
(2009) 02 CAL CK 0040

Calcutta High Court

Case No: C.R.A. 402 of 1990

Tapan Mandal

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Feb. 11, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 306, 498A

Citation: (2009) 3 CALLT 712 : (2011) 6 RCR(Criminal) 2035

Hon'ble Judges: Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Ahin Auddy, for the Appellant; Swapan Kumar Mallick for the State, for the Respondent

Final Decision: Allowed

Judgement

Girish Chandra Gupta, J.

This appeal is directed against a judgment and order dated 31st August, 1990 passed by the learned Additional Sessions Judge, First Court, Howrah, in Sessions Trial Case No. XXXI (January) of 1990 arising out of Uluberia P.S. Case No. 17 dated 28th April, 1998 convicting the accused Tapan Mondal of the offences punishable under sections 498A and 306 of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for a term of two years as also to pay a fine of Rs. 1,000/-, in default of payment to undergo further rigorous imprisonment for a period of two months for the offence punishable u/s 498A. He was also sentenced to rigorous imprisonment for eight years as also to pay fine of Rs. 2,000/- in default of payment to undergo further rigorous imprisonment for a period of three months for the offence punishable u/s 306 of the Indian Penal Code. Both the sentences were directed to run concurrently.

2. The facts and circumstances of the case briefly stated are as follows:

Satish Chandra Mondal, the de facto complainant had seven daughters. Jogomaya was one of them. She was given in marriage according to Hindu Rites and Customs to the accused Tapan. She died in a bus accident leaving a small male child. Within a month after her death Chandra, a younger sister of Jogomaya, was given in marriage to the accused Tapan much against her will. Within four years of her marriage, she committed suicide on 27th April, 1988.

3. Mr. Auddy, the learned Advocate appearing in support of the appeal submitted that the judgment is perverse. According to him, there is no evidence to hold that the accused Tapan is guilty of any wilful conduct which was of such a nature as was likely to have driven his wife Chandra to commit suicide nor is there any evidence of harassment with a view to coercing the deceased or any person related to her to fulfil any unlawful demand. He submitted that the prosecution witnesses themselves have admitted that the relationship between the couple was normal. The alleged demand for a sum of Rs. 6,000/- disclosed for the first time in Court is altogether unbelievable. He has taken us through the evidence and submitted that the learned trial Judge was wrong in recording the finding which he did. He, therefore, invited this Court to set aside the judgment and order under challenge.

4. Mr. Mallick, appearing for the State, submitted that there is evidence of eye-witnesses namely P.Ws.5 and 6 to show that the accused was guilty of wilful conduct which could have driven Chandra to take the extreme step of committing suicide.

5. We have heard rival submissions advanced by the learned advocates for the parties. We are inclined to think that the submission of Mr. Auddy has greater force which would appear from a scrutiny of the evidence which we propose to undertake.

6. The written complaint was filed on 28th April, 1988 at 21.45 hours whereas the incident took place in the morning of 27th April, 1988. In the written complaint, there is no allegation as regards any claim for the sum of Rs. 6,000/- or any other amount.

7. P.W.1, the de facto complainant, in his examination-in-chief deposed that the accused used to assault his deceased daughter occasionally. It is not however his case that he witnessed any such incident.

8. P.W.5, Niva Mondal, a sister of the deceased has admitted that during the two years preceding her death, the deceased did not come back to her paternal house. This admission of the P.W.5 weakens the evidence of the P.W.1 noted above for the simple reason that there was no scope for the deceased to have reported that she used to be occasionally assaulted by her husband.

9. P.W.1 has referred to an incident which happened on the date of occurrence itself which he claimed to have ascertained from the P.W.5. Therefore, as regards

occasional assault deposed to by the P.W.1, there is no reliable foundation.

10. P.W.1 has also deposed that the accused demanded a sum of Rs. 6,000/- from him which he could not pay. This bald allegation is not supported by any indication as to when was such demand made even by approximation. The lack of particulars as to when was such demand was made coupled with the fact that there is no indication in the written complaint with regard to any such demand coupled with the further fact that the investigating officer deposed that Niva (P.W.5), Rita (P.W.6) and Renuka (P.W.8) did not during their examinations u/s 161 of the Code of Criminal Procedure disclose about any such demand whereas each one of them in Court talked about such a demand allegedly made by the accused leads us to hold that the alleged demand for Rs. 6,000/- or any other amount was never made by the accused Tapan.

11. Regard being had to the surrounding circumstances namely that the deceased was given in marriage hurriedly to the appellant after her elder sister Jogomaya died in an accident leaving a tiny child, the theory of demand for dowry sounds improbable to us. Therefore, the only other thing which has to be looked into is the alleged wilful conduct on the part of the accused which might have driven his wife to take this extreme step of committing suicide.

12. The incident happened when the P.W.5 and her daughter P.W.6 were present in the matrimonial house of the deceased. P.W.5 Niva, an elder sister of Chandra, deposed as follows:

Satish Chandra Mondal is my father. Chandra Mondal was my sister. She is dead. On the day before the occurrence, I went to the father-in-law's house of Chandra along with my daughter Rita Mondal, at Jamberia. On the date of occurrence, in the morning, there was an altercation between Chandra and the accused over taking breakfast. The accused slapped on the face of Chandra as a result of which her earring was broken Chandra broke the other earring out of anger. I kept those rings in the drawer. I told the accused-Tapan that you broke one of the earrings and Chandra herself broke the other. The accused uttered in anger that Chandra had broken the earring and he would throttle her gala tipe sesh kore dile bhalo haye.

13. P.W.6, daughter of P.W.5, corroborated the evidence of P.W.5 as regards the altercations and slapping on the face of the deceased Chandra by her husband, the accused Tapan.

14. The autopsy surgeon (P.W.7) found swelling on the face of the deceased. His finding to that effect is as follows:

Diffuse swelling on the right side of face occupying over the right of cheek and right side of neck including submandibular region as well. On dissection sub cut one by tissue shows extravasation of blood.

15. Now, the question for determination is whether this incident alone is sufficient to hold that the deceased was dealt with cruelty within the meaning of the explanation appended to section 498A of the Indian Penal Code. In the explanation to section 498A of the Indian Penal Code cruelty has been defined as follows:

Explanation.- For the purpose of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

16. The P.W.5 in her cross-examination admitted as follows:

I had no discussion with my husband about the affairs of Chandra. The accused and ourselves were on visiting terms.

17. This admission of the P.W.5 goes to show that there was no serious discontent between the couple. The couple was also on visiting term with the P.W.5. The P.W.5 has also admitted that the couple also used to visit the other sisters of the P.W.5. This further goes to show that the relationship between the couple was normal.

18. This finding of ours is reinforced by the evidence of P.W.3, a neighbour, who deposed in his cross-examination as follows:

The relation between the accused and Chandra was cordial. Tapan used to love Chandra deeply. One year before her death, accused took Chandra on a tour in U.P.

19. The evidence of the P.W.2, the minor son of the accused and the step son of the deceased, is as follows:

There was no strained relationship between my father and my Chhota Ma.

That again goes to support the conclusion that the relationship between the couple was normal.

20. This is further reinforced by the evidence of D.W.1 Bikash, a cousin of the accused, who deposed that "Tapan had cordial relation with Jogmaya and with Chandra. Chandra died on 27.4.88."

21. We, therefore, are unable to find that the deceased was continuously or occasionally assaulted by her husband Tapan.

22. There are more facts which deserve deeper scrutiny. We already have noticed that the accused Tapan was married to the elder sister of the deceased Jogomaya. After Jogomaya died in an accident leaving a small male child Chandra was hurriedly

given in marriage to the accused Tapan within a month. Evidence goes to show that Chandra was not willing to accept Tapan as her husband.

23. P.W.8 (Renuka), mother of Chandra, denied in Court the fact that Chandra was not willing to marry the accused whereas the Investigating Officer, P.W.12, deposed that "She stated to me that Chandra was not agreeable to marry and that they lived a happy family life."

24. P.W.3, a neighbour of the de facto complainant, also admitted in his cross-examination that Chandra was not agreeable to this marriage. We are inclined to hold that the marriage was forced upon Chandra much against her will. There is no evidence nor any suggestion that Chandra conceived during the period of four years which elapsed since she was married to the accused. These facts go a long way to establish the mental condition of the deceased. It is in this backdrop that we have to consider the magnificence of the incident of slapping which took place at 12.00 noon and the victim committed suicide at 1.00 p.m.

25. The P.W.5 and the P.W.6 have both deposed that there was an altercation between the couple. During such altercations the accused slapped her and also uttered offensive sentence. There is suggestion given to the prosecution witnesses that the deceased used to insult the accused which they have denied but the significant information that the deceased was not willing to accept the accused as her husband goes to probabalise that the deceased may have been in the habit of insulting the accused occasionally. Therefore, all that we can find is that the couple on the fateful day engaged themselves into an altercation. On the spur of the moment the accused slapped his wife. The wife soon thereafter committed suicide. The act of slapping may have added fuel to the fire which already was burning in the heart of the deceased for the reasons already discussed above. It is, therefore, not a case where it can be said that the accused was guilty of any wilful conduct which was of such a nature as was likely to drive his wife to commit suicide. What happened between the couple on the date of the incident is nothing but normal wear and tear of life. Both the parties to the wedlock have to be tolerant to each other. The deceased out of impulse took the step which no prudent person of ordinary understanding would think of. No one could have foreseen in the facts of the case that the victim was likely to commit suicide. It cannot be said that the conduct of the accused husband was bad or so bad which did or could have led his wife to commit suicide. It is unfortunate that she took the extreme step. It is also unfortunate that she was married to a person much older than her in age; who was the husband of her elder sister; she from the day one of her married of life had to take the responsibility of a small child of her deceased elder sister at the cost of her own happiness. These are no small matters which can be ignored in assessing her mental condition for which the accused was not responsible.

26. We are therefore inclined to hold that the finding of the learned trial Judge holding the accused guilty of the offences punishable u/s 498A and 306 of the

Indian Penal Code is altogether bad and cannot be sustained. Accordingly, the appeal succeeds.

27. The appellant, Tapan Mondal, is acquitted of all the charges. The impugned judgment and order are set aside. The appellant, we are told, is now in jail. He should be released at once, if not wanted in connection with any other case.

28. Lower Court Records with a copy of this judgment to go down forthwith to the concerned learned Trial Court for information and necessary action.

Urgent xerox certified copy of this judgment, if applied for by the parties, be delivered to them upon compliance of all formalities.

Kishore Kumar Prasad, J.

29. I agree.