

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 518 of 1988

Protap Singh

Vs.

The State of West Bengal.

For the Appellant : Mrs. Pranoti Goswami.

For the State : Ms. Rita Dutta.

Heard on : 11.07.2022

Judgment on : **30.09.2022**

Shampa Dutt (Paul), J.:

The appeal is against an order of conviction under Section 306 and 498A of the Indian Penal Code and sentence to suffer rigorous imprisonment for

three years under Section 306 Indian Penal Code. No separate sentence being passed under Section 498A Indian Penal Code by the Additional Sessions Judge, Midnapore by his judgment and order dated the 30th November, 1988 in Sessions Trial Case No. VI August of 1988.

The prosecution case in short is that the accused persons are three full brothers. Accused/appellant Pratap Singh is the husband of deceased Ranidevi Singh and is a school teacher. The other two accused persons are the in-laws. The background of the case is that the conjugal life of the victim was not happy. Deceased Ranidevi Singh was the victim of torture at the hands the accused persons over inadequate dowry. Ultimately, she took the fatal step by killing herself by suicide on 30.07.1986.

Mrs. Pranoti Goswami, learned lawyer for the appellant submits that the conviction under appeal is bad in law as the date and year of marriage of the appellant and the deceased has not been stated in the evidence before the Trial Court. That the learned Sessions Judge without any proper appreciation of the evidence on record and without applying the appropriate provision of law in the right perspective, wrongly convicted and sentenced the appellant and as such the judgment and order of conviction is liable to be set aside.

Ms. Rita Dutta, learned lawyer appearing for the State submits that the judgment and order under appeal is in accordance with law and that the prosecution before the Trial Judge was able to prove the charge against the accused person beyond all reasonable doubt. The evidence on record was

sufficient to justify the conviction and sentence of the appellant and as such the appeal is liable to be dismissed.

Evidence on record

Prosecution witness no. 1 Sovamoni Saha is a member of the Paschim Banga Mahila Samity and the complainant in this case. She knows the accused and the deceased. She does not know the date of marriage of the parties. This witness has stated that the deceased approached her twice disclosing she was a victim of torture by the accused persons for want of dowry. On 30.07.1986 the victim committed suicide by burning. FIR was lodged by this witness (Exhibit 1). It is stated that the victim died within five years of marriage. In her cross examination she has stated that she resides within 500 ft. from the house of the accused persons. But she did not hear any cries from the house of the accused persons. This witness has further admitted, that she did not inform the police prior to the incident in this case, though the deceased had met her twice and made allegation against the accused persons. Nor did she report the same to her superior colleagues. **The evidence recorded does not bear the signature of the said witness, the complainant in this case.**

Prosecution witness no. 2 Gour Sikdar is a political party member and knows the parties to the case. This witness has also stated that the victim complained to him twice or thrice regarding the assault by the accused persons for want of dowry. This witness has stated that the incident took place three years after her marriage.

Prosecution witness no. 3 Sashi Giri Rao knows the accused persons which includes the appellant. This witness was declared **hostile** by the prosecution.

Prosecution witness no. 4 Raghunath Singh is a seizure witness (Exhibit 2).

Prosecution witness no. 5 Dr. Ashis Kr. Mishra is the Doctor who conducted the post mortem over the dead body and found burn injury. **The opinion of the Doctor as to the death of the victim is due to burn injury which is suicidal in nature.**

Prosecution witness no. 6 Anil Kr. Das is a constable who escorted the dead body.

Prosecution witness no. 7 Khillu Mal is a neighbour of the deceased and the appellant. This witness has stated that the deceased led a conjugal life with the appellant for four to five years. Her family life was not happy. This witness was not speaking terms with the deceased.

He has stated that he has witnessed quarrel between Ranidevi and the accused persons and he had seen Rani crying. This witness is also a member of the political party. He has stated on being cross examined that he **heard** about the ill-treatment on the victim from the neighbours.

Prosecution witness no. 8 Sankarlal Das is the recording officer.

Prosecution witness no. 9 Prasanta Kr. Chanda is the Investigating Officer who submitted chargesheet. Charge was framed by the Court of Sessions and on completion of trial the appellant was convicted and sentenced as above. The following documents were marked Exhibit.

Sl no.	Exhibit	Description of documents
1	Ext. 1	Written compliant dated 31.07.1986
2	Ext. 1/1	Formal F.I.R.
3	Ext. 1/2	Endorsement on written complaint.
4	Ext. 2	Signature of Raghunath Singh on seizure list.
5	Ext. 2/1	Seizure List.
6	Ext. 3	Seizure list.
7	Ext. 4	Order sheet of G.R. 1266/86

Analysis of evidence

Admittedly the deceased wife committed suicide by burning. The fact of death by suicide was proved by PW 5 the Doctor who conducted the post mortem over the dead body of the deceased. His opinion is as follows:-

“The death in my opinion was due to serious shock as a result of the burn injury following the ante mortem whole body burn injury. Which was suicidal in nature.”

Surprisingly the post mortem report has not been proved by the prosecution and as such not marked Exhibit before the learned Sessions Judge.

PW 1 is a neighbour and the complainant in this case and member of Paschim Banga Mahila Samiti. PW 2 is a party member and is also a neighbour. PW 3 (hostile) and PW 4 know the accused persons. PW 7 is also a neighbour.

From the evidence before the Trial Court it is clear that **no family members of the deceased have been examined by the prosecution.** No family member has filed the written complaint. There is no evidence on record stating that the deceased did not have any family members from her paternal side. A case of demand of dowry is substantiated by the paternal side family members of a woman. No family members have come before the Court to support the prosecution case that there was constant demand of dowry. Demand of dowry is made from the family members of the married woman and in order to prove such demand, the prosecution has to bring before the Court the best evidence so as to prove their case beyond reasonable doubt. Family members of the married woman are the persons from whom, such demands are made and they are the best witnesses to prove if any demand of dowry is made.

The prosecution witnesses have stated that it was the deceased who had stated to them that demand of dowry had been made. None of these witnesses have stated that deceased had informed her family members on the paternal side regarding the demand of dowry and not being paid the dowry she was being tortured. The prosecution thus could not bring the best evidence before the Trial Court. It is most natural for a victim of cruelty for dowry that she will

inform her parents and relatives about such torture and demand of dowry as it is expected that they will pay/meet the said demand. **The prosecution thus could not bring the best evidence before the Trial Court.**

Section 113-A of the Evidence Act provides for presumption as to abetment of suicide by a married woman within seven years of marriage, by her husband or any of his relative. The said section reads as under:-

“113A. Presumption as to abetment of suicide by a married woman -

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.- For the purposes of this section, “cruelty” shall have the same meaning as in Section 498A of the Indian Penal Code (45 of 1860).”

Explanation added to Section 113-A of the Evidence Act clearly provides that ‘cruelty’ shall have the same meaning as in Section 498-A of the IPC, which reads as under :-

“498A. Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for

a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purpose of this section, "cruelty" means-

(a) any willful 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 willful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

Ingredients of offence. — *The essential ingredients of the offence under Section 498A are as follows:-*

- (1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in —*
 - (i) Any willful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
 - (ii) Harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand;*
 - (iii) The woman was subjected to such cruelty by her husband or any relation of her husband."*

Now the point to be considered is whether the evidence on record has proved beyond reasonable doubt that the appellant had subjected the deceased to cruelty as per the provisions of Section 498A of the Indian Penal Code.

In the present case the witnesses have all contradicted each other regarding the period of marriage and none of them know the date of marriage. The witnesses who are the neighbours have in general stated that they had heard disturbance in the deceased's house and heard that she had been tortured for dowry from the deceased herself. PW 1 has stated that the incident in this case occurred within five years of the marriage and has stated that the deceased had approached her twice and stated about the torture. This witness has further stated in her cross examination that she did not hear any cries from the house of the accused persons. That she was on visiting terms. **Such stray incidents narrated do not prima facie constitute "cruelty" as defined.**

PW 2, has deposed that the deceased had complained to him regarding the torture for failure of her parents to pay the agreed dowry. **The existence of the parents of the deceased is proved by the evidence of this witness but no such members of the deceased's family on the paternal side have deposed before the Trial Court to substantiate in the allegation of demand of dowry and not being paid the deceased being inflicted with cruelty. Nor are any of them, the complainant in this case.**

From the evidence on record it has not been proved that the cruelty if any, was of such extent so as to drive the victim to commit suicide nor is there any evidence to prove that such harm was caused to the deceased to meet the willful demand of dowry. The evidence of the Doctor has proved that the deceased committed suicide, though **post mortem report has not been proved and thus not an exhibit**. But considering the fact that the appellant has been convicted under Section 306 of the Indian Penal Code it is for the Court to see if the prosecution before the Trial Court has been able to prove the charge of abatement against the appellant.

Section 107 of IPC describes offence of abetment as under:-

“Section 107 of IPC-

107. Abetment of a thing.—A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing;
or

(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 authorized 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 facilitate the commission thereof, is said to aid the doing of that act.

Section 306 of IPC provides punishment for the offence of abetment of suicide, reads as under:-

“306. 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.”*

The Supreme Court in Criminal Appeal Nos. 940-941 of 2021 arising out of Special Leave Petition (Crl.) Nos. 2860-2861 of 2019, Gumansinh @ Lalo @ Raju Bhikhabhai Chauhan & Anr. Vs. The State of Gujarat, while considering an appeal against conviction for offence punishable under Section 306, 498A read with Section 114 of the Indian Penal Code discussed a Three Judge Bench judgment of the Court in ***Ramesh Kumar Vs. State of Chhattisgarh (2001) 9 SCC 618*** (para 12) wherein the Court had observed as under :-

“This provision was introduced by Criminal Law (Second) Amendment Act, 1983 with effect from 26.12.1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four-corners of the matrimonial home and hence was not available to any one outside the occupants of the house.

How-ever still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113- A, it must be shown that (i) woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the Court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to 'all the other circumstances of the case'. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression - 'The other circumstances of the case' used in Section 113-A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase 'May presume' used in Section 113-A is defined in Section 4 of the Evidence Act, which says- 'whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.'

The Court then held that from the said observation it becomes clear:-

“That to attract the applicability of Section 113-A of the Evidence Act, three conditions are required to be fulfilled :-

- i. The woman has committed suicide,*
- ii. Such suicide has been committed within a period of seven years from the date of her marriage,*
- iii. The charged-accused had subjected her to cruelty.”*

The facts and circumstances in the present appeal has proved that the victim committed suicide. Whether the death is within the period of seven years from the date of her marriage could not be proved as none of the witnesses could clearly stated as to when the victim had got married or as to how many years she had been married. The witnesses have all contradicted each other regarding the period of marriage.

There is no specific evidence before the Trial Court to substantiate the charge under Section 498A IPC as discussed above. As such the presumption under the said provision of law clearly stands rebutted.

In ***Gurjit Singh vs. State of Punjab, (2020) 14 SCC 264*** the Supreme Court while considering a case similar to the facts and circumstances before this Court held that:-

“That though the prosecution was successful in proving the case under Section 498A of the IPC but the prosecution had failed to prove that the cruelty was of such a nature which left no

choice to the deceased than to commit suicide. It was found that the prosecution has failed to place on record any evidence to establish beyond reasonable doubt that any act or omission of the accused instigated the deceased to commit suicide. There is no material on record to show that immediately prior to the deceased committing suicide there was a cruelty meted out to the deceased by the accused due to which the deceased had no other option than to commit the suicide.”

From the facts and circumstances and evidence on record both oral and documentary it is seen that the prosecution before the learned Sessions Judge clearly failed to prove that the appellant was guilty of inflicting cruelty of such nature upon the victim which left her with no choice but to commit suicide. The prosecution failed to establish the charge under Section 498A and also the charge under Section 306 of the Indian Penal Code. There are no ingredients (evidence) to substantiate the charge that the appellant instigated the deceased by inflicting cruelty to such an extent that she was compelled to commit suicide. Neither is there any evidence to prove that the appellant intentionally aided in any manner what so ever leading to the suicide of the deceased.

Conclusion

The incident in this case occurred on 30.07.1986 (36 years ago).

From the discussion above and the materials on record including the evidence before the Trial Court and the relevant provision of law, it is found that the prosecution clearly failed to prove the charge beyond all reasonable doubt before the Trial Court. The findings of the Trial Judge shows that the

appreciation of evidence before the Court was not in accordance with law. The Trial Judge has discussed that the absence of witnesses from the victim's father side would not help the Court as they were distant outsiders in Uttar Pradesh. The said findings of the Trial Judge is against the interest of justice and thus against the appellant as the best evidence has been withheld from the Court. Even though the parents reside in Uttar Pradesh, the demand of dowry if any will only be within the knowledge of the parents of the deceased and as such they were the best witnesses and the best evidence not being brought before the Court goes against the prosecution. The findings of the learned Trial Judge relating to dowry also is not in accordance with law and is a casual discussion made as per his personal opinion and finally the Trial Judge **thought** that the husband/appellant is the main culprit and held:-

"I think that the husband is the main culprit, who made the life of the victim miserable for dowry or for whatever reason whatsoever"

Such findings of the learned Judge **"for whatever reason whatsoever"** leading to the conviction of a person depriving him of his personal liberty is totally against the principles of natural justice and as such the findings of the Trial Court and the judgment and order of conviction and sentence under appeal is thus set aside.

The appeal thus stands allowed. The appellant is accordingly acquitted of all charge and discharged/released from his Bail bond.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)