

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 701 of 2017

Sudip Biswas & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Sourav Mondal, Adv.

For the State : Mr. Saswata Gopal Mukherjee, Id. PP
Mr. Parthapratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 24.11.2022

Judgment on : 24.11.2022

Joymalya Bagchi, J. :-

Appeal is directed against judgment and order dated 23.11.2017 & 27.11.2017 passed by learned Additional Sessions Judge, Fast Track Court-III, Krishnanagar, Nadia in Sessions Case No. 49(2) of 2012 (S.T. No. III(June) of 2012 convicting the appellants for commission of offence punishable under Sections 498A/304B/34 of the Indian Penal Code and sentencing appellant no.1 viz. Sudip Biswas to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-, in default,

to suffer further simple imprisonment for three months more and appellant nos.2 & 3 viz. Subodh Biswas and Pratima Biswas respectively to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each, in default, to suffer further simple imprisonment of one month more for the offence punishable under Section 304B IPC and sentencing the appellants to suffer rigorous imprisonment for three years each and to pay a fine of Rs.3,000/- each, in default, to suffer simple imprisonment for one month more for the offence punishable under Section 498A IPC.

Prosecution case as alleged against the appellants is to the effect that on 1st of Magh, 1417 BS, Rupa was given in marriage to appellant no.1 viz. Sudip Biswas according to Hindu rites and customs. A sum of Rs.30,000/- in cash and five bhories of gold ornaments were given at the time of marriage. Soon after the marriage, conduct of the in-laws of Rupa appeared to be suspicious. When Rupa returned to her parental home on '*Astamangala*' she informed her father viz. Bhajan Mollick (PW1) and others with regard to torture. Rupa informed that her in-laws had demanded Rs.1,50,000/- which they had spent in the marriage. They also stated if Rupa did not return on '*Astamangala*', they would not take her back. As he was unable to maintain his daughter, he sent her to the matrimonial home. On 26.01.2011, he came to know from the local people that his daughter had committed suicide. He lodged written complaint against the appellant no.1 viz. Sudip Biswas (husband), appellant no.2 viz. Subodh Biswas (father-in-law), appellant no.3 viz.

Pratima Biswas (mother-in-law) and sisters-in-law viz. Mithu Biswas and Tulika Biswas @ Halder respectively. On the written complaint, Krishnaganj Police Station Case No.21 of 2011 dated 26.01.2011 under Sections 498A/304B/34 of the Indian Penal Code was registered. In conclusion of investigation, charge sheet was filed against the appellants, Tulika Biswas @ Halder and Mithu Biswas. Tulika Biswas @ Halder was discharged from the case. Charges were framed against the appellants and Mithu Biswas under Sections 498A/304B of the Indian Penal Code. Accuseds pleaded not guilty and claimed to be tried. In course of trial prosecution examined 18 witnesses and exhibited a number of documents. 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 23.11.2017 & 27.11.2017 convicted and sentenced the appellants, as aforesaid. Mithu Biswas was acquitted of the charges levelled against her.

Mr. Sourav Mondal for the appellants submits that Rupa had an affair with one Bibrata De. Against her will she had been given in marriage. As a result, she was unwilling to lead her conjugal life with Sudip. Her father insisted otherwise. Out of depression, she committed suicide. PWs.12 & 13 have probalised the defence version. Evidence of PW1 in Court is completely at variance with his FIR. Hence, torture over demands of dowry ought not to be believed. Accordingly, appellants are entitled to an order of acquittal.

On the other hand, Mr. Parthapratim Das, learned advocate for the State argues the housewife was subjected to torture over demands of dowry. She was falsely accused of pregnancy and tortured. Unable to bear the torture, she committed suicide within eleven days of her marriage. Offences are proved beyond doubt.

PW1 (Bhajan Mollick) is the de-facto complainant and father of the victim housewife. In the FIR, PW1 claimed after the marriage, appellants behaved suspiciously with his daughter. He was made aware of the incident of torture on '*Astamangala*' when his daughter visited the matrimonial home. Thereafter, the appellants claimed Rs.1,50,000/- as expenses for the marriage. In Court, the witness came out with a completely different story. He stated there was some problem with regard to non-payment of Rs.1,000/- which was outstanding and grievance over the quality of gold ornaments at the time of marriage. But the torture upon the housewife as per his deposition in Court was on the suspicion that his daughter was pregnant. He was informed about such torture on the day following '*boubhat*' and brought her daughter back to his residence. He treated her at Krishnaganj hospital. Doctor opined that she was not pregnant. Initially, her husband did not want to take her back. Thereafter, she was taken back but at 4:00 P.M. On the same day, she complained she was tortured by her husband and in-laws and at night PW1 and his wife went to her matrimonial home. At the matrimonial home, PW1 was forced to sign an undertaking. On 11th Magh, he was informed by his son-in-law Sudip that his daughter was

missing. On reaching the matrimonial home of his daughter, he found her hanging in the *lichu* garden of a neighbour.

The aforesaid narration of PW1 in Court is clearly at variance with that in the FIR. In the FIR, he did not speak of his daughter being brought to the matrimonial home on the day following '*boubhat*' and that he had gone to the matrimonial home and was forced to execute an undertaking. These allegations are made for the first time in Court. In Court, this witness is completely mum with regard to demand of Rs.1,50,000/- by the appellants, as alleged in FIR.

Other witness with regard to torture over demand of dowry is Sadhan Mollick (PW2), uncle of the deceased. He stated Rupa rang him and informed him over torture in connection with dowry. She also stated about torture on '*Astamangala*' day.

As discussed above, deposition of this witness with regard to torture upon Rupa over demands of dowry is not corroborated by the de-facto complainant (PW1). PW1 does not state that his daughter came to their residence on '*Astamangala*'. On the other hand, he claimed torture on his daughter was on the ground that the appellants falsely accused her of being pregnant on the day of '*boubhat*'.

Other witnesses viz. PW8 (Brindaban Mondal), a neighbour and PW17 (Ganesh Mondal), uncle of the deceased heard about the incident of torture from PW1. As PW1 himself has not supported the prosecution case of torture over demand of dowry in Court, their hearsay versions are of little support for the prosecution case.

Hence, I am of the opinion prosecution evidence on record are not convincing enough to establish the victim-housewife had been subjected to torture over demands of dowry.

Mr. Das would strenuously argue that the victim-housewife was falsely accused of being pregnant and tortured. As a result, she committed suicide. This would attract the offence under Section 306 IPC.

PWs. 12 & 13 are the neighbours at the matrimonial home of the deceased. Both the witnesses in unison stated that Rupa told them she had a pre-marital affair and was not happy with the marriage with Sudip. They also stated as Rupa refused to stay with Sudip, her father brought her back and assured her in-laws she would reside peacefully.

These witnesses have not been declared hostile by the prosecution. On the contrary, Investigating Officer (PW17) in cross admitted these witnesses told him that Rupa was in love with another person and had been given in marriage against her will.

Their depositions give a completely different picture with regard to the circumstances leading to the unfortunate death of Rupa. She had a pre-marital affair but was compelled to marry Sudip. She was unwilling to continue the marriage but her father brought her back to the matrimonial home and assured her in-laws she would reside peacefully. Caught in such a situation Rupa committed suicide. Contrary version coming from PWs. 12 & 13, therefore, rebuts the presumption under Section 113A of the Evidence Act and I am unable to come to a

conclusive opinion that it was the torture of the in-laws at the matrimonial home which led to the unfortunate death of the housewife.

In the light of the aforesaid discussion, I set aside the conviction and sentence imposed upon the appellants.

Appellants shall be discharged from their bail bonds after six months in terms of Section 437A of the Code of Criminal Procedure.

Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)