(2008) 07 CAL CK 0047

Calcutta High Court

Case No: C.R.A. No. 359 of 1997

Amalendu Paul alias Jhantu		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: July 24, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 306, 34, 498A

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

Bench: Division Bench

Advocate: Joymalya Bagchi, Sourav Bhagat, for the Appellant;Silpi Sengupta, Kalyan Moitra for the State, for the Respondent

Final Decision: Dismissed

Judgement

Girish Chandra Gupta, J.

The Judgment of the Court was delivered by:

1. This appeal is directed against a judgment and order dated 25th November, 1997 passed by the learned Assistant Sessions Judge, 1st Court, Contai, in Sessions Trial No XI/June of 1994 convicting the appellant, Amalendu Paul u/s 498A/306 of the Indian Penal Code.

2. The appellant was sentenced to rigorous imprisonment for three years for the offence punishable u/s 498A of the Indian Penal Code. He was also sentenced to suffer rigorous imprisonment for eight years as also to pay a fine of Rs. 1,000/-, in default of payment to undergo further simple imprisonment for a period of one month for the offence punishable u/s 306 of the Indian Penal Code. The sentences awarded to the appellant were directed to run concurrently.

3. The convict has come up in appeal.

4. The facts and circumstances of the case briet1y stated are as follows:

In the year 1977 the appellant Amalendu was married to Dipika according to Hindu Rite and Customs. She bore two sons. The couple led a happy conjugal life for 5-6 years from the date of marriage.

Amalendu thereafter had to come to Calcutta in connection with his work. He developed an extra-marital relationship with Jyotsna @ Anita. In course of time, the relationship between Amalendu and Anita became public and was also known to Dipika. She naturally protested. Amalendu, unperturbed by the protest, did as a matter of fact seek her permission to marry the said Anita. Such permission naturally was not granted by Dipika to the discomfiture of Amalendu. He commenced torture both physical and mental which culminated in the unnatural death of Dipika. On 27th September, 1991 she committed suicide by hanging. Her sons at that point of time were 10 and 8 years old respectively. On 28th September, 1991 at 20.30 hours, a written complain was lodged against Amalendu and his relations. Eight persons were charge sheeted. All of them were charged u/s 498A/306 of the Indian Penal Code read with section 34 thereof. Seven of them have been acquitted. The appellant, Amalendu, was convicted and sentenced as indicated above.

5. The evidence of PW.2, the brother of the deceased, as regards extra-marital relationship developed by the appellant, amalendu, and the consequent effect thereof is as follows:

Amalendu used to reside in Calcutta for his earning. My sister Dipika came to know about te involvement of her husband with Jyotsna at Calcutta. She raised objection. The accused persons became furious and they perpetrated physical and mental torture upon her systematically and continuously. After a few days Amalendu tried to take consent of my sister so that he could marry Joytsna for the second time, and my sister did not response. On her refusal all the accused persons except accused Jyotsna perpetrated physical and mental torture upon her and assaulted her physically and instigated her to commit suicide by consuming poison and also gave provocation to end her life by hanging.

6. The evidence of PW.2 has been corroborated by Sri Sasanka Sekhar Bera (PW.6), a neighbour of Amalendu. He added that salis was held in order to restore peace and harmony between the couple but all such attempts proved futile. The evidence of PW.6 in this regard is as follows:

After 5/6 years'' of her marriage Dipika came to learn about the involvement of her husband with the accused, Anita (identified). Dipika raised objection in the aforesaid illicit connection of her husband with the accused Anita. As a result torture upon her was started. Dipika respected me as father. She complained against the torture perpetrated

upon her. We convened meeting 2/3 occasions in the village where Amalendu, Paltoo and Mantoo appeared arid assured for non-recurrence of such incident. I know Paltoo (identified) and Mantoo (identified). I cannot remember all the dates of meeting; but I remember a date i.e. 5.7.91 said meeting was convened as per request of Supriya, the brother of Dipika, On 5.7.91 we discussed the matter and tried to restore the family peace by reconciling the matter, but all in vein.

Anita was brought by accused Amalendu prior to three months from the date of death of Dipika. Anita came with vermilion mark on her forehead and by wearing conch bangles; on her wrist.

Torture upon Dipika was not stopped. Degree of torture upon Dipika was increased by the accused Amalendu and his two brothers and also by three sisters namely, Puspa (identified), Dali (identified), Usha (identified) and Anita (identified).

7. PWs. 4 and 9 have also corroborated the evidence of the PWs.2 and 6 as regards the cause and the consequent torture.

8. PW.2, PW.7 and PW.8 corroborated the evidence of the PW.6 that on a number of occasions salis was held with the object of restoring peace and harmony but nothing did really work.

9. The defence sought to counter the evidence discussed above by the following suggestion:

(a) Jyotsna @ Anita was not the second wife but the first wife of Amalendu. It was also suggested that the appellant, Amalendu, married Dipika because Anita did not conceive. This suggestion was emphatically refuted by the PW.2. It is he who had contracted the marriage of his sister Dipika with Amalendu because at that time his father was already dead. Almost all the witnesses examined by the prosecution, most of whom were the neighbours of Amalendu, rejected the suggestion as false.

(b) The second suggestion given on behalf of the defence was that the deceased Dipika was a mental patient and she had been treated by Dr. Asim Mallick on 23rd June, 1991, 14th July, 1991 and 18th August, 1991. On behalf of the defence two witnesses were examined but no one deposed about the alleged mental illness of the deceased Dipika nor was the doctor who had allegedly treated Dipika examined by the defence. The suggestion was emphatically denied by the PW.2.

(c) The third suggestion given on behalf of the defence to the witnesses of the prosecution and more particularly to the PW.2, the brother of the deceased, was that Palas the eldest son of the deceased was also a mental patient. The suggestion was emphatically denied by the PW.2 as well as PW.9. The Court. as a matter of fact has recorded in this regard as follows:

Do you agree with me that the eldest son Palas, of your sister Dipika, is abnormal and is under the treatment of a psychiatrist?

Answer: It is absolutely false. Palas is present today. Witness identified Pal as. He is found sound and also found all alertness in him.

(d) The fourth suggestion, given to the PW.2, was that he had another brother who had also committed suicide which was also denied by the PW.2 in these words.

I had no other brother and as such committing of suicide by my elder brother in the house of Adhar Bania does not arise. I am the only son of my parents.

10. PW.9, a neighbour of the PW.2, deposed in this regard as follows:

The father of Supriya was known to me. He had two daughters one. Dipika and another Renuka and one son Supriya. Supriya had no brother. It is not a fact that the elder brother of Supriya committed suicide in the house of Adhar Bania.

11. Usha, the sister of the appellant Amalendu, who was a co-accused in the matter in answer to question No. 7 during her examination u/s 313 Cr.PC stated as follows:

Q.7. PW.2 and PW.6 Sasanka Sekhar Bera have revealed in this deposition that disputes started when Dipika came to know about the mixing of Amalendu and Anita. What is your say in this matter?

Ans. Yes.

12. From the evidence discussed above, we are satisfied that the prosecution has been able to prove-

(a) the deceased Dipika was married to Amalendu in the year 1977;

(b) she bore two sons;

(c) within 5/6 years from the date of marriage the appellant Amalendu husband of Dipika developed illicit relationship with Jyotsna @ Anita which was resented by Dipika when she came to know about it;

(d) the unperturbed husband Amalendu sought for permission of Dipika to marry Anita which was not granted;

(e) refusal to grant permission resulted in physical and mental torture upon the deceased Dipika;

(f) about three months prior to 27th September, 1991 the appellant, Amalendu, brought her fiance Anita as a lawfully wedded wife in the house which aggravated the situation;

(g) the degree of torture was thereafter increased which the deceased could not withstand;

(h) the continuous torture both mental and physical led the deceased Dipika to commit suicide in order to get rid of the continuous torture.

13. Mr. Bagchi, the learned Advocate, appearing in support of the appeal did not seriously challenge the findings recorded by the learned Trial Judge. He submitted that the written complaint was belatedly filed. It is true that the written complaint was filed on 28th September, 1991 at 20.35 hours whereas the death took place in the morning on 27.9.91 and for that there was adequate explanation. The PW.2, de facto complainant, had to accompany the dead body to the morgue. After the post-mortem was conducted and the cremation was performed the PW.2 took the assistance of PW.9 who actually scribed the written complaint.

14. We are under the circumstances of the view that the delay in lodging FIR has been adequately explained and there is no scope of any falsehood in the case of the prosecution. No other submission was advanced.

15. For the reasons indicated above, we are of the view that no interference is called for. The appeal is, as such, dismissed. The appellant, it appears, was enlarged on bail by an order dated 5th December, 1997. His bail bond is cancelled and he is directed to surrender to the bail at once and to serve out the sentence.

16. The learned Trial Court is directed to take the appellant into custody at once and to report back the matter to this Court.

17. Let a copy of the judgment along with the Lower Court Records be sent down to the concerned learned Trial Court forthwith for information and necessary action.

18. Let xerox certified copy of the judgment, if applied for, be given to the parties upon compliance of all formalities.

Kishore Kumar Prasad, J.

19. I agree.