

(2013) 07 CAL CK 0079
In the Calcutta High Court
Case No : CRA No. 121 of 1992

Amal Ghosh and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

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

Citation : (2013) 07 CAL CK 0079

Hon'ble Judges : Toufique Uddin, J

Bench : Single Bench

Advocate : Y.Z. Dastoor and Ms. Rupa Bandopadhyay, for the Appellant; Pawan Kr. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Toufique Uddin, J.—This appeal arose out of the judgment and order of conviction dated 25.4.1992 passed by the learned Additional Sessions Judge, 2nd Court, North 24-Parganas, Barasat, in Sessions Trial No. 3(4)/1991 arising out of Sessions Case No. 19(4)/1990 and thereby convicting the appellants for commission of offence under sections 498A of Indian Penal Code and sentencing them accordingly. In brief the background of this appeal is that:

One Nukul Chakraborty of Masjid Bati Road, Milan Nagar, Kanchrapara called at the Bizpur Police Station on 3.11.1988 at 20.24 hours with a written complaint reporting inter alia that his younger sister Sm. Gita Chakraborty was married with the accused Amal Ghosh about 8 years back and since marriage Gita used to reside at her husband's house in the company of all the accused persons. She had begotten two daughters. But, She was subjected to physical and mental torture by the accused persons. She was deprived of food and clothing. The children were not provided with milk.

2. After investigation, police has submitted charge-sheet against the accused persons under sections 306 /498A of Indian Penal Code.

3. The case was committed to the Court of Sessions by the learned Magistrate. After hearing of both sides, learned Court below framed charges under sections 498A /306 of IPC against the accused persons.

4. The contents of the charges were read over and explained to them when the accused persons pleaded not guilty and claimed to be tried.

5. To contest this case the prosecution examined as many as seventeen witnesses while none was examined on the side of the defence.

6. However, the accused persons were examined u/s 313 of Cr.P.C. The defence case as it appeared from the trend of cross-examination was denial of offence with a plea of innocence.

7. On trial, the learned Court below convicted the accused persons for commission of offence u/s 498A of IPC and acquitted for commission of offence u/s 306 of IPC by the impugned judgment.

8. It has to be seen if the impugned judgment suffers from any material irregularity and calls for any interference or not.

9. It was argued inter alia that the prosecution has totally failed to bring home the charge u/s 498A of IPC against the present appellants and he pointed out the eleven witnesses.

10. On the other hand, learned Counsel for the State made his usual submission.

11. Section 498A of IPC read as follows:

498A. Husband or relative of husband of a woman subjecting her to cruelty.--(1) Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

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.

12. To appreciate the case from a better angle, some relevant pieces of evidences are required to be mentioned here.

13. Exhibit-2 is the formal FIR. Exhibit-1 is the FIR

14. Exhibit-6 is the inquest report over the dead body. Therein it appears that on account of some family problems, the deceased committed suicide.

15. P.W.-1 is a hawker by profession. He is the brother of the deceased. With reference to his complaint/exhibit- 1, he stated that his sister entered into a love affair with the accused Amal Ghosh and subsequently married her. It is his evidence that the deceased used to come to her parents' house and disclosed about ill-treatment and torture meted to her by the members of her in-laws' family and also complained to him by showing marks of injury on her back that she was beaten up by her father-in-law and mother-in-law in the absence of her husband from house. She was denied of food and clothing even. The complainant went to the house of the accused and persuaded them not to inflict any torture but his entire request and persuasions failed. His cross-examination shows that during eight years after marriage of his sister he did not report the incident of torture to the police or any local commissioner. He was extensively cross-examined.

16. P.W.-2 herein heard sounds of a commotion. He rushed to the place and found that people were sprinkling water on the flames and a human body was under flames covered the body with a mattress. Thereafter he learnt about the death of the victim. In cross-examination P.W.-2 stated that he never saw any breach of the peace of bickering between Amal and Geeta.

17. P.W.-3 stated that he never saw any bickering between Geeta and her husband and her parents-in-law.

18. P.W.-4 and 5 were simply tendered for cross-examination.

19. P.W.-6 nothing knew about the torture at her father-in-law's place of the victim.

20. P.W.-7 and 8 were tendered for cross-examination. They never found any bickering of breach of peace between Geeta and her relatives in-law.

21. P.W.-9 and 10 did not say anything about torture.

22. P.W.-11 is a police personnel. He filled up formal FIR exhibit-4.

23. P.W.-12 took photograph of the dead body.

24. P.W.-13 is a lady whose Nanad (husband's sister) is Geeta. She could not say whether the victim was put to death or committed suicide. She stated of course that the victim used to tell that she was used to be persecuted by her husband, mother-in-law, father-in-law, sister-in-law and brothers-in-law at their place. She also claimed that the victim showed the marks of injury of beating on her body when she came to her place. She also stated that the victim Geeta disclosed to her that she would be nagged and forced to bring different things from her father's house.

25. P.W.-14 is the brother of the deceased. He stated that Geeta used to complain about torture inflicted by her in-laws and husband.

26. P.W.-15 is a police personnel. He filled up formal FIR.

27. P.W.-16 is the I/O who submitted charge-sheet.

28. P.W.-17 is a Doctor. He held post-mortem examination over the dead body. His opinion was that due to shock resulting from burn injuries which is ante mortem in nature, the victim died. His evident does not show any marks of other injury except burn injuries.

29. This being the position, considering the totality of the circumstances and the materials so far collected, I am of the opinion that the prosecution could not be able to bring home the charge against the appellants.

30. Accordingly, the sentence passed by the learned Court below is not sustainable.

31. The appeal stands allowed. The sentence and order of conviction are set aside.

32. The appellants be released from bail bond immediately, if they are not wanted in any other case.

33. Let a copy of this judgment along with LCR be sent back to the learned Trial Court immediately. Criminal Section is directed to supply the urgent photostat certified copy of this judgment to the parties, if applied for.