

Criminal Appeal

Present :

The Hon'ble Mr. Justice Ashim Kumar Banerjee**And****The Hon'ble Mr. Justice Kalidas Mukherjee**

Judgement on : May 18, 2010.

C.R.A. No.686 of 2005**Jaydeb Sau @ Shaw & Others****-VS-****State of West Bengal**

Point:

STATEMENT OF VICTIM, PROOF: Omnibus statement that torture was committed upon her whether would not be sufficient to sustain the charge under Section 498A- Treatment in had not been substantiated by producing any paper - Omnibus or generalised statement of torture as stated by the PWs do not relate to the cause of death- The victim herself did not make any allegation as against the appellant no.1 and 2, whether the appellant no.1 and 2 being the husband and father in-law can be convicted-Indian Penal Code, 1860 S 34, 302-Evidence Act,1872 S 32

Facts:

The wife/victim was married to Joydeb Sau @ Shaw at an early age. She was a minor when she was married. She was not so expert in the household work which annoyed her in-laws, particularly her mother in-law who constantly tortured her from the day one. Such torture was not only mental but also physical. Her father in-law Paresh Shaw and her husband must have a tacit approval to such torture. Putul once tried to commit suicide After recovery she was again sent to her in-law's place after a village compromise had at the Manik Bazar Gram Panchayat Office in presence of both parties. The compromise was reduced to writing as asserted by Putul's maternal uncle. Despite such compromise the torture continued to happen. Putul/wife died an unnatural death.

Held:

Putul being a younger girl was not skilled to perform household work which annoyed her in-laws. Omnibus statement that torture was committed upon her would not be sufficient to sustain the charge under Section 498A. **Para-20**

Treatment in Radhanagar Hospital and subsequently at Bishnupur Hospital had not been substantiated by producing any paper issued by the said hospital. In absence of any such documentary evidence, the charge under Section 498A Indian Penal Code was not proved against any of the appellants. **Para-24**

Omnibus or generalised statement of torture as stated by the PWs do not relate to the cause of death and hence hit by Section 32 of the Evidence Act and, therefore, those statements have no role to play so far as the charge under Section 302 / 34 is concerned. **Para-26**

No cogent evidence as against the appellant no.1 and 2. The victim herself did not make any allegation as against the appellant no.1 and 2 and made the appellant no.3 only responsible for her death. Hence, the learned Judge of the Court below was not right in convicting the appellant no.1 and 2 being the husband and father in-law. **Para-29**

Cases Cited:

i) 2002, Supreme Court Cases (Criminal), Page-461 (Gananath Pattnaik –VS- State of Orissa)

ii) 2007, Volume-V, Supreme, Page-713 (Mehiboobsab Abbasabi Nadaf –VS- State of Karnataka)

iii) 2007, Volume-I, Supreme Court Cases (Criminal), Page-715 (Balbir Singh & Another –VS- State of Punjab)

iv) 2007, Volume-I, Supreme Court Cases (Criminal), Page-726 (Mohd. Arshad –VS- State of Maharashtra and Others)

For the Appellant : Mr. Sekhar Kumar Basu
Ms. Devipriya Mitra

For the State : Mr. R.K. Ghosal

The Court :

1. The victim was married to Joydeb Sau @ Shaw at an early age. From the evidence it would appear that she was a minor when she was married. She was not so expert in the household work which annoyed her in-laws, particularly her mother in-law who constantly tortured her from the day one. Such torture was not only mental but also physical. Her father in-law Paresh Shaw and her husband must have a tacit approval to such torture. However, we do not find any definite evidence as against those two male accused save and except the contemporaneous complaint lodged by Putul's parents before the Panchayat earlier. Putul once tried to commit suicide by taking poison on 8th Chaitra, 1394 when she was admitted to hospital. After recovery she was again sent to her in-law's place after a village compromise had at the Manik Bazar Gram Panchayat Office in presence of both parties. The compromise was reduced to writing as asserted by Putul's maternal uncle. Despite such compromise the torture continued to happen. Her mother in-law Shakti Shaw kicked her in her belly while she was carrying. On June 24, 1988 at about 11.00 a.m. Putul died an unnatural death. As per the complaint she was wrapped in clothes when her mother in-law poured

kerosene on her and set fire. We find from the complaint that the father in-law, sisters in-law as well as her husband also assisted Shakti, the mother in-law in committing such crime. Both sisters in-law were minor at that time. They were separately tried where they were acquitted. On a close analysis of the evidence we however do not find any clinching evidence as against the husband or the father in-law.

2. As per the complaint, the police took action and arrested the husband Joydev, father in-law Pares, mother in-law Shakti and two minor sisters in-law Pratima Shaw and Purnima Shaw. They were charge sheeted. As observed hereinbefore, Pratima and Purnima were tried separately and were acquitted. Joydev, Pares and Shakti denied the charge and faced trial.

3. PW- 1 (Swapan Kumar Pal) :

P.W. 1, the maternal uncle was the complainant. He was consistent while deposing at the trial. He stated what had been stated by him in his complaint.

3. PW-2 (Sabita Bala Patra) :

PW-2 was the mother of the victim girl Putul. She supported her brother, the complainant being PW-1. We find from her evidence that the in-laws did not give sufficient food to Putul during her life time. The mother, however, expressed her ignorance about the complaint, if any, lodged with the Panchayat on the earlier occasion.

4. PW-3 (Biswanath Ghosh) :

PW-3 accompanied the complainant PW-1 to the Police Station. He was the informant of the incident. He went to the victim's parental place and informed them that mother in-law of the victim poured kerosene oil on her and set fire. The victim got injured. In cross-examination PW-3 admitted being distantly related to the parental family of the victim.

5. PW-4 (Samar Paul) :

PW-4 was another maternal uncle of the victim girl. He corroborated what had been stated by PW-1, 2 and 3. In addition, he deposed that the victim was not allowed to talk to anyone. He also deposed that the victim had stated to him that her mother in-law poured kerosene oil on her and set fire.

6. PW-5 (Aditya Sau) :

PW-5 was a neighbour. He deposed that he heard from others that mother in-law of the victim poured kerosene oil on her and set fire. He also deposed that the victim Putul was insane and often tried to commit suicide by consuming poison or with the help of rope. At that juncture, the witness was declared hostile and was cross-examined by the prosecution as well as the defence. The witness deposed that two/three times the victim tried to commit suicide. The witness also denied the charges of torture being meted out to the victim by the accused. The witness however admitted having a village compromise through Panchayat. He however deposed that it was due to "insanity of Putul".

7. PW-6 (Fhani Bhusan Shaw) :

PW-6 was also declared hostile. He stated that the accused treated the victim well in their house.

8. PW-7 (Buddhadeb Ghosh) :

PW-7 was also declared hostile as he feigned ignorance of having any personal knowledge of the incident. He however admitted to have a meeting of the Panchayat on the issue.

9. PW-8 (Banamali Garai) :

PW-8 was the Pradhan at the relevant time. He took the letter of complaint filed by the father of the victim with regard to the earlier incident.

10. PW-9 (Dr. Brojendranath Biswas) :

PW-9 was the doctor who did the post mortem. According to him, the death was due to severe burn injury. He also proved the dying declaration. At time of making of the dying declaration by the deceased, Dr. N.N.Ghosh, ASI, Madhab Chandra Das and himself were present.

11. PW-10 (Ramendra Kishore Basak) :

PW-10 held the inquest.

12. PW-11 (Bibhuti Bhusan Patra) :

PW-11 was the father of the victim. He deposed that all the three accused made a plan and poured kerosene oil upon the victim and set fire. He also deposed that her daughter had told him that her mother in-law had poured kerosene oil on her and set fire at the instance of her husband and father in-law. While being treated at the hospital his other relatives also visited. He also deposed that his daughter could speak to them.

13. pw-12 (Bibekananda Patra) :

PW-12 treated the victim at the Durgapur Steel Plant Hospital. He deposed that the victim had told him that her mother in-law set fire on her body with kerosene oil on June 24, 1988 at about 11.00 a.m.

14. PW-13 (Adiya Prasad Mondal) :

PW-13 was the Ward Master of Bishnupur S.D. Hospital when the victim was admitted with burn injury. He deposed that on July 14, 1988 the victim succumbed to her injury.

15. PW-14 (Golok Bihari Mahanta) :

PW-14 was the Police Officer posted at Bishnupur P.S. in 1988.

16. PW-15 (Pratap Chandra Das) :

PW-15 was the Investigating Officer. He received the written complaint from Tapan Kumar Pal on the basis of which he started the Sonamukhi P.S. case no.5 dated June 24, 1988 under Section 498A/326/307 of the Indian Penal Code. He narrated in detail how the investigation was carried out.

Two defence witnesses were examined.

17. DW-1 (Trilochan Shaw) :

DW-1 deposed that accused behaved well with the victim who was mentally ill and was in the habit of shouting and quarrelling.

18. DW-2 (Dhiren Shaw) :

DW-2 another villager deposed to the same effect.

19. On the strength of the evidence so discussed above, the learned Additional Sessions Judge, 1st Court, Bankura held the accused guilty of the offence and convicted all of them to suffer two years rigorous imprisonment for the offence committed under Section 498A coupled with a fine of rupees one thousand each and in default to suffer simple imprisonment for three months and also to suffer rigorous imprisonment for life each coupled with a fine of rupees five thousand and in default simple imprisonment for one year for the offence committed under Section 302 read with Section 34 of the Indian Penal Code. The learned Judge observed that there had been matrimonial dispute which stood resolved through Gram Panchayat on the earlier occasion. At that juncture the victim tried to commit suicide to save herself from the torture of the accused. The learned Judge also observed that the mother in-law set fire on the victim in the presence of other accused. The dying declaration was proved through the doctor who treated her. The Superintendent of the hospital also certified with regard to such dying declaration and the capability of the victim to make such statement. According to the learned Judge, there was unimpeachable evidence that the mother in-law poured kerosene oil on the victim and set fire. With regard to other co-accused the learned Judge observed that under Section 106 of the Indian Evidence Act they were to explain how the death occurred. In absence of such explanation adverse inference should be drawn. According to the learned Judge, the alibi taken by the other two accused had to be proved by cogent evidence.

The learned Judge observed, *“it is therefore bounden duty on the part of the other accused to show that they were not present in the house failing which they will be definitely roped in for causing such injury on the person of Putul by invoking Section 34 of the Indian Penal Code.”*

The learned Judge also observed that the husband and father in-law stood like a silent spectator when the mother in-law set fire on the victim.

20. Being aggrieved, the appellants preferred the instant appeal. From the evidence as analyzed by us hereinbefore there cannot be any second opinion with regard to commission of crime by the mother in-law. PW-1 categorically deposed that Shakti poured kerosene on the victim and set fire. Such statement was corroborated by PW-2,3,4 and 11. The dying declaration was proved by the Superintendent of the hospital being PW-9 and the doctor who treated the victim being PW-12. Such statement was corroborated by the Investigating officer being PW-15. Hence, in our view, the learned Judge was right in convicting Shakti the mother in-law of the victim Putul Shaw under Section 302 read with Section 34 of the Indian Penal Code. We do not find any scope of interference on that score. The learned Judge, however, convicted Shakti also under Section 498A. Here we respectfully join issue. From the evidence we find that the dispute arose with regard to household work. Putul being a younger girl was not skilled to perform household work which annoyed her in-laws. As to allegation of cruelty, it is to be borne in mind that omnibus statement that torture was committed upon her would not be sufficient to sustain the charge under Section 498A.

21. Mr. Sekhar Kumar Basu, learned counsel appearing for the appellants contended that the evidence of PW-1 was not safe to be relied upon as it had contradictions from the evidence which

he deposed before the learned Magistrate while trying the minor accused. Similarly, PW-2 also made contradictory statements as would be apparent from his deposition made before the learned Magistrate. With regard to dying declaration Mr. Bose contended that the dying declaration was signed by the doctor four days after it had been recorded. Such irregularity would raise doubt as to its credibility and would not be safe to be relied upon without any corroboration. He also contended that the victim did not receive any injury apart from the burn injury as would be evident from the post mortem report. The alleged complaint with regard to physical and mental torture on her could not be relied upon as it would not be admissible under Section 32 of the Evidence Act. He prayed for setting aside of the conviction imposed by the Court below.

22. In support of his contention, he relied on the following decisions :-

i) 2002, Supreme Court Cases (Criminal), Page-461 (Gananath Pattnaik –VS- State of Orissa)

ii) 2007, Volume-V, Supreme, Page-713 (Mehiboobsab Abbasabi Nadaf –VS- State of Karnataka)

iii) 2007, Volume-I, Supreme Court Cases (Criminal), Page-715 (Balbir Singh & Another –VS- State of Punjab)

iv) 2007, Volume-I, Supreme Court Cases (Criminal), Page-726 (Mohd. Arshad –VS- State of Maharashtra and Others)

23. Mr. Ranjit Kumar Ghosal, learned counsel, appearing for the prosecution contended that there had been consistent evidence as against the mother in-law which could not be brushed aside. Such evidence was sufficient enough to uphold the conviction of mother in-law. With regard to other two accused, Mr. Ghosal contended that contemporaneous complaint made before the Panchayat relating to the earlier incidents would make the chain complete and would lead to positive inference that the other two accused being the husband and the father in-law assisted the mother in-law to

commit the crime. Hence, their conviction should also be upheld. In this regard he referred the evidence of PW-11 and PW-15 at pages 49 and 56 of the paper book.

24. observed hereinbefore, the evidence so laid by and on behalf of the prosecution would unmistakably lead to conclusion that the mother in-law Shakti being the third appellant committed the crime. Question, thus, remains whether the other two accused could be held responsible. PW-1, in his complaint stated that Putul was subjected to torture by all the three which prompted her to make an attempt to commit suicide by taking poison on the earlier occasion. He also stated that her mother in-law kicked her in the belly which compelled her to be admitted in Radhanagar Hospital and then Bishnupur Hospital. We find that as regards the alleged treatment in Radhanagar Hospital and subsequently at Bishnupur Hospital had not been substantiated by producing any paper issued by the said hospital. In absence of any such documentary evidence, we are of the considered view that the charge under Section 498A Indian Penal Code was not proved against any of the appellants.

25. With regard to Section 302 we would have to find out whether there was any evidence which would help us to uphold the conviction of the husband and the father in-law being the first and second appellant. From the complaint we find that on June 24, 1988 quarrel took place between Putul and her in-laws with regard to household work and all three poured kerosene oil on her and set fire. While deposing before the Court, PW-1 modified his statement. According to him the mother in-law committed the crime. The other two accused were, however, "present in their house". PW-1 neither spoke about any conspiracy nor any assistance being given by them to the appellant no.3. PW-1 also deposed that Putul told him that her mother in-law poured kerosene oil

over her body and set fire. Hence, the complaint as against the other two accused made by PW-1 did not find corroboration from his evidence when he deposed before the Trial Court. Similarly, the other witnesses did not specifically depose with regard to the involvement of the appellant no.1 and 2 on the unfortunate incident on June 24, 1988. PW-4 deposed that Putul told her that her mother in-law was responsible. PW-11 the father, however deposed that all the three hatched a conspiracy and then poured kerosene oil on her and set fire. Such statement of PW-11 did not find corroboration from any of the witnesses including the complainant being PW-1. According to the doctor, the dying declaration was hinted at mother in-law only.

26. The decision in the case of *Gananath Pattnaik (Supra)*, was cited by Mr. Bose to support his contention that there was no sufficient evidence as against the appellants which could lead to their conviction under Section 498A. In the said case the prosecution witnesses deposed that prior to death the victim had stated to the witness that she was not treated well by her husband and in-laws for non-fulfilment of balance dowry amount. Such statement was held to be not admissible for the offence punishable under Section 498A although the self-same statement would lead to conviction of the accused under Section 304B. In the instant case, no such evidence came out. We have already held that omnibus or generalised statement of torture as stated by the PWs do not relate to the cause of death and hence hit by Section 32 of the Evidence Act and, therefore, those statements have no role to play so far as the charge under Section 302 / 34 is concerned.

27. The case of *Balbir Singh & Another (Supra)*, was relied upon to support the defence case that there was discrepancy as to the multiple dying declaration, hence, would not be safe to rely upon on

either of them. This case, in our view, has no application in the case before us in view of the facts and circumstances involved herein.

28. decision in the case of *Mohd. Arshad (Supra)*, and *Mehiboobsab Abbasabi Nadaf (Supra)*, were cited also on the issue of dying declaration.

29. To sum up, we find no cogent evidence as against the appellant no.1 and 2. We find that the victim herself did not make any allegation as against the appellant no.1 and 2 and made the appellant no.3 only responsible for her death. Hence, the learned Judge of the Court below was not right in convicting the appellant no.1 and 2 being the husband and father in-law.

The appeal thus succeeds in part.

30. The conviction and sentence given to the mother in-law Shakti Shaw under Section 302 Indian Penal Code is upheld. The conviction of Shakti under Section 498A is set aside and she is acquitted of the said charge.

31. The appellant nos. 1 and 2 are held not guilty of the charges under Section 498A and under Section 302 read with Section 34 of the Indian Penal Code. Their convictions are accordingly set aside. They are acquitted of all the charges brought against them.

32. The Court below is directed to issue modified jail warrant in respect of the appellant no.3 being Shakti Shaw so that she could suffer the remainder part of the sentence.

33. A copy of this judgment be sent to the Correctional Home where the appellant no.3 is suffering her sentence.

34. Lower Court Records be sent down at once along with a copy of this judgment.

Urgent xerox certified copy will be given to the parties, if applied for.

Kalidas Mukherjee, J:

I agree.

[ASHIM KUMAR BANERJEE,J.]

[KALIDAS MUKHERJEE,J.]