

**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 116 of 2021

**Somnath Das @ Somenath Das
VS.**

The State of West Bengal & Ors.

For the Appellant : Mr. Saryati Datta
Mr. SanjiB Kr. Dan, Advocates

For the
Respondent no. 2 : Mr. Soumik Ganguli,
Mr. Dilip Kr. Sadhu, Advocates

For the State : Mr. Bidyut Kumar Roy,
Ms. Rita Dutta, Advocates

Heard on : May 12, 2023 & May 15, 2023

Judgement on : May 15, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment and order of acquittal dated January 25, 2021 passed by the learned Additional Sessions Judge, 2nd Court, Katwa in Sessions Trial

no. 26 of 2016 arising out of Sessions Case no. 31 of 2015 acquitting the accused persons of the charges under Sections 498A/306/302/34 of the Indian Penal Code, 1860.

2. Learned advocate appearing for the appellant submits that, the learned Trial Judge failed to take into consideration relevant facts and arrived at an incorrect finding of fact.

3. Learned advocate appearing for the appellant refers to the written complaint lodged by the father of the victim, being the prosecution witness (P.W.) No. 1. He submits that the victim used to inform P.W. 1 as to the torture being meted out to her. He refers to the contents of the written compliant.

4. Learned advocate appearing for the appellant submits that, the investigation was carried out in a perfunctory and lackadaisical manner. There are serious doubts as to the transparency of the investigation.

5. Learned advocate for the appellant submits that the victim was, in fact, murdered. In support of such contention, he refers to the depositions of P.W. 1, P.W. 2 and P.W. 3 where they stated that a rope was lying next to the dead body and that the

police seized it under seizure list. The rope was, however, not sent for forensic examination nor was the same produced before Court for identification.

6. Learned advocate appearing for the appellant submits that P.W. 2, P.W.3 and P.W. 4 were interrogated by the Investigating Officer.

7. Learned advocate appearing for the appellant submits that, although, P.W. 5 stated in his testimony that he recorded the statement under Section 164 of the Criminal Procedure Code but was tutored by the police, such statement corroborates the charge as against the respondents.

8. Learned advocate appearing for the appellant submits that P.W. 6 confirmed that the death was due to hanging ante mortem in nature and that it may be homicidal/suicidal in nature. He contends that, the fact that the victim was tortured which led her to kill herself was a factor which was required to be considered. Learned Trial Judge erred in not doing so.

9. Learned advocate for the appellant refers to the oral testimony of P.W. 5 and submits that, such testimony did not

vitiating the fact that the victim was either compelled to commit suicide or was murdered.

10. Learned advocate appearing for the private respondent relies upon **2023 SCC Online SC 575 Kashibai & Ors. Vs. State of Karnataka**. In the facts of the present case, the post mortem report did not rule out the possibility of suicidal hanging. Moreover, the prosecution failed to establish that, the victim was tortured in such a manner that she committed suicide. According to him, ingredients under Section 306 of the Indian Penal Code, 1860 were not satisfied. Moreover, there were no materials to establish any torture or dowry demand. Learned Judge, accordingly, correctly acquitted all the accused persons.

11. On May 8, 2014, P.W. 1, lodged a written complaint with the police with regard to torture and harassment of his daughter and the death of her daughter. Such police complaint was registered as a First Information Report being F.I. R No. 144 of 2014 dated May 8, 2014 by the police under Section 498A/302 of the Criminal Procedure Code, 1860. Police on the

completion of the investigations submitted a charge sheet against the accused persons on July 31, 2014 under Sections 498A/302/34 of the Indian Penal Code, 1860.

12. Court framed charges as against the accused persons on May 3, 2016 under Sections 498A/306/302/34 of the Indian Penal Code, 1860. Accused persons pleaded not guilty of the charges and claimed to be tried.

13. At the trial, the prosecution examined six witnesses to bring home charges apart from relying upon various documentary evidences. On conclusion of the examination of the evidence of the prosecution, the accused persons were examined under Section 313 of the Criminal Procedure Code where they claimed to be innocent and falsely implicated.

14. P.W. 1 is the father of the victim. He stated that, the victim was married to the respondent no. 2. After marriage, the victim started to lead her matrimonial life at her matrimonial place. Two sons were born out of their wedlock. The victim was subjected to torture by the private respondents. The private respondents used to use filthy languages towards the victim.

They assaulted the victim in such a manner that her left hand was fractured.

15. P.W. 1 stated that on May 8, 2014 at 10 A.M., he was informed over telephone that the victim committed suicide by hanging. After receiving such news, he went to the matrimonial place of her daughter and noticed that the dead body of his daughter was lying in the veranda. He also noticed that one rope was lying in the courtyard. He lodged the written complaint with the police. He identified his signature on the written complaint which was marked as Exhibit-1. He stated that police came to the spot and seized the nylon rope by preparing a document which he signed. He identified his signature on the seizure list which was marked as Exhibit-2. He also signed the inquest report which was tendered in evidence and marked as Exhibit-3.

16. P.W.1 stated that, prior to the marriage with his daughter, respondent no. 2 was in another marriage and that the wife of the first marriage also faced unnatural death. The marriage of his daughter was second so far as the respondent no. 2 is

concerned after getting a decree of divorce of the first marriage. The respondent no. 2 used to assault his daughter under influence of liquor.

17. P.W. 2 is an acquaintance of P.W. 1 and the victim. He stated that the victim was married to the respondent no. 2. Victim expired by hanging on May 8, 2014. He came to know about the incident from P.W. 1. Upon receiving such news, they went to the village of the respondent no. 2. When they reached there, they noticed that the dead body of the victim was lying on the floor. He also noticed one rope was kept beside the dead body. Police came and collected the rope by preparing the document which he signed. The signature on the seizure list was tendered in evidence and marked as Exhibit 2/1. He stated that, the relation between the victim and the respondent no. 2 was not very well and they used to quarrel with each other and such relation was the cause of commission of suicide by the victim. He came to know such facts from P.W. 1. He identified the respondent no. 2 in Court.

18. The younger brother of P.W.1 deposed as P.W.3. He stated that, the victim was married to respondent no.2. He identified the respondent no.2 in Court. He stated that he heard that the victim was subjected to physical torture and for that reason she committed suicide by hanging. On getting the news, they went to the house of the respondent no2 and where they noticed the dead body was lying on the floor and a nylon rope was lying beside the dead body. Subsequently, police came and seized the rope and prepared a document. His signature on the seizure list dated May 8, 2014 was marked as Exhibit-2/2. His signature on the inquest report of the victim was tendered in evidence and marked as Exhibit-3/1. He identified the private respondents in Court.

19. An acquaintance of victim deposed as P.W.4. He stated that, he knew the private respondents. After marriage, the victim used to reside at her matrimonial place. He knew that victim committed suicide by hanging. He was examined by the police for the incident.

20. P.W.5, is son of the victim and the respondent no.2. He stated that, the victim committed suicide about four years ago and it was summer season. She committed suicide in the afternoon. He stated that the victim gave him Rs.5/- to purchase biscuit. He went to the shop and when he came back noticed that all the doors were closed from inside. He took entry into the house by scaling the boundary wall. He searched for the victim at the upstairs and did not find her. Then he went to the cowshed and noticed that the victim was hanging from the ceiling of the cowshed. He raised voice. The neighbours came to the spot. He could not say why the victim took the decision to end her life. He was produced before the Magistrate at Katwa Court where the statement under Section 164 of the Criminal Procedure Code was recorded. Such document was tendered in evidence and marked as Exhibit-4/1 with his signature being marked Exhibit-4.

21. In cross-examination, P.W.5 stated that, what he said to the Magistrate was the version which was tutored by the police.

22. P.W.6 is the doctor who conducted Post Mortem on the dead body of the victim. He stated that on May 9, 2014, he conducted the Post Mortem on the dead body of the victim. The dead body was identified by a police constable. During Post Mortem he noted the injuries as stated in the Post Mortem Report. He opined that death was due to cardio respiratory failure due to severe asphyxia. He tendered Post Mortem Report which was marked as Exhibit-5. He also opined that severe asphyxia may be homicidal but there was no such sign noticed by him.

23. As noted above the private respondents were charged under Sections 498A/306/302/34 of the Indian Penal Code, 1860.

24. So far as torture being meted out to the victim for demand of dowry is concerned, the evidence of the prosecution, at best is sketchy. P.W.1, who is the father of the victim and P.W.3 who is the elder brother of P.W.1 did not speak about any demand of dowry being made by the private respondents. None of the prosecution witnesses corroborated the statement of the physical assault on the victim by the respondents. No evidence

was produced to corroborate the claim that due to assault, the victim suffered fracture as claimed.

25. With regard to charge of murder, the deposition of the Post Mortem Doctor being P.W.6, is material. He stated that he did not find any sign with regard to severe asphyxia being homicidal. Such opinion of his in the present case, remains unchallenged on behalf of the prosecution. In fact, opinion of P.W.6 is that, the death was suicidal in nature, not homicidal. Therefore, victim was not murdered. Consequently, the charge of murder against the private respondents fails.

26. The charge under Section 306 of the Indian Penal Code, 1860 as against the private respondents remains unsubstantiated. P.W.5, who is the son of the victim deposed that he saw the victim last. He came to the house after school when the victim gave him Rs.5/- to purchase biscuit. He went out of the house to purchase the same. He came back to the house after purchasing the biscuit and found all the doors of entry being locked from inside. He scaled the boundary wall to enter into the premises. He went upstairs of the premises to

search for his mother, the victim. He could not find her there. He went to the cowshed and found the victim to be hanging. The oral testimony of P.W.5 read with the Post Mortem report being Exhibit-5 and the testimony of P.W.6 demonstrate that the victim committed suicide. None of the private respondents were present at that point of time when the victim committed suicide.

27. The oral testimonies of the other prosecution witnesses are sketchy with regard to the alleged torture allegedly meted out to the victim prior to the private respondents. P.W.1 spoke of the victim complaining to him of the torture being meted out by the private respondents. However, such alleged torture is sketchy and in fact, not established.

28. Other prosecution witnesses who are acquaintance of either the P.W.1 or the victim spoke about torture being heard from P.W.1. Therefore, it would not be appropriate to rely upon such hearsay evidence of other prosecution witnesses with regard to the torture allegedly meted out by the private respondents to the victim.

29. **Kashibai and others (Supra)** is a case where, the victim committed suicide. There was a charge under Section 307 of the Indian Penal Code, 1860 as against the accused. It observes as follows:-

“10. In view of the above, it is quite clear that in order to bring the case within the purview of ‘Abetment’ under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.”

30. As noted above, the facts of the present case do not sustain a finding that there was any evidence with regard to any positive act on the part of any of the accused to instigate or aid to drive a person to commit suicide.

31. In such circumstances, we find no ground to interfere with the impugned judgment of acquittal.

32. CRA 116 of 2021 is, accordingly, **dismissed**.

33. A copy of this judgment and order along with trial Court records be remitted to the appropriate Court forthwith.

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

(Debangsu Basak, J.)

35. I agree.

(Md. Shabbar Rashidi, J.)