

**IN THE HIGH COURT AT CALCUTTA  
CIRCUIT BENCH AT JALPAIGURI  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Gaurang Kanth**

***C.R.A. 14 of 2021***

***Bhabesh Das  
-Vs-  
The State of West Bengal***

**For the Appellant** : Mr. Arijit Ghosh, Adv.

**For the State** : Mr. Aditi Shankar Chakraborty, Id. A.P.P.  
Ms. Namrata Das, Adv.

**Heard on** : 28.01.2025 & 29.01.2025

**Judgment on** : 29.01.2025

**Joymalya Bagchi, J. :-**

1. Appeal is directed against judgment and order dated 17.12.2015 and 18.12.2015 passed by the learned Additional Sessions Judge, Mathabhanga, Cooch Behar in Sessions Case No.301 of 2011 (Sessions Trial No.02 (07) of 2012) convicting the appellant for commission of offence punishable under Sections 498A/302 of the Indian Penal Code

and sentencing him to suffer rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for three months more for the offence punishable under Section 498A of the Indian Penal Code and to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 302 of the Indian Penal Code; both the sentences shall run concurrently.

**Prosecution case:-**

2. Prosecution case as levelled against the appellant is as follows :

Deceased Gita was married to one Bhabesh Das on 11<sup>th</sup> Magh, 1410 (i.e. 26.01.2004). At the time of marriage, dowries and other gifts were given to the appellant. From the wedlock a male child was born. Appellant was addicted to liquor and used to take large sums of money from his in-laws. He used to physically assault his wife. Matter was brought to the notice of local people including the Panchayat authorities. But he did not mend his ways and continued to torture. Finally, on 30.10.2008 appellant assaulted Gita with a bamboo on her head. As a result, Gita died. Appellant tried to flee away but was detained by local people and handed over to police.

3. On the written complaint lodged by the victim's father, namely, Prafulla Chandra Das (since deceased), Ghoksadanga Police Station Case

No.114 of 2008 dated 30.10.2008 under Sections 498A/302 IPC was registered for investigation.

4. During investigation, appellant was arrested and charge sheet was filed against him. Charges under Sections 498A/302 IPC were framed against the appellant. In course of trial, prosecution examined sixteen witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. During his examination under Section 313 of the Code of Criminal Procedure, appellant contended he was returning home after work when he was caught on the road and falsely implicated in the case. However, he did not lead defence evidence to probabilise his *alibi*.

5. In conclusion of trial, learned trial Judge by impugned judgment and order dated 17.12.2015 and 18.12.2015 convicted and sentenced the appellant, as aforesaid.

**Arguments at the bar :-**

6. Mr. Arijit Ghosh argued there is no direct evidence that appellant had committed the murder. He used to work in a plywood factory and his presence at the house has not been proved beyond doubt. During his examination under 313 CrP.C he claimed he was apprehended by local people when he was returning from work. PW 2 who had deposed that he had seen the appellant throw a bamboo stick and run away is not a truthful witness. His deposition is not corroborated by other club

members namely PWs 7, 8 and 11. Moreover, no villager has been examined to prove that multiple *salishes* were held. Allegation of demand of money and torture for non-payment of the same is improbable as evidence has come on record appellant had transferred his properties in the deceased's name. Accordingly he prayed for acquittal.

7. On the other hand, learned Public Prosecutor submits PW 1 (uncle), PW 3 (Mother) and PW 4 (Sister) deposed appellant used to torture the deceased over demands of money. PW 2 saw the appellant run away from the place of occurrence after throwing the Bamboo stick. Victim was found lying in the courtyard of the house with bleeding injury. Blood and bamboo stick were recovered from the courtyard. P.M Report shows that the victim died due to head injury. Hence the appeal is liable to be dismissed.

**Evidence on record:-**

8. PWs 1, 3 and 4 are the relations of the deceased.

9. PW 1 (Abinash Das) is her uncle. He deposed Gita was married to the appellant. She was tortured by him severely. A number of *salish* were held. Last *salish* was held a month prior to her death. Appellant used to demand money for his business from Gita's father (Prafulla Chandra Das, since deceased). On the fateful day, appellant assaulted Gita with a bamboo. She received injuries and died. Hearing the news PW 1 went to the spot and found blood in front of the gate. He also saw the bamboo. He

went to Ghoksadanga hospital and saw his niece's dead body. He signed on the inquest report. He went to the police station with his brother. One Dulal Das (PW 16) scribed the FIR. His brother signed on the report. He proved his brother's signature. Local people had caught the appellant and handed him over to police. During cross-examination, he was unable to say when the appellant had demanded money from his brother but stated that a sum of Rs.12,000/- was given to the appellant.

10. PW 3 (Sandhya Das) is the mother of the deceased. She deposed the relationship between the couple was good for about a year. Thereafter appellant pressurised Gita to bring money. He used to assault her. They gave money in instalments. There was a *salish* over the issue. On the day of the incident appellant assaulted Gita. As a result, she died. Hearing the news she went to the place of occurrence. She also went to the hospital where they noted the body of Gita. During cross examination she stated that her husband had given money to the appellant in instalments.

11. PW 4 is the younger sister. She corroborated PW 1 and 3 that Gita was tortured by her husband and *salish* was held. She was murdered at her matrimonial home. She went to the house and saw blood. Thereafter she went to the hospital and saw the body of Gita.

12. PW 5 is the Priest who solemnised the marriage between Gita and the appellant.

13. PW 2, 7, 8 and 11 are members of a local club, namely, Shibbari Sporting Club. PW 2 deposed on the fateful day i.e. the day after Kali Puja while he was returning from Puja Pandal, he saw the appellant throw a bamboo stick and run away. He went to the appellant's house and saw his wife lying with blood injury near the gate. He informed the local people. They took Gita to the Ghoksadanga Hospital. Where she was declared dead. After the incident, Police came to the spot. During cross-examination he said that he did not require to cross the appellant's house when he returned from Puja Pandal. He did not raise any alarm when he saw the appellant throw a bamboo stick.

14. PW 7 deposed they heard hue and cry. Then he along with PW 2 and others went to the appellant's house and saw his wife lying in injured condition inside the boundary gate of the house. They took Gita to the hospital. Doctors declared her dead. During cross examination he said appellant used to work in a plywood factory. He had not seen the appellant 1-2 days prior to the incident or on the date of the incident. PW 8 was also at the club. He along with the other members of the club went to the house of the appellant and shifted Gita to hospital.

15. PW 11 deposed he was preparing *Prasad* in the club. Hearing sound they went to the house of the appellant. There they saw appellant's wife lying in injured condition. They took her to the hospital. Where she was declared dead.

16. PW 10 helped the club members to take the victim to hospital.

17. PW 6, 9 and 12 are local people. PW 6 deposed hearing incident he went to the spot and found Gita lying with bleeding injury at the courtyard. She was shifted to the hospital. During cross examination he stated around 6 PM local people brought the appellant and handed him over to Police. PW 9 and 12 are reported witnesses.

18. PW 13 is the Medical Officer. He found lacerated injury over the right temporal region 3" X 4" X 4" approx. The membrane overlying the brain was torn. The brain matter was lacerated and spilled out through the wound. Haematoma 3" X 3" approx was found over right parietal lobe. He opined death was due to shock as a result of the abovementioned injuries.

19. PWs 14 and 15 are the Investigating Officers. PW 15 is the first Investigating Officer. He visited the P.O and prepared rough sketch map with index (Ext. 6). He examined witnesses. He arrested the appellant. He seized one piece of bamboo and bloodstained and controlled earth from P.O. He proved the seizure list (Ext. 3/1). He held inquest (Ext. 1/1). He collected the Post Mortem Report. PW 14 submitted charge sheet.

### **Analysis and finding :-**

#### **a) Cruelty over demand of money :-**

20. PW 1, 3 and 4 are relations of the deceased. They have stated that the appellant had demanded money from his wife's father, Prafulla Chandra Das. On this issue victim was tortured and Prafulla paid money

in instalments. Learned counsel argues the demand of money is improbable as evidence has come on record that appellant had transferred his land and house in favour of his wife. I am unable to subscribe to this view. Consistent evidence has come on record that appellant demanded money from his father-in-law, Prafulla. He tortured his wife on this score. Prafulla was compelled to pay money in instalments. Though no local witness has been examined to prove multiple *salishes*, appellant in his examination under 313 CrPC himself admitted 8-10 months prior to the incident a *salish* was held due to dispute between the couple.

21. The aforesaid evidence prove that the appellant suffered from financial stringency and demanded money from his father-in-law which was paid in instalments. As the appellant was repeatedly demanding money and pressuring his wife on such score, *salishes* were held and in all probability under such circumstances the appellant was compelled to transfer his land and house to her. This conduct does not improbabilise either the repeated demands of money or cruelty on his wife on that score. Hence the prosecution case of cruelty over demands of money on the unfortunate wife has proved beyond doubt.

**b) Whether appellant murdered his wife? :-**

22. Overwhelming evidence has come on record from the mouths of prosecution witnesses that on the fateful day i.e. 30.10.2008 Gita was found lying in the courtyard with bleeding injuries on her head. She was

shifted to Ghoksadanga Hospital where she was declared dead. P.M Doctor opined death was due to head injuries and antemortem in nature. Appellant argued he was not present at the place of occurrence and had been apprehended while he was returning from work. He relies on the cross examination of PW 6 and 7 that he used to work in a plywood factory and prior to the incident he had not been seen at the house. But evidence has come on record soon after the incident appellant was apprehended by local people and handed over to Police at 6.45 PM. Even if one takes PW 2's deposition that he saw the appellant run away from the spot with a pinch of salt, the incriminating fact that soon after the incident appellant was apprehended by local people in the locality probabalises his presence in the house at the time of occurrence. Appellant has also not led defence evidence to probabalise his alibi that he had gone for work on that day and was not in the house.

23. An analysis of the evidence on record would show the following facts have been proved beyond doubt :-

- a) Appellant used to suffer from financial stringency as a result he would demand money from his father-in-law and torture his wife. His father-in-law was compelled to pay money in instalments.
- b) Victim had withdrawn herself from the matrimonial home and taken refuge at her parental residence. After *salish* she returned to the matrimonial home.
- c) On the fateful day members of a local club heard hue and cry from the appellant's house and rushed to the spot. They found the victim i.e. Gita lying with head injury.

- d) Gita was taken to Ghoksadanga Hospital where she was declared dead.
- e) P.M Doctor opined death was due to head injury.
- f) Though the injury was due to a single strike, the same was on the head – a vital part of the body. Intensity of assault was so severe that brain matter had spilled out. This discloses the appellant's intention to murder the victim.
- g) Soon after the incident, appellant was apprehended in the locality and handed over to Police.
- h) Police seized blood-stained earth and the bamboo stick from the courtyard.
- i) Appellant took a false alibi that he had gone to work on the fateful day but failed to lead defence evidence to probabalise the same.

**Conclusion:-**

- 24. These incriminating circumstances have been proved beyond doubt and unerringly point to the conclusion that it was none but the appellant who had assaulted his wife on the head and killed her.
- 25. Prosecution case is proved beyond reasonable doubt.
- 26. Appeal is accordingly dismissed.
- 27. Conviction and sentence of the appellant is upheld.
- 28. Period of detention suffered by the aforesaid appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 468 of BNSS, 2023.
- 29. Bail Bond of the appellant is cancelled and he is directed to forthwith surrender and serve out the remainder of the sentence, failing

which the trial court shall issue appropriate process to execute the sentence in accordance with law.

30. In view of the above, the connected applications, if any, stand disposed of.

31. Trial court records along with copies of the judgment be sent down at once to the trial Court as well as the Superintendent of Correctional Home for necessary compliance.

32. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

**(Gaurang Kanth, J.)**

**(Joymalya Bagchi, J.)**