

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 650 of 2005

**Sahadeb Saha @ Gopal Saha
-Vs-
The State of West Bengal**

For the Appellant : Mr. Bibaswan Bhattacharya
Mr. Madan Mohan Roy
Ms. Bindia Paul

For the State : Mr. Avishek Sinha

Heard on : 27.09.2023, 12.12.2023

Judgment on : 12.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 02.05.2005 passed by the Learned Additional Sessions Judge, Fast Track Court – II, Barrackpore, North 24 Parganas in Sessions Trial No. 5(9)/2004 arising out of Sessions Case No. 76 (4)/2004 convicting the appellant for the offence punishable under Section 323 of the Indian Penal Code and sentenced him to suffer simple imprisonment for 1 year and to pay a fine of Rs. 1000/- in default to suffer simple imprisonment for 3 months.
2. The prosecution case in brief was that the complainant i.e. the victim lodged a written complaint at Lake Town Police Station on 07.08.2003 to the effect

that the appellant Sahadeb Saha married her after the pending kidnapping case was withdrawn with the assurance of leading a peaceful conjugal life. It was alleged that the appellant thereafter remained untraced for 3 months after the marriage and ultimately the appellant returned on 06.08.2003 to the father's house of the complainant where the complainant was residing at that relevant point of time. It was alleged that the complainant and the victim being the husband and wife were sleeping in a room at the house of the father of the complainant where the appellant pressed a pillow upon the nose of the complainant when she was sleeping beside the appellant. It was alleged that a scuffled ensued and the pillow was removed. The appellant thereafter started strangulating the complainant by his hands with an intention to kill her. The complainant somehow raised alarm and as a result of which the mother of the complainant entered into the room. The complainant sustained mark of 'kalshite' at her neck. The father of the complainant went to the police station at 4:00 hours. It was further alleged that the appellant tried to flee by jumping from the roof of the house but the local people caught hold of him and restrained him in the house of the complainant.

3. Accordingly on the basis of the complaint of the victim, a First Information Report was drawn up by Lake Town Police Station being Case No. 194 dated 07.08.2003 under Sections 498A/307 of the Indian Penal Code.
4. After completion of investigation the police submitted Charge-Sheet under Sections 498A/307 of the Indian Penal Code against the appellant.

5. The offence in the complaint being triable by the Court of Sessions, the case was committed to the Court of Sessions where charges under Sections 498A/307 of the Indian Penal Code was framed against the appellant.
6. The appellant pleaded not guilty and denied the allegations levelled against him and claimed to be tried.
7. At the trial 9 witnesses were examined on behalf of the prosecution and several documents were exhibited. It was pertinent to mention that Subodh Kumar Nandi (PW-9), the father of the complainant was called to give evidence by the Learned Judge by invoking Section 311 of the Code of Criminal Procedure as he had not been cited as a witness in the charge-sheet.
8. Learned Advocate for the appellant submitted that –
 - i. The trial has been vitiated by reception of evidence which are not admissible in law and the appellant has seriously been prejudiced thereby.
 - ii. At the trial 9 witnesses were examined on behalf of the prosecution and the following materials fact appeared therefrom –
 - a) PW-1, the de-facto complainant in her evidence had stated that the marriage between her and the appellant took place 05.11.2000 as per Hindu Rites and Customs. Prior to the marriage, her father lodged a kidnapping case against the appellant and after solemnization of the marriage the said case was withdrawn. She had been a subject matter of torture by the appellant and that on 06.08.1997/07.08.1997 at about 2:30

a.m. (night) while she was sleeping with the appellant at her father's house she suddenly woke-up from sleep and saw the appellant pressing a pillow on her mouth. She also stated that the appellant also strangled her by both of his hands at her neck causing 'kalshite dag' of five fingers at her neck. She further stated that the appellant sustained injuries on his leg when he tried to flee away by jumping from the roof but he failed to flee away and the neighbours caught hold of him. She also stated that she gave birth to a male child who at present was 3 years old. During cross-examination this witness had stated that she had not lodged any diary at the police station for any physical or mental torture inflicted upon by the appellant.

- b) PW-2 Ranjita Nadi, the mother of the complainant had stated in her examination in chief that about 2:30 a.m. (night) she heard a screaming voice of her daughter from her bed. She entered into the room as the door of that room was not bolted she saw the appellant to strangle the neck of the victim by his hands. During cross-examination she stated that she had come to know that love affairs developed between the victim and the appellant since 1993 and their marriage took place in 1995. She stated that they did not accept the marriage and erased the vermilion from the forehead of the victim and also broke the 'Sakha'. Thereafter the victim girl and the appellant again started mixing with each other and started living together. She

stated that the first issue of the victim and the appellant was miscarriage. She also stated that the mother of the appellant came on the birth day of his grandson i.e. the son of the appellant and gifted him articles and sweets. The mother of the appellant also gave sweater to the complainant. The mother of the appellant time and again requested the victim girl to return back to her matrimonial house together with the appellant when victim girl was walking on the road. She stated that she did not accept the marriage held between the appellant and victim girl and that she cannot tell when the appellant had inflicted physical and mental torture upon the victim girl. She further stated that the appellant and the victim girl married twice but kept the matter confined among them. She lastly stated that they have accepted only the last marriage.

- c) PW-3 Sandhya Mondal in her evidence had stated that she had not stated to the Investigating Officer of the case that the accused jumped from the roof and she caught him on the road. She had been declared hostile by the prosecution but nothing could be brought out from her mouth during cross examination by the prosecution.
- d) PW-4 Bhola Nath Das in his evidence had stated that she had not stated to the Investigating Officer of the case that the accused jumped from the roof and he caught him on the road. He had been declared hostile by the prosecution but nothing

could be brought out from his mouth during cross examination by the prosecution.

- e) PW-5 Manasha Mondal in his evidence had stated that he had not stated to the Investigating Officer of the case that the accused jumped from the roof and he caught him on the road. He had been declared hostile by the prosecution but nothing could be brought out from his mouth during cross examination by the prosecution.
- f) PW-6 Subrata Biswas is an A.S.I. of Police of Lake Town Police Station. He received the written complaint from the complainant i.e. the victim and started Lake Town Police Station Case No. 194 dated 07.08.2003 and made endorsement to that effect in the written complaint. He thereafter filled up the formal F.I.R.
- g) PW-7 Dr. Manas Kumar Hazra in his evidence had stated that he is a medical officer now attached to R.G.Kar Hospital. On 07.08.2003 he was attached to the same hospital. On 07.08.2003 he examined the victim at about 4:09 p.m. She was brought by one Subodh Nandi and identified her before him. He stated that the patient stated before him that she was strangulated by her husband i.e. the appellant with his hands on 07.08.2003 at 2:30 a.m. (night). He stated that on examination he found the patient was conscious, pulse 100 per minute regular, Heard – nothing abnormality detected, Lungs clear, Blood Pressure 120/78 m.m. mercury, pupils – normal,

general condition good. He found abrasion 1½ inch diameter on the exterior surface of the neck. Old injury no bleeding. During cross examination he had stated that the injury of the patient was simple and the said injury was not such which may cause death.

- h) PW-8, Debabrata Mandal, a Sub-Inspector of Police of Lake Town Police Station investigated the case as the Investigating Officer of the case. He in his evidence had stated that he visited the place of occurrence along with index. He arrested the accused and produced him in the court. He had examined the available witnesses and recorded their statement under Section 161 of the Code of Criminal Procedure. He collected the injury report of the victim i.e. the complainant and thereafter submitted charge-sheet against the accused on completion of investigation. During cross-examination he had stated that he had not seized any pillow nor noted in the case diary as to whether or not any foreign hand was used in the neck of the victim. He had also stated that there was no allegation of demand of dowry in the F.I.R. nor it was revealed during investigation.
- i) PW-9 Subodh Kumar Nandi, the father of the complainant had supported the prosecution story. He in his examination-in-chief had stated that the accused placed the pillow on the mouth of his daughter while she was sleeping. During cross-examination

he had stated that he had not seen the accused jumping from the roof of his house.

- iii. The Trial Court failed to consider that the witnesses examined in the instant case were all known to the complainant and were interested witnesses.
- iv. The independent witnesses who were examined in the instant case being PW-3, PW-4 and PW-5 belied the prosecution case.
- v. The investigating officer of the case had neither seized the pillow nor made any endorsement in the case diary as to whether or not any foreign hand was used in the neck of the victim. The prosecution failed to prove its case and the appeal shall be allowed.

9. The Learned Advocate for the State in all fairness submitted that prosecution could not prove its case beyond reasonable doubt in terms of the injury which was inconclusive in nature.

10. A circumspection of the prosecution witnesses revealed as follows:

- i. PW-1 Sadhana Saha stated that on 06.08.2003/07.08.2003 at about 02:30 a.m. (night) she was sleeping with her husband at her father's house. The accused came suddenly on that date and disclosed to stay at her father's house. Suddenly she woke up from sleep and saw her husband to press a pillow on her mouth. She somehow raised alarm by shouting aloud calling her mother. The accused then strangulated her by his both hands at her neck causing 'kalshite dag' at her neck. Her mother somehow opened the door as the 'chitkini' was damaged. The accused pressed the pillow on her face and strangulated her with

a view to kill her. Her father went to Laketown P.S. at about 04:00 a.m. (night). The accused jumped from their roof and attempted to flee. The local persons caught him on the spot. She went to P.S. at about 09:00 a.m. and lodged a complaint in writing. The said complaint was written and signed by her marked (Ext. 1). The police referred her to R.G. Kar Hospital, where she stated the fact to the attending doctor. She gave birth to a son out of marriage with the accused Sahadev Saha @ Gopal. The said son was living with her. The son was about 3 years.

The right leg of the accused was fractured at the time when he tried to flee by jumping from the roof. She informed the fact of torture by the accused to her parents and others.

- ii. In her cross-examination PW-1 stated that *'... she had not lodged any diary at P.S. for physical and mental torture by the accused. She had not sent any letters stating the fact of torture to her parents. The door of their room on 06/07.08.2003 was only closed without bolting. Her husband namely the accused gave her the sweater worn by her. The accused purchased the sweater for her 2/3 months back.*
... She was suspicious on the said night that her husband might commit any untoward incident. She stated the doubt to her mother. The key of main gate was with her mother. There was no staircase in their house. She further stated there was a stair case in their house but the roof was open. The staircase was at the right side of the entrance. The police instructed her father to take her to the P.S. and to lodge complaint then

they would take action. She had no document to show that police referred her to R.G. Kar Hospital. She was not treated as an indoor patient.'

- iii. PW-2 Smt. Ranjita Nandi stated that the victim was her daughter. The victim was given marriage with the accused Sahadev Saha @ Gopal on 05.11.2000 as per Hindu Rites & Customs. The victim gave birth to son. Therefore the said son was living with her. They had previously filed a kidnapping case against the accused as he married her daughter by force. They subsequently withdrew the case after the marriage.

... The accused jumped from the roof and sustained fracture at his right leg before the police reached. The accused jumped from the roof and tried to escape but the local people caught him.

- iv. In her cross-examination PW-2 stated that *"... the date of birth of her grandson was 26th December, 2001 corresponding to 10th Poush of Bengali Calendar. The mother of the accused came on the birthday of her grandson and gifted articles and sweets. The mother of the accused also gave a sweater to her daughter and fruits to her grandson and toys. She did not know if Sadhana went to her matrimonial home with her son after filling of this case. The mother of the accused time and again requested Sadhana to go to her house with her son whenever she met Sadhana on the road. ... They restrained the accused in their house on the night of the incident till police reached. They did not raise alarm immediately after the incident. She put padlock on the main entrance*

gate of their house. The accused jumped from the roof and the local people caught him. They could not accept their marriage. She could not state the date, month and year of physical and mental torture inflicted by the accused upon Sadhana. Sadhana and Sahadev married twice and kept the matter concealed. They finally accepted the second marriage. The accused had not visited their house 3/4 months prior to the incident as there was a 'Ragaragi'. She did not know the cause of 'Ragaragi'. She had nothing to say if Sadhana and Sahadev again start living jointly. She had not known if Sadhana came to court to facilitate the bail of the accused. She could not state the name of local people who caught the accused. PW-3 was her neighbor."

- v. PW-3, PW-4 and PW-5 were declared hostile by the prosecution.
- vi. In cross-examination PW-6 stated that *"he noted the date of occurrence in the formal as 06.08.2003. He had not received any F.I.R. on 06.08.2003. He had no personal knowledge about the incident."*
- vii. PW-7 Dr. Manash Kr. Hazra, stated that he had been a Medical Officer now attached to R.G. Kar Hospital. On 07.08.2003, he examined one Smt. Sadhana Saha at about 04:09 p.m., who was brought by one Subodh Nandi and identified her before him. The patient stated to him that she was strangulated by her husband Sahadev Saha with his hands on 07.08.2003 at 02:30 a.m. On examination, he found the patient was *"conscious-pulse 100 per minute regular. Heart – Nothing abnormality detected, Lung – clear, B.P. – 120/78 mm. mercury, Pupils –*

normal, General condition – good. I found abrasion 1½ diameter on the interior surface of neck. Old injury, no bleeding.”

- viii. In her cross examination PW-7 stated that *“the blood pressure of the patient was normal. There was not note in the injury report that police referred the case to him. The prognosis of the patient was good. There was no note in the injury report as to what medicine he prescribed to the patient. The injury of patient was simple he had not admitted the patient in the hospital as it was not necessary. The injury was not such which may cause death. Not a fact that he had not examined Sadhana Saha on that date. Not a fact that Sadhana Saha had not stated to him that her husband Sahadev Saha strangled her.”*
- ix. In his cross-examination PW-8 stated that *“he had interrogated the victim cum de-facto complainant but not recorded her statement under Section 161 Cr.P.C. He took up investigation at 09:35 a.m. on 07.08.2003. The incident occurred on 06.08.2003 at night. The victim has not stated in the F.I.R. that her matrimonial home was away of five minutes by bus from her paternal home. He had not consulted the papers of previous case u/s 363/366 of I.P.C. between the parties. The victim was not stated in the F.I.R. that the accused being the husband. Used to inflict both physical and mental torture upon her. The victim has not stated in the F.I.R. that the police referred her to R.G. Kar Hospital where she was treat and/or that she stated the fact to attending doctor. The victim has not stated in the F.I.R. that the accused sustained fracture in right leg by jumping from the roof when he tried to flee away.*

The victim has not stated in the F.I.R. that she informed the fact of torture to some extent to her parents. The witness Smt. Ranjita Nandi had not stated to him that the marriage between Sadhana & Sahadev took place on 05.11.2000 as per Hindu Rites and Customs. She had not stated to him that she filed a kidnapping case against the accused previously as he married her daughter by force. She also had not stated to him that the accused however started misbehaving Sadhana after marriage and he used to inflict physical and mental torture upon her. She had not stated to him that on 06/07.08.2003 at about 02:30 a.m., Sadhana and Sahadev were sleeping in a room of their house and that she was sleeping at Verandah with their son and that the door of the room was not bolted. She had not stated to him that they had not allowed the accused to go outside by putting padlock in the main entrance door. She had not stated to him that her husband went to P.S. to 04:00 a.m. She had not stated to him that the accused jumped from the roof and sustained fracture injury at his right leg. The witness Sadhana Saha had not submitted any affidavit to him. He had not made any requisition for collection of medical report of the victim from R.G. Kar Hospital. He had submitted charge-sheet on the basis of medical report. He had not consulted the District P.P. before submission of charge-sheet. He had not obtained the finger print of the neck of the victim. He had not seized any pillow or weapon during investigation. He had not noted in the C/D as to any foreign hand was used in the neck of the victim or not.”

x. PW-9 Subodh Kumar Nandi, stated that the de-facto complainant/victim was his daughter. She was given marriage with the accused Sahadev Saha @ Gopal. They have a son. The incident occurred on 06.08.2003. The incident occurred on 06.08.2003. The accused came to his house.

11. In his cross-examination PW-9 stated that the house of Manasha Mondal was adjacent to his house and also Bholanath Das. Sandhya Mondal was the mother of Manasha Mondal. Any incident of his house was visible to them. He had not lodged any complaint at P.S., when he went there at 4 a.m. The police had not come to his house after hearing the incident from him at 04:00 a.m. He had received summon from Court. His daughter was treated at R.G. Kar Hospital at about 12/12:30 p.m. He had not seen the accused to jump from the roof of his house.

12. The dispute between the parties had been a consequence of marital discord based on impulsive fabrication to implicate the husband. PW-7 the Medical Officer of R.G. Kar Hospital detected an old injury without bleeding and the prognosis of the patient was good. The prosecution failed to prove the appellant to have fractured his right leg as he tried to jump off the roof. The pillow was not seized by the prosecution. The independent prosecution witnesses turned hostile. The local people to have restrained the appellant were not cited. The parents of the victim were distraughted at the marriage of the victim with the appellant initially due to concealment of the same from them. However, they subsequently accepted the said marriage. The mother of the victim i.e. PW-2 during her cross-examination deposed of annoyance and

displeasure between the victim and the appellant over certain issues unknown to her and she was agreeable to the fact if her daughter and the appellant resume their matrimonial life. PW-2, being the mother of the victim would not have expressed such a desire of cohabitation of the disputants, if the appellant had been a real offender at the risk of her daughter's life who had once been strangulated by the appellant to her peril, devastation and dismay.

13. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
14. Accordingly, the criminal appeal being CRA 650 of 2005 stands disposed of.
15. There is no order as to cost.
16. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
17. 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.)