

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 483 of 2006

Santosh Oraon

-Vs-

The State of West Bengal

<i>Amicus Curiae</i>	:	Mr. Pran Gopal Das
For the State	:	Mr. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	:	05.01.2023, 18.01.2023
Judgment on	:	17.04.2023.

Ananya Bandyopadhyay, J. :-

1. This appeal is preferred against the judgment and order dated 19.05.2006 & 20.05.2006 passed by Learned Additional Sessions Judge, 3rd Court (Special), Jalpaiguri in Sessions Trial No. 14 of 2005 arising out of Sessions Case No. 73 of 2005 convicting the appellant under Sections 306 and 498A of the Indian Penal Code sentencing the appellant Santosh Oraon to suffer rigorous imprisonment for five (5) years and also to pay a fine of Rs. 5,000/- in default further imprisonment for one (1) year for the offence under Section 306 of the Indian Penal Code and he is further sentenced to suffer rigorous imprisonment for three (3) years and also to pay a fine of Rs. 500/- in default to suffer further imprisonment for two (2) months for the offence

under Section 498A of Indian Penal Code. Both the sentences shall run concurrently.

2. The prosecution case originated on the basis of a complaint lodged at Banarhat P.S. on 22.01.2002 which precisely stated that the victim Basanti Oraon was the elder sister of the complainant who married the appellant having eloped with him. The appellant thereafter regularly tortured the victim physically at his house on 4.11.2002 the appellant assaulted the victim severely who escaped and took shelter in the house of a neighbour. On her return in the morning the appellant further assaulted her severely and threatened the neighbours who tried to resist him. The neighbours took her to the hospital at the tea garden when the victim became unconscious. The victim was referred to Birpara Hospital as she had reaction of poison in her body. After she was admitted to Birpara Hospital she expired on 5.11.2002. The complainant prayed for investigation of the case and punishment of the offender.
3. Based on the aforesaid complaint Banarhat PS Case No. 76/02 of the year 2002 dated 22.11.2002 was instituted under Sections 498A and 306 of Indian Penal Code. The investigation ended in a submission of a chargesheet. Charges were framed against the appellant under Sections 498A and 306 of the Indian Penal Code to which the appellant pleaded not guilty and claimed to be tried.
4. The Learned Amicus Curiae for the appellant submitted that the Trial Court failed to consider the infirmities in the prosecution evidence and based its judgment on conjectures and surmises. The ingredients to

constituted the offence under Section 498A and Section 306 of the Indian Penal Code are absent. There was no demand for dowry and imminent act of instigation to abate the offence under Section 306 of Indian Penal Code. There was a considerable delay to lodge the complaint without any explanation for such delay. The absence of injury on the body of the victim negated the possibility of assault on the victim as evident from the post mortem report apart from the relatives of the victim the prosecution did not cite any local witness. Ropen Oraon a vital witness in whose house the victim had allegedly shelter on 4.11.2002 was not examined. The Learned Trial Judge did not consider the material contradictions and termed the same to be omissions being lenient towards the tender age of the complainant and the evidence of ill-literate adivasi witnesses. The Learned Amicus Curiae further relied on the decisions cited in

CRL.A. 25 of 2012 D/d. 7.1.2020 (Kunwar Pal- Appellant Vs. State- Respondent),
(2007) 10 SCC 797 (Kishori Lal Vs. State of M.P.),
2018 SCC OnLine Cal 9769:(2019) 3 CHN 481 (Enamul Hoque and Another Vs. State of West Bengal),
(2021) 2 SCC 427 (Arnab Manoranjan Goswami Vs. State of Maharashtra and Others).

5. The Learned Amicus Curiae, Mr. Pran Gopal Das accordingly prayed for the appeal to be allowed.

6. The Learned Advocate for the State submitted sufficient cogent evidence put forth by the prosecution to establish the offence committed by the appellant and accordingly the appeal shall be dismissed.

7. The prosecution cited ten witnesses and exhibited certain documents.

8. Assessment of the evidence of prosecution witnesses denotes:

PW-1, S.I. Sankar Das identified the inquest report, dead body challan and the seizure list marked as Exhibit-1, 2 and 3 respectively.

PW-2, Jatru Oraon, deposed that the appellant used to inflict physical and mental torture upon the victim after consuming liquor and “Haria”. The victim was assaulted in the evening and the following morning by the appellant which propelled her to consume poison. She had spent the intermittent night at the house of one Ropen Oraon. Ultimately the victim died at Birpara Hospital. The victim narrated the incident of torture and complained to the PW-2 two months prior to her death. During his cross-examination PW-2 stated that he did not see the appellant to assault her sister ever and heard the incident from others.

PW-3, Doctor Kalyan Bhattacharyya conducted the post mortem of the victim and found the following:

“Body was blackish colour, stout, build average, Rigormortis was present. Stomach was empty and pungent smell with secretion present. Saleva present in the mouth and nose. Face was congested. Viscera was sent for chemical analysis. Cause of death is pending till receiving analysis report.

This is the P.M. report prepared and signed by me, marked Ext.

Yes, pungent smell in the stomach may be due to intake of poison.

Cross-examination:- I found no external injury on the body of Basanti.”

PW-5, Ganesh Oraon the younger brother of the victim deposed that after marriage the appellant used to torture her elder sister being intoxicated. She came to know about the torture from the victim and had also witnessed the same. The local people tried to persuade the appellant in futility. PW-5 further corroborated the evidence of PW-2 as well as the statement in the complaint filed by her. She further stated her ignorance as to whether her elder sister consumed poison on her own or was administered by somebody else. During her cross-examination she stated to have heard the incident that took place on 4.11.2002. She further stated the appellant having a son and daughter aged about 18/20 years and 8/10 years respectively from his earlier marriage who used to live along with the victim.

PW-6, Etowa Turi was the scribe of the complaint marked as Exhibit-5.

PW-7, Markesh Oraon stated the victim to be his niece and corroborated the evidence of PW-2 and PW-5.

PW-8 and PW-9 were declared hostile by the prosecution.

PW-10, S.I. Samaresh Halder the investigating officer visited the place of occurrence and examined the witnesses. He prepared sketch maps marked Exhibit-7 and 8 and arrested the appellant. He seized the wearing apparels of the victim and viscera was sent to

FSL. On completion of investigation he submitted chargesheet against the appellant.

9. Ropen Oraon who provided shelter to the victim lady for the night was not examined, who could have enlightened on the torture inflicted on the victim the preceding night by the appellant in an inebriated state to create a link in the chain of circumstances, which compelled the victim to seek refuge at his house. Prosecution case did not project any demand for dowry for a considerable period of time or any specific incident of instigation, imminent and menacing beyond despair and despondency to propel her to cross the rubicon. The cardinal principle to constitute an offence under Section 306 of the Indian Penal Code is the susceptibility to incitement, an inexplicable provocation to impact a person to such an extent of remorse that he or she commits suicide devoid of any option or alternative to continue with life. PW-3, the doctor who conducted post mortem examination could not detect any external injury on the body of the victim, which obliterated the possibility of an immediate torture on the victim. The contradictions and inconsistencies in the prosecution evidence affect its crux to be of credence and cannot be believed in its totality.
10. Under the facts and circumstances of the case in absence of proof of commission of the offence by the appellant beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.
11. CRA 483 of 2006 is allowed and disposed of accordingly.

12. It is revealed from record that the appellant has served out the sentence.
13. I record my appreciation for the able assistance rendered by Mr. Pran Gopal Das, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.
14. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
15. 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.)