

February 20, 2023
Sl. No. 9
Court No.236
s.biswas

CRR 4367 of 2009

***Sri Madan Mohan Ghosh
Vs.
State of West Bengal and another***

Mr. Bidyut Kumar Roy,
Ms. Sima Biswas, Advocates

... for the State

Perused the office report that indicates despite several attempts administrative notice could not be served upon the petitioner. This criminal revision is pending for nearly 14 years. In such circumstances, I do not find any reason to adjourn the case suo motu, rather I intend to dispose of this revisional application on merit based on the materials made available with the record.

The application under consideration challenges the judgment and order of acquittal passed by learned Additional Sessions Judge, Arambagh on 7th day of September, 2009 in S.T. Case No.45 of 2002 (S.C. Case No.24 of 2002). Briefly stated, on 3rd May, 1999 at about 00.15 hours one Madan Mohan Ghosh informed the Officer –In-Charge, Goghat Police Station about the unnatural death of his sister within seven years of her marriage. The marriage between Kalpana Pandit nee Ghosh and Kinkar Pandit was solemnized in the month of Shraban, 1994 and according to the informant, she died mysteriously on 1st May, 1999 at SSKM Hospital, Calcutta. Having found disclosure of offence cognizable in nature, Goghat Police Station Case No. 29 dated 3rd May, 1999 was

registered, police took up investigation and submitted charge-sheet against the accused person being the husband of the victim under Sections 498A, 304, 304B of the IPC. The accused person stood trial after pleading innocence to the charges. In order to succeed, the prosecution examined the witnesses cited in the charge-sheet and learned Trial Court after considering the evidence on record was pleased to hold that the prosecution failed to prove the charges beyond reasonable doubt and recorded the order of acquittal.

Upon perusal of impugned judgment, I find that the victim died well within seven years of her marriage.

So far cause of death is concerned, according to the death certificate issued from the hospital, it was cardio-respiratory failure due to unknown drug poisoning. During post mortem examination the doctor could not give any opinion and viscera was sent for chemical examination. The chemical examination report however ruled out the presence of poison in the viscera of the victim Kalpana Pandit. Thereafter on 31st March, 2001 the cause of death as noted was due to shock resulting from the head injury and it was ante mortem and homicidal in nature. Learned Trial Court while analyzing the evidence adduced by witnesses found that in the morning of 30th April, 1999 the victim was admitted to Arambagh Hospital and from there she was taken to SSKM Hospital where she expired on 1st May, 1999, FIR was registered on 3rd May, 1999, post mortem examination was held on 4th May, 1999. PW 7, the autopsy surgeon stated in

his evidence that the victim did not have any external or internal injury, but after obtaining the report the final opinion was given by the autopsy surgeon that the cause of death was due to shock resulting from the head injury. It is rightly held by learned Trial Court that prosecution failed to prove beyond reasonable doubt that the victim died otherwise than under normal circumstances. Even the post mortem report as well as testimony of PW 7, the autopsy surgeon, disproves the charge against the accused person for commission of offence like culpable homicide not amounting to murder.

So far allegation of harassment of the victim by the accused person demanding dowry is concerned, learned Trial Court after due analysis of testimony of prosecution witnesses has arrived at a decision that prosecution failed to prove the charge under Section 498A of the IPC beyond reasonable doubt. Though one of the prosecution witnesses PW1 claimed before the learned Trial Court that he was compelled to pay a sum of Rs.40,000/- as demanded by the husband of his sister and the money was deposited in bank, the said assertion could not be proved by the prosecution.

PWs 1 and 2 as well as other family members of the victim stated before the Court that seven days prior to fateful day, the victim came to her father's house with mark of injuries on all over her body and she was not willing to go back to her matrimonial home, but she was not taken either to doctor or to police. This inaction on the part of the family members of the victim when is considered in

contradistinction with the conduct of the husband of the victim in the light of the Exhibit B, the prescriptions issued by the doctor, there is hardly any room to deny that the husband was caring and he took all possible steps to treat his wife, who was mental patient as Exhibit B suggests. By no stretch of imagination he could be held to have perpetrated torture upon his wife physically and treated her with cruelty within the meaning of Section 498A of the IPC, if such conduct of the husband is considered from the point of view of human probability.

Under such circumstances, I do not find any reason to interfere with the judgment impugned. The criminal revisional application is bereft of merit and is dismissed, however, without costs. The application if any stands disposed of.

Let a copy of this order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)