

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. 649 of 2014

Sanjoy Ganguly

-Vs-

State of West Bengal

For the Appellant	:	Mr. Prabir Majumder, Adv. Mr. Snehansu Majumder, Adv. Mr. Avishek Chatterjee, Adv. Ms. Sangeeta Chakraborty, Adv.
For the State	:	Mr. Rudradipta Nandy, Ld. A.P.P., Mrs. Sonali Das, Adv. Mr. Ranadeb Sengupta, Adv.
Heard on	:	13 th December, 2022.
Judgment on	:	13 th December, 2022.

Joymalya Bagchi, J. :-

1. Appellant has challenged his conviction under Section 498A and 302 of the Indian Penal Code.
2. Prosecution case as alleged against the appellant is to the effect that he had married the victim Namita in 1992. Namita was regularly subjected to torture including physical assault by the appellant. On 28.07.2008 at 11.00 PM, Naren Dutta, father of Namita

(PW1) received information that his daughter had been assaulted and was admitted to hospital. He rushed to the matrimonial home of Namita. Appellant and other in-laws were missing. He went to the hospital and found his daughter had expired.

3. He lodged written complaint at Police Station resulting in registration of Nabadwip Police Station case No.156 of 2008 dated 29.07.2008 under Sections 498A/304 of the Indian Penal Code against the appellant and the in-laws. In conclusion of investigation charge sheet was submitted and charges were framed under Sections 498A/302/34 of the Indian Penal Code against the appellant and the in-laws.

4. In the course of trial, prosecution examined 15 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. It was his specific defence that the victim had not been murdered but had committed suicide.

5. In conclusion of trial, trial Judge by the impugned judgment and order dated 16.08.2014 and 18.08.2014 convicted and sentenced the appellant, as aforesaid. However, by the self-same judgment and order he acquitted the in-laws of the charges levelled against them.

6. I have gone through the evidence on record.

7. PW1, Naren Dutta is the father and de-facto complainant. He stated appellant used to torture Namita. On one occasion he had assaulted Namita with a burning coal oven. She was admitted at

Bishnupur B.P.H.C. On 28.07.2008 at about 11.00/11.30 PM, he received information his daughter was admitted to Pratapnagar Hospital, Nabadwip. He contacted police. Police told him to go to the hospital. In the morning he went to the matrimonial home of Namita. Appellant and in-laws were absent. Villagers told him victim was regularly assaulted for the last 14 years. As a result, she died. He lodged written complaint. He is also a signatory to the inquest.

8. PW2, Renu Bala Dutta is the mother of the deceased. She stated she heard from a female neighbour Namita had prepared omlet on the fateful night and had woken up her husband from sleep. Appellant woke up and kicked Namita. She fell down and became senseless. She was taken to hospital. Appellant fled away from the hospital. PW2 saw her daughter in the hospital. She did not find any external injury on Namita. She further deposed Namita was regularly assaulted at the matrimonial home.

9. PW3 and PW4 are the brothers of the deceased. They corroborated their parents.

10. PW3 (Kanai Dutta) further stated on the fateful night appellant had assaulted his sister. Thereafter, they hanged her in the handloom machine room.

11. PW6 (Parimal Sen) is a neighbour. He accompanied the appellant to the hospital. Appellant told him his wife was ailing. He informed the matter to PW1 over phone. He is a signatory to the inquest.

12. PW7 (Ajit Kr. Saha) was the Wardmaster of Nabadwip State Hospital. He produced the EMO report, marked as Ext.4 & Ext.4/1.

13. PW8 (Pradip Kr. Majumder) is a neighbour. He heard a dispute arose between the appellant and Namita over cooking. Appellant assaulted Namita. He is a signatory to the inquest report.

14. PW11 (Subrata Ganguly) is one of the sons of the couple. He was at Jaipur, Rajasthan at the time of incident. He stated relationship of the couple was good.

15. PW12 (Sanaka Sen), another neighbour was declared hostile. She stated she heard Namita had committed suicide by hanging.

16. PW15 (Dr. Molly Banerjee) is the post mortem doctor. He found following injuries :

"1) extravacassation of blood 8" x 4" diffused over antero medial aspect of left leg extending from left knee joint distalling.

2) extravacasatin of blood 1" x 1/2" placed 1 1/2" below left tibial tuberosity

3) extravacessatin of blood 1" x 1/2" diffused over right tibial tuberosity."

He also found 50 gm of dark brownish turbid fluid with a few undigested rice particles with a smell like that of alcohol. Extravacessatin of blood in legs may be caused due to striking of the part with some hard, blunt weapon, or fall on ground or due to restlessness of the patient. He reserved opinion till receipt of chemical examiner's report. Upon receipt of report he opined death was due to the effect of ethyl alcohol poisoning.

17. PW13 and PW14 are the investigating officers of the case.

18. PW14 (Tuhir Biswas) is the first investigating officer. He recorded statements of witnesses under Section 161 of the Code of Criminal Procedure.

19. PW13 (Sunil Kr. Sinha) took over investigation from PW14. He visited the place of occurrence, drew rough sketch map with index. He held inquest over the dead body. Dead body was sent to NRS Hospital for post mortem. He submitted charge sheet.

20. From the evidence on record particularly the opinion of PW15 (Dr. Molly Banerjee), it is clear victim-housewife suffered death due to poisoning. Injuries were also noted on the legs of the victim. During cross-examination suggestion was given that such injuries may be due to allergic reaction. This suggestion is wholly absurd. No evidence has come on record that victim-housewife was addicted to alcohol for a long period. On the other hand, PW15 clearly stated the injuries had occurred due to striking by hard, blunt weapon.

21. I am inclined to accept the aforesaid opinion of the post mortem doctor in view of notings in the history of injury in Ext.4 i.e. the report prepared by Emergency Medical Officer. Emergency Medical Officer noted the history as narrated by the husband i.e. appellant. It is recorded the patient had been battered by the appellant himself and had hanged herself from the roof. It is argued the Emergency Medical Officer not being examined, the report has not been proved. I am unable to

accept the proposition. Emergency Medical report prepared in the ordinary course of business in a Government hospital.

22. It was produced by the Ward Master (PW7) and proved through him. Ward Master and the Emergency Medical Officer worked in the same medical institution and it can be safely inferred that the Ward Master was aware of the hand writing of the said Medical Officer.

23. Prosecution has, therefore, proved that on the fateful night victim-housewife has been brutally assaulted by the appellant. However, it is doubtful whether the appellant had forced the victim to consume poison or that she had consumed the poison herself.

24. Trial Court relied on the false explanation given by the appellant-husband i.e. suicide by hanging as a ground to hold that he had murdered his wife.

25. In a case based on circumstantial evidence, false explanation given by an accused is an additional circumstance which reinforces the finger of guilt against him. But in the present case, a vital incriminating circumstance i.e. homicidal death has not been proved. PW14 admitted such type of poison may be accidental, suicidal or homicidal. When the cause of death itself is not clearly established, false explanation offered by the accused may not be sufficient to unerringly establish that the death was homicidal.

26. The other aspect relied by the trial Court is the conduct of the appellant, that is, he fled away without providing medical aid to the

victim. This inference is fallacious. It was the appellant who had carried the victim to the hospital and got her admitted. In the face of clear and unequivocal evidence in that regard, it cannot be said that he had left the housewife in the lurch and fled from the place of occurrence.

27. Under such circumstances, I am inclined to hold the prosecution has not been able to prove that the victim suffered homicidal death and the appellant is entitled to the benefit of doubt.

28. In the light of the aforesaid discussions while upholding the conviction of the appellant under Section 498A of the Indian Penal Code, I acquit him of the charge under Section 302 of the Indian Penal Code.

29. As the appellant has served out the sentence imposed on him under Section 498A of the Indian Penal Code, he shall be released from custody if not wanted in any other case.

30. Appeal is allowed in part.

31. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

32. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)