

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A.(SB) 53 of 2022

***Raju Das*
versus
The State of West Bengal**

For the Appellant : Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chattopadhyay,
Mr. Santanu Maji,
Ms. Snigdha Saha,
Mr. Debdipto Banerjee,
Ms. Trisha Rakshit,
Ms. Rajashree Tah,
Mr. Gourab Das.

For the State : Mr. S.. G. Mukherjee, Ld. P.P.,
Ms. Faria Hossain,
Ms. Baisali Basu.

For the Appellant/High : Mr. Saryati Datta.
Court Legal Services Authority

Heard On : 20.12.2022 & 22.12.2022.

Judgement On : 22.12.2022.

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction dated 08.03.2022 passed by the learned Additional

Sessions Judge, 1st Court, Katwa in Sessions Trial No.20/2011 arising out of Sessions Case No.185 of 2009 wherein the learned trial court was pleased to convict the appellant and sentenced him to suffer sentence as follows:

- (i) Rigorous imprisonment for seven years for the offence punishable under Section 307 of the Indian Penal Code and fine of Rs.5,000/- I.d. SI for six months.
- (ii) Rigorous imprisonment for seven years for the offence punishable under Section 326 of the Indian Penal Code and fine of Rs.5,000/- I.d. SI for six months.
- (iii) Rigorous imprisonment for three years for the offence punishable under Section 498A of the Indian Penal Code and fine of Rs.3,000/- I.d. SI for three months.

The genesis of the present case arose out of a complaint lodged by Abbas Ali Sk. with the Officer-in-Charge of Katwa Police Station wherein he alleged that his daughter Mallika Das (Khatun) married one Raju Das under the Special Marriage Act after they had a relationship over a period of time. At the time of marriage, the complainant gave gold ornaments along with some articles as gifts. After marriage, the complainant's son-in-law and daughter stayed at a rented house along with Sefali Das, mother-in-law of his daughter. After 4/5 days of

marriage, the complainant's son-in-law and his mother started demanding a sum of Rs.20,000/- from his daughter and stated torturing her both physically and mentally. It has been alleged that the complainant's daughter was not allowed to eat or wear properly and she was assaulted. The appellant used to drink frequently and after returning home when the same was objected by his daughter, she was assaulted. On several occasions, mother-in-law used to assault the complainant's daughter by catching the tuft of hair and told her to commit suicide so that she could get her son married to another girl. The complainant's daughter expecting that things would normalise, tolerated such torture. However, on 10.04.2007, the accused persons again demanded cash which was informed by the complainant's daughter over phone. The complainant asked his daughter to collect the cash from his house. When she reported the same to the appellant, he got furious and started assaulting his daughter by fists and blows with an intention to kill her. She was assaulted with a stick and hot water was splashed over her. In order to save herself the complainant's daughter managed to escape and went to the roof of the rented house where the appellant also followed and at the time of hot altercation between them, the appellant pushed his daughter from the roof. The said incident was witnessed by the neighbours and owner of the house who rushed to the spot and

seeing severe nature of injury sustained by her, they admitted her to Katwa Hospital and informed the complainant over phone. The complainant and his wife thereafter rushed to the hospital. They got her released from the said hospital and admitted her at Kalna Hospital for treatment. The complainant alleges that his daughter is in critical condition and is under treatment.

Pursuant to the aforesaid complaint, Katwa Police Station Case No.115 of 2007 dated 27.04.2007 was registered for investigation under Sections 498A/326/307 of the Indian Penal Code and the Investigating Agency on conclusion of investigation initially submitted their first charge-sheet on 23.06.2007 under Section 498A of the Indian Penal Code. Subsequently, after further investigation, second charge-sheet was also filed before the jurisdictional court on or about 11.08.2008 under Sections 498A/307/326 of the Indian Penal Code.

Records reflect that the appellant was arrested on 24th May, 2007 and he was released on bail on 29th June, 2007. The case being sessions triable was committed to the court of sessions and records were subsequently made over to the learned Additional Sessions Judge, 1st Court, Katwa wherein on 25.02.2011, charges were framed under Sections 326/498A/307 of the Indian Penal Code.

The prosecution in order to prove its case relied upon 10 witnesses which included Abbas Ali Sk., father of the victim as P.W. 1; P.W.2, Mallika Das (Khatoon), victim; P.W.3, Rekha Mondal, neighbour of the rented accommodation where the couple stayed; P.W.4 Swati Mitra Pal, the Marriage Registration Officer at Kalna; P.W. 5, Jhuma Ghosh, land lady of the rented accommodation; P.W. 6, Sanchita Das, neighbour of P.W.1; P.W.7, Tapasi Bibi, the mother of the victim; P.W.8 Dr. P.N. Mitra, who treated at Katwa Hospital on 11.04.2007; P.W.9, Dr. Biswadip Mukhopadhyay, who treated the victim on 11.04.2007 and P.W.10, Dr. Chandra Sekhar Kundu, who treated the victim on 09.08.2007.

The prosecution also relied upon the following documents:

Exhibit 1, the complaint of Abbas Ali Sk;

Exhibit 2, the seizure list dated 21.05.2007;

Exhibit 3, Marriage Registration Certificate;

Exhibit 4, the record of patient of Katwa Sub Divisional Hospital;

Exhibit 5, the prescription dated 11.04.2007 of Kalna Sub-Divisional Hospital;

Exhibit 6, the opinion of the radiologist, Dr. Biswadip Mukhopadhyay (P.W.9);

Exhibit 7, Dr. Chandra Sekhar Kundu dated 09.08.2007.

P.W. 1 Abbas Ali Sk. in his deposition before the court reiterated his contention which was made in the letter of complaint relating to demand of dowry and stated that on 10.04.2007 his daughter called him and demanded such amount while weeping, craving for an amount of Rs.20,000/-, when the complainant was compelled to ask her to come on the next day along with her husband to take the money. He deposed on the following day at about 8.30 a.m. over phone he learnt that his daughter has been admitted to Katwa SD Hospital and he immediately rushed to the said hospital where he found his daughter in a senseless condition with bleeding injuries at her mouth and other injuries of her back, spinal chord, both legs and other parts of the body. The complainant stated that since they were residents of Kalna and were not thickly connected at Katwa, he took her release from the Katwa SD Hospital and took the victim and got her admitted at Kalna Hospital. After about four days, she was referred to Burdwan MCH, as it was difficult for him to continue the treatment at Burdwan, he got his daughter treated by private doctor at Kalna. The complainant stated that later he came to know from his daughter that on 10.04.2007 in the evening his daughter was assaulted by Raju Das, appellant with piece of wood and on 11.04.2007 morning hot water was thrown at her and she was chased by the appellant and to escape from such assault she went

to the roof and the appellant also chased her there and she was kicked by the appellant for which she fell down from the roof and received the injuries. He also identified his signature in the seizure list relating to the treatment-sheets/prescriptions of his daughter and the photocopy of the Marriage Registration Certificate. He identified his signature in the seizure list which was dated 21.05.2007 and the same was marked as Exhibit 2/1. He also identified the original certified copy of the Marriage Registration Certificate of his daughter and the appellant, which was admitted in evidence and marked as Exhibit 3.

P.W. 2 is the victim. She stated that they got married under the Special Marriage Act on 06.02.2007 and introduced the appellant as a student of Bengal Institute of Technology, Katwa. She deposed that at the rented accommodation where they stayed after marriage, her mother-in-law also used to reside. The witness deposed that after 5/6 days of marriage, the accused persons demanded Rs.20,000/- and abused her by saying that if she is unable to bring such money, she should commit suicide and her mother-in-law stated that she would opt for getting her son married second time and obtain the hefty sum of money. This witness represented that he would convey such information to his father and on 10/04/2017. Her husband and mother-in-law again insisted her to bring money from her father which was conveyed to him

over phone and her father asked her to come at this residence at Kalna with her husband to collect the money. On 11.04.2007 in the morning when she represented the same to her husband that they would go to her father's house for collecting the money, her husband become furious and started assaulting her. The witness stated that firstly her husband inflicted a blow on her left eye when she lost her sight, thereafter he picked up a split wood and started assaulting with the same, he thereafter poured hot water on her legs when she sustained burn injury and being afraid she ran to the first floor roof in order to save herself from the clutches of her husband, however, her husband followed her there and shouting that the said day would be the last day of her life. He pushed her from the roof, when she fell down on the road and lost her senses. The complainant thereafter deposed that she was picked up by local people and admitted at Katwa hospital. After she regained her senses at Katwa hospital, she found her parents and neighbours of Kalna there and her legs, spinal chord and rib cages of her chest were broken. She stated that she was unable to walk properly. She also deposed that on the same date she was shifted to Kalna hospital by her parents and treated at a nursing home on the following day. After four or five days, she was advised to shift at Burdwan Medical College and Hospital, but her father having no connection at Burdwan, she was

treated at her home with the aid of private doctors namely, Dr. Anupama Kar and Dr. A. K. Das of Kalna. She was also treated by another doctor, namely, Dr. Chandrasekhar Kundu.

P.W. 3, namely Rekha Mondal is the neighbour of the rented accommodation where the couple stayed along with the mother of the appellant. The witness stated that about nine years ago there was a tenant residing at the house of Jhuma Ghosh, P.W.5. However, the tenant denied of any knowledge relating to the incident.

P.W. 4 is Swati Mitra Pal, a Marriage Registration Officer having her office at Kalna. She deposed that she issued the marriage certificate, identified the same as Exhibit. 3.

P.W. 5 is Jhuma Ghosh, landlady of the rented accommodation of the house situated at Katwa, Kabirajpara. The witness deposed that a portion of her house was rented out about nine years back to the appellant and P.W.2 who were rooted at Kalna. According to her, they resided for about 1 to 2 months and one day when she had been to her relative's house, she heard that PW 2 fell down and got herself injured. She added that she was unaware as to how PW.2 fell down, but, subsequently the couple left the tenancy.

P.W. 6 is Sanchita Das who is a neighbour of P.W.1. He deposed that the appellant was married to Mallika Das (P.W,2) and after marriage

they started residing at Katwa, Kabirajpara. She deposed that she heard from the mother of Mallika that the appellant assaulted her and pushed her down from the roof at Katwa, Kabirajpara, the victim as such, was admitted at Kalna Hospital, where she visited her and found that her two arms and waist were fractured (it has been recorded that subsequently the witness stated that the fracture injury was there on her both legs and waist). The witness opined that the victim is not totally fit and she cannot move or walk properly.

P.W. 7 is Tapasi Bibi who is the mother of the victim who deposed in the same manner and tune as P.W.1.

P.W.8 is Dr. P. N. Mitra, an orthopaedic surgeon attached to Katwa hospital was identified the last part of the treatment-sheet which was marked as Exhibit. 5.

P.W.9 is Dr. Biswadip Mukhopadhyay, a Radiologist who was attached to Kalna SD hospital at Wecre Pathological Laboratory. He deposed that on that day he examined the X-ray report of Mallika Das and on perusal of the same he detected fracture of both calcaneum and tip of lateral malleous on right leg and also detected fracture partial compression and fracture of L-1 vertebra. He identified the test report which was marked as Exhibit. 6.

P.W. 10 is Dr. Chandra Sekhar Kundu, a surgeon who treated the victim on 09.08.2007 in respect of a fracture. He identified his prescription which was marked as Exhibit. 7.

Mr. Uday Shankar Chattopadhaya, learned advocate appearing for the appellant submitted that the prosecution has failed to prove its case beyond any reasonable doubt and as such, the accused/appellant is entitled to be acquitted of the charges. In order to substantiate his argument, learned advocate submitted that the incident happened on 10.04.2007/11.04.2007, but the written complaint was registered on 27.04.2007, as such there was a delay of 17 days which was without any reasonable explanation. Learned advocate for the appellant added that the victim did not mention the name of the appellant before the first attending doctor and also did not mention the name of the appellant as assailant before any of the doctors. It was contended that there was a mental pressure upon the P.W.2/victim due to inter-religion marriage.

Furthermore, he stated that the parents took the victim/P.W.2 on personal bond out of Katwa SD Hospital to Kalna SD Hospital on the very date of the incident, although her condition deteriorated and after 4/5 days in the said Kalna SD Hospital when she was advised to be shifted to Burdwan Medical College and Hospital, surprisingly the

parents brought her back home and got her treated through private doctors.

It was further contended that the victim in cross-examination stated that the roof of the tenanted premises had no railing and she also deposed that before marriage she did not divulge about her relationship to other relations. This, according to the learned advocate, reflects the attitude of the relations and their understanding regarding inter-religion marriage.

Learned advocate drew the attention of this court to the documents and submitted that some of the vital documents such as formal FIR, sketch map, medical documents were not admitted in evidence and the non-examination of the Investigating Officer as such has prejudiced the appellant. He added that inconsistency in the evidence of PW-2 could have been cross-checked, had the investigating officer was present in court and the defence had the opportunity of cross-examining him. Reference was made to the evidence of PW-7 regarding the hearsay nature of evidence wherein, according to the learned advocate for the appellant, it was deposed that couple was living peacefully so the issue relating to torture did not arise.

It has also been stated that the mother-in-law viz., Shefali Das has been acquitted from the case and on grounds of parity, the appellant

must be acquitted from the charges under Sections 326/307/498A of the Indian Penal Code.

Mr. Saryati Dutta, learned Advocate appearing for the appellant/Legal Aid submitted that a cumulative appreciation of the evidence of the witnesses fails to make out any case against the appellant and the judgment calls for interference of this Court.

Ms. Faria Hossain, learned advocate appearing for the State submitted that there is a consistency in the version of the prosecution witnesses particularly, PW-1, PW-2 and PW-7. According to the learned advocate, the statement of the injured victim in this case assumes importance and her evidence as such cannot be thrown away on mere technical issues. Attention of the Court was drawn to the date of marriage which was 06.02.2007 and the date of registration of the FIR which is 27.04.2007. Learned advocate for the State contends that the evidence of the victim incorporates chain of circumstances which are demand of dowry, informing the same to her father, her father having consented to part with such amount only when she along with her husband comes to collect the same, husband after hearing the same started assaulting her with fist and blows on her eyes with a split wood on different parts of body, splashing hot water upon her and when she tried to escape by going to the roof, she being followed/chased by her

husband and pushed at the time of hot altercation the resultant of which are the fractures which she suffered. Learned advocate draws the attention of the Court to the medical documents which have been marked as Exhibits 5, 6 and 7 and points out that the lady has suffered in the region of ankle, spinal chord and the waist. Given the circumstances, according to the learned advocate for the State, there is no scope for interference in the order of conviction and sentence passed by the learned trial court and the same should be affirmed.

I have considered the submissions advanced by the learned advocates appearing for both the parties. I have also taken into consideration the nature of the incident which occurred in close proximity of two months after the marriage. The three witnesses who are vital in this case are PW-1, PW-2 and PW-7 being the complainant/father of the victim, victim and the mother of the victim respectively. The subject-matter of demand of Rs.20,000/- has been corroborated by each and other, so far as the factum of assault is concerned, the same has also been corroborated by them.

An issue has been raised by Mr. Chattopadhyay, learned advocate for the appellant regarding the factum of the sketch map not being produced in this case in evidence which could have added to the issue whether the victim accidentally fell down or she was pushed by the

husband from the roof. It has also been pointed out that the medical evidence which has been produced before this Court is of Orthopaedic Surgeon which relates to treatment of the legs, arms, waist and spinal cord. The judgment under challenge according to the State do not call for any interference.

The facts which the prosecution could not bring on record is regarding sustaining injury at the eye or burn because of the hot water being splashed. The formal FIR of the case has not been exhibited. However, it remains that it is nobody's case that no case was registered at Katwa Police Station, consequently the issue relating to non-examination of the Investigating Officer as to how much the same has prejudiced, the defence is to be assessed in this particular case. The two authorities of the Hon'ble Supreme Court in this point are relevant.

On this issue Paragraph 23 of the decision of the Hon'ble Supreme Court in ***Behari Prasad & Ors. Vs. State of Bihar*** reported in ***(1996) 2 SCC 317*** would be relevant for the purpose of this case which is set out hereunder:

“23. It, however, appears to us that the entire case diary should not have been allowed to be exhibited by the learned Additional Sessions Judge. In the facts of the case, it appears to us that the involvement of the accused in committing the murder has been clearly established by the evidences of the eyewitnesses. Such

evidences are in conformity with the case made out in FIR and also with the medical evidence. Hence, for non-examination of Investigating Officer, the prosecution case should not fail. We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross-examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal strait-jacket formula should be laid down that non-examination of Investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence.”

In the judgement of the Hon’ble Supreme Court in **Rajesh Yadav Vs. State of U.P.** reported in **2022 SCC OnLine SC 150**, the Hon’ble Supreme Court after relying upon **Behari Prasad** (supra) and **Lahu Kamlakar Patil Vs. State of Maharashtra** reported in **(2013) 6 SCC 417** was pleased to explain the circumstances under which the non-examination of the Investigating Officer becomes vital. The Hon’ble Supreme Court relied upon paragraph 18 of **Lahu Kamlakar Patil** (supra) which is set out hereunder :

“18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the FIR but has given the excuse that it was taken on a blank paper. The same could have

been clarified by the investigating officer, but for some reason, the investigating officer has not been examined by the prosecution. It is an accepted principle that non-examination of the investigating officer is not fatal to the prosecution case. In *Behari Prasad v. State of Bihar* [(1996) 2 SCC 317 : 1996 SCC (Cri) 271], this Court has stated that non-examination of the investigating officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In *Bahadur Naik v. State of Bihar* [(2000) 9 SCC 153 : 2000 SCC (Cri) 1186], it has been opined that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial Judge nor the High Court has delved into the issue of non-examination of the investigating officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in *Arvind Singh v. State of Bihar*, [(2001) 6 SCC 407 : 2001 SCC (Cri) 1148], *Rattanlal v. State of J&K* [(2007) 13 SCC 18 : (2009) 2 SCC (Cri) 349] and *Ravishwar Manjhi v. State of Jharkhand* [(2008) 16 SCC 561 : (2010) 4 SCC (Cri) 50],

has explained certain circumstances where the examination of investigating officer becomes vital. We are disposed to think that the present case is one where the investigating officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.”

I have assessed the cross-examination of PW-1, PW-2 and PW-7 and I do not find that there have been contradictions which were confronted regarding previous statements made by them which could have been confronted to the Investigating Officer had he been present as a witness in this case. That leaves this Court to decide on the issue regarding the topography of the area particularly, the rented house of the roof which happens to be a major issue relating to the offence. It is not possible to ascertain from the evidence as to whether the victim PW-2 was in a conscious state to narrate regarding the incident to the doctor when she was initially admitted for treatment. There is a version of the prosecution witnesses including the victim that she lost her senses and regained the same at the hospital. Having considered the medical documents which include Exhibits 4, 5, 6 and 7, I find that Exhibit-4 is a record of Katwa S.D. Hospital wherein no injury has been recorded except at the bottom, the personal bond by which the victim was released from the said hospital. So far as the Exhibits 5, 6 and 7 are

concerned, they do incorporate the phrase 'fall from 10ft. height', thereafter description of the injuries, the medicines prescribed and the follow up treatment to be made.

Having regard to the said medical evidence, I am of the opinion that it would be unwise to hold that the injuries complained of were in the nature of offence committed under Section 307 of the Indian Penal Code or for that matter under Section 326 of the Indian Penal Code. However, the injuries are grievous in nature and the evidence has been conducted in a very casual manner by the prosecution.

Considering the statement of the victim, I am of the opinion that the evidence in this case which has been disclosed is in the nature of offences under Section 498A of the Indian Penal Code and Section 325 of the Indian Penal Code. The appellant is accordingly convicted under Section 498A of the Indian Penal Code and Section 325 of the Indian Penal Code.

Having regard to the age of the appellant and that at the relevant period of time, he was a student, I direct that the sentence so imposed upon the appellant is modified as follows :-

- (i) The appellant is sentenced to suffer rigorous imprisonment for one year for the offence under Section 498A of the

Indian Penal Code and to pay fine of Rs.5000/-, in default, S.I. for three months.

- (ii) The appellant is sentenced to suffer rigorous imprisonment for two years for the offence under Section 325 of the Indian Penal Code and to pay fine of Rs.5000/-, in default, S.I. for three months.

Both the sentences would run concurrently. Any term of imprisonment or detention suffered by the appellant in course of investigation, enquiry, trial and appeal would be set off under Section 428 of the Code of Criminal Procedure.

With the aforesaid observations, the appeal being CRA (SB) 53 of 2022 is partly allowed.

Department is directed to send back the lower court records immediately and communicate this order to the learned trial court.

All parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)