

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 672 of 2004

Sukla Dawn & Anr.

-Vs.-

State of West Bengal

For the appellants	:	Mr. Saryati Dutta,
For the State	:	Mr. Saibal Bapuli, Mr. Bibaswan Bhattacharya.
Heard on	:	11.04.2022, 28.04.2022, 04.05.2022 10.05.2022
Judgment on	:	19.05.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order dated 15.09.2004 passed by the learned Additional Sessions Judge, 2nd Court, Barasat, North 24-Parganas in connection with the S.T. No. 4(4) 97 corresponding to S.C. No. 19(9) 95, wherein the learned Trial Court was pleased to hold the appellants guilty for commission of offence punishable under Section 498A of the Indian Penal Code and acquitted them for the offence punishable under Section 307 read with Section 120B of the Indian Penal Code. The Trial Court was pleased to impose sentence upon the appellants to suffer rigorous imprisonment for 1 (one) year each and to pay a

fine of Rs. 500/- each, i.d. to suffer further rigorous imprisonment for 2 (two) months for the offence under Section 498A of the Indian Penal Code.

The records reflect that Bidhannagar Police Station Case No. 155 dated 10.12.1994 under Sections 498A/323/325/506 of the Indian Penal Code was registered for investigation on the basis of a complaint addressed by Anindita Dawn to Officer-in-Charge, Bidhannagar Police Station on 10.12.1994. The allegations made in the letter of complaint was that the complainant was married to one Chirantan Dawn on 05.03.1994 and the complainant's father on demand of the appellants gave gold jewellery, cash etc. and after some days of marriage paid a huge sum of money for construction of the first floor of the house. The complainant alleges that after few days of marriage her mother-in-law, Sukla Dawn started physical and mental torture upon her on various pretext and instigated her husband for bringing more money and jewellery from her father. When the complainant refused to such demand of her husband which was instigated by her mother-in-law, both the appellants inflicted physical torture upon her and the complainant was compelled to inform the same to her parents. On 03.12.1994 the complainant's husband being instigated by his mother assaulted the complainant and when the same was informed by the complainant to her mother and elder sister, police had to intervene when the complainant's husband at the police station accepted his mistake and prayed for mercy, as such on the said date the complainant withdrew her allegations and the complainant with the consent of the present appellants went to her paternal home. On 10.12.1994 at around 6.30 p.m.

when the complainant being accompanied by his parents went to her matrimonial home, her mother-in-law abused them in filthy language and within 10/15 minutes her husband returned and in an excited manner directed the complainant and her mother to go out of their house, when the complainant's mother protested, her mother-in-law directed her husband to throw them away from their residence, when her husband started assaulting her mother and threw her at the floor and thereafter with shoes started assaulting her. Her mother sustained serious injuries at her face, stomach and other portions of the body. At that time, when the complainant went to rescue her mother she was also assaulted by her husband with shoes and took out a knife for murdering her. The complainant and her mother started shouting when the local people started approaching their residence and as a result the husband fled away.

The Investing Agency on receipt of the complaint commenced investigation, the Investigating Officer on completion of investigation submitted charge-sheet under Sections 498A/324/326/307/506 of the Indian Penal Code against the present appellants. Learned Magistrate was pleased to take cognizance of the offence and after supply of the copies under Section 207 of the Code of Criminal Procedure was pleased to commit the case to the Court of Sessions and finally the case was transferred to the learned Additional Sessions Judge, 2nd Court, Barasat, North 24-Parganas (hereinafter referred to as the 'Trial Court').

The learned Trial Court thereafter was pleased to frame charges against the appellants under Sections 498A, 307 and 120B of the Indian Penal Code.

In course of trial the prosecution examined 14 witnesses which included PW1, Anindita Dawn, the complainant; PW2, Krishnapada Dawn, father of the complainant; PW3, Basudeb Mondal, working as a mason at Salt Lake; PW4, Bibekananda Dutta, an Accounts Assistant in the firm of PW2, who accompanied the mother of the complainant; PW5, Bimal Gupta, the driver of PW2 who was present on 10.12.1994; PW6, Dr. Archana Adhikary, Medical Officer of Salt Lake Zonal Hospital; PW7, Dr. Subrata Majumder, Medical Officer of Salt Lake State General Hospital; PW8, Malatilata Dawn, mother of the complainant; PW9, Gour Gopal Banik, brother-in-law of PW1; PW10, Nibedita Banik, sister of PW1; PW11, Bimal Chandra Das, common friend of both the families; PW12, Asish Bhattacharya, A.S.I. of Police, who started Bidhannagar East Police Station Case No. 155 dated 10.12.1994; PW13, Chitta Ranjan Das, Sub-Inspector of Police Bidhannagar East Police Station and PW14, Shyamal Ranjan Sengupta, S.I. of Police, Bidhannagar East Police Station.

PW1, Anindita Dawn, in her evidence before the Trial Court deposed that she was married with appellant No. 2, Chirantan Dawn /appellant no.2 on 05.03.1994 according to Hindu rites and customs and in the said marriage her father gave Rs.20,000/- in cash, 25/30 bharies of gold ornaments, refrigerator, T.V., Sofa set and many other articles including wrist watch, ring, gold buttons.

After marriage both of them started residing at AJ-323 Salt Lake, for about 10/15 days after marriage she lived peacefully and thereafter, when her husband went out of house her mother-in-law started serving rotten meals. When she refused to take such meals, her mother-in-law threatened her that if such an incident is reported she would be burnt by pouring kerosene oil over her. Being afraid she did not divulge such incident to her husband or to her parents. Being unable to bear such torture when she informed her husband and also to her parents, her parents came down and spoke with her mother-in-law. Immediately after her parents left the house her mother-in-law dashed her and drove her out of the house. She thereafter stayed with her husband at 10/1, Beniatola Lane, Calcutta and also at her father's house at 8/B, Ram Nath Majjummder Street, Calcutta. During such period the appellant no.2 requested the complainant's father to provide him financial assistance for construction of the first floor of their house where he could live with her and her father paid a sum of Rs.3,60,000/- to her husband. The first floor of the house was constructed and both of them returned back to her matrimonial house and stayed at the first floor, however, the mother-in-law used to abuse her in filthy language from the ground floor of the house and when such incident was reported to the appellant no.2, he stated that she would have to bear such abuse or in the alternative leave the house. On 03.12.1994 the appellant no.2 insisted to her for demanding a Maruti car from her father when she refused she was assaulted mercilessly, when she ran out of the house and entered a neighbouring house for shelter. She thereafter, informed her mother,

sister and brother-in-law over phone and after sometime police reached at her matrimonial home and the appellant no.2 was taken to the police station. However, she withdrew the complaint as the appellant assured her they would not ill-treat her in future. She was treated by a lady doctor namely, Archana Adhikary at Salt Lake General Hospital. On 10.12.1994 at about 6.00 p.m. when she went to her matrimonial home with her parents, her husband was not present and her mother-in-law on seeing them started abusing and asked her to go back. As the keys of the first floor was available with her she went to the first floor, within 15 minutes appellant no.2 came to the house and on seeing her and her mother in the first floor he became excited and kicked on the leg of her mother who fell down and her husband started assaulting her mother with his shoes over her face, breast and belly, her mother sustained bleeding injuries. When she went to rescue her mother, she was also assaulted. When at that time her mother-in-law (appellant no.1) asked the appellant no.2 to kill them when the appellant no.2 took out a knife. Hearing the hue and cry the neighbours and other local persons started coming when her husband/appellant no.2 fled away. She and her mother were taken to the hospital and also to the Police Station. The witness also alleged that the sum of Rs. 3,60,000/- was paid by her father from her own account maintained with Bank of India, College Street Branch through account payee cheque. The witness identified her letter of complaint and the FIR which was marked as Ext.1. The seizure of knife and shoes which were marked as Ext.2. The seizure

list by way of which the invitation card, injury report, bank passbook were seized was marked as Ext.3. The Invitation Card was marked as Material Ext1.

PW2, is the father of PW1, who narrated regarding the torture and assault inflicted upon his daughter and wife by the appellants. The witness also stated regarding parting with a sum of Rs. 3,60,000/- for the sake of peace of his daughter. The rest of the evidence deposed by the witness was in tune with the evidence of PW1 so far as it related to the assault, torture and injuries sustained by PW1 and her mother.

PW3, was a mason working at Salt Lake on that date at about 6.15 p.m. he was passing in front of AJ-323 and he found many people gathered there in front of the said house and he also heard noise of assault and scuffle at the first floor of the said house and saw a young woman was getting down from staircase from the first floor of the house and an aged lady was slowly coming down. According to the witness, the aged lady had bleeding injury at her face and her clothes were stained with blood. He has also been deposed that the said lady was shifted for the purpose of sitting at the house opposite to AJ-323.

PW4, is an Accounts Assistant, who new regarding the incidents of 03.12.1994 and 10.12.1994. The witness signed the seizure list wherein the wearing cloths of Malatilata Dawn were seized and he had signed the same. The witness identified his signature which was in the seizure list, which was marked as Ext.4.

PW5, is the driver of PW2, who had taken the family to AJ-323 on 10.12.1994. The witness has narrated part of assault, injuries as have been stated by PW1 and PW2. The witness has signed in the seizure list and his signature was identified in Court and marked as Ext.2/2, Ext.3/2 and signature in another seizure list as Ext.4/1.

PW6, was attached to Salt Lake State Zonal Hospital on 03.12.1994. The witness had examined PW1 and found minute abrasion over dorsum of left hand, bruise over left chick, tenderness in lower abdomen and the history of the assault as stated by the patient was that her husband kicked and blows inflicted all over her body in the morning at her residence. The injury report was identified by the doctor and the same was marked as Ext.5.

PW7, treated both Anindita Dawn and Malatilata Dawn. The witness found multiple bruise and abrasion over the body particularly on the elbow and back. There was lacerated injury on the lips bleeding from the gums, swelling on the back of the head and bleeding from the skull. The history so stated is that her son-in-law assaulted her at about 6.30 pm at AJ-323, Calcutta-91. Regarding Anindita Dawn the doctor stated that he found abrasion over the neck and hands, bruise over the chick and the history of the injury is related to assault being inflicted upon her by her husband. Injury Report was identified by the witness and the same was marked as Ext.6.

PW8, mother of PW1, narrated the events in tune and similarly as PW1.

PW9, is brother-in-law of PW1 who stated regarding the incident of torture, injury, demands of dowry and assault.

PW10, sister of PW1, who stated regarding the same manner as PW9 in respect of torture, demands of dowry, injuries inflicted and the incident which happened on the relevant dates.

PW11 stated regarding the incidents of 3rd December, 1994 and at his intervention on that date PW1 withdrew the complaint. The witness also deposed that on 11.12.94 PW1 and PW8 came down to his residence and showed their injuries.

PW12 is A.S.I. of Police who prepared the Formal FIR. The witness identified his signatures in the Formal FIR.

PW13 is Sub-inspector of Police, who wrote the GD Entry which was signed by him and the same was marked as Ext.7.

PW14 is Sub-inspector of Police and Investigating Officer of the case.

Mr. Dutta, learned advocate appearing for the appellants submits that the prosecution witnesses have embellished the facts of the case at every stage. According to him the demand of Maruti Car and the story of Rs.3,60,000/- being paid to Chirantan Dawn/appellant no.2 was not alleged in the FIR and was subsequently incorporated to improve the prosecution case. Learned Advocate submits that the factum of PW8 Malatilata Dawn, who fell down at the staircase, was converted into an allegation of being assaulted and pushed

down the staircase. The appellant no.1, mother-in-law who is 81 years of age has been implicated with false narration of facts. By introducing interested and chance witnesses the prosecution tried to cover up the case by filling up the loopholes.

Learned advocate also drew the attention of the Court to the factum of a civil case being pending and submitted that a suit for cancellation of Deed of Gift itself goes to show that the amount which was handed over was not in the form of dowry. In order to stress upon the conduct of the complainant, learned advocate submitted that earlier a complaint was lodged by the PW1 at Bidhannagar Police Station but subsequently the same was withdrawn.

Mr. Bhattacharya, learned advocate appearing for the State, on the other hand rebutted the contentions advanced by the learned advocate appearing for the appellants and submitted that PW2, PW8, PW9 and PW10 corroborated the evidence of PW1 on the issue of torture and assault inflicted by the appellant no.2 on 03.12.1994. The said witnesses also corroborated the assault upon PW8 and PW1 on 10.12.1994. The doctors who treated the prosecution witnesses nos. PW1 and PW8 i.e. PW6 and PW7 corroborated the factum of assault and also recognised the injury reports of 03.12.1994 and 10.12.1994 which are marked in the evidence as Ext.5 and Ext.6. According to the learned advocate there is a ring of truth in the narration of all the prosecution witnesses and there is no scope for the appellants to come out from the finding of the learned

trial Court, so far as the offence under Section 498A of the Indian Penal Code is concerned.

I have taken into account the rival submissions of the parties and assessed the evidence of the witnesses tendered by the prosecution, the documents relied by them, the answers which were advanced by the appellants in their examination under Section 313 of the Code of Criminal Procedure as also the issues raised in the cross-examination by the appellants. The version of PW1, the complainant who happened to be the victim of the case and on whose allegation of physical and mental torture, the instant case was initiated along with injuries being sustained by her and her mother could not be dislodged by the appellants during their cross-examination, in fact the assault of 03.12.1994 and 10.12.1994 were corroborated by independent witnesses, as also the medical practitioners associated with Government Hospital. So far as the issue of related and interested witnesses are concerned as has been raised by the learned advocate appearing for the appellants, I am of the view that as it has been settled by the Hon'ble Supreme Court in a number of judgments that in this type of offences where within the four walls offences are committed, it is not possible for the outsiders to be a eye-witness to the incident. The very fact that a witness is a related witness do not automatically dilute such evidence as it is expected that the factum of physical and mental torture being inflicted upon the victim in a matrimonial discord would normally be divulged and known to related witnesses. To that extent the judgment of the Hon'ble

Supreme Court in Ilangovan –Vs. – State of T.N., (2020) 10 SCC 533 is quoted as follows:

“7. With respect to the first submission of the counsel for the appellant, regarding the testimonies of related witnesses, it is settled law that the testimony of a related or an interested witness can be taken into consideration, with the additional burden on the Court in such cases to carefully scrutinise such evidence (see Sudhakar v. State [Sudhakar v. State, (2018) 5 SCC 435 : (2018) 2 SCC (Cri) 777]). As such, the mere submission of the counsel for the appellant, that the testimonies of the witnesses in the case should be disregarded because they were related, without bringing to the attention of the Court any reason to disbelieve the same, cannot be countenanced.”

I have also considered the contention regarding embellishment of facts and I find that the same is not an afterthought story as the Investigating Officer of the case was never confronted regarding such version of the witness which surfaced in course of investigation. It was way back in Manoj Alias Bhau & Ors. –Vs. – State of Maharashtra, (1999) 4 SCC 268, held that FIR is not supposed to be encyclopaedia of all details and as such the minute details regarding demand of dowry may not have been stated when the same was initially lodged. The factum that a suit for cancellation of the Deed of Gift is pending itself goes to show that a sum of Rs.3,60,000/- was contributed by the father of PW1 for construction of a floor at the matrimonial home of PW1.

In view of the consistent version of the prosecution witnesses, I am of the opinion that the finding of guilt so far as the offence under Section 498A of the

Indian Penal Code is concerned, the same do not call for any interference by this Court and as such the judgment dated 15.09.2004 passed by the learned Additional Sessions Judge, 2nd Court, Barasat, North 24-Parganas is hereby affirmed. However, so far as the sentence is concerned the same calls for an interference on two counts as the instant complaint of is of the year 1994 and the degree of complicity of the mother-in-law, Sukla Dawn /appellant no.1 and husband, Chirantan Dawn/appellant no.2 are not same.

Thus, the sentence imposed upon mother-in-law, Sukla Dawn, Appellant No.1 under Section 498A of the Indian Penal is modified to Rigorous Imprisonment for 6 (six) months with fine and the default sentence remaining un-altered.

So far as the sentence imposed by the trial Court upon the husband, Chirantan Dawn/Appellant No.2 is concerned the same is not interfered with.

With the aforesaid observations CRA 672 of 2004 is disposed of.

The appellants are on bail their bail bonds stand cancelled.

They are directed to surrender before the Jurisdictional Court within a period of 30 days, in the alternative the Jurisdictional Court would issue process for compelling them to undergo the sentence.

Department is directed to send back the Lower Court Records and intimate the judgment to the learned Jurisdictional Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)