

**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 223 of 2011

**Bablu Manna Das
VS.
The State of West Bengal
With
CRA 213 of 2011**

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**IA NO: CRAN 1 of 2011
(Old No: CRAN 946/2011)**

**Smt. Gouri Manna Das
Vs
The State of West Bengal**

For the Appellants : Mr. Moinak Bakshi, Advocate
Ms. Roma Roy, Advocates

For the State

In CRA 223 of 2011: Mr. Debasish Roy, Id. PP
Mr. Parthapratim Das, Advocates

Heard & Judgement on: December 15, 2023

DEBANGSU BASAK, J.

1. The appeals are directed against the judgment of conviction dated March 25, 2011 and the order of sentence dated March 29, 2011 passed by

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the Additional Sessions Judge, 2nd Court Tamluk in Sessions Trial No.5 (9) of 2007 in Sessions Case No. 15(June), 2007.

2. By the impugned order of conviction, the learned Trial Judge convicted the husband of the victim, appellant in CRA 223 of 2011, under Sections 498A / 34 and 302 of the Indian Penal Code, 1860. The mother-in-law of the victim, appellant in CRA 213 of 2011, was convicted under Section 498A/34 of the Indian Penal Code, 1860. By reason of the nature of convictions, they were awarded different sentences.

3. The father of the victim, Prosecution Witness (P.W) 1, lodged a police complaint dated May 3, 2006 with regard to torture and murder of his daughter at the behest of the appellants. Such police complaint was registered by the police as a First Information Report being FIR No. 46 of 2006 dated May 3, 2006 under Sections 498A, 302, 201, 120B and 34 of the Indian Penal Code, 1860. On conclusion of the investigations, police submitted a charge sheet.

4. By an order dated September 27, 2007, charges as against the appellants were framed under Sections 498A/34/302/201 of the Indian Penal Code, 1860.

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5. At the trial, the case of the prosecution was that, the appellants subjected the victim to torture and cruelty both physically and mentally. The appellants in furtherance of common intention murdered the victim on May 2, 2006 and caused evidence of such offence to disappear and intentionally gave false evidence with the intention of screening the husband from legal punishment.

6. Learned advocate appearing for the appellants submits that, two appeals were filed by the accuseds. He points out that, the husband was convicted under Sections 498A/ 34 and 302 of the Indian Penal Code, 1860 while the mother-in-law of the victim was convicted under Section 498A and 34 thereof.

7. Referring the merits of the case, learned advocate appearing for the appellants submits that, there are contradictions with regard to the evidence led by the prosecution. Neither of the appellants was placed at the place of occurrence. The distance between the place of occurrence and the matrimonial home of the victim was not established at the trial. No witness was examined as an eye-witness to the incident. Allegation of torture or cruelty was not established. The husband was not last seen

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together with the victim. The evidence led at the trial, did not specify the nature of the alleged torture being meted out on the victim.

8. Referring to the inquest report of the victim, he submits that, such report suggests sexual assault on the victim. The same was not established at the trial. Moreover, the Doctor conducting the postmortem on the victim was not examined. The defence was denied of the opportunity of cross-examining the postmortem Doctor as to his opinion noted in the postmortem report that the death was homicidal.

9. Referring to the alleged confession allegedly made by the husband of the victim as claimed by the P.W. 10, learned advocate appearing for the appellants submits that, such confession was made under duress and is of no consequence.

10. Since the chain of circumstance was not established by the prosecution, learned advocate for the appellants submits that the impugned judgment of conviction and the order of sentence should be reversed.

11. Learned advocate appearing for the State submits that, the death occurred on May 2, 2006. The husband of the victim was a night guard in a factory and P.W. 21 his co-worker, in his deposition stated that, husband

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of the victim was on leave from May 2, 2006 to May 4, 2006. Therefore, the husband of the victim was obliged to establish his whereabouts during this period of time. The husband of the victim was found absconding at the time of discovery of the dead body. Husband of the victim did not establish any alibi for his absence. The death of the victim was found to be homicidal. The victim was residing at her matrimonial home. Husband and the mother-in-law of the victim were, therefore, obliged to explain the death which they did not do. Duties enjoined under Section 106 of the Evidence Act, 1872 were not discharged by any of the appellants.

12. In such circumstances, learned advocate appearing for the State submits that, the prosecution was able to complete the chain of circumstances, at the trial establishing the guilt of the appellants. He, therefore, submits that, the impugned judgment of conviction and the order of sentence should be affirmed.

13. At the trial, prosecution examined 25 witnesses to establish the charges as against the appellants. On conclusion of the evidence of the prosecution, the appellants were examined under Section 313 of the Criminal Procedure Code, where they claimed themselves to be innocent

and falsely implicated. They, however, declined to adduce any defence witness.

14. P.W. 1 is the father of the victim. He lodged the First Information Report. He identified the written complaint lodged with the police which was tender in evidence and marked as Exhibit.

15. P.W. 1 stated that, the husband of the victim was a co-villager and a close door resident at a distance of 5 chains away from his house. He identified both the appellants in Court. He stated that there was a love affair between the victim and her husband before marriage. In course of their love affair, the victim became pregnant by her husband. A proposal of marriage was turned down by the husband of the victim, whereupon, he called a village mediation. At the intervention of the villagers pressure was created on the husband and his family members and after such pressure, the husband agreed to marry the victim. The victim was married to her husband about 3 and ½ years ago from the date of deposition. He stated that dowry sum of Rs.10,000/-, golden ornaments of one necklace, a pair of bangles and golden ear rings were given at the time of marriage. After marriage, the victim began to live in her matrimonial home, where, the

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mother-in-law and two minor brothers-in-law were living in the same house on the same mess.

16. P.W. 1 stated that, first year of the conjugal life of the victim was happy. However, after expiry of one year, the victim was subjected to cruelty and harassment. He, however, could not state the ground for such torture and harassment. In examination-in-chief initially, he stated that pregnancy of the victim was miscarried and then went on to say that the victim was compelled to miscarry her pregnancy but could not say by whom the miscarriage was caused.

17. P.W. 1 stated that, on the fateful day at about 8 P.M. his wife informed him that the victim was found missing from the house of the appellants. After receiving such news, he along with other villagers went out in search of the victim and the victim was found in a naked condition and her mouth was gagged with a piece of cloth. They found a bottle and a glass at the place near the house of the appellants at a distance of 2 chains away from the house of the appellants. The place where the dead body of the victim was lying was surrounded by betel vine. He stated that, he along with villagers took part in the discussion and he submitted written complaint with the police.

18. P.W. 1 was interrogated at length by the defence when the defence could not extract anything favourable to them.

19. P.W. 2 is the younger brother of P.W. 1 and uncle of the victim. He corroborated P.W. 1 with regard to the marriage and the dowry. He, however, stated that, he used to visit the victim at her matrimonial home and saw the incident of torture upon the victim with his own eyes. Besides, he stated that, when the victim used to come to his house, she used to ventilate her grievances and also complained to them of torture and harassment upon her by her husband and mother-in-law. After hearing about the incidents of torture from the victim, he used to persuade her to go back to her matrimonial home and also insisted on her to resume her conjugal life. He also used to persuade the appellants to check themselves from inflicting any further torture upon the victim but in vain.

20. P.W. 2 was also cross-examined at length on behalf of the defence without any material being extracted favourable to the defence.

21. P.W. 3 is the wife of P.W. 2 and an aunty of the victim. She corroborated P.W. 1 and P.W. 2 with regard to marriage of the victim. She stated that, the victim was compelled to abort her child in her womb. She stated that, the first 2 to 3 months of the conjugal life of the victim was

happy. After that period, the husband and the mother-in-law of the victim subjected the victim to assault, cruelty and harassment. They used to rebuke and abuse her in filthy languages. She made aware of the incident of torture by the victim when she used to come to her house. Victim used to complain of such torture while crying. After hearing the incident of torture, she used to persuade the victim to go back to her husband's house and also used to go to matrimonial home and also used to persuade husband and mother-in-law to restrain themselves.

22. P.W. 3 was cross-examined at length by the defence. Nothing favourable to the defence was stated by P.W. 3 during cross-examination.

23. P.W. 4 is an acquaintance of P.W. 1. He was declared hostile by the prosecution. On cross-examination, by the prosecution and the defence, nothing substantial came out from such witness to favour either the prosecution or the defence.

24. P.W. 5 is the wife of P.W. 1 and the mother of the victim. She corroborated P.Ws. 1, 2 and 3 with regard to the marriage and the torture as also abortion. She stated that, she became aware of the torture and ill-treatment upon the victim from her when she used to visit her. She also

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stated that once when she visited the matrimonial home of the victim, she found the husband was assaulting the victim.

25. P.W. 5 was cross-examined at great length on behalf of the defence. She reiterated her stand as to the torture and harassment on the victim during such cross-examination. She also reiterated her stand with regard to the assault on the victim by her husband.

26. P.W. 6 is a member of the Panchayat. He corroborated P.Ws. 1, 2, 3, 4 and 5 with regard to events leading up to the marriage between the victim and her husband. He is a seizure list witness. He identified the signature in the seizure list. He was also present during preparation of the inquest. He is the signatory to the Inquest Report. He identified his signature on the inquest report. He identified the seized articles in Court which were marked as material Exhibits.

27. P.W. 7 is a resident of the village. He was a supervisor at Seth Construction and stated that the husband of the victim worked as night guard at Seth Construction for about 3/4 months before May 2, 2006.

28. P.W. 8. is a resident of the village and a member of the Panchayat. He is a seizure list witness and identified his signature on the seizure list.

He was present at the time when the dead body of the victim was discovered.

29. P.W. 9 is a villager who was present when the dead body of the victim was found. He was also present during the inquest. He identified his signature on the Inquest Report.

30. P.W. 10 is a resident of the village and a van-puller by profession. He stated that, after 3/4 days of the death of the victim, police brought the husband tied with a rope before them when the husband confessed before the police that the husband went to the pond with the victim where the victim went for answering the nature's call. Husband of the victim confessed that while he was washing his face in the pond, the victim was abusing him with filthy languages and on being abused, he slapped her and as a result, she fell on the bathing steps leading to the pond. Husband then sprinkled water on the face of the victim but without any result. Husband then took the victim on his lap to the betel vine. He stated that the photographer snapped some photographs of the dead body of the victim in his presence. He tendered those photographs in evidence which were marked as Exhibits.

31. Another resident of the village was examined as P.W. 11. He also stated that, the husband made a confessional statement. He corroborated P.W. 10 with regard to the confession made by the husband.

32. P.W. 12 is also another resident of the village who corroborated P.W. 10 and 11 with regard to the confession made by the victim. P.W. 12 also tendered various photographs taken, in evidence.

33. P.W. 13 is another villager who corroborated P.Ws. 1, 2, 3 and 5 with regard to the marriage taking place between the victim and her husband. He, however, claimed that the husband made a confession before the villagers that the husband killed the victim. However, the nature of confession was not spelt out by P.W. 13.

34. P.W. 14 similarly, stated that, the husband made a confession without spelling out the nature and extent of the confession.

35. P.W. 15 is a villager who was declared hostile by the prosecution. In cross-examination by the prosecution as also by the defence, he did not add any value to the case of either the prosecution or the defence.

36. A priest was examined as P.W. 16. He did not add any value to the case of the prosecution or the defence.

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37. P.W. 17 was tendered as a witness and not cross-examined by the defence.

38. The scribe of the written complaint was examined as P.W. 18. He identified his signature on the written complaint and stated that he wrote the written complaint as per instruction of P.W. 1 and he signed the same.

39. The photographer who took the photographs of the dead body of the victim at the place of occurrence was examined as P.W. 19. He identified the photographs taken which were marked as material Exhibits. He identified his signature on the seizure list.

40. The Executive Magistrate who held the inquest over the dead body of the victim was examined as P.W. 20. He narrated about the injuries he found on the dead body of the victim and the distinguishing features that he found on the dead body. The inquest report was tendered in evidence.

41. P.W. 21 was a worker who worked as a night guard with Seth Construction. He stated that the husband of the victim was also working as a night guard with the same Seth Construction. He identified the husband in Court. He stated that the duration of work as night guard starts from 6-00 p.m. till 8-00 p.m. on the next date. The husband of the victim used to attend his duty as night guard regularly at Seth Construction but he was

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on leave for three days from May 2, 2006 to May 4, 2006. During such period no night guard was deputed in his place. He also stated that he knew P.W. 7 who worked as Supervisor at the Seth Construction.

42. The Medical Officer who made the referral of the dead body of the victim deposed as P.W. 22. He narrated about the reference of the dead body.

43. The police personnel who was present at the time of the inquest of the dead body was examined as P.W. 23. He narrated about the conduct of the inquest on the dead body.

44. The Investigating Officer deposed as P.W. 24. He narrated about the investigations conducted. He stated that on May 5, 2006, he examined the husband of the victim. The husband of the victim stated that he could show the place where he left the dead body. Thereafter, he took the husband to the place on May 8, 2006 when local people gathered. The husband showed the place near the betel leaves vines where the dead body of the victim was kept. Photographs were taken. He prepared the rough sketch map along with the Index. He sent the husband to record a statement under Section 164 of the Criminal Procedure Code which was declined by the husband. He spoke about the nature of investigations that

he conducted, the seizures made, the witnesses examined. He filed the charge-sheet. He was examined at great length when the defence could not extract anything favourable to them.

45. P.W. 25 is a police personnel who stated that, he received a telephonic information from an anonymous caller as to the dead body of the victim. He lodged a General Diary on May 3, 2006 and left for the place of occurrence. He tendered the General Diary in evidence, which was marked as Exhibit.

46. As noted above, on conclusion of the evidence of the prosecution, the appellants were examined under Section 313 of the Criminal Procedure Code. In his examination, the husband, admitted that there was love affair between him and the victim prior to their marriage. He claimed that the marriage was solemnized voluntarily. He admitted that prior to marriage victim became pregnant. He denied any village mediation being held before marriage. He denied other evidence as put against him as false.

47. Mother-in-law of the victim in her statement recorded under Section 313 of the Criminal Procedure Code acknowledged existence of love affair between her son and the victim. She denied that dowry was given at the time of marriage. She acknowledged that after marriage, the victim used

to reside with them. She denied any village mediation being held prior to marriage. She claimed to be innocent and declined to adduce any witness.

48. Post mortem report of the victim was tendered in evidence and marked as Exhibit 11 under Section 294 of the Criminal Procedure Code. Exhibit 11 stated that death was due to the effects of strangulation of ligature anti-mortem and homicidal in nature. Moreover, Exhibit 11 noted a number of injuries being found on the dead body of the victim.

49. Marriage between the victim and her husband stood established at the trial. It was also established at the trial that at the relevant point of time the victim was residing at her matrimonial home.

50. Dead body of the victim was discovered on May 2, 2006. Police complaint was lodged on May 3, 2006 with the First Information Report with regard thereto being registered on such date itself. Delay was adequately examined by P.W.1. After discovery of the dead body at night on May 2, 2006, a meeting amongst villagers was held and thereafter on May 3, 2006 the complaint was lodged.

51. Prosecution was able to establish that the victim was murdered by Exhibit 11. Prosecution was also able to establish that the victim was at her matrimonial home at the material point of time. The fact that the

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victim was at her matrimonial home stood established by depositions of the P.Ws. 1,2,3 and 5 and other villagers as also the statements of both the appellants before us recorded under Section 313 of the Criminal Procedure Code.

52. On May 2, 2006, the victim was found missing initially, whereupon a search was conducted and her dead body recovered on the same day at night. On May 2, 2006, the husband of the victim who was working as a night guard with Seth Construction did not report for his duty. His employment with such Construction was established by the deposition of P.W. 7 and P.W. 21. P.W. 7 was the Supervisor of Seth Construction and he stated that the husband of the victim was working as night guard therein. P.W. 21 was another night guard who stated that the husband of the victim was working as a night guard and that the husband of the victim was on leave for the period from May 2, 2006 till May 4, 2006.

53. There are confessional statements claimed to be made by the husband to villagers where they claimed that the husband identified the place where he kept the dead body of the victim on May 8, 2006. His confession that he slapped the victim whereupon, the victim fell down and, thereafter, he took the body and kept it at the place where the body was

found is discarded for the sake of argument, then there are other circumstantial evidences establishing that he was complicit for the murder of the victim.

54. As the husband of the victim, he is required under Section 106 of the Evidence Act, 1860 to explain the death. As noted above, the victim was at her matrimonial home. Husband was not placed at his place of work at Seth Construction on May 2, 2005. P.W. 7 stated that the period of duty as a night guard was from 6 P.M. to 8 A.M. of the next date. The dead body was recovered on May 2, 2006 in the night, after 8 A.M. Therefore, the husband was not at his place of work on the given date. He did not adduce any evidence to establish his presence elsewhere other than at his house.

55. Torture being meted out by the two appellants before us upon the victim subsequent to her marriage stands established by the evidences of P.Ws. 1, 2, 3 and 5 amongst others. Although the P.W. 1, the father of the victim did not narrate the incident of the torture, he, however, spoke about the dowry demanded and giving of the dowry demanded. This stood corroborated by P.Ws. 2, 3, and 5. Torture on the victim by the appellants stood established by P.Ws. 1, 2, 3 and 5. Mediation took place prior to

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marriage. This fact of mediation stood corroborated by two Panchayat members deposing as P.Ws. That there was a love affair between the victim and her husband prior to their marriage stood established by the evidence of P.Ws. 1, 2, 3 and 5 and the Panchayat members as also other co-villagers deposing for the prosecution and admitted to be so by both the appellants in their examination under Section 313 of the Criminal Procedure Code.

56. Both the appellants in their examination under Section 313 of the Criminal Procedure Code denied any mediation taking place before marriage, factum whereof stood established by P.Ws. 1, 2, 3 and 5 and other co-villagers.

57. In our view, torture, cruelty, demand for dowry being established, charges under Sections 498A of the Indian Penal Code, 1860 against the appellants stood established. Both the appellants were complicit in such offence.

58. So far as murder is concerned, the husband is unable to discharge his burden of proof under Section 106 of the Evidence Act, 1872. As noted above, he was not at the place of occurrence at the time of incident. He did not explain his absence from the place of work or the circumstance

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under which his wife was found murdered. Confessional statement made by him to the villagers, if taken at face value, puts the husband in presence of the victim as a person last seen together. In fact, the confessional statement establishes that he caused the death and put the dead body of the victim at a place from where the dead body of the victim was recovered.

59. In view of the discussions above, the prosecution was able to prove the charges as against the appellants beyond reasonable doubts by circumstantial evidence with the chain of circumstances being completed.

60. We consequently find no reason to interfere with the impugned judgment of conviction and the order of sentence. We, therefore, affirm the same.

61. Order of sentence was suspended so far as the mother-in-law is concerned. Consequently, appellant in CRA 213 of 2011 will surrender before the trial Court within six weeks from date. In default, Jurisdictional Court is at liberty to take appropriate steps.

62. The Trial Court Records along with a copy of this judgment and order be sent to the appropriate Court forthwith.

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63. The period of detention of the appellants be adjusted against the substantive sentences awarded to each of the appellant.

64. CRA 223 of 2011 and CRA 213 of 2011 along with all connected applications are **disposed of** accordingly.

(Debangsu Basak, J.)

65. I Agree

(Md. Shabbar Rashidi, J.)