

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 497 of 2003

Subarna Halder & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Sumanta Ganguly
Mr. Rajib Lochan Chakraborty

For the State : Mr. Madhusudan Sur
Mr. Dipankar Pramanick

Judgment on : 29.06.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is directed against the judgment and order dated 24.07.2003 passed by the Learned Additional Sessions Judge, Fast Track Court, Diamond Harbour, South 24 Parganas in S.T. No.34(3)2002 arising out of Sessions Case No.83(12)2001 convicting the appellants for commission of offence punishable under Section 498A of the Indian Penal Code and sentencing the appellant no.1 to suffer simple imprisonment for 3 years and to pay a fine of Rs.8,000/-, in default, to suffer further simple imprisonment for 8 months and sentencing the appellant nos.2 and 3 to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.8,000/-, in default, to suffer further simple imprisonment for 8 months with a direction that the fine amount if paid, a sum of Rs.20,000/- would be handed over to Sanjoy

Bikram on behalf of two minor sons of the victim to be shared equally amongst them and the same should be kept in a nationalized bank till they attained majority.

2. The prosecution case precisely stated one Sanjoy Bikram/PW-1, brother of the victim lodged a written complaint at Kulpi Police Station camping at Karanjali on 18.03.1995 alleging the victim to be his sister married to Biswanath Halder of village Karanjali, P.S.-Kulpi, South 24 Parganas approximately 16 years ago. Biswanath predeceased Bharati. There was a dispute between the appellants and other accused persons and the victim over the property and goats destroying vegetables. Consequently, Bharati used to be assaulted. On 17.03.1995 Bharati was assaulted on the head by an iron rod and leading to fracture. She went to Kulpi P.S. and lodged a General Diary Entry No.757 dated 17.03.1995. Subsequently, torture on Bharati mounted and she was assaulted on that night and ultimately murdered. To conceal her murder, her body was set on fire by the accused persons. The accused persons informed the de facto complainant on 18.03.1995 that Bharati committed suicide.
3. On the basis of the aforesaid complaint, Kulpi P.S. Case No.34 dated 18.03.1995 was initiated under Sections 302/34 of the Indian Penal Code.
4. After conclusion of investigation, charge-sheet was submitted by the Investigating Officer against the appellants under Sections 302/34 of the Indian Penal Code.

5. Charge was framed under Sections 498A/302/306/34 of the Indian Penal Code against the appellants and other accused persons to which they pleaded not guilty and claimed to be tried.
6. In the course of trial, the prosecution examined as many as 12 witnesses and exhibited certain documents.
7. Considered the rival oral and documentary submissions of the Learned Advocate representing the appellants as well as the State.
8. PW-1 the brother of the deceased deposed that his sister Bharati had been married to Biswanath Halder, who had expired nearly six months prior to her death. According to him, the appellants maintained a dominant in sustaining intimidation and cruelty with the object of securing possession of the landed property, left by Biswanath. PW-1 stated on the date preceding Bharati's death, she came to his residence, bearing bleeding injuries on her head being physically assaulted by the appellants and other accused persons. PW-1, accompanied by his brother, Mrityunjoy immediately proceeded to Bharati's matrimonial residence, where, according to him, the appellants and the other remaining accused chased them away. Thereafter, PW-1, escorted Bharati to Kulpi Police Station, where a General Diary Entry was recorded regarding the assault. Bharati, thereafter, returned to her matrimonial home. On the following morning, PW-1 received information that Bharati had suffered fatal burn injuries. He, together with his brothers, rushed to the house and found Bharati lying dead while her three children were weeping beside her. Though, the appellants and the co- accused were not physically present when PW-1 reached the place of occurrence, it was

asserted that the same were seen there earlier. PW-1 further stated, Tagori @ Tagari, the daughter of the deceased victim, informed him that Banshi had deliberately sent her away from the house with the cattle, and upon her return she found her mother dead. Tagori @ Tagari further disclosed that the appellants and the remaining accused persons had cause Bharati's death by setting her on fire.

9. PW-2, another brother of Bharati, substantially corroborated the version, narrated by PW-1. It was further submitted on the day preceding her death, Bharati arrived at his residence with a fractured head injury and narrated that the appellants and the remaining accused persons had assaulted her. PW-2, accompanied Bharati, and his elder brother, Sanjay/PW-1, to Kulpi Police Station where the incident was reported through a General Diary. Thereafter, Bharati returned to her matrimonial house. On the next date, he received the information of Bharati's death, succumbing to ablaze injuries. During his cross-examination, he denied of knowledge regarding any illicit relationship between Bharati and Chittaranjan and the possibility of suggested false implication.
10. PW-3, the then Pradhan of Karanjali Gram Panchayet deposed the victim to have been personally known to him. On receiving information regarding her death by burn injuries, he submitted a written report to the Officer-in-Charge of Kulpi Police Station. The written information was marked as Exhibit-1. His signature appearing on the carbon copy of inquest report was marked as Exhibit-1/1. Though, he stated his signature to have been

obtained on a blank document which was later on, identified to be the inquest report.

11. PW-4, the brother of the deceased Biswanath Halder, presented a version markedly different from that advanced by the prosecution. He deposed that Bharati had committed suicide. According to him, Bharati had developed an illicit relationship with Chittaranjan, son of Banshi which had become a subject of public ridicule within the village, causing considerable mental distress to the deceased victim. PW-4 stated that Bharati had been assaulted on the day preceding her death and had lodged a diary concerning the incident. Though, he himself was absent from the house, when the assault, allegedly occurred.
12. PW-5, daughter of the victim deposed the date before the death of her mother, the appellants and other accused persons assaulted her concerning property related issues resulting in bleeding injury on her head compelling her to lodge a complaint at the police station subsequent to which the police arrested Bansi @ Banshi and Monoranjan. On the date of their release from the police station, the victim was further assaulted resulting in her unconsciousness whereafter, she was dragged inside her room by the accused persons from the courtyard. On the following morning, a person namely Kashi Nath had summoned them to assort their cows. On return from the errand, she found her mother ablaze. The accused persons were present at the courtyard while her mother was on fire and on the entry of the children including PW-5, the accused persons escaped.

13. PW-6, another brother of Bharati deposed to have been a resident of a village away from the matrimonial house of the victim, however, conformed to the death of the victim due to burn injuries at a date, eight to nine years prior to his deposition. He further submitted of his unawareness, or negligible information regarding the day-to-day affairs of his of the diseased victim and his other brothers.
14. The evidence of the PW-7 corroborated and reiterated the evidence of PW-1 and PW-2.
15. PW-8 was declared hostile by the prosecution.
16. PW-9, the Medical Officer attached to Diamond Harbour Hospital, conducted the post-mortem examination over the body of Bharati Haldar on 19th March, 1995 in connection with the instant case. He identified the post-mortem report prepared and signed by him which was marked as Exhibit-3. His testimony formally proved the medical examination and authenticated the post-mortem report forming part of the prosecution record.
17. PW-10, Constable produced the original G.D. Entry No. 757 dated 17.03.1995 before the Learned Trial Court. He also produced a copy of the same duly certified by the Officer-in-Charge, Kulpi Police Station marked as Exhibit-4.
18. PW-11, the Investigating Officer after complying with formalities of the prosecution procedure examining the available witnesses under Section 161 of the Code of Criminal Procedure, preparation of the rough sketch map of the place of occurrence marked as Exhibit-8, had collected the post-mortem report and filed the charge-sheet. He had further deposed the initial case to

have been registered as Unnatural Death Case, which was later on, registered through a formal F.I.R. and investigated upon.

19. PW-12 was declared hostile by prosecution.

20. The course of evidence of prosecution witnesses, revealed upon the demise of the husband of the victim, scarcely, six months prior to the occurrence, the atmosphere, at her matrimonial house underwent a whirlwind of change which was perceptible. The evidence of the brothers of the victim, being PW-1, PW-2, PW-6 and PW-7 presented a coherent narrative that after death of Biswanath, the appellants, being close agnatic relation of the deceased husband, together with the remaining members of the family, subjected Bharati to sustain physical and mental torment, with a view to secure control over the property left by the deceased husband.

21. PW-1, deposed Bharati to have arrived at his residence on the day preceding her death, with bleeding injuries upon her head. She specifically disclosed that the appellants and the remaining accused persons had assaulted her. The witness immediately accompanied Bharati to Kulpi Police Station where a General Diary was lodged. Such conduct bears considerable evidentiary significance. A victim who approaches the police, immediately after sustaining injuries, lends, spontaneity, and contemporaneity to her grievance, eradicating the possibility of artificial embellishment.

22. The testimony of PW-2 substantially fortified this account which was assured and affirmed by the evidence of PW-6. Maintaining the continuity, concerning the occurrence of the assault, preceding the fatal incident to be substantially intact though PW-6 resided at a distance. However, his

evidence did not deviate subjectively from the evidence of his other brothers, as stated above. The formal evidence adduced through PW-3 established immediate information regarding the victim's death to reach the authorities while the documentary evidence relating to the General Diary, inquest, and seizure demonstrated that the prosecution version did not emerge as a concocted afterthought conceived under prolonged deliberation.

23. Much emphasis has been placed upon the hostility of PW-8 and PW-12 and on the evidence of PW-4 attributing Bharati's death to suicide. Such circumstances by themselves do not efface the otherwise reliable evidence establishing cruelty. It is a settled principle of criminal jurisprudence that the testimony of a hostile witness is not rendered wholly devoid of evidently worth merely because the witness departs from the prosecution case. Equally conviction under Section 498A, of the Indian Penal Code does not become legally fragile, merely because certain witnesses attempt to dilute the prosecution version regarding the ultimate cause of death.

24. The omissions elicited by the Investigating Officer during cross-examination, likewise failed to erode the substantive evidence concerning the assault of the proceeding day. Statements recorded under Section 161 of the Code of Criminal Procedure do not constitute substantive evidence. Unless an omission attains the character of a material contradiction, striking at the root of the prosecution case, it cannot eclipse a consistent testimony rendered before the Court on oath.

25. The evidence of PW-1, PW-2 and PW-6 possesses intrinsic consistency. Their depositions converge upon the material features, namely, the persistent

harassment suffered by Bharati after the death of her husband, the property dispute forming the immediate source of hostility, the physical assault inflicted upon her on the previous day, the bleeding injuries noticed by her brothers and the prompt approach to the Police Station for redress. These circumstances satisfied the statutory ingredients embodied in the explanation to Section 498A of the Indian Penal Code. Physical assault accompanied by sustained harassment arising out of an unlawful design to deprive a widow of her proprietary rights plainly constitutes cruelty within the contemplation of law. The evidence of PW-5 the eyewitness to the torture inflicted upon the victim without malice and prevarication proved beyond incertitude the acrimony and animosity exercised upon the victim physically and mentally.

26. The evidence adduced by the defence, suggesting suicide or financial hardship does not obliterate the prosecution evidence establishing repeated acts of equality. Even if divergent views may arise regarding the precise manner in which Bharati ultimately lost her life, such divergence does not diminish the evidence proving that, immediately preceding the occurrence, she had been physically assaulted and subjected to persistent ill treatment by the appellants.

27. In view of the above discussions, the sentence is modified to the extent of incarceration undergone by the appellants.

28. Accordingly, the instant criminal appeal being CRA 497 of 2003 is dismissed.

29. There is no order as to costs.

30. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
31. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)