

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 75 of 2006

**Bablu Bouri
-Vs-
The State of West Bengal**

For the Appellant : Ms. Anchita Sarkar

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

Heard on : 01.09.2023, 16.10.2023

Judgment on : 31.01.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order of conviction dated 23.11.05 by Additional Sessions Judge, 2nd Court, Bankura in Sessions Case No. 7/December/2003 and Sessions Trial No.6/February/2004 whereby the appellant was convicted under Sections 498A/304B of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 3(three) years and to pay a fine of Rs. 6,000/- for the offence under Section 498A of the Indian Penal Code, in default, to suffer rigorous imprisonment for 1 year and was further sentenced to suffer rigorous imprisonment for 7(seven) years and to pay a fine of Rs. 7,000/- for the offence under section

304B of the Indian Penal Code, in default, to suffer rigorous imprisonment for 1(one) year and both the sentences would run concurrently.

2. The allegations which formed the basis of the prosecution case stated as follows :-

Smt. Mithila Bouri the defacto complainant had given her daughter Champa Bouri, D/o Late Habu Bouri, aged about 20 years, in marriage with Bablu Bouri, S/o Late Fuchiram Bouri of village Bhaluka, Police Station Saltora, Bankura. The said marriage was solemnized on 27.2.2000 following Hindu Rites and customs. She further stated that at the time of marriage Rs. 5,000/- in cash and '5 tolas' of silver ornaments were given –Champa, resided in a joint mess with her husband and in-laws. Moreover, it was stated that Champ's husband and in-laws physically and mentally tortured her from the inception of her marriage.

On 6.4.02 the appellant, Bablu and his mother came to the residence of the complainant, informing her about Champa's suffering from Diarrhea. They requested the complainant to visit Champa's matrimonial home on that very night. The complainant could not visit the said matrimonial home on the said night. She reached the village of Bhaluka on the morning of 7.4.2002 and came to know that Champa's dead-body was hanging by a rope from a tree by the side of her village. On reaching the spot, she found her daughter to be dead. The matter was then reported to Saltora Police Station. The defacto complainant nurtured the idea that appellant along with the other

accused persons tortured and murdered Champa as they failed to obtain further dowry.

3. On the basis of the said written complaint, Saltora Police Station Case No. 17/02 dated 7.4.02 under Section 498A, 304B/34 of the Indian Penal Code was started during the course of investigation, the investigation officer recorded the statements of the available witnesses, held inquest over the dead-body, sent the body for Post-Mortem Examination, prepared the sketch map of the place of occurrence and arrested the accused persons.
4. After completion of the investigation, the Investigating Officer submitted Charge-sheet against all the F.I.R. named accused persons including the appellant under Section 498A, 304B/34 of the Indian Penal Code.
5. The prosecution in order to bring home the charges levelled against the appellant examined as many as 17 witnesses and exhibited certain documents, including the victim's mother.
6. The Learned Advocate for the appellant submitted that :-
 - i. The prosecution had miserably failed to make out any case which would attract Sections 498A, 304B of the Indian Penal Code either in fact or in law. Despite total absurdities in the prosecution case, the Learned Judge believed the absurd story, accepting the disjointed, in-coherent, inconsistent and unconvincing statements of the informant and few other witnesses. Moreover, in a case full of absurdities and disjointed facts, the prosecution totally failed to establish the case beyond any shadow of doubt.

- ii. The allegation of torture had not been corroborated by independent witnesses. Had there been sustained torture, the neighbors would have been aware of it.
- iii. A vague allegation of demand of dowry was not sufficient enough to bring home the charge of commission of offence under Sections 498A and 304B of the Indian Penal Code. The specific claim by way of dowry was not detailed and spelt-out.
- iv. PW-4 Mithila Bouri, the informant, could not name a single person to whom she had conveyed the fact of her daughter sustaining torture.
- v. The relations of the victim namely PW-6 Guiram Bouri and PW-8 Madhab Bouri did not depose about demand dowry.
- vi. The earlier information of alleged commission of cognizable offence prompted the local Police Station to take appropriate action by holding inquest over the dead-body at about 10.40 hrs. on 7.4.2002. The written complaint was received long afterwards at 18.25 hrs. on the same date. Adverse inference ought to have been taken for withholding the earlier information regarding commission of cognizable offence. The written complaint should not have been taken as First Information Report.
- vii. The vagueness and ambiguity in the charges under Sections 498A and 304B of the Indian Penal Code caused substantial prejudice to the appellant in making out his defence.

7. The Learned Advocate for the State submitted that the victim was subjected to torture as per the deposition of the mother whose evidence had been unshaken during cross-examination the evidence of the mother of the victim was convincing enough to convict the accused persons since the mother was the person closely related to the victim in whom the victim confided her tragedy and misery. The prosecution has been able to prove the case and the appeal shall be dismissed.
8. The trend of evidence adduced by the prosecution witnesses revealed PW-1, PW-2, PW-3, PW-11 and PW-12 to have turned hostile.
9. PW-4 the mother of the victim reiterated the narrative of the complaint.
10. The evidence of PW-5 is based on hearsay. She is not the resident of the village where the matrimonial house of the victim is situated. She was not examined by the Investigating Officer and her deposition was recorded for the first time in Court. She further stated that the victim did not state or report anything to her directly about the torture inflicted by the appellant.
11. PW-6 too was a villager of Monihara distinct from the village and place of occurrence. He deposed to have heard about the torture sustained by the victim however did not know the actual cause of her death.
12. PW-7 was the first Investigating Officer.
13. PW-8 belonged to the parental village of the victim and his evidence appeared either to be tutored or based on hearsay and accordingly unreliable.
14. PW-9 was a signatory to the inquest report marked as Exhibit-1.
15. PW-10 had filed the charge-sheet after completion of the investigation.

16. PW-13 the doctor who conducted the post mortem examination of the victim opined “for all practical purposes and probabilities the deceased died out of suicide”. He further stated that he did not find any ingredient over the dead body of the deceased to form his opinion in favour of accidental or homicidal death.
17. PW-14 and PW-15 were the Investigating Officers who recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure.
18. PW-16 had been the scribe of the written complaint marked as Exhibit-7.
19. PW-17 conducted the inquest and identified the inquest report marked as Exhibit-9.
20. The statements regarding infliction of torture are full of inconsistencies and contradictory in nature. While the informant Mithila Bouri and Binod Bouri alleged about infliction of torture on Champa Bouri over the issue of payment of money, the other relation namely PW-6 Guiram Bouri mentioned about the appellant misbehaving and harassing Champa Bouri and also creating trouble with her. The other witness namely PW-8 Madhab Bouri simply alleged that once the appellant assaulted Champa Bouri and drove her out of the matrimonial house.
21. Apart from general and omnibus allegations the prosecution could not establish any ingredient for demand of dowry to constitute either the offence under Section 498A of the Indian Penal Code or Section 304B of the Indian Penal Code. None of the witnesses narrated any specific incident of severity which was the immediate effect for the victim to commit suicide.

PW-4 the mother of the victim suspected that her daughter was killed by the appellant for claim of additional dowry. However that was not substantiated through proper evidence.

22. Prosecution failed to cite any witness from the locality or immediate neighbours who could be in a position to state the actual affairs prevailing in the matrimonial house of the victim. Most of the witnesses belonged to the parental village of the victim whose evidence was based on hearsay without any direct consequence.
23. Under such fact and circumstances of case the instant Criminal Appeal being CRA 75 of 2006 is allowed.
24. Accordingly, the criminal appeal stands disposed of.
25. No order as to costs.
26. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
27. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)