

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Rabindranath Samanta

C.R.A. 126 of 1996

Muslimuddin
Vs.
The State.

For the Appellant/Amicus Curiae : Mr. Sujay Sarkar

For the State : Mr. Narayan Prasad Agarwal,
Mr. Pratick Bose.

Heard on: February 11, 2022.

Judgment on: February 11. 2022.

The Court: This appeal has been preferred against the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Islampur, Uttar Dinajpur, in Sessions Trial No. 43 of 1994 arising out of Sessions Case No. 7 of 1994 whereby and whereunder the appellant, Muslimuddin, was convicted for commission of offence punishable under Sections 498A/306 of the Indian Penal Code (in short 'IPC') and sentenced to suffer rigorous imprisonment for two years for the offence punishable under Section 498A, IPC and to suffer rigorous imprisonment for five years for the

offence punishable under Section 306, IPC. Both the two sentences were directed to run concurrently.

Briefly stated, the prosecution case may be stated as follows:

Masammat Orina Khatun, daughter of the informant Abdul Karim @ Fitting Mohammad, was married to the appellant, Md. Muslimuddin, S/o. Fafizuddin @ Kalakatu, of village – Gendagachh four months prior to lodging the First Information Report (in short 'FIR') on 17th May 1992. After their marriage, the appellant took up quarrel with Orina continuously. He used to beat her 3/4 times regularly. On 16th May 1992, the informant after returning home from Siliguri went to the house of his daughter to see her. Then Orina told him that she was subjected to torture by the appellant and she was not feeling well due to torture. However, he returned home after giving consolation to her. At about 8 p.m. on 16th May 1992, the informant came to learn that his daughter was lying at her matrimonial home in an unconscious condition. He then and then rushed to her house with some villagers and found that there were signs of beating on her body. Many villagers assembled there. He made arrangement to take her to Doctor. But she expired after some time.

Narrating the aforesaid episode, the informant lodged an FIR at Chopra Police Station, which was registered as Chopra PS Case No. 63 of 1992 dated 17th May 1992 under Sections 498A/306, IPC. After taking up the investigation, the Investigating Officer arrested the accused and forwarded him to the Court. During investigation, the Investigating Officer examined number of witnesses under Section 161 of the Code of Criminal Procedure and recorded their statement. The Investigating Officer sent viscera of the deceased to the Forensic Science Laboratory and he collected the FSL report from the laboratory. He collected the inquest report and the post mortem examination report. After completion of the investigation, the Investigating Officer submitted charge-sheet against the appellant

under Section 498A/306, IPC. Ultimately charge was framed under Sections 498A/306, IPC by the learned trial Judge against the appellant, who pleaded not guilty to the charge and claimed to be tried.

To bring home the charge, the prosecution has examined as many as thirteen witnesses. Some documents upon which the prosecution placed reliance have been marked as Exhibit-1 to 4/1.

On consideration of the evidence on record and after hearing the learned Advocate for the parties, the learned trial Judge found the appellant guilty of commission of offence punishable under Sections 498A/306, IPC and inflicted the sentence as above.

Mr. Sujay Sarkar, learned Advocate appearing for the appellant as Amicus Curiae, submits that the incident took place on 16th May 1992, but the FIR was lodged on the following date i.e. on 17th May 1992, after 12 hours of the incident. Learned Advocate points out that there is no explanation of delay in lodging the FIR. In such situation, embellishment and embroidery might take place in lodging the FIR. Learned Advocate also submits that the evidence of the vital witnesses, who have deposed in favour of the prosecution, are not convincing to prove the offence for abetment of committing suicide by the victim on the part of the appellant. Learned Advocate argues that if the Court considers the evidence of the prosecution witnesses, their evidence faintly prove the offence punishable under Section 498A, IPC. On this score, Mr. Sarkar submits that the appellant is liable to be acquitted of the charge under Section 306, IPC as well as of the charge under Section 498A, IPC.

Mr. Narayan Prasad Agarwal, learned Advocate for the prosecution, submits that the evidence of PW1 - Abdul Karim, the father and some neighbours of PW1 viz., PW4 - Taiyabuddin, PW8 - Samina Khatoon, the first wife of the appellant, PW9 - Abdul Majid, are convincing and trustworthy to prove both the charges framed

against the appellant. Learned Advocate also submits that the deceased died within four months of her marriage and that being so, it will be presumed under Section 113A of the Indian Evidence Act that the appellant abetted the victim to commit suicide.

Since this is the first appeal before this Court, I have carefully scrutinized the evidence, both ocular and documentary.

It is the case of the prosecution that the appellant used to beat the victim Orina on regular basis. Before her death, she was confined to a room. Unable to bear with the cruelty meted out to her, she was compelled to commit suicide.

What I find from the evidence of P.W.1, the informant became shocked and perplexed at the untimely death of his daughter. Having considered this and the rural background of him, I feel that twelve hours delay in lodging the FIR does not blow fatal to the prosecution case.

PW1 – Abdul Karim @ Fitting Mohammad, the father of the victim, in his evidence states that his daughter Orina was married to the appellant 3/4 months before her death. After her marriage, the appellant used to assault and torture her. At that time he used to work at Siliguri as day labourer. On the fateful date, he came to his village and came to know that her daughter was confined in a room by her husband. The appellant assaulted her severely. His nephew Naimat informed him that his daughter Orina being assaulted by the appellant was compelled to commit suicide by taking poison in her matrimonial home. After coming to the house of her matrimonial home, he saw that his daughter died and she was lying in a cot.

It is in the evidence of PW8 – Samina Khatoon, the first wife of the appellant, that she knows the appellant as she was married to him. The appellant used to assault and ill-treat her now and then and as such she left his house. Thereafter she married Nurul Islam for the second time. The deceased Orina was his third wife. The appellant

also got another wife, who is his fourth wife. She knows Ajifa Khatoon, the second wife of the appellant, but she cannot say where she resides.

Another witness PW9 – Abul Majid in his evidence has deposed that Orina died on 16th May 1992. He came to know her death from the wife of Latif. After knowing her death, he rushed to the house of the appellant and found that Orina was restless on the bed of her house. He could not talk with her at that time. He heard that 3/4 days before her death she was beaten by her husband. The accused married four ladies one after another.

It is true that some other witnesses, namely, PW2 – Afajuddin, PW3 – Yunush, PW4 – Tayabuddin, PW5 – Abdul Rahim, PW6 – Kaimuddin and PW7 – Kafuluddin, in their cross-examination have stated that they do not know about any assault or ill-treatment meted out by the appellant to the deceased. Learned trial Judge in his evidence has stated that these witnesses are also of same village where the appellant resides. It has been inferred by the learned trial Judge that there was possibility that these witnesses did not speak truly, as they are the villagers and neighbours of the appellant.

Now, this Court will have to consider whether the evidence of the aforesaid witnesses, namely, PW1- Abdul Karim, PW8 – Samina Khatoon, PW9 – Abdul Majid, are credible to prove the charges brought against the appellant.

What I find, the informant PW1 – Abdul Karim in consonance with the allegations in FIR has testified unequivocally that prior to the death of the deceased and soon after marriage with the appellant, the appellant used to assault her on regular basis and she narrated her traumatic plight to him. In a case like torture on a bride, ordinarily the victim lady does not speak of the torture suffered by her to any outsider to maintain the dignity of family. What it is done, she shares all her sorrows and joys with her parents and close relatives. In such

case, the evidence of the father of the deceased should not be ignored as an interested witness. As quoted above, PW1 has testified that before her death the appellant used to assault the deceased on regular basis. PW9, who is a resident of the same village Gendagachh, in his evidence, has also testified that the appellant used to beat the deceased.

Though it is not spelt in the FIR, one fact as emanating from the evidence, especially from the evidence of PW8 – Samina Khatoon, PW9 – Abul Majid, is that before the appellant married the deceased Orina, he had two other ladies before hand and all those left him out of torture meted out to them. It also transpires from the evidence of those witnesses that the appellant after the death of the deceased has married another lady. His first wife Samina (PW8) has testified convincingly that out of torture meted out to her, she abandoned the appellant and married one Nurul Islam. She has also deposed that his second wife also left him because of the torture meted out to her. The evidence of PW1 and the evidence as forthcoming from PW8 and PW9, evince same circumstances from which it is perceived that the appellant possessed a propensity to ill-treat his wives.

In view of the evidence as discussed above, I concur with the findings of the learned Court below that the prosecution has been able to establish the charge under Section 498A, IPC.

Mr. Sarkar, learned Advocate appearing for the appellant strenuously submits that evidence as produced by prosecution is not sufficient to prove the charge under Section 306, IPC. He submits that though presumption against the appellant may be drawn up under Section 113A of the Indian Evidence Act on abetting the commission of suicide by the deceased, but the prosecution will have to prove with convincing and credible evidence that the appellant/accused by his culpable acts drove the victim to commit suicide. Here, except some stray evidence there is no trustworthy evidence by which the appellant

can be held guilty of commission of offence under Section 306, IPC. To buttress his submission Mr. Sarkar has cited two decisions rendered in the case of **Ramesh Kumar vs. State of Chhattisgarh**, reported in **(2001) 9 Supreme Court Cases 618** and in the case of **Jadeppa Hanumanthappa vs. State of Karnataka**, reported in **2018(2) Crimes 560 (Karnataka)**. In the case of **Ramesh Kumar (supra)**, the Hon'ble Apex Court has held that merely because the accused is found guilty under Section 498A, IPC, he should not necessarily be held to be guilty under Section 306, IPC on the basis of some evidence. In **Jadeppa Hanumanthappa (supra)**, the Hon'ble Karnataka High Court has expressed the similar view as held by the Hon'ble Apex Court.

After scrutinizing and appreciation of the evidence-on-record, I do not find any convincing evidence by which it can be held that prior to the death of the deceased, the tortures/assaults meted out to her were so severe that she had no other option but to end her life by committing suicide. Therefore, I am of the view that the prosecution has failed to prove the charge under Section 306, IPC.

Accordingly, the conviction and sentence as handed down by the learned trial Judge in respect of the charge under Section 306, IPC is liable to be set aside.

As stated above, the learned trial Judge after convicting the appellant under Section 498A, IPC awarded sentence to him to suffer rigorous imprisonment for two years.

From the statement of the appellant under Section 313 of the Code of Criminal Procedure before the learned trial Judge on 19th February 1996, I find that he was then aged about 35 years. Meanwhile the appellant is aged more than 60 years. Before the trial commenced the appellant was detained in judicial custody from 17th May 1992 to 20th July 1992 i.e. about 60 days during investigation. After the appellant was convicted and sentenced, he was taken into

judicial custody on 15th March 1992. After he preferred the instant appeal, this Court vide order dated 26th July 1996 released the appellant on bail. It appears that the appellant was in detention for about six months.

Considering the continuance of the criminal proceeding before the learned Court below since 1992 and continuance of this appeal since 1996 and the age of the appellant, I feel that if the sentence imposed upon the appellant in respect of the offence under Section 498A, IPC is reduced to the detention already undergone by him, it will be conducive to the interest of justice.

Accordingly, the sentence as imposed in connection with the offence under Section 498A, IPC is reduced to the detention of six months which has already been sub-served by the appellant.

In view of the above, the appeal merits in part.

Accordingly, it is ordered that the appeal be allowed in part.

The order of conviction and sentence relating to the charge under Section 306, IPC is hereby set aside.

The conviction under Section 498A, IPC is confirmed. The sentence as imposed by the learned trial Judge is reduced to the sentence as indicated above. The appellant be discharged from the bail-bonds and he be set at liberty.

Thus, the criminal appeal is disposed of.

There shall, however, no order as to costs.

Send down the Lower Court Records along with the copy of the judgment to the learned Court below.

