

**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 349 of 2021

Purnima Patra

VS.

The State of West Bengal & Ors.

For the Appellant : Mr. Bhaskar Seth
Mr. Kallol Kr. Maity, Advocates

For the private
respondent nos. 2-5: Mr. Arindam Jana
Mr. Soumyojit Chatterjee, Advocates

For the State : Mr. Saswata Gopal Mukherji, Id. PP
Mr. S. S. Imam,
Mr. Narayan Prasad Agarwala,
Mr. Sandip Kundu,
Mr. Pratick Bose, Advocates

Hearing concluded on : March 2, 2023

Judgement on : March 2, 2023

DEBANGSU BASAK, J.:-

1. In assailement is the judgment and order of acquittal dated October 7, 2021 passed by the learned Additional Sessions Judge, Fast Track, 1st Court, Contai in Sessions Trial no. 3/April/2014

CRA 349 of 2021

arising out of Sessions Case no. 550/October/2013 acquitting the accused persons of the charges under Sections 498A/313/307 of the Indian Penal Code, 1860.

2. The case of the prosecution, at the trial, was that, the private respondents being the husband and relatives of the de facto complainant, continuously mentally and physically tortured the de facto complainant. On June 28, 2010, in furtherance of common intention, the private respondents voluntarily caused the de facto complainant, then pregnant, to miscarry without her consent. Such miscarriage was not caused by the private respondents on good faith. On September 11, 2011, in furtherance of common intention, the private respondents attempted to murder the de facto complainant by pouring kerosene oil on her body and set her saree on fire with the intention and knowledge that, under such circumstances, it would cause death to the de facto complainant.

3. The appellant, lodged a written complaint with the police on November 18, 2011, accusing the appellant of torture, demand for

CRA 349 of 2021

dowry causing miscarriage and attempting to murder her. On the basis of such written complaint, a formal First Information Report being Contai Police Station Case no. 268 of 2011 dated November 18, 2011 was registered. On conclusion of the investigations, police filed charge sheet against the private respondents. The Court framed charges against the private respondents on April 22, 2014 under Sections 498A/313/307 of the Indian Penal Code, 1860.

4. To prove the charges, the prosecution examined 12 witnesses and relied upon various documentary and material evidences.

5. Learned advocate appearing for the appellant submits that the appellant was given in marriage at the age of 19 years on July 29, 2008. The private respondents subjected the appellant to cruelty three months after her marriage. The private respondents demanded more dowry on the pretext that the articles given in marriage by the father were not satisfactory.

6. Learned advocate appearing for the appellant submits that, the appellant under compelling circumstances, informed her

CRA 349 of 2021

father as to further demand made by her in-laws. However, the father of the appellant, due to the financial scarcity, could not meet such demands. Such inability to meet the demand for dowry, resulted in physical and mental cruelty, being inflicted upon the appellant by the private respondents. The private respondents conjointly tried to kill the appellant.

7. Learned advocate for the appellant submits that on June 26, 2010, the private respondent no. 2 administered drugs to the appellant in order to cause miscarriage to her. Miscarriage was ultimately accomplished on June 28, 2010. Thereafter, the respondent no. 2 attempted to murder the appellant by pressing a pillow on her mouth while she was sleeping. On September 11, 2011 at about 7 a.m., a dispute cropped up between the appellant and the respondent no. 2, about the issue of demand for more dowry. At that time, all the private respondents with the intention to kill the appellant, encircled her, while the private respondents poured kerosene oil on her body and set her on fire. Due to such incident, the appellant sustained grievous burn injuries. The

CRA 349 of 2021

appellant, however, managed to defuse the fire. Hearing her hue and cry, local people rushed to the place of occurrence. In such a situation, the respondent no. 2 told the appellant that she would be provided with medical treatment only if she states that cause of injury was due to burst of stove. The appellant, being in a helpless condition, conceded to such proposal. The appellant was first taken to a nursing home for treatment on October 26, 2011. In such nursing home, the appellant came to know, from the conversation of the respondents, that they were conspiring something ill. The appellant intimated her father whereupon, she was shifted and admitted at Contai sub-divisional Hospital on October 27, 2011. On November 16, 2011, after being released by the hospital, on November 18, 2011, she lodged the complaint with the police station.

8. Learned advocate appearing for the appellant submits that, the appellant suffered 70% burn injury within three years of marriage. He refers to the testimony of P.W. 1 as against the charges under Section 498A of the Indian Penal Code, 1860 read

CRA 349 of 2021

with Evidences of P.W.-3, P.W.-4, P.W.-5 and P.W.-6. He submits that, such prosecution witnesses could not be shaken in cross-examination. Moreover, if the cross-examination of the Investigating Officer, being P.W. 13, is taken into consideration, it would be evident that there was no denial taken as to the evidence taken by P.W. -1, the victim.

9. Learned advocate for the appellant submits that so far as charges under Section 307 of the Indian Penal Code, 1860 is concerned, the testimony of the victim was disbelieved by the learned Trial Judge on the ground that as to why the victim did not make complaint regarding the incident to her parents. According to him, the victim lodged the complaint immediately after being discharged by the hospital.

10. Learned advocate appearing for the appellant submits that, the burn injuries were caused by an accident by burst of stove is unsupported by any evidence. He refers to the evidence of P.W.-8, P.W.-10 and P.W.-11 and, in particular, to the deposition of P.W.

10. He submits that, defence witness being D.W. 1, is a Doctor

CRA 349 of 2021

who was not associated with the Government hospital. He points out that, the victim did not sustain any injury on the back or any side of her head/face.

11. Learned advocate appearing for the appellant submits that, the learned Judge erred in relying upon the evidence of P.W. 1. He submits that, the claim that the injuries were the result of accidental burst of stove is self-contradictory.

12. Learned advocate appearing for the appellant submits that, the trial Court erred in appreciating the evidence placed on record. He relies upon **AIR 2012 SC 3046 [Dayal Singh & Ors. Vs. State of Uttaranchal]** in this regard. He submits that, the Court is not required to surrender its judgment to that of the expert.

13. Learned advocate appearing for the appellant submits that, the private respondents were required to give explanations as to the burn injuries that the appellant suffered. He contends that, maintaining silence by an accused, while under an examination under Section 313 of the Criminal Procedure Code, is not an

CRA 349 of 2021

absolute right. He refers to Section 106 of the Evidence Act. He contends that, in given facts and circumstances, the accuseds are bound to give explanation to prove that the accident occurred in the manner as they are claiming. In support of such contention he relies upon **(2014) 3 S.C.R 551 [Phula Singh vs. State of Himachal Pradesh]** and **(2012) 4 SCC 257 [Ramnaresh vs. State of Chattisgarh]**.

14. Learned advocate appearing for the appellant submits that, the private respondent failed to produce the burst stove that they claimed exploded at the material point of time. In absence of such proof placed before the trial, he contends that, the prosecution is able to prove the case against the private respondents beyond all reasonable doubts.

15. Learned advocate appearing for the State refers to the evidence on record, particularly, the oral testimonies of the prosecution witnesses.

16. Learned advocate appearing for the private respondents submits that, P.Ws. 3 and 4 being the parents of the appellant,

CRA 349 of 2021

admitted that they stated about the payment of dowry for the first time before the learned trial Judge. They never revealed the same before the Investigating Officer. It is trite law that, where a witness does not make a statement under Section 161 of the Code of Criminal Procedure during investigation and makes the same for the first time before the trial Court, such deposition cannot be relied upon as chances of prefabrication cannot be ruled out in such an event.

17. Learned advocate appearing for the private respondent submits that, P.W. 6 also did not shed any light with respect to any demand of payment of dowry. He refers to the impugned judgment of acquittal and submits that, the learned trial Judge dealt with the issue of Section 498A of the Indian Penal Code, 1860 (IPC) and arrived at a finding that such charge was not established.

18. Learned advocate appearing for the private respondent submits that, charge under Section 313 of the IPC was not established. He refers to the provisions of Section 313 of the IPC.

CRA 349 of 2021

He submits that, although, the appellant claimed to be treated by a certain doctor at the Contai Hospital, such doctor was not examined at the trial. Moreover, in the evidence of P.Ws. 3 and 4, being the parents of the appellant, there is no whisper of the incident of P.W. 3 taking the appellant to Contai Hospital on June 28, 2010.

19. Learned advocate appearing for the private respondent refers to the finding returned by the learned trial Judge with regard to the charge under Section 313 of the IPC. He submits that, the learned trial Judge was correct in finding that such charge was not established.

20. Referring to Section 307 of the IPC, the learned advocate appearing for the private respondent submits that, there was no evidence to sustain such charge. He refers to the deposition of various prosecution witnesses. He submits that, the appellant was taken to nursing home first and thereafter shifted to a government hospital. The appellant stated before the doctors treating her at the two institutions that, she sustained burn

CRA 349 of 2021

injuries due to stove bursting. He contends that the charge under Section 307 of the I.P.C., is improbable in view of the oral testimonies of P.Ws. 8, 10, 11 and D.W. 1. He submits that, the opinion of the D.W. 1 was at the behest of the prosecution.

21. Learned advocate for the private respondent submits that, before reversing the finding of the learned trial Court, the appeal Court is required to consider each ground on which the order of acquittal was based for not accepting the same. He submits that, there is no material placed on record for the High Court to reverse the findings returned by the learned trial Judge in the impugned judgment of acquittal.

22. P.W. 1 is the de-facto complainant of the case. She stated that, she was married to the respondent no. 2 on July 29, 2008 according to Hindu rites and rituals at her paternal home. At the time of marriage, her father made over a sum of Rs.60,000/- in cash to the respondent no. 2 and gold ornaments to her. Her father spent Rs.1,00,000/- in her marriage. After marriage, she went to her matrimonial home and started her conjugal life there.

CRA 349 of 2021

For the first three months, she lived happily at the matrimonial home. Thereafter, disputes cropped up. The private respondents asked her to bring Rs.20,000/- from her father on the pretext that the articles which were given at the time of marriage by her father were not up to the mark. She informed such fact to her father. But her father, however, told her that he was unable to give such amount as he already spent Rs.1,00,000/- in her marriage. Thereafter, the private respondents started assaulting her and abusing her with filthy languages as she could not be able to bring Rs.20,000/- from her father. P.W. 1 stated that, in the month of Asarh, 1419 B S, respondent no. 2 pressed a pillow on her mouth. She informed her father about such incident. Thereafter, her pregnancy was terminated by way of administering medicines by the respondent no. 2 and sister-in-law on June 28, 2010. On June 27, 2010, P.W. 1 was taken to her paternal house by the respondent no. 2. As she was travelling under the sun, she felt uneasy at that time. The respondent no. 2 asked her to

CRA 349 of 2021

swallow a tablet and she took that. Thereafter, the respondent no. 2 left her at her paternal home.

23. P.W.1 stated that she was bleeding at night at her parental house. Father took her to the Contai Sub Divisional Hospital where she was admitted. Doctor of Contai Sub-Divisional Hospital treated her. She recovered due to such treatment.

24. P.W.1 stated that on September 11, 2011, all the private respondents set fire on her. Her sister-in-law caught hold of the locks of her hair, her mother-in-law caught her two hands from the back, father-in-law poured kerosene oil on the body and set fire on her. Her husband, the respondent no.2, threatened her that he would teach her a good lesson. The brother-in-law of the de facto complainant was standing at the gate to see whether anybody was coming or not. She was set ablaze. She was rolling on the ground in order to save herself.

25. Respondent no.2 told her that some persons had come to their house and if she told them that she got burn due to stove burst then she would be taken to doctor or hospital or otherwise

CRA 349 of 2021

she would not be taken anywhere. Then she was taken to a Nursing Home near her matrimonial home. She was admitted in such Nursing Home. She told the Doctor at Nursing Home that she got burn injury due to stove burst. She was admitted there for a period of one and half months. Thereafter, she informed the matter to her father from the Nursing Home. Her father came to the Nursing Home and shifted her to Contai Sub Divisional Hospital. She was admitted in the Sub Divisional Hospital for a period of 19/20 days. Then she came to her parental home after recovering. P.W.1 identified the written complaint lodged by her which was marked as Exhibit 1/1.

26. P.W.1 was cross-examined at length. In cross-examination, she stated that, when she was taken to the Nursing Home she did not tell the doctor who examined her that her husband asked her not to deliver the truth or that, she was required to say that she sustained burn injury due to stove burst. She stated that she read up to class-X and she stayed at the Nursing Home for one and half months. She admitted that prior to she being taken to Contai

CRA 349 of 2021

Hospital from the Nursing Home, her father visited the Nursing Home. She could not remember when her father went to the Nursing Home for the first time. She stated that after half days at the Nursing Home, she rang up her father from the phone of the adjacent patient and thereafter her father came to the Nursing Home.

27. P.W.2, did not add any value to the case of the prosecution or the defence.

28. P.W.3, is the father of the de facto complainant. He sought to corroborate the claims made by P.W.1 with regard to marriage and dowry given at the time of marriage. He stated that he came to know from P.W.1 that, on the date of the incident, the mother-in-law of the appellant assaulted her. Such testimony of P.W.3 is heresay evidence as it is based on the statements claimed to be learnt from P.W.1. He stated that he did not speak about the incident to anyone else.

29. P.W.4 is the mother of the appellant. She also sought to corroborate the statement with regard to the marriage of the

CRA 349 of 2021

appellant with the respondent no.2 and the demand for dowry allegedly made.

30. P.W.5 did not add any value to the case of the prosecution or the defence.

31. P.W.6, is the family priest of P.W.3. He also sought to corroborate the fact that cash of Rs.60,000/- and articles of Rs.1 Lakh were given by P.W.3 at the time of marriage of the appellant. He is not an eyewitness to the incident.

32. P.W.7 is a neighbour of P.W.3. He is not eyewitness to the incident. He claimed to learn about the incident from P.W.1 and P.W.3.

33. P.W.8 is a Doctor, who attended the appellant on October 27, 2011. He stated that on examination, he found an old burn injury suffered on September 11, 2011 and treated at the Nursing Home. He stated that, the appellant claimed that the burn was inflicted by the private respondents. He tendered the injury report of the appellant which was marked as Exhibit 2. He also tendered the bedhead ticket, which was marked as Exhibit 3.

CRA 349 of 2021

34. P.W.9 is a neighbour of the private respondents. He was declared hostile by the prosecution. On being cross-examined by the prosecution, he denied the suggestions put to him by the prosecution. He was cross-examined on behalf of the defence.

35. P.W.10 is a Doctor working with Contai Sub Divisional Hospital, he stated that on November 14, 2011, he examined the appellant who was admitted in the hospital with old burn injury on October 27, 2011. He tendered the injury report of the appellant which was marked as Exhibit 4. He stated that, in his opinion, such type of injury may occur very rarely by stove burst. In cases of bursting of a stove a person may sustain burn injury over the face. In this case there is no injury over the face of the patient.

36. P.W.11 is another Doctor, who attended the appellant on October 27, 2011. Appellant was admitted in the Contai Sub Divisional Hospital under him. He stated that, the injury suffered by the appellant can be caused by throwing or pouring kerosene oil on the body of a person. However, he could not say it certainly. He tendered the five treatment sheets of the appellant and marked

CRA 349 of 2021

Exhibit 5 series. He also opined that the type of injury suffered by the appellant may be possible due to stove burst but it depends on the position of the patient.

37. The photographer deposed as P.W.12. He tendered the envelope and the photographs taken by him on the place of occurrence. Such envelope was marked as Exhibit 6. Photographs taken by him were marked as Material Exhibit I series. Chip in which, such photographs were delivered was marked as Material Exhibit II.

38. The Investigating Officer deposed as P.W.13. He narrated about the course of investigation. He tendered the formal First Information Report which was marked as Exhibit 7. He tendered the rough sketch map with index of the first place of occurrence which was marked as Exhibit 8. He also tendered rough sketch map with index of the second place of occurrence which was marked as Exhibit 9.

39. On conclusion of the evidence of the prosecution, the private respondents were examined under Section 313 of the Criminal

CRA 349 of 2021

Procedure Code. The private respondents examined one defence witness being a doctor attached to the Nursing Home. Such doctor as D.W.1, stated that, the appellant was admitted in the Nursing Home on September 11, 2011 and that, he attended the appellant. He stated that the appellant was discharged on October 26, 2011. He claimed that the mother of the appellant forced him to discharge the appellant from Nursing Home. He tendered the injury report of the appellant which was marked as Exhibit A. He stated that , the appellant gave a statement which is mentioned in injury report that she suffered the injury at her own will. In his opinion, any stove burst may cause such type of injury suffered by the appellant.

40. The private respondents were charged with Sections 498A/307/313 of the Indian Penal Code, 1860.

41. So far as the charge against the private respondents under Section 498A of the Indian Penal Code, 1860 is concerned, the prosecution was unable to bring home such charge. The prosecution witnesses were not able to prove beyond reasonable

CRA 349 of 2021

doubt that, there were torture meted out to the appellant at her matrimonial home due to demand for dowry or otherwise. In fact, prosecution failed to establish that any dowry was given.

42. On the aspect of the charge under Section 313 of the Indian Penal Code, 1860, again, the prosecution failed to establish that the respondent no.2 administered any medicine on the appellant and that she suffered an abortion as claimed by her. Significantly, the Doctor who allegedly treated the appellant, was not examined by the prosecution. The claims made by the appellant remains unsubstantiated. Appellant apparently sought medical help with regard to miscarriage but documents substantiating the same was not tendered in evidence. In absence of corroboration it would be improper to take a contrary view than the learned trial Judge.

43. So far as the charge under Section 307 of the Indian Penal Code, 1860 is concerned the allegation is that the appellant was sought to be murdered by pouring kerosene oil on her and setting her ablaze. The appellant did suffer burn injuries. She was treated in two different medical entities, first at a Nursing Home and

CRA 349 of 2021

thereafter, at a Government Hospital. Three doctors on behalf of the prosecution and one doctor on behalf of the private respondents, in total four doctors treated the appellant at different points of time in two institutions. None of the doctors ruled out the possibility of the injury of the nature as suffered by the appellant, being caused by a stove burst. Even the Doctor examined on behalf of the prosecution could not confirm that the burn injuries suffered by the appellant could not be caused by stove burst.

44. When there is an element of doubt, obviously, the benefit goes in favour of the accused. Here, the prosecution was unable to prove beyond reasonable doubt that, the injury suffered were actually inflicted by the private respondents and not due to stove burst.

45. It is the contention of the appellant that, the stove said to be burst was not produced by the defence to establish that the appellant suffered burn injuries through a stove burst.

CRA 349 of 2021

46. With the deepest respect, it is for the prosecution to establish the charges beyond reasonable doubt. All that the defence is required to do is to demonstrate the charges were not established by the prosecution beyond reasonable doubt. Again, in the facts and circumstances of the present case, there is a doubt as to whether, the burn injury suffered by the appellant were due to the stove burst or pouring of kerosene on her as claimed by her.

47. It is trite law that, unless, the impugned judgement of acquittal is demonstrated to be perverse or that the learned trial Judge overlooked relevant material and arrived at a wrong conclusion, the view expressed by the learned trial Judge, if plausible is to be accepted.

48. We find no material to arrive at a finding that the views expressed by the learned Trial Judge in the impugned judgement and order of acquittal is perverse.

49. **Phula Singh (supra)** was rendered in the context of Prevention of Corruption Act, 1988. While dealing with powers

CRA 349 of 2021

under Section 313 of the Criminal Procedure Code, it held that, an accused was under a duty to furnish an explanation in statement regarding any incriminating material that was produced against him failing which the Court would be entitled to draw adverse inference as against him as noted above.

50. **Ramnaresh and others (supra)** dealt with a situation of a gang rape and murder. In such context, it dealt with the provisions of Section 313 of the Criminal Procedure Code. It noted that the accused may then remain silent or consequently deny the incident when his statement under Section 313 of the Criminal Procedure Code is being recorded. The Court is also entitled to draw an inference including adverse inference as may be permissible in accordance with law.

51. In the facts and circumstances of the present case, experts, who came to depose at the time, both on behalf of the prosecution as well as on behalf of the defence did not negate the possibility of the injuries being suffered by the appellant due to stove burst.

CRA 349 of 2021

Therefore, in such context, denial by the accused cannot lead to an adverse inference being drawn as against the accused.

52. **Dayal Singh & ors. (Supra)** is of the view that the Court normally look at expert evidence with a great sense of acceptability. It is equally true that facts are not absolutely guided by the report of the expert specially when such reports are perfunctory and unsustainable and the result of a deliberate attempt to misdirect the prosecution. Where the eye-witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

53. In the facts of the present case, apart from testimony of P.W.1 that the private respondents put kerosene oil over her and set her on fire, there is no other eyewitness to the incident examined on behalf of the prosecution. She also did not complain contemporaneously that the respondents set fire on her.

54. Four doctors who treated the appellant were examined at the trial; three on behalf of the prosecution and one on behalf of the

CRA 349 of 2021

defence. As noted above, all the four doctors did not negate the possibility of the appellant suffering the burn injuries due to a stove burst.

55. The appellant was in the first Nurshing Home for a period of one and half months. She did not make any complaint contemporaneously that fire was set on her by the private respondents. She admitted in her cross-examination that her father came to meet her after half days of first admission at the Nursing Home. She did not confide to her father that she was set ablaze by the in-laws.

56. The justification of the appellant in not confiding with either the doctors treating her initially or the police that she was set ablaze by the private respondents or that, the respondent no.2 told her that if she did not say that she suffered injuries by a stove burst, she would not be treated. Such justification, does not stand scrutiny in view of the fact that, her father visited her at the Nursing Home at an early stage. She was ultimately shifted to the

CRA 349 of 2021

Contai Sub Divisional Hospital by the parents. Therefore, the appellant was not left alone for her treatment.

57. In such circumstances, we find no merit in the present appeal.

58. **CRA 349 of 2021 is dismissed.**

59. It is accepted at the bar that, the respondent no.2 paid a sum of Rs.61,500 /- to the appellant being the amount due to the appellant in terms of proceeding for maintenance

60. Copy of this judgement and order along with the trial court records be transmitted to the jurisdictional court for appropriate orders forthwith.

61. Urgent 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.]

62. I agree.

[MD. SHABBAR RASHIDI, J.]

CRA 349 of 2021