

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 66 of 2006

**Suman Debnath
-Vs-
The State of West Bengal**

For the Appellant : Mr. Rajeshwar Chakraborty
(Amicus Curiae)

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 25.09.2023, 17.11.2023, 05.12.2023

Judgment on : 07.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the order of conviction and sentence dated 23.12.2005 passed by the Learned Additional District & Sessions Judge, Fast Track 3rd Court, North 24 Parganas in Sessions Trial No. 15(5)/05 convicting the appellant under Section 308 of the Indian Penal Code and sentenced the appellant to suffer rigorous imprisonment for 3 years and to pay a fine of Rs. 1000/- in default simple imprisonment for 2 months more.
2. The prosecution case in brief is that one Sujata Debnath, wife of the appellant lodged a written complaint or First Information Report with the Bijpur Police Station against 1) the appellant / husband, 2) Monorama

Debnath / mother-in-law, 3) Lakshmi Debnath / sister-in-law (Nanad), 4) Harisadhan Debnath / elder brother-in-law (bhasur) alleging inter alia that she got married with the appellant on 05.02.2003 and subsequently the marriage was registered and thereafter social ceremony was organized but since after marriage, her husband Suman Debnath, her father-in-law Banamali Debnath, elder brother-in-law Harisadhan Debnath, mother-in-law Monorama Debnath and her husband's widow sister Lakshmi Debnath began torturing her physically and mentally in demand of further dowry for which she had to come back to her home on being specified by her parents she returned to her matrimonial house but her mother-in-law and her in-laws used to instigate her to commit suicide by hanging and that on 22.04.2004 in the early morning at about 04:00 am, her husband, with the intention to kill her, assaulted her by throttling and kicked her belly and by fists and blows on her chest. As a result of which, she became senseless; fell down on the ground and she was taken to Kalyani Hospital by the para people.

3. On the basis of the above complaint, Bijpur P.S. Case No. 55 dated 02.05.2004 under Section 498A, 325, 307 of the Indian Penal Code was started against the appellant and Monorama Debnath, Lakshmi Debnath and Harisadhan Debnath. After investigation, charge-sheet was submitted against the above-noted four persons under Section 498A, 325, 307 of the Indian Penal Code, the case was committed to the Court of Sessions Judge, North 24 Parganas subsequently the case record was transferred to the Court of Sessions Judge, First Track Court III at Barrackpore.

4. Charge was framed under Section 498A, 323 and 307 of the Indian Penal Code.
5. That in course of trial, the prosecution examined as many as 9 witnesses and exhibited certain documents.
6. In conclusion of the trial in the instant case, the Learned Additional Sessions Judge, Fast Track Court III, Barrackpore, North 24 Parganas by the impugned judgment and order of conviction dated 23.12.2005 sentenced the appellant to suffer rigorous imprisonment for 3 years and to pay fine of Rs. 1,000/-, in default, to suffer simple imprisonment for two months more for the offence punishable under Section 308 Cr.P.C and the Learned Judge was pleased to acquit the others.
7. The Learned Advocate for the appellant submitted that:-
 - i. The appellant stated that the First Information Report was lodged on May 02, 2004 which is 10 days after the date of incident.
 - ii. The appellant stated that PW-1, the victim lady has deposed the following -
 - a. On the morning of 22.04.2004, she was inside the room at her matrimonial home. Her husband (appellant) came there and knocked the door and she opened it. The appellant entered the room and throttled her neck and threatened to kill her. He further assaulted the victim lady with fists and blows on her chest and kicked her on her belly. She became senseless as her mouth was gagged. Apart, from PW-1, no other witnesses stated anything

about the manner and genesis of the assault on the date of incident.

- b. PW-1 further stated that on 09.03.2004, father of Suman gifted a portion of house to Suman and began residing elsewhere in a rented house in the locality with other family members. PW-2 and PW-7 also stated the same that a portion of house was gifted in the name of the appellant. This might be the discontent among the family members of the victim lady and thus, the story of false implication cannot be ruled out completely.
- c. PW-1 further stated that she was admitted at hospital for 6 days. However, the evidence of Medical doctors shows that she was admitted only for 4 days from 22.04.2004 to 26.04.2004. This again contradicts the statement of PW-1. Thus PW-1 who is the best person to say what happened, the prosecution should not have relied upon her version as the witness cannot be regarded as a 'sterling witness'.
- iii. The appellant stated that PW-2 being the father of the victim lady and PW-7, the mother of the victim lady have stated in Toto as that of PW-1, the victim lady and therefore, they are parroted witnesses. As such they are not trustworthy witnesses and the Trial Court has erred in relying upon them.
- iv. The appellant states that PW-2, the father of the victim stated in his deposition that one Dr. Poddar of the locality attended and examined the victim lady.

PW-7 also stated that one local doctor Dr. Poddar was called as per his advice the victim lady was admitted to Kalyani Hospital. However, Dr. Poddar was not examined by the prosecution who could have given some important clue regarding the history of assault.

- v. The appellant stated that apart from PW-1, PW-2 and PW-7, there are several omissions, contradictions and exaggerations by and between the witnesses and they have subsequently tried to develop a case in order to secure the conviction of the appellant. Therefore, their versions cannot be safely relied upon.
- vi. The appellant stated that only PW-3, a close neighbour was examined by the prosecution, but later on he was declared hostile. Apart from PW-3, none of the close neighbours as evident from the Sketch Map, were examined by the prosecution who were the best witnesses to say what happened.
- vii. The appellant states that PW-4, a neighbour was examined by the prosecution but his house was not marked in the Sketch Map which goes to show that he was not a close neighbour of the house of the appellant. The Trial Court has therefore, erred in relying upon the version of PW-4 because of the following reasons-

- a) The only question which arises here is whether the house of P.W.4 was located near the house of the appellant or not. If we go by the Sketch Map, his house has not been marked in the Sketch Map which goes to show that he was not a close

neighbour and thus, it was improbable for him to witness any incident. Therefore, he is not the best witness to say whether at all the victim lady was assaulted by the appellant and what happened on the date of incident.

- b) PW-4 stated in his deposition that he has heard quarrel in the matrimonial house of the victim lady as Suman (appellant) being unemployed asked Sujata (victim lady) to bring money from her father. PW-4 further stated in his deposition that he heard Sujata (victim lady) was not happy he also stated that he has heard the incident of quarrel. Therefore, he is a hearsay witness and as such his version cannot be relied upon safely to secure the conviction of the appellant.
- c) PW-4 also did not mention of any bleeding injury of the victim lady in his entire deposition as stated by the doctors. He only stated that one morning hearing hue and cry he went to the house of Suman (appellant) and found Sujata lying like a dead person.
- d) Now, regarding the time of admission of the victim lady to the Hospital, P.W.4 stated that it was 9/10 P.M. when Sujata was taken to Hospital. However, the time of incident as per the version of the victim lady was at 4 A.M. Thus, it was contradictory to the statement of other witnesses as far as the time of incident is concerned.

- viii. The appellant stated that PW-5, another close neighbour and an independent witness stated that the victim fell ill at her parental house and not matrimonial home as stated by other prosecution witnesses. PW-5 also accompanied the victim to the hospital. Thus, the evidence of PW-5 if taken into consideration than it would be revealed that the victim lady was at her father's house on the date of incident and not at her matrimonial home. Thus, the story of assault is a total myth and does not inspire confidence at all.
- ix. The appellant stated that PW-6, the 1st attending doctor deposed that the victim lady came with bleeding in vagina with pain chest. However none of the prosecution witnesses have mentioned about any bleeding in their evidences. This very fact was also not mentioned in the written complaint. This is a vital omission and therefore it casts a grave doubt on the genuineness of prosecution case.
- x. PW-6 stated that there is no mention in the Injury Report (Exhibit 4) as from whom he got to know about the history of assault. This was important to ascertain as to who had inflicted the assault upon the victim lady. He further stated he has mentioned the nature of the weapon as blunt in the Injury Report. The nature of weapon was earlier mentioned as slaps, kicks and blows which was struck out by PW-6 himself. This again contradicts the statements/versions of PW-1, the victim lady, PW-2, father of the victim lady and PW-7, the mother of the victim lady who had stated that the victim lady was

assaulted by slaps, kicks and blows. PW-6 further stated that the victim lady was admitted in the hospital at 12:15 pm and he attended her forthwith. Now, which is 8 hours from the time of incidence. Here again there is contradiction with regard to the time of the incident.

- xi. PW-8, 2nd attending doctor and a gynaecologist stated that at the time of admission of the victim lady she had bleeding privy as per observation of the Emergency Medical Officer. He further stated that that type of bleeding privy may be caused during the period of normal menstruation due to hormonal imbalance. This goes to show that the story of assault was a myth and the bleeding injury of the victim lady was not a result of assault but due to menstruation. Thereby, it completely rules out the possibility of assault.
 - xii. The prosecution case could not be proved beyond reasonable doubt by the prosecution and as such the appellant should get the benefit of doubt. Therefore, the Learned Trial Court was totally erroneous in convicting the appellant under Sections 308 of the Indian Penal Code.
8. The victim did not disclose that how the appellant and others assaulted/tortured her physically and mentally.
 9. There was a delay of 11 days in lodging the First Information Report and there was no explanation to such delay.
 10. The First Information Report did not mention of demand of Rs. 1,00,000/- as dowry from the father of the victim by the parents of the appellant.

11. Though PW-2, father of the victim, stated that before taking his daughter to Kalyani Hospital, one local doctor, Dr. Poddar, attended his daughter but the Investigating Officer did not examine him.
12. The marriage between the appellant and the de facto complainant was a love marriage solemnized in the Kali temple and just after the marriage the de facto complainant came to her matrimonial home and as such there was no question of dowry.
13. The marriage between the appellant and de facto complainant was solemnized on 05.02.2003. The house of the appellant and his wife was intervened by only one house. After the marriage, the father of the appellant transferred a portion of the house, i.e. 2 Cottahs, in the name of the appellant and they shifted to Nabadwip as such there was no scope of continuous physical and mental torture upon the de facto complainant.
14. The de facto complainant was taken to hospital in the morning. The doctor examined her at 12:00 hrs and there are discrepancies in the medical report which was not explained during the evidence of the doctor, PW-8.
15. PW-2, the father of the de facto complainant, asked the father of the appellant to transfer 2 Cottahs of land in the name of his daughter.
16. The evidence of PW-3 Gita Das who was a witness to the marriage stated that though her house was between the house of the appellant and PW-2, she did not know about the quarrel between the couple nor any torture.
17. The evidence of PW-8 the doctor who had attended the victim stated on 23.04.04 when he attended the patient he did not find any leading 'privy'. The doctor did not mention that the victim was senseless at the time of the

admission. PW-3 was declared hostile by the prosecution. The evidence of PW-4 was based on hearsay. There are contradictions in the evidence of PW-4 in his examination-in-chief as well as the cross-examination. The evidence of PW-5 was also based on hearsay. The evidence of PW-6 doctor Nil Ratan Chakraborty was contradictory and inconsistent with the evidence of PW-8. The evidence of PW-1, PW-2 and PW-7 cannot be relied upon as the allegations are general and omnibus in nature. PW-2 in his cross-examination stated that he wanted the appellant to transfer a piece of land belonging to the father of the appellant to be transferred in the name of his daughter the victim.

18. The differences with regard to non-fulfilment of certain demands on the part of the victim and her family members led to the filing of the criminal case based on false and prevaricated statements. The investigating officers, i.e, PW-9, stated that he did not initiate the case in spite of sending the victim to the hospital on 22.04.04 prior to 02.05.04. The delay in instituting the complaint case or drawing the F.I.R. has not been explained by the prosecution. Moreover, there was no independent witness to justify the prosecution.
19. In the case of *Roop Chand v. State (NCT of Delhi)*¹, the Hon'ble Supreme Court held the following:-

“6. Section 308 of IPC provides that “whoever does any act with such intention or knowledge and under such circumstances that, if

¹2020 SCC OnLine SC 1353

he by that act caused death, he would be guilty of culpable homicide not amounting to murder”; and in case any hurt is caused to any person by such act, then “the accused is liable to be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

7. *Therefore, to secure conviction under Section 308 of IPC, the prosecution must prove that the accused had requisite ‘intention’ or ‘knowledge’ to cause culpable homicide, which in turn can be ascertained from the actual injury as well as from other surrounding circumstances.*

8. *Section 324 of IPC, on the other hand, criminalises willful infliction of injuries on another and states that whoever “voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death”, would be punished with “imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

9. *In contrast to Section 308 IPC, which necessarily requires proving ‘intention’ or ‘knowledge’, to attract Section 324 IPC it is sufficient if a person voluntarily causes hurt by means of an instrument for stabbing or cutting.*

10. *It is thus crucial to determine whether the appellant had ‘intention’ or ‘knowledge’ that the injury inflicted on the victim could cause the latter's death and as a result thereto the appellant could be guilty of committing culpable homicide not amounting to murder?*

11. *The distinction between attempt to commit culpable homicide not amounting to murder, and voluntarily causing hurt with a sharp-edged weapon, is subtle and nuanced. Under the former (Section 308), injuries must be such as are likely to cause death, but in the*

latter (Section 324) the injuries may or may not endanger one's life....”

20. The prosecution failed to prove that there was intention and knowledge on the part of the appellant to commit an offence under Section 308 of the Indian Penal Code. Moreover, the injuries sustained by the victim were not grave enough to cause her death if at all being inflicted by the appellant to cause her death.
21. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
22. Accordingly, the criminal appeal being CRA 66 of 2006 stands disposed of. Connected application, if there be any, also stands disposed of.
23. There is no order as to cost.
24. I record my appreciation for the able assistance rendered by Learned Advocate, Mr. Rajeshwar Chakraborty, as *Amicus Curiae* in disposing of the appeal.
25. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
26. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(AnanyaBandyopadhyay, J.)