

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA  
Criminal Revisional Jurisdiction  
Appellate Side

Present:  
The Hon'ble Justice Siddhartha Roy Chowdhury

CRA 344 of 2018

Khokan Das  
Vs.  
The State of West Bengal

For the Appellant : Ms. Kaberi Mukherjee, Amicus Curiae

For the State : Mr. Narayan Prasad Agarwala  
Mr. Pratick Bose,

Heard on : 5<sup>th</sup> December 2022

Judgment on : 5<sup>th</sup> December 2022

The Court:

The appeal assails the judgement and order of conviction passed by the learned Additional Sessions Judge, 3<sup>rd</sup> Court, Nadia in S.C. No. 49(04)/2017 S.T. No. 02(6) / 2016. By the impugned judgement the learned Trial Court was pleased to record an order of conviction against the appellant for committing offence within the meaning of Section 308 of the Indian Penal Code and sentenced him to suffer imprisonment for five years.

Briefly stated Smt. Monika Das set the criminal administration of justice into motion by informing the officer-in-charge, Ghurni Women Police Station, Krishnagar in writing that she got married to Khokan Das in the year 2002. She has two

daughters. Her husband is a carpenter by profession who has developed the habit of inflicting physical torture upon his wife. The lady used to endure such torture perpetrated upon her by her husband considering the future of her daughters. On 17.7.2016 at about 7.30 A.M. in the morning her husband landed blow of 'Da' upon the head of the victim and made her suffer bleeding injury on head. The lady went to the hospital at Saktinagar with such bleeding injury she was attended by a doctor, she got herself discharged from the hospital as there was none to take care of her daughters. The information since disclosed offence cognizable in nature, Krishnagar Women P.S. Case No. 126 / 2016 was registered under Sections 498A/324/ 308 of the Indian Penal Code.

Police took up investigation which culminated into submission of charge sheet against the accused person, who claimed to be innocent and stood trial. Prosecution examined eight witnesses including the I.O. Learned Trial Court after considering the evidence on record did not find any ingredient of offence within the meaning of Section 498A of the Indian Penal Code and was pleased to record an order of conviction under Section 308 of the Indian Penal Code.

The convict Khokan Das though challenged such findings by filing this appeal under consideration, but ultimately none appeared on his behalf to assist the Court.

Ms. Kaberi Mukherjee, has been appointed as amicus curiae to assist this Court.

Ms. Mukherjee, draws my attention to the testimony of the victim who is the best witness of this case. While adducing evidence the lady P.W. 1 Smt. Monika Das stated on 17.7.2016 Khokan Das her husband assaulted her in the morning with a

sharp cutting weapon i.e. "Banti" and she sustained bleeding injury and went to Kotwali P.S. to inform police. She was referred to the hospital by police. She was attended by Medical Officer in the hospital whom she narrated the incident. During cross-examination suggestion was given that when the accused assaulted P.W.1 and slapped her and a scuffle took place between herself and her husband and thereafter her husband again assaulted her, she fell down on the sharp cutting weapon and sustained bleeding injury on her head. This suggestion unerringly indicates that the lady sustained injuries on her head while she was being assaulted by her husband.

Dr. Amlan Pal Chowdhury who attended the victim at Nadia district hospital found one inch cut injury on the skull of the lady with active bleeding. He was told by the injured that the lady was physically assaulted by her husband with unknown weapon. During cross-examination the doctor stated that the victim Smt. Monika Das did not indicate the kind of sharp cutting weapon used by her husband. According to the doctor, injury was simple in nature. Other than P.Ws. 1 & 2, P.W. 3, Manju Togi is the mother of the victim who did not have direct knowledge about the incident. Manisha Banik, P.W. 4 is the sister of the victim, ignorant about the incident as she did not witness anything.

P.W. 5 Sri Dipankar Roy is the scribe who prepared the information, marked as exhibit 1/1. He also did not have any direct knowledge about the incident. P.W. 6 Monojit Toge, is the other sister of the victim. P.W. 7 is the lady A.S.I. Sima Ghosh who registered the Krishnagar P.S. Case No. 126/16 and P.W. 8 Lakshi Sarkar is the I.O. of this case who after investigation submitted charge sheet.

Therefore, the victim appears to be the sole witness to the occurrence and she is getting support from the testimony of as P.W. 2 the attending Medical Officer.

Thus it has been established beyond doubt that Khokan Das assaulted his wife and while doing so he used a sharp cutting weapon which according to the victim is a 'Banti'. Learned Trial Court recorded an order of conviction under Section 308 I.P.C. despite the fact that there was an injury sustained by the victim.

In order to constitute an offence under Section 308 of I.P.C. the prosecution need to prove that the alleged act was committed with intention or with knowledge of committing culpable homicide not amounting to murder and if the accused by that act had caused death of the victim he would have been guilty of culpable homicide. But the nature of injury sustained by the victim rules out such intention on the part of the accused person.

In my view the appellant should have been convicted for committing an offence under Section 324 of the Indian Penal Code instead of committing offence under Section 308 of the I.P.C. in the given the facts and circumstances of the case and the nature of injury the victim suffered. Therefore, while maintaining the order of conviction, I am inclined to modify the sentence. The appellant is sentenced to suffer S.I. for eighteen months. Rest of the order of conviction remains unaltered.

Let a copy of the judgement be sent down to the learned Trial Court together with lower court record for information and necessary action.

The appellant is directed to surrender to the jurisdiction of the learned Trial Court to serve out sentence within thirty days from date, failing which the learned Trial

Court shall take necessary steps permissible under the law to make him serve the sentence.

With the above observation, the criminal appeal is disposed of.

I record my appreciation for the able assistance rendered by Ms. Kaberi Mukherjee, learned advocate, as amicus curiae in disposing of the appeal.

The parties shall act upon the server copy duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury,J )