

**HIGH COURT OF TRIPURA
AGARTALA**

CRL. A. NO. 15 OF 2013

Sri Pradip Bhowmik,
S/o Sri Suresh Bhowmik of
Chamanu, Amtali,
P.S. Chamanu, Dist. Dhalai Tripura.

.....**Convict-Appellant.**

- Vrs -

The State of Tripura.

..... **Respondent.**

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the appellant : Mr. A.K.Banerjee, Advocate.

For the respondent : Mr. A. Ghosh, P.P.

Date of hearing : 07.05.2015.

Date of delivery of judgment & Order. : 01.06.2015.

Whether fit for reporting : **Yes**

JUDGMENT & ORDER

Pursuant to a charge-sheet submitted by SDPO, Amarpur in connection with Birganj P.S. Case No.57/2005, under Sections 498(A) and 304(B) of IPC vide charge-sheet No.5/11 dated 28.02.2011, cognizance was taken by learned SDJM, Amarpur and on commitment to the Court of Sessions, learned Sessions Judge, Udaipur, South Tripura (now Gomti)

on 13.09.2011 framed charges against accused appellant Pradip Bhowmik, his father Suresh Bhowmik, mother Basana Bhowmik, sister Sandya Bhowmik and brother Kishore Bhowmik for commission of offence punishable under Sections 498(A) and 304(B) of IPC and in the alternative under Section 302 of IPC to which the accused persons including the appellant pleaded not guilty and hence trial was taken up.

At the conclusion of trial except accused-appellant Pradip Bhowmik, other accused persons were acquitted of all the charges. Accused-appellant Pradip Bhowmik was convicted under Section 498(A) of IPC and he was also acquitted of the charge under Section 304(B) of IPC and the alternative charge under Section 302 of IPC.

2. Having felt aggrieved, the convict-appellant Pradip Bhowmik preferred the present appeal under Section 374 of Cr.P.C.

3. Heard learned counsel Mr. A. K. Banerjee for the appellant and learned P.P., Mr. A. Ghosh for the State-respondent.

4. Prosecution case is that the accused-appellant Pradip Bhowmik had been working as a driver constable of TSR posted at A.D.Nagar. Smt. Sangita Biswas, daughter of the informant Smt. Kanika Biswas of A.D.Nagar, Agartala had

developed love affairs with accused Pradip Bhowmik and on 26.09.2001 they eloped and without consent of the parents of Sangita marriage was solemnized between Pradip and Sangita and the marriage was accepted by the parents of Pradip i.e. the other accused persons and thereafter they had been living at Chamanu, village Amtali in the house of the accused persons for some time.

4.1 It is the case of the prosecution that Sangita was subjected to torture and tormentation in the matrimonial home on demand of a motor bike, one colour TV and cash Rs.50,000/- which parents of Sangita could not satisfy immediately and therefore, she was subjected to physical and mental torture. Once because of torture she took shelter at Chamanu P.S. wherefrom O.C. of the P.S. put her back to the house of the accused persons with serious caution. A male child was born to Pradip and Sangita and thereafter while Pradip was transferred to Daluma TSR Camp, Pradip with his wife Sangita and the minor child shifted to Daluma TSR barrack and had been living there. After the marriage of the son of the informant Kanika Biswas, Rs.10,000/-, furniture, colour TV and golden ornaments etc. were given to accused but even thereafter Sangita was subjected to torture. It is the case of the prosecution that on 08.12.2005 Sangita was set to fire by pouring kerosene/petrol on her body and as a result,

she received 90% burn injuries and was shifted to Amarpur Hospital wherefrom she was shifted to G.B. Hospital but in G.B. Hospital on the same date she succumbed to the injuries.

5. Smt. Kanika Biswas, mother of Sangita lodged the FIR in writing on 10.12.2005 and accordingly, Birganj P.S. Case No.57/05, under Section 304(B) of IPC was registered and after investigation charge-sheet was submitted by SDPO, Amarpur for commission of offence punishable under Sections 498(A) and 304(B) of IPC.

6. In course of trial, prosecution examined as many as 23 witnesses namely-

P.W.1 Smti Kanika Biswas,
P.W.2 Shri Ashis Biswas,
P.W.3 Shri Subrata Biswas,
P.W.4 Shri Rushan Pradhan,
P.W.5 Shri Biplab Kr. Shil,
P.W.6 Shri Manik Biswas,
P.W.7 Shri Jogandra Prasad Singh,
P.W.8 Shri Dharendra Kr. Das,
P.W.9 Shri Gautam Chakraborty,
P.W.10 Shri Shibu Ranjan Chakraborty,
P.W.11 Dr. Ranjit Kr. Das,
P.W.12 Shri Dharendra Ch. Das,
P.W.13 Shri Subhendu Das Gupta,
P.W.14 Shri Sudhir Debnath,

P.W.15 Shri Benoy Lodh,
P.W.16 Shri Shyamal Ghosh,
P.W.17 Shri Anish Prasad,
P.W.18 Shri Subrata Chakraborty,
P.W.19 Shri Nityananda Sarkar,
P.W.20 Shri Navadwip Jamatia,
P.W.21 Shri Jayanta Karmakar,
P.W.22 Shri Pradip Das,
P.W.23 Shri Ashoke Kr. Paul.

7. Out of the aforesaid witnesses, P.W.1 is the mother of the deceased and is the maker of the FIR. P.W.2 is the elder brother of the deceased. P.Ws 3,4 and 5 are all TSR personnel of Daluma TSR camp and out of them, P.W.3 is a witness to the Exhibit-M.O.1 series, P.W.4 is a driver constable of TSR and shifted Sangita to hospital after she received burn injuries and P.W.5 is a Washer man of TSR and they stated nothing incriminating against the accused. P.W.6 is a witness to the seizure of Exhibit-M.O.1 series. P.W.7 and 15 stated that they knew nothing about the case. P.W.8 is the scribe of the FIR. P.W.9 is a driver of TSR and his evidence is important for consideration. P.W.10 was a Sub-inspector of Police of Chamanu P.S. at the relevant point of time. His evidence is also important for consideration. P.W.11 is the Medical Officer who conducted post mortem examination over the dead body of the deceased. P.Ws 12,17,18,20 and 22 are the I.Os of the

case. P.W.13 was working as SDJM, Amarpur at the relevant point of time and he recorded the statement of P.W.9 under Section 164 of Cr.P.C. P.W.14 and 16 are witnesses to the seizure of Exhibits-M.O.2. P.W.19 was the O.C. of Birganj P.S. and he registered the case on receipt of FIR from P.W.1. P.W.21 is a witness to the seizure and P.W.23 prepared inquest report over the dead body.

8. While considering the evidence on record, learned Sessions Judge has held that the prosecution has failed to prove the charge under Section 304(B) of IPC and the alternative charge under Section 302 of IPC against all the accused persons but at the end he has held accused-appellant Pradip Bhowmik guilty of the charge under Section 498(A) of IPC but acquitted other accused persons of the said charge.

9. On careful perusal of the judgment passed by learned Sessions Judge, I find no discussion as to based on the evidence of which witness and/or what item of evidence, the learned Sessions Judge has held the accused-appellant guilty of charge under Section 498(A) of IPC.

10. In a criminal trial burden lies on the prosecution to prove the charge. In certain specific cases, burden shifts on the accused to prove his innocence if initial burden of proving the case is discharged by the prosecution. The Supreme Court

in the case of **Rajbabu & Anr. V. State of Madhya Pradesh** reported in **(2008) 17 SCC 526** while relying on an earlier decision of the Apex Court in the case of **State of West Bengal V. Oril Jaiswal**, reported in **(1994) 1 SCC 73** has held that in a criminal trial, however, intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises or conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498(A), IPC and Section 113A of the Evidence Act. Although, the Court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubt must depend upon the facts and circumstances of the case and quality of the evidence adduced in the case and the materials placed on record. Lord Denning in **Bater v. Bater, (1950) 2 All ER 458** has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter.

11. Section 498(A) of IPC prescribes punishment for the exercise of cruelty on a married woman by her husband or other relatives of the husband. Explanation to Section 498(A) defines the meaning of 'cruelty' which reads as follows:-

"Explanation—For the purposes 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 demand."*

12. The learned Sessions Judge while acquitting the accused-appellant and others from the charges under Sections 304(B) and Section 302 of IPC has arrived at a conclusion that the allegation of harassment to meet unlawful demand for property and other valuable security etc. has not been proved and that finding of the learned Sessions Judge has not been challenged. Therefore, we need not re-examine the evidence on the point of harassment for non-fulfillment of any unlawful demand. The learned trial Judge has not elaborately discussed in the judgment as to how the allegation of cruelty as defined in *explanation (a)* to section 498(A) of IPC has been proved.

13. The Supreme Court in the case of **Girdhar Shankar Tawade v. State of Maharashtra**, reported in **(2002) 5 SCC 177** has held in Para 3 as under--

"3.The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures : Whereas Explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A."

14. In the given facts of the present case, while the accused has already been acquitted from the charge under Section 304(B) of IPC, from the prosecution evidence it has not be proved beyond reasonable doubt that the accused has conducted in such a manner which was likely to drive the deceased to commit suicide or to cause grave injury or danger to life, limb or health.

15. Admittedly, Sangita, a very young lady of about 19 years died within 7 years of marriage otherwise than in normal circumstances. The Medical Officer (P.W.11) did not

mention as to whether it was suicidal or homicidal but the trial Court has held that neither the charge under Section 304(B) nor the charge under Section 302 has been proved and so, we need not enter into that controversy again which is not challenged before us. It is shocking that a young woman died leaving her minor son at such young age because of burn injuries. May be the incident is shocking but to hold anybody guilty for the incident, there must be cogent evidence on record.

16. P.W.1, the mother of the victim lodged the FIR on 10.12.2005. The incident occurred on 08.12.2005. The victim died on 08.12.2005. Why there was delay in lodging the FIR has not been explained at all. However, the FIR as I find is in details narrating various facts. P.W.8 is the Scribe of the FIR and he proved the FIR as Exhibit-1/1. P.W.1, the informant Kanika also proved her signature in the FIR and stated that it was written as per her dictation. In the FIR P.W.1, the informant alleged that after elapse of some days, after marriage, the accused persons demanded motor bike, colour TV and cash Rs.50,000/-. She has also alleged that before last Durga Puja at night, at about 12-30 a.m. Sangita was threatened and tormented to bring Rs.50,000/- and colour TV immediately and the accused Pradip and his elder brother Kishore even made an attempt to kill her by throttling and she

took shelter at Chamanu P.S. and thereafter O.C. of Chamanu P.S. took her back to the house of the accused persons and cautioned them seriously. She has also alleged that in the meantime, she arranged Rs.10,000/-, furniture, colour TV, one gas oven and golden ornaments etc. and those were given to the accused persons since at the time of marriage nothing was given. After some days Sangita came to her house with her son and was living there. Thereafter, the accused along with his friend Goutam Chakraborty (P.W.9) came to her house and requested to take back Sangita and accordingly, Sangita was given back. She also alleged that on 30.11.2005 in the 'boubhat' ceremony of her son, Pradip had demanded motor bike within 7 days.

16.1. In her deposition before Court she stated that after one year of marriage both Pradip and Sangita came to her house and Sangita reported that on the previous night Pradip and his brother was about to kill her and she took shelter at Chamanu P.S. She also stated that one Archana Debnath had died in the house of Sangita but Sangita started accusing that Pradip and his brother killed Archana. As such, Sangita was assaulted by Pradip. She further stated that torture on Sangita was started thereafter every now and then and after 10/15 days Pradip along with his parents and sister came to her house and demanded Rs.50,000/- to be paid

within a week. Thereafter a son was born to Pradip and Sangita and they shifted to Daluma TSR camp and had been living there. They attended marriage of her son and after 7 days a TSR personnel came to her house and reported that Sangita was in hospital. On that information she went to hospital and found her daughter crying saying that her husband killed her. About 6 months before the marriage of her son she gave Rs.10,000/- and other articles but Pradip was not satisfied. She also alleged that her daughter asked her to give a motor bike to Pradip.

17. P.W.2, the brother of Sangita stated that after about 6 months of marriage Pradip came to their house and demanded Rs.50,000/- in cash, one motor bike and other articles to his parents and his parents reported it to him. After about 2/3 months of such demand they paid Rs.10,000/- in cash and a few articles but could not give the motor bike. Sangita continued her conjugal life and at the time of his marriage, Pradip and Sangita both visited his house and attended the marriage ceremony. After 7 days of the marriage, he received a telephone call from one person that his sister has been admitted in G.B. hospital and he went to G.B. hospital with his brother-in-law Jiban Sarkar and found Sangita dead. His parents arrived at the hospital before his

arrival and reported him about the death that Sangita told them that Pradip killed her.

18. P.Ws 9 and 10 are the two other witnesses whose evidence is important for consideration. As already stated earlier besides mother and brother of the deceased and P.Ws 9 and 10, there is nothing material in the evidence of other witnesses for consideration to decide a charge under Section 498(A) of IPC. I have already stated that the cruelty on the allegation of harassment on demand of dowry has already been decided in negative. Only issue to be decided is whether there was willful conduct on the part of the accused which was bound to drive the deceased Sangita to commit suicide or to cause grave injury to her life, limb or health. At least in the evidence of P.Ws 1 and 2, I find no such cogent evidence to arrive at a conclusion that the accused conducted himself in any manner to drive the deceased to commit suicide or to cause grave injury to her life, limb or health.

18.1. One of the allegations made in the FIR is that prior to last Durga puja (before the date of lodging FIR) at night at about 12-30 a.m. she was threatened and tormented on demand of Rs.50,000/- and colour TV and at that time, the accused Pradip and his elder brother Kishore tried to throttle her and she took shelter to Chamanu P.S. and O.C. of the P.S. handed over her to accused Suresh with serious caution.

P.W.1 in her deposition stated that after one year of marriage Pradip and Sangita came to her house and Sangita reported that on the previous night Pradip and his elder brother was about to kill her and she took shelter at Chamanu P.S. Marriage between Pradip and Sangita as alleged was solemnized on 26.09.2001 as per deposition of P.W.1 if that incident occurred after one year of marriage, it had occurred in the year 2002. But in the FIR she stated that prior to last Durga Puja the incident occurred which means prior to the last Durga Puja of the date of lodging FIR and if it is so, it occurred in the year 2004. P.W.10 has been examined by prosecution only to prove that fact. He stated that in the month of March,2005 in one night he heard 'hulla' in the house of Suresh Bhowmik (accused), father of accused Pradip Bhowmik. Just after that, one married girl appeared in the P.S. with petty coat and blouse and her mother-in-law and sister-in-law followed her. On his query that girl did not tell anything but the mother-in-law reported him that there was some family hiccups and it will be solved by them and thereafter they left the P.S. As already stated P.W.10 was a Sub-inspector of Police of Chamanu P.S. at that time. So there was an incident in the month of March,2005 that a young girl appeared at P.S. with petty coat and blouse followed by her mother-in-law and sister-in-law but that girl did not make any allegation and she was taken back. Therefore, there are lot of

contradictions between P.Ws 1 and 10 about the alleged occurrence actually when such incident occurred and so implicit reliance cannot be placed on such evidence of P.Ws 1 and 10. Surprisingly P.W.2, the brother of the deceased did not utter a single word on the issue.

19. P.W.1 in her deposition stated that when she reached hospital she found her daughter crying saying that her husband killed her but in the FIR she did not make any such allegation. Her attention was drawn to her previous statement which has been marked as Exhibit-A wherein she stated that she went to hospital after her son-in-law and when she reached hospital she found her daughter already died. So, this allegation of the informant that the deceased told her that she was killed by her husband has not been substantiated. P.W.2 only stated about the demand of Rs.50,000/- in cash, motor bike and other articles and further stated that Rs.10,000/- and some articles were given and he did not say anything else that the accused conducted with the deceased in such a manner which was likely to drive the deceased to commit suicide or to cause grave injury to her life or limb. P.W.1 also in her deposition except that of the demand of money and other articles stated nothing more to prove the allegation of any willful conduct of the accused which was

sufficient to drive the deceased in committing suicide or causing grave injury to her life or limb.

20. Let us now come to the evidence of P.W.9. He is a driver constable of TSR and according to the informant he along with the accused once visited her house to bring back Sangita to the matrimonial home. In his deposition, he stated that on one day he was requested by Pradip to accompany him to the house of sister of Pradip at Agartala where mother of Sangita also accompanied them and in the house of sister of Sangita, the parents of Pradip demanded motor bike, TV etc. as the marriage of Pradip was a love marriage and no gift was given and that he urged Pradip not to demand anything. But the sister of Pradip opined that he being a third person should not interfere and therefore, he left the house. This fact which is stated by P.W.9 has not been stated by P.Ws 1 and 2. No such allegation also made in the FIR. If P.W.1 had accompanied the accused Pradip and P.W.9 to the sister's house of Pradip and a demand was made there, P.W.1 would definitely state it in her deposition. Further as I find P.W.9 did not make this statement before I.O. when he was examined under Section 161, Cr.P.C. P.W.17, the I.O. of the case stated that such statement was not made by this witness to him when he was examined under Section 161 Cr.P.C. Therefore, this statement of P.W.9 does not inspire any confidence.

P.W.9 further stated that on different occasion Sangita informed him that Pradip used to physical torture her. This statement of the witness was also not corroborated by other witnesses. Further, as I find in the evidence P.W.13, that while examination under Section 164 of Cr.P.C. this witness did not make any such statement. P.W.9 also stated that Pradip told him that on one occasion he gave a slap to Sangita whereas the witnesses did not make such statement in his previous statement recorded under Section 164 of Cr.P.C. and his such statement also not supported by P.Ws 1 and 2. P.W.9 as it appears was residing as a tenant near the house of P.W.1 and it is suggested by defence that at the influence of P.W.1 he made false allegation. I have very carefully scrutinized the evidence of P.W.9 and it is very difficult to put implicit reliance on his evidence since he is not creditworthy enough to rely solely and there is no other corroborating evidence to prove a willful conduct of the accused which was sufficient to drive Sangita to commit suicide or to cause grave injury or danger to her life, limb or health.

21. Sangita, the wife of the accused-appellant died otherwise than in normal circumstances on receipt of 90% burn injuries. Except denial, the accused did not come out with any explanation as to why and under what circumstances Sangita died such an un-natural death. She left behind a small

kid. Ordinarily, it is not natural for such a young wife to end her life unless there was some reason behind doing so. The accused neither at the time of cross examination of prosecution witnesses nor in his examination under Section 313, Cr.P.C. came out with any probable story for which Sangita ended her life. This circumstance no doubt goes against the accused but to hold the accused guilty of a charge under Section 498(A) of IPC, prosecution is to prove that the accused conducted willfully in a manner which drove the deceased to end her life. Mere stray statements that she was subjected to torture or tormentation in the matrimonial home is not sufficient to hold an accused guilty of the charge and to punish him. It may happen that the deceased ended her life for any reason which was not attributable to the accused and under such circumstances unless there is cogent evidence, it will not be proper to punish the accused only on assumption or presumption.

22. In view of the discussions made above, I am of considered opinion that prosecution case in respect of charge under Section 498(A) of IPC against the accused-appellant is doubtful and the accused-appellant is entitled to get benefit of doubt.

23. The judgment and order of conviction and sentence dated 04.06.2013, passed by learned Sessions

Judge, South Tripura, Udaipur in Sessions Trial No.32(ST/A)/2011 is set aside. The accused-appellant Pradip Bhowmik is acquitted and set at liberty.

24. Send down the L.C. records along with a copy of this judgment.

JUDGE