

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 (DB) 95 of 2022

Bishnupada Mishra

Vs.

The State of West Bengal & ors.

For the Appellant : Mr. Malay Bhattacharyya, Adv.
Mr. Amit Baran Dash, Adv.
Mr. Subhrajyoti Ghosh, Adv.
Ms. Ankana Sarkar, Adv.

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

Heard on : February 24, 2023
Judgement on : February 24, 2023

DEBANGSU BASAK, J.:-

1.The appeal is directed against the judgement and order of

acquittal dated March, 31, 2022, passed by learned Additional Sessions Judge, 1st Court, Tamruk, Purba Medinipur in Sessions Trial No.54 of 2019 arising out of Sessions Case No.05 (05) of 2018 acquitting the accused persons of the charges under Sections 498A/306/34 of the Indian Penal Code, 1860.

2.The case of the prosecution, at the trial, was that, the victim committed suicide on January 22, 2017 and that, the respondent nos. 2 and 3 abetted in the crime of such suicide in furtherance of common intention. Moreover, the respondent nos.2 and 3 assaulted the victim in furtherance of their common intention. The death occurred at the matrimonial home of the victim.

3.P.W.1, father of the victim lodged a written complaint with the police in relation to the death of the victim. Such written complaint was lodged on January 22, 2017. On the basis of such written complaint the police registered a formal First Information Report being Haldia Police Station FIR No.07 of 2017 dated January 22, 2017, under Sections 498A/302/34 of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act.

4. Police on completion of investigation submitted chargesheet.

The court framed charges as against the respondent nos.2 and 3 on April 23, 2019 under Sections 498A/306/34 of the Indian Penal Code, 1860. The respondent nos.2 and 3 pleaded not guilty and claimed to be tried.

5. At the trial, the prosecution examined 15 witnesses. On conclusion of the evidence of the prosecution, the respondent nos.2 and 3 were examined under Section 313 of the Criminal Procedure Code.

6. The father of the victim deposed as P.W.1. He stated that, the victim was given in marriage to the respondent no.2 in the year 2008. After marriage, the victim was at her matrimonial home. He claimed that at the time of marriage he gave dowry as per the demand of the respondent no.2 and the in-laws of the victim.

7. P.W.1 stated that, apart from the husband of the victim, the respondent no.2 herein, and the mother-in-law of the victim, the respondent no.3 herein, the sisters-in-law and husband of the sisters-in-law, used to visit and stay at the matrimonial home of the victim frequently.

8. P.W.1 stated that, after eight days of marriage, respondent no.2

and in-laws of the victim demanded money, landed property and jewellery. The victim came to the paternal house after eight days of marriage and narrated about the demand by the respondent no.2 and her in-laws. He stated that he could not fulfil the demand of the respondent no.2 and the in-laws of the victim due to which, the victim was subjected to torture at her matrimonial home by them. Respondent no.3 assaulted the victim on her leg with a sharp cutting instrument causing serious injuries. However, despite such torture, the victim continued to reside at the matrimonial home.

9.P.W.1 stated that on January 21, 2017, the victim invited P.W.1 and his wife over telephone to her matrimonial home on the occasion of Sitala Puja. The wife of P.W.1, went to the matrimonial home of the victim when the victim told her mother that, the victim would come to the station to receive her mother. When her mother reached station, the victim was not there at the station. The mother of the victim went to the matrimonial home of the victim herself. When the mother of the victim reached matrimonial home, she found about 8 to 10 persons gathering in front of the house. The respondent no.3 and the

sisters-in-law of the victim told his wife that the victim was ill and taken to Durgachak Hospital. They told his wife to return to her house. His wife was not allowed to enter the matrimonial home of the victim by the in-laws of the victim. He called the victim but no one picked up the phone. After sometime, the phone was switched off. Then at 4:30 p.m. he called his son-in-law and son-in-law informed him over phone that the victim was senseless and was taken to the hospital. His son-in-law asked him to contact in the hospital. P.W.1 repeatedly asked the respondent no.2 about the condition of the victim when he admitted that victim was not alive. After 6 p.m., P.W.1 along with his two sons went to the matrimonial home of the victim. Thereafter, on the next date, January 22, 2017, he lodged the written complaint. He identified the written complaint which was tendered in evidence and marked as Exhibit.1. He identified his signature on the inquest report. He stated that, there was one son of 11 years of age and one daughter of 9 years of age, of the victim, who were residing with him. He stated that police seized various articles by a seizure list dated March 24, 2017.

10. In his cross-examination, P.W.1 stated that, he did not go

to the hospital on January 21, 2017 after getting the information of the death of the victim. He also did not send his wife to the hospital on that date. The mobile phone in which, the son-in-law called him and informed about the death of the victim was not seized by the police. He did not go to any police station for lodging any diary before the death of the victim with regard to the claim of dowry and assault on the victim. He stated that, the respondent no.2 filed a case before learned District Judge, Tamluk for custody of his children.

11. In cross-examination, P.W.1 stated that he could not remember the date on which the victim was driven out from the matrimonial home for the first time. The victim was usually driven out three to four times in a year from her matrimonial home. He did not lodge any FIR with any police station at that material point of time. He claimed that salishi (mediation) was held but no document was prepared with regard to mediation. He stated that, he did not receive the ornaments given to victim at the time of marriage.

12. In cross-examination, P.W.1 stated that that it is a fact that there was good relation between the victim and her husband, the

respondent no.2. He however, volunteered and added that, the respondent no.2 used to assault the victim in spite of having good relation. He also stated in cross-examination that, he went to the matrimonial home of the victim 15 days prior to her death.

13. P.W.2, is the son of P.W.1 and the brother of the victim. He stated that, the two children of the victim were presently residing in their house. He claimed that the victim was murdered on January 21, 2017 by the respondent nos.2 and 3 and the sisters-in-law and their husbands.

14. P.W.3 is the son of the victim. At the time of deposition, he was about 11 years of age. At the time of incident, therefore, he was 8 years of age. He claimed that, his mother was murdered by the respondent nos.2 and 3 and the five paternal aunties. He stated that, his mother, the victim called his maternal grandmother for Prasad of Makar due to which the in-laws of his mother were aggrieved and committed murder of his mother. He stated that the relationship between his mother and father and grandmother was not good. He claimed that his mother was assaulted by the respondent nos.2 and 3. The respondent no.3

used to demand money from his mother but as his maternal grand-mother could not provide they assaulted mother.

15. P.W.3 in reply to the Court, stated that on the day when his mother died, he was in the house. Before his mother died his five parental aunties, respondent nos.2 and 3 assaulted his mother with a wooden log. They locked him and his sister in the room.

16. In cross-examination, P.W.3 stated that, he went to the maternal uncle's house one month after his mother died. At the time of the deposition, he came from his maternal grand-father's house. He stated that, he did not divulge the information to his neighbour that the respondent no.2 committed murder of his mother.

17. P.W.4, is the mother of the victim. She stated that, the victim was married in the year 2008 with the respondent no.2. After marriage, victim went to the matrimonial home. The victim was assaulted by the respondent no.2 and her in-laws at her matrimonial home on demand of further dowry which they could not fulfil. She stated that the children of the victim were residing in her house. She claimed that, the respondent no.3 assaulted

her on the leg with a sharp cutting weapon causing serious injury. In spite of such torture, the victim continued to reside at her matrimonial home.

18. In cross-examination, she stated that she was not allowed to enter the victim's house on January 21, 2017. She was not informed about the victim on that day.

19. Another son of P.W.1, and brother of the victim deposed as P.W.5. He corroborated the fact that the children of the victim were residing in the house of P,W.1.

20. A neighbour of the respondent nos. 2 and 3 deposed as P.W.6. He stated that, the victim hanged herself with a saree. He was informed by his daughter-in-law about the hue and cry in the house of the respondent nos.2 and 3. When he went to their house, he did not enter the house. He came to know that the victim died by hanging herself and that the respondent no.2 was in the temple at that time. The victim was taken to the hospital. He could not say whether at that time the victim was alive or not. He stated that, later he came to know that victim was dead. He stated that, he could not say whether victim hanged herself.

21. In cross-examination, P.W.6 stated that, at the time of

incident, the son of the victim, namely, P.W.3 was at the temple with the respondent no.2 and that the daughter of the victim was in the house.

22. Nephew of P.W.1 deposed as P.W.7. He stated that, the victim was murdered by wooden log. He died at her matrimonial home on January 21, 2017. He stated that he lodged a General Diary at the police station and was called for compromise during the lifetime of the victim.

23. In cross-examination, he stated that, the victim did not come to his house after her marriage. He claimed that, he heard about the quarrel and demand of money from P.W.1 over telephone.

24. A neighbour of P.W.1 deposed as P.W.8. He claimed that he came to know about the torture from P.W.1 and from the victim. He claimed that the victim was murdered by the respondent nos.2 and 3.

25. In cross-examination, P.W.8 stated that, he did not state to the police that the victim informed him that she was subjected to torture at her matrimonial home.

26. A neighbour of the respondent nos.2 and 3 deposed as

P.W.9. She stated that, she went to the house of the victim's father after hearing about her death. She saw the victim hanging from the ceiling fan in the dining place. At that time victim was alive. Her father-in-law, P.W.6, called the respondent no.2 over phone as he was in the temple at that time. Then respondent no.2 came and took the victim to hospital. She was not interrogated by the police.

27. In cross-examination, P.W.9 stated that, the son of the victim, namely, P.W.3 was in the temple with the respondent no.2 and that, the daughter of the victim was sleeping in the house. She admitted that she never heard the relationship between the victim and the respondent no.2 was not good.

28. P.W.10 is the neighbour of the victim. She stated that, the victim hanged herself. Cross-examination of P.W.10 was denied.

29. P.W.11 is the police personnel, who initiated the unnatural death case in respect of the death of the victim. He performed inquest on the deadbody of the victim on January 21, 2017 at the Sub Divisional Hospital, Haldia. He identified his signature on the inquest report. He stated that on the neck of the victim, he found one ligature mark. Cross-examination of P.W.11 was

declined.

30. P.W.12 is an acquaintance of P.W.1, He stated that, after marriage, victim did not reside happily at her matrimonial home. Victim cried and told him that she was subjected to torture at her matrimonial home by the respondent nos. 2 and 3 and sisters-in-law. He did not take any steps after hearing such fact from the victim. He claimed that victim was murdered by the respondent nos. 2 and 3.

31. In cross-examination, P.W.12 stated that he did not remember the date on which the victim narrated the incident of torture to him for the first time. He did not lodge any complaint in the police station.

32. A co-villager of P.W.1 deposed as P.W.13. He stated that, after marriage, when the victim came to her parental home, he saw a bandage on her leg. When asked, victim told that she was assaulted by the respondent no.3 by a sharp cutting weapon by which victim suffered cut injury on her leg. He claimed that respondent no.2 and 3 subjected the victim to torture on demand of dowry. He claimed that victim was murdered.

33. In cross-examination, he stated that, he did not state to the

police that the respondent nos.2 and 3 subjected the victim to torture on demand of dowry and that the victim was assaulted by the respondent no.3 with the sharp cutting weapon.

34. P.W.14 is a police personnel who was the Officer-in-Charge of the Haldia Police Station at the material point of time. He registered the First Information Report.

35. The Investigating Officer deposed as P.W.15. He narrated about the conduct of the investigation. He collected the Post Mortem report. He submitted charge-sheet.

36. In cross-examination, P.W.15 stated that, no wooden log or any sharp cutting weapon was seized. He did not receive any information about any General Diary being lodged at the Haldia Police Station with regard to the assault on the victim by a sharp cutting weapon. He stated that, in the statement recorded by him, no witness claimed that the victim was instigated to commit suicide. He stated that he recorded the statement of the P.W.3 under Section 161 of the Criminal Procedure Code. P.W.3 stated that, when the victim died, he was sleeping, he did not say that the respondent no.2 assaulted the victim with a wooden log at that point of time.

37. Respondent nos.2 and 3 were examined under Section 313 of the Criminal Procedure Code, on conclusion of the evidence of the prosecution. They claimed that they never demanded dowry from the victim or from the parental family of the victim. They declined to adduce any defence witness.
38. As noted above, by the impugned judgement and order, the learned trial Judge acquitted the respondent nos.2 and 3 from the charges under Sections 498A/306/34 of the Indian Penal Code, 1860.
39. Learned advocate appearing for the appellant submits that the inquest report contains materials establishing that there were torture upon the victim. He refers to the deposition of the prosecution witness no.3 and submits that, there are instances of torture with the son of the victim, P.W.3 stating so in his evidence. Therefore, he submits that, even though, the charge under Section 306 of the Indian Penal Code, 1860 would not be established as against the respondent nos.2 and 3, at least, charge under Section 498A of the Indian Penal Code, 1860 stood established.
40. Learned advocate appearing for the appellant refers to the

deposition of the other prosecution witnesses and submits that, the charge under Section 498A of the Indian Penal Code, 1860 stood established, as many of the prosecution witnesses heard about demand for dowry and the torture that was meted out by the in-laws of the victim on her.

41. Learned advocate appearing for the appellant submits that, investigations were carried out in a perfunctory manner. By reason of the same, the de facto complainant cannot be made to suffer. The wooden log, spoken of by the P.W.3 and other prosecution witnesses, were not seized by the investigating agency.

42. Learned advocate appearing for the appellant submits that, the relationship between the matrimonial family of the victim and her parental family was not good. In support of his contention he submits that mother of the victim was not allowed to enter the matrimonial home of the victim on January 21, 2017 when the incident occurred.

43. In such circumstances, learned advocate appearing for the appellant submits that, the Court should at least convict the respondent no.2 and 3 under Section 498A of the Indian Penal

Code, 1860 if not under Section 306 thereof.

44. Learned advocate appearing for the State draws attention of the Court to the depositions recorded at the trial and the documents marked as Exhibits. He refers to the various portions of the impugned judgement and order of acquittal.
45. It is trite law that, a judgement and order of acquittal can be reversed on appeal, provided that, there are compelling reasons to do so. The appeal Court, on reappreciation of the evidence, can arrive at a finding that, material evidences were overlooked by the learned trial court or that, evidences on record were not appreciated correctly and therefore, arrived at a finding of conviction as against the accused persons.
46. Prosecution did not produce any eye witness to the incident at the trial. P.W.3 is the son of the victim. He was aged about 8 years when the incident occurred. At least two prosecution witnesses placed P.W.3 to be outside the house at the material point of time. They stated that P.W.3 was with his father, respondent no.2, at the temple when the incident occurred.
47. P.W.2 stated that, the victim was assaulted by a wooden log. Post Mortem report which was marked as Exhibit 11 at the

trial, states that there were no injury mark on the body of the victim apart from a non continuous ligature mark.

48. The claim of P.W.3 that the victim was assaulted by a wooden log was not corroborated by the Post Mortem Report of the victim. Moreover, P.W.3 stated that, he was with the maternal grand parents subsequent to the death of the victim. A period of three years elapsed from the death of the incident and the date when P.W.3 came to depose at the trial.

49. Fact that P.W.3 was with the maternal grand parents was established by the two sons of the P.W.1. They also corroborated the fact that, P.W.3 was with P.W.1 subsequent to the death of the victim. Therefore, the possibility of P.W.3 being prevailed over or tutored by his grand parents to depose as against the respondent nos.2 and 3 cannot be overlooked. Benefit of doubt, should go in favour of the accused in this regard.

50. Several prosecution witnesses claimed that the victim was tortured at her matrimonial home. There is no contemporaneous complaint by any person with any police station or any authority regarding the alleged torture meted out by the in-laws of the victim.

51. Quite to the contrary, there is evidence of P.W.1, who is the father of the victim that, there was a good relationship between the victim and the respondent no.2. P.W.9, a neighbour of the respondent nos.2 and 3, stated in cross-examination that she never heard that the relationship between the victim and her in-laws was not good.
52. Therefore, on the strength of the oral testimonies of the prosecution witnesses, we are unable to bring ourselves to hold that the respondent nos.2 and 3 indulged in torture or demanded dowry within the meaning of Section 498A of the Indian Penal Code, 1860. Moreover, we are not finding any compelling reason to reverse the finding of the learned Trial Judge in this regard.
53. The impugned order is well-reasoned. It is not vitiated by perversity.
54. In such circumstances, we find no merit in the present appeal.
55. **CRA (DB) 95 of 2022** is dismissed.

56. In the event, the respondent nos.2 and 3 complied with the order dated June 7, 2022 they be discharged of their bail bonds so furnished.

57. Trial Court records along with a copy of this judgement and order be sent down at once to the appropriate Court for necessary action.

58. 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.]

59. I agree.

[MD. SHABBAR RASHIDI, J]