

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. 293 of 2013
With
CRAN 2 of 2014 (Old CRAN 2367 of 2014)

Mintu Sk & Anr.
-Vs-
The State of West Bengal

For the Appellants : Mr. Mrityunjoy Chatterjee, Adv.
Md. G. N. Imrohi, Adv.
Mr. Debapriya Majumder, Adv.

For the State : Mr. Saibal Bapuli, Id. A.P.P.
Mr. Soumik Ganguly, Adv.
Mr. Bibaswan Bhattacharya, Adv.

Heard on : 13.05.2022

Judgment on : 13.05.2022

Joymalya Bagchi, J. :-

Appeal is directed against the judgment and order dated 14.02.2013 and 18.02.2013 passed by the learned Additional Sessions Judge, 3rd FTC, Lalbagh, Murshidabad in Sessions Trial No. 03 of February, 2010 arising out of Sessions Serial No.110 of 2008 convicting the appellants for commission of offence punishable

under Sections 498A/302/34 of the Indian Penal Code and sentencing them to suffer simple imprisonment for life and to pay fine of Rs.3,000/- each, in default, to suffer simple imprisonment for three months more for the offence punishable under Section 302 IPC and to suffer simple imprisonment for three years and to pay fine of Rs.1000/- each, in default, to suffer simple imprisonment for one month more for the offence punishable under Section 498A IPC.

Rejina Bibi was married to appellant No.1 Mintu Sk. in 1994. From the wedlock three children were born. During her marriage, Rejina was subjected to torture by Mintu Sk. over trivial issues. She was ill treated and not given proper food. The matter was sought to be settled through village salish. 5/6 years after marriage, appellant No.1 Mintu Sk. again married appellant no.2 viz. Moyna Bibi. After the second marriage, torture upon Rejina increased. Mintu Sk. and his second wife Moyna Bibi subjected her to torture and ill-treatment. In 2002 she lodged criminal case against both the appellants. The matter was again referred to salish for settlement. One month prior to the incident, Rejina was suffering from abdominal pain. Mintu Sk. did not make any arrangement for her treatment. On the date of the incident i.e. 2.8.2006 at 7.00 A.M. Elora Bibi (sister-in-law of Rejina) found her lying dead at the matrimonial home. Nazimuddin Sk., father of Rejina (P.W.1) was informed and he came to the spot. He found the body of the

deceased lying in the varandah of the house. He lodged written complaint resulting in registration of Bhagwangola P.S. Case No.85 of 2006 dated 2.8.2006 under Sections 498A/304/34 of the Indian Penal Code. Post mortem revealed victim had died due to strangulation and heavy assault over abdomen which is ante mortem and homicidal in nature. Charge sheet was filed against the appellants and charges were framed under Sections 498A/302/34 IPC. Appellants pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 18 witnesses. Defence of the appellants was one of innocence and false implication.

In conclusion of trial, learned trial Judge by the impugned judgment and order dated 14.02.2013 and 18.02.2013 convicted and sentenced the appellants, as aforesaid.

Mr. Mrityunjoy Chatterjee, learned Advocate for the appellants submits there is no direct evidence connecting the appellants with the murder. Elora Bibi (P.W.3) had inimical relationship with appellant no.1 Mintu Sk. over family disputes. Her evidence ought to be taken with a pinch of salt. Her daughter had not been examined. In cross-examination, P.W.1 admitted menfolk in their community ordinarily took more than one wife. Due to financial stringency he had requested his daughter to accommodate and stay with the appellants. Relying on these pieces of evidence, Mr. Chatterjee submits there was no enmity between the appellants

and the victim lady. There is no evidence against Moyna Bibi, second wife of the appellant no.1 Mintu Sk that she committed the murder. Chain of circumstances is not complete and the appellants are entitled to the benefit of doubt.

Mr. Bibaswan Bhattacharya, learned Advocate for the State argues the unfortunate housewife suffered brutal death due to strangulation and heavy assault on her abdomen by the appellants at her matrimonial home. Initially, she had been subjected to continuous torture by the appellants. In 2002 a criminal case was lodged against the appellants by Rejina alleging torture. Salish was held with regard to torture but to no avail. Both the appellants were present in the matrimonial home where Rejina suffered homicidal death. No explanation was forthcoming from the appellants with regard to the circumstances in which the victim met her brutal end. These circumstances clearly establish the guilt of the appellants beyond doubt. Accordingly, the appeal is liable to be dismissed.

Evidence of the parents of the victim viz., P.W.1 (Najimuddin Sk.) and P.W.9 (Renuka Bibi) disclose a heart rending saga of continued torture on the victim Rejina at her matrimonial home. She had been married to appellant no.1, Mintu Sk. in 1994. Soon after the marriage, Mintu started misbehaving with her over trivial issues and tortured her. Intervention at the behest of father of Rejina (P.W.1) did not yield result. 5/6 years after marriage, he

contracted second marriage with appellant no.2, Moyna Bibi. Thereafter, torture upon Rejina increased. Both the appellants tortured her. Her children were sent to the residence of her father (P.W.1). She manfully bore the torture and continued to reside at the matrimonial home. In 2002, she lodged complaint against the appellants regarding torture. Salish was held in the village with regard to torture meted out to her.

P.W.5, Makmal Hossain, member of the Gram Panchayat, P.W.6, Rumiya Iysin @ Jharna, P.W.7, Nur Islam, P.W.8, Gita Bhattacharjee (Roy) and P.W.11, Amikul Islam, members of one 'Chandradip Ashray Samiti' (a social organisation) deposed regarding complaint by father of Rejina regarding torture upon the latter. They deposed salish was held in the matter. Evidence of these witnesses corroborate the evidence of the parents of the victim with regard to torture upon her by the appellants.

P.W.3, Ilora Bibi, sister-in-law of appellant no.1, Mintu Sk. has also supported the prosecution case. She deposed Mintu had married Rejina 15 years ago and 5/6 years later, he again married Moyna Bibi. They used to torture Rejina and salish was held by local villagers. House of P.W.3 is adjacent to that of the appellants. It is intervened by a jute fencing. On the fateful morning appellant no.1, Mintu Sk. had requested her to take Rejina to her parental home. She was unable to do so due to household jobs. At 7.00 A.M. she

sent her daughter to call Rejina to have morning tea with her. Her daughter informed no one had responded. She went to the room of Rejina and found her lying in the cot. Her face was facing the floor and her neck was hanging from the cot. There was mark of ligature on her throat. Appellants were not present at that time. Parents of Rejina were informed. They came to the matrimonial home and found the body of their daughter lying in the varandah. They noted marks of injury on her body. They saw the appellants at the place of occurrence. P.W.1 lodged written complaint. Police came to the spot and prepared inquest.

Post mortem was also conducted over the body of Rejina. P.W.10, Dr. Gautam Paul post mortem doctor held post mortem on the body of Rejina. He noted the following injuries;

“.....I found fracture on the right corner of hyoid bone, peritoneal cavity was full of blood. There was fracture in the right lobe of the liver. The uterus was found non-pregnant.”

He opined death was due to strangulation and heavy assault on abdomen ante mortem and homicidal in nature. He proved the post mortem report.

Mr. Chatterjee contends P.W.3 had inimical relationship with appellant no.1, hence her version ought not to be beleived. In support of his contention, he refers to her cross-examination where she admits there were family discord between her husband and

appellant no.1 and they were living in separate mess though in the property owned by her father-in-law. She also stated dispute arose as appellant no.1 had lion share of the said property.

I have considered the evidence of P.W.3 as a whole. She is the wife of one of the brothers of appellant no.1, Mintu. They reside in a house adjacent to that of the appellants separated by a jute fencing. Although she admits there was some family discord over sharing of joint property, her presence in the house adjacent to that of the appellants cannot be disputed.

Viewed from that perspective, P.W.3 is the most natural witness to depose with regard to torture upon Rejina by the appellants. She stated appellants had subjected Rejina to torture and ill-treatment and salishes were held over the issue. On the fateful day, her daughter went to the room of Rejina but no one responded. Thereafter she found Rejina lying dead on the cot. Appellants were found missing from the house. These facts coming from P.W.3 appear to be convincing and cannot be discarded merely on the score of prior family discord.

I am further emboldened to come to such conclusion as version of P.W.3 with regard to torture upon Rejina by the appellants is corroborated from contemporaneous materials as well as other independent sources. Investigating Officer, Dipak Kumar Das (P.W.18) deposed in 2002 Rejina had lodged a complaint against the

appellants alleging torture. As discussed earlier, local villagers including Panchayat member (P.Ws.5 to 8 & 11) also corroborated the prosecution case relating to holding of salish over torture on Rejina.

The aforesaid evidence on record clearly establishes the following circumstances against the appellants :-

- a) Rejina was married to appellant no.1 Mintu Sk. 16 years after her marriage, Mintu again married appellant no.2 Moyna;
- b) Rejina used to reside with the appellants at the matrimonial home;
- c) Appellants subjected Rejina to torture. She was not given food, ill-treated by them and had to shift her children to the residence of her father (P.W.1);
- d) In 2002 Rejina lodged criminal case against the appellants alleging torture. On complaint lodged by father of Rejina, salish was held in presence of local villagers. However, the situation did not improve;
- e) Prior to the incident, Rejina was suffering from stomach pain but appellant no.1 did not arrange for her medical treatment;
- f) On the fateful day i.e. 2.8.2006 Rejina suffered homicidal death due to strangulation and assault on abdomen at

her matrimonial home. No plea of alibi has been taken by the appellants during trial;

- g) Soon after the incident appellants ran away from the place of occurrence. Subsequently, they again returned to the place of occurrence;
- h) No explanation was offered by the appellants with regard to the circumstances in which the victim Rejina suffered homicidal death;

Mr. Chatterjee submits there is scanty material against the appellant no.2, Moyna Bibi. I am unable to accept such submission. There is ample evidence Moyna Bibi along with Mintu Sk. subjected the housewife to torture. Earlier Rejina had lodged criminal case against Mintu Sk. as well as Moyna Bibi. During her examination under Section 313 Cr. P. C., Moyna Bibi admitted she was residing along with Rejina at the matrimonial home. No alibi was taken by her that she was not present at the matrimonial home on the fateful day. She also did not offer any explanation how Rejina had suffered homicidal death. These circumstances clearly establish the guilt of appellant no.2, Moyna Bibi as much as it implicates the appellant no.1, Mintu Sk.

Hence, I am of the opinion the prosecution case is proved beyond doubt against both the appellants.

Conviction and sentence of the appellants are upheld.

Appeals are accordingly, dismissed.

In view of disposal of the appeal, connected application being CRAN 2 of 2014 (Old No. CRAN 2367 of 2014) is also dismissed.

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

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

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.)