

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

G.A. 1 of 2004

**The State of West Bengal
-Vs-
Subrata Kar & Ors.**

For the Appellant/State : Mr. Avishek Sinha
For the Respondents : Mr. Soumya Basu Roychowdhury
Heard on : 10.10.2023, 18.01.2024, 29.02.2024,
06.05.2024
Judgment on : 31.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of acquittal dated 10.03.2003 passed by the Learned 9th Assistant Sessions Judge, Alipur, South 24-Parganas in S.T. No. 1(7)/01 arising out of S.C. No. 48(2)/01 Budge Budge P.S. Case No. 136 dated 22.12.1999 under Sections 498A/306/34 of the Indian Penal Code.
2. The brother of the deceased victim lodged a complaint at Budge Budge Police Station on 22.12.1999 which precisely narrated his elder sister was tortured by the accused persons after two months of her marriage with the respondent no. 1 Subrata Kar on 24.02.1999. The respondent no. 1 frequently tortured the victim along with his mother and younger brother.

The victim was threatened to be murdered by administering poison by the mother-in-law instigated by her daughter. The victim was admitted at M. R. Bangur Hospital having sustained burn injuries on 21st of December, 1999. The complainant assumed indisputably that the victim was instigated to commit suicide at around 6:00 P.M. on the relevant date.

3. Based on the aforesaid complaint, Budge Budge Police Station Case No.136 dated 22.12.1999 was registered under Sections 498A/306/304B of the Indian Penal Code.
4. Investigation ensued and on completion, the charge-sheet was submitted against the accused persons under Sections 498A/306/34 of the Indian Penal Code to which the accused persons pleaded not guilty and claimed to be tried.
5. The Learned Trial Court pronounced the impugned judgment acquitting all the accused persons. Subsequently, the instant appeal has been filed on behalf of the State.
6. The Learned Advocate for the appellant-State during his submission referred to the specific roles attributed to the individual accused persons in the written complaint which were corroborated by the depositions of PW-3 and PW-8. It was further submitted in all fairness that the charge under Sections 306/34 of the Indian Penal Code could not be sustained in view of the deposition of PW-14 the doctor at the M. R. Bangur Hospital who indicated the incident to have occurred due to an accidental fire. However, the Learned Advocate for the State elucidated the instances of torture inflicted upon the

victim establishing the ingredients to constitute an offence under Section 498A of the Indian Penal Code.

7. The Learned Advocate for the opposite parties submitted the allegations against the respondents to be general and omnibus in nature who were falsely implicated in the instant case.
8. PW-1 the complainant and brother of the deceased victim deposed of providing dowry at the time of his sister's marriage comprising of gold ornaments, wearing apparels, utensils, furniture etc, however, did not state of any further demand of dowry by the accused persons. During his cross-examination, PW-1 stated that he did not know that a dying declaration was made by her sister before the doctor at M. R. Bangur Hospital. He further did not know whether in the said dying declaration the victim told the doctor that at the time of lighting earthen lamp in the evening she had accidentally caught fire and sustained burn injuries.
9. PW-2 had been a post occurrence witness.
10. The evidence of PW-3 was based on hearsay who reiterated the statement of PW-1 that the victim was subjected to physical and mental torture by the accused persons.
11. PW-4 denied having personal knowledge as to how the victim sustained injuries.
12. PW-5 in his cross-examination deposed that the victim was burnt accidentally while lighting an earthen lamp.
13. PW-6 produced certain medical documents including the treatment report of the victim to be seized by the Investigating Officer.

14. PW-8 an independent witness deposed of an incident of domestic brawl in the family without specifying any overt act on the part of the accused persons to have tortured the victim. In his cross-examination, PW-8 stated that he did not tell the Investigating Officer that the family members of the victim's paternal family were careless and did not enquire about her. He further did not state to the Investigating Officer that the accused Dipti Kar abused the victim.

15. PW-9, PW-10 and PW-11 were police witnesses.

16. PW-13 was unaware of the incident of burn injury sustained by the victim.

17. PW-14 the doctor who attended the victim at M. R. Bangur Hospital on 21.12.1999, inter alia, stated that *"As per record, she had 80% burn injury at the time of admission through the emergency department. The patient was taken to the ward and admitted there at bed no.19, ward no.11 at 7:30 p.m. She was examined in the ward at 8 p.m. by the on-call house surgeon, Dr. Murmu. After taking her statement and examination he found that it was a case of accidental fire. As stated by the patient, she had received accidental burn injury while making Sandhya Pradip. The incident was happened on 21.12.1999 but the time of incident is not mentioned in the report.*

On examination, it was found that the patient was conscious and restless. Pulse-100 per minute, burn injury- Almost all over the body including the face and about 90% burn. The treatment was made as per schedule. The patient died at 5:50 a.m. on 22.12.1999 and the death was declared by Dr. Sanat Murmu. These are the medical papers, already marked Exbts- 2 to 2/g (ID)."

18. PW-15 on completion of investigation had filed the charge-sheet.

19. The entire evidence of the prosecution witnesses did not reveal any act on the part of the accused persons to have inflicted mental and physical torture upon the victim for demand of dowry or continuously to have subjected her to such extremities of aggression whereby the victim turned desperately helpless being threatened to face the ultimatum of losing her life. The evidence of PW-14 is explicit in terms of an unfortunate incident resulting in accidental burn injuries affecting the victim through a lighted lamp.
20. The Learned Trial Court is justified in acquitting the accused persons and this Court is not inclined to interfere with the same.
21. In view of the above discussions, the instant appeal being GA 1 of 2004 is dismissed.
22. There is no order as to costs.
23. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
24. 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.)