

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.A. 48 of 2016

Asraf Mondal & Ors.

-Vs-

State of West Bengal

For the Appellants: Mr. Kallol Kumar Basu, Adv.,
Md. Jannat Ul Firdous, Adv.,
Ms. Tithi Majumdar, Adv.

For the State: Mr. Saibal Bapuli, Ld.A.P.P.,
Mr. Bibaswan Bhattacharyya

Heard on: **22.12.2021**

Judgement on: **09.03.2022.**

Bibek Chaudhuri, J.:-

The appellants faced trial under the charge of Section 498A/304B of the Indian Penal Code in Sessions Trial No.15 (4)/11 and were convicted under the charge of Section 498A of the Indian Penal Code by the Court below. The learned trial Judge passed order of sentence directing the appellants to suffer simple imprisonment for two years each and also to pay fine of Rs.1,000/- each, in default, to

suffer simple imprisonment for three months each for the offence under Section 498A of the Indian Penal Code. The present appeal is filed by the accused/appellants assailing the judgment and order of conviction and sentence.

Basirhat P.S. Case No.372 of 2005 was registered under Sections 498A/304B of the Indian Penal Code on 29th December, 2005 on the basis of a written complaint submitted by one Md. Anisur Rahaman Gazi. It is alleged by the de facto complainant that marriage of his sister Ajmira Khatun was held with the appellant Asraf Mondal. In the said marriage the de facto complainant gave gold ornaments and a sum of Rs.40,000/- to the bridegroom as per his demand. Unfortunately, since after marriage the father-in-law of Ajmira namely, Ahamed Mondal, mother-in-law, married sister-in-law and her husband used to torture her both physically and mentally on illegal demand of dowry. On 28th December, 2005 the accused persons assaulted Ajmira. The de facto complainant further suspected that the accused persons poured some poison in the mouth of his sister forcibly and admitted her to a local hospital. Subsequently, she died in the hospital on the date of lodging complaint.

It is submitted by the learned advocate for the appellant that during trial prosecution examined eight witnesses. Amongst them P.W.1 is the de facto complainant. P.W.2 is a co-villager of the de

facto complainant. P.W.3 Amena Bibi is the mother of the victim. P.W.4 Baburali Gazi is the father of the deceased. Dr. Anjan Kumar Ghosh who medically treated the deceased Ajmira Bibi in the emergency ward of Basirhat Sub-Divisional Hospital deposed during trial as P.W.5. P.W.6 Dr. Kanchan Kumar Das is the autopsy surgeon. P.W.7 is a constable of police and P.W.8 is the Investigating Officer.

It is submitted by the learned advocate for the appellant that apart from P.W.5 to P.W.8, other witnesses are interested witnesses. P.W.1 is the elder brother of the deceased while P.W.2 and P.W.4 are her parents.

It is submitted by the learned advocate for the appellant that marriage of the deceased was held with the appellant No.1 in the month of July, 2004. She died on 29th December, 2005 i.e, within one and half years of marriage. It is deposed by the de facto complainant that the husband of his sister demanded a sum of Rs.10,000/- which they could not pay at the time of marriage. They could not pay at the time of marriage for such failure on the part of the defacto complainant and his family members Ajmira was subjected to torture by the accused persons both physically and mentally. P.W.-1 also stated that he went to the matrimonial home of his sister seven days before 28th December, 2005 to hand over a

woolen shawl of her at that time. He noticed Ajmira in a very depressed condition.

It is pointed out by the learned advocate for the appellants that the defacto complainant did not state in the written complaint that the accused persons demanded further sum of Rs. 10,000/- from his sister. It is alleged by the defacto complainant that his sister was physically tortured and mentally harassed by the accused persons since after her marriage. However, during her lifetime he did not make any complaint in the local police station or to the local Panchayet against the accused persons. In cross-examination, the defacto complainant clearly admitted that she developed depression before her death. As to the cause of death, it is submitted by the learned advocate for the appellants that charge was framed under Section 304B of the Indian Penal Code. Only on the basis of suspicion of the defacto complainant that the accused persons poured some poison in her mouth on 28th December, 2005.

It is further submitted by the learned advocate for the appellants drawing my attention to the cross-examination of PW-3, Amena Bibi who is the mother of the deceased that she admitted that the deceased could not adjust with her husband and other matrimonial relations. She further admitted that many a time she made her understand and sent her back to matrimonial home.

The learned advocate for the appellants also draws my attention to the evidence of PW-4, Babar Ali Gazi who is the father of the deceased. Except some omnibus and bald allegation against the accused persons, nothing specific transpires from the evidence of PW-4. It is also pointed out by the learned advocate for the appellants the autopsy surgeon did not give any opinion as to the cause of death of said Ajmira. Thus, from over all appreciation of evidence, it is ascertained that the learned Trial Judge framed charge against the appellants under Section 304(B) of the Indian Penal Code. Only on the ground of suspicion of the defacto complainant that the deceased might be administered poison by the accused persons. There is absolutely no evidence that the deceased was subjected to cruelty or harassment by her husband and other matrimonial relations for, or in connection with any demand for dowry. It is true that the victim died within one and half years of her marriage at her matrimonial home and she had met with an unnatural death but there is absolutely no evidence to the effect that soon before her death Ajmira subjected to torture cruelty and harassment for, or in connection with, any demand for dowry. In the absence of such evidence the prosecution was not entitled to get the benefit of presumption under Section 113(B) of the Evidence Act.

The learned Trial Judge held the accused persons guilty for committing offence under Section 498A of the Indian Penal Code holding, inter alia, that the prosecution was able to prove that Ajmira was subjected to physical cruelty and mental harassment to such an extent which forced her to commit suicide. Surprisingly enough no case of suicide was made out by the de facto complainant. Except the defacto complainant who is the elder brother of the deceased and her parents, no other persons deposed in support of the prosecution case. It is alleged that the victim was tortured at her matrimonial home. The prosecution failed to produce any witness from the neighborhood of the matrimonial home of the deceased. During her lifetime the defacto complainant or the parents of the deceased did not lodge any complaint to the police or local Panchayet etc.

It is found from the evidence of the mother of the victim that the deceased could not adjust herself at her matrimonial home, she made her understand and used to send her to her matrimonial home during her lifetime. She noticed that Ajmira used to remain depressed most of the time.

Therefore, Ajmira might have committed suicide out of depression as she failed to adjust with her husband and other matrimonial relations.

For the reasons stated above, the parents ought to have been entitled to get benefit of doubt. The learned Trial Judge mis-appreciated the evidence on record denying to offer benefit of doubt to the appellants. Therefore, the impugned judgment and order of conviction and sentence cannot be sustained.

As a result the instant appeal is **allowed** on contest.

The appellants, namely, Asraf Mondal, Ahamed Ali Mondal, Beauty Khatun @ Charui Bibi and Anju @ Anjura Khatun are acquitted from the charge and discharged from their respective bail bonds.

Let a copy of this judgment be sent to the learned court below along with the lower court records.

(Bibek Chaudhuri, J)