

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. 251 of 2018

Raju Mitra & Ors.
-Vs-
State of West Bengal

For the Appellant : Mr. Moinak Bakshi, Adv.

For the State : Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 11.05.2022

Judgment on : 11.05.2022

Joymalya Bagchi, J. :-

Appellants have assailed the judgement and order dated 07.05.2018 and 08.05.2018 passed by the learned Additional District and Sessions Judge, Fast Track Court, Bankura in Sessions Trial No. 08(01)2017 arising out of Sessions Case No. 01(11)2016 convicting the appellants for commission of offence punishable under Sections 498A/304B of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for ten years for the offence punishable under Section 304B of the Indian Penal Code and to suffer simple imprisonment for one year and to pay fine of Rs.1,000/- each, in default, of payment of fine, to suffer simple

imprisonment for three months more for the offence punishable under Section 498A of the Indian Penal Code; both the sentences to run concurrently.

Barely 72 days after her marriage to Raju Mitra (appellant No. 1) Ganga was compelled to commit suicide at her matrimonial house. At the time of marriage, as per demand of the appellants, Rs.20,000/- out of Rs.35,000/- had been given along with gold ornaments as dowry. A sum of Rs.15,000/- was outstanding. About a month after the marriage over demands of outstanding dowry appellants being the husband, father-in-law and mother-in-law of the housewife subjected her to mental and physical torture. Two days prior to the incident on 22.02.2016 at 12 noon Ganga made a frantic phone call to her father complaining the appellants were beating her. Her father, Asim Dutta, rushed to the matrimonial home and requested the appellants not to torture his daughter. On the next day, he returned home. In the evening of that day Ganga again complained of torture over demand of dowry. On 24.02.2016, Raju, husband of Ganga, informed her father that his daughter had passed away. He rushed to her matrimonial home and was informed that Ganga had been taken to Ramsagar hospital. At the hospital, he noted marks of injuries on the body of her daughter. He lodged complaint against the appellants and one Soumen Mitra @ Gaju (brother-in-law of the deceased) alleging commission of offences punishable under Section 498A/304B/34 of the Indian Penal Code. In conclusion of investigation, charge-sheet was filed against the appellants and the aforesaid Soumen Mitra @ Gaju. Charges were framed against the appellants under Sections 498A/304B/34 of the Indian Penal

Code read with section 3/4 Dowry Prohibition Act and under Section 498A of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act against Soumen Mitra @ Gaju. Accused persons pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined sixteen witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication. It was the specific defence of the appellants that Ganga was an emotional lady. She was unhappy with the financial status of her husband. Out of depression she committed suicide. To probabilise their defence, appellants examined two witnesses namely Dharani Majhi and Uday Majhi (D.W. 1 and D.W. 2). Upon appreciation of the evidence on record, learned trial Judge by the impugned judgment and order dated 07.05.2018 and 08.05.2018 convicted and sentenced the appellants, as aforesaid. Soumen Mitra @ Gaju was acquitted of the charges levelled against him.

Mr. Bakshi, learned Counsel appearing for the appellants, submits no independent witness has deposed regarding torture upon the victim housewife. Only family members spoke about torture. On the other hand, D.W. 1 and D.W. 2, neighbours of the appellants, deposed there was good relation in the family. Hence, torture on the housewife over demand of dowry is not proved. It is also argued victim was an emotional lady. Financial status of the appellant husband was weak. She was unwilling to marry him. Out of depression, she committed suicide. Evidence against appellant Nos. 2 and 3 (parents-in-law of the deceased) are general and omnibus. They stand on the same footing with the acquitted accused

Soumen Mitra @ Gaju. Hence, appellants are entitled to an order of acquittal.

Mr. Das along with Mrs. Roy for the State, argue parents of the victim and other relations are the best witnesses to the hostile atmosphere prevailing in the matrimonial home of the victim. All of them deposed that the housewife was relentlessly tortured at her matrimonial home. Live link between torture over demands of dowry and her unnatural death has fully established. Evidence of the defence witnesses are vague and artificial in nature. They appear to have been tutored. Swelling on the head and bruise marks on the palm of the victim were noted in the inquest report prepared by the learned Magistrate, (P.W. 14) as well as investigating officer (P.W. 16). These findings corroborate the allegation of physical torture on the victim which compelled her to commit suicide. Hence, prosecution case has been proved beyond reasonable doubt.

P.Ws 1 and 3 (Asim Dutta and Subhadra Dutta) are the parents of unfortunate victim.

P.W. 1 (Asim Dutta) is her father and the informant. He deposed victim was married to Raju Mitra through negotiations. As per demand of the appellants Rs.20,000/- out of Rs.35,000/- was paid at the time of marriage along with gold ornaments. Initially appellants treated their daughter well. After a month, as remaining Rs.15,000/- was not paid, she was subjected to ill treatment and torture. Husband and other inmates used to pick up quarrel with his daughter. On 22.02.2016 at about 12 noon her daughter informed him over phone that her husband, parents-in-law and brother-in-law inflicted torture upon her. He came to the

matrimonial home of her daughter and settled the dispute. On the next day he returned home. That day in the evening he again received phone call from his daughter informing him if he did not pay the remaining cash, husband and other in-laws would kill her. On the next day, i.e., 24.02.2016 his son-in-law informed him Ganga had died and asked him to come to Ramsagar B.P.H.C. He along with others went to the hospital. He noticed injury marks on the head and body of his daughter. Police held inquest over the dead body. He signed on the inquest report. He also signed on the magisterial inquest. He lodged written complaint with Officer-in-Charge of Onda Police Station which was scribed by Santosh Nandi. He proved the written complaint.

In cross-examination, though he admitted his daughter was emotional he denied suggestion that she had committed suicide as she was not happy with the financial status of her husband.

PW 3 Subhadra Dutta, mother of the victim girl corroborated her husband with regard to physical torture upon her daughter by the appellants. She stated one day before the incident her husband had gone to the matrimonial home of her daughter. On the following day, she was again physically tortured. In cross-examination, she admitted she had not visited the matrimonial home of her daughter.

PWs 2, 4, 5, 6 and 7 are other relations of Ganga. All of them corroborated the parents of the unfortunate housewife and stated she had been subjected to torture by her husband and in laws over non-payment of Rs. 15,000/- as dowry. On receiving news of death of Ganga, they had

accompanied PW 1 to Ramsagar BPHC and had seen the dead body of Ganga.

PW 11 Dr. Mousumi Mondal was the medical officer who was posted at Ramsagar BPHC at the relevant point of time. On 24.2.2016 she examined Ganga Mitra who was brought to the primary health centre and declared her dead.

PW 14 Subhankar Bhattacharjee, Deputy Magistrate held magisterial inquest over the body of Ganga. He proved the inquest report. He found swelling on the head of deceased. He also noted bruises on her left palm and ligature mark around her throat.

PW 13 Dr. Tanoy Mahanto held post mortem over the body of the deceased. He opined death was due to asphyxia as a result of ante mortem hanging. He proved the post mortem report (Exhibit 2). Post mortem doctor also noted clotted blood and product of conception (gestation sack) in the uterus of the deceased indicating the deceased had conceived prior to her death.

PW 16 Shyamal Kumar Chakraborty is the investigating officer. He held inquest over the body of the deceased. In addition to the ligature mark around the neck of the deceased, he found swelling at the back of her head, bruises on her left palm and on the back of her body. He collected post mortem report and submitted charge sheet.

Appellants examined two witnesses who claimed to be their neighbours. Both the witnesses deposed on similar lines. They stated they

had not heard about quarrel between Ganga and the accused persons. Asim had visited the matrimonial home of his daughter 20/25 days prior to the incident.

Mr. Bakshi contends evidence of parents of the deceased and other relations regarding torture over demand of dowry ought not to be believed in the light of evidence of neighbours of the appellants.

Victim suffered unnatural death at the matrimonial home barely two and half months after marriage. Inquest reports prepared by Investigating Officer (PW 16) and Deputy Magistrate (PW 14) show marks of injury on the body of the deceased. In addition to ligature mark, both the officers noted swelling on the back of the head and bruise marks on the left palm of the deceased. These injuries show victim housewife had been subjected to physical assault immediately prior to her death probalising the saga of torture as narrated by her relations. When a housewife is tortured within four corners of the matrimonial home, persons to whom she would ordinarily confide are her parents and close relations. It is highly unlikely she would narrate her misfortune to outsiders including neighbours. Analysing the evidence on record from this perspective, I am of the opinion evidence of parents and other relations of the victim girl with regard to torture meted out to her over further demand of money are wholly reliable. Evidence of the defence witnesses appear to be tutored. None of the witnesses were privy to the household affairs of the appellants. Hence, it is impossible for them to state whether victim housewife was tortured within the four corners of the matrimonial home or not. Even with regard to visit

of PW 1 at the matrimonial home of her daughter these witnesses cannot be relied. They are not inmates in the household of the appellants. Hence, it is impossible for them to state when PW 1 had last visited the house of the appellants. For these reasons I am of the opinion defence witnesses are untrustworthy and their versions were rightly rejected by the trial Court.

Post mortem doctor found ligature mark the neck of the victim and opined death was due to asphyxia arising out of ante mortem hanging. He also noted clotted blood and product of conception (gestational sac) in the uterus. From these findings it appears that the victim housewife who was pregnant had been subjected to torture over demands of dowry and was brutally assaulted at the matrimonial home prior to her death. Unable to bear such torture, she committed suicide.

Desperate plea that the victim committed suicide as she was unhappy with the financial status of her husband is patently absurd. Consistent evidence on record show she was physically and mentally tortured at the matrimonial home over further demands of dowry. Notings in the inquest reports indicate marks of injury on her body immediately prior to her commission of suicide. These circumstances wholly rule out the fanciful plea of suicide by an over-emotional lady who was unhappy with her unsuccessful husband.

The next question which arises for consideration is who are responsible for the torture upon the housewife?

Evidence on record show Rs. 20,000/- out of Rs. 35,000/- was paid as dowry. Rs 15000/- was outstanding. Appellant/husband who was

under financial stress subjected the housewife to torture over further demand of dowry. Two days prior to the incident, victim housewife complained over telephone to her father (PW 1) that her husband and other in laws were subjecting her to torture. PW 1 tried to settle the matter but failed. In the evening of 23.2.2016 the housewife again complained of torture by her husband and other in laws. Finally, on the next day i.e. 24.2.2016 unable to bear torture she committed suicide. Prosecution case unequivocally points to the role of appellant No. 1 Raju Mitra in the torture of his wife over demands of dowry. But there is no specific overt act attributed either to the father in law or mother in-law regarding torture on the victim housewife over further demands of dowry. It may not be out of place to note brother-in-law of the housewife i.e Gaju Mitra was tried and acquitted in the instant case. Evidence against the parents in law of the housewife is on par with the brother-in-law, Gaju Mitra who has been acquitted. In the absence of specific overt acts of torture attributed to the parents-in-law of the victim housewife i.e appellant nos. 2 and 3 herein and as co-accused Gaju Mitra (against whom similar evidence was led by the prosecution) stands acquitted, I am of the opinion it would not be proper to come to a finding of guilt against the appellant Nos. 2 and 3 viz Sudhir Mitra and Nupur Mitra @ Nepi.

In the light of the aforesaid discussion, while upholding the conviction and sentence of the appellant No. 1 Raju Mitra, I acquit the appellant Nos. 2 and 3 viz Sudhir Mitra and Nupur Mitra @ Nepi of the charges leveled against them.

Appellant Nos. 2 and 3 viz Sudhir Mitra and Nupur Mitra @ Nepi shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial court which shall remain in force for a period of six months in terms of section 437A of the Code of Criminal Procedure.

The appeal is allowed in part.

Period of detention suffered by the appellant No. 1 Raju Mitra during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

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.)