

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 157 of 2004

Ashok Kumar Gupta & Anr.

-Vs.-

The State of West Bengal

For the appellants	:	Mr. Suranjan Mondal, Mr. Sukumar Bhunia,
For the State	:	Mr. S. G. Mukherjee, Ld. P.P., Mr. Arijit Ganguly, Ms. Debjani Sahu.
Heard on	:	11.04.2022, 25.02.2022 & 27.04.2022.
Judgment on	:	02.05.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 27.02.2004 passed by the Learned Additional Sessions Judge, 5th Fast Track Court, Bichar Bhawan, Kolkata in Sessions Trial No. 7(4) of 2003 arising out of Sessions Case No. 65 of 2002 wherein the Learned Trial Court was pleased to convict the appellants and another for commission of offences punishable under Sections 498A/34 and 306/34 of the Indian Penal Code and sentenced them as follows:

- i) Rigorous imprisonment for two years and fine of Rs. 5,000/- (Rupees Five Thousand Only) each i.d. to undergo S.I. for six months for offences under Sections 498A/34 of the Indian Penal Code;
- ii) Rigorous imprisonment for five years and fine of Rs. 5,000/- (Rupees Five Thousand Only) each i.d. to undergo S.I. for six months for offences under Sections 306/34 of the Indian Penal Code.

The genesis of the case relate to a complaint being addressed by one Siya Ram Sah to the Officer-in-Charge Jorabagan Police Station pursuant to which Jorabagan Police Station Case No.95 of 2000 was registered for investigation. The complainant alleged that his daughter Nirmala Sah was married with one Ashok Kumar Gupta on or about December, 1992. At the time of marriage Ashok and his relations demanded Rs. 4 lakhs of cash and other articles but due to financial stringencies the complainant could give only Rs.51,000/- and different household articles. As such after some days of marriage the family members of her matrimonial home used to ill-treat her which included both her husband and her mother-in-law, namely, Janki Devi Gupta. It was also alleged that her sister-in-law, namely, Anita Gupta used to demand the desired amount which the complainant was unable to pay and very often they used to mentally torture the deceased for bringing rest of the amount. However, with passage of time a daughter and a son was born out of the wedlock who were six years and 4 years old respectively, but the movement of the deceased Nirmala

was restricted by her husband and she was not even allowed to speak over phone with him or any members of her paternal family. As such when she visited school of her children she could call them and narrate her incident of ill-treatment. On or about 04.05.2000 the complainant received a call that Nirmala was ill. Accordingly being accompanied by his wife, Lalpari Devi and son, Rameshwar Prasad Gupta he went to the matrimonial home of her daughter when he found that his daughter was lying unconscious on the floor in the dinning cum drawing space and all the family members were surrounding the body. It has been alleged that due to continuous torture, ill-treatment and harassment by her husband, mother-in-law and sister-in-law for demand of dowry the death of Nirmala occurred.

The Police authorities on conclusion of investigation submitted charge-sheet under Sections 498A/306/34 of the Indian Penal Code. The case was committed to the Court of Sessions and finally it was sent for trial and disposal to the Court of learned Additional Sessions Judge, 5th Fast Track Court, Bichar Bhawan, Kolkata. Charges were framed under Sections 498A/306/34 of the Indian Penal Code and the records reflect that the prosecution in order to prove its case relied upon 24 witnesses which included four doctors, one Scientific Expert, five police witnesses and one Executive Magistrate who conducted the inquest and number of documents.

Mr. Mondal, learned advocate appearing for the appellants, Ashok Kumar Gupta and Janki Devi Gupta, who are the husband and mother-in-law of the

deceased, submitted that the couple were leading a happy married life and as such two children were born out of the said wedlock. Prior to the incident, no allegation at any stage has been made regarding the demand for dowry and after the death of Nirmala Sah the story of mental/physical torture and demand for dowry has been created for falsely implicating the appellants. It has further been contended that the deceased was suffering from 'Bronchial asthma' and there was every scope that being unable to bear such pain the deceased committed suicide. Learned advocate to that effect draws the attention of the Court to the evidence of PW20 i.e. Dr. Rajendra Golcha. The relevant part of the evidence relied by the appellants which relate to a prescription marked as Ext.E/1 is set out as follows:

"I treated Nirmala Devi on 29.10.97 under the prescription from the medicine prescribed it can be said that she was suffering from her back pain or body pain. Prescription dated 29.10.97 is marked Ext.E/1.

It is true that Beclate inhaler is prescribed for cough, cold and bronchial asthma.

It is true that Hydrocortisone injection 100 mg. Along with Deriphyline 2cc. injection are treatment for Bronchial asthma.

Bronchial asthma may be chronic or acute disease.

Injection deriphyline 2 ml., Injection wymesone 2 ml., Cap. Respimox 500 mg., Ventroline Cap. 4mg., Piriton Syrup medicine of cough, cold and bronchial asthma, if given combined.

It is true that if the medicine stated above are given for years together to the patient, it may be concluded he/she is/was suffering from bronchial asthma.

It is also true that Mantoux test is prescribed for detection of T.B.”

Learned advocate submitted that in fact, in examination-in-chief of PW4 it has transpired that the couple were leading a happy conjugal life. The appellant therefore, contended that no case has been made out by the prosecution for convicting the appellants.

Mr. S. G. Mukherjee, learned Public Prosecutor appearing on behalf of the State drew the attention of the Court to the statement of PW17 namely, Birendra Kumar Shah wherein it has been stated that prior to 10/12 days of the incident of death, the witness had been to the matrimonial home where the mother-in-law and sister-in-law of the deceased misbehaved with him and threw away the packet of sweets which he had taken. It has also been narrated by the witness that he was asked not to come to their home and both the ladies stated that the deceased Nirmala will not be allowed to ring her parents.

Another witness Shiv Shankar Gupta (PW3), landlord of 106, Maharshi Devendra Road, Kolkata-700006, deposed in his examination-in-chief that there was strained relationship between Ashok Kumar Gupta and his wife Nirmala Gupta.

The consistent version of the prosecution is that as there was ill-treatment with the cousin brother of the deceased in front of her and most of

the witnesses have stated that there was a strained relationship and the landlord has also corroborated the fact of strained relationship, while other witnesses repeatedly deposed regarding the factum of demand of dowry and their incapacity to meet such demands, the guilt of the appellants were established. It has been emphasized that the deceased committed suicide because of the mental and physical torture being inflicted upon her and she was unable even to bear the insult of her cousin brother at her matrimonial home, as such within a close proximity of time she decided to end her life. The stand of the State is that there is no illegality in the judgment and order passed by the learned Trial Court and the appellants are guilty of the offences.

I have considered the submissions advanced by both the parties and also assessed the medical evidence including the report of the scientific expert who happened to be the Professor and Head of the Department, Forensic and State Medicine, Medical College, Calcutta which has been marked as Ext.14. The said report reflects as follows :-

“It is evident from final opinion as to cause of death that Nirmala Devi died due to effects of Endosulfan Poisoning.”

It has also been explained that deceased Nirmala consumed insecticides used for insects which is easily available in the open market. The expert has categorically opined after perusing all the documents including the post-mortem report that the present is a case of suicide and there is no scope for homicide. Further from the deposition of the doctor as well as the post-mortem

report there is no reflection of any physical injury sustained by the deceased. Although the victim has committed suicide after about eight years of marriage, the only reason which has been assigned by the prosecution was in respect of the incident of insulting the brother i.e. PW17, Birendra Kumar Shah wherein it has been alleged that the mother-in-law and sister-in-law threw away the packet of sweets and asked him not to come anymore to their house and further stated that the deceased will not be allowed to call her parents or visit her paternal home and will not be allowed to receive any calls also.

The Hon'ble Supreme Court in Velladurai –Vs. – State Represented by the Inspector of Police, 2021 SCC OnLine SC 715 observed as follows:

“14. Now so far as the offence under Section 306 IPC is concerned, in a case where if any person instigates other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished for the offence under Section 306 IPC for abetting the commission of suicide. Therefore, in order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide. As observed and held by this Court in the case of Amalendu Pal (supra), mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC.

15. *Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no other option except to commit suicide. In the instant case, the allegation against the appellant is that there was a quarrel on the day of occurrence. There is no other material on record which indicates abetment. There is no material on record that the appellant-accused played an active role by an act of instigating the deceased to facilitate the commission of suicide. On the contrary, in the present case, even the appellant-accused also tried to commit suicide and consumed pesticide. Under the circumstances and in the facts and circumstances of the case and there is no other material on record which indicates abetment, both the High Court as well as the learned trial Court have committed an error in convicting the accused for the offence under Section 306 IPC.”*

In this case 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.

Therefore, to bring the particular incident referred by the State, within the ambit of Section 107 of the Code of Criminal Procedure for commission of an offence punishable under Section 306 of the Indian Penal Code is not acceptable to this Court as there is no evidence to the fact that within a close proximity of time there was any other exceptional incident relating to mental

and physical torture being inflicted upon the deceased. The incident referred to by the prosecution for foundation of an offence under Section 306 of the Indian Penal Code is not convincing and as such the finding of guilt, order of conviction and sentence passed by the learned Trial Court under Section 306 of the Indian Penal Code is hereby set aside.

However, not only PW4, PW6, PW7, PW8, PW9 and PW10 who happened to be father, uncle-in-law, elder brother, mother, younger brother and cousin brother of the deceased respectively have constantly stated regarding the factum of demand of dowry, ill-treatment by the husband and mother-in-law of the deceased but the same has been corroborated by PW3, the landlord of the house who stated that the relationship between Ashok Kumar Gupta and Nirmala Devi were strained.

The records itself speak that there was a ring of truth regarding the demand of dowry and non-fulfilment of the same by the parents of the deceased. The offence as such under Section 498A of the Indian Penal Code has been proved beyond reasonable made out. Accordingly, the finding of guilt so far as the offence under Section 498A/34 of the Indian Penal Code has been arrived at by the learned Trial Court is hereby affirmed. However, the sentence so imposed by the learned Trial Court is required to be modified, in view of the fact that the incident is of the year 2000 and more than 20 years have passed in the meantime.

The sentence of the appellant no.1, Ashok Kumar Gupta is modified to one year of rigorous imprisonment and fine of Rs.5,000/- (Rupees Five Thousand only) i.d. simple imprisonment for three months for the offence under Section 498A /34 of the Indian Penal Code.

The sentence of appellant No.2, Janki Devi Gupta is modified to simple imprisonment for six months and fine of Rs.5,000/- (Rupees Five Thousand only) i.d. simple imprisonment for one month for the offence under Section 498A/34 of the Indian Penal Code.

Accordingly, Criminal Appeal being CRA 157 of 2004 is partly allowed with sentence being modified.

The order dated 23.03.2004 reflects that the petitioners were released on bail subject to the satisfaction of the Learned Additional Chief Metropolitan Magistrate, Calcutta in CRAN No. 450 of 2004, which was filed in connection with the present appeal. In view of the order of conviction and sentence being passed the said bail bonds which were furnished before the Learned Additional Chief Metropolitan Magistrate, Calcutta stands cancelled. The appellants are directed to surrender before the jurisdictional Court immediately. In the alternative the learned jurisdictional Court is directed to take steps for execution of sentence as referred to above.

Department is directed to send back the Lower Court Records immediately to the trial Court preferably within a week from date.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)