

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. 256 of 2012

Sudhakar Ruhidas & Anr.

-Vs-

State of West Bengal

For the Appellant : Mr. Moinak Bakshi, Adv.

For the State : Mr. Nequive Ahmed, learned APP
Mrs. Amita Gaur, Adv.
Mr. Pratick Bose, Adv.

Heard on : 22nd April, 2022

Judgment on : 22nd April, 2022

Joymalya Bagchi, J. :-

Appellants have been convicted under Sections 498A/364/302/34 of the Indian Penal Code and have been sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 50,000/- each to the de facto complainant, in default, to suffer further rigorous imprisonment for two years each for the offence punishable under Sections 302/34 of the Indian Penal Code and to suffer rigorous imprisonment for five years each and to pay a fine of Rs. 50,000/- each

for the offence punishable under Sections 364/34 of the Indian Penal Code and to suffer simple imprisonment for one year and to pay a fine of Rs. 10,000/- each to the de facto complainant for the offence punishable under Section 498A of the Indian Penal Code. All the sentences to run concurrently.

Appellants have assailed the aforesaid conviction and sentence in the present case.

Mrittika Ruhidas was married to Sudhakar Ruhidas of village Boro on 16th Baisakh, 1412 B.S. After marriage it is alleged Sudhakar Ruhidas and other in-laws including brother-in-law of the victim, Buddheswar Ruhidas subjected her to mental and physical torture. Mrittika bore such torture silently and continued to stay at her matrimonial home. On 24.09.2006 at 9 a.m., Sudhakar informed Santosh Ruhidas, father of the victim girl (P.W. 1) that his daughter was missing. Hearing this, Santosh came to the matrimonial home and searched for his daughter but he could not trace her for three days. Finally on 27.09.2006 Santosh Ruhidas (P.W. 1) lodged written complaint which was scribed by P.W. 14 (Rabindranath Majhi) at Boro Police Station resulting in registration of Boro Police Station Case No. 19/06 dated 27/09/2006 under Sections 498A/364/34 of the Indian Penal Code against Sudhakar Ruhidas, Buddheswar Ruhidas and other in-laws namely Habu Ruhidas (father-in-law of the victim), Sanaka Ruhidas (mother-in-law of the victim) and Purnima Ruhidas (sister-in-

law of the victim). On the self-same day, highly de-composed body of the victim lady was found in the water around an island at the junction of Jamuna and Totko river which was about 6 to 7 kilometers away from the residence of the appellants. P.W. 17, investigating officer, went to the spot and prepared inquest over the dead body. Post mortem was also conducted over the body by P.W. 2 who stated the victim had died 4 to 7 days earlier. In conclusion of investigation, charge-sheet was filed against the appellants and other in-laws namely Habu Ruhidas, Sanaka Ruhidas and Purnima Ruhidas under Sections 498A/364/34 and 302/201 of the Indian Penal Code. Charges were framed against them under Sections 498A/364/302/34 of the Indian Penal Code. They pleaded not guilty and claimed to be tried. In the course of trial prosecution examined 17 witnesses to prove its case. Defence of the appellants was one of innocence and false implication. In conclusion of trial, trial Judge by the impugned judgment and order convicted and sentenced the appellants, as aforesaid. However, co-accused Habu Ruhidas and Sanaka Ruhidas were acquitted of all the charges levelled against them.

Mr. Moinak Bakshi, learned Counsel appearing for the appellants argues there is no direct evidence connecting the appellants to the murder. It is nobody's case victim housewife was murdered at the matrimonial home. Her decomposed dead body was recovered 6-7 kms. away from the residence of the appellants. No one came forward

to say appellants were last seen at the spot with the victim. F.I.R. appears to be ante dated. P.W. 1, in cross-examination, stated he lodged F.I.R. at 6-7 P.M. at the police station after the dead body had been seen by him at 11 a.m. on that day. Allegation of torture over demand of dowry also suffers from embellishments. Prosecution case is based on surmises and conjectures. Hence, the appeal ought to be allowed.

Mrs. Amita Gaur, learned Counsel appearing for the State, submits P.Ws 1, 3 and 5 stated victim was subjected to mental and physical torture over further demands of dowry. She was at the matrimonial home prior to her death. Appellants gave false explanation that she had gone missing. Subsequently, her decomposed dead body was recovered in the river. Post mortem doctor (P.W. 2) opined that the victim had suffered death due to strangulation which is homicidal in nature. Hence, the appeal is liable to be dismissed.

P.W. 1, Santosh Ruhidas is the father of the deceased and the informant in the present case. He deposed that his youngest daughter Mrittikka was married to Sudhakar Ruhidas of Boro village. At the time of marriage dowry was fixed at Rs. 10,000/-. They could give Rs. 8,000/- and Rs. 2,000/- was outstanding. Due to non-payment of the remaining money Mrittikka was tortured. His son-in-law stated Mrittikka had gone missing from the matrimonial home. Two days later, her dead body was found in the river side of Totko. He lodged first

information report which was scribed by P.W. 14. He was also a signatory to the inquest reports prepared by police as well as Magistrate.

In cross-examination, he stated the dead body had been recovered at a distance of 6-7 kms. from the house of the appellants. He had seen the dead body around 11.00 a.m. His son-in-law (P.W.3) was accompanying him. Local people also came to the spot. After that he went to police station and lodged first information report at 6-7 p.m.

P.W. 3, Sudhakar Ruhidas is another son-in-law of P.W. 1 who bears the same name as appellant No. 1. He deposed with regard to trouble at the matrimonial home of Mrittikka over outstanding dowry. He stated P.W. 1 had been informed Mrittikka was missing. They found her floating in the river. They assumed she had been killed and thrown in the river by her in-laws. He was a signatory to the inquest report.

P.W. 5, Ankur Ruhidas is a brother-in-law of deceased Mrittikka. He stated she was not happy at her matrimonial home. P.W. 1 informed him about the death. He suspected victim had committed suicide.

P.Ws. 9, 16 and 17 are the investigating officers of the case.

P.W. 17, Nitya Nanda Chakraborty received the written complaint from Santosh Ruhidas and drew formal FIR. He went to the place of occurrence and prepared sketch map, Exhibit-7. On that day he arrested appellant No. 1. On 28.09.2006 he held inquest over the

body of the deceased which is marked as Exhibit-2/2. P.W. 4, Ram Prasad Dutta, a Magistrate held inquest over the body which was marked as Exhibit-3/2. Subsequently, P.W. 17 arrested appellant No. 2 and others. He handed over investigation to P.W. 9 on 06.10.2006. P.W. 9 continued the investigation and finally charge sheet was filed by P.W. 16, Uttam Mandal.

P.W. 2, Dr. Amal Nath is the post mortem Doctor who held post mortem over the dead body of the deceased. On examination, he found the following injuries;

- “1) Highly decomposed body with maggots;*
- 2) Tie materials, sari, middle of the neck with knot right side. Both the upper limbs are tied with rope above elbow and heavy stone tied to facilitate drowning.*
- 3) Body is wet, scalp peeled off, skin peeled off in places.*
- 4) Tie materials is cut and underlying tissues were found lacerated and decomposed.*
- 5) All the internal organs are decomposed and intestine coming out from abdomen due to decomposition.”*

He opined death was due to asphyxia from strangulation by sari ante mortem and homicidal in nature. He proved post mortem report, Exhibit-4.

In cross-examination he stated he held post mortem on 29.09.2006 at 12.45 p.m. Time of death was between 4-7 days from the time of holding post mortem examination.

Analysis of the evidence on record would show that the prosecution case is based on circumstantial evidence. Ms. Gaur has strongly relied on the following incriminating circumstances:-

(a) Victim had been subjected to torture over dowry demands by the appellant;

(b) She was at her matrimonial home prior to death;

(c) Appellants gave false explanation she had gone missing;

(d) Two days later, her decomposed body was recovered from a river 6-7 kms. away from the residence of the appellants; and

(e) Post mortem doctor (P.W.2) opined death was due to strangulation homicidal in nature and had occurred 4-7 days from 29.09.2006 i.e. between 22.09.2006 to 25.09.2006.

Evidence on record particularly that of P.W.1 shows body of the deceased was found floating in the river at the junction of Jamuna and Totko at 11.00 a.m. Local people assembled at the spot. Around 6-7 p.m., P.W. 1 went to the police station and lodged FIR. However, FIR which was received by P.W. 17 at Boro Police Station is said to have been received at 10.15 a.m. on 27.09.2006. Hence, the documentary evidence viz., the FIR and the endorsement thereon with regard to the time of receipt is at variance to the version of P.W. 1 in Court regarding

the time when it was lodged. Such dichotomy leads to a plausible hypothesis that the FIR is ante dated to give an impression that the same was registered prior to the discovery of the dead body in the river.

When facts are viewed from that perspective, it appears the implication of the appellants in the murder arose out of suspicion when the body of the deceased was recovered in an island at the junction of Jamuna and Totko river on 27.09.2006 i.e. three days after the deceased had gone missing from her matrimonial home. Contention of Ms. Gaur that the fact victim had gone missing is false does not resonate from the aforesaid facts.

On the other hand evidence on record show on 24.09.2006 appellant No. 1 had informed P.W. 1 with regard to the missing of his daughter. P.W. 1 came to the matrimonial home and started searching for his daughter. Only after recovery of the decomposed body of his daughter in the river, a suspicion arose with regard to the role of the appellants and the case came to be registered. Admittedly, the body of the deceased was recovered from the river 6-7 kms. away from the residence of the appellants. Charge in the instant case was framed, inter alia, under Section 364 IPC. It is the prosecution case that the victim had been forcibly taken away from the matrimonial home and murdered at a different place. No evidence is forthcoming to show that the appellants had forcibly taken away the victim from the matrimonial home and murdered her elsewhere. This vital missing link strikes at the

very heart of the prosecution case and snaps the chain of circumstances which is proposed to establish the guilt of the appellants. It is nobody's case that the death occurred within the four corners of the matrimonial home which would shift the onus upon the appellants to explain how the housewife suffered homicidal death.

In the light of the aforesaid circumstances, I am constrained to hold in the absence of clear and unequivocal evidence that the appellants had forcibly taken away the victim from the matrimonial home and murdered her, it would be unsafe to hold their plea that the victim lady went missing is false leading to an inevitable inference of guilt against them.

Even with regard to torture, I note the prosecution case that the victim housewife was tortured due to non-payment of remaining dowry has been made out for the first time in court. There is no reflection of torture over non-payment of remaining dowry in the FIR.

In view of the aforesaid facts, I am of the opinion prosecution case which is based on circumstantial evidence has not transcended from one of strong suspicion to proof beyond reasonable doubt.

Accordingly, I am of the opinion the appellants are entitled to the benefit of doubt.

Appeal is allowed. Conviction and sentence of the appellants are set aside.

Appellant No. 1 shall be forthwith 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.

Appellant No. 2 shall be discharged from his bail bonds after expiry of six months in terms of Section 437A 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 for necessary compliance.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)