

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

CRA 66 of 2014

Budhin Soren

-Vs-

State of West Bengal

With

CRA 64 of 2014

Baidyanath Mardi

-Vs-

State of West Bengal

With

CRA 88 of 2014

Shyamal Mardi

-Vs-

State of West Bengal

With

CRA 993 of 2013

Baidyanath Mardi & Anr.

-Vs-

State of West Bengal

For the Appellants : Mr. Debabrata Acharyya, Adv.
Mr. Sital Samanta, Adv.

For the State : Mr. Nequive Ahmed, learned APP
Ms. Amita Gaur, Adv.

Heard on : 22nd February, 2022

Judgment on : 22nd February, 2022

Joymalya Bagchi, J. :-

CRA 66 of 2014 and CRA 64 of 2014 are dismissed as not maintainable.

Appeals being CRA 88 of 2014 and 993 of 2013 are directed against the judgment and order dated 26th November, 2013 and 27th November, 2013 passed by the learned Additional District and Sessions Judge, Fast Track Court, Balurghat, Dakshin Dinajpur convicting the appellants for commission of offence punishable under Section 498A/306/34 of the Indian Penal Code and sentencing Shyamal Mardi (appellant in CRA 88 of 2014) to suffer rigorous imprisonment for three years and also to pay fine of Rs.2,000/-, in default, to suffer further rigorous imprisonment for three months for the offence punishable under Section 498A/34 of the Indian Penal Code and with a further direction that Shyamal Mardi (appellant in CRA 88 of 2014) shall suffer rigorous imprisonment for ten years and shall pay of fine Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months more for offence punishable under section 306/34 of Indian Penal Code and the appellants Baidyanath Mardi & Budhin Soren (appellants in CRA 993 of 2013) shall suffer simple imprisonment for three years each and also to pay fine of Rs. 2,000/- each, in default, to suffer further simple imprisonment for three month each for the offence punishable under section 498A/34 of the Indian Penal Code and further suffer simple imprisonment for five years and to pay Rs.2,000/- each, in default, to suffer simple imprisonment for three months more for offence under Section

306/34 of the Indian Penal Code; both the sentences directed run concurrently.

Prosecution case, as alleged, against the appellants is to the effect six years ago Bimali Hansda was married to Shyamal Mardi observing Hindu rites and customs. Dowry was paid at the time of marriage. A child was born from the wedlock. Appellants pressurized Bimali to bring 5,000/- as further dowry. She was tortured on such score. Shyamal in an inebriated condition inflicted physical torture on her. One and half years ago due to severe beating Bimali suffered fractures and was hospitalized. A complaint was lodged at the police station against Shyamal and Budhin. Subsequently, the appellants tendered apology and an amicable settlement was arrived at between the parties. Bimali returned to the matrimonial home and a second child was born to the couple. However, torture continued upon the victim lady unabated. On 06.03.2012 at 7.00 P.M., unable to bear the torture Bimali committed suicide by consuming poison. She was taken at Balurghat hospital where she was declared dead.

Raban Hasda (P.W.1), brother of the deceased lady, lodged written complaint resulting in registration of Balurghat P.S. case No. 119 of 2012 dated 07.03.2012 under Section 498A/304B/302/34 of the Indian Penal Code. In conclusion of investigation charge-sheet was filed and charges were framed under Section 498A/34/304B/34/306/34 of the Indian Penal Code against the appellants. They pleaded not guilty and claimed to be

tried. In the course of trial, prosecution examined 11 witnesses and exhibited a number of documents.

Defence of the appellants was one of innocence and false implication. In conclusion of trial, the trial judge by the impugned judgment and order dated 26th November, 2013 and 27th November, 2013 convicted and sentenced the appellants, as aforesaid.

Mr. Acharyya, learned advocate appearing for the appellants argues the prosecution case of torture of housewife over demand of dowry had not been proved. Bimali had married Shyamal out of love which was not approved by her relations. They did not maintain social contact with her. Hence, there was no question of demanding dowry and evidence of the relations of Bimali regarding torture are hearsay and inadmissible in law. No document with regard to physical torture upon Bimali resulting in hospitalization has been produced. Allegation of torture is also not supported by independent witnesses. Most vital witness, namely, Saraswati Hasda, sister of the deceased, has not been examined. There is no proximate nexus between the alleged torture and suicide of the victim lady. Hence, the prosecution case is riddled with various lacunae and liable to be rejected. He prays for acquittal of the appellants.

On the other hand, Mr. Ahmed, learned Additional Public Prosecutor submits that the victim lady was subjected to continuous torture. P.Ws. 1, 2 and 6 have proved the torture upon the victim by the appellants. Appellant no. 1 brutally assaulted his wife resulting in fracture

and hospitalisation. Matter was amicably settled but torture continued unabated. Unable to bear such torture, victim committed suicide within six years of marriage. Hence, the prosecution case is established beyond doubt.

P.Ws. 1, 2 and 6 are the relations of the deceased.

P.W 1, Raban Hasda, is her elder brother. He deposed that deceased was married to Shyamal. Shyamal used to torture his sister. Other in-laws also inflicted torture upon her. Shyamal assaulted her on flimsy reasons. As a result of assault she sustained injuries and was hospitalised. Matter was reported at Tapan Police Station. Thereafter, the accused persons apologized and matter was settled. Bimali returned to her matrimonial home. Torture upon her continued unabated. Budhin tortured her over household chores. Saraswati used to reside in the village of the appellants. She informed the news of death of Bimali to P.W. 1. P.W. 1 went to hospital and found her dead body. He submitted written complaint to the police. He signed on the inquest report. In cross-examination, P.W. 1 admitted marriage between the couple was not an arranged one. He intended his sister to marry a boy of his choice. He rarely used to go to her matrimonial home.

P.W. 2, Amoli Hasda, is the sister of the deceased. She stated that Bimali intimated her about the torture over phone from time to time. Bimali had been physically assaulted and was admitted to hospital. Matter was amicably resolved and she returned to her matrimonial home.

Shyamal continued physical torture upon her. Saraswati informed her about the death of Bimali. In cross-examination, she stated two days' prior to her death Bimali intimated her that she was subjected to torture as there was no rice in her house.

P.W. 6, Dilip Murmu, is the husband of P.W. 2. He has substantially corroborated the evidence of her wife.

P.Ws. 3 to 5, namely, Golapuddin Mondal, Abdul Karim Mondal and Ayeala Bibi are neighbours of the appellants. Their evidence with regard to the matrimonial life of the couple is very cryptic. They deposed that the couple used to reside in separate mess from Baidyanath Mardi. They had not heard of any trouble in the matrimonial life of the accused persons.

P.W. 9, Pankaj Tamang, is the Block Development Officer who conducted the inquest over the body of the deceased. He prepared the inquest report.

P.W. 7, Soumen Mondal, is the post mortem doctor who deposed that the victim died due to poisoning which was ante mortem in nature.

P.W. 11, S.I. Babul Hossain, is the investigating officer in the instant case. During investigation he went to the place of occurrence, prepared rough sketch map. He arrested the accused persons. He recorded statements of the witnesses. He sent the viscera for chemical examination. After completion of investigation he filed the charge-sheet. In cross-examination, he admitted that he had not examined Saraswati as a witness.

From the aforesaid evidence on record it appears the couple had married out of love six years ago. One and half years prior to the incident, Bimali had been severely assaulted and was hospitalised. A complaint was lodged at Tapan Police Station. It is argued that documentary evidence with regard to hospitalisation has not been produced. This is a remissness on the part of the investigating officer who ought to have made efforts to collect the relevant documents. However, consistent evidence with regard to assault on Bimali at her matrimonial home resulting in injuries and hospitalisation has remained unchallenged during cross-examination. Moreover, evidence of P.W. 2, sister of the victim, shows two days' prior to the incident she had been physically tortured for three days due to non-availability of food in the house. Mr. Acharyya, learned Counsel for the appellants strenuously argued that evidence of the relations do find corroboration from the local witnesses. Torture of housewife takes place within four corners of her matrimonial home. Hence, it is not possible for the neighbours to witness the torture meted upon her. It is also natural that a housewife would not ordinarily disclose incidents of torture to outsiders but only to those on whom she reposed faith and confidence. In fact, Bimali did so. She regularly informed about torture meted to her sister, Amoli (P.W 2). Amoli's deposition finds corroboration from her husband P.W. 6 and her brother, P.W. 1. It is argued that relationship between Bimali and others in her family was strained ad she had been married out of love. Although there is some evidence that her relations did

not support her marriage with Shyamal, subsequently, her sister reconciled with Bimali and they had regular interaction between themselves. Bimali had been assaulted and taken to hospital. Though P.W. 1 rarely visited her matrimonial home, he was aware of the torture upon her sister. Thus, torture upon Bimali in the matrimonial home was a regular feature. Even couple of days prior to her commission of suicide she had been tortured over non-availability of food. Non-examination of Saraswati is also not fatal for the prosecution case. It is true she resided in the same village where the matrimonial home of Bimali was situated and had informed PW1 about her death. As the torture on the victim has been well documented through her other relations, that is, PWs 1, 2 and 6 non-examination of Saraswati does not create a dent in the unfolding of the prosecution case. One must not forget it is the quality and not quantity of evidence which is relevant to test the veracity of the prosecution case.

Next question which arises is who were the perpetrators of such torture. P.W 1, 2 and 6 deposed that the appellants had conjointly tortured Bimali. However, evidence of the local witnesses namely, PWs 3 to 5 shows that the couple used to reside in a separate mess from her in-laws. Distilling the evidence of relation witnesses, namely, P.Ws. 1, 2 and 6 in the backdrop of other evidence on record, it appears Bimali used to reside with her husband alone in separate mess. Two days prior to the incident, Bimali was tortured due to non-availability of food in the residence. Such torture could have been perpetrated by none other than her husband who shared

hearth and home with her. No doubt, there are statements from her relations that other appellants also tortured her. However, I am of the view such evidence may be exaggerations on the part of her relations who intended to rope in her in-laws in addition to her husband in the crime. Assessing the evidence of the prosecution witnesses from this angle, I find Bimali had been continuously tortured by her husband Shyamal. One and half years ago, she had been assaulted and hospitalised. Later on matter was reconciled. Bimali returned to her matrimonial home. Couple was residing in a separate mess and torture upon the victim lady by her husband continued unabated. Even two days prior to the incident, she told to her sister due to paucity of food she was being tortured. It is, therefore, crystal clear that life of Bimali at her matrimonial home was a bed of thorns. Her husband, Shyamal inflicted inhumane torture upon her. Unable to bear such torture, she decided to take her own life. I am convinced the live link between torture meted out by Shyamal upon his wife and her ultimate act of self-extermination is clearly established. Ample evidence has come on record that the housewife was subjected to torture and was compelled to commit suicide within six years of marriage. Prosecution evidence in this regard is also fortified by the statutory presumption under Section 113A of the Evidence Act.

In the light of the aforesaid discussion, I hold as follows:-

Prosecution case against Baidyanath Mardi and Budhin Soren (appellants in CRA 993 of 2013) has not been proved beyond doubt. Hence, their conviction and sentence are set aside.

Accordingly, the appeal being CRA 993 of 2013 is allowed.

The appellants are on bail. They shall be discharged from their bail bonds after expiry of six months in terms of Section 437A of the Code of Criminal Procedure.

Conviction of Shyamal Mardi (appellant in CRA 88 of 2014) under Sections 498A/306 of the Indian Penal Code is upheld. Coming to the issue of sentence, I find that there is no evidence on record about torture upon the housewife over dowry. Evidence on record shows a pitiable condition in the matrimonial home of Bimali where she was tortured for non-availability of food. Poverty, though acute, cannot be a justification for the husband to perpetrate torture upon his wife and compelling her to commit suicide.

Balancing the aggravating and mitigating circumstances, I am of the opinion sentence of Shyamal Mardi for the offence under section 306 of the Indian Penal Code may be modified and he is directed to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo rigorous imprisonment for six months more. Sentence with regard to Section 498A of the Indian Penal Code shall remain unaltered. Both the sentences to run concurrently.

CRA 88 of 2014 is, accordingly, disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

Bail Bond of Shyamal Mardi 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.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)