

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. 690 of 2008

Ankur Banerjee

-vs-

The State of West Bengal

For the Appellant : Mr. Mainak Bakshi, Adv.

For the State : Ms. Zareen N Khan, Adv.
Ms. Trina Mitra, Adv.

Heard on : 18.02.2022

Judgment on : 18.02.2022

Joymalya Bagchi, J.:-

The present appeal is directed against the judgment and order dated 30.05.2008 passed in a re-trial pursuant to an order of remand passed by this Court in Criminal Appeal No. 548 of 2005. By the impugned judgment and order the trial Court convicted the appellant for commission of offence punishable under Sections 498A/302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs.10,000/- in default of fine to suffer simple imprisonment for one year more for the offence punishable under Section 302 of the Indian Penal Code, and sentencing him to suffer rigorous imprisonment for one year

and to pay fine of Rs.1,000/- in default of fine to suffer simple imprisonment for one month under Section 498A of the Indian Penal Code, both the sentences will run concurrently.

In the earlier round of litigation, the appellant upon being convicted for the offence under section 302 IPC, had appealed before this Court. An Hon'ble Division Bench of this court upon hearing the appeal by judgment and order dated 16.06.2006 set aside the conviction and sentence recorded by the trial Court and remanded the entire matter before the Sessions Judge with direction to conduct the trial himself or by the seniormost Additional Sessions Judge in the station. The Court further directed the Trial Court to appreciate the evidence and materials on record independently and after production of papers from Bansgore P.H.C.

The Bench was persuaded to remand the matter for the following reasons:

- (i) Finding of acquittal by the trial court for the offence under section 498A IPC was contrary to the evidence on record particularly that of PWs 1 to 3 herein;
- (ii) Although the trial Court by order dated 22.07.2002 had directed production of injury register from Bansgore Primary Health Center, Bansgore the same had not been taken to its logical conclusion and the said register had not been produced;
- (iii) Trial Court had conducted the proceeding in a manner which left an impression that it had already formed its opinion with regard to the guilt of the appellant even before conclusion of arguments

had delivered the verdict on such preconceived motion. To elaborate, the matter was fixed on 15.06.2006 for hearing arguments. When adjournment was sought for on behalf of the defense, trial Court recorded its displeasure and took the accused into custody. Though written arguments were furnished on that day, trial Court in post haste fixed the matter for judgment on the very next day i.e 16.06.2006 and delivered the verdict against the appellant.

In view of the aforesaid order of remand the matter was re-heard by the trial Court. In the course of re-trial, P.W. 15, B.M.O.H. attached to Community Health Centre, Bansgarh was examined. He deposed the injury register of Bansgarh Primary Health Centre was not traceable and his report was exhibited as Exhibit 10. Upon independent consideration of the evidence on record, the trial court convicted and sentenced the appellant, as aforesaid.

Hence, the present appeal.

Mr. Bakshi, learned Advocate appearing for the appellant submits injury register has not been produced. He further submits that the place of occurrence has not been proved. Seized articles were not sent for FSL examination. Conviction under Section 498A, I.P.C. was also based on general and omnibus materials. He accordingly prayed for acquittal of the present appellant.

Ms. Khan, learned Advocate appearing for the State submits that the case is fully proved by the deposition of P.W. 2, mother of the deceased.

She was an eyewitness to the incident. Her deposition is corroborated by the medical evidence on record including the P.M. doctor. P.W. 15 deposed injury register of the primary health centre was untraceable. Hence, trial Court relied on the evidence on record and came to a finding of guilt against the appellant which does not call for interference.

As this Court had passed an order of open remand directing the trial judge to independently assess the evidence on record, I consider it prudent to re-appreciate the evidence afresh.

On doing so, I find P.W. 2 is the most vital witness. She is the mother of the deceased. She deposed her daughter was married to the appellant. During her stay at the matrimonial home she was tortured. She was not provided food, proper clothing and was also assaulted. Her daughter narrated the incidents of torture to her whenever she came to her residence. On 2nd Kartik, her daughter came to her residence along with her husband. Thereafter, appellant left on 5th Kartik but her daughter stayed back. On the day of the incident, that is, 7th Kartik at 5.00 p.m. while she was gossiping with her daughter, appellant came to their residence. He enquired about his father-in-law and brother-in-law, who were not in the house at that time. Thereafter, he started hurling abuses towards her daughter and called her to the roof of the house. There he stabbed her daughter. She cried for help. P.W. 2 reached the roof and found the appellant was stabbing her daughter with a knife. She also cried for help. Local villagers came to the spot. Appellant tried to run away but unable to do so. He jumped from the roof and became senseless. Villagers

took her daughter to local hospital. Thereafter, she was shifted to Purulia Sadar hospital. Doctors advised to shift her daughter to Bankura Medical College Hospital. While steps were been taken, her daughter expired on the next day.

F.I.R. was lodged by P.W. 1, father of the deceased. He was not the eyewitness to the incident. However, he deposed his daughter had been married to the appellant on 4th Ashar, 1984. One year after marriage she gave birth to a female child. Thereafter, she was subjected to torture. Appellant and other in laws subjected her daughter to torture. When her daughter gave birth to a second female child, the torture increased. Accused persons used to assault her and drove her away from the house. She was denied food. Couple came to their residence on 02.11.1990. On 05.11.1990 appellant returned home but her daughter stayed back. On 07.11.1990, appellant came and assaulted her daughter with a knife on the roof. Thereafter, appellant tried to flee away. As he was unable to do so, he jumped from the roof and became senseless. His daughter was removed to Purulia Sadar Hospital where she expired. He lodged F.I.R. which was scribed by P.W. 4, Manu Banerjee. Police seized wearing apparels of his daughter as well as his son-in-law signature under a seizure list.

P.W. 3 (Sagarika Chakroborty) is the sister-in-law of the deceased who was in the house of her aunt at the time when the incident occurred. On hearing hue and cry, she came to the spot and found his sister-in-law with bleeding profusely. Appellant jumped from the roof and became

senseless. Her sister-in-law was shifted to Purulia Sadar Hospital, where she expired.

P.W. 4 to P.W. 9 are local villagers. All of them on hearing hue and cry they rushed to the residence of P.W. 1 and found the deceased with bodily injuries. P.W. 2 narrated the incident to her.

P.W. 4 (Manu Banerjee) is the scribe of the First Information Report. He is also a signatory to the seizure list prepared in connection with seizure of the wearing apparels and knife.

P.W. 5 (Muruli Sen) is also witness to the seizure of the knife and wearing apparels and signed on the seizure list.

P.W.10 (Dr. A.K. Pakrashi) is the medical officer, who was attached to Purulia Sadar Hospital. He treated the victim as well as the appellant. He noticed sharp penetrating injuries over the right breast and other parts of the body of the victim. He found her general condition very poor and advised to shift her to a better institution. Unfortunately, she succumbed to her injuries on 08.11.1990 at 12.20 a.m. He also treated the appellant and found marks of bleeding from his nostril. Appellant was discharged from hospital on 11.11.1990. He proved the bed head ticket cum injury reports of the appellant as well as the victim. He deposed the victim and the appellant had been referred from Bansgarh P.H. Centre and proved the reference slips (Exhibit 5).

P.W.11 (Dr. D.K. Basak) held post mortem examination on the body of the deceased. He proved the postmortem report (Exhibit 6).

He found the following injuries:

- i) 1" X ¼" stab injury over the left side of the back at scapular region.
- ii) Three similar injuries over the same area at slight interval, each penetrating injury thoracic cavity from back with fractured scapula (surgical emphysem).
- iv) 1" X 1 ½" penetrating injury over the left inguinal region penetrating into the abdominal cavity.
- v) 1" X 1 ¼" stab injury with 2" depth over the right thigh.
- vi) Over the first sternal segment 1" x 1 ½" bone deep stab injury.
- vii) 1" x ½" stab injury at the medial aspect of the right breast entering into the thoracic cavity.

On dissection there was blood in the left thoracic cavity, mesentery of the sigmoid colon were injured.

There was blood into the abdominal cavity.

He opined death was due to shock and haemorrhage due to the above noted injuries, ante-mortem and homicidal in nature.

In view of the direction of this Court, the trial Judge called for production of the injury register of Bansgarh P.H.C.

P.W. 15 (K.P. Sarkar), who was B.M.O.H. attached to Community Health Centre, Bansgarh and the custodian of all registers and other documents in respect of Bansgarh P.H.C. was examined. He tried to trace out the documents as per instruction of C.M.O.H., Purulia. The injury register was not traceable. He proved his report (Exhibit 10).

From the aforesaid evidence it is clear the deposition of eyewitness, P.W. 2 is corroborated not only by her relations namely, P.Ws.1 and P.W. 3

but independent witnesses, namely, P.Ws. 4 to P.W. 9. All these witnesses had come to the spot soon after the incident. They found the victim with bleeding injuries on her chest and P.W. 2 narrated the incident to them. They also deposed the appellant had jumped from the roof and became senseless.

That apart, ocular version of the eyewitness, P.W. 2 with regard to the manner of assault finds corroboration from the medical evidence of P.W. 10 and P.W.11. Both the doctors found penetrating injuries on the chest and other parts of the body of the victim.

P.W. 2, who is the mother of the deceased, is a most natural witness who was present in the house when the appellant had attacked the deceased. Her presence at the place of occurrence is most probable and her deposition clearly brings out the genesis of assault. She also explains the injuries suffered by the appellant. Thus, I am of the opinion her evidence is reliable and establishes the contours of the prosecution case including the place of occurrence.

Injury register of Bansgarh P.H. Centre could not be produced as the same was untraceable. Incident had occurred in 1990 and injury register could not be produced during re-trial in 2007. There is a lapse of more than 17 years between the incident and re-trial. P.W. 15 who was the custodian of records fairly submitted that the records were untraceable. In view of his evidence, I am of the opinion, direction of this Court that the orders for production of injury register of Bansgarh P.H. Centre be taken to its logical conclusion has been squarely addressed. Moreover, in view of

the unequivocal evidence of P.W. 2 receives corroboration from medical evidence on record namely P.Ws. 10 and P.W. 11, I am of the view non-production of the injury register from Bansgarh P.H.C. does not affect either the unfolding or the credibility of the prosecution case.

Similarly, non-sending of seized articles for FSL examination is a remissness in investigation which does not affect the prosecution case which is wholly proved by the version of the eye-witness, P.W. 2 and other evidence on record.

With regard to the conviction under Section 498A of the I.P.C., I find the evidence of P.Ws. 1, 2 and 3 are clear, convincing and establishes the ingredients of the offence. There is no inherent contradiction or inconsistency in their version. Manner of torture upon the victim at her matrimonial home due to birth of female children may be elaborately disclosed by one witness while others are less expressive. However, the gist of their depositions corroborate one another and the ingredients of the offence under Section 498A are clearly established. In the light of the aforesaid discussion, I uphold the conviction and sentence of the appellant. The appeal is accordingly dismissed.

In the event the appellant is on parole, his parole is cancelled and he is directed to surrender forthwith and serve out the remaining part of the sentence.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed

upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

Copy of the judgment be communicated to the correctional home concerned for necessary compliance.

Copy of the judgment along with LCR be sent down to the trial court at once.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties, as expeditiously as possible on compliance of all necessary formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)