

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE PARTHA SARATHI SEN

C.R.A. No. 324 of 2003

Dilip Kumr Dey and Anr.

-Versus-

The State of West Bengal.

For the appellants:

**Mr. Ashok Biswas, Adv.,
Mr. Tirtharaj Ghoshal, Adv.**

For the respondent/State:

Mrs. Faria Hossain, APP.

Last Heard on : 11.03.2025

Judgment on : 17.03.2025

PARTHA SARATHI SEN, J. : –

1. The subject matter of the instant appeal is the judgement of conviction and order of sentence both dated 17.07.2003 passed by the Learned Additional Sessions Judge, 3rd Court, Bankura in Sessions Trial no.1(2)/1997/Sessions case no.12(5)/1995. By the impugned judgement learned trial court found accused Dilip Kumar Dey and accused Shankari Dey guilty of the offences under Sections 498A/306 IPC and thus sentenced them to suffer RI for 5 years each and to pay a fine of Rs.1000/- each i.d. to suffer RI for 6 months each for the offence committed by them under Section 306 IPC. The said convicts are further sentenced to suffer RI for 3 years each and to pay a fine of Rs.500/- each i.d. to suffer RI for 3 months each for the offence committed by them under Section 498A IPC with a further direction that both the sentences

would run concurrently. The said two convicts felt aggrieved and thus preferred the instant appeal.

2. For effective adjudication of the instant appeal the facts leading to initiation of the aforementioned sessions trial is required to be dealt with in a nut shell.

3. One Bampada Nandi of village Lalpur, P.S Onda, District Bankura lodged a written complaint dated 04.08.1993 with the O/C Onda P.S stating inter alia, that at about 6/7 years back marriage of his sister Sumitra was solemnized with one Dilip Kumar Dey, son of Subal Chandra Dey as per Hindu Rites and Customs. It has been stated further in the said written complaint that soon after such marriage her said sister was subjected to torture both physically and mentally at her matrimonial home at the instance of her husband, parents-in-law, brother-in-law and brother of her father-in-law namely; Dilip Kumar Dey, Subal Kumar Dey, Shankari Dey, Bhojohori Dey and Kalipada Dey respectively. It has also been disclosed in the said written complaint that the said Sumitra used to narrate the incident of such torture to the family members of her paternal home as well as to many persons of their locality. It has been stated further in the said written complaint that on account of such physical and mental torture his said sister became totally shattered since she was kept half fed and made to wear torn wearing apparels and was even forced to live with her husband against her will. It has been stated further that being unable to forebear such torture his said sister committed suicide by hanging on 03.08.1993 at about 11:45 pm.

4. On the basis of such written complaint Onda P.S case no.58 of 1993 dated 04.08.1993 under Sections 498A/306 IPC was started. Investigation was taken up and on completion of the same charge sheet was submitted under Sections 498A/306/34 IPC. After commitment and transfer learned trial court considered the charges against the accused persons on 10.02.1997 and on consideration of the entire materials as placed before him framed charges under Sections 498A/306 IPC against the five accused persons who were named in the FIR. While framing charges the said five accused persons pleaded their innocence and claimed to be tried and thus the said trial proceeded.

5. In order to bring home the charges as against the accused persons the prosecution has examined 12 witnesses in all and several documents have been exhibited on their behalf. On behalf of the defence two witnesses have also been examined. From the trend of cross-examination of the prosecution witnesses and the answers as given by the accused persons in their respective examinations under Section 313 CrPC and from the evidence of DWs it appears to this Court that the defence case is based on clear denial and false implication.

6. In course of his argument Mr. Ghoshal learned advocate led by Mr. Biswas learned advocate at the very outset draws attention of this Court to the written complaint (Exhibit 1/1) as lodged in connection with the said case. It is submitted by Mr. Ghoshal that from the said written complaint it would reveal that the informant has not mentioned any specific date and time regarding the alleged torture upon his sister. It is

submitted further that no case has been made out by the informant regarding demand of dowry by the accused persons and there is no whisper in such written complaint that prior to lodging of the said FIR any complaint was lodged against the accused persons under Section 498A IPC.

7. Mr. Ghoshal while drawing attention of this Court to the evidence of PW5 (informant) contended that from the testimony of PW5 it would reveal that he has improved his version. It is submitted further that the evidence of PW5 that on the evening of the death of his sister the said PW5 went to her house and came to know that on the previous day the accused persons assaulted his said sister is completely a new story which finds no place in the written complaint or in the evidence of PW7 and PW8 who are the parents of PW5 as well as of the deceased. It is further submitted by Mr. Ghoshal that PW5 is found to be not a truthful witness inasmuch as in his examination-in-chief he testified that he noticed marks of injury and marks of assault on the dead body of his deceased sister which gets no support from the evidence of autopsy surgeon i.e. PW12.

8. In course of his argument Mr. Ghoshal also draws attention of this Court to the evidence of PW7 who is the father of the deceased. It is submitted by Mr. Ghoshal that the evidence of PW7 is equally not believable inasmuch as his evidence is omnibus in nature since the said witness did not specifically state as to when and how his said daughter was tortured by the accused persons. It is further argued on behalf of the appellant that though PW7 in his deposition testified that one Manik

Kundu, PW3 reported him about the alleged torture upon his daughter at the instance of the accused persons but from the evidence of the said PW3 it would reveal that the said PW3 testified only about quarrel between the deceased during her lifetime and the accused persons. It is thus submitted that the evidence of PW7 is excessively exaggerated.

9. Drawing attention to the evidence of PW4 it is submitted by Mr. Ghoshal that though the said PW4 testified that the charged accused persons caused torture upon Sumitra and thus he participated in a compromise over the said issue but he could not say the exact date and time of such compromise meeting.

10. Drawing attention to the evidence of DW1 it is further submitted on behalf of the appellant that the said DW1 has given sufficient explanation as to why the present appellant no.1 on the relevant day and hour was taking the dead body of his wife to hospital by a trolley since he found that at the material time her dead body was still warm and he thus thought that his wife may survive. It is submitted by Mr. Ghoshal that while passing the impugned judgement learned trial court placed much reliance upon the evidence of PW5 but miserably failed to visualize the infirmity in the said evidence. It is further argued by him that the learned trial court has failed to consider the material omission in the evidence of other PWs. It is further contended by Mr. Ghoshal that though the learned trial court had given benefit of doubt to the accused no.2 Subal Dey, accused no.4 Bhajohari Day and accused no.5 Kalipada Dey but the said court has miserably failed to assign any reason as to why the present

appellants being accused no. 1 and 3 are not entitled to same benefit of doubt.

11. In course of argument Mr. Ghoshal places his reliance upon the following reported decisions:-

- i. Ravishankar Tandon vs. State of Chattisgarh reported in 2024 INSC 299;*
- ii. Rohini Sudarshan Gangurde vs. The State of Maharashtra reported in 2024 INSC 519; and*
- iii. UDE Singh and Ors. vs. State of Haryana reported in AIR 2019 SC 4570.*

12. It is thus submitted by Mr. Ghoshal that the learned trial court has also miserably failed to visualize that the prosecution could not prove the ingredients of Section 107 IPC and thus in absence of any proof of instigation at the instance of the present appellants in the alleged commission of suicide of the deceased, the said court is not at all justified to convict the accused under Section 306 IPC.

13. Per contra Ms. Hossain, learned Additional Public Prosecutor for the State at the very outset draws attention of this Court to the evidence of PW12. It is submitted by Ms. Hossain that during post mortem the said autopsy surgeon found two marks of abrasion over the back of right and left elbows. The said doctor also noticed fair amount of extra vessated clotted and liquid blood seem to infiltrate the tissues over vault of scalp covering an area of 2" X 1".

14. It is submitted by Ms. Hossain that though the said autopsy surgeon opined that the death of the deceased was due to ante mortem suicidal hanging but there was no cross-examination on the part of the defence with regard to the injury of the deceased at her head. It is further submitted on behalf of the State that in the event the written complaint and the evidence of PW5 are read together it would reveal that the version of PW5 was all along consistent. It is further submitted by Ms. Hossain that the evidence of the parents of the deceased i.e. PW7 and PW8 clearly specifies the role of the appellants in the crime and the same gets due corroboration from the evidence of PW3 and PW4 who are the neighbours of the accused persons as well as from the versions of PW5, PW7 and PW8 since it reveals from the evidence of the said prosecution witnesses that the family members of the informant and the accused persons used to reside in the same village.

15. It is further submitted by Ms. Hossain that on conjoint perusal of the evidence of PW5, PW7 and PW8 the only inference can be drawn that the deceased was unable to forebear the torture as committed by the accused persons at her matrimonial home and thus had taken the path of committing suicide.

16. It is thus submitted by Ms. Hossain that from the chain of events as came out from the versions of the prosecution witnesses the only inference can be drawn that the cruelty and harassment meted out to the victim by the appellants had left the victim no other alternative but to put

an end to her life. Ms. Hossain thus submits that it is a fit case of dismissal of the instant appeal.

17. For effective adjudication of the instant appeal this court proposes to categorize the prosecution witnesses in the following manner:-

Sl.no.	Private individuals	Government Officials	Police Officials
1.	PW3- A co-villager of the accused persons and the informant.	PW12- Autopsy Surgeon.	PW1- Recording Officer.
2.	PW4- A co-villager of the accused persons and the informant.		PW2- First Investigation Officer.
3.	PW5- The informant and brother of the deceased.		PW6- Second Investigating Officer.
4.	PW7- Father of the deceased.		PW9- Constable of police.
5.	PW8- Mother of the deceased.		PW10- SI of police (inquest maker).
6.	PW11- A co-villager of the informant.		

18. Since in the impugned judgement learned trial court has elaborately discussed the evidence of all the prosecution and defence witnesses this Court considers that detailed discussion of the evidence of the said witness all over again is not at all necessary except to the extent the same is required for effective adjudication of the instant appeal.

19. From the trial court record it reveals that the informant was tendered by the prosecution as PW5 who in his examination-in-chief testified that after marriage of his sister Sumitra she was subjected to

torture at the instance of the charged accused persons. He testified further that the deceased during her life time used to narrate the incident of torture to him. He stated that the charged accused persons refused to provide meal to the deceased and they used to assault and drove out his sister and even refused to provide shelter in their house at night. He testified further that he called the village people to reconcile such dispute and the matter was once compromised.

He further testified that in the evening immediately prior to the death of the deceased he went to the house of the accused persons and came to learn that the accused persons assaulted his sister. He further testified that he noticed marks of injury as well as marks of assault on the dead body of his sister.

20. At his juncture if I look to the evidence of PW7 i.e the father of the deceased it appears to this Court that the said PW7 testified that his son-in-law and the other accused person used to torture his daughter physically and they did not provide her food. He also testified that his para people namely; PW3 (Manik Kundu) reported him about the torture inflicted by the accused. He then stated that his daughter reported to him that she was tortured by the charged accused persons. He also testified that since his said daughter could not endure the torture as inflicted by the accused persons she committed suicide.

21. The mother of the deceased deposed as PW8. She testified that her son-in-law and his mother used to assault her daughter. She also testified

that all the accused persons tortured her daughter and they also did not provide her food.

22. At this juncture if I look to the evidence of PW4 who is a neighbour of the accused person and a co-villager of the informant it reveals to this Court that before the learned trial court the said PW4 testified categorically that the deceased during her life time was subjected to physical torture at the instance of her husband as well as by her parents-in-law and her uncle-in-law. He also stated that he effected compromise over the matter in the village.

23. In course of her argument Mr. Ghoshal though contended that the evidence of PW4, PW7 and PW8 with regard to the alleged assault upon the deceased during her life time is omnibus in nature and the said witnesses had given no details as to when and how the said assault occurred but on careful consideration of the evidence of PW5, PW7, PW8 and PW4 following facts reveals:-

- i. The deceased was assaulted both physically and mentally by her husband and other family members of her matrimonial home.
- ii. The charged accused persons did not provide her adequate food.
- iii. On account of such torture village people were called.
- iv. In a village meeting a compromise was effected but in vain.

- v. The deceased during her life time used to narrate the incident of torture to her family members as well as to her neighbours of her paternal home.
- vi. Ultimately on 03.08.1993 at about 11:45 p.m the deceased committed suicide.

It thus appears to this Court that the evidence of PW5, PW7 and PW8 are consistent in this regard and the same gets due corroboration from the evidence of PW4.

24. It is to be kept into mind that the domestic offence like offence under Section 498A IPC is being normally committed within the four walls of the house and therefore availability of the independent witnesses is next to impossible.

25. In view of such, this Court has got no other alternative but to rely on the evidence of the witnesses belonging to the paternal family members of the deceased. In doing so, it is the primary and foremost duty of the court to look for consistency and to ascertain whether such evidence is blemished with exaggeration and false implication.

26. Coming to the factual aspect of this case if I once again look to the evidence of PW5 (informant), PW7 (father of the deceased) and PW8 (mother of the deceased) it appears to this Court that the said three witnesses in their respective depositions were very much consistent with regard to the role of the appellant no.1 being the husband of the deceased. The said three witnesses categorically stated that the deceased at her matrimonial home was assaulted by the husband of the deceased

(the appellant no.1 herein) along with the other accused persons. Their evidence gets due corroboration from the evidence of PW4 who is an independent witness. From his cross-examination it cannot be established that the PW4 has an inimical interest with the present appellants.

27. It further appears to this court that the said prosecution witness did not merely used the word 'harassed' or 'tortured' rather it appears to this Court that the said witnesses describe the exact conduct of the present appellant no.1 which according to them amounted to harassment and/or torture.

28. As rightly argued by Ms. Hossain that since the deceased committed suicide on 03.08.1993 and since the evidence of PW5, PW7 and PW8 were recorded on 21.02.2000 and 20.05.2002 respectively this Court considers that minor discrepancies in their respective depositions are quite natural which indicates towards the genuineness of the versions of the said witnesses and also to the fact that they were not tutored.

29. This Court is thus of considered view that the learned trial court is very much justified in convicting the present appellant no.1 Dilip Kumar Dey guilty under Section 498A IPC.

30. On careful scrutiny of the evidence of PW5, PW7, PW8 read with the deposition of PW4 it appears to this Court that their evidence with regard to the alleged role of the present appellant no.2 i.e the mother-in-law of the deceased is not so much prominent. It appears to this Court that PW7 in his examination-in-chief did not state that his daughter used to live at her matrimonial home with her mother-in-law. It further appears from the

cross-examination of PW5 that in between the deceased and the appellant no.2 there was no speaking terms for the last two years.

31. This Court thus considers that the testimony of the prosecution witnesses as against the appellant no.2 is vague and omnibus in nature. The said witnesses in their respective evidence did not say any specific overt act as against the present appellant no.2.

32. In view of such, this Court thus considers that the learned trial court is not justified in convicting the appellant no.2 under Section 498A IPC.

33. Accordingly, this Court holds that the finding of the learned trial court that the present appellant no.2 is guilty under Section 498A is not correct and is thus set aside.

34. In order to come to a logical conclusion as to whether the learned trial court is at all justified in convicting the present two appellants under Section 306 IPC this Court at the very outset proposes to look to the provisions of Section 306 IPC and the same is quoted below in verbatim:-

“Abetment of suicide.—

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

35. In order to understand the true meaning and purport of section 306 the provision of Section 107 IPC is also required to be looked into and the same is quoted hereinbelow in verbatim:-

“Abetment of a thing.

A person abets the doing of a thing, who—

First.—Instigates any person to do that thing

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

36. On conjoint perusal of the provisions of the aforesaid two Sections it appears to this Court that in order to bring home the charges under Section 306 the primary responsibility of the prosecution is to prove the incitement of the accused persons to the deceased to commit suicide. This Court considers that the finding of the Hon'ble Supreme Court in the reported decision of **Madan Mohan Singh vs. State of Gujarat** reported

in **(2011) 1 CCrLR (SC) 190** in this regard is required to be looked into and the relevant portion of the said reported decision is as under:-

“In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of the abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC.

37. In the reported decision of **P.J Agro Tech Limited vs. Water Base Limited** reported in **(2010) 3 C CrLR (SC) 1** the Hon’ble Apex Court explained the word ‘abetment’ in the following manner:-

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of thing. Without a positive act on part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.....It also requires an active part or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

38. In the reported decision of **UDE Singh vs. State of Harayana** (supra) as cited on behalf of the appellant the Hon’ble Supreme Court while dealing with a case under Section 306 IPC expressed the following view:-

“14.7. In the case Amalendu Pal v. State of W.B.: (2010) 1 SCC 707: AIR 2010 SC 512, para 15), this Court, after reference to several past decisions, held as follows:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and

circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."

39. In view of the proposition of law as discussed in the aforementioned reported decision if I once again look to the evidence of the prosecution witnesses as recorded by the learned trial court it appears to this Court that the evidence of the prosecution witnesses is short of bench mark as set by the Hon'ble Supreme Court to prove a case under Section 306 IPC.

40. Admittedly PW5, PW7 and PW8 in their respective depositions testified regarding torture of the deceased at her matrimonial home but from such evidence this Court finds no such material which may be considered sufficient for instigating the said deceased to commit suicide. It further appears to this Court that the learned trial court misconstrued the provision of Section 32 of the Evidence Act inasmuch as from the evidence of the prosecution witnesses no case has been made out that immediately prior to her death the deceased made an oral dying declaration roping the present two appellants for the cause of her suicide.

41. In view of the discussion made hereinabove this Court thus finds that the conviction of the present two appellants under Section 306 IPC cannot be sustained.

42. As a result the instant appeal succeeds in part.

43. This Court thus finds that the appellant no. 2 Shankari Dey is not guilty under Sections 306/498A IPC in connection with Sessions Trial no.1(2)/1997/Sessions case no.12(5)/1995 as disposed of by the Learned Additional Sessions Judge, 3rd Court, Bankura.

44. She is discharged from her bail bonds and be set at liberty at once if not wanted in connection with any other cases.

45. The appellant no.1, Dilip Kumar Dey is also not found guilty under Section 306 IPC in connection with Sessions Trial no.1(2)/1997/Sessions case no.12(5)/1995 as disposed of by the Learned Additional Sessions Judge, 3rd Court, Bankura.

46. The conviction of appellant no.1 Dilip Kumar Dey under Section 498A as passed by the learned trial court is hereby upheld, however, his sentence is modified in the manner indicated hereunder.

47. The appellant no.1 Dilip Kuamr Dey is thus sentenced to suffer RI for 6 months and to pay a fine of Rs.50,000/- i.d to suffer RI for 2 months more for the offence committed by him under Section 498A IPC.

48. It is further directed that in the event the fine is paid the same shall be converted to compensation and be paid to PW8, the mother of the deceased under Section 357 CrPC.

49. The bail bond of the appellant no.1, Dilip Kumar Dey is hereby cancelled. The appellant no.1, Dilip Kumar Dey is thus directed to surrender before the learned trial court within a month from the day of passing this judgement failing which learned trial court shall issue non-bailable warrant of arrest against him for his arrest and detention.

50. The period already undergone shall be set off from the substantive period of sentence of the present appellant no.1, Dilip Kumar Dey.

51. With the disposal of the instant appeal, all pending interlocutory applications if there be any, stand hereby disposed of.

52. Department is hereby directed to send down the trial court record along with a copy of this judgement forthwith.

53. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)