

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**CRA 22 of 2020
With
IA No.:CRAN 2 of 2021**

**Jayabrata Ganguly
Vs.
The State of West Bengal & Anr.**

With

CRA 65 of 2020

**Shatadipa Choudhury @ Shatadipa Chowdhury
Vs.
The State of West Bengal & Ors.**

For the Appellant : Mr. Partha Sarathi Bhattacharyya
in CRA 22 of 2020 Ms. Swarnali Saha
For the private opposite parties
In CRA 65 of 2020

For the Appellant : Mr. Aniruddha Bhattacharyya
In CRA 65 of 2020 Mr. Aditya Tiwari
For the private opposite party Mr. Uttam Mukherjee
In CRA 22 of 2020

For the State : Mr. Binay Panda
Ms. Puspita Saha

Heard on : January 1, 2023 & February 6, 2023

Judgment on : February 6, 2023

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for analogous hearing as they emanate out of the same police case.
2. CRA 22 of 2020 is the appeal by the husband who was convicted under Section 494 of the Indian Penal Code, 1860 by the impugned judgment of conviction dated December 20, 2019 and the order of sentence dated December 21, 2019.
3. CRA 65 of 2020 is at the behest of the victim. The victim is aggrieved by the exoneration of her husband in respect of most of the charges and imposition of lesser sentence in respect of the charge proved. She is also aggrieved by the other accuseds being acquitted of the charges.
4. The Court is informed that respondent no.3 in CRA 65 of 2020 who is the father-in-law of the victim expired on October 22, 2020. A photocopy of the death certificate made over to Court be taken on record.
5. Death of respondent no.3 in CRA 65 of 2020 is recorded.
6. A written complaint dated May 5, 2013 was lodged by the father of the victim which was registered as a First Information Report being English Bazar Police Station FIR No.363/13

dated May 6, 2013 under Sections 498A/406/420/34 of the Indian Penal Code, 1860. Section 376 of the Indian Penal Code was subsequently added.

7. Police submitted charge sheet on conclusion of the investigations. Charges as against the respondents in CRA 65 of 2020 were framed on August 13, 2014. The respondents in CRA 65 of 2020 pleaded not guilty and claimed to be tried.

8. At the trial, the prosecution examined twenty witnesses. Prosecution relied upon various documentary and material evidences.

9. The father of the victim deposed as P.W.1. He stated that, the victim and Jayabrata Ganguly (for convenience hereinafter referred to as Jayabrata) got married. He claimed that social marriage between the victim and Jayabrata was solemnized on April 29, 2013 when he gave certain articles to Jayabrata as dowry. After marriage, the victim went to her matrimonial home. On May 5, 2013, he went to the matrimonial home of the victim when he heard that the victim was subjected to physical torture and harassment by the accused persons. He brought the victim back to her paternal house. He lodged the

written complaint. The written complaint was marked as Exhibit-1 at the trial. He tendered the certificate of marriage between the victim and Jayabrata which was marked as Exhibit-3. He also tendered the invitation card and the photographs of marriage in evidence.

10. The victim deposed as P.W.2. She stated that, initially a registered marriage was held between her and Jayabrata on December 10, 2010. It was then decided that the social marriage will be performed after one year. During such one year grandfather of Jayabrata expired and for that reason social marriage was deferred. In the year 2011, on the pretext of promotion of Jayabrata in the job, she stated that Jayabrata demanded money from her father and uncle. She said that the social marriage was solemnized on April 29, 2013. Jayabrata took various articles before the social marriage. She stated that on April 30, 2013 she went to the matrimonial home. After the ceremony on the night of May 2, 2013, she was subjected to various physical torture and harassment including demand for further dowry. She said that she went

back to her paternal home with her father, the P.W.1 herein on May 5, 2013.

11. An acquaintance of P.W.1 and 2 deposed as P.W.3. He stated that, the marriage between the victim and Jayabrata took place in the year 2010. Subsequently, a social marriage was also solemnized.

12. Another acquaintance of P.W.1 and 2 deposed as P.W.4. He stated that, the marriage between the victim and Jayabrata was registered in the year 2010 and the social marriage was solemnized in 2013. He stated that P.W.1 gave cash and various articles to Jayabrata as dowry.

13. The mother of the victim deposed as P.W.5. She corroborated the statements made by P.W.s1 and 2.

14. An acquaintance of both the victim and the appellant deposed as P.W.6. He stated that, on May 5, 2013, P.W.1 called him on phone and told him that Jayabrata fled away with the articles given in dowry. He went with P.W.1 to the Police Station to lodge the police complaint.

15. An acquaintance of Jayabrata deposed as P.W.7. He stated that Jayabrata and his father went to him about four

years ago to take his car on hire. He carried certain articles which subsequently transpired as dowry articles.

16. A relative of P.W.1 deposed as P.W.8. He more or less corroborated the evidence of P.W.1.

17. A neighbour of P.W.1 deposed as P.W.9. He stated that a registered marriage took place between the victim and Jayabrata in 2010 and the social marriage was held on April 29, 2013. He stated that there was demand for dowry and that articles were given as dowry.

18. A relative of P.W.1 deposed as P.W.10. She corroborated the statements of P.W.1.

19. An acquaintance of P.W.1 deposed as P.W.11. He claimed that he heard that there were matrimonial disputes between the victim and Jayabrata.

20. An acquaintance of the victim as well as Jayabrata deposed as P.W.12. He stated that, a registered marriage took place between the victim and Jayabrata in the year 2010 and a social marriage was held in the year 2013. He stated that he heard that the victim and Jayabrata got second marriage at Siliguri.

21. P.W.13 is the mother of one Manti Dey. She was declared hostile by the prosecution. She stated that in the year 2007 Manti Dey got married with Sushanta Banerjee and in 2008 such marriage was dissolved. A child was born out of such wedlock. Manti Dey was residing separately with her daughter.

22. Manti Dey deposed as P.W.14. She claimed that she did not know Jayabrata. She was declared hostile by the prosecution and cross-examined by the prosecution. She denied that, the marriage between her and Jayabrata was registered on April 1, 2013.

23. The doctor, who examined Jayabrata, deposed as P.W.

15. He stated that, there was nothing to suggest that, Jayabrata was incapable of sexual intercourse on the date of the medical examination i.e. on May 22, 2013.

24. The doctor, who examined the victim, deposed as P.W.

16. He stated that, he did not find any injury mark on the body of the victim or on her private parts. He stated that, there was nothing to suggest that the victim was not subjected to sexual intercourse.

25. The neighbour of Jayabrata deposed as P.W. 17. He was a seizure list witness.

26. The brother of Manti Dey deposed as P.W.18. He identified his signatures in the seizure list. He was declared hostile by the prosecution.

27. A Marriage Registrar deposed as P.W.19. He produced the registration of marriage and certified true copy thereof, which was tendered in evidence and marked as exhibit 13. He stated that, the marriage between Manti Dey and Jayabrata was registered on April 1, 2013 under the provisions of Special Marriage Act, 1954.

28. P.W. 20 is the Investigating Officer. He narrated the course of investigations. He tendered various documents which were marked as exhibits.

29. On conclusion of the evidence of the prosecution, the accused persons were examined under Section 313 of the Code of Criminal Procedure (Cr.P.C.) where they pleaded not guilty and to be innocent. Jayabrata in his examination under Section 313 of the Cr.P.C. stated that exhibit 13 was false.

30. Charges against three persons were framed on August 13, 2014. Two were acquitted by the impugned judgment of conviction while Jayabrata was convicted under Section 494 of the Indian Penal Code, 1860 (IPC). Jayabrata was sentenced to suffer rigorous imprisonment of five years with a fine of Rs.50,000/- in default rigorous imprisonment for six months for committing the offence under Section 494 of the IPC by the impugned order of sentence.

31. Learned advocate appearing for the victim submits that, the prosecution was able to produce cogent and reliable evidence with regard to commission of offence under Section 498A of the I.P.C. against all of the three accused persons. The victim along with her relatives corroborated each other in the evidence of torture and harassment meted out by Jayabrata and two other accused persons against her. He submitted that, the learned Judge erroneously overlooked the same and disbelieved the evidence of the victim and other prosecution witnesses.

32. Learned advocate appearing for the victim submits that, the version of the victim was corroborated in material

particulars by various other prosecution witnesses. He refers to the fact that the written complaint was lodged on May 5, 2013. The First Information Report was registered on May 6, 2013. The Investigating Officer made a prayer for recording the statement under Section 164 of the Cr.P.C. of the victim on May 11, 2013. The victim recorded her statement, which was marked as exhibit 8 at the trial. Therefore, it would be incorrect to claim that the victim and her relatives made a claim of torture and harassment for the first time in Court in their oral testimonies.

33. Learned advocate appearing for the victim submits that, the ingredients of Section 494 of the IPC stood established as against all the three accused persons. Various articles were made over by the family of the victim to the accused persons. Such articles were in their custody till such time. They were recovered by the police. Therefore, till such recoveries were made, the offence under Section 406 of the IPC stood committed. Therefore, the learned Judge erred in acquitting all the accused persons under such charge.

34. Referring to the other charges, learned advocate for the victim submits that, other charges also stood established by the prosecution beyond reasonable doubt, as against all the accused persons. The learned Judge erred in not convicting the accused persons.

35. Learned advocate appearing for the victim submits that, given the gravity of the offence and the involvement of Jayabrata, the quantum of punishment imposed on Jayabrata under Section 494 of IPC was inadequate. The same should also be enhanced to the maximum level prescribed by law.

36. Learned advocate appearing for the accused persons submits that, the learned Trial Judge took a plausible view of the involvement of the accused persons and, therefore, acquitted two of the accused. The Appellate Court should not interfere with order of acquittal of two of the accused persons. So far as Jayabrata is concerned, he submits that, Jayabrata adopted the child of Manti Dey. Jayabrata was looking after such child. He refers to the recording of the impugned order of sentence. He submits that, the quantum of punishment

imposed upon Jayabrata by the impugned order of sentence should be reduced.

37. Learned advocate appearing for the accused relies on **(2008) 10 SCC 450 (Ghurey Lal –vs- State of Uttar Pradesh)** and submits that, no ground for interference with the order of acquittal against the two accused exists in the facts and circumstances of the present case. He submits that the impugned judgment of conviction and the order of sentence, acquitting the two accused should not interfered with.

38. A registered marriage between the victim and Jayabrata took place on December 10, 2010 as appearing from Exhibit 3. The victim did not go to the matrimonial home subsequent to the registration of marriage with Jayabrata. She stayed back at her paternal home. The evidence of the prosecution is that, the family of the victim and the victim were waiting for a social marriage to take place between the victim and Jayabrata for the victim to go over to the matrimonial home.

39. A social marriage was arranged between the victim and Jayabrata on April 29, 2013. Thereafter, in accordance with Hindu rituals, the victim went over to her matrimonial home.

She stayed there till May 5, 2013 when she came back with her father to her paternal home. In between April 29, 2013 till her return to her paternal home on May 5, 2013, she claimed that, she was tortured and harassed by the accused persons at her matrimonial home commencing from the night of May 2, 2013. She narrated several acts which she claimed were harassment and mental torture on her. She claimed that, further demand for dowry was made.

40. PW-19 is the Marriage Registrar who, in his evidence stated that, a registered marriage took place between Jayabrata and Manti Dey on April 1, 2013. He tendered the marriage certificate between Jayabrata and Manti Dey, which was marked as Exhibit-13.

41. The mother and brother of Manti Dey were produced as prosecution witnesses. They were declared hostile. They did not allude to the marriage between Manti Dey and Jayabrata. Manti Dey, herself, was examined as a prosecution witness. She also did allude to her marriage with Jayabrata.

42. Exhibit-13, however, speaks otherwise. It is a certificate of marriage between Jayabrata and Manti Dey. There is a

previous certificate of marriage between the victim and Jayabrata registered on December 10, 2010 being Exhibit 3.

43. Therefore, during the subsistence of the first marriage of Jayabrata with the victim, he entered into a second marriage with Manti Dey. Consequently, an offence under Section 494 of the Indian Penal Code, 1860 stood committed by Jayabrata. This is the finding of the learned Trial Judge by the impugned order of conviction.

44. None of the accused persons including Jayabrata was able to draw our attention to any fact to establish that when Jayabrata married Manti Dey as evidenced by Exhibit 13 the marriage between Jayabrata and the victim evidenced by Exhibit 3 did not subsist. Jayabrata admitted his guilt under Section 494 of the Indian Penal Code, 1860 when the impugned order of conviction was passed. He prayed for mercy on the ground that he adopted the daughter of Manti Dey born and out of her first marriage. He also said that he was the only earning member of the family. In such circumstances, the learned trial Judge imposed a punishment of rigorous imprisonment of 5 years with a fine of Rs.50,000/- and in

default further rigorous imprisonment for 6 months for offence punishable under Section 494 of the Indian Penal Code, 1860 as against Jayabrata.

45. We do not find any ground to upset the quantum of punishment so imposed by the learned Trial Judge. The learned Trial Judge gave reasons as to why he was imposed with such quantum of punishment.

46. So far as the other charges against the two other accused are concerned, the learned Trial Judge held that the charges were not proved beyond reasonable doubt by the prosecution. He ascribed reasons for returning such finding. Section 494 of Indian Penal Code stipulates a band within which a punishment can be imposed. The learned Trial Judge exercised his discretion in awarding the sentence within the permissible band. The order of sentence contains adequate reasons for the exercise of discretion. The view expressed by the learned Trial Judge on the appreciation of the evidence led by the prosecution is a plausible view. We do not find any material to come to a finding that the view expressed by the Learned Trial Judge is perverse.

47. We need to keep in mind that, the victim entered the matrimonial home subsequent to April 29, 2013 and left the matrimonial home on May 5, 2013. According to the victim, the harassment and torture commenced from May 2, 2013.

48. **Ghurey Lal (surpa)** is of the view that an acquittal by a Trial Court should not be interfered with unless it is totally perverse or wholly unsustainable. It notes that the Trial Court has the advantage of watching the demeanour of the witnesses, which gave the evidence, therefore, an Appellate Court should be slow to interfere with the decision of the Trial court. It also notes that an Appellate Court undoubtedly is possessed with wide powers of re-appreciating and re-evaluating the entire evidence. However, it would be justified in interfering with the judgment of acquittal only when the judgment of the trial Court is palpably wrong, totally ill-founded or wholly misconceived, based on erroneous analysis or evidence and non-existent material, demonstrably unsustainable or perverse.

49. The charges under Sections 498A/420/406 of the Indian Penal Code, 1860 as against the accused was considered by

the learned Trial Judge in the light of the evidence adduced at the trial. The learned Trial Judge found the second marriage of Jayabrata although did amount to mental torture for the victim, the same did not result in causing grave injury or danger to the life of the victim. According to the learned Trial Judge such mental torture may be sufficient ground for a matrimonial suit but did not fall within the ambit of Section 498A of the Indian Penal Code. Learned Trial Judge found discrepancies in the evidence of the prosecution relating to the charge of cheating. He found discrepancies both on the quantum of money and articles claimed to be given. The charge of rape as against Jayabrata was found not proved in view of the subsisting marriage between the victim and Jayabrata by dint of Exhibit 3. Therefore, the learned Trial Judge extended the benefit of doubt to the accused excepting the charge under Section 394 of the Indian Penal Code as against Jayabrata.

50. It is trite law that, in an appeal against a judgment of acquittal, although an appeal Court on reappraisal can reverse the same and convict the accused, it should be resorted only

when the appeal Court finds overwhelming or compelling for reasons for the same. As a rule of prudence, Appellate Courts are required to be slow in interfering with a judgement of acquittal. This rule is premised upon the foundations that, an accused is presumed innocent until proven guilty, this presumption is not weakened or lessened by virtue of a pending appeal; the demeanour of the witness could best be adjudged by the trial Court as the witness action took place before it and that the benefit of doubt must be extended to the accused.

51. In the facts and circumstances of the present case, we cannot say that the impugned judgment and order is wholly unsustainable or palpably wrong requiring a reversal.

52. In such circumstances, we find no merits in the two appeals.

53. CRA 65 of 2020 and CRA 22 of 2020 are dismissed.

54. The period of detention suffered by Jayabrata be set off against the sentence of imprisonment under Section 428 of the Code of Criminal Procedure. The Learned Trial Judge by the impugned order of sentence directed that, if the fine is

realised, it be given to the victim as part of the compensation under Section 357 of the Code of Criminal Procedure. We affirm such direction.

55. The Trial Court records along with a copy of this judgment and order be remitted to the appropriate Court for necessary action.

56. In view of the dismissal of the two appeals, nothing survives in CRAN 2 of 2021 filed in connection with CRA 22 of 2020. The same is also dismissed.

57. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Debangsu Basak,J.)

58. I Agree.

(Md. Shabbar Rashidi, J.)