

Form J(2)

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

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

CRA 133 of 2017

**Rakesh Sahani
-Versus-
State of West Bengal**

**For the appellant : Mr. Saryati Datta,
Mr. Sandip Kumar Dan.**

**For the respondent : Mr. Prasun Kumar Dutta,
Mr. S. S. Imam,
Mr. Pratick Bose.**

Heard & Judgement on : 08.02.2022.

Judgment and order of conviction and sentence passed in Sessions Case No. 99/2012 corresponding to Sessions Trial No. 3/December/2012 by the Learned Additional Sessions Judge, Fast Track Court, Rampurhat thereby convicting accused, Rakesh Sahani for the offence punishable under Section 498A/304B/306 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for seven years for the offence under Section 304B and also rigorous imprisonment for seven years with fine and default clause for the offence punishable under Section 306 of the Indian Penal Code and

rigorous imprisonment for one year for the offence punishable under Section 498A of the Indian Penal Code, is assailed in the instant appeal.

Marriage of the appellant, Rakesh Sahani was solemnized according to Hindu rites and ceremonies with one Aparna Sahani, daughter of Prahlad Sahani of village – Bahina within Police Station – Mayureswar, Birbhum on 13th May, 2011. At the time of marriage, the father of Aparna gave a sum of Rs.2,00,000/- in cash, gold ornaments weighing about 10 'bhari' and other ceremonial gifts as bridal presents. However, subsequent to marriage Aparna was subjected to torture by her husband, father-in-law, mother-in-law and sister-in-law on demand of a motorcycle. On 15th June, 2011, the daughter of the *de facto* complainant requested him over telephone to take her to her paternal home from her matrimonial home, failing which the husband and other matrimonial relations of Aparna would kill her. On 16th June, 2011, the *de facto* complainant took her to his house. On 17th June, 2011 at about 9 p.m., Aparna set herself on fire by pouring kerosene oil on her body in the bathroom of her paternal home. The parents of Aparna and their neighbours rescued her by breaking upon the door of the bathroom. However, when she was recovered, Aparna was extremely burnt. She did not give any opportunity for medical treatment and succumbed to her burn injury

at her paternal home. According to the *de facto* complainant, his daughter committed suicide failing to bear the torture inflicted upon her by her husband and other matrimonial relations.

On the basis of the said complaint, Police registered Mayureswar Police Station Case No. 139/2011 dated 17.06.2011 under Section 498A/304B/306 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act against the husband, father-in-law, mother-in-law, brother-in-law and married sister-in-law of the deceased.

Investigation of the above police case ended in filing charge-sheet against the above-named accused persons. Trial of the case was commenced by the Learned Additional Sessions Judge, Fast Track Court at Rampurhat. On conclusion of trial, the Learned Trial Judge upon due consideration of evidence on record and the argument advanced by the Learned Counsels for the parties convicted and sentenced the appellant in three counts of charge as narrated above. It is pertinent to mention here that during pendency of the trial of the case Rajendra Sahani, father-in-law of the deceased passed away and the case against him was abated. Other accused persons were acquitted from the charge by the Learned Trial Judge.

During trial, prosecution examined as many as 11 witnesses. Amongst them, the *de facto* complainant deposed as P.W. 1. P.W. 2,

Drapadi Sahani is the mother of the deceased. P.W. 5, Raj Kumar Sahani is the brother of Aparna. P.W. 3, Kalyani Let and P.W. 6, Joy Shankar Sinha are the residents of Mallarpur. P.W. 4, Md. Ibrahim was the Executive Magistrate who held inquest over the dead body of the deceased. The Autopsy Surgeon was examined as P.W. 7. P.W. 8, Abhijit Das is the scribe of the *de facto* complainant. P.W. 10, Kazi Md. Hossain and P.W. 11, Brikada Sanyal are the Investigating Officers.

The accused persons were duly examined under Section 313 of the Code of Criminal Procedure. They also examined one Naresh Chandra Nandi of Village – Rajnagar as D.W. 1.

From the examination of the accused persons under Section 313 of the Code of Criminal Procedure and deposition made by D.W. 1, the specific defence case can be ascertained inasmuch as the deceased had love affair with one Amit Chakraborty. Therefore, she was not agreeable in her marriage with the appellant. She did not want to stay with her husband. When her dream love came to an abrupt end, she committed suicide. The accused persons never demanded any dowry at the time of or after the marriage between Rakesh and Aparna.

I have carefully perused the evidence on record. I have also perused the judgment delivered by the Learned Trial Judge. It is

pertinent to mention at the outset that demand and payment of dowry has not been proved during trial of the case. Therefore, the appellant was acquitted from the charge under Sections 3 and 4 of the Dowry Prohibition Act. Furthermore, it is found from the evidence of P.W. 1 and P.W. 5 that before marriage the appellant or his relatives did not make any demand of dowry from the father of the deceased. The father of the deceased gave certain bridal presents on her own accord at the time of marriage of his daughter. Delivery of bridal presents and gifts at the time of marriage to the bride or bridegroom does not amount to dowry. The evidence on record is sufficient enough to hold that the accused persons never demanded any money or other valuable articles as condition of the marriage of Rakesh with Aparna.

It is needless to say that Section 498A of the Indian Penal Code has two components. Explanation (a) of Section 498A speaks about any wilful conduct by the husband or other matrimonial relations of a married woman as was likely to drive such women to commit suicide or to cause grave injury or danger to her life, limb or health, whether mentally or physically.

Clause (b) of Section 498A speaks of causing harm to such women with a view to coercing her to meet unlawful demand for

property or valuable security or on account of failure of such women or any other relations to meet the lawful demand.

In the instant case, it is alleged by P.W. 1 and P.W. 5 that the husband of the deceased demanded a motorcycle from her. Marriage of the deceased with Rakesh was solemnized on 13th May, 2011. She left her matrimonial home on 16th June, 2011. In the meantime, it is found from the cross-examination of P.W. 1 that till the date of 'Aastamangala' the matrimonial relations of his daughter behaved with her cordially. It is needless to say that as a customary rite bride and bridegroom come to the house of the bride on the 8th day of marriage and stay there for 1/2 days. Thus, from the evidence of the *de facto* complainant it is ascertained that the appellant used to treat his wife cordially at least for about 10 days after their marriage. After 'Aastamangala' they returned to the matrimonial home of the bride. There she stayed for about 20 days because admittedly she returned to her house on 16th June, 2011 and committed suicide on 17th June, 2011. Within 20 days if the prosecution case is accepted the victim was tortured in such a manner that she compelled to commit suicide.

I am constrained to hold that the evidence on record is not at all sufficient to bring home the charge levelled by the prosecution against the appellant. The witnesses, especially P.W. 1, P.W. 2 and P.W. 5 did not state any unequivocal term as to who amongst the

matrimonial relations demanded motorcycle from the father of the deceased. During the lifetime of Aparna neither she nor her parents or elder brother made any complaint alleging, *inter alia*, that the accused persons used to torture her both physically and mentally on demand of a motorcycle. Only after the death of Aparna the *de facto* complainant made such allegation.

The Learned Trial Judge held the appellant guilty on the following reasons as quoted below:-

"Here, the case in hand, I find that Aparna Sahani is a newly wed girl who was married on 13.05.2011 and the incident of death occurred on 17.06.2011. She died of burn injuries. Dr. Hemadri Halder (P.W.7) conducted post-mortem and found on examination, the deceased sustaining 99% burn injury all over the body and gave his opinion that the cause of death was due to effect burn injury which was ante-mortem in nature. The evidence of father Prahlad Sahani, mother Drapadi Sahani, brother Rajkumar Sahani, neighbours viz. Jaysankar Sinha and Kalyani Let of the deceased disclosed that the deceased Aparna Sahani had complained of harassment and torture by her husband and her other in-laws for bringing a motorcycle from her parental house. It is not disputed into the evidence that the death of Aparna Sahani was accidental death. So it may be

presumed that the deceased Aparna Sahani committed suicide set herself into fire at the instigation of her husband or any other in-laws member”.

It is needless to say that in order to bring home a charge against accused prosecution is under obligation to prove the charge beyond all reasonably doubt. Presumption cannot take place of proof of a criminal case. Learned Trial Judge held that as the deceased had met with an unnatural death and committed suicide within 34 days of her marriage, it might be presumed that she committed suicide at the instigation of her husband.

From the four corners of the evidence on record it is not found that the husband of the deceased instigated his wife to commit suicide. There is absolutely no such allegation in the FIR made by the *de facto* complainant or by the witnesses in course of their evidence. There is also no evidence that soon before her death the appellant treated her with cruelty which drove her to commit suicide. On the other hand, the evidence on record shows that the deceased was a student of B.A. 1st Year at the time of her marriage. The academic qualification of the appellant, on the other hand, was Madhyamik pass. Therefore, the deceased was more educated than her husband. It is found from the evidence of D.W.1 that during her college days the deceased had a love affair with one Amit Chakraborty or Sumit

Chakraborty. At the time of death Aparna was aged only about 19 years. During this tender age, a college going girl has some romantic idea about life. When Aparna found that she had to marry against her wish, it may be probable that she committed suicide. It is needless to say that the defence does not require to prove its case beyond any shadow of reasonable doubt. It is sufficient for the defence to present its case on the basis of preponderance of probability.

Considering the entire evidence on record this Court is of the view that the learned trial Judge erred both in law and fact by convicting the appellant for the offence under Section 498A/304B/306 of the Indian Penal Code.

Accordingly, the instant appeal is **allowed**.

The judgment and order of conviction and sentence passed by the Learned Additional Sessions Judge, Fast Track Court, Rampurhat, Birbhum in Sessions Case No. 99/2012 corresponding to Sessions Trial No. 03/December/2012 is set aside.

The appellant be discharged from his bail bond at once.

Let a copy of this judgment along with the lower Court record be sent down to the trial Court for information.

[Bibek Chaudhuri, J.]

Srimanta/Suman
A. Rs. (Court)