

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 71 of 2004

Maya Pal & Ors.
-Vs-
State of West Bengal

<i>For the Appellants</i>	:	Mr. Angshuman Chakraborty Mr. S.S. Saha
For the State	:	Mr. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	:	20.12.2022, 20.01.2023
Judgment on	:	17.04.2023.

Ananya Bandyopadhyay, J. :-

1. This appeal is preferred against the judgment and order dated 16.01.2004 & 17.01.2004 passed by Learned Additional Sessions Judge, Fast Track Court No. 2, Barasat, North 24 Parganas in Sessions Trial No. 3(8)03 arising out of Sessions Case No. S.C. 2(6)03 convicting the appellants under Section 498A/306 of the Indian Penal Code, sentencing the appellants Maya Rani Paul and Purnima Paul to suffer rigorous imprisonment for 4 years and to pay a fine of Rs. 500/- in default to suffer simple imprisonment for three months for the offence under Section 306 of Indian Penal Code and they are

further sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs. 500/- in default to suffer simple imprisonment for three months for the offence under Section 498A of Indian Penal Code. Both the sentences shall run concurrently.

2. The appellant Bholanath Paul is sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for three months for the offence under Section 306 of Indian Penal Code and he is also sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for two months for the offence under Section 498A of Indian Penal Code. All these sentences shall run concurrently.

3. The appellant Sannyasi Paul is hereby sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/- for the offence under Section 306 of Indian Penal Code in default to suffer simple imprisonment for three months. For the offence under Section 498A of Indian Penal Code is hereby sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for two months. All the sentences shall run concurrently.

4. The prosecution case emanated from the complaint filed at Amdanga Police Station, precisely stating the complainant on 27.07.2001 at around 5 AM observed smoke and stench pervading from the dwelling house of Sannyasi Paul which prompted him to assemble at the house of the Sannyasi Paul along with his neighbour and pushed the door. On constant endeavour by 4/5 persons they entered through the door and found Rita Paul @ Jharna wife of Sannyasi Paul aged about 25 years lying in supine position on the floor of her room with the head towards the north being completely burnt. Villagers also climbed on the tile shed of the roof and extinguished the fire by pouring water. The complainant requested for investigation and revelation of the actual cause of death of the victim Rita Paul.
5. Based on the aforesaid complaint Amdanga P.S. Case No. 83/2001 dated 27.07.2001 was initiated for investigation. On completion the investigation chargesheet was filed under Section 498A/306/304B of the Indian Penal Code along with Section 3 and 4 of the Dowry Prohibition Act against the appellants vide chargesheet no. 111 on 12.12.2001. Charges were framed to which the accused persons pleaded to be not guilty and claimed to be tried.
6. The prosecution cited 14 witnesses and exhibited certain documents.

7. The Learned Advocate for the appellants submitted that the impugned judgment, the order of conviction and sentence were based on conjecture and surmise in absence of evidence of the individual wrongful act to have been committed by the appellants. The prosecution could not establish the demand for dowry or any overt act or proximate instigation to have compelled the victim to commit suicide as an ultimate measure to redress her grievance in exclusion of any other option. The prosecution has failed to establish its case in absence of cogent evidence on record and the appeal shall be allowed.
8. The Learned Advocate for the State submits the torture inflicted upon the victim by the appellants is conspicuous through material evidence on record supported by the opinion of the PM Doctor of suicidal death of the victim as an immediate consequence for demand of dowry and ill-treatment. The prosecution has been successful in establishing its case and the appeal shall be dismissed.
9. The appellant Purnima Paul has expired on 25.01.2012, and the appeal abates against the appellant no. 2.
10. A circumspection of the evidence of the prosecution witness reveals as follows: PW-1, Nemai Ch. Paul the brother of the victim deposed the victim to have married the appellant Sannyasi Paul on 28th Falgun, 1998. A sum of Rs.8000/-,

wristwatch, cot, furniture, gold ornaments etc. were given at time of marriage. 2/3 months after the marriage the appellants who resided at the matrimonial home of the victim subjected her to physical and mental torture and pressurized her to procure money for the appellant Sannyasi Paul to run a business to the tune of Rs. 10,000/-. A village “shalishi” to that account did not yield result. The appellants used to instigate the victim to commit suicide. Being informed of victim’s death sustaining burn injuries the complainant reached the spot and thereafter lodged the complaint which was written by Nanda Kabashi bearing his signature marked Exhibit-1. He also identified his signature on the inquest report marked Exhibit-2. During his cross-examination PW-1 stated that the victim had told him about the torture and accordingly he tried to convince the appellants as well as the victim. He expressed inability to evince a “Shalishi” to have taken place convened by a local club. He further stated that his sister was issueless and he was not aware as to whether the victim was mentally upset as she could not deliver any child.

11. PW-2, Prasanta Paul, in his testimony stated to have witnessed smoke permeating from the house of the appellants and found the room to be bolted from inside on the relevant date and time. They entered into the room by removing tiles and recovered the dead body of the victim. Subsequently, he

informed the incident to the police station. He identified his signature on the inquest report, seizure list, photographs of the victim marked Exhibit-4, 5, X to X/3 for identification respectively. PW-2 further stated of “Shalishi” on two occasions. Initially the issue was amicably settled which continued for a temporary period flaring up later on. During his cross-examination PW-2 stated to be unaware of the reason of the family disturbances of the victim and the appellants.

12. PW-3, Ganapati Paul conformed to the evidence of the PW-2 regarding the incident to have been witnessed by him. He stated to be present at the “Shalishis” held to resolve the family dispute concerning the demand of the money by the appellants from the victim’s family. During his cross-examination initially PW-3 stated the victim’s brother to have told him about the torture meted out to his sister eight months prior to the date of the incident over a demand of Rs. 10,000/-.

13. PW-4 was declared hostile by the prosecution.

14. PW-5 did not have any personal knowledge regarding the incident.

15. PW-6, Manju Paul conceded to the deposition of PW-1 regarding family disturbances on demand of dowry. She further stated on a Thursday, there was a quarrel between the victim

and her mother-in-law and on the following day the victim committed suicide.

16. PW-7, conducted the post mortem examination in respect of the deceased victim and opined that the death was due to ante mortem burn injuries and was suicidal in nature, as per the document of PM report marked Exhibit-6.
17. PW-8 conducted the magisterial inquest and identified the inquest report by him marked Exhibit-7.
18. The evidence of PW-9 is based on hearsay.
19. PW-10 in his evidence stated to have been ignorant of the reason of the death of the victim and had learnt from the victim's brother that appellants demanded money and confirmed of his presence at the "Shalishi" meeting. However, contradicted himself during cross-examination stating though he knew there was family disturbances but was unaware of its reasons.
20. The evidence of PW-11 self contradictory. He did not have any personal knowledge regarding the incident. Though he stated to have known the appellants demanded money.
21. PW-13 filled up the formal FIR and identified his endorsement and filled up formal FIR marked as Exhibit-1/1 and Exhibit-9 respectively.

22. PW-14 was endorsed to investigate the case who visited the place of occurrence, prepared the inquest report and sent the dead body for post mortem examination, prepared sketch map, see certain articles under a seizure list, examined the witnesses under Section 161 Criminal Procedure Code and took steps for judicial inquest. Thereafter he arrested the appellants, collected the post mortem report and submitted the charge sheet as aforesaid.
23. Apart from vague allegations, general and omnibus in nature, infinitesimal support from the event of “Shalishis” asserting the demand of a sum of Rs 10,000/-, in the presence of the prosecution witnesses viz. PW-2, PW-5, PW-10, PW-11 who confounded as well as confronted the reason of the occurrence of such “Shalishis”, the prosecution failed to demonstrate any effective credible evidence to justify to offence committed under Section 498 of the Indian Penal Code.
24. Prosecution case did not project any specific incident of instigation, imminent and menacing beyond despair and despondency to propel her to cross the rubicon. The cardinal principle to constitute an offence under Section 306 of the Indian Penal Code is the susceptibility to incitement, an inexplicable provocation to impact a person to such an

extent of remorse that he or she commits suicide devoid of any option or alternative to continue with life.

25. Under the facts and circumstances of the case in absence of proof of commission of the offence by the appellants beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.
26. The appellants are acquitted of the charges. The appellants if in custody, be released forthwith if not required in connection with any other case. The appellants shall, however, furnish a bail bond to the satisfaction of the trial Court which shall continue for six months from date in terms of Section 437A of the Criminal Procedure Code.
27. CRA 71 of 2004 is disposed of accordingly.
28. Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.
29. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)