

Form J(2)

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

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

CRA 333 of 2017

**Marjina Bibi & Ors.
-Versus-
State of West Bengal**

For the appellants : Md. Younush Mondal

**For the respondent : Mr. Ranabir Roy Chowdhuri,
Mr. Mainak Gupta.**

Heard & Judgement on : 07.02.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence dated 17th May, 2017 and 18th May, 2017 respectively passed by the Learned Additional Sessions Judge, 7th Court, Barasat at North 24-Parganas in Sessions Trial No. 03(09)/2013 arising out of Sessions Case No. 22(02)/2013, convicting the appellants and sentencing them to suffer rigorous imprisonment for two years with fine and default clause for committing offence under Section 498A of the Indian Penal Code, the instant appeal is filed by the convicts/appellants. The appellant no. 1 is the husband of one Lachmi Bibi, since deceased. Appellant no. 2, Jhantu Mondal and

appellant no. 4, Tuku Mondal are the brother and sister of the appellant no. 1 and appellant no. 3 is the wife of appellant no. 2.

One Anisur Mondal lodged a written complaint before the Officer-in-Charge of Ashoknagar Police Station on 5th May, 2011 stating, *inter alia*, that marriage of his sister, Lachmi Bibi was contracted under Mohammedan rites and ceremonies with the appellant no. 1 sometimes in the year 2002. At the time of marriage, the *de facto* complainant gave a sum of Rs.1,00,000/- in cash and other household furniture to the bride and bridegroom. However, even after five years of marriage the husband and other matrimonial relations started torturing Lachmi Bibi both physically and mentally on demand of money. The *de facto* complainant further stated that they satisfied the demand of the husband of Lachmi Bibi several times. However, on 4th May, 2011 at about 7 p.m. he received an information that his sister committed suicide by hanging. He rushed to the matrimonial home of his sister and found her dead body lying on the 'Varandah' of her matrimonial home. He and other people took her to Ashoknagar Hospital but the Medical Officer on examination declared her dead. It is stated by the *de facto* complainant that Lachmi Bibi died as a result of torture inflicted upon her by the appellants.

On the basis of the said complaint, Police registered Ashoknagar Police Station Case No. 191/2011 dated 05.05.2011 under Sections 498A/306 of the Indian Penal Code and took up the case for investigation. On completion of investigation charge-sheet was submitted against the accused persons under Sections 498A/306 of the Indian Penal Code.

After the case being committed to the Court of Sessions, it was transferred to the 7th Court of the Learned Additional Sessions Judge at Barasat for trial. The accused persons duly appeared before the Learned Trial Judge. Charge was framed against them under Section 498A read with Section 34 of the Indian Penal Code and Section 306 read with Section 34 of the Indian Penal Code. As the accused persons pleaded not guilty when the charge was read over and explained to them, trial of the case commenced.

It is further found from the record that in order to bring home the charge against the accused persons prosecution examined 13 witnesses. Amongst them, the *de facto* complainant deposed before the Trial Court as P.W. 1. P.W. 2 is another brother of deceased Lachmi Bibi. P.W. 3, Habibur Rahaman @ Mondal is also a brother of deceased Lachmi Bibi. P.W. 4, Rashida Bibi is the younger sister of deceased Lachmi Bibi. P.W. 5, Mominul Islam @ Momonur is a neighbour of the matrimonial home of deceased Lachim Bibi. P.W. 6,

Safikul Islam is a resident of the paternal village of Lachmi Bibi. P.W. 7, Dr. Suprity Ghorai is the Autopsy Surgeon. P.W. 8, Prosanta Ghosh was an Assistant Sub-Inspector of Police. He registered Ashoknagar Police Station Case No. 191/2011 under Sections 498A/306 of the Indian Penal Code on receipt of complaint from P.W. 1. P.W. 9, Selima Bewa is another neighbour of the matrimonial home of Lachmi Bibi. P.W. 11, Saidul Haque is a village quack who once medically treated Lachmi Bibi. P.W. 12 and P.W. 13 are the Police Officers. P.W. 12 held inquest over the dead body of Lachmi Bibi and P.W. 13 conducted investigation of the case.

From the evidence-on-record, it is ascertained that Lachmi Bibi committed suicide by hanging at her matrimonial home after about nine years of her marriage. The Learned Trial Judge rightly held that as the victim died after nine years of marriage, prosecution is not entitled to get presumptory benefit of Section 113A of the Evidence Act. Therefore, abatement to commit suicide is required to be proved by adducing cogent, satisfactory, believable and unblemished evidence.

Bearing this principle in mind if the evidence-on-record is scanned carefully it is found that P.W. 1 has alleged that after five years of marriage the accused persons demanded money from the deceased and tortured her both physically and mentally. The

introductory part of the evidence of P.W. 1 shows that he gave bridal presents in the form of furniture and cash money to the husband of his sister. But delivery of such furniture and cash money, even if accepted in the absence of any documentary evidence, cannot be termed as dowry because those were bridal presents not demanded as a condition of marriage by appellant no. 1 with Lachmi Bibi. In his cross-examination, he candidly admitted that during the lifetime of Lachmi he went to her matrimonial home about 50/60 times. During his visit, he was cordially treated by his sister and her husband. They also used to visit the house of the *de facto* complainant and they were cordially treated by the *de facto* complainant. Therefore, it is ascertained from the evidence of the *de facto* complainant as well as his brother and sisters that the relation between the said two families were cordial and no occasion arose for the *de facto* complainant or his sister, since deceased to lodge any complaint against the accused persons.

The witnesses who are the neighbours of the matrimonial home of the accused persons stated on oath that the relation between Lachmi Bibi and her husband was very cordial till her unnatural death. P.W. 11 who is a disinterested witness also stated that the relation between Lachmi Bibi and her husband was very good and during her illness her husband took her to P.W. 11 for her treatment.

Section 498A of the Indian Penal Code runs thus: -

"498A. Husband or relative 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 wilful 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 unlawful 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".*

Definition of 'cruelty' is available in explanation (a) and (b) of Section 498A of the Indian Penal Code. On careful perusal of the evidence in Lower Court Record I do not find any ingredient in support of the essential element of Section 498A, explanation (a) to the effect that the accused persons made certain wilful conduct which is of such

a nature as is likely to drive Lachmi Bibi to commit suicide. Evidence on this score is absolutely silent. There is also no evidence that the deceased was harassed to meet unlawful demand for money. In order to prove such ingredient there must be substantial evidence to indicate that illegal demand was made by the husband and other matrimonial relations of the deceased. In respect of the death of a married woman where the question is whether the death was suicide, it may be necessary to determine whether the victim had been subjected to harassment by her in-laws and this may be a continuous built up right from the date of marriage. It is not every harassment or every type of cruelty that would attract Section 498A of the Indian Penal Code. It must be established that harassment was with a view to force the wife to commit suicide or fulfil illegal demands of husband and other matrimonial relations.

It is needless to say that the evidence-on-record is absolutely silent on the above aspect of ingredient of evidence under Section 498A of the Indian Penal Code.

For the reasons stated above, this Court is of the view that the judgment and order of conviction and sentence passed by the Learned Trial Judge in Sessions Trial No. 03(09)/2013 cannot be sustained.

Accordingly, the instant appeal is **allowed**. The order of conviction and sentence passed by Additional Sessions Judge, 7th

Court, Barasat, North 24-Parganas in Sessions Trial No. 03(09)/2013 arising out of Sessions Case No. 22(02)/2013 is set aside.

The accused is acquitted from the charge, set at liberty and release from his bail bond.

Parties are at liberty to act on the server copy of this order.

[Bibek Chaudhuri, J.]

**Srimanta
A. R. (Court)**