

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. 181 of 2013
+
CRAN 3 of 2014 (Old CRAN 1342 of 2014)

Ajit Das & Anr
Vs.
State of West Bengal

For the Appellant : Mr. Avishek Sinha, Advocate,
Ms. Anasuya Sinha, Advocate,
Ms. Eshita Dutta, Advocate.

For the State : Mr. Sanjay Bardhan, Advocate,
Ms. Amita Gaur, Advocate.

Heard on : 16th March, 2022

Judgment on : 16th March, 2022

Joymalya Bagchi, J. :-

A heart rending incident where the victim housewife being unable to bear the inhuman torture meted out by her husband and mother-in-law committed suicide after taking the lives of her two minor children is the subject matter of the prosecution case.

Sandhya was married to the appellant No. 1 five and half years ago. At the time of marriage, gold ornaments and cash of Rs. 6,000/- was given to the appellant No. 1. After six months, she was subjected to

cruelty by the appellants, i.e. her husband and her mother-in-law over further demands of dowry. Her father did not have capacity to meet the demands immediately. He requested the husband and mother-in-law of her daughter to bear with him and he would try to make payments as far as possible. They did not listen and continued torture upon the housewife. In the meantime, the appellant developed illicit relation with another lady and upon Sandhya protesting she was physically assaulted by the appellants. One and half months prior to the incident, she came from her matrimonial home and complained of torture. After three days, she returned to her matrimonial home. Torture upon her continued unabated and her father was compelled to give a trolley van to satiate the greed of the appellant. On the day of the unfortunate incident, that is, 25th October, 2005, mother of Sandhya went to her matrimonial home but was turned away. Thereafter, at night unable to bear the torture she took the extreme path of self-extermination not only for herself but also for her two minor children. Under such circumstances, her father Dhananjay Doary, P.W. 1 lodged written complaint which was scribed by Nabendu Das, P.W. 2 resulting in registration of Uluberia P.S. Case No. 411 dated 27.10.2005 under Sections 498A/306 of the Indian Penal Code against the husband and mother-in-law of the victim lady. In the course of investigation, the accused persons were arrested and charge sheet was filed. Charges were framed under Section 498A/306 of the Indian Penal Code. The accused persons pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 13 witnesses and exhibited a

number of documents. The defence of the appellants is one of innocence and false implication. In conclusion of trial, the learned trial Judge by the impugned judgment and order dated 25.02.2013 and 26.02.2013 convicted and sentenced the appellants for commission of offence punishable under Section 498A/306 of the Indian Penal Code and directed the appellants to suffer rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- each in default rigorous imprisonment for three months more for the offence punishable under Section 498A of the Indian Penal Code and appellant No. 1 to suffer rigorous imprisonment for ten years and pay a fine of Rs. 2,000/-, in default, to suffer further rigorous imprisonment for one year more for the offence punishable under Section 306 of the Indian Penal Code and appellant No. 2 to suffer rigorous imprisonment for three years and a fine of Rs. 1,000/- in default to suffer further rigorous imprisonment for six months more for the offence punishable under Section 306 of the Indian Penal Code, both the sentences to run concurrently.

At the time of hearing, we are informed that the appellant No. 2 Koppuri Das has died. Hence, the appeal abates so far as the said appellant is concerned.

Ms. Sinha with Ms. Eshita Datta, learned Advocates appearing for the appellants argue that the charge framed under Sections 498A and 306 of the Indian Penal Code alleges torture on a single day i.e. on 25.10.2005. There is no material to show on the date of incident victim had been subjected to torture which compelled her to commit suicide.

Thus, the prosecution case ought to fail on such score alone. None of the independent witnesses have supported the prosecution case. Evidence with regard to torture over demands of dowry is vague and non-specific in nature. Dates on which the victim was tortured mentally and physically have not been stated by her parents, P.Ws. 1 and 3. P.W. 3, mother of the victim did not corroborate her husband, P.W. 1 that she had been threatened with assault at the matrimonial home of the victim on the day of the incident. Trial Court did not believe the allegation of illicit relationship between the appellant No. 1 and a widow. Hence, the prosecution case with regard to cruelty on the housewife and abetment of her suicide are not proved beyond doubt. Appellant No. 1 may be acquitted of the charge levelled against him.

Ms. Gaur, learned Advocate appearing for the State argues evidence of the parents of the victim girl i.e. P.W. 1 and 3 narrate a saga of continuous torture upon her over demands of dowry. She had returned from her matrimonial home one and half months prior to the incident and complained of torture to her parents. P.W. 1 was forced to hand over a trolley van to the appellant No.1 in order to avoid further torture upon his daughter. On the day of the incident, mother of the victim had gone to her matrimonial home but had to leave hurriedly as she was threatened with assault. Live link between torture upon the housewife over demands of dowry and her ultimate end is clearly established and the statutory presumption under Section 113A of the Evidence Act has not been

rebutted by the appellant No. 1 in the factual matrix of the case. The appeal is accordingly liable to be dismissed.

P.Ws. 1 and 3, parents of the victim housewife, are the most vital witnesses in the instant case.

P.W. 1, Dhananjoy Duary, deposed that his daughter, Sandhya Das was married to appellant No. 1 as per Hindu rites and customs. At the time of marriage golden ornaments of one bhorī, cash of Rupees six thousand were paid to the accused persons. After marriage Sandhya was subjected to torture over demands of dowry. As he was unable to meet the demands, he approached the appellants and assured them that he would meet their demands as far as possible and requested them to live peacefully and not to subject his daughter to torture. Appellants, however, continued physical and mental torture upon his daughter. When his daughter came to his residence, he enquired from her the reason for the torture upon her. His daughter stated appellant No. 1 had an affair with a widow at Gangarampur and when she had protested she was physically assaulted. She returned to her matrimonial home and appellant No. 1 increased his demand for money and subjected her to torture. Ultimately, P.W. 1 gave a trolley van to meet the demand of the appellant No. 1. On the day of the incident, his wife went to the matrimonial home of her daughter. The accused persons intended to assault his wife. So she returned home. That night, his daughter telephoned him and said she was suffering from severe pain in her stomach. He along with his son went to her matrimonial home at 11 p.m.

and found there were a number of people standing there. Thereafter, he went to the hospital and saw the body of his daughter and grand children. He lodged complaint which was scribed by Nabendu Das, P.W. 2. He signed on the inquest report. In cross-examination, he stated about one and half months ago his daughter had come to his house. Main dispute between his daughter and her husband was his illicit relationship with a widow. He, however, was unable to give the identity of the widow.

P.W. 3, Sabitri Duary, is the mother of the deceased. She has substantially corroborated the deposition of her husband, P.W. 1 with regard to torture over demands of dowry as well as illicit relationship between appellant No. 1 and a widow. She further stated they had given a trolley van to the appellant No. 1 in order to meet his demands. In spite thereof, appellants continued physical and mental torture upon her daughter.

P.W. 9, Gaur Das Mondal, A.S.I. of police, held inquest over the body of the deceased, Sandhya and her female children viz. Shilpa and Shilpi. He proved the inquest reports as "Exhibit-3/2", "Exhibit-4" and "Exhibit-5". Subsequently, magisterial inquest was held by P.W. 6 over the body of Sandhya which was marked as "Exhibit-3"

P.W. 11, Amal Chandra Biswas, was the postmortem doctor who conducted postmortem over the body of the deceased and her two children viz. Shilpi and Shilpa. He opined death of the deceased was due to unknown poison, suicidal in nature. He further opined death of her two children was, however, homicidal in nature.

P.W. 13, Rabiul Haque, was the investigating officer of the case. He visited the place of occurrence, prepared rough sketch map, recorded statements of witnesses, seized the wearing apparels of the deceased, collected post mortem report and submitted charge-sheet.

P.Ws. 1 and 2 have vividly narrated the torture meted out on their daughter at her matrimonial home. They deposed their daughter was married to appellant No. 1. Six months after the marriage, on demands of dowry she was subjected to mental and physical torture. P.W 1 was unable to meet their demands. He requested them to give him time to meet the demands and not to torture her daughter. But appellant No. 1 and his mother did not relent and continued mental and physical torture upon Sandhya. In the meantime, two female children namely Shilpi and Shilpa were born to the couple. Appellant No. 1 developed illicit relationship with a widow of Gangarampur. One and half months prior to the incident when the victim came to her parental home she disclosed about the illicit relationship to her father. In fact, she had divulged such fact to her mother three to four months ago. When Sandhya protested against such illicit relationship she had been subjected to physical assault by appellant No. 1. After she returned to her matrimonial home, appellant No. 1 made further demands of money. P.W. 1 tried to assuage the greed of appellant No. 1 by giving him a trolley van but to no avail. On the day of the incident mother of the deceased went to the matrimonial home but fearing that she would be assaulted, her daughter asked her to go away. At night unable to bear such inhuman torture and humiliation,

Sandhya poisoned herself as well as her two daughters resulting in their deaths.

Ms. Sinha, has criticised the depositions of the aforesaid witnesses on the ground that those are contradictory to one another. It is contended P.W. 3 did not disclose she had left the matrimonial home of her daughter on the fateful day on the apprehension she would be assaulted. She also submitted the exact dates of torture were not disclosed by the said witnesses. It is her further contention the learned trial Judge did not believe the allegation of illicit relationship between appellant No. 1 and another woman.

I have considered the aforesaid submissions in the light of the evidence on record. Parents of the victim have substantially corroborated each other. As discussed earlier, they have stated in unison about the continuous torture over demand of dowry upon their daughter. P.W. 1 was compelled to request the appellants to give him time to meet their demands and not to torture his daughter. Finally, he was compelled to give a trolley van to appellant No. 1 but to no avail. As the torture meted out upon the victim was a daily affair in the unfortunate life of the housewife, failure to state specific dates of torture is of little consequence. P.Ws. 1 and 3 lived in the fond hope that the appellants will stop the torture upon their daughter. P.W. 1 had requested them to do so and even given a trolley van to appellant No. 1 to appease him. Under such circumstances, they chose not to take the issue before the police authorities which they apprehended might exacerbate the dispute. Even

with regard to the visit of the mother of the victim at her matrimonial home on the fateful day, I find there is substantial corroboration. Both P.W. 1 and 3 stated the latter had visited the matrimonial home of Sandhya on the day of the incident. While P.W. 1 is more explicit that his wife (P.W. 3) returned hurriedly as she apprehended assault by the appellants, P.W. 3 is not as explicit why she returned alone. This minor variation in their deposition does not affect the crux of the prosecution case regarding torture and ill-treatment of the victim housewife. I am also unable to subscribe the reasoning of the trial Judge with regard to the fact that illicit relationship of appellant No. 1 with a widow is not probable as the identity of the latter had not been disclosed. Victim appear to be diffident with regard to the illicit relationship and had initially confided only to her mother. However, as the torture increased, she narrated such fact to her father 1½ months prior to her death. Still then, she remained mum about the identity of the paramour of her husband apart from stating that she was from Gangarampur. Failure of the investigating agency to investigate properly in the matter is a remissness in investigation but cannot be a ground to cast doubt with regard to truthfulness of the narration of the victim to her parents about the illicit relationship between the appellant No. 1 and a widow. Thus, I am of the opinion torture upon the victim housewife which commenced six months after the incident continued till her ultimate end. Prosecution case in this regard is proved beyond doubt through the mouths of her parents, P.W. 1 and 3. Lack of support from neighbours does not affect the credibility of

the prosecution case. These witnesses namely P.Ws. 4, 5 and 7 appear to have been won over and were declared hostile. They confronted with their earlier statements made to the police.

Defect in connected stating the period for which the housewife was tortured in the charge, in my estimation, is an irregularity and has not prejudiced appellant No. 1. He was fully aware of the evidence led against him which showed he and his mother had subjected the victim housewife to torture from six months of her marriage till the very end. During his examination under section 313 Cr.P.C, the trial Court clearly put such fact to the appellant No. 1. Hence, I am of the opinion defect in the charge has not resulted in a mistrial or had occasioned any failure of justice so as to affect the ultimate result in the case.

There is ample evidence on record that the appellant No. 1 and his mother had subjected the housewife to torture over demands of dowry. A clear link between such torture and her ultimate suicide has been established.

Prosecution case is further bolstered by the statutory presumption under section 113A of the Evidence Act which appellant No. 1 has singularly failed to rebut. Appellant No. 1 in the course of trial has failed to rebut such presumption by probalilising any circumstance other than the torture meted out by the appellants as the direct and proximate cause for commission of suicide by the victim lady. Hence, I am of the opinion the prosecution case against the appellant No. 1 is proved beyond doubt.

Conviction of appellant No. 1 for commission of offences under section 498A and 306 I.P.C. is upheld.

Coming to the issue of sentence, Ms. Sinha argued that the appellant has been awarded the maximum sentence of rigorous imprisonment for 10 years on the score of section 306 I.P.C. The same may be reduced.

I have given anxious consideration to such submission. The victim housewife was subjected to continuous torture in connection with dowry and illicit relationship maintained by appellant No. 1 with another woman. Unable to bear such torture, she not only killed herself but put an end to the lives of two minor children. However, there is no evidence on record that appellant No. 1 had failed to take care of the two children whose lives were also unfortunately snuffed off by the conduct of the victim lady.

Balancing the aforesaid aggravating and mitigating factors, I consider it prudent that the maximum sentence of rigorous imprisonment for 10 years upon appellant No. 1, Ajit Das, may be reduced. Accordingly, I direct that appellant No. 1 shall suffer rigorous imprisonment for 7 years and to pay a fine of Rs. 2,000/- in default to suffer rigorous imprisonment for one year more for the offence punishable under section 306 of the Indian Penal Code. Sentence on the score of 498A I.P.C. shall remain unaltered and both the sentences shall run concurrently.

With the aforesaid modification as to sentence, the appeal is disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of section 428 of the Code of Criminal Procedure.

Bail Bond of the appellant is cancelled and he is directed to forthwith surrender and serve out the remainder of the sentence, failing which the trial Court shall issue appropriate process to execute the sentence in accordance with law.

In view of disposal of the appeal, connected applications, if any, also stand disposed of.

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.)