

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 296 of 2021

With

CRAN 2 of 2022

Samir Jana

Vs.

The State of West Bengal

For the Appellant : Mr. Asit Nayek, Adv.
Mr. Depanjan Chatterjee, Adv.
Ms. Richa Pramanik, Adv.

For the State : Mr. Swapan Banerjee, Adv.
Ms. Purnima Ghosh, Adv.

Hearing Concluded on : December 20, 2022
Judgement on : January 5, 2023

DEBANGSU BASAK, J.:-

1. The appellant was tried for cruelty towards his wife and murdering her. At the trial, the prosecution claimed that, the appellant who was married to his wife about nine years prior to the date of the murder, demanded dowry from his in-laws and obtained the same. The appellant used to torture his wife. His wife fell ill. The paternal family of the wife of the appellant gave the appellant money for the treatment of his wife. However, the appellant gambled the money received and

did not treat his wife. On May 14, 2016, at around 11 AM, the parents of the wife were informed that the appellant assaulted his wife and thereafter set her on fire. The in-laws of his wife reached the matrimonial home where they found the wife of the appellant lying dead in her room in burnt condition. A first information report was lodged which was investigated into.

2. On completion of investigations, the police filed a charge sheet as against the appellant. The trial Court framed charges against the appellant under Sections 498A and 302 of the Indian Penal Code, 1860 on January 11, 2017. The appellant pleaded not guilty and claimed to be tried.

3. At the trial, the prosecution examined 11 witnesses and relied upon documentary as well as material Exhibits. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Criminal Procedure Code when the appellant claimed to be innocent. The appellant declined to use any defence witness.

4. By the impugned judgement of conviction dated March 15, 2021, the appellant was found guilty under Sections 498A and 302 of the Indian Penal Code, 1860. By the impugned order of sentence dated March 16, 2021, the appellant was sentenced to suffer rigorous imprisonment for three years and

to pay a fine of Rs. 5000 and in default of payment of fine to suffer further rigorous imprisonment for a period of six months on the conviction under Section 498A of the Indian Penal Code, 1860 and to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000 and in default of payment of fine, to suffer further rigorous imprisonment for a period of six months on the conviction under Section 302 of the Indian Penal Code, 1860.

5. PW1, the brother of the victim, deposed that the marriage took place about 8/9 years ago as per Hindu rites and customs. He claimed that, at the time of the marriage, the paternal family of the victim gave Rs. 30,000 in cash, gold ornaments and articles. After marriage, the victim gave birth to a baby boy who was about three years old. He claimed that, after birth of the baby boy, the appellant used to inflict physical and mental torture upon the victim. He also claimed that, the appellant took loans from several persons of the locality as also from him. The appellant did not repay such loans. He claimed that, the appellant used to demand money through the victim and that the paternal family of the victim paid Rs. 55,000 to meet his demands. The paternal family took loans from different persons and sold their cattle to pay

the sum of Rs. 55,000 to the appellant. The appellant used such money for gambling.

6. PW1 deposed that, the appellant set fire to the victim at her matrimonial home where from the victim died. PW1 was informed about the incident by a relative. Upon being informed, PW1 went to the house of the victim where he saw the victim to be lying on the floor of a room in burnt condition. At that time, the appellant was sitting in the Courtyard. Suddenly the appellant entered into the room and searched for something. Thereafter, the police came to the spot and took away the dead body of the appellant to the hospital where she was pronounced as dead. Post-mortem of the victim was conducted and thereafter, he received the dead body of the victim. Thereafter, he lodged the complaint with the police. His grandfather typed the original written complaint under his dictation. Thereafter, he read over the contents and put his signature on the original written complaint. He tendered the written complaint which was marked as Exhibit 2. He also identified the appellant in Court.

7. In cross-examination, PW1 deposed that, the victim was suffering from illness after giving birth to her child. He also stated that, the victim used to visit her in-laws house at

least once in a week. They did not make any complaint with any authority over the issue of torture meted out by the appellant to the victim. He stated that, for the treatment of the illness of the victim, he took the victim to a doctor. The prescription of such doctor in respect of the victim was tendered in evidence and marked as Exhibit A. He stated that, the appellant and the victim used to visit their house occasionally prior to giving birth of the child.

8. The mother of the victim deposed as PW 2. She deposed that, the marriage between the victim and the appellant was a love marriage. A son was born out of the wedlock. She stated that, at the time of the marriage of the victim, the family gave the victim gold ornaments and Rs. 30,000 in cash as demanded by the appellant. She stated that, the appellant demanded money on repeated occasions through the victim and that the paternal family of the victim gave the appellant money as demanded which the appellant used for gambling and consuming liquor. She gave the appellant Rs. 55,000 by selling the cattle of the paternal family of the victim and withdrawing money from the bank account. Thereafter, the victim came to her paternal home and told the paternal family that she was not treated by any doctor

and demanded more money when the paternal family decided not to give any further money to the victim but to treat the victim. Thereafter, the victim went to her matrimonial home when, the appellant set ablaze the victim and murdered her. Prior to the incident, there was a quarrel between the victim and the appellant. After receiving the information, the paternal family of the victim went to her matrimonial home where they found that the victim was lying in burnt condition. She identified the appellant in Court. She identified her signature on the inquest report which was marked as Exhibit 3.

9. In cross-examination, PW 2 stated that, the victim and the appellant used to visit the paternal house of the victim frequently after the marriage and that the paternal family of the victim used to visit the matrimonial home of the victim frequently. The victim never complained anything against the appellant to her. She could not recollect the stage and the dates on which, the appellant demanded money from the paternal family of the victim through the victim. She also stated that, the paternal family of the victim never complained to any authority alleging that the appellant demanded money.

10. A family member of the appellant deposed as PW 3. He identified his signature on the Exhibit 3. He stated that, on being informed that the victim died out of a fire incident, he went to the house of the appellant and found a gathering in that house. He stated that, he did not meet the appellant when he returned home. He was declared hostile by the prosecution. He denied the suggestion of the prosecution that, on May 14, 2016, in the morning, the appellant quarrelled with the victim and thereafter went out of his house. Thereafter, he along with others went to the house of the appellant and after opening the door found the burnt body of the victim lying on the floor. At that time, appellant came to the house and that, he along with others found the appellant to be without any qualms for his burnt wife and that the appellant was busy collecting the wearing apparels and other articles in order to save them from the fire.

11. In cross-examination, he stated that, he was not aware about any illness suffered by the victim. He also stated that, he was not on good terms with the family of the appellant and was not in a position to say anything about the family affairs of the appellant. He however said that, no paternal family

member of the victim made any complaint to him about the appellant.

12. The younger brother of the appellant deposed as PW 4. He was present at the time of the inquest. He identified his signature on Exhibit 3. He was declared hostile by the prosecution and was cross-examined by the prosecution. He denied in such cross-examination that, he stated to the police that, in the morning of May 14, 2016, the appellant quarrelled with the victim and thereafter, the appellant went out of his house when it was found that a fire broke out in the house of the appellant. Thereafter, he along with others came over to the house and after opening the door, he and the others found the dead body of the victim lying on the floor. At that time, the appellant came back and started collecting the wearing apparels and other articles in order to save them from fire without any qualms about his burnt wife.

13. A neighbour of the appellant deposed as PW 5. He identified his signature on the inquest report being Exhibit 3. He was also declared hostile by the prosecution and on cross-examination by the prosecution, he denied the same suggestion that was put to PW 3 and 4 as to the conduct of the appellant.

14. Seizure list witness deposed as PW 6. The seizure list was marked as Exhibit 4. In cross-examination, he stated that, he knew that, the appellant need to take his wife, the victim, to Bangur Institute of Neuroscience, SSKM Hospital for treatment and at that once he accompanied them. Subsequently, the appellant took the victim to the hospital on repeated occasions for treatment. There was no problem in the family and that, they led a happy and peaceful conjugal life after their love marriage. The victim was suffering from mental depression due to her physical illness as well as disability. On the date of the incident, the appellant was not at home. He went to Ranihati to bring material for Jori work at the time of the incident. In answer to a query whether the appellant was present when he reached the place of occurrence, PW 6 stated that, he did not see the appellant when he reached the place of occurrence. He claimed that, he stayed for about 20/25 minutes at the place of occurrence. Thereafter, the appellant came to his house and left the place. During the lifetime of the victim, neither any member of the family of the appellant nor any member of the paternal family of the victim made any complaint against the appellant to him.

15. The father of the appellant deposed as PW 7. He stated that, the relation between the appellant and the victim was normal like any other husband-and-wife. He was declared hostile by the prosecution and on cross-examination by the prosecution, he stated that, previously, the appellant used to take grocery items from his shop and did not pay for the same. He admitted that on May 14, 2016, there was a quarrel between the appellant and the victim. He stated that, the appellant came to the spot and he did not find the appellant to express any sorrow with regard to the death of the victim. He identified his signature on the Exhibit 4 and claimed that it was blank when he signed it. During cross-examination by the defence, PW 7 stated that, due to ill-health, the victim could not do household work and for such reason, there used to be quarrel between the appellant and the victim. At the time of the incident, he was in his shop room. Local people put out the fire. He claimed that, appellant and the victim were on visiting terms with the in-laws of the appellant. Appellant used to do the household works as the victim was unable to do so. He also stated that, appellant used to take the victim to Bangur Neurosciences Institute for treatment.

16. A police personnel deposed as PW 8. He stated that, he brought the visara from Uluberia Hospital Morgue and handed it over to the investigating officer. He identified his signature in the seizure list being Exhibit 5/1. In cross-examination he stated that, excepting bringing the viscera he did not possess any knowledge regarding the case.

17. The doctor who issued the declaration certificate in respect of the victim deposed as PW 9. He stated that, the victim was brought with hundred percent burn injury. He declared the victim as brought dead. He tendered the death declaration certificate in evidence which was marked as Exhibit 6. He informed the jurisdictional police station after filling the prescribed format which was marked as Exhibit 7. In cross-examination, he stated that, as the death was unnatural, so he informed the matter to the police station. He stated that, no one made any complaint before him. The victim was brought dead.

18. The investigating officer deposed as PW 10. He described the manner in which, the investigation was conducted. He stated that, he collected the post-mortem report of the victim. He submitted the charge sheet against the

appellant. In cross-examination, he stated that, he did not investigate with regard to the dowry demands.

19. The doctor who conducted the post-mortem on the victim deposed as PW 11. He stated that, the post-mortem was conducted on May 14, 2016 at about 3:45 PM. On examination of the victim, he found the following: –

“1. Rigor mortis absent, heat stiffening of whole body with entire body in flexed condition.

2. Eyes and mouth open with tongue protruded.

3. 100% burn and deep burn injury affecting entire surface of body with stiffening of whole body, blackening of skin with blister formation at places, rupture of muscle tissue and deep burn mainly affecting both lower limbs and right upper limb.

4. Trachea congested, contains black soot particles.”

20. PW 11 stated that, in his opinion, the death was due to the effects of the burn as noted in the post-mortem report, ante-mortem in nature. The post-mortem report was tendered in evidence and marked as Exhibit 10. He stated that, if fire set on the body of any person, then the type of injury noted on the victim could be caused. In cross-examination, he stated that, from the post-mortem report it cannot be ascertained that, whether the death was suicidal or accidental or homicidal. He also stated that, subsequent chemical

examination report was not produced before him by the investigating officer for his opinion.

21. Learned Advocate appearing for the appellant submitted that, the prosecution did not prove the charges beyond reasonable doubt. He submitted that, the appellant was not present at the time of the incident at the house. He referred to the testimonies of the prosecution witnesses. He submitted that, PW 6 and 7 stated that, they saw the appellant to leave the house. PW 1 and 2 are the relatives of the victim. The prosecution did not produce any eyewitness to the incident. Therefore, their testimonies with regard to the presence of the appellant at the spot were of no consequence.

22. Learned Advocate for the appellant submitted that, the victim was suffering from illness. The victim was being treated at Bangur Neurosciences Institute for nerve -related problems. The victim was unable to do household works. The victim committed suicide because of her ill-health. He referred to the inquest report being Exhibit 3 and submitted that, PW 2, 3, 4 and 5 were present at the inquest. They suggested that, the victim committed suicide as will appear from the inquest report being Exhibit 3.

23. Since, the appellant was not at home being the place of occurrence at the time of the incident, provisions of Section 106 of the Evidence Act, 1872 were not attracted. He referred to the testimonies of PW 6, 7 and 11 in support of his contention that, the appellant was not present at the place of occurrence at the time of the incident.

24. Learned advocate appearing for the appellant submitted that, the appellant never demanded dowry from the victim or the paternal family of the victim. The appellant did not torture the victim. The paternal family apparently extended monetary facilities for the treatment of the victim during her lifetime. Such conduct of the appellant and the paternal family of the victim cannot be construed to mean that, the appellant was guilty under Section 498A of the Indian Penal Code, 1860. In support of his contentions, he relied upon **2007 volume 9 Supreme Court Cases 721 (Appasaheb and Another vs. State of Maharashtra)** and **2013 volume 4 Supreme Court Cases 551 (Modinsab Kasimsab Kanchagar vs. State of Karnataka and Another).**

25. It was contended on behalf of the appellant that, in the facts and circumstances of the present case, the appellant should be acquitted.

26. Learned advocate appearing for the state contended that, the prosecution proved both the charges beyond reasonable doubt. He submitted that, the appellant and the victim were husband-and-wife. They were last seen together. The fact that they were last seen together was established by the father of the appellant. Consequently, provisions of Section 106 of the Evidence Act, 1872 were attracted. He also referred to the conduct of the appellant after the death of the victim. He submitted that, the appellant did not express any remorse at the death of the victim. The appellant was busy collecting articles at the spot. He submitted that, the impugned judgement of conviction and the order of sentence should be upheld.

27. Post-mortem report of the victim, being Exhibit 10 stated that, the victim died due to the effects of burn injury as noted therein, ante-mortem in nature. However, further and final opinion with regard to the cause of death was reserved after receiving the chemical examination report. The post-mortem doctor being PW 11 in cross-examination stated that,

burn injury can be of three types, namely, suicidal, accidental and homicidal. From the post-mortem report being Exhibit 10 it could not be ascertained whether the death was suicidal or accidental or homicidal. The chemical examination report was not produced before him by the investigating officer for his opinion.

28. The prosecution therefore failed to prove as to whether the death of the victim was suicidal, accidental or homicidal. There is sufficient doubt as to whether the burns that the victim suffered were homicidal in nature in view of the testimony of the doctor conducting the post-mortem on the body of the victim. The post-mortem doctor was unsure as to whether, the burn injury was suicidal or accidental or homicidal since the chemical examination report was not placed before him for his opinion.

29. The prosecution did not produce any evidence either at the trial or during the hearing of the appeal to establish that, the death of the victim was homicidal.

30. The prosecution did not establish at the trial that, the appellant was present at the place of occurrence at the time of the incident. PW 1 and 2 did not witness the incident. They cannot be considered to be eyewitnesses to the incident. PW 6,

7 were post occurrence witnesses and they stated that when they arrived at the place of occurrence, the appellant was not present. The appellant arrived there after at the place of occurrence. PW 2, 3, 4 and 5 were present at the time of the inquest and they did not complain about the victim being murdered by the appellant. Rather they suggested that, the victim committed suicide due to the illness that the victim suffered from. PW 2 is the mother of the victim while PW 3 and 4 are the relatives of the appellant and PW 5 is a neighbour of the appellant. None of them claimed at the time of the inquest that, the victim was murdered by setting her on fire.

31. The evidence led by the prosecution of the trial suggest that, the appellant was out of his house at the time of the incident and that he arrived after the incident. Therefore, the question of the appellant explaining the death of the victim under Section 106 of the Evidence Act, 1872 does not arise. The prosecution did not produce any evidence to establish that the appellant was last seen with the victim prior to the incident.

32. The prosecution therefore could not establish that the victim was murdered and that the appellant was the

murderer. Consequently, the appellant is required to be acquitted of the charge under Section 302 of the Indian Penal Code, 1860 and is so acquitted.

33. The trial Court found the appellant guilty of Section 498A of the Indian Penal Code, 1860. Two authorities were relied upon on behalf of the appellant with regard to dowry death.

34. *Appasaheb and Another (supra)* noted that, the word dowry in the Indian Penal Code was of the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. It held that, two essential ingredients of Section 304B of the Indian Penal Code, 1860 were that the death of the woman was caused by any burns or bodily injury or because otherwise than under normal circumstances and the woman was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry.

35. *Modinsab Kasimsab Kanchagar (supra)* held that, offence under Section 498A of the Indian Penal Code, 1860 was committed if, it was established that, there was harassment/cruelty in connection with unlawful demand for property or valuable security required which need not be dowry demand. In the facts of that case, harassment of bride

relating to demand for a particular amount for repayment of a loan but not in connection with dowry was established. It was also established that the bride committed suicide due to harassment by her husband for non-payment of such amount. Therefore, the conviction of the husband under Section 498A of the Indian Penal Code, 1860 was sustained.

36. In the facts of the present case, the prosecution established that, there was demand for money made by the appellant to the victim. However, the reason for demand for money was not established by the prosecution. The possibility of money being demanded for the treatment of the victim cannot be ruled. In fact, evidence suggest that the appellant received money for the treatment of the victim. It was contended on behalf of the appellant that, the money was for the purpose of treatment of the victim prior to her death. The prosecution contended that, money was demanded on behalf of the appellant by the victim, prior to her death, from the paternal family of the victim and that, money was paid which, the appellant squandered away by gambling and consuming liquor.

37. The marriage was a love marriage. There were frequent visits between the two families. The victim was being treated

for nerve related problems as will appear from Exhibit 'A'. The husband used to take the victim to the hospital for treatment. The prosecution did not produce any evidence to suggest that there was any contemporaneous complaint regarding any demand for dowry lodged with any authority.

38. The evidence led at the trial by the prosecution also suggests that, the victim was suffering from ailments subsequent to the birth of the child. The victim was being treated at Bangur Neurosciences Institute at SSKM Hospital, Kolkata and that, the appellant used to take the victim to such hospital for her treatment. At the time of the inquest, even the mother of the victim stated that, the victim committed suicide due to her ill-health. None of the relatives of the victim present at the time of the inquest complained about dowry death. Therefore, the prosecution failed to prove beyond reasonable doubt that, the victim committed suicide due to the cruelty/torture meted out to her by the appellant or due to the demand for money from the appellant.

39. In such circumstances, we acquit the appellant of the charge under Section 498A of the Indian Penal Code, 1860 also.

40. The appellant is acquitted of the charges he was charged with. He is directed to be set at liberty forthwith, if not required in any other case. He 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.

41. CRA 296 of 2021 along with CRAN 2 of 2022 is disposed of accordingly.

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

43. Photostat certified copy of this judgement and order, if applied for, be given to the parties on priority basis on compliance of all formalities.

[DEBANGSU BASAK, J.]

44. I agree.

[MD. SHABBAR RASHIDI, J]