

(2012) 08 CAL CK 0001

In the Calcutta High Court

Case No : CRA No. 505 of 2008 with CRA No. 509 of 2008

Debasish Podder and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357
Penal Code, 1860 (IPC) — Section 221, 222, 223, 304B, 306

Citation : (2012) 4 CALLT 647 : (2012) 4 CALLT 33

Hon'ble Judges : Tapen Sen, J;Dipak Saha Ray, J

Bench : Division Bench

Advocate : Milon Mukherjee and Mr. Saibal Mondal, for the Appellant; Sauvik Mitter, For the State, for the Respondent

Judgement

Tapen Sen, J.—This Appeal is directed against the Judgment and Order dated 30.7.2008 and 31.7.2008 passed by Sri Arup Basu, Additional Sessions Judge, Fast Track Court No. 5, Barrackpore, North 24 Parganas in Sessions Trial No. 04(09)/07 arising out of Sessions Case No. 04 (07) (07) whereby and whereunder the Appellants were convicted under Sections 498A and 304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years with fine of Rs. 5,000/- for each and in default, to suffer further R.I. for three more months u/s 498A and rigorous imprisonment for life for the offence under Section 304B IPC. It was further directed that 50% of the fine amount was to be paid to the Complainant by way of compensation u/s 357 Cr. P.C. On 1.8.2006, one Smt. Malati Saha, wife of Kanai Saha made a written report before the Officer-in-charge, Bizpur police station, North 24 Parganas in relation to an occurrence said to have taken place on the same day at a time not mentioned wherein, she made allegations in the following manner against (i) Debasish Podder, son of Bidhu Bhusan Poddar; (ii) Bidhu Bhusan Poddar (father-in-law); (iii) Smt. Sadhana Poddar (mother-in-law); (iv) Smt. Babli Ghosh, wife of Tutu Ghosh (sister-in-law); (v) Chandana Saha, wife of Uttam Saha (sister-in-law); (vi) Tutu Ghosh and (vii) Uttam Saha.

It was alleged that the Complainant's daughter, Kakali Poddar (nee Saha) had been married to Debasish Poddar (Accused No. 1) in the year 2002 as per Hindu rites and customs. It was alleged that two months after the marriage, the complainant was informed by two persons that her son-in-law, Debasish Poddar, was already married prior to the wedding with her daughter. When the complainant asked Kakali Poddar about this, she also stated that this was true and that the earlier wife also had a baby. The Complainant alleged that this fact was concealed totally at the time of marriage from her daughter and therefore, conjugal right became disrupted. It was further alleged that the accused persons started mentally and physically assaulting her daughter. It was alleged that when her daughter came to their house, she informed her as well as neighbors about such assault. It was also alleged that the accused persons used to tell her "you die, there is no need to alive like such a girl and if you die we shall arrange another marriage for Debasish" (quoted from page 2 of the paper book).

It was further alleged that thereafter, the Complainant lodged a Diary with the Jagaddal Police Station informing them about such facts and the said Diary was numbered in the Jagaddal P.S. as GDE No. 1718 dated 21.3.2006.

2. It was alleged that on 1.8.2006 at about 7.30 P.M. the complainant came to learn that her daughter and Labony had died. On going to the marital home, she came to learn that death was due to strangulation by a chord around the neck and when they wanted to see dead body, they were informed that it had already been taken to the local police station. The complainant then went to the police station and saw the dead bodies.

3. The impugned judgment was assailed on different points and various aspects/ inconsistencies in the prosecution case were pointed out by the learned Counsel for the Appellants, but in view of the nature of the Order that we intend to pass, it would not be proper for us to indicate those points at this stage.

4. The impugned judgment records the fact that initially, the Charges under Sections 498A and 306 of the Indian Penal Code were framed against the accused persons on 13.9.2007 but later on, it was converted and altered to Section 304B of the Indian Penal Code. The lower Court records were produced before us and Order No. 2 dated 30.5.2008 was perused. It will be relevant to reproduce the said Order because it shows that all of a sudden, the learned Court expressed an opinion without giving any reasons that the charge should be altered from Section 498A/306 I.P.C. to Section 498A/304B I.P.C. The said Order reads as follows:-

S.C. 4 (7)/07 S.T. 4 (9)/07 G.R.- 2013/06

STATE

Versus

Debasis Podder & Ors.

....Accused Persons.

Order No. 22

30.5.2008

Today is fixed for delivery of judgment. Accused persons are present. Learned P/P-in-charge and the Learned Defence Counsel are also present. Perused the evidence on record meticulously. Perused also the documentary evidence and the photographs gathered in the record. It will be appropriate to mention here that at the stage of argument Learned P/P -in-charge submitted a joint photograph of deceased Kakali Podder and her minor baby Sana Podder (X for identification) wherefrom it appears that both of them were in hanging condition by a "gamcha". From the evidence of the doctor Dulal Krishna Das it appears that the death of minor Sana Podder, daughter of deceased Kakali Podder was homicidal in nature and from the evidence of the other prosecution witnesses it appears prima facie, that the death of Kakali Podder and her minor baby occurred otherwise than under normal circumstances in her in laws house within four (4) years of her marriage. But in the present case charge was framed under Sections 498A/306 I.P.C. and the trial has been concluded after framing of the charge. In my considered view charge should be altered for the interest of justice and to arrive at a just decision from Sections 498A/306I.P.C. to Sections 498A/304B of I.P.C.

Hence, charge under Sections 498A/304B of I.P.C. is framed against the accused persons. Charges are read over and explained to them to which they plead not guilty and claim to be tried. At this stage Learned P/P-in-charge and the Learned Defence Counsel are directed to submit a list of witnesses to whom they want to re-call or re-examine.

To: 21-6-08 for examination of witnesses by the prosecution of its choice if any.

(ARUP BASU)

Additional Sessions Judge

Fast Track Court 5, Barrackpore

North 24 Parganas

5. Upon a perusal of the aforementioned Order, we are satisfied that the same is mechanical because no reasons have been assigned nor do we find any justification on the part of the Court below to have passed the said Order. Section 304B of the I.P.C. relates to offences of death caused by demand of dowry. Upon a perusal of the FIR, we have not found any allegations of dowry demands and therefore, we are unable to understand as to how did the Additional Sessions Judge straightway come to a conclusion without assigning any reasons that the charge should be altered from Section 306 I.P.C. to 304B of the I.P.C ? That apart, we have noticed that when the initial Charge was framed on 13.9.2007, the Charges were 498A and 306 of the I.P.C. The same reads as

follows:-

Charges with Two Heads

No. XXVIII (ii) Schedule V, Act V, 1898)

Sections 221,222,223, Code of Criminal Procedure)

Name & Office of

Magistrate & O-

Sessions Trial Case No. 4(9) 2007

S.C. 4 (7) 2007

I, Sri Arup Basu,

Addl. Dist. & Sessions Judge

Fast Track Court 5, Barrackpore

North 24 Parganas

hereby charge you

1) name of the accused

persons as follows-

1, Sri Debashis Poddar

2. Sri Bidhubhusan Poddar

3. Smt. Sandhana Poddar

4. Sri Prabir Ghosh @ Tutu

5. Smt. Chandana Saha

6. Smt. Babli Ghosh

7. Sri Uttam Saha

(2) My cognizance or

(3) cognizance of the

Court of Sessions

Firstly- That you, on or about the 25th Day of Baisakh, corresponding to English Calendar 2002 till 01.08.06 at the above place being the husband and relative of Smt. Kakali Poddar subjected her cruelty by inflicting mental and physical torture

and thereby you committed an offence punishable u/s 498A of the Indian Penal Code and within the cognizance of the Court of Sessions.

Secondly- That you, on or about the 25th Day of Baisakh, corresponding to

English Calendar 2002 till 01.08.06 at the above place Smt. Kakali Poddar committed suicide along with her minor child namely, Sana and that you all abetted its commission by inflicting mental and physical torture by saying and thereby you committed an offence punishable u/s 306 of the Indian Penal Code and within the cognizance of the Court of Sessions.

(4) In cases tried by

Magistrate "by

the said court"

And I hereby direct you be tried by the said Court on the said charge.

The contents of the charges are read over and explained to the accused persons to which they have pleaded "not guilty" and claimed to be tried.

Dated this 13th day of September, 2007.

(ARUP BASU)

Additional Sessions Judge

Fast Track Court 5, Barrackpore

North 24 Parganas

6. However on 30.5.2008 when the aforementioned quoted Order was passed the offence straightway was altered to 304B without assigning any reasons. The charge so altered on 30.5.2008 reads as follows:-

Charges with Two Heads

No. XXVIII (ii) Schedule V, Act V, (1898)

Sections 221,222,223, Code of Criminal Procedure

Name & Office of

Magistrate & O-

Sessions Trial Case No. 4(9) 2007

S.C. 4 (7) 2007

I, Sri Arup Basu,

Addl. Dist. & Sessions Judge

Fast Track Court 5, Barrackpore

North 24 Parganas

hereby charge you

2) name of the accused

persons as follows-

- 1, Sri Debashis Poddar
2. Sri Bidhubhusan Poddar
3. Smt. Sandhana Poddar
4. Sri Prabir Ghosh @ Tutu
5. Smt. Chandana Saha
6. Smt. Babli Ghosh
7. Sri Uttam Saha

(2) My cognizance or

(3) cognizance of the

Court of Sessions

Firstly- That you, on or about the 25th Day of Baisakh, corresponding to English Calendar 2002 till 01.08.06 at Barojawnpur, Kediabagan, under P.S. - Bizpur, being the husband and relatives of Smt. Kakali Poddar subjected her cruelty by inflicting mental and physical torture

and thereby you committed an offence punishable u/s 498A of the Indian Penal Code and within the cognizance of the Court of Sessions.

Secondly- That you, on or about the 1st day of August, 2006 at Barojawnpur, Kediabagan, under P.S. - Bizpur, committed dowry death by causing the death of Smt. Kakali Poddar and her minor baby Sana Poddar

and thereby you committed an offence punishable u/s 304B of the Indian Penal Code and within the cognizance of the Court of Sessions.

(4) In cases tried by

Magistrate "by the

said court"

And I hereby direct you be tried by the said Court on the said charge.

The contents of the charges are read over and explained to the accused persons to which they have pleaded "not guilty" and claimed to be tried.

Dated this 30th day of May, 2008

(ARUP BASU)

Additional Sessions Judge

Fast Track Court 5, Barrackpore

North 24 Parganas

7. For the foregoing reason and for no other reason, we are of the view that the matter should be remanded for re-hearing the case on merits from the stage when the Court had framed Charges under Sections 498A and 306 of the Indian Penal Code (i.e. 13.9.2007) and not from the stage of alteration of Charge i.e. 30.5.2008.

8. The impugned Order and judgment passed by the Additional Sessions Judge, Fast Track Court No. 5, Barrackpore, North 24 Parganas in Sessions Trial No. 04(09)/07 arising out of Sessions Case No. 04 (07) (07) is hereby set aside and the matter is remanded to the said Court for re-hearing the case on merits as per the directions and observations made above. Both the Appeals stand Disposed off.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgement, be given/issued expeditiously subject to usual terms and conditions.

Dipak Saha Ray, J.

I agree.