

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No. 105 of 2010

Shri Sudhangshu Paul,
son of late Abhinash Paul,
resident of Cungicherra,
P.S. Radhakishorepur, Dist. South Tripura

..... Petitioner

- V E R S U S -

The State of Tripura,
represented by the Secretary-cum-Commissioner, Department of
Home, Government of Tripura, Agartala

..... Respondent

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner	:	Mr. N. Majumder, Advocate.
For the respondent	:	Mr. A. Ghosh, P.P. and Mr. J. Debbarma, Advocate.
Date of hearing & judgment & order	:	05.06.2015
Whether fit for reporting	:	No

JUDGMENT & ORDER (ORAL)

Heard Mr. N. Majumder, learned counsel
appearing for the petitioner as well as Mr. A. Ghosh, learned
Public Prosecutor along with Mr. J. Debbarma, learned
counsel appearing for the State.

[2] This is a petition under Section 397 read with Section 401 of the Cr.P.C. questioning legality of the judgment and order dated 29.09.2010 delivered in Criminal Appeal No. 16(3) of 2010 by the Sessions Judge, South Tripura, Udaipur(now Gomati, Tripura).

[3] By the said judgment dated 29.09.2010, the judgment dated 07.06.2010 delivered in ST57 (ST/U)/2009. by the said court, the Assistant Sessions Judge, South Tripura, Udaipur, has been affirmed. The trial court convicted the petitioner under Section 498(A) of the IPC and acquitted him from the charge under Section 306 of the IPC. In terms of the conviction under Section 498(A) of the IPC the petitioner has been sentenced to suffer rigorous imprisonment for 1(one) year.

[4] The genesis of the prosecution is rooted in the complaint filed by one Shri Sankar Paul, PW-1, disclosing that on 13.06.08, at about 9.00 am his niece namely Ms. Beuty Paul came to his residence and informed that her mother consumed poison. Immediately he rushed to the house of his sister and came to know that his sister had expired. In that written ejahar he has also disclosed that after marriage, her sister was subjected to torture on unlawful demand of dowry. Based on the said written ejahar

dated 13.06.08, R.K. Pur P.S. Case No.163/2008 under Section 498(A)/306/34 of the IPC was registered and taken up for investigation. On completion of the investigation, the final police report was filed and thereafter observing all formalities the case was committed to the Court of Sessions Judge, South Tripura, Udaipur, as the offence under Section 306 of the IPC is exclusively triable by the Court of Sessions. The Sessions Judge, South Tripura, Udaipur in the course of time transferred the case to the Court of Assistant Sessions Judge, South Tripura, Udaipur for disposal in accordance with law. The Assistant Sessions Judge, South Tripura, Udaipur, framed the charge under Section 306/498(A) of the IPC against the petitioner to which the petitioner pleaded not guilty and claimed to face the trial.

[5] To substantiate the charge, prosecution adduced as many as 9 witnesses including the informant, the doctor who conducted the post-mortem examination and the investigating officer and also introduced some documentary evidence including the written ejahar, the inquest report and the post-mortem examination report.

[6] Thereafter, the petitioner was examined under Section 313 of the Cr.P.C to have his response on the incriminating materials those surfaced in the evidence led by

the prosecution, when the petitioner reiterated that he was innocent and he had been implicated in the case falsely.

[7] The trial court after purported appreciation of the evidence convicted the petitioner under Section 498(A) of the IPC and acquitted him from the charge under Section 306 of the IPC, by the said judgment dated 07.06.10. Being aggrieved by that judgment the petitioner preferred an appeal under Section 374(3) of the Cr.P.C. to the court of the Sessions Judge, South Tripura, Udaipur as the sentence was below 7 years. After hearing the appeal the Sessions Judge, South Tripura, Udaipur, by the impugned judgment and order dated 29.09.10 dismissed the appeal by affirming both the judgment and the sentence. To question the legality of that judgment dated 29.09.10, the petitioner has preferred this revision petition.

[8] Mr. N. Majumder, learned counsel appearing for the petitioner has submitted that there is no evidence that there was unlawful demand for which the victim was subjected to harassment or that the petitioner had wilfully acted to cause such injuries or coercion which might lead the victim to commit suicide or cause grave injury to her person or mind. He has submitted that only the related witnesses

have stated that the petitioner used to assault the victim physically under influence of liquor.

[9] Mr. Majumder, learned counsel has fairly submitted that PW 5, Smt. Sefali Sutradhar and PW-7 Sri Khitish Pal who are the Pradhans of their respective villages have stated that they conciliated different matrimonial discords between the petitioner and the deceased, Chabi Paul. Even they have not disclosed that the deceased was subjected to torture or harassment for un-lawful demand or the conduct of the petitioner was, as such that the deceased was expected in the ordinary course of action to commit suicide or that he caused grave injuries to her person or mind. He urged for setting aside the judgment of conviction as affirmed by the impugned judgement.

[10] From the other side, Mr. J. Debbarma, learned counsel appearing for the State has submitted that there is no rule that the related witnesses cannot be believed rather they are the witnesses who are only supposed to be the persons who could know what happened within the four corners of the domestic walls. While trying a case for commission of offence under Section 498(A) of the IPC, such witnesses rather play a vital role in exposing the truth. He has further submitted that there is no denying fact that the

victim was subjected to physical assault. However, Mr. Debbarma, learned counsel could not give any explanation why the daughter of the victim who first informed the occurrence to the informant (PW-1) was withheld by the prosecution. Even no endeavour has been made to bring her in the trial.

[11] Be that as it may, when this Court is confronted with the finding as regards the fact, it would be apposite for the Court to have a survey of the evidence even though in a very brief manner for weighing the challenge that has been extended by this petition. As already noted that in the written ejahar it has been stated that there was un-lawful demand but surprisingly when PW-1 came to depose in the trial he did not support his own statement and he has merely stated that the petitioner used to beat his sister, Chabi Paul at night 'under influence of liquor'. After beating her, he used to drive her out from his residence. When in the year March 2008 the victim was physically assaulted she came out of her matrimonial home and on the following day he had reported the matter to the Panchayat Pradhan. The Panchayat Pradhan returned her back to the matrimonial home. On 13.06.08 the accused had beaten his sister again and driven out her from his house and then she took poison. Thereafter, she was taken to the Tripura Sundari District Hospital,

Udaipur where she died. Whether the evidence supports that allegation?

[12] PW-2, Smt. Namita Pal is the elder sister of the victim. She has narrated that her sister was subjected to torture by the petitioner 'under influence of liquor'. She has made categorical statement that "*her sister did not state to me for what reason her husband used to assault her at night under influence of liquor*". However, she has confirmed that there was Panchayat meeting and lastly on 12.03.08 the panchayat tried to mitigate the matrimonial discord which emerged as her sister was again tortured by the petitioner. Even once her sister came to their home having been assaulted by her husband. She has also stated that on 13.03.08 her husband had beaten her in the morning and as a result she took poison being unable to bear torture of her husband. She was declared dead when she was brought to the T.S.D. Hospital. She did not waver on any statement during her cross-examination. But she failed to disclose from whom she came to know the last episode.

[13] PW-3, Sri Gopal Pal, the elder brother of the victim has completely replicated the statement of PW-1 but added that on 13.06.08 in the morning his sister was assaulted by her husband by lathi as reported to them by her

sister on arriving at their house. Thereafter, the daughter of the victim arrived at their house and stated to them that her mother had taken poison. She was taken to the T.S.D. Hospital, where she was declared dead. This witness was declared hostile by the prosecution as he had improved his statement over what he stated to the Investigating Officer. No material could be elicited by the defence from his cross examination. He has not invested any statement as to how his sister came to know about the assault in the morning or where and when she talked to the victim.

[14] PW-4, Partha Pradip Shil, is the scribe and he did not add a single line except saying that he had written the complaint (Exbt.P-1/1) as per dictation of Sankar Paul (PW-1).

[15] PW-5, Smt. Sefali Sutradhar, is the former Pradhan of Sim Sima village. She has stated that *"at about 2/3 years back said Chhabi Pal came to me and alleged that her husband assaulted her. At that time she was at her father's house. I told Chhabi Pal to approach before the Pradhan of her area, I also assured her that I also convey with Pradhan of Uttar Kalaban Panchayat concerning her allegation. Then Panchayat of Uttar Klaban and our Panchayat sat in a joint meeting where we made*

reconciliation of the dispute in between Sudhanshu and his wife Chhabi. Then both went in their matrimonial home. After elapse of 2/3 months I heard that Chhabi Pal has taken poison and died of such taking of poison. Chhabi only once approached before me with her allegation". This witness was also declared by the prosecution as hostile, as she had drifted from her previous statement as recorded under Section 161 of Cr.P.C. She has stated in the cross examination that no written complaint was filed before any of the Panchayats.

[16] PW-6, Sri Dulal Ch. Dutta, was the officiating officer in- charge of R.K. Pur P.S. on 13.06.08 when the victim consumed poison. After her death when the written ejahar was filed he had recorded the ejahar and registered the case. He had entrusted the investigation to Sri Panna Lal Sen (PW-9). He has also admitted that before registration of the said police station case he had also started a case for her unnatural death on the information of the doctor from T.S.D. Hospital at Udaipur.

[17] PW-7, Sri Khitish Pal, was the Gram Pradhan of Uttar Kalaban and he has stated in the trial that "*In the year of 2008, Chabi Paul approached our Panchayat for remedy against the allegation of her husband for beating on her. On*

the basis of the allegation we the local heads of the panchayat and other people arranged a conciliation meeting. We mitigated the dispute in between Chabi Rani Paul and her husband and we reconciled their dispute and sent them to their matrimonial home to live in future in peace. In the conciliation meeting Sudhangshu Paul assured that he will not repeat his beating to his wife. We also found some fault with his wife. Thereafter, on the following month again Chabi Paul came with the same allegation and we arranged to send her to her husband's house with one Matilal Das. Chabi Paul used to report to the Panchayat and others of the locality that Sudhungshu Paul used to torture her prior to 2/3 years of her death". He has also stated that the resolution of the Panchayat even was not reduced in writing.

[18] PW-8, Dr. Debashis Pal conducted the post-mortem examination on the body of the victim and he identified the post-mortem examination report which this Court would deal separately. He has admitted that the report is related to the case of un-natural death vide R.K. Pur P.S. Case NO. 30/08. He has categorically stated that "*there is no ante mortem injury on body of the deceased. There may be marked of injury upon a person if he subjected to blow by a stick of 22.*"

[19] PW-9, Sri Panna Lal Sen, the investigating Officer, has narrated how he investigated the case. He has stated that he seized one branch of tree measuring 22" on preparing the seizure list (Exbt.P-2/1), which has been introduced by him in the evidence. After completion of the investigation and having been satisfied that the prima facie case against the petitioner surfaced, he filed the charge sheet against the petitioner. In the cross examination, he has categorically stated that *"at the time of preparing of Surthal report of the deceased I do not find any mark of injury in the person of deceased"*.

[20] In the post-mortem examination report (Exbt.4), it has been clearly noted that there was no extraneous injury found on her body. Body structure was healthy and intact. The petitioner in his examination carried out under Section 313 of the Cr. P.C. did not say anything why his wife consumed poison. But it is apparent from the records of evidence that there was no witness who had seen the victim to have been beaten up by the petitioner on 13.06.2008 except what PWs 2 and 3 have stated without disclosing any detail to lend some credence to their statement. But their statements are curious enough. They have stated that on 13.06.2008 in the morning, Chabi Pal was assaulted by her husband by a lathi as reported to them by their sister (the

deceased) on arriving in the house of PW-2. Neither PW-1 nor the sister who was examined as PW-2 did not detail that episode. Therefore, that statement also cannot be believed. Now both from the inquest report and from the post-mortem report this Court can safely come to the finding that there was no external injury on the person of the deceased and as such the story of beating in the morning by 'a lathi' cannot be believed by this Court. This is the reason why the petitioner was acquitted from the charge framed under Section 306 of the IPC. But this has got to affect the credence of the related witnesses and their role to expose the truth.

[21] It is apparent on the face of the record that there is no un-lawful demand of dowry. There is an allegation of beating or physical assault on the victim by the petitioner under influence of liquor. Whether such conduct can be brought within the meaning or sweep of the other wilful conduct is to be assessed by the court. No doubt, the conduct as alleged if is believed by the Court is obnoxious in nature. Even the petitioner might have been accused under some other provision of the IPC. But such offence would not definitely be cognate to the offence punishable under Section 498(A) of the IPC. Even those incidents are not definitely stated, when and how and on what date those had taken

place. There are all general and sweeping statements. As such this Court is of the view that even if passion tends to drive, but this Court is to be guided and governed by the legal evidence and hence the finding of the conviction returned by the court cannot be affirmed or sustained by this Court.

[22] As a result the petitioner is acquitted from the charge under Section 498(A) of the IPC for committing offence of cruelty on benefit of doubt. Accordingly the impugned judgment and order is set aside.

[23] This petition stands allowed. Send down the LCRs forthwith.

JUDGE

A. Ghosh