courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 31/10/2025

(2012) 07 CAL CK 0211

Calcutta High Court

Case No: C.R.A. No. 471 of 2003

Kartick Chandra Saha and Others	APPELLANT
Vs	
The State of West Bengal	RESPONDENT

Date of Decision: July 20, 2012

Acts Referred:
Evidence Act, 1872 â€" Section 113A#Penal Code, 1860 (IPC) â€" Section 304B, 306, 498A

Citation: (2012) 07 CAL CK 0211

Hon'ble Judges: Raghunath Bhattacharya, J

Bench: Single Bench

Advocate: Milan Mukherjee and Ms. Sabilaa Rahaman, for the Appellant;Amarta Ghosh for the State, for the Respondent

Judgement

Raghunath Bhattacharya, J.
This appeal is directed against the order of conviction passed by Sri P.S. Mukherjee, Additional Sessions

Judge, 1st Court, Barasat, 24 Parganas (North) whereby convicting the appellants namely Kartick Chandra Saha, Sukla Saha, Swapna Saha and

Soma Saha u/s 498A of I.P.C. A thumbnail sketch of the prosecution case is that on 24.10.1992 a verbal complaint was lodged with Belghoria

P.S. to that effect that in the year 1985 the marriage between daughter of the defacto complainant Gita Saha and Kartick Saha of Ramkrishna

Pally was solemnized at Kalighat in presence of the some of the witnesses and son of the defacto complainant Madhu Das. At the time of marriage

Kartick Saha demanded some golden ornaments and cash. The same was fulfilled. After 3 to 4 months of marriage Gita was subjected to torture

both mentally and physically and also abused by her in mates in her in-laws house. Occasionally Gita could not bear the torture so she used to

come to the house of the defacto complainant and disclosed before her mother that she was unable to bear the torture any more. In the morning of

23.10.1992 mother-in-law and sister-in-law began severe torture upon Gita and they also tried to drive her away from her maternal house and

compel her to commit suicide. As a result on the same night at about 01.00 hrs. Gita set herself on fire by pouring kerosene oil on her person. She

was taken to the hospital where she succumbed to the burn injury. On the basis of verbal complaint police took up investigation of the case and

after completion of investigation submitted a charge sheet u/s 498A/306/304B I.P.C. Hence the prosecution case.

2. After hearing both side and after following the procedure for commitment and after hearing the submission made by the learned Counsel for the

State as well as for the defence a charge u/s 498A/304B/306 I.P.C. have been framed against all above named accused persons. Charge was

read over and explained to the accused persons each of them pleaded not guilty and claims to be tried. Now the prosecution has got altogether 21

witnesses have been examined from the side of the witness.

3. So, the only point for determination consideration is whether the order of sentence and conviction passed by the learned Trial Court is

sustainable in the eye of law or not.

4. Out of the 21 witnesses examined in the instant case P.W. 1 Janaki Das happens to be defacto complainant of the case. P.W. 2 Madhu Das,

was the son of the defacto complainant. P.W. 3 Kabita Karmakar, P.W. 4 Jayanta Roy, P.W. 5 Madhu Patra, P.W. 6 Sujit Halder, P.W. 7

Nilima Paul, P.W. 8 Anil Paul, P.W. 9 Chaitali Chakraborty, P.W. 11 Sneha Lata Jana, P.W. 12 Amal Manna. P.W. 13 Hari Pada Jana, P.W.

14 Jayanta Jana, P.W. 15 Sudhin Roy, P.W. 16 Dipak Chanda, P.W. 17 Anjana Biswas all are independent witnesses and resident of

Ramkrishna Pally. P.W. 18 was S.I. of Police and he at the very outset I like to mention that is a very very formal witness. He has recorded First

Information Report on the basis of the verbal complaint lodged by P.W. 1. During the course of the cross-examination P.W. 18 practically

admitted that he has not mentioned in the F.I.R. that he procured L.T.I. of defacto complainant (P.W. 1) and also there is no endorsement in the

F.I.R. that same was drafted as per the verbal statement of P.W. 1 i.e. mother of Gita. P.W. 19, a police Constable who took the dead body from

the R.G. Kar Medical College to N.R.S. Medical College and Hospital for holding post-mortem examination and he has no personal knowledge

of the occurrence. P.W. 20 who performed the inquest of the dead body of Gita Saha and according to him Gita sustained 100 per cent burn

injury. Though during the course of the cross-examination he admitted that he did not know the method as to how the percentage of burn injury

was calculated. P.W. 21 is the I.O. of this case.

5. These are in a nutshell the examination of the 21 witnesses produced from the side of the State in order to bring home the charge leveled against

the accused person. Before going into the merits and demerits of the witnesses I like to mention that P.W. 4 Jayanta Roy has no knowledge under

what circumstances Gita sustained burn injury. P.W. 5 Madhu Patra who was a resident of Ramkrishna Pally like P.W. 4 has also stated the same.

Though P.W. 7 contended that she heard that Gita met an unnatural death and about a year prior to the incident he told them the story of torture

inflicted upon Gita by the member of her in-laws house but he has not made any attempt to solve the dispute or lodge any complaint to the

appropriate forum for remedy. As a result I am not inclined to place any reliance upon ocular version of P.W. 7. Though P.W. 8 have stated that

Gita prior to her death occasionally assaulted by her mother-in-law and other accused persons yet during the course of the examination P.W. 8

(Anil Paul) has categorically stated that Gita ""personally never told me about the torture upon her"" and though he claims that Anil Paul who

happens to be the husband of Gita''s childhood friend admitted that he never visited to Gita even after she was admitted to the hospital. I have gone

through the ocular version of P.W. 9 and practically it was not wise to place any reliance upon her testimony. P.W. 12 Amal Manna and he has

not stated anything just like P.W. 13 and P.W. 14. P.W. 15 has no personal knowledge about the occurrence and he is only a seizure witness of

this case. P.W. 16 is also a seizure witness. P.W. 17 has not stated anything, P.W. 18 to 20 all are formal witnesses. So, out of these witnesses

reliance may be placed upon the ocular version of P.W. 1, defacto complainant mother of Gita, P.W. 2 Madhu Das, elder brother of Gita, P.W. 3

Kabita Karmakar who was a local witness.

6. From the aforesaid discussion it was now more or less crystal clear that the prosecution story depends upon the ocular versions of P.W. 1,

P.W. 2, P.W. 3, P.W. 6 and P.W. 9. According to P.W. 1 the defacto complainant come mother of the victim there was a love affair in between

Gita and Kartick as a result they got married at Kalighat. After marriage Gita used to reside with her husband on her mother''s house but due to the

intervention of friends and local people both Kartick and Gita began to reside as husband and wife at Gita''s matrimonial house at Ramkrishna

Pally. According to P.W. 1 her husband, mother-in-law, sister-in-law and brother-in-law used to torture upon her for some furniture and other

articles. It was the admission on the part of the P.W. 1 that both Gita and Kartick began to reside in a separate mess but in the same house along

with other accused persons. It was the admission on the part of the mother-in-law that prior to the marriage Gita and Kartick used to move freely,

merrily and frequently as a result P.W. 1 rebuked Gita prior to marriage with free mixing with Kartick as a result Gita consumed poison. It is a fact

that P.W. 1 being a first witness have stated everything whatever is in her mind against the family member of Kartick. How far the statement of

P.W. 1 was correct or not had required to be examined. According to the P.W. 1 she lodged a verbal complaint to the local P.S. during the

course of the cross-examination the mother-in-law, two sister-in-law, another brother-in-law of Gita used to reside in separate mess and a dispute

continued to exist all the time between the three fractions of the said family. As per ocular version of P.W. 3 Gita had to face trouble from her

husband and in-laws while sisters-in-law in her matrimonial home and both Gita and her eldest sister-in-law informed P.W. 3 about the incident.

According to P.W. 3 she also tried her level best to solve the problem. It was contended by P.W. 3 that at the time of marriage of Kartick his two

younger sisters were aged between 10 - 12 years. She admitted during her cross-examination as the families of three brothers used to reside in a

separate mess, still there was inimical relation in between them. So from the evidence of P.W.s duly corroborated by P.W. 3 it appears that

Kartick and his two brothers including their wives and sisters-in-law used to quarrel with each other over the properties. So it is a fact that there is

a quarrel, dispute and trouble in the house of Kartick. Kartick and Gita stayed along with other brothers and sisters of Kartick though all of them

were living in their respective separate mess. So, these are the evidence whom the prosecution wants to rely in order to sustain the order of

sentence and conviction passed by the Lower Court. Learned Counsel for the State Mr. Ghosh tried his level best to uphold the order of Trial

Court. Before discussing the evidence of witnesses we might mention a few preliminary remarks against the background of which the oral

statements are to be considered. All persons to whom the oral statements are said to have been made by the witnesses who are the close relatives

and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a

tendency to exaggerate or add facts which may not have been stated to them at all. Not that it was done consciously but even unconsciously the

love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine

such evidence with very great care and caution. In this case Mr. Ghosh as his usual fairness and sincerity contended that the Court has nothing to

do but to uphold the judgement passed by the Trial court only on the basis of the ocular version of PW. 3, P.W. 6 and P.W. 9. Mr. Ghosh, the

learned Counsel for the State has tried his level best. Everybody should admit even the learned defence counsel that learned State Advocate has

argued vehemently to bring home the charge leveled against the accused person or to be more correct the conviction leveled against the accused

person. It is a settled proposition of law that the fact that fate of each case depends on a set of facts and circumstances peculiar to itself. A

mentally depressed housewife and to whom oral testimonies were made by the said female and necessarily, therefore, the careful scrutiny

demanded refers to the oral version of all those relative witnesses which they might have heard deceased, what the witnesses have heard. It is

nothing but virtually are production of what everybody or most of the people heard or somebody have experience and if particularly the tales of

miseries and misfortune in domestic life. So, in my opinion it is virtually a reproduction of what everybody / somebody heard and the witness did

not tend to exaggerate or add some facts that you yourself fancy, the narrator might have herself felt or experienced though not quite expressed in

words, out of your genuine love and sympathy for narrator-victim-relation and it is true, in your anxiety to collar the villain of the piece itself that

you might inflate your version with what you did not really have heard.

7. In this case though there is a word to appreciate the attempt made by the State Council Mr. Ghosh to uphold the judgement of the Lower Court

yet I find that he like very intelligent, clever and sincere lawyer sought to cover the loopholes in the judgement.

8. Mr. Mukherjee, learned Counsel appearing for the accused persons at the very outset pointed out the age of the two sister-in-law which is duly

admitted by the other witnesses that both Swapna and Soma are juvenile at the time of commission of the offence. It is really surprising to note

neither the State Lawyer or the defence lawyer raised his point at the time of trial in the Court below. In my opinion both Swapna and Soma are

liable to be tried by the Juvenile Justice Act and liable to be tried exclusively by Juvenile Justice Act. Their case should be split up with the present

trial and this lacuna cannot be cured in any way. On this score conviction and sentence against Swapna and Soma are liable to be set aside. The

learned Trial Court ought to be more correct, the learned State Advocate who conducted the trial had made a gross mistake for not pointing out

that Swapna and Soma are minor at the time of commission of the offence and they should be tried by the Juvenile Justice Act and only on this

score sentence and conviction of Swapna and Soma should fail.

9. It was argued that attempt to commit suicide is dealt with by Section 306 I.P.C. When this suicide is preceded by cruelty contemplated in

Section 498A and the victim is married within a period of seen years preceding the marriage, in view of Section 113-A Evidence Act. A

presumption may be drove that the husband of the victim girl or his relatives abetted the suicide. The basic difference that lies between the two

sections is that of "intention". u/s 498A I.P.C. cruelty committed by the husband or his relation drag the woman to commit suicide while u/s 306 is

abetted and intended that Section 304B and 498A are mutually exclusive. This provision dealt with two distinct offences. It is true that cruelty is a

common essential to both the Sections and that has to be proved. The explanation to Section 498A gives a meaning of "cruelty". In Section 304B

there is no such explanation about the meaning of "cruelty". But having regard to the common background to those offences the meaning of

"cruelty" or "harassment" will be same has come in explanation to Section 498A under which cruelty itself amounts to a offence and punishable. u/s

304B it is the dowry death i.e. punishable and such death should have occurred within seven years of marriage. No such period as mentioned in

Section 498A and the husband or his relative would be liable for subjecting the woman to cruelty at any time after the marriage. Further a person

charged and acquitted u/s 304B can be convicted u/s 498A that charge being there in such a case is made out. But from the point of view of

practice and procedure and to avoid technical defect it is necessary in such a case to frame charge under both the Sections and if the case is

established they can be convicted under both the sections but no separate sentence need to be awarded u/s 498A. In view of the substantive

sentence being awarded for that major offence u/s 304B.

10. In order to attract Section 498A there must be a willful 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 harassment of the woman were such

harassment is within a view to coercing her or any person related to her to met any unlawful demand or any property or valuable security is on

account of failure of her or any person related to her to met such demand.

11. Learned Counsel for the State Mr. Ghosh placed much reliance upon the ocular version of P.W. 3, P.W. 6 and P.W. 9. Now before

discussing the evidence of P.W. 3 let me confined my attention to the ocular version of P.W. 3, P.W. 6 and P.W. 9. According to P.W. 6 victim

used to met them and told them that she was assaulted in the matrimonial home. Admittedly P.W. 6 never stated how all the accused persons who

used to assault the victim. It appears to me that P.W. 6 made a general statement. Moreover, P.W. 6 does not remember whether she stated the

same thing to the I.O. of this case or not. The learned Counsel for the State further argued that P.W. 6 has no inimical relation with the accused

persons. So, there is hardly any reason to disbelieve her statement but in my opinion P.W. 6 made a general statement and it is a fact that victim

stayed in the house along with other family members but in a separate mess. Moreover, there is in evidence that all the family used to quarrel with

each other throughout the day. P.W. 3 happens to be the Secretary of Ganatantrik Mahila Samity, Kamarhati Branch and according to her Kartick

and other sister-in-law used to torture Gita but no attempt was made on behalf of the Samity to settle the dispute. Moreover, P.W. 3 was not

specific on the point of torture. Same thing can be said in respect of P.W. 9.

12. When the Trial Court has failed to come to a conclusion that Gita committed suicide due to such torture because as per the opinion of the Trial

Court the State has failed to establish the charge u/s 306 I.P.C. or 304B I.P.C. against the accused persons. So, in view of the above I think that it

is quite difficult to uphold the judgement passed by the learned Trial Court.

13. In view of aforesaid discussion all the accused persons are found not guilty to the charge leveled against them and they are set at liberty and be

released from their respective bail bonds at once.

14. Let a copy of this judgement along with the Lower Court Record be sent down before the learned Court immediately. Urgent photostat

certified copy, if applied for, be handed over to the parties as early as possible.