal Code.

Hence, I am not inclined to modify the conviction of the appellant from murder to culpable homicide. Conviction and sentence of the appellant is upheld.

The appellant is accordingly dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against 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 appellant upon completion of all formalities.

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)

akd+as/PA