

Form J(2)

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

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

CRA 298 of 2016

Suresh Mondal

-Vs.-

The State of West Bengal

**For the appellant : Mr. Sourav Chatterjee, Adv.,
Mr. Soumya Nag, Adv.,
Mr. Gautam Kumar Roy, Adv.**

**For the State : Mr. Binay Panda, Adv.,
Mrs. Puspita Saha, Adv.,**

Heard & Judgment on: 18.04.2022.

Bibek Chaudhuri, J.

The appellant is the husband of deceased Dipsikha Mondal. He was convicted and sentenced to suffer imprisonment for the offence punishable under Sections 498A/304B of the Indian Penal Code by the Learned Additional Sessions Judge, Fast Track, 1st Court at Lalbagh vide judgment and order of conviction and sentence dated 29.03.2016. The Learned Trial Judge handed down sentence of rigorous imprisonment for two years with fine and default clause for the offence punishable under Section 498A of the Indian Penal Code

and also rigorous imprisonment for seven years for committing offence punishable under Section 304B of the Indian Penal Code.

It is not in dispute that the deceased had met with an unnatural death after approximately four years of marriage at her matrimonial home on 5th March, 2010. A Police Case was registered on 6th March, 2010 against the present appellant, his parents and brother under Sections 498A/304B of the Indian Penal Code. It is alleged by the *de facto* complainant being the mother of the deceased that deceased was subjected to physical and mental torture during her lifetime on demand of dowry. Failing to bear such torture either she committed suicide by consuming poison or she was murdered. The allegation in the FIR led the Learned Judge in Trial Court to frame charge against the accused persons under Sections 498A/304B and alternatively under Section 302 of the Indian Penal Code. The Learned Trial Judge on appreciation of evidence adduced by 21 witnesses convicted the appellant, while other accused persons were acquitted from the charge.

Mr. Chatterjee, Learned Advocate for the appellant being ably assisted by Mr. Nag and Mr. Roy, Learned Advocates submits at the outset that the Learned Trial Judge failed to consider serious infirmities in the record and had such infirmities and contradictions being considered in their true perspective the Learned Trial Judge

ought not to have convicted the appellant. In order to substantiate his contention, Mr. Chatterjee first takes me to the inquest report prepared by P.W. 21, Sub-Inspector, Chandan Kumar Das. The inquest over the dead body of the deceased was held by Chandan Kumar Das, Sub-Inspector of Police in presence of the father, uncle, aunt and two neighbours of the maternal home of the deceased. The father of the deceased stated before the Inquest Officer that the deceased failed to bear any child even after four years of marriage. The appellant, his parents and the brother of the appellant used to quarrel with her frequently. She was rebuked by her in-laws over family matters on 3rd March, 2010. She was rebuked by her parents-in-law because she went to her parents house on 27th February, 2010 without informing anything to any of the members of her maternal home and her husband brought her back to her matrimonial home on 3rd March, 2010. On 5th March, 2010 at about 9.00 A.M. she consumed unknown poison. She was taken to Islampur Gramin Hospital in the early morning on 6th March, 2010 when the Doctor examined and declared her dead. Thus, at the time of inquest, the father of the deceased did not make any allegation regarding torture upon his daughter on demand of dowry or cash money. Nothing was also said to the Magistrate who held parallel inquest alleging demand of dowry by the appellant or any other accused persons from the

deceased during her life time. In the written complaint which was submitted subsequent to the holding of inquest, the de facto complainant for the first time incorporated the story of demand of dowry. The learned trial Judge failed to consider such aspect of the matter. Secondly, it is submitted by Mr. Chatterjee showing the charge framed against the accused persons that in respect of the charge under Section 304 B of the Indian Penal Code it has not been stated that the appellant or other accused persons used to treat the deceased with cruelty on illegal demand of dowry.

Mr. Chatterjee next has placed the evidence adduced by the witnesses on behalf of the prosecution during trial. P.W.1 Maya Rani Mondal is the mother of the deceased and the de facto complainant. In her cross-examination she admitted that her daughter was issueless. She was medically treated due to her infertility. It is also admitted by her that she was always anxious because she could not give birth to a child during the span of her four years of marriage and for this reason she used to remain depressed. P.W.2 Manik Mondal is the uncle of the deceased. P.W.3 Sadananda Mondal is her cousin brother and P.W.4 Ganesh Mondal is the father of the deceased. It appears from their evidence that the deceased was allegedly tortured by the accused persons on demand of dowry. However, none of the witnesses could state anything about the date, time and manner as to

how the deceased was tortured and when alleged dowry was demanded. P. W.5 Padmarani Mondal is the neighbour of the paternal home of the deceased. Nothing material transpires from her evidence. The evidence of P.W.7 Nabakumar Mondal is very important. He is an independent witness and village headman (Morol). In his examination-in-chief he stated unequivocally in clear terms that he had talking terms with the deceased. The deceased never disclosed him anything about the torture inflicted upon her by the appellant or any other accused persons. However, she used to share her agony with the witness that she failed to bear any child even after receiving medical treatment. She used to tell that her life became meaningless and subsequently she died suddenly. There was no cross-examination of P.W.7. Therefore, the evidence of P.W.7 stands as to the cause of the death of Dipsikha Mondal. From the evidence of the autopsy surgeon (P.W.14) it is found that during post mortem examination he found partial digested food material with foul smell in the stomach of the deceased. Therefore, he opined that the death was probably caused due to consumption of poison and was suicidal in nature.

It is submitted by Mr. Chatterjee that in order to establish a charge under Section 304B of the Indian Penal Code, the following essential ingredients must be satisfied:-

- (i)** the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.
- (ii)** Such death must have been occurred within seven years of her marriage.
- (iii)** Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any other relative of her husband.
- (iv)** Such cruelty or harassment must be for, or in connection with, demand of dowry.

In the instant case, the prosecution hopelessly failed to prove that the appellant demanded dowry from his wife. On the contrary, the evidence on record is absolutely clear that the deceased went to her paternal home on 27th February, 2010. It is the husband of the deceased who went to the paternal home of his wife and brought her back to his house. The parents-in-law of the deceased rebuked her because she went away to her paternal home without informing anything to anybody of her matrimonial home. Such incident took place on 3rd March, 2010. The deceased consumed poison on 5th March, 2010. There is no allegation that during such interregnum the deceased was tortured on demand of dowry.

On the other hand, a parallel story has come up to the fact that the deceased became mentally depressed because of her failure to bear a child even after four years of her marriage and in spite of her medical treatment. She disclosed that her life became meaningless as she failed to bear a child. Soon thereafter she consumed poison. Therefore, the prosecution hopelessly failed to prove the charge under Section 304B of the Indian Penal Code. It is further submitted by Mr. Chatterjee that the charge under Section 498A of the Indian Penal Code was also not proved because neither in the FIR nor in the evidence of witnesses it is proved that the victim was subjected to cruelty within the meaning of explanation 1 and 2 of Section 498A of the Indian Penal Code.

Learned P.P.-in-charge, on the other hand, has supported the judgment passed by the learned trial Court.

Having heard the learned counsel for the parties and on careful perusal of the entire evidence on record as well as the judgment delivered by the learned trial Court I fail to understand how the learned trial Judge came to the conclusion that the deceased was subjected to cruelty by the appellant on demand of dowry. The learned trial Judge held the statement made by the de facto complainant in the written complaint as gospel truth and in support of his observation he refers to the decision of the Hon'ble Supreme Court

in **Trimukh Maroti Kirnan vs. State of Maharashtra** reported in **(2006) 10 SCC 681**. The aforesaid judgment states about the practical necessity of relying on the evidence of the related witnesses in the cases of dowry death because according to the Hon'ble Supreme Court independent witness in a matrimonial dispute is hardly available and no person generally comes forward to depose in favour of his neighbour who is an accused of an offence under Section 304B of the Indian Penal Code. The ratio laid down in the said judgment is not at all applicable in the instant case because the independent witness (P.W.7) as well as the de facto complainant stated that the deceased remained depressed during her lifetime for failure to bear a child. She thought that her life became meaningless without having a child. Therefore, she committed suicide consuming poison.

For the reasons stated above, I am of the view that the impugned judgment and order of conviction and sentence is liable to be set aside.

Accordingly, the appeal is allowed on contest.

The appellant is acquitted from the charge and discharged from the bail bond.

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

(Bibek Chaudhuri, J.)

