

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 274 of 2014

Bharat Chandra Bhowmick & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Moinak Bakshi, Adv.

For the State : Ms. Zareen N. Khan, Adv.
Ms. Manisha Sharma, Adv.
Mr. Arup Sarkar, Adv.

Heard on : 29.11.2022 & 30.11.2022

Judgment on : 30.11.2022

Joymalya Bagchi, J.:-

1. Appeal is directed against the judgment and order dated 25.03.2014 and 26.03.2013 passed by the learned Additional Sessions Judge, 3rd Court, Tamluk, Purba Medinipur in Sessions Trial No.02(10) of 2009 arising out of Sessions Case No.183(July) of 2009 convicting the appellants for commission of offence punishable under Section 498A of the Indian Penal Code and appellant No.1 for the offence punishable under Section 302 of the Indian Penal Code and sentencing them to suffer simple imprisonment for three years and to pay fine of Rs.2,000/- each, in

default, to suffer simple imprisonment for two months more for the offence punishable under Section 498A of the Indian Penal Code and sentencing the appellant No.1 to suffer rigorous imprisonment for live and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months more for the offence punishable under Section 302 of the Indian Penal Code; both the sentences to run concurrently for the appellant no.1.

Prosecution case:-

2. Prosecution case as alleged against the appellants is to the effect that Uma Rani Bhowmik was married to Bharat Chandra Bhowmik on 21st Falgun 1412 BS according to Hindu rites and customs. As per demand, cash of Rs. 30,000/-, one bicycle and some gold ornaments were given as dowry. Three months after the marriage, appellants subjected Uma to mental and physical torture. She complained of torture during her visits to her parental home. Keeping the future of her daughter in mind, Bibekananda Maity, her father (PW1) arranged for a settlement through villagers but to no avail. On 30.09.2006 at 10.00 P.M., Bharat came to the residence of Bibekananda Maity and informed he had taken Uma to see Durga idol at Chingurdona and Chhaypukur. Uma went missing from Chingurdona fair. Bharat stayed at the residence of his in-laws that night. On the next day, Bharat went to his residence and again returned to the house of Bibekananda. On interrogation he narrated different versions on each occasion. This raised suspicion in the minds of his in-laws. On 01.10.2006 around 6.30 P.M. when Bibekananda and others went to the local gram panchayat office, they were informed that the body of a female

was found floating in the Haldi river. Bibekananda went and identified the body as that of his daughter. Owing to strong suspicion, he lodged first information report at Nandakumar Police Station resulting in registration of Nandakumar Police Station Case No. 101 of 2006 dated 03.10.2006 against the appellants under Sections 498A/302/304B/201/34 of the Indian Penal Code.

3. Police held inquest over the body of the deceased. Post mortem was also conducted. Post mortem doctor (PW13) noted lacerated and punctured wounds in the abdomen of the victim and opined death was due to the combined effect of abdominal injury and ante mortem drowning, homicidal in nature.

4. In the course of investigation, witnesses stated that appellant no.1 had made extra-judicial confession that he was enraged as his wife wanted to return to her parental home. He slapped her. As a result, she fell down and became unconscious. He dragged her body and threw it into the river.

Proceedings before the trial Court:-

5. In conclusion of investigation, charge-sheet was filed against the appellants and charges were framed under Sections 498A/34 of the Indian Penal Code against all the appellants and under Sections 302/201 of the Indian Penal Code against appellant No.1.

6. To prove its case, prosecution examined 19 witnesses and exhibited a number of documents.

7. Defence of the appellants was that appellant no.1 had taken his wife to Chingurdona fair. She went missing from the fair. Subsequently, her dead body was recovered from the river. They also denied the allegations of torture upon the housewife for dowry. Appellants, however, did not examine any witness to probabalise such defence.

8. In conclusion of trial, trial Judge by the impugned judgment and order dated 25.03.2014 and 26.03.2013 convicted and sentenced the appellants, as aforesaid.

Analysis of evidence:-

9. PW1, Bibekananda Maity is the father of the victim and the de-facto complainant. He deposed his daughter was married to appellant no.1. As per demand, Rs.9,000/- in cash, a gold ring and a finger ring were given as dowry. Over an outstanding demand of Rs.21,000/- as balance dowry and a sum of Rs.2,000/- for purchasing bicycle for his son-in-law, his daughter was subjected to torture. He along with his brother Monishankar Maity (PW4) went to the matrimonial home and settled the matter. However, torture continued.

10. On 30.09.2006, Bharat came to his residence around 10.30 PM and informed he had taken his daughter to Chingurdona fair where she went missing. At that time, he was suffering from fever and was not in a position to go out. He asked Bharat to stay for the night. On the next morning, Bharat left for his home and thereafter returned in the afternoon. His daughter could not be traced. At 4.00 PM a meeting was held at Hari temple in the village. Upon repeated queries by para people,

Bharat stated he had taken Uma to the bank of Haldi River. Uma wanted to return to her father's house. He became angry and slapped her. As a result, she became unconscious and he threw her in the water. Hearing the incident, local people went to search for the victim lady in the river. As it was dark, they could not trace her. On the next morning, another meeting was held at Motilal Chak Anchal office. When they were in the meeting, PW1 received information that body of a woman was found floating in the river at Berasura. The body was stuck to a badam tree. He along with others went to the river side and identified the body as that of his daughter. Police came to the spot and prepared inquest. He signed on the inquest report. Thereafter, he along with Monishankar Maity (PW4), Tapas Das (PW6) and Hiralal Jana (PW8) went to the police station. He lodged written complaint which was scribed by Hiralal, marked Ext.2.

11. During cross-examination, he admitted there was no salish held with regard to quarrel or assault on his daughter. He also admitted he had not stated there was outstanding dowry payable to the in-laws in the FIR or that there was torture over such issue on his daughter. He also admitted he did not disclose the extra judicial confession made by Bharat in the FIR. He had drafted the first information report in consultation with Monishankar Maity (PW4), Tapas Das (PW6) and Hiralal Jana (PW8).

12. PW3 (Badal Chandra Maity) and PW4 (Monishankar Maity) are the brothers of PW1. They have substantially corroborated PW1. They stated Uma was subjected to torture over the issue of outstanding dowry. PW4 had accompanied PW1 to the residence of the appellants and paid the

remainder dowry. The witnesses also deposed with regard to the extra judicial confession made by appellant No.1 during the meeting at Hari temple at 4.00 PM on 01.10.2006. That evening they went to search for the body of the deceased in the river but failed. On the next morning, when they were in the meeting at Motilal Chak Anchal office, a dead body was recovered. They went to the river bank and identified the dead body.

13. PW5, Smt. Jaba Maity is the mother of the deceased. She spoke about torture upon her daughter over dues payable on account of dowry. She also corroborated her husband (PW1) that the latter and Monishankar (PW4) went to the house of the appellants and paid the outstanding dowry amount. She also deposed with regard to the extra judicial confession made by appellant no.1 at Hari temple in the evening on 01.10.2006.

14. PW6 (Tapas Das), PW7 (Dulal Chandra Das) and PW8 (Hiralal Jana) are local villagers. All of them had stated appellant no.1 made extra judicial confession at Hari temple in the evening of 01.10.2006 to the effect that he had taken his wife to the river bank and when she insisted to go to her father's house, he slapped her. As a result, she became unconscious and he dropped her in the river. PW6 further deposed on the next morning upon recovery of the dead body he intimated the police over telephone. They were present when the police came and prepared inquest report. PW8 was the scribe of the first information report.

15. PW2, Minu Maity (Karfa) is the sister of the deceased. She stated she had seen the appellant and the deceased at Chingurdona fair.

16. From the cross-examination of the Investigating Officer, it appears she stated to him that she had seen her sister alone in the fair.

17. PW14, Chandan Maity and PW16, Sarama Maity are the neighbours of the appellants. PW14 stated appellant no.1 had taken money and purchased land. He heard quarrels in the house of the appellants. PW16 stated appellant no.1 and his wife had gone to the fair to see Durga idol. Later on, appellant told her that his wife had gone missing from the fair.

18. PW18, Kartick Ghorai deposed he had seen the appellant no.1 alone in the fair. Appellant no.1 told him that his wife had gone missing. Thereafter, they searched for his wife but could not find her. Then appellant no.1 went to his in-laws house.

19. PW13, Dr. Pradip Das is the post mortem doctor. On examination he found rigor mortis all over the corpse. He noted peeling of superficial layer of skin, mummification and decomposition over different parts of the body. He found the following injuries:

“One 14 cm X 5 cm X cavity deep lacerated wound noted over left side of umbilicus obliquely placed – upper end of wound more near mid line of the body than lower end and from the wound extrusion of pale coils of small intestine which having punctured wounds at two places of size 3 to 4 cm X 1 cm X lumen deep.”

20. He opined death was due to the combined effect of abdominal injury and ante mortem drowning which is homicidal. He stated that the injuries may be caused by sharp object. Lacerated wound may be caused

by stabbing. He opined death was approximately 90 hours plus minus ten hours prior to the holding of post mortem examination.

21. During cross-examination he stated lacerated wound may be caused by blunt object or sharp cutting weapons. Penetrating wound may be caused by sharp cutting blunt weapon or sharp cutting pointed weapon. He clarified the first injury mentioned in his report is a lacerated wound and the second injury is a punctured wound.

22. PW21, Biswajit Haldar is the first Investigating officer. He deposed on 02.10.2006 while on patrolling duty, he received telephonic information from police station that body of a female was found on the bank of Haldi river. On arriving at the spot, he found the dead body of a female. The dead body was shown to him by Tapas Das (PW6). He held inquest over the body, Ext.1. Magisterial inquest was also held over the dead body. He sent the body of the deceased for post mortem examination. At the spot he received written complaint from Bibekananda Maity. He forwarded it to Nandakumar Police Station through NVF Sudangshu Maity. PW20, the then Officer-in-charge, Nandakumar Police Station received the written complaint and drew up the formal FIR.

23. During investigation, PW21 prepared rough sketch map of the place of occurrence. On 04.10.2006 he arrested appellant no.1 from his residence. He interrogated witnesses. He prepared rough sketch map of the house of the appellants. He collected post mortem report. He seized a small ladies purse containing various articles from the place where the

dead body was recovered. On 23.02.2007 he was transferred and investigation was concluded by PW19 who submitted charge-sheet.

Conviction of appellant no.1 under section 302 IPC – Whether justified:-

24. From the aforesaid evidence, it appears that the prosecution case of murder is based on circumstantial evidence. One of the most incriminating circumstance relied upon by the prosecution to prove the guilt against the appellant no.1 is his extra judicial confession made at Hari temple in the evening on 01.10.2006. Prosecution relies on PWs 1, 3, 4, 5, 6, 7 and 8 to prove the aforesaid fact.

25. Let me examine the evidence of the aforesaid witnesses to test whether their versions in court with regard to the extra judicial confession is reliable or not.

26. PW1 is the de-facto complainant in the instant case. He deposed his daughter had gone missing on the night of 30.09.2006. On the next day i.e. 01.10.2006 in the evening a meeting was convened at Hari Mondir. Upon repeated queries by villagers his son in law i.e. Bharat confessed that he had slapped his wife whereupon she became unconscious. Then he dragged her body and threw it into the water. This fact, however, is significantly absent in the FIR lodged by PW 1. Failure to disclose this important fact in the FIR casts severe doubt with regard to credibility of the prosecution case relating to extra judicial confession made by the appellant. PW 1 also claimed other witnesses namely Monisankar Maity (PW 4), Tapas Das (PW 6) and Hiralal Jana (PW 8) were

present with him when the confession was made and thereafter at the time of registration of FIR. He had consulted the said persons and then lodged FIR which was scribed by PW 8. Though all the witnesses had deposed with regard to extra judicial confession in Court, it is unclear how in spite of their presence and consultation prior to the lodging of FIR such fact does not find place in the said document. This is a grave lacuna which not only discredits the maker of the FIR but casts doubt on the credibility of all the witnesses who were present and consulted at the time when the FIR came to be lodged. Additionally, a vital omission of this nature goes to the root of the prosecution case and affects its veracity (see ***Ram Kumar Pandey vs. State of Madhya Pradesh***¹)

27. Ms. Khan strongly argued that other witnesses namely PWs 3, 5 and 7 have also deposed regarding extra judicial confession.

28. We may have been persuaded to accept her submission but for the fact that the truthfulness of the extra judicial confession comes into serious challenge from other evidence too. All the witnesses in unison stated that appellant no. 1 had slapped his wife and she became unconscious. Thereafter, she was dumped into the river. But the medical evidence on record i.e PW 13 (PM doctor) found two wounds - one lacerated and another penetrating in the abdomen of the deceased. He deposed such wounds may be caused by stabbing with a sharp cutting blunt or pointed weapon. By no stretch of imagination could the wounds found on the body of the deceased be caused by a slap. Hence, the

¹ AIR 1975 SC 1026 (Para 9)

contents of the extra judicial confession as narrated by the witnesses do not find corroboration with the medical evidence on record. This wholly improbabilises the truthfulness of the so-called extra judicial confession which is the foundation of the prosecution case.

29. It is the defence case that the victim went missing from the fair. Defence version is corroborated by the evidence of PW 18 who found the appellant no 1 at the fair searching for his wife. PW 2 tried to embellish the prosecution case by claiming that he had seen the appellant no 1 and his wife together in the fair. However Investigating Officer (PW 19) stated PW 2 told him he had seen the victim, Uma alone in the fair. Investigating Officer further clarified none of the witnesses have told him that they had seen appellant no 1 and the victim together in the fair. After his wife went missing, appellant no 1 went to the residence of his in laws to inform the incident. The aforesaid pieces of evidence including the conduct of appellant no 1 to immediately rush to the residence of the in laws and inform the incident to them probabilises the defence case that the victim had gone missing from the fair.

30. Hence I am of the opinion the prosecution has not been able to prove all the circumstances beyond doubt and appellant no 1 is entitled to the benefit of doubt on the charge of murder.

Charge under Section 498A IPC – Whether proved:-

31. With regard to cruelty upon the housewife over demand of dowry, I note that the prosecution witnesses have made a new case in Court. In the FIR there was no allegation that there were outstanding claims. There is

also no whisper that the housewife was tortured over demands of dowry. But in court all the witnesses deposed an additional sum of Rs. 21,000/- as dowry and sum of Rs. 2,000/- for purchase of bicycle for appellant no. 1 was outstanding and the housewife was tortured on such score. Even PWs 14 and 16 (neighbours of appellant no. 1) while stating that the appellant no 1 had bought land from dowry amount, do not speak of any torture over demand of additional dowry.

32. In the light of the aforesaid contradictory stance taken by the relations of the deceased regarding torture over demand of outstanding dowry, I am of the opinion the prosecution case with regard to cruelty on the housewife over demand of dowry has also not been proved. Appellants are entitled to an order of acquittal on this score too.

Conclusion:-

33. In the light of the aforesaid discussion, conviction and sentence imposed on the appellants are set aside. They are acquitted of the charges levelled against them.

34. Appellant nos. 2 and 3 namely Astami Bala Bhowmick and Tulasi Das shall be discharged from their bail bonds after expiry of six months in terms of Section 437A of the Code of Criminal Procedure.

35. Appellant no. 1 viz. Bharat Chandra Bhowmick 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.

36. The appeal is, accordingly, allowed.

37. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

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

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)