

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. 579 of 2016
with
CRAN 1 of 2021

Baharul Baidya
-Vs-
State of West Bengal

For the Appellant : Mr. Kallol Mondal, Adv.
Mr. Souvik Das, Adv.

For the State : Mr. Sudip Ghosh, Adv.
Mr. A. K. Datta, Adv.
Mr. B. Banerjee, Adv.

Heard on : 28th April, 2022

Judgment on : 28th April, 2022

Joymalya Bagchi, J. :-

Appellant has assailed judgment and order dated 28.07.2016 and 29.07.2016 convicting the appellant for commission of offence punishable under Sections 498A/302/201 of the Indian Penal Code and sentencing him to suffer simple imprisonment for three years for the offence punishable under Section 498A of the Indian Penal Code, to suffer rigorous imprisonment for life for the offence punishable under

Section 302 of the Indian Penal Code and to suffer simple imprisonment for seven years and to pay a fine of Rs.10,000/-, in default, to suffer further imprisonment of one year for the offence punishable under Section 201 of the Indian Penal Code. All the sentences to run concurrently.

Prosecution case as alleged against the appellant is to the effect that victim Asmina Khatoon was married to the appellant three months prior to the incident according to Muslim rites and customs. At the time of marriage, Rs. 80,000/- in cash, a pair of gold rings were given to the appellant. One month after the marriage appellant and in-laws subjected Asmina to torture over further demand of money. She returned to her parental home unable to bear torture. Appellant made a phone call to the father of the victim, Abul Khair Molla (P.W. 1) and requested him to bring Asmina to the matrimonial home. In the month of Bhadra at about 11.30 a.m. father-in-law, Safiqul Baidya and mother-in-law, Jabeda Bibi came and took Asmina back to the matrimonial home. On that day at 9 p.m. appellant telephoned P.W. 1 and stated that he had asked for a glass of water from Asmina and since she delayed in bringing water he had slapped her twice. Thereafter he went to the bathroom and Asmina went missing. On the next day at 5 a.m. P.W. 1 and others came to the matrimonial home and found Asmina was still untraceable. Suspecting that she had been murdered, P.W. 1 lodged written complaint at the police station resulting in Kashipur Police Station Case No. 163 of 2012 dated

25.08.2012 under Sections 498A/364 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act. In the course of investigation P.W. 11 (S.I. Shankar Patra) arrested the appellant and the body of Asmina was recovered from Bagchola canal (khal) on 26.08.2012 which was at a walking distance of 5 to 7 minutes from the residence of the appellant. Body was recovered in the presence of P.W. 7 (Kader Molla). Asmina was taken to the hospital where she was declared dead by P.W. 9 (Dr. Himadri Sekhar Mondal). P.W. 8 (Dr. U. P. Ghosal) held postmortem over the body of the victim and opined that she had died by strangulation by ligature around the neck ante mortem and homicidal in nature. Upon recovery of the body of the victim, Section 302/201 of IPC was added to the F.I.R. In conclusion of investigation, charge-sheet was filed against the appellant and other in-laws. Mother-in-law of the victim (Jabeda Bibi) was not arrested and the case was filed against her. Charges were framed under Sections 498A/34/302/34/201/34 of IPC against the appellant and his father, Safiqul Baidya. Prosecution examined eleven witnesses and exhibited a number of documents. In the course of trial co-accused Safiqul Baidya expired. In conclusion of trial, learned trial Judge by the impugned judgment and order convicted and sentenced the appellant, as aforesaid.

P.Ws. 1 and 2, Abul Khair Molla and Fuljan Bibi respectively, are the parents of the victim girl. P.W. 3, Saleha Bibi is her aunt. P.W. 1 deposed victim girl Asmina was married to the appellant three months prior to the incident. Rs. 80,000/- in cash and gold ornaments were

gifted to the appellant at the time of marriage. However, she was subjected to torture over further demands of dowry. In the month of Ramjan, Asmina came to the residence of P.W. 1 and stayed there for a couple of days. Appellant told P.W. 1 to bring Asmina back to her matrimonial home. In the month of Bhadra parents-in-law of Asmina came and took her back to the matrimonial home. On the same day at 9P.M. appellant telephoned P.W. 1 and stated he had asked Asmina to bring drinking water and she refused. As a result, he slapped Asmina. Thereafter he went to the bathroom and Asmina went missing. On the next day at 5 a.m. P.W. 1 went to the matrimonial home of the victim. Appellant and other in-laws could not give any explanation with regard to the absence of the victim. Written complaint was lodged by P.W. 1 which was scribed by P.W. 10. On the next day, at the hospital P.W. 1 identified the body of his daughter. She had a rope tied around her neck. Evidence of P.W. 1 is corroborated by P.Ws. 2 and 3. Prosecution case that the appellant on the fateful night had slapped his wife as she did not bring water is admitted by him during his examination under section 313 Cr.P.C. Hence, presence of the victim at the matrimonial home at the time of occurrence is established.

After lodging of F.I.R., appellant was arrested by P.W. 11. On 26.08.2012, he was taken to Bagchola canal and on his showing body of the deceased was recovered.

P.W. 7 (Kader Molla) deposed he had accompanied the police along with one Khude Molla and was present at Bagchola khal when the body of the victim was recovered.

Mr. Mondal, learned Counsel appearing for the appellant submits presence of Kader Molla is not corroborated by P.W. 11, investigating officer or P.W. 6, another police officer who was present at the time of recovery.

I have considered the evidence of both the official witnesses. P.W. 11 deposed he arrested the appellant. Thereafter the body of the victim was recovered from Bagchola Khal in presence of local witnesses. Although P.W. 11 did not specifically name the local witnesses, presence of P.W. 7 as a local witness is substantially corroborated in his deposition. P.W. 6, another police officer was also present at the time of recovery of the dead body. He signed on the seizure list which was prepared with regard to collection of earth from the place of occurrence. Body was taken to Jeramgacha BPHC where P.W. 9 declared him dead. He proved medical report (Exhibit 6). P.W. 1 identified the body of his daughter. P.W. 6 held inquest over her body. He proved the inquest report (Exhibit 4). P.W. 1 signed on the inquest report.

P.W. 8 held post mortem over the body of the victim. He found following injuries :

- 1) Transversely placed continuous ligature mark around the neck measuring 14" X 1". The skin under the ligature mark

was found to be condensed, glistening, grooved and abraded at places. On dissection, sub-cutaneous was found to be hardened and thickened and with evidences of extravasation of blood around the soft tissues of neck. Fracture (subluxation) of the median eminence of thyroid cartilage, stomach was found to be empty, no untowards smell was found to be noted. Uterus was found to be non-gravity.

He opined death was due to strangulation by ligature around the neck ante mortem and homicidal in nature.

Evidence on record has proved the following circumstances against the appellant:-

(a) Victim was married to the appellant three months prior to the incident;

(b) Rs. 80,000/- in cash and gold ornaments were given to the appellant at the time of marriage. Appellant and other in laws subjected the victim to torture over further money;

(c) During Ramjan, a month after the marriage victim came to her parental home. Appellant requested father of the victim (P.W. 1) to bring her back;

(d) Subsequently on 24.08.2012 parents in-law of the victim took her back to the matrimonial home around 4.30 p.m.;

(e) On the same day at 9 p.m, appellant telephoned P.W. 1 that he had slapped the victim as she did not bring water. Thereafter, he went to answer nature's call. He further stated on his return, the victim

was found missing. Appellant has admitted such fact during his cross examination under section 313 Cr.P.C.;

(f) On the next morning, around 5 a.m P.Ws. 1 and 2 came to the matrimonial home of the victim. Appellant gave false explanation that his wife had gone missing;

(g) P.W. 1 lodged FIR against the appellant and other in-laws,

(h) P.W. 11, investigating officer arrested the appellant. He took the appellant to Bagchola Khal and the body of the deceased was recovered in presence of P.W. 7;

(i) P.W. 9 declared the victim dead and P.W. 8, post mortem doctor opined death was due to strangulation by ligature around neck, ante mortem and homicidal in nature.

These circumstances which have been proved beyond doubt, make a complete chain which unerringly points to the guilt of the appellant. Appellant admitted he had assaulted his wife on the fateful night of 24.08.2012. On 26.08.2012, body of the victim was recovered from a nearby canal. According to the post mortem doctor death was due to strangulation which was homicidal in nature. Appellant had given false explanation that the victim had gone missing. In the light of the aforesaid circumstances, there is no escape from the conclusion, it was the appellant who had strangled his wife to death and thereafter disposed of her body in the nearby canal.

Conviction and sentence of the appellant is upheld.

The appeal is dismissed. Connected application being CRAN 1 of 2021 stands disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him 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.)