

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

CRA 151 of 2011

Urubala Karmakar

-Vs-

State of West Bengal

With

C.R.A. 372 of 2011

Bijoy Karmakar

-Vs-

State of West Bengal.

For the Appellants : Mr. Moinak Bakshi, Adv.

For the State : Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Manoranjan Mahata, Adv.

Heard on : 7th February, 2023.

Judgment on : 7th February, 2023.

Joymalya Bagchi, J. :-

1. Appeal is directed against the judgment and order dated 12.01.2011 passed by the learned Additional Sessions Judge, FTC No.4, Raghunathpur, Purulia in Sessions Trial No.8(12)06 arising out of Sessions Case No.449 of 2006 convicting the appellants for commission

of offence punishable under Sections 304B/34 of the Indian Penal Code and Sections 498A/34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act and sentencing them to suffer rigorous imprisonment for life in respect of charge under Section 304B/34 of the Indian Penal Code. No separate sentence was awarded in respect of offence under Sections 498A/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

2. Prosecution case runs as follows:-

Bijoy Karmakar was married to Sonali on 28th Ashar 1411 BS according to Hindu rites and customs. At the time of marriage Rs.75,000/- including gold and silver ornaments, furniture etc. were given to the bridegroom party. Sonali started residing at the matrimonial home. One year and eight months later she gave birth to a daughter. After giving birth to the daughter, her husband Bijoy and other in-laws including mother-in-law viz., Urubala Karmakar and *devar* (brother-in-law) viz., Dulal started to torture her physically and mentally. They demanded Rs.40,000/-. Her father viz., Magaram Karmakar tried to settle the matter but failed. Due to poverty he was unable to arrange the money. On 29.06.2006 at 11.30 A.M. Magaram received information that his daughter had sustained 90% burn injuries. He rushed to her matrimonial home and found her lying in the verandah. She was shifted to hospital. Soon thereafter, Sonali died.

3. Magaram lodged written complaint against the appellants i.e. Bijoy Karmakar (husband of Sonali), Urubala Karmakar (her mother-in-law) and Dulal Karmakar (her brother-in-law) resulting in registration of Raghunathpur Police Station Case No.35 of 2006 dated 29.06.2006 under Sections 498A/304B of the Indian Penal Code and under Sections 3/4 of the Dowry Prohibition Act.

4. In conclusion of investigation, charge-sheet was filed and charges were framed under Sections 498A/34 and Sections 304B/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act against the appellants and Dulal Karmakar. During trial prosecution examined 14 witnesses to prove its case. Defence of the appellant was one of innocence and false implication. It was their specific defence Sonali had suffered accidental burns during cooking. It was the further defence of Dulal Karmakar that he resided separately from the couple and was at his place of work at the time when the incident occurred. He led defence evidence through DW1, an Assistant Professor of Raghunathpur College to prove his alibi. Upon considering the evidence on record, trial court by the impugned judgment and order dated 12.01.2011 convicted and sentenced the appellants, as aforesaid. Dulal Karmakar, however, was acquitted of the charges levelled against him.

5. Mr. Moinak Bakshi, learned Advocate for the appellants argued prosecution case of torture over demand of dowry has not been proved. During cross-examination, PW1 admitted relationship between

the couple was good for one year and four months. PW1 is silent with regard to complaints of torture by Sonali soon before her death. On the other hand, PW2, a neighbour deposed Sonali told her that her saree had caught fire while cooking. This wholly improbabilises the prosecution case. Appellants are entitled to an order of acquittal.

6. Mr. Madhusudan Sur, learned Advocate for the State submits Sonali died due to burn injuries at the matrimonial home. Post mortem doctor (PW6) deposed that she had suffered 100% burns and opined death might be homicidal. PW1 stated Sonali told him that the appellants had set her on fire. Possibility of accidental death is wholly ruled out.

7. PWs, 1, 4, 8 and 9 are the relations of deceased Sonali.

8. Magaram Karmakar (PW1) is her father and de-facto complainant. He deposed at the time of marriage he gave Rs.75,000/- in cash, gold and silver ornaments and furniture. After one year and eight months, Sonali gave birth to a female child. Bijoy demanded Rs.40,000/- before the birth of child. After the child was born, the demand was reiterated. Sonali came to her father's house and stated if demand is not fulfilled, Bijoy and Urubala would kill her. On 14th Ashar he received information Sonali had sustained burn injuries and was lying at matrimonial home. He went there and Sonali told him Bijoy and Urubala had set her on fire. She was shifted to Raghunathpur Hospital where she died. He reported the incident to police. Police

prepared inquest report. He signed on the inquest report. Police also seized various articles. He signed on the seizure list.

9. In cross-examination, he admitted Sonali lived happily at the matrimonial home for about one year and four months. When she conceived, Bijoy admitted her to hospital. After delivery of baby, Bijoy and Sonali came to their house and all of them were cheerful. Bijoy and Sonali had gone to Raghunathpur Hospital after she had received burn injuries. He did not ask Bijoy and Urubala or any other villagers how Sonali sustained burn injuries.

10. PW9 is the mother of the deceased. She deposed the appellants and Dulal had demanded Rs. 50,000/-. They could not fulfill the demand. The accused persons set her daughter on fire. When she went to hospital her daughter was not in a position to speak.

11. In cross-examination, she admitted she had not stated before police that accused persons had demanded Rs.40,000/- after marriage.

12. Kuran Karmakar (PW4) is the uncle of the deceased. He also stated Bijoy and his mother demanded Rs.40,000/- but they could not fulfil their demand. 4/5 days before death, Sonali came to the house of her father and complained that her husband and mother-in-law were demanding money. During cross-examination, of the investigating officer, it transpires the aforesaid version had not been stated by PW4 to him during investigation.

13. Nirmal Karmakar (PW8), another relation turned hostile and did not support the prosecution case.

14. Sadhan Karmakar (PW2) and Sanjay Karmakar (PW3) are neighbours of the appellants. Both of them did not speak of torture on the housewife. PW2 stated Sonali had told that her saree caught fire accidentally while cooking.

15. Laltu Hajra (PW13) is a neighbour of the de-facto complainant. He stated he had not heard about any family dispute between the couple.

16. Dr. Amal Nath (PW6) is the post mortem doctor. He deposed Sonali had suffered 100% burn injuries. Cause of death is due to extensive burns, ante-mortem and might be homicidal. He clarified 100% burns usually occurred in homicide cases. But in cross-examination he contended he could not say how Sonali sustained burn injury on her body. 100% burn injury may also occur in accident cases.

17. Hiralal Gorain (PW14) is the Investigating Officer.

18. From an analysis of the aforesaid evidence, it appears Sonali was married to Bijoy Karmakar on 14th Ashar 1411 BS i.e. 13.07.2004. On 20.06.2006, she suffered burn injuries at her matrimonial home and expired. Prosecution would propose Sonali was subjected to torture over demand of dowry while defence argued she had suffered accidental death. From the evidence of the relations particularly PW1, it appears Sonali was initially happy at the matrimonial home for one year and

four months. After the birth of her daughter, a demand of Rs.40,000/- was made. While PW1 claimed that the demand had been made by Bijoy alone, other witnesses i.e. PWs.4 and 9 embellished the version and claimed Bijoy and other in-laws including mother-in-law Urubala had made the demand. However, versions of PWs 4 and 9 appear to be exaggerated. Sarasati Karmakar (PW9) admitted she did not tell the police that the accused persons had made a demand of Rs.40,000/-. Likewise, PW4 had also not stated to investigating officer (PW14) that couple of days prior to the incident, Sonali came to her father's house and stated all the accused persons had made the demand.

19. In this backdrop, I am convinced that the demand of Rs.40,000/- was made by the husband alone. Later on, the witnesses exaggerated and implicated the mother-in-law Urubala in the demand too. Evidence has also come on record that the demand was not fulfilled and Sonali was tortured. Though it is contended both the appellants tortured her, as the demand appears to have been made by Bijoy alone, I consider it prudent to distil such evidence and infer that the torture emanated from the husband who made the demand and not other in-laws. The aforesaid evidence on record clearly establishes the demand of dowry and torture upon the housewife Sonali by her husband Bijoy soon before death i.e. four months.

20. Mr. Bakshi argued the death was accidental whereas Mr. Sur referring to the opinion of the post mortem doctor contends the

housewife was set on fire and murdered. With regard to the cause of death two rival versions emanate from the evidence on record. PW1 stated her daughter Sonali told him that she was set on fire by the appellants. But PW2, a neighbour claimed she stated her saree had caught fire while cooking.

21. I am unwilling to rely on either of the so called dying declarations. Evidence on record shows Sonali had suffered 100% burns. PW9 (mother of the victim) who came to the hospital stated her daughter was unable to speak.

22. In view of the extensive burn injuries suffered by Sonali and other attending circumstances which improbabilise the fact that she was in a position to speak after the incident, I am of the opinion it is most improbable that Sonali had made any statement to the aforesaid witnesses. It is argued PW2 was not declared hostile and hence prosecution case ought to be disbelieved. PW2 is a neighbour of the appellant. Her close association with them is admitted. The affinity between the said witness and the appellant may have prompted her to save them from legal punishment by making out a case of accidental death. Merely because a witness has not been declared hostile by the prosecution and cross-examined, the Court is not duty bound to accept her evidence in toto. It is the duty of the Court to test the intrinsic truth in the evidence of the witness in the backdrop of attending circumstances and separate the chaff from the grain. Testing the

evidence of PWs 1 and 2 on the anvil of broad probabilities particularly the extensive burn injuries suffered by the victim and other evidence on record which improbabilises her ability to speak thereafter, I am convinced neither PW1 nor PW2 is truthful with regard to the so called dying declarations made to them. Even the opinion of the post mortem doctor with regard to cause of death is ambivalent. While in-chief if he states that 100 % burn injuries may be homicidal, during cross-examination he does a volte face and states such injuries may also be accidental. Thus, it cannot be said that the prosecution has been able to prove that the death was homicidal in nature.

23. Accidental death due to burn of saree also appears to be improbable. No material was seized from the place of occurrence during investigation to show the incident occurred in the kitchen while the housewife was cooking. In this factual backdrop, accidental death claimed by the defence is ruled out.

24. On the other hand, evidence has also come on record to show her husband, Bijoy Karmakar demanded Rs.40,000/- barely four months prior to her death. The amount was not paid and she was tortured by him. Ingredients of the offence punishable under Sections 498A/304B of the Indian Penal Code are fully established against Bijoy Karmakar.

25. Evidence with regard to demand of dowry by mother-in-law Urubala is contradictory. Though PWs 4 and 9 claimed she also made

the demand, their evidence in Court appears to be embellished. They did not make such statement before police. On the other hand, PW1, father of the deceased categorically stated that the demand was only made by husband, Bijoy.

26. In view of contradictory evidence with regard to demand of dowry by Urubala, I am inclined to hold the foundational facts attracting the statutory presumption under Section 113B of the Evidence Act has not been established against her. She is entitled to an order of acquittal.

27. In the light of the aforesaid discussions, I uphold the conviction of Bijoy Karmakar but acquit Urubala of the charges levelled against her.

28. Coming to the sentence imposed upon Bijoy Karmakar, I find he has been awarded the maximum sentence i.e. life imprisonment. As discussed earlier, prosecution has failed to prove the death as homicidal. Though the failure to prove the death as homicidal may not affect the legality of conviction, the same shall certainly have an impact on the sentence imposed on the convict. Appellant Bijoy Karmakar has already suffered incarceration for more than 11 years.

29. Balancing the aggravating and mitigating circumstances, I modify the sentence imposed upon him and direct that he shall suffer rigorous imprisonment for 12 years and pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for one year more.

30. With the aforesaid modification as to sentence, CRA 372 of 2011 is disposed of.

31. C.R.A. 151 of 2011 is allowed.

32. Appellant Urubala Karmakar in CRA 151 of 2011 shall be discharged from her bail bonds after expiry of six months in terms of Section 437A of the Code of Criminal Procedure.

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

34. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)