

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 126 of 2020

with

CRAN 1 of 2020

Sk Majed Ali & Anr.

-Vs-

The State of West Bengal & Anr.

For the Appellants : Mr. Suman De, Adv.

For the State : Mr. P P Das, Adv.
Ms. Manasi Roy, Adv.

Heard on : 06.03.2024

Judgment on: 06.03.2024

Joymalya Bagchi, J. :-

1. Enquiry report is placed on record.
2. Report shows that the appellants were juvenile in conflict with law at the time of commission of offence.
3. This Court has perused the evidence on record.

4. P.W. 14 recorded dying declaration of the deceased. Gist of the dying declaration is as follows:-

“her husband Sk. Sajed caught her and the brother-in-law Sk. Majed and his wife Momena Bibi poured kerosene oil and set fire on her body.”

5. P.W. 20, Medical Officer was present at the time when dying declaration was recorded. He proves his certificate enclosed on the dying declaration marked as Exbht. 1/2.

6. Evidence of mother of the deceased (P.W. 1) and her uncles (P.Ws. 5 and 6) show that the deceased had been subjected to torture over demand of dowry by the appellants (who are her husband and brother-in-law) soon before her death.

7. Hence, there are ample evidence on record to uphold the conviction of the appellants under sections 498A/302 IPC.

8. However, as noted above appellants were juvenile in conflict with law and the incident occurred prior to the enactment of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as ‘2015 Act’). In view of the aforesaid, notwithstanding the enactment of the 2015 Act appellants are to be governed by the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2010 (hereinafter referred to as ‘2010 Act’).

9. Appellants have suffered incarceration since 2020 i.e. more than four years. In light of the aforesaid fact and the law declared in *Satya Deo*

@ *Bhoorey vs. State of Uttar Pradesh*¹ and *Devilal and Ors. vs. State of Madhya Pradesh*², we set aside the substantive sentences of three years and life imprisonment imposed on the appellants on account of offences under sections 498A and 302 IPC respectively. Appellants have also been directed to pay a fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for one year and Rs.40,000/- each, in default, to suffer rigorous imprisonment for two years under sections 498A and 302 IPC respectively. Instead of remanding the matter to the Juvenile Justice Board for awarding fine, this Court upholds the fines imposed on each count on the appellants. Appeal is accordingly disposed of. Connected application, if any, is also stands disposed of.

10. Upon payment of the aforesaid fine amounts, the appellants shall be released from custody if not wanted in any other case.

11. Lower court records along with a copy of the judgment be sent down at once to the learned trial Court for necessary action.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

¹ (2020) 10 SCC 555

² (2021) 5 SCC 292