

**In the High Court at Calcutta
Criminal Appellate Jurisdiction**

Appellate Side

Present:

**The Hon'ble Justice Debangsu Basak
and
The Hon'ble Justice Md. Shabbar Rashidi**

CRA 354 of 2006

Haradhan Mete @ Haru & anr.

Versus

The State of West Bengal

For the appellant : Mr. Syed Shamsul Arefin, Adv.

: Ms. K. Kulsum, Adv.

For the State : Mr. Debashis Roy, Ld. P.P.

: Mr. Rana Mukherjee, Ld. A.P.P.

: Mr. Soumik Ganguli, Adv.

Hearing

concluded on : February 23, 2024

Judgment on : March 07, 2024

Md. Shabbar Rashidi, J.

1. The instant appeal is directed against the judgment of conviction dated March 30, 2006 and order of sentence dated March 21, 2006 passed by learned Sessions judge, Burdwan in connection with Sessions

Trial No. 16 of 2005 arising out of Sessions Case No. 206 of 2005. By the impugned judgment and order, the appellants were convicted for the offences punishable under Section 498A/302/34 of the Indian Penal Code.

2. One Baidaya Nath Ganth lodged a written complaint before the Burdwan Sadar Police Station to the effect that his daughter i.e. victim was married to the convict Haradhan Mete, some nine years ago and she had two minor sons out of the aforesaid wedlock. He further stated that there were disputes in the matrimonial life of his daughter and his daughter used to come back to his house. He used to send his daughter back to her matrimonial house and tried to persuade his son-in-law. Even the party office and villagers from the matrimonial village were informed. The de-facto complainant also alleged that his daughter was admitted in Burdwan Medical College and Hospital on March 31, 2004 with burn injuries.

3. On the basis of such written complaint, Burdwan P. S. Case NO. 145/2004 dated April 2, 2004 under

Section 498A of the Indian Penal Code was started against the husband and other in-laws of the victim. Later on, Section 307/302 of the Indian Penal Code was added.

4. The police took up investigation and on completion of investigation submitted charge sheet under Sections 498A/302/34 of the Indian Penal Code. Accordingly, on the basis of materials in the case diary, charges under Section 498 A/302/34 of the Indian Penal Code were framed against five accused persons on December 2, 2005. The accused persons pleaded not guilty to the charges and claimed to be tried.

5. In order to substantiate the charges levelled against the accused persons, the prosecution examined 17 witnesses. In addition, the prosecution also relied upon certain documentary evidences which were admitted in evidence.

6. One inspector of police deposed as PW 1. He stated that on April 2, 2004, he was posted at Burdwan police station as sub- inspector of police and in such capacity,

he received a written complaint. Upon receipt of such written complaint, he drew up the Formal First Information Report. He proved the formal First Information Report and his signature on the written complaint as well as on the formal First Information Report (Exhibit 1 and Exhibit 2) respectively.

7. Another Sub- Inspector of Police was examined as PW 2. He has stated that he was endorsed with the investigation of Burdwan PS Case No.145 dated April 02, 2004 and owing to his transfer, he handed over the case diary to the inspector-in-charge on October 31, 2004.

8. The de facto complainant himself deposed as PW3. He stated that amongst his two daughters, the victim was married to accused Haru Mete about 10 years ago. She died in the month of Baisakh. She was burnt to death by her husband and mother-in-law by pouring kerosene oil. PW3 further stated that after marriage, the victim used to reside at her matrimonial house. While so residing, she used to come to the house of PW3

occasionally complaining torture. The husband of the victim had an illicit relation with some lady in the neighborhood. He further stated that the victim was subjected to physical and mental torture at her matrimonial house.

9. PW3 also stated that about two years ago at about 1.30/2.00 in the afternoon, the husband of the victim informed him after admitting her in the hospital. Being so informed, PW3, his wife and wife of his brother went to the hospital. His victim daughter was in a position to talk but he was not allowed by the doctors, to talk to her. He was even removed from the ward. His wife only was allowed to remain there, others came out. He then lodged information at the police station on the following day against the husband and in-laws of the victim. Thereafter, he returned to the hospital where he was requested by his daughter to remove all her belongings from her matrimonial house. PW3, however, did not state anything as to if his daughter confided in him about the incident.

10. PW3 was declared hostile and in his cross examination by the prosecution, he admitted to have stated before police that his daughter told him that she was subjected to torture in the morning of the day of the incident. He also admitted to have stated before police that his daughter reported him that she was assaulted by her husband and other in-laws by fists and kicks and that out of a conspiracy her husband poured kerosene on her body and her mother-in-law lighted the match stick. PW3 also acknowledged to have made a statement before the police to the effect that his son-in-law had an illicit relation with another lady.

11. In his cross examination, PW3 admitted that his daughter used to reside in separate mess from her parents-in-law for 4/5 years and that PW3 made a shed for separate cooking in that house. He further admitted that his daughter used to live happily with her husband in the separate mess and that the husband of the victim came to his house to inform him of the incident and had his meal at the house of the relative of PW3. PW3 also

stated that he went to the police station at about 11.00 PM on the date following the incident.

12. A person who acted as the priest in the marriage of the victim with the accused was examined as PW4. He stated that the marriage was solemnized as per Hindu customs and rites.

13. The mother of the victim deposed as PW5. She has corroborated the statement made by her husband PW3. She further stated that her victim daughter was married to accused Haru Mete about 10 years ago. Her daughter used to visit the house of PW5 and report her that she was subjected to torture by her husband and other in-laws. She visited the matrimonial house of her daughter and requested many persons to see that her daughter could live peacefully in her matrimonial house. PW5 also stated that her daughter was murdered about 2 years ago. Her son-in-law came to her house in the afternoon at about 2 pm and informed that the daughter of PW5 received burn injuries while preparing puffed rice. Getting such information she along with her

husband and sister-in-law went to Burdwan Hospital but they were not allowed by the doctors to enter the ward. They kept waiting until her husband came down and then left the hospital with her sister-in-law in the night. PW5 however, stayed with her daughter. PW5 further stated that her daughter confided in her that when she kept rice in the oven for puffing, the accused persons started assaulting her. She tried to escape with her two children when the accused persons caught hold of her and dragged her into the house. She was assaulted and thereafter, her husband poured kerosene oil on her body and her mother-in-law lighted the match stick. She received burn injuries. Her daughter also stated that nobody came to save her though her father-in-law and brother-in-law were present in the house. PW5 was interrogated by the police. She identified the accused persons in the Court.

- 14.** In her cross examination, PW5 stated that she did not state before police that her daughter was driven out while puffing rice. She has also stated that her daughter

confided in her about the incident on the day following the date of incident. PW5 could not name the villagers of the matrimonial village whom she requested to see that her daughter could live in peace. She also stated in her cross examination that her two grandchildren visited her house often and that her accused son-in-law also visited her house after being released on bail.

15. The scribe of the written complaint was examined as PW6. He has stated that he wrote the written complaint as per the instructions of PW3 i.e. the father of the victim. He has proved the written complaint (Exhibit 1/1) and his signature on the inquest report (Exhibit 3).

16. A co villager of the de facto complainant deposed as PW7. He stated that he was present in the marriage ceremony of the victim with accused Haradhan Mete.

17. A villager of the accused persons deposed as PW8. He has stated that he was not in the locality when the victim lady died and he was never interrogated by the police.

18. One Medical Officer of Burdwan Medical College & Hospital deposed as PW9. He stated that on April 1, 2004, in terms of the directions of Medical Superintendent, he recorded the dying declaration of the victim lady in presence of other medical staff. According to PW9, the patient stated that she was beaten up by her husband with fists and blows in the morning as per directions of her parents-in-law. Later on, her husband poured kerosene oil on her body and ignited with the help of parents-in-law and brother-in-law as well as the lady with whom her husband had illicit relations. PW9 proved the dying declaration (Exhibit 4).

19. In the cross examination, PW9 admitted that he just recorded the dying declaration of the victim. He neither admitted nor treated the victim. He also could not testify as to who took the thumb impression of the victim on her declaration. He further admitted that there was no recording as to the physical and mental capacity of the victim to make the dying declaration. He could

not remember also if he was interrogated by police in connection with the case.

20. The police officer who conducted inquest over the dead body of the victim was examined as PW10. He has stated that on April 29, 2004 he conducted inquest over the dead body of the victim. He proved the inquest report and the dead body challan prepared in his pen and signature (Exhibit 5 and Exhibit 6 respectively). In his cross examination, PW10 reiterated that the inquest was conducted in connection with Burdwan PS UD Case No. 339 dated April 29, 2004 and that the dead body was identified by the father of the victim.

21. The police officer who carried the dead body to Burdwan Medical College & Hospital on April 29, 2004 under a challan for post mortem examination deposed as PW11. He proved his signature on the dead body challan (Exhibit 6/1).

22. A neighbour of the accused deposed as PW12. He stated that the victim was living a peaceful matrimonial life. He heard that she caught fire while preparing

puffed rice. PW12 was declared hostile and in his cross examination by the prosecution, he denied having made any statement before police. In his cross examination by the defense, PW12 admitted that the victim used to live with her husband in a separate mess from that of her parents-in-law which was far away.

23. Another villager from the matrimonial house of the victim was examined as PW13. He did not add any substance to the case of either the prosecution or the defense.

24. The second investigating officer of the case deposed as PW14. He stated that being endorsed with the investigation he took up the charge of investigation in the case. He visited the place of occurrence and prepared rough sketch map with index thereof. He also examined the witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. Owing to his transfer, he handed over the case diary to the succeeding investigating officer. He further described the manner of investigation undertaken by

him. PW14 was cross examined at length by the defense. He proved the rough sketch map with index of the place of occurrence. He stated in the cross examination that he tried to seize the wearing apparel of the victim but could not find the same.

25. The third investigating officer was examined as PW15. He received the charge of investigation on April 11, 2004. In course of his investigation, he raided the house of the female accused persons and thereafter, due to his transfer, he handed over the case diary to the Inspector-in-charge for further investigation.

26. Another investigating officer deposed as PW16. He stated that he received the charge of investigation of the case on February 02, 2005. In his part of investigation, he arrested one of the female accused. He also examined two witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. Thereafter, on completion of investigation, PW16 submitted charge-sheet under Section 498A/302/34 of the Indian Penal Code against five accused persons. He

identified the accused whom he arrested. Defense declined to cross examine PW16.

27. Another medical officer was examined as PW17. He stated that on March 31, 2004 at about 11.16 hrs. one Mitali Mete was admitted in the Emergency Department of Burdwan Medical College & Hospital with accidental burn injuries. PW17 proved his signature on the Bed Head Ticket (Exhibit 9).

28. The post mortem report of the victim was however admitted in evidence and marked as Exhibit 7 under the provisions of Section 294 of the Code of Criminal Procedure, with the consent of the defense, dispensing with the formal proof thereof. The autopsy surgeon was not examined on behalf of the prosecution.

29. Upon closure of the evidence for the prosecution, the accused persons were examined under Section 313 of the Code of Criminal Procedure where the accused persons pleaded innocence and claimed to be falsely implicated.

30. On conclusion of the trial, the learned trial court, by the impugned judgment convicted the appellants being the husband and mother-in-law of the victim lady for the offences punishable under Section 498A/302/34 of the Indian Penal Code, 1860. Three other accused persons were however, found not guilty and were acquitted. By the impugned order of sentence, the two convicts/appellants were sentenced to suffer Rigorous Imprisonment for life and to pay a fine of ₹. 5000/- each and in default of payment of fine they were to undergo Rigorous Imprisonment for a further period of two months.

31. In course of hearing of the appeal, the court was informed that during the pendency of the present appeal one of the appellants namely Haradhan Mete @ Haru i.e. the husband of the victim has expired.

32. From the evidence on record coupled with the written complaint and other materials on record, it transpires that the accused persons were charged with the offence of committing murder of the victim. It is

alleged that the victim was subjected to torture by the accused persons including the present appellant and she was set on fire. She sustained severe burn injuries. The victim was taken to hospital where she underwent treatment. In course of such treatment, the victim succumbed to her injuries. The matter was reported to the Police. An inquest was conducted upon the dead body of the victim and ultimately the dead body was sent for post-mortem. As noted above, the autopsy surgeon has not been examined and the post-mortem report prepared by such surgeon was admitted in evidence and under the provisions of Section 294 of the Code of Criminal Procedure as Exhibit 7. According to the opinion of the autopsy surgeon on the basis of the injuries found on the dead body, death of the victim was caused due to the effects of septic absorption from the infected ulcer resulting from burn injuries. The autopsy surgeon noted a number of injuries found on the person of the dead body which were in the nature of burn injuries. Therefore, taking into account the evidence

read at the trial together with the testimony of Exhibit 7, it is quite evident that victim died an unnatural death caused due to burn injuries sustained by her.

- 33.** As to the person/persons involved in informing the fatal injuries, resulting into the death of the victim, it is the case of the prosecution that on March 31, 2004, the de-facto complainant i.e. the father of the victim was informed that his daughter was admitted in Burdwan Medical College and hospital in a burnt condition. The de-facto complainant (PW3) in his deposition stated that his daughter was subjected to physical and mental torture by her husband and other in-laws. He, in his deposition, stated that such information was given to him by his son-in-law himself. He was informed at about 01.30 pm and upon such information PW3, his wife and wife of his brother went to hospital. He has categorically stated that when he visited the hospital, his victim daughter was still in a condition to talk inspite of burn injuries. However, he was not allowed to talk to her or to stay inside the ward. Later on, he along

with the wife of his brother went outside while his wife remained with the victim. Thereafter, PW3 lodged a written complaint against his son-in-law and other in-laws of his daughter. PW3 has further stated that after lodging the complaint, he returned to hospital and then he could meet the victim when she said that “whatever happened to me you take all my belongings from my matrimonial house”. PW 3 however refrained himself from answering question as to the contents of his conversation with the victim. Under such circumstances, it raises a reasonable doubt as how the de-facto complainant (PW 3) lodged a written complaint against the husband and other in-laws of the victim without talking to the victim or without getting any information regarding the incident. Admittedly, he had not seen the occurrence. The de-facto complainant was declared hostile by the prosecution and in course of his cross-examination on behalf of the prosecution, he admitted to have made statements before police to the effect that after marriage of his daughter with the

accused husband, the accused husband and his relatives used to inflict physical and mental torture upon his daughter. He also admitted that he stated before the Police that his daughter told him that due to the conspiracy of her husband and other in-laws, her husband poured kerosene oil on her body and her mother-in-law i.e. the present appellant lighted her by throwing on her match stick.

34. According to the case narrated by the de-facto complainant, when they visited the victim in the hospital, only the mother of the victim was allowed to remain inside whereas the father i.e. PW3 and wife of the brother of PW3 were removed from inside the ward.

35. The mother of the victim who was allowed to remain inside the ward deposed as PW5. She in her deposition said that she has stayed with the victim in the hospital whereas her husband and sister-in-law returned. PW5 stated that her daughter told her that while she was puffing rice, the accused persons assaulted her. She tried to flee away with her two

children but she was caught and dragged inside the house and was assaulted. After that her husband poured kerosene oil over her body while her mother-in-law lighted her by throwing match stick. PW5 further stated that she was informed by the victim that the other accused persons did not come to her rescue though they were present inside the house.

- 36.** The Medical Officer who recorded the dying declaration made by the victim was examined as PW9. On his deposition, he has stated that as per the statement of the victim recorded by him, the victim was first beaten up by her husband in the morning as per the direction of her parents-in-law. Later on, her husband poured kerosene oil on her body and ignited with the help of her parents-in-law, brother in-law and others. Such dying declaration was proved by the prosecution as Exhibit 4. Contradictory to the statement made by the mother of the victim (PW 5), the dying declaration Exhibit 4 discloses that the victim was set on fire by her husband. Although the parents-in-law,

brother-in-law and others were present at the place of occurrence, no overt act has been specifically alluded to such in-laws. According to the Exhibit 4, the victim was beaten up by her husband. The kerosene oil was poured by the husband. According to Exhibit 4, the fire was also lighted by the husband with the help of the parents-in-law and many others without assigning any specific role to such in-laws including the present appellant. The dying declaration of the victim was recorded by PW9 on April 01, 2004. On March 31, 2004 the victim was admitted in Burdwan Medical College and Hospital with burn injuries by a medical officer who has been examined as PW17. He has stated in his deposition that on March 31, 2004 at about 11.16 hrs, the victim was admitted in Emergency Department of the Hospital with accidental burn injuries as stated by the patient.

- 37.** In the instant case, demand of dowry has been set up as a motive behind the alleged incident. Admittedly, the victim was married to the accused

husband some 10 years prior to the incident and they had admittedly two children out of the aforesaid wedlock. From the evidence of the parents of the victim, it transpires that the two children of the victim used to frequently visit their house. Even the accused husband also visited after being released on bail in connection with this case. There is also no contemporaneous complaint for demanding of dowry before any authority whatsoever during this entire period of ten years. Besides that, it is also evident from the materials on record that the victim used to reside in separate mess with her husband and children from that of her in-laws. In his cross-examination, PW3 admitted that his daughter with his husband and family used to reside in a separate mess from that of her father in-law since the 4/5 years after her marriage. He further admitted that he made one shed for the purpose of separate cooking in the said house. If that be so, the case of the prosecution as to the demand of dowry seems to be quite incredible and rightly disbelieved by the learned Trial Court. None

of the accused persons including the present appellant were convicted for the offences punishable under section 498A of the Indian Penal Code.

38. From the impugned judgment it appears that the present appellant i.e. mother-in-law of the victim was convicted for the offences punishable under Section 302 of the Indian Penal Code solely based upon the statement to the effect that the husband poured kerosene oil upon the body of the victim and the present appellant lighted the match stick. However, no such statement was made by the de-facto complainant (PW3) though he admitted in his cross-examination on behalf of the prosecution to have made such a statement before the Police. The mother of the de-facto complainant (PW5) has stated that her daughter reported her, while she was in the hospital that her husband poured kerosene oil over her body and her mother-in-law lighted by throwing match stick. However, such statement of PW5 gets doubted from the testimony of PW9 together with Exhibit 4 where the

victim herself stated that her husband poured kerosene oil upon her body and lighted her with the help of her parents-in-law, brother-in-law and others without alluding any specific role to the present appellant. There is nothing in the evidence as to in what manner the present appellant assisted the husband of the victim in putting her on fire. Given the evidence of PW3 to the effect that the victim used to reside in separate mess from her parents in law, the involvement of the appellant in the incident as alleged, seem to be unlikely.

- 39.** The evidence on record is absolutely silent as to any allegation regarding the demand of dowry. Materials also go to establish that the husband of the victim himself reported the incident to the de facto complainant. It was him who brought the victim to hospital for treatment. In view of the evidence on record and the extent of the involvement of the present appellant in the occurrence, the present appellant cannot be held guilty of the offence punishable under Section 302/34 of the Indian Penal Code.

40. Therefore, on the basis of discussion made hereinbefore, we are of the view that the impugned judgment of conviction and order of sentence suffers from material irregularity based on erroneous appreciation of evidence and thus, liable to be set aside.

41. Consequently, the impugned judgment of conviction dated March 30, 2006 and order of sentence dated March 21, 2006 passed by learned Sessions judge, Burdwan in connection with Sessions Trial No. 16 of 2005 are set aside. The present appellant convict namely Chhaya Mete is hereby acquitted of all the charges.

42. Accordingly, the instant appeal being **CRA No. 354 of 2006** is hereby allowed. The appellant be set at liberty forthwith, if not wanted in connection with any other case, upon execution of a bond to the satisfaction of the Trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

43. In view of the disposal of the appeal, connected applications, if any, shall stand dismissed.
44. Trial Court records along with a copy of this judgment and order be sent, at once, to the learned Trial Court for necessary action.
45. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

46. I agree.

[DEBANGSU BASAK, J.]