

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 255 of 2005

Sanjoy Das & Ors.

-Vs-

State of West Bengal

Amicus Curiae : Mrs. Rituparna Ghosh (De)

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 19.01.2023

Judgment on : 17.04.2023.

Ananya Bandyopadhyay, J. :-

1. The instant appeal has been preferred against the judgment and order of conviction dated on 11.03.2005 passed by learned additional sessions judge case first court Birbhum Suri in session case number 12/1999 convicting the appellants u/s 498A of IPC sentencing the appellants to suffer rigorous imprisonment for 3 years each and also to pay a fine of Rs 5000/- each.
2. In default to suffer further rigorous imprisonment for six months each.
3. The prosecution case precisely state of a complaint lodged by father of the deceased victim who was married to the appellant Sanjoy Das. Just after the marriage the relatives of the appellant

started to torture the victim Puspha, physically and mentally. As a result of such torture the victim submitted an application before the women cell a year before her death. The appellant gave an undertaking before the officer of the women cell to take his wife back to his house. The complaint further stated the victim used to come to her parental house frequently and on 13th of March on a Dol-Purnima day the victim was assaulted by her husband and other family members for which she went to her house. Thereafter the husband of the victim and other members came to the house of the complaint and assured that they were sorry and had taken back the victim to their house. Thereafter on 9.4.98 the appellants Sanjoy das, Kartick Das and two of her sister-in-law Prafulla Das and Katamuni Das assaulted her severely. The husband of the victim hit her with a shabol and other had put kerosene oil in her body and caught her fire in her. She was to Suri Sadar Hospital. And 10.04.1998 the victim died at 6.00 A.M in the morning. The complaint prayed for punishment of the appellant. Based on the aforesaid written complaint Suri P.S case no. 54/98 dated 10.04.1998 under Section 302 was investigation was started, which ended in the submission of the charge sheet. Charges were framed under Sections 302/498A/34 Indian Penal Code. The accused persons pleaded not guilty and claimed to be tried.

4. The prosecution cited 17 witnesses and exhibited certain documents.

5. The Ld. Amicus Curiae, Mrs. Rituparna Ghosh (De) for the appellant submitted the judgment of the Trial Court was based in conjecture and surmises without proper appreciation of the evidence on record. The Ld. Trial Judge relied upon the evidence of P.W 1,2,4,5,9 being related witness, in absence of any independent witnesses. The evidence of P.W.6 a neighbour of the appellant was completely disregarded who stated that he had not seen personally or heard anything regarding ill- treatment, torture or assault upon the victim by the appellant. The inquest report marked as Ext.1 stated that a dispute took place between the appellant husband and the victim on 09.04.1994. At about 7.00 p.m. and thereafter the appellant left the house. At about 9.00 p.m in the night the victim set herself on fire. It was further submitted that the written complaint filed by the deceased victim before the women's cell mark Ext 4. alleged that on 15.05.1996 the deceased was assaulted by her husband by a chain with the aid of her three sisters in law and somehow saved by her aunt-in-law. However the said Aunt-in-law was not produced as a witness, to corroborate the fact of physical torture inflicted upon the victim. The prosecution did not cite any eye witness. Moreover the women cell could not produce any document to justify the claim of torture complained to them. The doctor who attended the victim at the hospital and the doctor who held the post-mortem examination of the victim were not examined. The post-mortem report did not clearly express

whether the nature of death was suicidal, homicidal or accidental. The prosecution could not make out a case for alleged commission of the offence U/S 498A of the IPC and as such miserably failed to establish its case and the appeal shall be allowed.

6. The Ld. Advocate for the State, Ms. Faria Hossain submits that the evidence of the related witnesses which are corroborative and trustworthy cannot be disregarded because the relatives will not let any innocent to be punished but the perpetrator alone. The prosecution aptly proved its case and the appeal should be dismissed. There as a previous complaint before the women cell which evinces the fact of the victim being subjected to continuous torture by the appellants.
7. The evidence of the prosecution witnesses on record primarily corroborates the statement of the complaint. PW 1 the father of the victim deposed that his daughter was married to appellant Sanjoy Das for about 10 years since her death. The victim used to reside at her matrimonial home after her marriage and for a year after her marriage she did not disclose anything regarding her matrimonial life. Thereafter she used to narrate of being subjected to ill-treatment, torture and assault at the hands of the appellants. The victim had submitted an application at the women cell which was written by one, Firoj Ali. Consequently the appellant Sanjoy Das was summoned to appear before the woman cell and submitted a declaration that he would behave

properly with the victim and would not consume alcohol and refrain from gambling. Thereafter the victim returned to her matrimonial home along with her husband. However the undertaking by the appellant was not acted upon and the victim was subjected to ill treatment and torture which she narrated whenever she visited her parent's house. After two years from the death of submission of such undertaking before the woman cell the victim came to her parents house on the day of Dol-Purnima and stated that she was assaulted and she came to her parent's house out of anger. Thereafter appellant Sanjoy Das and Kartick Das came to the house of P.W 1 and on assurance that she will not be ill treated any further, she returned to her matrimonial home. However the incident of ill treatment and torture continued and appellant got the information that his daughter was burnt to death by pouring kerosene and by setting fire. The PW-1 got the information that his daughter was alive and he had been to Suri Sadar Hospital to see his daughter and he spoke to his daughter at the hospital. The victim died on the following day. He identified his signature on the inquest report and his signature on the written complaint marked as Exhibit-2/1 and further identified his signature on the seizure list marked Exhibit-3/1. He further stated that Prafulla Das and Patongi Das were the wives of Kartick Das. Kartick Das and Sanjoy Das resided in two separate houses within a common courtyard. During his cross-examination PW-1 stated that he

had filed an application before the Women's Cell after two years of marriage of his daughter. He further stated that he got the information at about 9 PM that his daughter sustained burn injuries through Kartick Das. When he reached the hospital he found his daughter with severe burn injuries all over the body with saline and oxygen being supplied to her and his daughter was groaning in pain. He had been to the hospital alone to see his daughter.

8. PW-2 corroborated the evidence of PW-1. PW-2 stated that her sister came to her parental house on a Dol-Purnima day, six years ago and narrated the manner in which she was ill-treated by the accused person. She further stated that she had gone to the hospital and met her father. Though the victim had sustained severe burn injuries all over body but she was in her senses and the victim stated to her that oil was poured on her person and she was burnt. During her cross-examination PW-2 stated that the victim narrated the attending physician that she was assaulted by her husband on an earlier occasion though she could not name the doctor of the government hospital. She further stated that nothing was asked by the police except obtaining her LTI on the seizure list and she was deposing about the incident for the first time in the court.

9. PW-3 was declared hostile by the prosecution.

10. PW-4 the mother of the victim corroborated the statements of PW-1 and PW-2 with regard to her marriage and torture being

inflicted upon her and settlement at the Women's Cell. PW-4 further stated after her daughter was taken back home through settlement at Women's Cell she could not say how her daughter passed her days and thereafter they got the information that her daughter was burnt and her daughter died at Suri Sadar Hospital. During her cross-examination PW-4 stated that she did not go to the hospital to see her daughter at night on getting the news of burn injury when she reached the hospital on the following morning she saw the dead body of her daughter. She further stated that both Sanjoy and Kartick were rickshaw-puller and passing their livelihood with great hardship and the victim had given birth to a female child prior to her death and she did not get any information about the death of her grandchild. She subsequently got an information that her grandchild died. She further stated that it is a fact that some trouble cropped up in the family of my daughter because of financial stringency. It is a fact that her daughter used to allege all these things.

11. PW-5 the sister of the victim deposed in the similar manner as that of PW-1, 2 and 4. During her cross examination PW-5 stated that she did not know anything regarding the settlement and her sister was taken back by the accused of the first time again about 3-4 months ago. PW-6 was declared hostile by the prosecution. PW-7 was described to the complaint marked as Ext.4. During his cross examination PW-7 stated he did not

make any endorsement in the written application marked as Ext.4 before the women cell to the effect that it was written by him as per the narration of the victim and explained to her. During his examination in chief of recall PW-7 stated that there was undertaking by the appellant written by him marked as Ext. 6 along with another undertaking by the wife of Sanjoy Das, the deceased Pushpa Das to put her LTI. He has put his signature in the same sight undertaking as a witness along with the signature of Ujjal Mukherjee, as the witness marked Ext. 7. PW-8 was a medical practitioner, who did not conduct the post-mortem examination but identified his hand writing and signature of the doctor P. Chakraborty, who had examine the patient and noted down the report and treatment sheet marked as Ext. 5. PW-10 held the inquest over the dead body of the victim identified by her husband. He identified the inquest report marked as Ext. 1. PW-13 described of the complaint marked as Ext. 2. PW-14 received the written complaint and drew the formal FIR marked Ext. 8. PW-15 was the O.C of the women cell, who received an application number 18.05.1996 from the victim Pushpa Das marked Ext. 4 and effectuated the settlement between the victim and the appellant Sanjoy Das, who had submitted undertaking marked Ext. 6 and 7 respectively. During her cross examination PW-15 stated it was a fact that she did not initiate any case on the allegation of Pushpa Das. Moreover no G.D. Entry was noted in the said

application. She did not send the victim to any hospital for treatment and also did not notice any injury on the person of Pushpa Das. Ujjal Mukherjee and Firoj Ali were present at the time of settlement to put their signature. PW-16 conducted the investigation, he visited the place of occurrence, prepared the rough sketch map with index, examined the available witnesses on different days, arrested the accused persons, prepared the seizure list, collected the post mortem report from office as well as the inquest report of the deceased on 25.07.1998 and made over the case to the then OC on transfer. During his cross-examination he stated that he did not inquire from Suri Sadar Hospital to ascertain whether victim Puspha Das made any statement before her attending physician before her death. During investigation he did not make any attempt to ascertain whether the letter of Sanjoy Das, a Xerox copy of the same which was handed over to him by complainant and seized by him was at all submitted before any authority. He did not seize or inquire of any paper relating to ill treatment and torture about upon Puspha Das. He did not send the burn wearing apparel of the deceased to FSL. PW 17 on completion of investigation submitted the charge sheet.

12. PW-1 and PW-2 controverted each other's statement on the point of assumption of the time of torture being disclosed by the victim. PW-1 stated about two years from the tragic incident on a Dol-Purnima day while PW-2 submitted the same to be on the

exact day six years earlier. The complaint before the women cell was insignificantly dealt by the authorities therein as transpired from the deposition of PW-15, the Officer-in-Charge of women cell considering the same to be a minor day to day wear and tear of a family life. There was no G.D. Entry of initiation of a criminal case. Both the appellant Sanjoy Das and the victim submitted written declaration to maintain peaceful matrimonial life. PW-1 and PW-2 stated that the victim after sustaining the burn injuries was in a condition to speak and narrated the case of her injury, however the statement of the victim as not recorded. PW-4 the mother of the victim was surprisingly unaware of the death of the grandchild i.e. the child of the victim. The appellants did not possess adequate financial means and the victim expressed her discontentment over such financial stringency.

13. The demand for dowry is absent. The prosecution witnesses did not describe the role of an individual appellant to inflict torture upon the victim lady. No one saw the victim to be set on fire by the appellants.
14. 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.
15. 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.

16. CRA 255 of 2005 is disposed of accordingly.

17. I record my appreciation for the able assistance rendered by Mrs. Rituparna Ghosh (De), Learned Advocate, as *amicus curiae* in disposing of the appeal.

18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

19. 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.)