
(2009) 03 CAL CK 0040
In the Calcutta High Court
Case No : C.R.A. No. 395 of 1987

Amal alias Nirmal Dutta and Another	APPELLANT
Vs	
The State of West Bengal and Another	RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 113A
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2009) CriLJ 4333

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

Bench : Division Bench

Advocate : Biplab Mitra, Joymalya Bagchi, Subrata Mukhopadhyay and Sourav Chatterjee, for No. 1 and Y.J. Dastoor and Prabir Majumdar, for No. 2, for the Appellant; Minoti Gomes, for the Respondent

Judgement

Girish Chandra Gupta, J.—This appeal is directed against a judgment and order dated 3rd September, 1987 passed by the learned Assistant Sessions Judge, Kalna in Sessions Trial No. 4 of 1987 arising out of Sessions Case No. 325 of 1986 convicting the accused Amal alias Nirmal Dutta and Arun Basak for the offence u/s 306 of the Indian Penal Code and an order passed on the same day sentencing them to rigorous imprisonment for a period of eight years as also to pay fine of Rs. 3,000/- each in default of payment to undergo further imprisonment for a term of two years each. The amount of fine, if realised, was directed to be paid to the mother of the victim.

2. The facts and circumstances of the case briefly stated are that Basanti fell in love with the accused Amal also known as Nirmal Dutta. She was given in marriage to the said Nirmal Dutta by her maternal uncle. A male child was born. Within five years of marriage she committed suicide by consuming poison. The allegation of torture is there which principally is that Amal developed extra-marital relationship with Sabita who happened to be the widowed sister of the accused Arun. The allegation against Arun is that he actively encouraged Amal

alias Nirmal to proceed with the extra-marital affair with the said Sabita.

3. The fact that Basanti committed suicide is not in dispute. As a matter of fact, P.W. 2 Manimala, a sister of the deceased, was suggested as follows during her cross-examination:

Not a fact that she had to commit suicide due to our disliking and criticism.

4. The fact that the victim committed, suicide is also otherwise proved by the evidence of the P.W. 3, Dr. A. K. Pal, who conducted the post-mortem examination. In the stomach of the deceased presence of insecticides was suspected by him. He preserved viscera which was sent to Forensic Science Laboratory. The report of the FSL has confirmed that the deceased died due to poisoning. It is riot anybody's case that poison was" administered by anyone other than the victim herself. The case of the relations of the victim consistently was that she committed suicide which has been adequately proved and was also not challenged by the learned Advocate appearing in support of the appeal. It should be mentioned that previously when no one appeared for the appellants, we appointed Mr. Biplab Mitra and Subrata Mukhopadhyay to represent the appellants by way of legal assistance. At the time of hearing of the appeal" Mr. Joymalya Bagchi assisted by Sourav Chatterjee appeared for the appellant No. 1-Amal and Mr. Y. J. Dastoor assisted by Mr. . Prabir Mazumdar appeared for the appellant No. 2-Arun.

5. The only point advanced before us by Mr. Mitra, the learned Advocate appearing for the appellant No. 1 -Amal, is that there is no sufficient evidence to show that the deceased was treated with cruelty by her husband the accused-Amal. He added that the deceased survived for five years from the date of her marriage. During the first year of her marriage there Was period peace and harmony. Thereafter something had happened which embittered the relationship between the husband and the wife and the wife went back to her paternal house and remained there for a period of 1 1/2 years. She was thereafter taken to her matrimonial house. There is hardly any evidence that she was treated with cruelty after she returned to the matrimonial house and, therefore, conviction u/ s 306 of the Indian Penal Code even with the aid of Section 113A of the Evidence Act cannot be sustained.

6. In the Trial Court a defence was also taken that the deceased was not a legally married wife of the accused Amal which has been rejected by the learned trial Court.

7. Mr. Bagchi, the learned Advocate adopted the aforesaid submissions of Mr. Mitra and reiterated that the victim Basanti was not a legally married wife of the accused Amal.

8. Therefore, we have to answer the following questions -

(a) whether the victim Basanti was a legally married wife of the accused-Amal ?

(b) whether the victim was treated by her husband Amal with cruelty which drove her to commit suicide ?

(c) Whether the accused-Arun is also guilty of aiding and abetting the suicide ?

9. Insofar as the first issue is concerned as regards marriage between the couple, the P.W. 1, mother of the deceased, was suggested on behalf of the defence as follows which is a clear pointer to show that the marriage between the couple was never in dispute:

It is a fact that Ananta's father did everything for solemnization of the marriage between my deceased daughter and accused-Amal.

10. P.W. 2, Manimala sister of the deceased, deposed that the victim was given in marriage to the accused five years prior to her death.

11. The suggestion given to the P.W. 1 on behalf of the defence noticed above referred to one Ananta. Ananta is P.W. 5 who deposed as follows:

Deceased Basanti was my cousin sister. Basanti was married with accused Amal Dutta about 17 years back in the month of Agrahayan. After marriage, she was quite happy for about one year or a "bit more. Thereafter accused-Arun Basak came to our locality from Gaignata. One son was begotten out of their wedlock. Present age of the son would be about four years. In due course accused-Amal was acquainted, with co-accused Arun. "Accused-Amal grew his intimacy with Arun's widowed sister Sabita. They had free mixing and my sister lodged protest against it. As a result, my sister was driven out by the accused Amal from his house on several occasions.

12. The inquest report marked Exhibit 3 contains a recital that the deceased was the wife of accused Amal alias Nirmal Dutta. From the evidence of P.W. 5 it appears that both the accused persons were present when the inquest was conducted. There is no suggestion given to the P.W. 5 that the accused persons were not present when the inquest was conducted.

13. The victim was hospitalized by the accused-Amal himself therefore, he may safely be presumed to have supplied her particulars to the hospital authority. Information as regards death of the victim Basanti was sent from the hospital to the Sub-Inspector of Police attached to Raina P. S. who was examined as P.W. 6. He deposed as follows:

On 4-12-85, I received one message from Kalna Hospital in respect of death of one Basanti Rani Dutta wife of Nirmal Dutta of Baigachipara, Shantipur, Nadia at present resident of Swarazpur Dhatrigram P. S. Kalna and as per direction of the O/c. Chinmoy Dutta I went to Kalna Hospital for holding inquest of the deadbody of the above deceased.

This is the inquest report prepared and signed by me in duplicate in respect of deceased Basanti Dutta, held by me in presence of witnesses Nirmal Dutta (husband), Arun Basak, Swadhin Dey, Ananta Dutta, Pradip Basak as Ward

Master Haradhan Adhikary (market Ext. 3 after objection). Original report was sent to hospital.

14. It would appear that both the accused persons were present when the inquest was conducted by the police. During the cross-examination of P.W. 6 he was never suggested that the accused persons were not there when the inquest was conducted. The information that the victim was wife of the accused-Amal was supplied to the hospital by Amal himself which amounts to an admission. There is no dispute that the accused-Amal begot a male child by the deceased.

15. It appears that three witnesses namely Dayal Nag, Prahlad Kar and Pradip Basak were examined as Court witnesses because it transpired from the evidence of the witnesses of the prosecution that they were the neighbours.

16. P.W. 8, Dayal, the first Court witness deposed that no marriage ever was solemnized between the victim and the accused-Amal. He, however, admitted that the victim and the accused-Amal lived in the same house.

17. The second Court witness, Prahlad Kar deposed the same thing, as did Dayal. He, however, added that the victim lived with Amal for 10/11 years. We find from the evidence of the autopsy surgeon that the victim was about nineteen years old. There is plethora of evidence to show that the victim fell in love with Amal. It is difficult to believe that Basanti fell in love with Amal while she was eight years old.

18. The third Court witness, Pradip Basak, is the brother-in-law of the accused-Arun Basak. He is one of the signatories to the inquest report. He has admitted in cross-examination that in the inquest report the victim Basanti was described as the wife of Amal. The evidence of the said Pradip Kumar Basak is, inter alia, as follows:

Accused Amal lived with Basanti in our house for only one year. Accused Amal and Basanti were allowed one separate room for their living. I live in our house along with my parents, wife and others. In one evening accused-Amal reported about Basanti's diarrhea and I asked him to remove at hospital as there was no local doctor.

My brother-in-law Arun was not present at that time in our house. It is a fact that Basanti died at hospital.

19. The evidence discussed above goes to establish that marriage between the couple was not disputed while the P.W. 1, the mother of the deceased, was in the box. On the contrary, marriage between the couple as a matter of fact was admitted by the suggestion given to the P.W. 1 which we already have noticed. P.W. 2 and P.W. 5 deposed about the marriage between the couple. The conduct of the accused-Amal evidenced by the fact that he begot a male child by the deceased; he in the hospital described the deceased as his wife furnished strong proof of marriage between the couple. The evidence of the C. W. 3 Pradip that the couple used to live together in a room in his house also reinforces the

evidence of marriage between the two. The overwhelming evidence discussed outweighs the evidence of Dayal who deposed that no formal marriage took place between the victim Basanti and the accused-Amal. He, however, has admitted that Amal and Basanti used to live in the same house which as a matter of fact is also the evidence of the two other Court witnesses. The fact that marriage between the couple was solemnized by Ananta's father is the case of the defence which clinches the issue. It may also be pointed out that law leans in favour of legitimacy and frowns upon bastardy. A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife (see *Badri v. Dy. Badri Prasad Vs. Dy. Director of Consolidation and Others*,).

20. Reference in this regard may also be made to the judgment in the case of *Reema Aggarwal Vs. Anupam and Others*, wherein a purposive interpretation of the word "husband" was adopted for the purpose of Section 498A of I. P. C.

I would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any purposes enumerated in the relevant provisions - Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B, I. P. C. Such an interpretation, known and recognised as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304B or 498A, I.P.C., viewed in the context of the very object and aim of the legislations introducing those provisions.

21. For the reasons discussed above the first issue is answered in the affirmative.

22. The evidence as regards cruelty may be tabulated in order to answer the second issue formulated above. PW. 1, mother of the deceased, deposed as follows:

For one year she had very happy and peaceful married life. Accused Arun Basak (identifies the co-accused on dock) came to reside at Shantipur Rail gate No. 2 from Gaighata. He had one widow-sister. My son-in-law Amal alias Nirmal grew intimacy with her. He picked up illicit connection with Arun's widow-sister, Sabita. So, my daughter was subjected to physical torture by accused/husband. She was driven out from the matrimonial home by him. So, my daughter Basanti came back to me. My daughter Basanti lived with me for about one and half years. At that time she also stayed with my elder daughter Manimala within Shantipur Hospital premises. Thereafter, accused Amal came to me and proposed to take back Basanti after disclosing as to his intention to reside at Dhatrigram in the house of father-in-law of co-accused Arun. By this time accused-Amal sold away his property at Shantipur rail gate. My daughter agreed to go back to him in view of his approach and change of attitude as shown by accused husband.

Therefore, I did not raise any objection and I rather allowed to take my daughter back.

Accordingly, accused Amal took my daughter Basanti at Dhatrigram new residence. I kept information about her from time to time. On enquiry I came to learn that my daughter was not happy at her new place of residence. She was similarly tortured by accused-Amal. The trouble started as my daughter protested against accused/husband's illicit connection with the widow-sister of co-accused Arun. She did not tolerate it and as such she was subjected to torture again.

The accused/husband has got no encouragement from any body in respect of his illicit connection with Sabita.

Then says - The accused Arun used to encourage my son-in-law to go on with his love affairs with his sister and thereby he instigated such tortures towards my daughter Basanti (objected to).

P. W. 2, Manimala sister of the deceased, deposed in that regard as follows:

Accused and Basanti was married about 5 years from the date of death. After marriage they lived together at Shantipur Rail gate No. 2. I used to keep information about their life. She lived quite happily for about one year. Arun Basak came from 24-Parganas District and constructed a house contiguous to the house of accused-Amal. Said Arun had one widowed sister Sabita. Accused-Amal used to torture my sister at the instance of accused-Arun Basak. She was once beaten and driven out from the matrimonial home by the accused-Amal. She lived with my mother and with myself too for about one or one and half years. During her stay as above, she disclosed as to her tortures by the accused/husband and asked us not to divulge to anybody otherwise her life would be at stake. Thereafter, accused Amal shifted to Dhatrigram i.e. in the house of Arun's father-in-law. Accused Amal came to us and proposed to take my sister back. Accordingly, he took her to Dhatrigram. My sister died there subsequently due to torture by the accused. She died in Agrahayan 1392 B. S. My sister was of sound health. There was love affairs between accused Amal and sister of Arun Basak (identifies co-accused). My sister told about this to me and asked me to keep it as a secret as she was threatened with dire consequence had it been made public by us. She had to commit suicide by taking poison due to tortures by the accused.

P. W. 5 deposed in that regard as follows:

Deceased Basanti was my cousin sister. Basanti was married with accused Amal Dutta about 7 years back in the month of Agrahayan. After marriage, she was quite happy for about one year or a bit more. Thereafter, accused Arun Basak came to our locality from Gaighata. One son was begotten out of their wedlock. Present age of the son would be about four years. In due course accused Amal was acquainted with co-accused Arun. Accused Amal grew his intimacy with

Arun's widowed sister Sabita. They had free mixing and my sister lodged protest against it. As a result, my sister was driven out by the accused Amal from his house on several occasions.

23. From the evidence of these three witnesses, it transpires that the cause of discontent between the husband and the wife was the extra-marital relationship of the accused Amal with Sabita. From the evidence of the P.W. 1 it appears that when information with regard to the illness of the victim Basanti was conveyed to her, she out of concern naturally rushed to see her daughter but she was not allowed to meet her daughter. She was detained in the house of the Court witness Pradip who is no other than the brother-in-law of the accused Arun.

24. The P.W. 5 was told by the accused Amal and the accused Arun that the deceased could not be hospitalized whereas we have definite evidence of P.W. 3 to show that the victim died in hospital. The question which we have to consider in answering the issue is whether the accused persons are guilty of a conduct which amounts to cruelty within the meaning of the provision of Section 498A of the Indian Penal Code. In the explanation appended to Section 498A of the Indian Penal Code the term "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.

25. From the evidence discussed above, we have no manner of doubt that the accused Amal developed extra-marital relationship with the said Sabita which naturally was resented to by the victim Basanti. Engaging in extra-marital relationship and thereby impairing the congeniality of the married life definitely amounts to a wilful conduct which is likely to drive a woman to commit suicide which also amounts to cruelty.

Section 113A of the Evidence Act provides as follows:

Section 113A. Presumption as to abetment of suicide by a married woman.-

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

26. We can with the aid of Section 113A of the Evidence Act unhesitatingly hold that the accused Amal abetted the suicide of Basanti.

27. Miss Gomes rightly pointed out that after marrying a young girl and begetting a child, the accused Amal engaged himself in an extra-marital relationship and told her bluntly and violently that she was not his legally married wife. She submitted that the possibility of such a statement, having been made by the accused to the deceased, becomes apparent when the accused during his examination u/s 313 of the Cr. P. C, stated as follows:

Q. 3 - Now answer after proper understanding. It transpires from the evidence that you were married to Basanti daughter of Kamala Roy. About 5 years ago and one year after marriage Basanti lived peacefully with you in your house near Railgate No. 2 near Shantipur. Have you got anything to say in this matter?

Ans. I was not married to Basanti. We had a close and intimate relation. She lived in my house as a concubine.

28. Based on the evidence discussed above the second issue is answered in the affirmative.

29. Insofar as the third issue as regards involvement of the accused Arun is concerned, we are of the opinion that there is no evidence which can warrant conviction as against him u/s 306 of the Indian Penal Code. He may have been a friend of the accused. He may have been the brother of Sabita but that does not establish that he abetted the suicide of the victim Basanti. On the top of that it transpired from the evidence that the accused Arun is a step cousin of the victim Basanti.

30. We are accordingly satisfied that the conviction and sentence of the accused Arun Basak should be set aside. In the result the appeal partly succeeds. The conviction and sentence of the accused Arun Basak passed by the learned Trial Court is set aside. The conviction and sentence of the accused Amal alias Nirmal Dutta is upheld.

31. It appears that the accused Arun Basak was taken into custody on 7th September, 2008 and the accused Amal alias Nirmal Dutta was taken into custody on 22nd December, 2008. The accused Amal alias Nirmal Dutta is directed to serve out the sentence awarded by the learned Trial Court.

32. The accused-Arun Basak is acquitted of the charge levelled against him. He should be released forthwith, if his detention is not required in connection with any other case.

33. Criminal section is directed to send a copy of the judgment along with the lower Court records to the concerned learned Trial Court immediately for information and necessary action.

34. Let 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.

35. I agree.