

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 445 of 2007

**Joydeb Das and Anr.
-Vs-
The State of West Bengal**

For the Appellants	: Mr. Soubhik Mitter Ms. Rajnandini Das Mr. Karan Bapuli
For the State	: Mr. Binay Panda Mr. Subham Bhakat
Heard on	: 28.11.2023, 18.01.2024, 29.02.2024, 06.05.2024
Judgment on	: 05.08.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 20.07.2007 passed by the Learned Additional Sessions Judge, Arambagh, Hooghly, in S.T. Case No. 12 of 2006 (corresponding to S.C. Case No. 25 of 2006), convicting the appellants on the charges framed for commission of offence punishable under Section 498A of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.1000/- each in default to suffer rigorous imprisonment for a further period of 2 months more.

2. The prosecution case precisely stated the de-facto complainant victim to have lodged a complaint Arambagh Police Station on 29.10.1999, inter alia, alleging on 29th Baisakh 1406 B.S. (corresponding to May 1999) the complainant got married to the appellant no. 1 according to Hindu rites and customs. After the marriage the complainant was refused to pursue her education and forced to continue herself to domesticity. On her protest, the complainant was subjected to torture and Rs.50,000/- was demanded from her as dowry for the business of the appellant no. 1. On her refusal to comply to the same the complainant was subjected to physical and mental torture.

Subsequently on 1.7.1999 the appellant no. 1 drove her to her parental home, wherefrom she attended her studies. On 10.9.1999, the appellant no. 2 and other matrimonial family members appeared at the parental home of the complainant and tried to throttle her father on the intervention of the parental aunt and cousin brother of the complainant, they too were tried to intervene they were also assaulted by the appellant no. 2 and other members of his family. Thereafter the appellant no. 2 forced the complainant to retract to his house and compelled her to work like a maid servant.

In between 10.9.1999 and 21.10.1999 complainant was subjected to severe torture at her matrimonial home tried to kill her by drowning. On one occasion she was slapped on head, cheeks and ear for which she became senseless. Her signatures were taken on a blank piece of paper by force. On 22.10.1999 complainant informed Sanatan Santra, a panchayat member,

who took her to her parental home, however on the same day the appellants and other family members came to her parental home and tried to drag her away. This was resisted by the elder brother of the complainant who was also assaulted. Thereafter the father of complainant arranged for her medical treatment.

Consequently, the complainant resided at her maternal home and was treated by a physician at Arambagh. The matrimonial family members of complainant further threatened that they would kill the complainant whenever they found her.

3. On the basis of the aforesaid complaint Arambagh Police Station Case no. 181 dated 29.10.1999 under Sections 498A/323/448/506/307 of the Indian Penal Code was registered for investigation against the present appellants, namely, Joydeb Das (the husband of the complainant), Lila Mohan Das (the father-in-law of the complainant), Arati Das (the mother-in-law of the complainant), Sasthi Charan Das and Biplab Bama Das (the brothers-in-law of the complainant) and Saraswati Das (the sister-in-law of the Complainant).
4. On completion of investigation, charge sheet under sections 498A/323/448/506/307 of the Indian Penal Code was submitted by the investigating agency against the present appellants and other four accused persons (named hereinabove).
5. Charges were framed for the commission of offences punishable under Sections 498A/448/307 of the Indian Penal Code against the appellants, Arati Das, Sasthi Charan Das, Biplab @ Bama Das and Saraswati Das. The

appellants and their co-accused person pleaded not guilty and claimed to be tried.

6. The prosecution examined as many as 10 witnesses and exhibited certain documents.

7. Learned Advocate for the appellants submitted as follows: –

- i. It was a love marriage between the appellant No.1 and PW-1/victim, but their respective families did not approve of their relationship/marriage, as confirmed by PW-1 herself.
- ii. PW-1's cross-examination indicated that the criminal case was lodged after PW1 obtained an ex parte decree of dissolution of marriage. Had the allegations levelled against the appellants in the prosecution case been true, it remained unexplained as to why PW-1 or her family members waited till the dissolution of marriage for lodging the instant case. PW-1 was brought back to her father's house on 22.10.1999. The complaint in the instant case was lodged on 29.10.1999. The delay in registering the case has not been explained by PW-1.
- iii. No independent witness had been examined in this case. Barring the doctor and the investigating officer and a member of the Panchayat Samiti, all the other witnesses were relatives of the purported victim.
- iv. PW-1 admitted in her cross-examination that she had not mentioned in her written complaint regarding the attempt of appellant no. 1 to kill her by drowning her in the pond and regarding her being slapped by appellant no. 1 which left her senseless. PW-1 further admitted in her cross-examination that she had not mentioned in her written

complaint regarding appellant no. 1 forcefully obtaining her signature on a paper wherein it was endorsed that none would be responsible for her death and had stated the same for the first time in court at time of her deposition.

- v. PW-1 admitted in her cross-examination that the inmates of her father's house could not accept her relation with appellant no. 1 socially and her affair with Joydeb Das was no longer in existence. PW1 further stated that her relatives had stopped visiting her father's house due to her marriage to Joydeb Das.
- vi. PW-3 admitted that he did not make any statement before the police. Such testimony being made for the first time in court, without being examined by the investigating agency, is not admissible in law and hence his deposition cannot be relied upon.
- vii. PW-5 being an injured witness stated that there was no medical paper to show that they were treated by any doctor.
- viii. From the evidence of PW-7 (Doctor) it was found that he did not notice any external marks of injury on PW-1 when he examined her on 28.10.1999 at his chamber. Medical prescription by PW-7 was not seized during investigation and had been produced in court for the first time at the time PW-1's evidence. PW-7 in his PW-3 admitted that he did not make any statement before the police. Such testimony being made for the first time in court, without being examined by the investigating agency, was not admissible in law and hence his deposition could not be relied upon.

- ix. PW-8 (father) in his evidence stated that PW-2 brought PW-1 back to his house and upon seeing her condition he made an arrangement for her treatment. In his cross-examination he stated the name of the said doctor was Sahadat Kazi who was not examined by the prosecution or cited as a witness. PW-8 in his cross-examination stated that on account of the assault by the accused persons they were medically treated by a doctor. He went to contradict himself by stating that PW-1 was the only one to sustain injuries on account of the assault by the accused persons, therefore, she was given medical treatment.
- x. PW-10 (I.O.) stated that except PW-1 he did not examine any other person who was assaulted by the accused persons. PW-1 did not tell him about any external injury on her person due to assault. Except PW-1's verbal statement he did not find any other tangible material. He prescribed medicines to PW-1 for her depression. PW-1 did not tell him if she was at all treated by any doctor due to the alleged assault.
- xi. PW-10 (I.O.) admitted that during investigation he did not get any injury report or any prescription regarding the treatment of the injured.
- xii. PW-10 (I.O.) admitted that barring the complaint he did not get any material from any other witnesses examined by him that the accused persons demanded dowry of Rs.50,000/- from PW-1.

- xiii. PW-10 (I.O.) admitted that he did not get any tangible evidence regarding caste dispute between the victim's (PW-1) family and her in-laws.
- xiv. PW-10 (I.O.) admitted that during investigation he did not find any evidence regarding a dispute over the victim's education. He did not find any evidence to show that the victim was not allowed to continue her education by her in laws.
- xv. PW-10 (I.O.) admitted that Radharani Karmakar (PW-5) did not state before him that Joydeb Das (appellant no.1) tried to kill PW-1/the victim by drowning her in the pond nor did she state that Lila Mohan Das (appellant no. 2), and other accused persons assaulted her along with her younger brother (PW-3) and his son (PW-4). Radharani Karmakar (PW-5) did not state that Lila Mohan Das (appellant no. 2) had held the victim's (PW-1) hand in order to drag her back to his house. Hence, so far as this portion of the testimony of PW-5 is concerned the same is inadmissible in evidence since this was not stated to the investigating officer and made for the first time in court.
- xvi. PW-10 (I.O.) admitted that he did not examine Sankar Prasad Karmakar (PW-8/father) and Premamoy Karmakar (PW-9/brother). Hence the testimony of PW-8 and PW-9 cannot be relied upon.
- xvii. PW-10 (I.O.) admitted that Shyamapada Karmakar (PW-4) did not state before him regarding the demand of Rs.50,000/- by Joydeb Das (appellant no. 1) did not mention about the assault allegedly perpetrated by the accused persons nor any specific allegation of

assault was made against any accused person. Hence, so far as this portion of the testimony of PW-4 is concerned the same is inadmissible in evidence since this was not stated to the investigating officer and made for the first time in court.

- xviii. PW-10 (I.O.) admitted that none of the witnesses stated before him that they were constrained in their house by the accused persons. Hence this particular testimony of the witnesses cannot be relied upon and cannot be treated as admissible evidence since this was made for the first time in court.

8. Considered the rival contentions of the Learned Advocate for the State.

9. The Hon'ble Supreme Court in ***Achin Gupta v. State of Haryana***¹ held the following:-

*“19. It is also pertinent to note that the Respondent No. 2 lodged the FIR on 09.04.2021, i.e., nearly **2 years** after the filing of the divorce petition by the Appellant and **6 months** after the filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members.*

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***32.** Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in*

¹ 2024 SCC OnLine SC 759

the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is

complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.”

10. PW-1, the victim stated to have been filed the complaint against the appellant husband and his family members after she obtained an *ex parte* decree of divorce being Mat Suit No. 7 of 2001 filed by her. The complainant/PW-1 filed a written complaint alleging to have married the appellant no. 1 on 29th Baisakh, 1406 B.S. while she was a student of Kamarpukur College. Subsequent to her marriage, the appellant and his family members refused to permit her to continue with her studies, subjected her to torture, demanded a sum of Rs.50,000/- for her husband's business and compelled her to do household duties.
11. The appellant no. 1 took her to her parents' house on 01.07.1999 wherefrom she pursued her studies. On 10.09.1999 her father-in-law and other people arrived at her parents' house and assaulted her father, the elder brother of her father, aunt and her cousin at their residence. She was forcibly taken to her matrimonial house at the pretext to treating her as a maid servant. From 10.09.1999 to 21.10.1999 she was subjected to inexplicable mental and physical torture to attempt to drown her in the pond, she lost conscious being slapped on her head, cheek and ear. She was forced to sign certain blank papers. On 22.10.1999, PW-1 the complainant was accompanied by one Sanatan Santra to her parents' house wherefrom she was again driven to her matrimonial house by her husband and others who assaulted the

father of the complainant and other members. Therefore, the PW-1 resided at the house of maternal uncle at Kayrapara for safety.

12. She further stated to undergo medical treatment by a local doctor for being assaulted by the appellant husband and his family members. The complaint was received by the police station at Arambagh on 29.10.1999.
13. The evidence of PW-1, the complainant revealed the annoyance of her parents at her marriage with the appellant no. 1 on the basis of difference of their caste. Both the families of the couple resided on the western and eastern bank of a pond, presumably located equi-distance from each other amongst known individuals. The marriage was the love affairs between the disputants which was social and religious ceremony at the house of the sister of the appellant no. 1 to the repulsion of the parents of the victim lady. PW-1 in her complaint as well as deposition before the Court narrated the incident of torture inflicted upon her during subsistence to her marriage at the matrimonial house, demand of a sum of Rs.50,000/- from her father's house for pursuing a business for her husband and refusal to her pursuance of education.
14. She narrated certain dates namely, 01.07.1999, 10.09.1999. On 10.09.1999 when she was subjected to physical torture at her parents' house by the appellant and his family members who even assaulted her father, uncle and aunt etc.
15. She was further compelled and dragged to her matrimonial house disregarding the resistance of her father, brother and other members of the family. It was weird and uncanny these two specific incidents were not

reported to police and she was allowed to stay at the house of the perpetrators from 10.09.1999 till 21.10.1999 to the resentment of her parents and other members of the family.

16. She further stated to have sustained injuries caused at the matrimonial house and being treated by the Dr. Kamal Krishna Ghosh at Arambagh. Dr. Kamal Krishna Ghosh was examined as PW-7 who deposed to have failed to detect any injury on the person of PW-1 who refused to disclose the name of her husband. During the cross-examination of PW-7 he deposed *“Excepting her verbal statement I did not find any tangible material Depression is a part and parcel of mental disease. Hallucination, false statement, non-sleeping etc are symptoms of a patient suffering from mental depression Patient did not tell me the place and time and date of making alleged torture on her. There is no note of time mention regarding her medical examination by me in my chamber”*. Apart from complaining of torture upon her by her husband and other family members, PW-1 complained of headache and insomnia.

17. During his cross-examination PW-8 stated that they being Karmakar belongs to higher caste and the accused Lila Mohon Das was a man of bagdi family. They could not accept the marriage of the victim with Joydeb Das. After divorce the victim was living in his house. After divorce there was no longer any unrest in their mind. They were medically treated by the doctor on account of assault by the accused persons. The victim was medically treated for sustaining injuries due to assault by the accused persons. Only the victim sustained injuries due to assault. None else of them sustained any injury. He did not notice any bleeding injury on the person of the victim. The

victim did not visit the house of the accused persons. She did not meet Daroga Babu. Daroga Babu came to his house and interrogated him about the incident. He could not remember as to how many days back police came to his house.

18. PW-9 in his deposition stated that he knew the accused persons and they were Lila Mohan Das, Joydeb Das, Arati Das, Sasthi Charan Das, Biplab Das, Saraswati Das. Sulogna was his younger sister. She was married to Joydeb Das of Hatbasantapur on 29th Baisakh of 5/6 years back. It was love marriage of the victim and Joydeb. Their marriage was performed against the wish of their house. "Fulsajya" ceremony was held in the house of Lila Mohan Das. After marriage Victim used to reside in the house of Lila Mohan Das. Before marriage Victim was a student of English Honours in Kamarpukur College. After marriage also Victim wanted to continue with her study staying in her in-law's house, but she was never allowed to continue with her study by the inmates of her in law's house. Joydeb Das was unemployed. Rs.50,000/- was demanded from the house of the accused for starting a business by Joydeb Das as he was unemployed person.
19. After the completion of investigation and being satisfied he submitted charge-sheet under Sections 498A/323/448/ 506/307 of the I.P.C. against all the six abovenamed accused persons. He examined PW-2.
20. During his cross-examination PW-10 stated that during the period of investigation he did not get any evidence to show the continuance of the husband-wife relation between the PW-1/victim and Joydeb Das as the same has not been noted in the C.D. He examined the witnesses who corroborated

the evidence of the victim. Excepting the victim he did not examine any other person who was assaulted by the accused persons. Victim did not tell him about any external injury on her person due to assault. She also did not tell him if she was at all treated by any doctor due to alleged assault. During investigation he did not get any injury report or any prescription regarding the treatment of the injured. Relying on the statements of the witnesses he submitted charge-sheet in that case. He did not record any separate statement of victim under Section 161 Cr.P.C. as she corroborated the complaint. He did not make any investigation if the witnesses examined by him on the side of the de-facto complainant victim were not tutored by her. Barring the complaint he did not get any material from any other witnesses examined by him that the accused persons demanded dowry amount of Rs.50,000/- from victim. He did not get tangible evidence regarding the caste dispute between the family of victim and the accused persons. During investigation he got the material regarding the study problem of victim. He also did not get any tangible material during investigation that victim was not allowed to go to her College from her in-law's house. He also did not make any investigation as to where the marriage of victim and Joydeb had taken place and as to what was given in the marriage of Joydeb and victim. He did not make any investigation if for a single day Joydeb was accepted in the father's house of victim as son-in-law. PW-5. Radha Rani Karmakar did not tell him that Joydeb tried to kill victim by drowning in the water of the pond. She also did not tell him that Lila Mohon Das himself tried to kill her younger brother, Sankar by throttling. She also did not tell him that Lila

Mohon Das and other accused persons assaulted her, her younger brother Sibbu, his son, Shyamapada. PW-5 also did not tell him specifically that Lila Mohon Das himself by catching the hand of victim dragged her towards his house from their house. He did not examine Sankar Prasad Karmakar (father of victim) and Premamoy Karmakar (brother of victim). PW-4 Shyamapada Karmakar did not tell him that Joydeb Das claimed Rs.50,000/-. He also did not tell him that the accused persons assaulted them and also as to who assaulted whom specifically. None of the witnesses stated to him that the accused persons did not allow any of the inmates of the complainant's house to go outside their house as they confined them in their house.

21. PW-2 and PW-6 were declared hostile by the prosecution. PW-3, PW-4 and PW-5 in unison stated that the dispute between the parties was primarily because of the marriage between the victim and the appellant no. 1 belonging to different caste. However, they reiterated the evidence of PW-1 in terms of the torture inflicted upon her and demand of Rs.50,000/- as dowry.
22. PW-1 in her cross-examination, inter alia, deposed as follows:-

“It is a fact that the inmates of my father's house could not accept my relation with Joydeb Das socially.

Due to my marriage with Joydeb Das our relations stopped visiting my father's house.

The love affairs with Joydeb Das is no longer in existence.

Panchayet Member Sanatan Santra also knows about the torture upon me in my in-law's house so long I was living in my in-law's house.

I narrated the incident of torture on me in my in-law's house to Sanatan Santra. After my narrating the said incident to of torture/the said

Sanatan Santra, he took me and kept me in my father's house. Since then I have been living in my father's house. In the meantime I have filed a divorce suit and got my marriage dissolved by a decree of divorce from the Court. The marriage was dissolved by an ex parte decree.

After passing of the ex parte decree I have filed this complaint in the Police station and investigation was done as usual.

....

I was not present when police went to our locality to investigate the case.

I cannot say if police went to the locality of my father in connection with the investigation of this case as I resided in my maternal uncle's house at Arambagh.

....

The sweet relation has been regained between me and other inmates of my father's house.

I did not state in the petition of complaint regarding the attempt of my husband to kill me by drowning in the water of the pond and assault on me by slapping inside the room and also regarding my becoming unconscious due to slapping by my husband.

I also did not state in the written complaint that my then husband obtained my signatures on some blank white papers with endorsement that none is responsible or liable for my death by me. I have stated this for the first time in this Court today.”

23. The obdurate and intractable family members of the victim detested her marriage to the appellant no. 1 portraying abhorrence towards the inter – caste marriage. An attitude which is abysmal and abominable. The family of the victim was supported by the local people in their rage of unanimous orthodox indoctrination. The devoutness over caste distinction cast widespread dispassion and resentment in the locality which was restored at

the dissolution of marriage between the parties. The engrained enmity caused the victim to suffer depression and lodge a false complaint incriminating the appellants as well as other members of the family on false pretexts of physical and mental torture as well as demand of dowry. The marriage was admittedly performed at the house of the sister of the appellant in the absence of the victim's family members eradicating the possibility of demand of dowry. The complaint was filed with an objective to subdue the appellants and to avenge their sentiments of restoring honour of the family whereby the victim had been a machination to intensify vengeance.

24. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.

25. Accordingly, the instant criminal appeal being CRA 445 of 2007 is disposed of.

26. There is no order as to costs.

27. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

28. 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.)