

Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Tirthankar Ghosh

CRA (SB) 56 of 2022

Sri Lalan Kundu & Anr.

-vs-

The State of West Bengal & Anr.

For the appellant:

Mr. Kallol Kumar Basu
Mr. Mrinal Das
Mr. Raja Adhikary
Md. Jannat Ul Firdous

For the State:

Mr. Abhra Mukherjee
Mr. Dipankar Mahata

Heard on: **29.11.2022.**

Judgement on: **29.11.2022.**

Tirthankar Ghosh, J.

The present appeal has been preferred against the judgement and order of conviction and sentence dated March 14, 2022 passed by the learned Additional District & Sessions Judge, 2nd Court, Katwa, Purba Bardhaman in Sessions Case No. 08 of 2013 (corresponding to Sessions Trial No. 23 of 2014), wherein the appellants namely, Lalan Kundu and Bhagirath Kundu were held guilty and convicted under

Sections 306/498A/34 of the Indian Penal Code. The learned Trial Court was pleased to sentence the appellants as follows:

- I) the appellant no. 1, Lalan Kundu was sentenced to suffer rigorous imprisonment for seven years and also with fine of Rs.10,000/- i.d. to suffer for one year for the offence punishable U/s. 306 IPC.
- II) The appellant no. 1, Lalan Kundu and appellant no.2 Bhagirath Kundu were each sentenced to suffer rigorous imprisonment for two years and also fine of Rs.2000/- each i.d. to suffer S. I for six months for the offence punishable U/s. 498A/34 IPC.

The genesis of the case related to Ketugram P. S. Case No. 237 of 2010 dated 08.12.2010 which was registered for investigation under Section 498A/304B/34 of the Indian Penal Code on the basis of a complaint lodged by one Anil Sutradhar with the Inspector-in-Charge, Ketugram Police Station. The allegations made therein were to the effect that about four years ago, his daughter namely, Rumki Kundu was married to the youngest son of one Pashupati Kundu, namely, Lalan Kundu. At the time of marriage by way of dowry the complainant gave cash of Rs.80,000/-, five bhories of gold along with brass utensils and other gifts. After marriage, the complainant's daughter was subjected to torture at her matrimonial home both for the quality of the gifts as well as on the ground of further demand of dowry. Being unable to tolerate such torture, often the complainant's

daughter used to return back to her paternal home. Such torture was inflicted by husband, elder brother-in-law, her mother-in-law (Nomita Kundu) and one Saraswati Kundu being the sister-in-law. It has been alleged that on 29.11.2010, the accused persons in collusion and in conspiracy with each other, inflicted immense physical and mental torture upon the deceased which compelled her to pour kerosene oil and set herself on fire. She was admitted at the hospital in serious condition and the complainant organised her treatment. However, on 2nd December, 2010, her daughter Rumki Kundu expired. The complainant alleges that the deceased Lalan Kundu and all the relations named above were responsible for her death, which was because of the immense physical torture and demand for dowry.

The investigating agency on conclusion of investigation submitted chargesheet under Section 498A/304B/34 of the Indian Penal Code against the four accused persons named in the chargesheet but it was pointed out that the case against the mother-in-law, Namita Kundu was filed on 19.01.2021.

The case was thereafter committed to the court of sessions and the learned Sessions Court/trial Court was pleased to frame charges against all the accused persons under Sections 498A/34 of the Indian Penal Code, Sections 304B/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

The prosecution in order to prove its case relied upon 10 witnesses, namely Utpal Chowdhury (P.W.1), who is the scribe; P.W.2, Ranjit Paramanik, a co-villager of the matrimonial home of the deceased; P.W.3, Anil Sutradhar, father of the deceased; P.W. 4, Tapan Chakraborty, who is the member of Panchayat of Manpur Dhandanga Anchal; P.W.5, Sisir Sutradhar, uncle of the deceased; P.W.6, Adhir Sutradhar is also an uncle of the deceased; P.W. 7 is Dr. Tapan Sarkar who treated the deceased after she was admitted at the emergency ward of Katwa Sub-Divisional Hospital; P.W.8, Amanatullah Mahammad who is the doctor attached to Katwa Sub-Divisional Hospital; P.W.9, Tapan Chowbey is the investigating officer of the case; P.W.10 is Dr. Md. Amanutulla, post mortem doctor.

The prosecution relied upon number of documents to substantiate the charges, which included written complaint Ext.1/1; Ext.2, seizure list dated 18.12.2010; Ext.3, inquest report; Ext.4, Seizure list dated 02.12.2010, Ext.5, bed head ticket and Ext.6, Formal FIR.

P.W. 1, Utpal Chowdhury is the scribe of the FIR who deposed before the court that the entire written complaint was prepared by him under the directions of Anil Sutradhar (complainant of the case), he identified the said written complaint which was marked as Ext.1. The witness also in course of Examination-in-chief deposed that there was a maintenance case which was filed at Bolpur Court.

PW 2 is Ranjit Paramanik, is a co-villager of the accused persons who deposed that the deceased Rumki died by way of pouring kerosene oil on her body while she was staying at her matrimonial home. This witness also identified all the accused persons who were present in court.

PW 3 is the Anil Sutradhar, who deposed before the court that he lodged an FIR before the Katwa P.S. after his daughter died and the said complaint was written by Utpal Chowdhury, PW 1. The witness further stated that the complainant was as per his instruction and it was read over and explained to him and only thereafter he signed the same. The signature of the witness in the complaint was marked as Ext.1/1. He deposed that his daughter Rumki Kundu got married to accused Lalan Kundu about eight and half years prior to the date of the examination and it was almost four and half years after her marriage the unfortunate incident happened. He identified all the accused persons on dock and continued narrating that the marriage of his daughter was solemnized according to Hindu Rites and Customs and at the time of marriage he gave Rs.80,000/- in cash, gold ornaments of five bhoris and utensils as per demand and direction of the accused persons. After marriage his daughter went to her matrimonial home. However, the accused persons used to assault his daughter when she was staying at her matrimonial home as they were not satisfied with the dowry. The accused persons demanded further

dowry and on this issue they used to assault his daughter. She was driven out of the matrimonial home number of times and for this reason a maintenance case was initiated against his son-in-law at Bolpur Court. Subsequently the said case was compromised, and in course of investigation those papers were seized by the investigating authority where he signed on the said seizure list on or about 18.12.2010. The signature was identified as Ext. 2/3. His daughter thereafter again went to her matrimonial home and she died on 2nd December, 2010. The witness complained that there was always dissatisfaction between the members of the matrimonial home and on 29th November, 2010, the deceased poured kerosene oil and set herself on fire. It was the villagers who rescued her and admitted her at Katwa Hospital, while he got information at about 10 p.m on the said date and as such along with other persons he had been to the matrimonial home of his daughter where he found that the said house was under lock and key. He came to know from the village people that his daughter was admitted in the Katwa Hospital and after reaching Katwa Hospital, he found that her daughter was admitted and she was unable to speak. This witness further stated that out of the wedlock a son namely Rana Kundu was born who continued to stay with his father. He also stated that police came to the hospital after the death of his daughter, prepared a report after examining the dead body of his daughter which he signed. The carbon copy of the inquest report was

shown to the witness and he identified his signature which was marked as Ext.3/1. The seizure list dated 02.12.2010 was also shown to the witness, he identified his signature on it which was marked as Ext. 4/1. The witness deposed that a Magistrate also examined the dead body of his daughter, prepared a report where he also signed. This witness also identified the broken conch bangle, sari and the coral bangle of his daughter which was marked as Mat Ext. II and Mat Ext.III.

P.W. 4, Tapan Chakraborty is the member of the Panchayat who deposed before the court that he knew Anil Sutradhar as well as his daughter and had been invited at the time of marriage, which was solemnized on 17th Baishakh 1413 B.S. The witness categorically stated that he knew nothing about the dowry. However, in the year 2008 the deceased stayed for about six months in her father's house due to torture being inflicted upon her by the accused persons. He also deposed that he being a panchayat member arranged a settlement relating to the dispute at Bakul Kanun and the settlement was fixed on 22nd August, 2008 and on that date both sides appeared and disputes were settled on 23rd August, 2008 and on 23.08.2008 Lalan Kundu took back the deceased Rumki and her child to the matrimonial home. The witness also stated that she lodged a maintenance case at Bolpur Court and because of the settlement, the maintenance case was also withdrawn. Lastly, on 02.12.2010, he

came to learn that Rumki died at Katwa Hospital due to burn injury which may be due to torture.

PW-5, Sisir Sutradhar is brother of Anil Sutradhar (complainant). This witness reiterated the facts of the case in the same manner as PW-3 Anil Sutradhar.

PW-6, is Adhir Sutradhar, is another brother of the complainant, Anil Sutradhar who also narrated the chronology of events leading to the death of the victim in the same manner as PW-3 and PW-5.

PW-7 is Dr. Tapas Sarkar who deposed that on 29.11.2010 he was posted at Katwa S.D. Hospital as Medical Officer and on that day, he treated Rumki Kundu, aged about 21 years. The victim was admitted at emergency department of Katwa S.D. Hospital and he, on examination of the patient, found her to be conscious and oriented. Referring to the documents present over there, the witness deposed that the victim told her that she had quarrel with her husband and poured kerosene oil on her person and set herself on fire. The witness observed that she sustained 65% burnt injury and her condition was grave which information was passed on to the patient party. The witness also stated that the patient was initially admitted under Dr. Amanat Ali and identified bed head tickets which included four sheets. The witness further stated that the first two pages of the bed head tickets were written by Dr. Amanat Ali and the rest of the pages were

written by him. He identified the attested copies of the bed head tickets which were marked as Ext.5.

PW-8, Amanatullah Mahammad, is a Medical Officer associated with Katwa Hospital who only deposed that he knew Dr. Tapas Sarkar who was also posted at the relevant time at Katwa Hospital.

PW-9 is Tapan Chowbey, the Investigating Officer of the case who deposed that on receipt of the complaint from PW-3, he initiated Ketugram P.S. Case No. 237/2010 dated 08.12.2010. The formal FIR was filled up by him which was identified by him in court and as such, marked as Ext.6. The case was endorsed to him by the Inspector-in-Charge, Ketugram Police Station. He deposed that as investigating officer of the case he visited the place of occurrence and prepared a sketch map along with index. He identified the sketch map with index which was marked as Ext.7 collectively. The witness also deposed that in course of the investigation he examined the available witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. In course of investigation, he also arrested two accused persons and forwarded them to the court. The witness also collected the post-mortem report and the bed head tickets of the deceased and also sent the viscera for chemical examination and subsequently on his transfer, handed over the charge of this case to the Inspector-in-Charge, Ketugram Police Station. Further the witness deposed that he

seized a document relating to the amicable settlement which was held at Lavpur Gram Panchayat. The said seizure list was marked as Ext.2.

PW-10 is Dr. Md. Amanutulla who is a Medical Officer attached to Katwa S.D. Hospital. He deposed that he conducted post-mortem over the dead body of the deceased Rumki Kundu which was identified by Constable Bidyut Chakraborty. The carbon copy of the post-mortem report was marked as Ext.8.

Mr. Kallol Basu, learned advocate appearing for the appellants submitted that although the case was initially registered under Section 304B of the Indian Penal Code, but the learned trial court at the end of the trial was pleased to convict the appellant no.1 under Section 306 of the Indian Penal Code. According to the learned advocate, there are no incriminating materials which make out a case for torture of such degree which could have compelled the deceased to commit suicide and mere quarrel cannot be a ground for holding the appellant no.1 responsible for the cause of death of Rumki Kundu. Learned advocate further submitted that the evidence of the witnesses clearly states that marriage was solemnised about four and a half years ago prior to the date of the incident and a son was also born out of the wedlock. It has been pointed out that no specific incident has been pointed out in the letter of complaint or any material appearing in evidence which would implicate the appellants in a case under Section 498A of the Indian Penal Code or under Section 306 of the Indian Penal Code.

It has been further submitted on behalf of the appellants that PW-3, father of the complainant, in his emotions has embellished the version in the letter of complaint and further changed the nature and character of the allegations in the deposition before the court. The prosecution witness no.2, according to the appellants, is an independent witness who deposed before the court that the deceased was happy at her matrimonial home and the incident was an accident which occurred at the time of preparing milk. The evidence of the said witness was never challenged by the prosecution and in this case, the order of conviction has only been passed on the basis of the evidence of the relative witnesses and the statement made before the doctor. Learned advocate submits that the manner in which the learned trial court implicated both the appellants calls for interference by this Court.

On the other hand, Mr. Abhra Mukkherjee, learned advocate appearing for the State submits that within four and a half years of marriage, the unfortunate incident of victim setting herself on fire took place and the same was because of immense physical and mental torture which was inflicted upon her. The prosecution witnesses have consistently stated the same and the chain of events would also substantiate the prosecution charges in view of the fact that apart from the relation witnesses, the panchayat member, PW-4, Tapan Chakraborty, categorically deposed before the court that the deceased for a substantial period of time was staying at her parental home

because of the torture being inflicted at her matrimonial home. The said PW-4 organised a compromise as he was a panchayat member and after compromise, the deceased went back to her matrimonial home. Further, the maintenance case, which was initiated during the period when she was staying at her parental home, was withdrawn. It has been emphasized on behalf of the State that within such a short span of time, the deceased was once thrown out of her matrimonial home and there was a reference to compromise, which would go to show that because of social compulsions, the deceased had to return back to her matrimonial home and even after returning there, she was further subjected to physical and mental torture which resulted in the unfortunate incident compelling her to take the ultimate step of setting herself on fire. The State contends that there is no scope for interference in the judgement and order of conviction so passed by the learned trial court.

I have considered the submissions advanced on behalf of the appellants as well as on behalf of the State. On an assessment of the materials which are available on records particularly, with regard to the evidence of PW-3, Anil Sutradhar, PW-5, Sisir Sutradhar, and PW-6, Adhir Sutradhar, I am of the opinion that the materials which could lead to the factum of abetment of commission of suicide is missing in this case particularly, if we take into account the best evidence on behalf of the prosecution i.e. the history as recorded by PW-7, Dr.

Tapas Sarkar wherein he stated that there was quarrel with her husband and that is why, the victim poured kerosene on herself and set herself on fire. Such quarrel in a family affair may be for different reasons, nothing has been stated that on issues relating to further demand of dowry or allied reasons there was quarrel. Further, there was no allegation by the victim/deceased that at the relevant point of time, she was assaulted on frivolous pleas which compelled her to take the ultimate decision of ending her life. It would be apposite to state here that in the evidence so far as the issue relating to abetment is concerned, nowhere the appellant no.2 has been mentioned and throughout the prosecution case there has been a general reference to the inmates of the matrimonial home along with the husband. The evidences do not inspire the confidence of the court to hold that the appellant no.1, Lalan Kundu was solely responsible for the death or for the abetment to commit suicide of the victim/deceased. As such, the order of conviction and sentence under Section 306 of the Indian Penal Code so awarded by the learned Additional District & Sessions Judge, 2nd Court, Katwa in Sessions Case No. 8 of 2013 (S.T. No. 23/2014) is not sustainable and is liable to be set aside.

However, having regard to the chronology of facts which surfaced in course of the evidence, it would transpire that the victim was tortured at her matrimonial home and she had to leave her matrimonial home and stay at her paternal home and it was only after a

compromise arrived at by the intervention of the panchayat member, PW-5, she returned to her matrimonial home. The initiation of the maintenance case would also go to show that it was a substantial period of time and the dispute and difference was such that the allegation of the father that there was a further demand of dowry and dissatisfaction regarding the quality of the gifts is substantiated. Thus, the order of conviction and sentence under Section 498A of the Indian Penal Code so far as the appellants are concerned are substantiated.

However, having regard to the fact that the case was initiated in the year 2010 and more than 12 years have passed in the meantime, I am of the opinion that the appellants presently should not be either sent back to prison or allowed to suffer further sentence, which requires modification of the sentence imposed by the learned trial Court for the offence under Section 498A of the Indian Penal Code.

It has been informed that the appellant no.1, Lalan Kundu, is in custody after the judgement was pronounced by the learned trial court and is suffering for the last eight and a half months and he has also suffered a substantial period (about 78 days) in course of the period of investigation. Having regard to the same, I direct that so far as the sentence under Section 498A of the Indian Penal Code is concerned, the appellant no.1, Lalan Kundu, would be deemed to be sentenced for the period which he has already undergone.

So far as the appellant no.2 Bhagirath Kundu is concerned, he is on bail. Having regard to the nature of the allegations which has surfaced against him and the fact that he was in custody for about 75 days during trial, I am of the opinion that his sentence should be reduced to the period already undergone in course of the investigation and trial of the proceedings. No further sentence is required to be served by the said Bhagirath Kundu, appellant no.2.

Accordingly, the appeal being CRA (SB) 56 of 2022 is partly allowed.

The appellant no.1, Lalan Kundu, is directed to be released in connection with the instant case as his sentence has been reduced to the period already undergone.

All pending connected applications, if any, are consequently disposed of.

Department is directed to send back the lower court records forthwith.

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]