

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. 483 of 2017

Aloke Mondal & Ors.

-Vs-

State of West Bengal & Anr.

For the Appellants : Mr. Arnab Chatterjee, Adv.
Mr. Dhanasree Biswas, Adv.
Ms. Poulami Bose, Adv.

For the State : Ma. Zareen N Khan, Adv.
Ms. Amita Gaur, Adv.

Heard on : 28.03.2023 and 29.03.2023

Judgment on : 29.03.2023

Joymalya Bagchi, J. :-

1. Appellants have assailed judgment and order dated 17.7.2017 and 18.7.2017 passed by the learned Additional District and Sessions Judge, 5th Court, Barasat, North 24-Parganas in ST case no. 50/2015 arising out of S.C case no. 293/2015 convicting the appellants for commission of offence punishable under section 498A/304B IPC and sentencing them to suffer rigorous imprisonment for 2 (two) years each and to pay fine of Rs. 5000/- each, in default to suffer rigorous

imprisonment for further two months each for the offence punishable under section 498A IPC and to suffer rigorous imprisonment for 10 (ten) years each for the offence punishable under section 304B IPC. Both the sentences shall run concurrently.

2. Prosecution case as alleged against the appellants is to the effect that the victim Pallabi was married to Alope on 3.8.2012. Alope used to carry on illegal trade in liquor. In order to assist Alope, Sankar Naskar (PW1), father of Pallabi used to provide daily ration on a regular basis. Alope and his parents Adhir Mondal and Haridasi Mondal started demanding cash. They tortured Pallabi over such demands. Pallabi complained of torture. A boy was born to the couple. When villagers intervened, Alope and his parents started assaulting Pallabi. On 30.10.2014 at around 12 O'clock Sankar received information that Pallabi had been admitted to hospital. He came to the hospital and heard that there was a quarrel between Pallabi and her husband and in-laws. As a result, she committed suicide by pouring kerosene and setting herself on fire. On the written complaint of Shankar (PW1) Rajarhat PS case no 363/14 dated 30.10.2014 under sections 498A/326/307 IPC was registered.

3. In the course of investigation, dying declaration of Pallabi was recorded in presence of Dr. Sudipta Kr. Singh (PW10), the treating surgeon. Soon thereafter Pallabi died. Charge sheet was filed and charges were framed under Sections 498A/304B IPC, alternatively section 302 IPC. They pleaded not guilty and claimed to be tried.

4. In the course of trial, prosecution examined 12 witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication. They examined one of their neighbours Jayanti Mondal (DW1). In conclusion of trial, learned trial Judge by judgment and order dated 17.7.2017 and 18.7.2017 convicted and sentenced the appellants, as aforesaid.

5. I have considered the evidence on record.

6. P.W 1 Sankar Naskar is the father of the deceased and de facto complainant. He deposed his daughter Pallabi was married to Alope Mondal. Six months after marriage disturbances occurred over the issue of Alope demanding money. PW1 gave money to Alope on a number of occasions. A male child was born to the couple. Thereafter, torture increased. In 2014 he received a phone call that Pallabi had caught fire. She was admitted to a hospital. He rushed to the hospital. Subsequently Pallabi died. He lodged written complaint Ext 1. In cross examination, he stated that he had lodged general diary with regard to torture. Pallabi suffered from mental pain as there was poverty in the house of Alope. After her death 'streedhan' articles were returned.

7. PW5 Balendra Nath Mondal is a relation of PW1. He deposed there were disturbances in the matrimonial life of Pallabi. General diary was lodged. At the time of marriage they knew Alope used to work as a labour in a silver shop but subsequently they came to know he ran an alcohol business.

8. PW 8 Palash Naskar is the brother of Pallabi. He signed on the inquest report.

9. PW 9, Basudev Naskar is an uncle of Pallabi. He deposed appellant tortured Pallabi to compel her to join the illegal alcohol trade. They tried to settle the matter. Local people told them to go to police. In May 2014 general diary was registered. Torture upon Pallabi increased. On 30.10.2014 Pallabi set herself on fire. She was admitted to R.G. Kar Medical College and Hospital. He scribed the FIR (Exhibit 1/1).

10. PW 10, Dr. Sudipta Kr. Singh was a medical officer attached to R.G. Kar Medical College and Hospital. He deposed on 30.10.2014 Pallabi Mondal was admitted to the hospital. She was conscious and oriented. She made statement to police in his presence. The statement was read over and explained to the patient. She put her LTI on the statement. He proved the dying statement. In cross-examination, he stated he could not understand or write Bengali properly.

11. PW 7, Dr. Manimala Sen conducted post-mortem examination. She found 96 per cent burn injuries on the dead body. She opined death was due to burn injury, ante-mortem in nature.

12. PW 12, Pravash Ghosh is the investigating officer. He deposed he went to the place of occurrence. He drew rough sketch map with index. He recorded statements of witnesses. He seized articles under a seizure list. He collected dying declaration recorded by Debasish Ghosh, S.I. of police attached to Tala P.S. He identified the dying declaration. He collected death certificate of the deceased. He lodged written complaint.

13. Jayanti Mondal, a neighbour of the appellant was examined as DW 1. She stated Pallabi lived happily at the matrimonial home. She wanted to go to her parental home and a document was signed (Exhibit B). She proved her signature on the document (Exhibit B/1). She could not state why Pallabi died. In cross-examination, she stated there was a dispute going on as Pallabi wanted to go to her parental home.

14. From the aforesaid evidence on record it appears Pallabi was married to Alope Mondal on 03.08.2012. After six months there were disturbances at the matrimonial home. Her father (PW 1) and her uncle (PW 9) intervened. A general diary being GD Entry No.998 dated 18.05.2014 was registered. A meeting was convened and a written settlement (Exhibit B) was executed to permit her to go to her parental home. In the light of the aforesaid evidence, defence plea sought to be established through DW 1 that Pallabi was living happily at the matrimonial home appears to be false. After child birth, torture on Pallabi increased. Finally on 30.10.2014 she suffered burn injuries and was admitted to hospital.

15. From the aforesaid evidence on record it appears prosecution has been able to prove that Pallabi was subjected to torture at the matrimonial home by her husband and in-laws. Oral statement regarding torture as transpiring from her relations PWs 1, 5 and 9 is corroborated by the general diary lodged (Exhibit 7). Contents of the written statement (Exhibit B) must be seen in the light of the aforesaid evidence on record. Pallabi was subjected to torture. In order to bring her

back to the matrimonial home, it is probable she was compelled to write in the written statement (Exhibit B) that there was no torture meted out by her husband and in-laws. If Exhibit B is appreciated in the backdrop of other incriminating evidence on record including the dying declaration, it is self-evident that its contents are untrue and the document was executed under compulsion. Even then the document admits there was dispute at the matrimonial home.

16. Evidence with regard to torture upon Pallabi is supported by her dying declaration (Exhibit 8). PW 10, Dr. Sudipta Kumar Singh who treated Pallabi at R.G. Kar Medical College and Hospital proved the dying declaration. He stated Pallabi was conscious and oriented. She made the dying declaration to a police officer SI Debasish Ghosh who recorded the same. Pallabi also put her LTI on dying declaration.

17. It is contended Debasish Ghosh, S.I. attached to Tala Police Station who recorded the dying declaration has not been examined. PW 10, Dr. Sudipta Kr. Singh who proved the dying declaration did not understand or write Bengali properly. Hence, dying declaration has not been proved beyond doubt. I am unable to accept such contention. The dying declaration has been proved as Exhibit 8 without objection. Pallabi was admitted under Dr. Singh at R.G. Kar Medical College and Hospital. He is the best person with regard to her competence to make the statement. The said witness unequivocally stated Pallabi was conscious and capable of giving the dying declaration. She made the declaration before a police officer who recorded the same. She also put her LTI. Dr.

Singh has been working in the Government Hospital for sometime. Though he may not be fully conversant in Bengali, in view of his nature of work in a hospital which caters mostly to Bengali speaking population, it is highly improbable that he would not understand the statement made by Pallabi to the police officer.

18. In such view of the matter, in my estimation, P.W. 10 is a competent witness to prove the dying declaration. Dying declaration is corroborated by the oral evidence of the relations with regard to the torture as well as the corresponding contemporaneous General Diary at police station. As discussed earlier, the averments made in the written statement (Exhibit – B) must be construed in the backdrop of the circumstances in which the document was executed and the overwhelming evidence to the contrary. However, I am unable to accept the prosecution case that the torture was over demands of dowry. Apart from P.W. 1 none of the other witnesses stated the victim-housewife was tortured over dowry. Even the scribe of the FIR (P.W. 9) did not support the prosecution case with regard to demands of dowry.

19. Thus, I am of the opinion, though prosecution has been able to prove that the housewife was subjected to torture at the matrimonial home, it has not been established beyond doubt that the torture arose from demands of dowry. But the torture was continuous and was of such intensity that it pushed the housewife towards self-immolation within two years of marriage.

20. The evidence on record attracts the statutory presumption under section 113A of the Evidence Act. No alternate explanation justifying suicide by the housewife is either offered by the defence or is evident from the materials on record. The irresistible inference is that the continuous torture upon the housewife goaded her to commit suicide.

21. Under such circumstances, I am of the opinion prosecution has been able to prove the ingredients of the offences punishable under sections 498A and 306 IPC. Offence under section 306 IPC being a lesser offence to one punishable under section 304B IPC, conviction of the appellants without framing charge for the said offence do not prejudice them. Accordingly, conviction of the appellants is modified and they are convicted on the aforesaid counts.

22. Coming to the issue of sentence imposed on the appellants, I note prosecution has not been able to prove the offence under section 304B IPC but the ingredients of the offence under section 306 IPC have been established beyond doubt. Torture upon the housewife was primarily by her husband Alope Mondal and the in-laws, namely, Haridasi Mondal and Adhir Mondal abetted the same. They have been suffering incarceration for more than five years.

23. Taking into consideration the aforesaid factors, I direct that appellant No.1, Alope Mondal shall suffer rigorous imprisonment for seven years and pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for one year more and appellant Nos. 2 and 3, namely, Haridasi Mondal and Adhir Mondal shall suffer rigorous imprisonment

for the period already undergone and pay a fine of Rs.10,000/- each, in default, to suffer imprisonment for one year more for the offence punishable under section 306 IPC. Sentence imposed on the appellants under section 498A IPC shall remain unaltered. Both the sentences shall run concurrently.

24. The appeal is, accordingly, disposed of.

25. In view of disposal of appeal, connected application(s), if any, stands disposed of.

26. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of 428 of the Code of Criminal Procedure.

27. Copy of the judgment along with L.C.R. be sent down to the trial Court at once.

28. Urgent photostat certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)