

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

C.R.A. 280 of 2012

Jagannath Pramanik

Vs.

State of West Bengal & Ors.

For the Appellant : Mr. Debashis Banerjee, Adv.

For the State :

Heard on : 12.09.2023.

Judgment on : 12.09.2023.

Joymalya Bagchi, J. :-

1. Appeal has been preferred by the appellant who is the de facto complainant and the uncle of the deceased lady.

2. It is alleged prosecution case is to the effect that in January 2002, deceased had eloped with the second respondent Bibhas Singh. Initially, the family did not accept the marriage. After one month they went to the matrimonial home of their niece and the matter was settled. At that time their niece stated that her in-laws had demanded money. Thereafter their niece returned to her parental home.

3. A village salish was held where it is alleged Rs. 40,000/- was to be handed over to one Debasis Ojha (PW 5) for payment to the husband and in-laws as dowry. One year after marriage a daughter was born to the couple. Soon thereafter torture upon the victim commenced to compel her to bring more dowry. On 24.7.2006 appellant received information that the victim had died due to burn injuries. At her matrimonial home he could not find her husband and in-laws.

4. He lodged written complaint resulting in registration of the present case. On completion of investigation, charge sheet was filed and charges were framed against respondent nos. 1 to 4 i.e. the husband and parents-in-law of the victim lady under sections 498A/304B/34 IPC. In the course of trial prosecution examined 7 witnesses.

5. On analysis of the evidence on record learned trial judge came to a conclusion that the demand of dowry by the respondents was unlikely and there is no reliable evidence that the victim lady was subjected to cruelty for or in connection with dowry soon before her death. Accordingly, he acquitted the accused persons. Hence, the present appeal.

6. Lower court records have been received.

7. We have gone through the impugned judgment as well as the evidence on record. PW 1 is the uncle of the deceased and the de facto complainant. PW 3 is the mother of the deceased. PW 2 is a member of Labpur Gram Panchayat. He was present during the salish. PW 4 is a

neighbour. PW 5 Debasis Ojha was present at the time of salish on behalf of the respondents and it is alleged that he had received Rs. 40,000/- to be handed over as dowry to the respondents. PW 6 also deposed about the salish. PW 7 is the investigating officer.

8. PWs 1 and 3 are the uncle and mother of the deceased lady respectively. They admitted in January 2002 the deceased had eloped with Bibhas Sing. Initially they did not accept the marriage. One month later they went to the matrimonial home of the deceased. It is contended at that time the deceased informed them her in-laws had demanded dowry. During cross examination PW 1 had admitted that trial judge noted that the marriage between the deceased and Bibhas Sing was not through negotiation. On the contrary Bibhas Sing had eloped with the deceased in January 2002. Relations of the deceased did not accept the marriage. In fact they had lodged a missing diary at Labpur P.S after the lady had eloped. One month later they went to the matrimonial home of the lady. There is no evidence on record that the trial judge held under such setting it is unlikely that in-laws had made a demand of dowry in connection with marriage. However evidence has come on record after the marriage, the victim was residing at her parental home. A salish was held to settle the dispute. Local people including member of the Panchayat i.e. PWs 2 and 4 were present during the salish. PW 5 was also present and deposed it was decided that the appellant would pay Rs. 40,000/- to the in-laws. The following evening appellant went to the house of the

respondents and the money was handed over to the father in law. This fact has not been corroborated by the appellant in his deposition. He did not say that he had come to the house of the respondents and had handed over the money to them. On the other hand he claims that the money was handed over to Debasis Ojha (PW 5) for meeting the dowry demands of the respondents. Even panchayat member PW 2 who claimed in Court that he was present during the salish admitted that during cross examination he did not disclose this fact earlier.

9. In the light of the aforesaid evidence, the trial Judge expressed doubt whether in the factual matrix it is likely dowry would be demanded. The marriage was out of love and not negotiation. Victim had eloped with the 2nd respondent. Her relations initially did not accept the marriage. This Court is in agreement with the reasoning of the trial Judge that under such circumstances it is unlikely that the respondents would demand dowry when the couple had eloped and the relations of the victim had not accepted their union.

10. Subsequently, the relations of the victim accepted the marriage. Prosecution witnesses particularly PWs. 1 and 3 deposed thereafter she returned to her parental home due to family disputes. Thereafter, a village salish was held where it is said Rs. 40,000/- was paid through Debasis Ojha (PW 5) to the respondents. Though evidence shows a salish was held and there was a proposal to pay Rs. 40,000/-, the manner and circumstances in which the payment, if any, was made is unclear. PW 1

stated the money was handed over to Debasis Ojha (PW 5) who, in turn, handed it over to the respondents. But PW 5 stated that PW 1 had come to the residence of the respondents and had handed over the money to them. This shows payment of dowry to the respondents in terms of the salish has not been proved.

11. It is the prosecution case after the salish the housewife returned to her matrimonial home. A girl child was born. PWs 1 and 3 stated thereafter she was subjected to torture over further demands of money. Other independent witnesses including PW 5 have not supported the case of torture after the salish. PW 5 stated after the victim returned to the matrimonial home the relationship between the couple became normal. Evidence of PWs 1 and 3 in this regard are also contradictory. During cross-examination, PW 1 stated during the marriage of his younger brother Debu, the victim had attended the ceremony. After Debu's marriage relationship between the families were normal. PW 3 admitted she did not state anything about torture after the salish to the police or anyone.

12. In this backdrop, it appears torture upon the housewife after the salish has not been proved. Salish was held within a couple of months of marriage in 2002. Incident occurred in 2006. There is no credible evidence of torture upon the housewife for more than three years prior to her death. Hence, prosecution has singularly failed to prove the victim housewife had been subjected to torture over demands of dowry soon

before her death. Trial Court had rightly held ingredients of the charged offences had not been proved.

13. For the aforesaid reasons, we did not find any merit in the appeal.

14. Appeal is not admitted and is accordingly dismissed.

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

16. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)