

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRA 335 of 2017

Dipankar Das @ Pantu

-Vs-

The State of West Bengal

For the Appellant: Mr. Sourav Chatterjee, Adv.,
 Mr. Satadru Lahiri, Adv.,
 Mr. Someswar Dutta, Adv.,
 Mr. Safdar Azam, Adv.

For the State: Mr. S.G Mukherjee, Ld. P.P.,
 Mr. Faria Hossain, Adv.,
 Ms. Sonali Das, Adv.

Heard on: 01.03.2022.

Judgment on: 12.05.2022.

BIBEK CHAUDHURI, J. : –

1. Marriage of one Ruma Das was solemnised with one Dipankar Das on 12th March, 2005. Since after her marriage, said Ruma was subjected to physical torture and mental trauma by her husband and other matrimonial relations. Even after birth of a female child, the said woman was subjected to cruelty by her husband and other relatives of her husband. Ruma lodged a complaint before the jurisdictional police station against her husband and other matrimonial relations and on the basis of

the said complaint, a police case under Section 498A of the I.P.C was registered against them. Subsequently, Dipankar settled the dispute amicably and both of them started residing in a tenanted premises. On 31st January, 2010, the defacto complainant who is the maternal uncle of Ruma, got an information that Ruma received severe burn injury. Immediately, he rushed to the tenanted premises of Dipankar and Ruma but did not find them. He noticed some burnt cloth lying in front of the door of their tenanted room. The defacto complainant then went to Howrah State General Hospital and saw injured Ruma lying in the hospital. After few hours she succumbed to her injuries.

2. After death of his niece, the defacto complainant submitted a written complaint to the Officer-in-Charge of the jurisdictional police station. Police registered F.I.R under Section 498A/302/120B of the I.P.C against Dipankar, the husband of Ruma, since deceased and conducted investigation. On completion of investigation, charge sheet was submitted against the accused/appellant under Section 498A/302/120B of the I.P.C.

3. The trial court framed charge under Section 498A/302, alternatively under Section 304B of the I.P.C. During trial prosecution examined 14 witnesses to prove charge against the accused.

4. The accused also examined two witnesses in support of his defence. It is ascertained from the trend of cross examination of the witnesses on behalf of the prosecution and specific evidence adduced by the witnesses on behalf of defence that the accused denied the allegation of torture

perpetrated upon the deceased during her life time. The neighbouring witnesses also stated on oath that they never experienced any discord between Dipankar and his wife.

5. The learned trial judge on appreciation of evidence on record recorded order of conviction against the accused for the offence punishable under the Sections 498A and 306 of I.P.C. The learned trial judge finally handed down sentence of imprisonment for 2 (two) years with fine and default clause for the offence under Section 222 of the Code of Criminal Procedure and also for 7 (seven) years with fine and default clause for the offence punishable under Sections 306 of the I.P.C.

6. Hence the appeal filed by the convict assailing judgment and order of conviction and sentence passed by the court below.

7. Mr. Sourav Chatterjee, learned Advocate for the appellant submits that in order to bring home the charge, prosecution examined 14 witnesses. Amongst them, PW1 Subhas Basu is the maternal uncle of the deceased and defacto complainant of this case. PW2 Dipak Pal and PW4 Purnima Pal are the parents of the deceased. PW3 Anima Basu is the wife of PW1, PW5 Smt. Mallika Chakraborty is a neighbour of the matrimonial home of deceased Ruma. PW7 Biswajit Sadhukhan is the maternal uncle of the deceased. He does not have any personal knowledge about the relationship between Dipankar and Ruma during later's life time. His evidence is in the nature of hearsay. PW8 Shankar Deb is the landlord under whom Dipankar and Ruma used to stay as tenants. PW8 stated in his evidence that the relation between Dipankar and Ruma was cordial

and he did not see any matrimonial discord between them. PW9 Dr. Amit Chatterjee was attached to T.L Jaiswal Hospital, Howrah as Medical Officer. On 30th January, 2010 at about 4.45pm, he medically examined Ruma Das who was brought to the hospital by her husband with 80 percent burn injury. According to the husband of Ruma, she poured kerosene oil on her body and set herself on fire following quarrel with family members. The patient was referred to Howrah State General Hospital. PW10 Dr. Jaydipta Chattopadhyay is the autopsy surgeon who conducted P.M examination over the dead body of deceased Ruma Das and opined that the death of Ruma was due to the effect of burn injuries and ante mortem in nature. PW11 Ananta Dhara is a photographer who took photography of the place of occurrence as per direction of the investigating officer. PW12 was I.C, Liluah P.S on 31st January, 2010 who registered F.I.R against the accused. PW13 is another police officer who held inquest over the dead body of Ruma Das and PW14 is the investigating officer who submitted charge sheet against the accused.

8. Taking me to the evidence on lower court record, it is submitted by Mr. Chatterjee that except the near relatives of the deceased, no independent witness supported the prosecution case. PW5 Smt. Mallika Chakraborty and PW8 Shankar Deb who are one of the neighbours and landlord of the appellant deposed that the relation between the appellant and his wife was normal and they did not find any matrimonial discord during life time of the wife of the appellant.

9. It is also urged by Mr. Chatterjee that the defacto complainant stated in his evidence that deceased Ruma was initially happy with Dipankar but after few months of marriage Dipankar started to play gambling and consume liquor. He also asked his wife to bring money from her paternal home. As the deceased failed to satisfy unlawful demand of her husband, she was subjected of physical torture and mental cruelty. Parents of Dipankar also misbehaved with her. However, in the F.I.R, the defacto complainant did not narrate such facts. From the evidence of the defacto complainant, it is clearly ascertained that he does not know how Ruma received burn injury. He also stated in his evidence that as relation between Dipankar and Ruma was not cordial and he tortured Ruma, so he was of the opinion that Dipankar was responsible for the death of his wife.

10. It is pointed out by the learned Advocate for the appellant that the victim received burn injury on 30th January, 2010. But on 29th January, 2010, the accused came to the house of PW1 with her husband on the occasion of 'Snanyatra' of 'Sheetala Mata'. Both of them offered Puja and then Dipankar left for her paternal home. He again came to the house of PW1 at night and took his wife back to his tenanted house. He did not find any hint of matrimonial discord between them on 29th January, 2010.

11. It is also ascertained from the evidence of PW1 that the appellant also received burn injury on his person in order to save his wife. He was also admitted to the hospital. The parents of his wife and PW1 also went

to see him in the hospital. Thus, Mr. Chatterjee has raised a very pertinent question as to whether the person who is guilty of aiding and abating his wife to commit suicide would try to save her and receive burn injury on his person.

12. PW2 Dipak Pal and PW4 Purnima Pal are the parents of the deceased. In course of their examination in chief they stated that their daughter Ruma was tortured both physically and mentally by Dipankar and other matrimonial relation. In his cross examination, PW2 Dipak stated that he inquired about the matrimonial life of his daughter and son-in-law from other tenants of the tenanted house where they used to live during the life time of his daughter. However, he did not lodge any complaint against the appellant alleging torture upon her daughter. It is important to note that none of the witnesses could specify any incident of torture upon the wife of the appellant. The evidence on record further suggests that the deceased lodged a complaint under Section 498A of the IPC during her life time in 2008 against Dipankar. But the dispute between the parties was amicably settled and they again started to reside together. It appears from the evidence of PW3 who is the wife of the defacto complainant that Ruma came to their house one week before her death. At that point of time Ruma allegedly told PW3 that Dipankar directed her to fulfill his demand failing which she would be burnt to death. However, PW3 did not narrate the incident to the parents of the deceased. She did not also tell the deceased to inform the matter to the local police station and all such allegations were made by the witnesses

who are closely related to the deceased at the time of their evidence. It appears from the cross examination of PW4 that she did not disclose the incident of torture upon her daughter even to the Investigating Officer and she was deposing for the first time in court to tell the incidents of torture and assault by Dipankar upon his wife. It is already recorded that the neighbouring tenant of Dipankar turned hostile and the landlord of Dipankar also did not support the prosecution case. Mr. Chatterjee, learned Advocate for the appellant submits that the independent witnesses stated that the relation between Dipankar and Ruma was very cordial and they never saw the appellant inflicting torture upon his wife. He also submits that the prosecution failed to produce any ingredient of offence under Section 306 of the IPC. Therefore, he invites the court to consider as to whether conviction under Section 306 of the IPC was justified or not. As the appellant suffered burn injury on his person while trying to save his wife, the conduct of the appellant justifies that he had no culpable intention of causing death or aiding and abetting suicide of his wife. Therefore, the learned Advocate for the appellant submits that the judgment passed by the court below suffers from wrong appreciation of evidence and the said judgment and order of conviction and sentence is liable to be set aside.

13. Learned P.P-in-Charge, on the other hand, submits that the wife of the appellant died at her matrimonial home within five years of marriage. The evidence of the witnesses who happened to be the close relatives of the victim shows that the deceased was treated with cruelty during her

life time. Previously she had to file a complaint against her husband under Section 498A of the IPC. The appellant was in the habit of playing gambling and consuming liquor. The cumulative effect of all such act induced the petitioner to commit suicide. Thus, the court below rightly convicted the appellant and there is no reason to interfere with the impugned judgment and order of conviction.

14. Having heard the learned Counsels for the parties and on careful perusal of the evidence on record it appears to this Court that the defacto complainant did not state in the FIR that victim was subjected to cruelty by her husband on illegal demand of money. It is true that in the year 2008 the victim lodged a complaint under Section 498A of the IPC but the dispute between the parties was amicably settled and they started to reside together in a tenanted premises. The wife of the appellant committed suicide in the said tenanted premises. It is important to note that the landlord of the appellant and a co-tenant were examined during trial and they stated in their evidence that the relation between the appellant and his wife was cordial during their life time and they did not witness any dispute or quarrel between them. It is needless to say that all kinds of torture does not fall within the meaning of cruelty under Section 498A of the IPC. Section 498A of the IPC runs thus:-

“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 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.”

15. Learned trial judge held that the willful conduct or cruelty inflicted upon the deceased by the appellant was of such a nature that drove the wife of appellant to commit suicide. Therefore, the learned trial judge held the appellant guilty for committing offence under Section 498A of the IPC. It also appears from the impugned judgment that the learned trial judge convicted the accused under Section 306 of the IPC on the ground that as the victim committed suicide failing to bear torture inflicted upon her, such torture or cruelty amounts to aiding or abating the commission of suicide by the wife of the appellant. On independent and careful scrutiny of the evidence on record it appears to this Court that the allegation of cruelty was made by the defacto complainant and the close relative of the deceased out of shock and anger due to the death of the deceased. It is apparent from the evidence on record that on 29th January, 2010 the deceased and her husband came to the house of the defacto complainant. The deceased spent whole day in the house of the defacto complainant

and at nights he returned to her tenanted house with her husband. She did not make any allegation of cruelty against her husband to the defacto complainant on 29th January, 2010. The parents of the deceased did not take any step against the appellant when their daughter was allegedly tortured by her husband on illegal demand of dowry. In view of such circumstances it appears to the court that the allegation of the cruelty is an afterthought.

16. It is needless to say that Section 498A and 306 of the IPC are independent and constitute different offences. Though depending upon the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide. However, merely because an accused has been held liable to be punished under Section 498A of the IPC, it does not follow that on the same evidence he must also and necessarily be held guilty of having abated the commission of suicide by the woman concerned.

17. In order to establish a charge under Section 306 of the IPC prosecution requires to prove that a person committed suicide in consequence of abatement by the accused. The word “instigate” literally means to goad, urge, forward, provoke, incite or encourage to do ‘an act’. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation in

encouragement. Instigation may be in express word or may be by implied conduct. In the instant case there is absolutely no evidence that the appellant instigated his wife to commit suicide. Merely because the accused has been held liable to be punished under Section 498A, it does not follow that on the same evidence he must also be held guilty of having abated the commission of suicide by his wife. In the instant case, there is no evidence adduced by the witnesses on behalf of the prosecution to the effect that the appellant had ever abated or instigated the deceased to commit suicide. It might be a fact that the victim committed suicide out of frustration due to the reason that the appellant was in the habit of playing gambling and consuming liquor. It might also be the fact that over such incident dispute and quarrel broke out between the parties. Because of such evidence, it does not automatically prove abatement of commission of suicide. Therefore, the learned trial judge was absolutely wrong in convicting the accused under Section 306 of the IPC.

18. With regard to the conviction under Section 498A of the IPC, this Court is of the view that the evidence on record sufficiently establishes that the victim was subjected to cruelty by her husband. The victim was compelled to file a complaint under Section 498A of the IPC in the year 2008. However, the appellant was not arrested in that case because an amicable settlement was arrived at by and between the appellant and his wife. They started living together after such settlement in a tenanted premises. However, she was subjected to torture and harassment by her husband. It is true that apart from the close relatives of the deceased, so-

called independent witnesses do not support the prosecution case. However, it is the common experience that in a case of harassment against women, generally outsiders do not come forward to depose against his neighbour. Under such circumstances, no other alternative is left with the court except to rely on the evidence of the witnesses who are related with the victim. In the instant case, it is convincingly established that during her life time the deceased lodged a complaint under Section 498A of the IPC alleging physical and mental torture. All the witnesses being the relatives of deceased stated that she was subjected to cruelty by her husband.

19. In view of such evidence on record this Court holds that the appellant was rightly convicted under Section 498A of the IPC.

20. For the reasons stated above, the instant appeal is allowed in part.

21. The conviction and order of sentence for the offence punishable under Section 306 of the IPC is set aside. However, the conviction passed by the learned trial judge for the offence punishable under Section 498A of the IPC is upheld.

22. Coming to the question of sentence, I like to record that the appellant has been facing trial for about 12 years. He has suffered much mental trauma and agony during this long period of 12 years. Therefore, this Court is of the view that the order of sentence is required to be modified.

23. Considering both aggravating and mitigating circumstances the appellant is sentenced to suffer rigorous imprisonment for one year and to

pay fine of Rs.5000/- and in default of payment of fine he is to suffer further simple imprisonment for one month of his conviction to the charge under Section 498A of the IPC.

24. The appellant is directed to surrender before the court below within three weeks from the date of communication of the order, failing which the learned court below is at liberty to issue warrant of arrest against the convict for execution of sentence.

25. The period of detention undergone by the convict shall be set off from the substantive sentence in accordance with the provision of Section 428 of the Code of Criminal Procedure.

26. The appellant be informed that he may prefer an appeal before the Hon'ble Supreme Court against the judgment and order of conviction and sentence passed by this court of appeal and for this purpose he is entitled to have free legal aid from the State Legal Services Authority.

27. Let a plain copy of this order be supplied to the learned Advocate for the appellant free of cost.

28. The department is directed to send a copy of this judgment along with the lower court record forthwith.

(Bibek Chaudhuri, J.)