

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

CRA 523 OF 2003

Laxman Gope

Vs.

The State of West Bengal

For the Appellant : **Mr. Himanshu De, Sr. Adv.**
Mr. Navanil De, Adv.
Mr. Rajeshwar Chakraborty, Adv.
Mr. Srinjan Ghosh, Adv.
Mr. Subhrajit Dey, Adv.
Ms. Monami Mukherjee, Adv.

For the State : **Mr. Prasun Kr. Dutta, Adv.**
Md.Kutubuddin, Adv.
Mr. S. Deb Roy, Adv.

Heard on : **05.09.2022, 23.11.2022**
& 08.12.2022

Judgment on : **23.12.2022.**

CHITTA RANJAN DASH, J.:-

1. The appellant and his parents were tried for offence under Section 498A/302/34 IPC. Manik Gope, father of the present appellant and Smt. Methi @ Methila Gope, mother of the present appellant were acquitted of the charge. The present appellant was also acquitted of the charge under Section 498A/34 IPC. But he was found guilty for offence under Section 302 IPC and was sentenced to rigorous imprisonment for life and to pay fine of Rs.1000/- i.d. to suffer simple imprisonment for one month more. Hence the appeal.

2. The occurrence happened in the dwelling house of the appellant. Namita was found to be dead in the morning of 22.02.1995 in a suspicious circumstance. Manik Gope, father of the present appellant went to the house of the father of the deceased and informed him to the effect that his daughter is not well. Father of the deceased came to the spot and found her daughter lying on a cot in a 'Chala Ghar' in the Verandah of the house near the entrance door with nail scratch marks on her throat. He (PW-1) immediately brought the matter to the notice of the Pradhan of the Village of the appellant, who has been examined as PW-6 and PW-6 advised PW-1 (informant) to lodge report in the police station. Accordingly, PW-1 lodged the report scribed by his neighbour PW-7 in police station.

3. PW-3, the S.I. of police received the report, registered the case, drew the formal FIR and directed S.I. Bibhutibhusan Samaddar (since dead) to take up investigation. S.I. Bibhutibhusan Samaddar held inquest over the dead body, challaned the dead body for post-mortem, prepared the spot map, examined the

witnesses and on completion of investigation filed charge-sheet against the appellant and his parents under Section 498A/302/34 IPC.

4. Prosecution has examined seven witnesses to bring to home the charge against accused persons. PW-1 is the father of the deceased. PW-5 is the mother of the deceased. PW-2 is co-villager of PW-1 but his evidence is of no consequence. PW-6 is the Pradhan of the village of the appellant. PW-7 is the neighbour of PW-1 who has scribed the FIR. PW-3 is the S.I. of police who registered the case. PW-4 is the medical officer who held autopsy and opined that cause of death is asphyxia as a result of throttling and the death is homicidal in nature.

5. Learned Court below on thorough discussion of the evidence adduced by PW-1 and PW-5, father and mother respectively of the deceased have disbelieved the factum of torture and harassment meted out to the deceased and has acquitted the appellant and other co-accused persons of the charge under Section 498A/34 IPC.

6. On the same set of evidence, learned Trial Court has arrived at a supposition that the present appellant was not visiting the house of her father-in-law; he was not going there to bring her wife back when her wife was visiting her father's place and his conduct is so that he was instrumental in torturing his wife in the matrimony. Learned Trial Court has again arrived at the supposition that in lower strata of society even if torture is meted out to their daughter, the parents refrain from reporting the matter before police or village gentries with a hope of resettlement in the matrimony and not to displease the groom's family and not to aggravate the situation for their daughter.

7. Taking into consideration the medical opinion tendered by PW-4, the medical officer who conducted post-mortem report, learned Trial Court has held that the deceased was living with the appellant and she was found dead and she must have been done to death either in the night or in the wee hour of the morning of the occurrence day by the appellant as his father Manik Gope went to the house of PW-1 at about 5 A.M.

8. From the aforesaid supposition and the medical opinion to the effect that death of the deceased was homicidal in nature, learned Trial Court came to find the appellant guilty under Section 302 IPC.

9. From the argument advanced by learned Counsel for the appellant and learned Counsel for the State we are called upon to determine as to whether the appellant had exclusive opportunity of causing the death of the deceased or any other person might have also been responsible. From the cross-examination of PW-1, it is found that the house where appellant resides also house the family members of the deceased brother of Manik Gope, father of the present appellant. Dinobandhu, Hira, Baidyanath and Badal are the sons of deceased brother of Manik Gope. Manik Gope had also three sons, viz., Laxman (present appellant), Budhu and Uday. According to PW-1 himself there is only one main door to go to the kuli from the courtyard of Maghu (deceased brother of Manik) and Manik. The dead body of the deceased was lying on a cot in a 'Chala Ghar' which is on the left side from the entrance door of the spot house. This evidence of PW-1 itself shows that besides the appellant many other persons were there who could have committed the murder of the deceased for any reason best known to them. The

factum of torture having been disbelieved by the learned Trial Court and the informant or the State having not preferred any appeal against such order, we do not want to revisit the evidence on that aspect again.

10. In the present case a homicidal death has been caused and there is evidence to show that many other adult persons were also residing in the same house who had access to the deceased. Only because a homicidal death has been caused, the circumstance to the effect that the deceased was the wife of the appellant do not lead to only one possible inference regarding the guilt of the appellant.

11. We are, therefore, of the merited view that only on the basis of post-mortem report and opinion of the medical officer regarding homicidal death of the deceased, when the only incriminating circumstance against the appellant is held to be disproved having pointed out to possibilities otherwise, the appellant cannot be convicted on the basis of medical opinion alone for the offence under Section 302 of the IPC. [See ***Balaji Gunthu Dhule Vs. State of Maharashtra (2012) 11 SCC 685***]

12. In the result, the appeal is allowed. The impugned judgment and order of sentence passed by the learned Additional Sessions Judge, Fast Track Court-1, Purulia in S.T. Case No. 30 of 2003 are hereby set aside. The appellant be set at liberty forthwith, if his detention is not required in any other case.

13. Pronounced in open Court on this day i.e. 23rd day of December, 2022.

14. The L.C.R. along with a copy of this judgement be sent down to the Trial Court forthwith.

15. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Partha Sarathi Sen, J.)

(Chitta Ranjan Dash, J.)