

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Criminal Appellate Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

CRA 20 of 2019

Asha Devi @ Mandal & Ors.
Vs.
THE STATE OF WEST BENGAL

For the Appellants : Ms. Radhika Agarwal, Adv. Amicus Curiae

For the State : Mr. Aditi Shankar Chakraborty
Mr. Sourav Ganguly

Heard on : 01.9.2023

Judgment on : 01.9.2023

The Court:

1. This criminal appeal challenges the judgement and order of conviction passed by learned Additional District and Sessions Judge, F.T.C. Siliguri, Darjeeling in S.C. No. 142(12) of 2013, S.T. No. 2 of 2014.

2. By the impugned judgement learned Trial Court was pleased to record an order of conviction against the appellant and his family members, (who preferred separate appeal) for committing offence under Section 498A/34 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for a term of three years with a fine of Rs.10,000/-, and also to suffer rigorous imprisonment for seven years for committing offence under Sections 304B /34 of the Indian Penal Code and to pay a fine of Rs. 30,000/- with a default clause.

3. The fact of the case, in short, is that, the de facto complainant Sri Anil Roy informed the Officer-in-Charge of Matigara P.S. in writing about the unnatural death of his daughter Arati Kumari, who was married to Lalit Mandal on 24.4.2013. It is alleged that Arati Kumari was subjected to mental as well as physical torture in her matrimonial home as she could not fulfil the unwilful demand of her husband and other in-laws for a sum of Rs. 2 lacs.

4. On 04.9.2013, Anil Roy received a phone call from Lalit Mandal, his son-in-law who told him to talk to Arati Kumari but Arati was not in a condition to talk. At about 3 PM one Pandit gave him a call and informed that Arati, his daughter sustained burn injury. It was alleged that Arati was murdered by her husband namely, Lalit Mandal and her parents-in-law Asha Devi, Suresh Mandal and brother-in-law Amardeep Mandal.

5. As the information disclosed offence cognizable in nature, Matigara P.S. Case No. 435 of 2013 dated 05.9.2013 was registered under Sections 498A/302/34 of I.P.C. Police took up investigation which culminated into submission of charge sheet against the accused persons on 20.01.2014.

6. Upon considering the materials collected in course of investigation learned Trial Court, having found prima facie case framed charges under Section 498A/304B/34 of I.P.C. against four accused persons who pleading their innocence claimed to be tried. During trial prosecution examined as many as 21 witnesses.

7. The de facto complainant as P.W. 1 stated that on 04.9.2013 at about 12.30 P.M. he received a phone call from his son-in-law Lalit Mondal who wanted to know if he could come to Siliguri on the following day. At about 3.01 P.M. Bablu Jha called him over phone and informed that her daughter was set ablaze by her husband Lalit Mandal and her parents-in-law Asha Devi, Suresh Mandal and

Amardeep Mandal. It is further stated that his daughter Arati was married to Lalit Mandal on 08.4.2013. After marriage all the accused persons demanded Rs.2 Lacs from his daughter. The written information submitted by P.W. 1 is admitted as Exhibit – 1 and his signature on the inquest report is admitted as Exhibit – 2. It is his further evidence that Arati his daughter informed him about the demand of Rs.2 Lacs by the accused persons.

8. During cross-examination he stated that he used to visit the house of his daughter and son-in-law off and on. He informed the police that in-laws of his daughter demanded Rs. 2 lacs for the purpose of business but he did not lodge any complaint prior to the death of his daughter, regarding such demand of Rs.2 lacs. After marriage, his daughter visited his house thrice, accompanied by her husband. Both his daughter and son-in-law visited Gantok and stayed in his house for 3-4 days during their each visit. He identified his signature on the seizure list, the wedding cards, Photographs, DVD disc seized during investigation are admitted into evidence as Material Exhibits Nos. I, II, III and IV.

9. Sarban Jadav- P.W. 2 stated that the victim was set ablaze in her bathroom by the members of her in-laws house. It is his further evidence that Lalit used to assault his wife over the demand of money and his family members also assaulted the wife of Lalit over the demand of Rs.2 lacs. But he stated that he heard everything from others in the locality. The evidence of P.W. 2, therefore, appears to be inadmissible being *hearsay*.

10. Gita Jadav – P.W. 3, expressed his ignorance about the alleged incident save and except the fact that Lalit was married to one lady and she was dead. P.W. 3 was examined in the light of Section 154 of the Evidence Act by the prosecution.

11. Sita Devi Ram- P.W. 4, also expressed her ignorance about the alleged incident. Her only evidence is Lalit was married and his wife is dead. She was also examined in the light of Section 154 of the Evidence Act. But nothing came out to the benefit of the prosecution.

12. Pappu Kanti – P.W. 5 stated that Arati, the wife of Lalit is dead. She succumbed to burn injury on 04.9.2013 in the bathroom of the house of the Lalit. He was not present at the relevant point of time. But he found Arati lying with burn injuries. He identified his signature Exhibit-9 on the seizure list that put as witness to seizure of burn cloth, hair, mug etc. seized by police.

During cross-examination he stated that he heard about the demand of dowry but he had no personal knowledge on that matter.

13. Tarun Kanti Ghosh – P.W. 6, is the A.S.I. of police who conducted inquest examination over dead body of the victim Arati Mandal and seized burn clothes, plastic mug, burnt hair and one match box which he identified in Court. The inquest report prepared by the said witness is admitted as Exhibit 4. He forwarded the dead body along with challan for post mortem examination. The relevant documents are admitted as Exhibits 5 & 6.

14. Gorakh Prasad Gupta – P.W. 7 stated that Lalit Mondal and his family members are known to him. He identified the accused persons in Court. It is his further evidence that he found the victim in burnt condition. He stated that he heard that accused persons set her ablaze. It is his further evidence that on 09.11.2012 the negotiation of marriage took place. Father of the bride-groom demanded Rs.2,51,000/- and ultimately it was settled that a sum of Rs.1,51,000/- would be paid together with one gold ring owing 5 gms, to the bride-groom. P.W. 7 attended the Tilak ceremony. There was a demand of Palanka from the side of the

bride-groom. He further stated that on the day of Raksha Bandhan Lalit came to the house of Anil Kumar with his wife Arati and demanded a sum of Rs.2 Lacs. He informed Anil Kumar, father of victim about such demand by Lalit when he came to his house on the day of Raksha Bandhan.

15. Amar Nath Prasad - P.W.8 did not support the prosecution case. He was examined by the prosecution in the light of Section 154 of Evidence Act. But nothing came out to the benefit of the prosecution.

17. Bablu Jha – P.W. 9 is priest by profession who presided over the marriage ceremony of the victim and Lalit Mondal. He did not say anything about the alleged incident of torture or demand of money.

18. Dipak Dasgupta – P.W. 10 stated that wife of Lalit Mandal, Arati Mandal is dead. She died of burn injury on 09.4.2013 in the house of accused Lalit Mandal. But he could not say how Arati was engulfed by fire. This witness was examined in the light of Section 154 of the Evidence Act by prosecution.

19. S.I. Sanjay Ghosh – P.W. 11 registered the Matigara P.S. Case No. 435 of 2013 on 05.9.2013 under Sections 498A/ 302 / 34 of the Indian Penal Code and endorsed the case to S.I. Ajijul Hoque of Matigara P.S. for investigation. He did not have any direct knowledge about the incident.

20. Mahesh Prasad Mondal – P.W. 12 stated on that death of Arati was caused by fire as her father-in-law Suresh Mandal, brother-in-law Amardeep Mondal, husband Lalit Monal, mother-in-law, Asha Devi set her ablaze over the demand of dowry. He further stated that During Tilak ceremony he was in the house of Lalit Mondal when the demand was placed for Rs.2,51,000/- and 5 baris of gold ornaments. Anil Ray handed over a cheque for a sum of Rs.1,30,000/- and Rs.21,000/- was paid by cash together with wrist watch and gold chain to Lalit

Mandal. He further stated that fifteen days previous to marriage the demand of Rs.2,51,000 was made together with 5 bharis of gold ornaments. It is his further evidence that after marriage, Arati along with her husband came to Gangtok on the day of Raksha Bandhan, two days thereafter he came across the daughter of Anil, who disclosed her unhappy marital life because of the demand of money made by the accused persons from her father Anil Ray for the business of her husband from her father Anil Ray.

During cross-examination he stated to the I.O. that on 04.9.2013 the accused persons set fire upon the victim over the demand of money. He denied all the suggestions put to him during cross-examination.

21. Debananda Roy – P.W. 13 is the constable of police who accompanied A.S.I. Tarun Kanti Ghosh of Matigara P.S. to the house of Lalit on 04.9.2013 when the inquest examination was held over the dead body of Arati Mandal. The command certificate is admitted as Exhibit 8. This witness does not have any direct knowledge about the alleged incident.

22. Shri Bijay Gupta – P.W. 14 who identified Lalit Mandal on dock stated that Lalit has two sons. He was declared hostile and examined in the light of Section 154 of the Evidence Act by the prosecution.

23. Manoj Sha – P.W. 15 could not say anything in support of the prosecution case. He was also examined in the light of Section 154 of the Evidence Act by the prosecution.

24. Smt. Hira Devi Roy – P.W. 16 stated that Arati Kumari her daughter was killed by Lalit Mandal, Asha Devi, Suresh Mandal and Amardeep Mandal. The accused persons set Arati ablaze committing murder by strangulation. It is her further evidence that on the day of Raksha Bandhan 2013 her daughter came to

Gangtok with her husband and told her that the accused persons were demanding a sum of Rs.2 lacs and inflicting torture upon her to get such illegal demand satisfied. Lalit demanded a big Palanka and told her daughter that she would be compelled to sleep on the ground if the Palanka was not provided.

During cross-examination she stated that she never visited the matrimonial home of her daughter. She never lodged any complaint before any authority having been informed by her daughter about her plight in her matrimonial home over the demand of Rs. 2 lacs.

25. C/1009 Sunil Tamang- P.W. 17 is the witness to the seizure of DVD Cassette, marriage invitation card and photographs.

26. C/249 Madhab Ch. Roy – P.W. 18 is another witness to the seizure of DVD, Cassette, marriage invitation card and photographs of Lalit and Arati. None of them had any knowledge about the incident.

27. Shri Suman Bagdas – P.W. 19 is the Senior Deputy Collector attached to the office of D.M. at Jalpaiguri who held inquest examination over the dead body of Arati Mandal at North Bengal Medical College Hospital in presence of the family members of the deceased.

28. Dr. Anurup Saha – P.W. 20 conducted the post mortem examination over the dead body of Arati Mandal the victim. The post mortem report is admitted as Exhibit 12.

During cross-examination he stated that he did not find any internal and external injuries other than burn injuries.

29. S.I. A Hoque – P.W. 21 conducted investigation and submitted charge sheet after recording the statement of available witnesses. He prepared a rough sketch map admitted as Exhibit 13.

During cross examination he admitted that he did not examine Bengali Paswan, Mahender Das and Upender Ram the adjacent neighbours of the accused persons. No other witness was examined.

30. Mr. Sarkar, learned counsel appearing on behalf of the State underscoring the testimony of P.W. 12 submits that there is ample reason to hold that Arati was told to fetch money from her father for the business of her husband and such statement was also made by the victim on the date of Raksha Bandhan to her mother. Raksha Bandhan normally takes places sometime in the month of August and two days thereafter the victim disclosed her plight to P.W. 12 and Arati died on 04.9.2013. Therefore, there is every reason to presume that the accused persons inflicted torture and / or treated the victim with cruelty within the meaning of Section 498A of the Indian Penal Code. The poor father of the victim since failed to meet such demand, Arati was compelled to put an end to her life by setting herself ablaze during her stay in her matrimonial home. It is further submitted by Mr. Sarkar that P.W. 1 the father of the victim stated that the accused persons demanded Rs. 2 lacs from his daughter, this testimony of P.W. 1 therefore, is getting support the testimony of P.W. 7 and P.W. 12 which is sufficient to prove the case of prosecution that there was demand of money from the side of the accused persons, which could not be satisfied and such failure took away the life of victim.

31. Drawing my attention to Section 113B of the Evidence Act, it is submitted by Mr. Sakar, that a statutory presumption is to be drawn in favour of the prosecution as it is established that the victim was treated with cruelty over the demand of money and died an unnatural death.

32. Ms. Radhika Agarwal, learned advocate appearing as amicus curiae submits that no specific role is attributed to the appellants. A general and omnibus statement was made about the demand of Rs. 2 Lacs. The father, P.W. 1 for the first time, after the death of his daughter, disclosed the alleged demand of money. That apart the testimony of P.W.1, P.W. 7, P.W. 12, and P.W. 16 are incorrect. P.W. 1 never claimed that Lalit ever claimed money from him or he ever demanded anything.

33. The evidence of P.W. 7 regarding demand of Rs.2 lacs by Lalit from his father-in-law Anil Kumar is something which was never disclosed by Anil Kumar himself either in his written information or in his oral testimony. Therefore, testimony of P.W. 7 appears to be contrary what was told by P.W. 1.

34. In his written information P.W. 1, Anil Ray stated that his daughter was subjected to physical and mental torture by each and every member of her matrimonial home to make her fetch a sum of Rs.2 lacs. He claimed that her daughter told him about such demand. There is no explanation as to why he did not take up the issue with Lalit or his family members or why no authority was informed by him. So is it the evidence of P.W. 7, P.W.12 and P.W.16, but when we consider the testimony of the witnesses from the point of view of human probability, inaction on the part of the parents despite being informed about the plight of their daughter in the hand of their son-in-law and his family members, during the life time of Arati does not inspire confidence in Court to hold that Arati, the victim was treated with cruelty in her matrimonial home. Had there been any such demand, parents of the victim at least would have spoken to their son-in-law who used to come with his wife and used to stay with them.

35. Section 113B of the Evidence Act says about the presumption as to the dowry death :

“113B. Presumption as to dowry death. -- *When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.”*

36. But in order to invoke the Section 113B of the Evidence Act prosecution is under obligation to establish that soon before her death the victim had been subjected to cruelty or harassment in connection with any demand for dowry. This precondition for invocation of provision of Section 113B of the Evidence Act has not been satisfied by the prosecution.

37. There is no evidence to show that the victim was tortured by the accused persons soon before her death. The I.O. could have gathered the information from the adjacent or contiguous neighbours of the accused persons but he candidly admitted that he did not examine any of the members of the three households adjacent to the house of the accused person.

38. The evidence as adduced by the prosecution witnesses at best can create suspension. It is obvious there might be some reason otherwise why a young girl would put an end to her life by setting herself ablaze. But mere suspension cannot replace the burden rests upon the prosecution to prove the charges beyond doubt. Suspicion, howsoever strong cannot replace the obligation to prove the charge beyond the doubt.

39. Therefore, I am of the view that it is a fit case to extend the benefit of doubt to the appellant, in absence of any cogent evidence to prove the charges beyond reasonable doubt. That apart while imposing sentence, I find that learned Trial

Court did not consider the provision of Section 360 of the Cr.P.C. and no explanation was given in terms of Section 361 of Cr.P.C.

40. Under such circumstances, in my considered opinion the judgment and order of conviction passed by the learned Trial Court should not be allowed to remain in force and should be set aside which I accordingly do.

41. It is submitted that accused was not admitted on bail and there was no order of suspension of sentence.

42. The appellants Asha Devi@Mandal, Suresh Mandal and Amardeep Mandal be set at liberty at once.

43. The appeal is thus allowed on contest but without cost. Pending application, if any, stands disposed off.

44. Before parting with the case, I record my appreciation for the able assistance rendered by Ms. Radhika Agarwal as amicus curiae.

45. Let a copy of the judgement along with LCR be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury,J)

Item No. 3