

(2013) 12 CAL CK 0030
In the Calcutta High Court
Case No : CRA No. 275 of 2009

Sambhunath Das and 3 Ors.

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) CriLJ 523 : (2014) 1 Crimes 154

Hon'ble Judges : Kanchan Chakraborty, J

Bench : Single Bench

Advocate : Subrata Ghosh and Mr. Tarapada Das, for the Appellant; Manjit Singh, Public Prosecutor and Mrs. Kakali Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Kanchan Chakraborty, J.—The challenge in this appeal is to the judgment and order dated 31.03.2009 passed by the learned Additional District & Sessions Judge, Fast Track Court, Khatra, Bankura in Sessions Trial No. 8 (12)/2005 arising out of Sessions Case No. 22(9)/2005 convicting the appellants under sections 498A/306/34 of Indian Penal Code and sentencing them to suffer simple imprisonment for three years with a fine of Rs. 2000/- each for the offence u/s 498A and to suffer simple imprisonment for seven years with a fine of Rs. 2000/- each for the offence committed u/s 306/34 of Indian Penal Code. Both the punishments would run concurrently. The prosecution case in the court below, succinctly, is that the marriage between Subhra Das and Sambhunath Das had taken place on 13th Ashar last year. 2 or 3 months after marriage, Subhra Das was subjected to mental and physical torture by the husband and other in-laws. She was assaulted and ill-treated by them. She was pressurized to write a letter to her father to collect money from him. On 15th October Subhra and Sambhunath had been to the paternal house of Subhra and they stayed there till 20.10.2000. On the next day i.e. on 21.10.2000, an information was received by Gunadhar Das, father of Subhra. He was told that Subhra was ill. He had been to the matrimonial house of Subhra at about 10 p.m. and found Subhra was lying

dead. The in-laws of Subhra informed him that Subhra committed suicide by hanging at about 8-30 a.m. Gunadhar Das, father of Subhra, lodged one FIR with the Ranibandh Police Station alleging therein that Subhra was compelled to commit suicide due to physical and mental torture upon her by the appellants. That FIR was registered as Ranibandh P.S. Case No. 29/2000 dated 22.10.2000 under sections 498A/306/34 of Indian Penal Code against the appellants.

2. The case was investigated into. The inquest of the dead body of Subhra was done. The post-mortem of the dead body was also done. The Investigating Officer recorded the statements of available witnesses and finally filed one charge-sheet against the appellants for prosecuting them under the abovementioned sections.

3. The appellants were arraigned to face charges under sections 498A/306/34 of Indian Penal Code to which they pleaded not guilty and accordingly, the trial commenced.

4. In course of trial, eleven witnesses were examined on behalf of the prosecution.

5. The letter allegedly written by Subhra to her father, the inquest report, the FIR, the P.M. report, the rough sketch map of the place of occurrence and seizure list were admitted into evidence and marked exhibit on behalf of the prosecution. No evidence was adduced on behalf of the appellants in their defence in the trial court.

6. The learned court, upon consideration of the evidence on record, oral and documentary, came to a finding that the prosecution brought home the charges to the hilt. Accordingly, the trial court recorded their conviction and sentence, which is impugned in this appeal.

7. Mr. Subrata Ghosh, learned counsel appearing for the appellants, contended that there is no iota of evidence disclosing the fact that the victim Subhra was subjected to physical and mental torture in her matrimonial house. No person from the locality wherein the matrimonial house of Subhra is located has come forward and deposed in favour of the prosecution. The evidence of Subhra's father that Subhra was subjected to mental and physical torture in her matrimonial house appears to be very general and hypothetical in nature. The letter written by Subhra to her father which has been marked exhibit-2 clearly discloses that Subhra was having a good time in her matrimonial house. There is nothing within four corners of the exhibit-2 which would indicate that she was subjected to mental and physical torture in her matrimonial house.

8. Mr. Ghosh contended further that the learned trial court failed to appreciate the evidence on record in its proper perspective. The judgment impugned was passed relying on the exhibit-2, which does not support the prosecution case. Therefore, he contended, the judgment impugned is not sustainable in law and the appellants should be acquitted.

9. Ms. Kakali Chatterjee, learned counsel appearing for the respondent/State, contended that the victim died within one year six months from the date of her marriage with the appellant/Sambhunath Das. Some of the witnesses including the father of the victim stated categorically that Subhra was subjected to mental and physical torture in her matrimonial house. This apart, Ms. Chatterjee contended, the learned court below had taken help of the provisions of section 113A of the Evidence Act to come to a conclusion which appears to be justified and reasonable in the facts and circumstances of the case. The judgment impugned is not suffering from any infirmity and, as such, is not required to be upset in this appeal.

10. I have carefully gone through the evidence of the witnesses examined on behalf of the prosecution. I have also gone through the inquest report i.e. exhibit-3 and the post-report report i.e. exhibit-14.

11. There is no denial to the fact that Subhra died due to hanging. It is the case of the prosecution that she had to commit suicide by hanging in her matrimonial house because of unbearable torture on her, mental and physical, by the appellants.

12. It is really unfortunate that a young lady of 19 years recently married had to commit suicide but this fact alone is not enough to jump into a conclusion that she committed suicide because she was subjected to mental and physical torture by her husband and in-laws who created pressure on her to bring money from her father. This presumption u/s 113A of the Evidence Act can be used by court as an aid when there is specific evidence supporting the prosecution case. That presumption can be added to the evidence in order to strengthen the prosecution case and to come to a proper conclusion. In other words, court is not supposed to start with presumption and gets corroboration of that presumption from any other evidence.

13. The learned court below relied heavily on the exhibit-2, a letter written by the victim Subhra to her father (P.W.-4). A cursory perusal of the exhibit-2 makes it abundantly clear that Subhra was fine in her matrimonial house with her husband and in-laws. She has referred to other relations in the letter who were also having good days. She wrote the letter for a specific purpose and asked for Rs. 5000/- immediately, which she needed badly. There is nothing in the letter exhibit-2 which indicates that she was subjected to mental and physical torture by the appellants in her matrimonial house. She requested her father (P.W.-4) to give her Rs. 5000/- as a loan, which she needed very badly. According to the prosecution, that letter was written against her will and after creating pressure on her. To that effect, P.W.-4 Gunadhar Das, the father of the victim, stated that while he was staying at Narendrapur, Subhra wrote a letter to him demanding Rs. 5000/-. Nowhere the P.W.-4 has stated that said letter was written by Subhra because of pressure created by her husband and other in-laws. To my estimate, the exhibit-2, in any manner, does not help the prosecution to establish that the appellants demanded money through Subhra and inflicted torture on the victim

Subhra for her failure to bring money. The exhibit-2 bears no date. Subhra had been to her father's house with appellant Sambhunath on 15.10.2000 and they together stayed there till 20.10.2000. On 21.10.2000, the victim allegedly committed suicide at 8.30 a.m. During her stay in her paternal house with the appellant Sambhunath, she did not demand any money or her husband Sambhunath also had not given any hints that he demanded money through Subhra by creating pressure on her to write a letter to her father. Therefore, I find the learned court below unnecessarily put much emphasize on the exhibit-2.

14. Amongst the prosecution witnesses, P.W.-1 is a co-villager. She stated that as a co-villager that she found the appellants to behave properly with Subhra. P.W.-1 was declared hostile and from her cross-examination it appears that Subhra was her cousin sister. She stated also in her cross-examination that she had visiting term with Subhra when she was alive.

15. P.W.-2 was tendered by the prosecution but not examined.

16. P.W.-3 is Manikanchan Das. He is a man of Dharampur where the paternal house of Subhra is situated. He identified the exhibit-2 and stated in his cross-examination that he had cordial relation with Gunadhar. He has not stated anything about alleged physical and mental torture on Subhra by her inmates.

17. Gunadhar, the father of the victim, has been examined as P.W.-4 in the case. He stated that Subhra died due to physical and mental torture inflicted on her by the appellants. He stated that 2/3 months after marriage, the husband of Subhra demanded money through Subhra from him and on that plea, he used to assault Subhra. Subhra and her husband-appellant Sambhunath Das had been to his house on 15.10.2000 and stayed there together till 20.10.2000 i.e. day before the alleged incident of suicide took place. Nowhere P.W.-4 stated that during their stay in his house he noticed anything in the behaviour of the appellant Sambhunath which was amounting to mental and physical cruelty. In the last line of his cross-examination, P.W.-4 stated that he believed that the appellants inflicted torture upon his daughter. So, if the evidence of the P.W.-4 is considered as a whole, it appears to me that he was never reported of any kind of mental and physical torture by the appellants on the victim. Since his daughter died and that once a letter was written by her asking her to pay Rs. 5000/- as a loan, he believed only that the appellants inflicted torture upon his daughter. This "belief" cannot be accepted as a truth.

18. P.W.-5, a man having abode in village Kathalia where the appellants have their house. He stated that the appellants used to abuse and assault the victim and Subhra used to report this fact to him on many occasions. From his cross-examination it appears that he is uncle of Subhra. He denied that he did not disclose the fact that Subhra was subjected to torture by the appellants to any person but I find that nowhere P.W.-5 has stated to whom he disclosed the fact that Subhra reported him that she was subjected to physical and mental torture in her matrimonial house. Even the P.W.-4 has not taken the name of P.W.-5 as

the man who reported to him that Subhra was subjected to physical and mental torture in her matrimonial house.

19. P.W.-6 is a co-villager of the P.W.-4. He stated categorically that Subhra's in-laws rendered good behaviour to her after marriage although he was declared hostile. It appears from his cross-examination that he was related to Subhra as well as the appellants.

20. P.W.-7 is a relation of P.W.-4. He has stated that the husband and in-laws of Subhra did not render misbehaviour with Subhra. He was also declared hostile but nothing fruitful result yielded in favour of prosecution.

21. P.W.-8 is mother of victim Subhra. She has developed the prosecution case by giving details of the nature of torture allegedly inflicted by the appellants on Subhra. She stated that Subhra was not treated nicely in her matrimonial house. She was not allowed to go anywhere to talk to anybody and she was not given food, milk, clothing etc. She stated also that the appellants used to assault her and used to keep her in confinement. All the appellants demanded money from her and once the appellants wrote letter demanding money through the victim. She stated that whenever Subhra came to her paternal house, she disclosed her misfortune to her inmates. She stated that Subhra came 5/6 days prior to her death when she stayed five days in her paternal house. Her husband i.e. P.W.-4 informed her that being unable to bear the torture, Subhra committed suicide by hanging. The statement of P.W.-8 not only tainted with exaggeration but also lacking corroboration. Her statement does not inspire confidence.

22. P.W.-9 who is close relation to the victim. He stated that Subhra reported him when he had gone to her matrimonial house that she was subjected to torture by the appellants who demanded money. He stated that she was not allowed to talk to any person. This statement of P.W.-9, P.W.-8 and P.W.-5, if are considered together, it is not understood while Subhra was not allowed to talk to any person and was confined in room, how could the P.W.-5 and P.W.-9 talk to Subhra in her matrimonial house. This evidence of P.W.-9 and P.W.-5 can hardly be admitted into evidence being hearsay evidence not corroborated by any witness.

23. A careful appraisal of the evidence recorded by the learned trial court, I find that the same is not sufficient and satisfactory enough to come to a conclusion that Subhra was in fact subjected to physical and mental torture in her matrimonial house.

24. It is settled principle of law that it is not every type of harassment or cruelty that would attract section 498A of IPC. The definition of cruelty is circumscribed by the explanation. In view of clause (a) to the explanation, it must be a wilful conduct which postulates and obstinate and deliberate behaviour on the part of the offender. The conduct itself being wilful must result in the likelihood of driving the women concerned either to commit suicide, or to cause grave injury or danger to life, limb or health (whether mental or physical).

25. In the facts and circumstances of the case, both the deceased and the appellant/Sambhunath Das were in the house of P.W.-4 from 15th to 20th October, 2000. Subhra died on 21.10.2000 at 8-30 a.m. There is no history of torture or assault within 20.10.2000 till the death of Subhra, at least, not on record. There is also absence of evidence that during the period starting from 15th to 20th October, 2000, anybody had seen in-laws of Subhra inflicted mental and physical torture on her during the stay of Subhra together with her husband/appellant Sambhunath in her father's house immediately prior to her death. There appears no nexus between the death of Subhra and any overact on the part of the appellants. It is true that Subhra committed suicide but absence of sufficient and satisfactory evidence of cruelty within the meaning of 498A of Indian Penal Code, help of presumption cannot possibly be taken by invoking the provisions of 113A of the Evidence Act. The exhibit-2, I reiterate, does not disclose anything about mental and physical torture on Subhra by her inmates nor it gives any hints to that effect. It was a request of a daughter to her father for some money as a loan. Learned trial court put much emphasize on the exhibit-2 and treated the same as an evidence speaking in favour of prosecution in support of the case that the letter was written by Subhra on the pressure of the appellants.

26. It is repeated that Subhra's unnatural death within a short span of matrimonial life was unfortunate and not desirable but at the same time it cannot be said that the appellants were liable for her suicidal death. Beside the husband, the other in-laws were not with Subhra and her husband during the period from 15.10.2000 to 20.10.2000.

27. Therefore, they had no opportunity either to torture Subhra physically or mentally immediately before her death. There is no evidence to show what happened in the matrimonial house of Subhra at the night of 20.10.2000. Whatever had happened, it was not disclosed. Therefore, the learned court below should not have taken aid of presumption u/s 113A of the Evidence Act in such a fact situation and evidence on record. There is doubt in the prosecution case as it is lacking cogent, reliable, consistent and trustworthy evidence. In my estimate, the appellants ought to have given benefit of doubt in such a case.

28. In view of discussions made above, I find that the judgment impugned is not sustainable in law.

29. Accordingly, the appeal is allowed. The judgment impugned is set aside.

30. The appellants are set at liberty and be discharged from bail bond, if any.

31. 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.