

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

**Hon'ble Justice Chitta Ranjan Dash
AND
Hon'ble Justice Partha Sarathi Sen**

C.R.A. No. 368 of 2007

Gautam Paul & Anr.

-Versus-

State Of West Bengal

For the Appellant : **Mr. Debapratim Guha, Adv.**
: **Mr. Sumanta Ganguly, Adv.**
: **Mr. Rajiv Lochan Chakraborty, Adv.**
: **Ms. Anchita Sarkar, Adv.**

For the State : **Mr. Saswata Gopal Mukherjee, Ld. P.P,**
: **Ms. Zareen N. Khan, Adv.,**
: **Mr. Ashok Das, Adv.,**
: **Md. Kutubuddin, Adv.**

Heard on: : **23.09.2022**

Judgment on. : **27.09.2022**

PARTHA SARATHI SEN, J. : –

1. The present appeal arises out of the judgment and order dated 25.05.2007 and 28.05.2007, as passed in S.T. 2nd April 2003 (arising out of Sessions Case No. 35/1998, GR Case No. 52/1996, Burwan PS Case No. 12/1996 dated 25.01.1996) by the Learned Additional Sessions

Judge, 1st Fast Track Court, Kandi, Murshidabad whereby the present appellants being Gautam Paul and Dhanubala Paul were convicted under Section 235(2) of Cr.P.C for the offence committed under Sections 498A/306 IPC.

2. The convicts namely; Gautam Paul and Dhanubala Paul felt aggrieved and thus filed the instant appeal.

3. For effective disposal of the instant appeal, the facts leading to initiation of Burwan PS Case No.12/96 dated 25.01.1996, under Sections 498A/306 IPC are required to be dealt with in a nutshell.

4. One Lal Mohan Mondal son of Nitya Mondal of village Barutiya PS Mayureswar, District Birbhum lodged a written complaint dated 25.01.1996, with the O/C Burwan Police Station, District Murshidabad stating inter alia that on 4th Ashar, 1395 (according to Bengali Calendar) marriage of her sister Minati Mondal was solemnized with one Gautam Paul son of Samadis Paul of Mallikpur, PS Burwan, District Murshidabad as per Hindu Rites and Customs. It has been stated in the said written complaint that one year after such marriage her sister's husband Gautam Paul, parents-in-law; namely; Samadis Paul, Dhanubala Pal and her brother-in-law Prabir Paul started torturing his aforementioned sister Minati both physically and mentally. It has been stated further that over this issue mediation has been done by the local Panchayat. It has also been disclosed that whenever Mianti was subjected to torture at her matrimonial home at the instance of the aforementioned persons, she used to inform the same to the family members of her paternal home.

However, the de facto complainant and his family members used to leave her in her in-laws' house after trying to pacify her grievance.

5. In the written complaint, it has been stated further that on 25.01.1996, at about 7 a.m one Banshibadan Mondal, maternal uncle of Gautam Paul intimated him that Minati Paul died after consuming poison and immediately thereafter he along with his family members rushed to his sister's matrimonial home and after reaching there at about 8:30 a.m they noticed that his sister was lying dead on the floor of the upstairs room and none of the accused persons are present at that time. It is the further version of the de facto complainant that from the neighbours of the matrimonial home of his sister he came to learn that his said sister died on 24.01.1996, at about 7:30 p.m. In his said written complaint he thus disclosed that he very much suspected that his said sister had either committed suicide being unable to bear the torture of her husband and other in-laws as mentioned above or the said persons had murdered her.

6. As stated above, on receipt of such written complaint the aforementioned PS Case was started. Investigation was taken up and on completion of the same charge sheet was submitted under Sections 498A/306 IPC. The Learned SDJM Kandi, District Murshidabad found that the case is triable by a Court of Sessions and accordingly by his order dated 02.04.1998 the case record was committed to the Learned Sessions Judge, District Murshidabad who thereafter transferred the aforementioned case to the learned trial court for trial and disposal.

7. Lower Court Records reveals that the learned trial court on perusal of the entire materials as placed before him including the Case Diary framed charges under Sections 498A/306 IPC against all the charge sheeted four accused persons namely; Gautam Paul, Samadis Paul, Dhanubala Paul and Prabir Paul. Since all the four accused persons pleaded their innocence and claimed to be tried, the trial before the learned trial court proceeded and ultimately the learned trial court by impugned judgement and order found the present two appellants namely; Gautam Paul and Dahnubala Paul guilty under Sections 498A/306 IPC and thus they were convicted while rest of the two accused persons namely; Samadis Paul and Prabir Paul were found not guilty and thus they were acquitted from the said case.

8. Heard the learned advocate for the appellants as well as the learned Public Prosecutor-in-Charge for the state at length. Perused the entire materials of the trial court's record including the oral evidence as adduced by the PWs as well as the DWs, the exhibited documents as well as the examination of the accused persons under Section 313 CrPC. We have minutely gone through the impugned judgement as passed by the learned trial court.

9. In support of the instant appeal learned advocate for the appellant, Ms. Anchita Sarkar, led by Mr. Debapratim Guha, Mr. Sumanta Ganguly and Mr. Rajiv Lochan Chakraborty at the very outset draws attention of this Court to the evidence of PW1, PW9 and PW 11. It is submitted by her that while passing the impugned judgement learned trial court ought not

to have placed much reliance upon the evidence of the aforesaid three prosecution witnesses. It is argued that on conjoint perusal of the evidence of the aforesaid three prosecution witnesses it will reveal that they are not truthful witnesses and their respective examination-in-chiefs and cross-examinations are contradictory. Drawing special attention of this Court to the cross-examination of PW 9 and PW11, it is submitted that in their respective cross-examinations it has been admitted by PW9 and PW11 that in course of investigation they had not given any statements before the Investigating Officer and in view of such, their evidence must not be considered as sacrosanct.

In course of her argument Ms. Sarkar, learned advocate for the appellant placed her reliance upon the following three reported decisions:-

Mangat Ram vs. State of Haryana reported in **(2014) 12 Supreme Court Cases 595**

Niharbala Banerjee & Anr. Vs. State reported in **1988 SCC Online Cal226: (1988) 2 CHN 398: (1989) 1 Cal LT 307: 1989 Cri LJ (NOC 38) 19**

Amalendu Pal @Jhantu vs. State of West Bengal reported in **(2010) 1 SCC 707.**

Ms. Sarkar, learned advocate for the appellants thus contends that it is a fit case for allowing the instant appeal by setting aside the impugned judgement.

10. Mr. Ashok Das, led by Ms. Zareen N. Khan, contends that learned trial court committed no error of fact or of law in placing reliance upon the evidence of the prosecution witnesses. It is contended further that before the learned trial court PW1, PW9 and PW11 had adduced corroborative evidence to bring home the charges under Sections 498A/306 IPC against the present appellants. It is argued that from the deposition of PW 10 vis-a-vis the post mortem report (Exhibit 5) it will reveal that the victim committed suicide and it has also been proved beyond reasonable doubt before the learned trial court that the victim Minati was subjected to torture at the instance of her family members of her matrimonial home and finding no other alternative she committed suicide.

It is thus argued by Mr. Das that it is a fit case for dismissal of the instant appeal.

11. On perusal of the trial court's record it reveals to us that in order to bring home the charges under Sections 498A/306 IPC, the prosecution has examined nine witnesses in all and six documents have been exhibited on behalf of the prosecution. It reveals to us further that before the learned trial court on behalf of the accused persons three witnesses have also been examined as DWs.

12. In considered view of us, for effective disposal of the instant appeal a brief discussion with regard to the evidence as adduced PW1, PW9, PW10, PW7, PW8 and PW11 are very much relevant and accordingly we

propose to confine our discussion over the oral evidence of the aforesaid prosecution witnesses vis-à-vis some exhibited documents.

13. Since PW 1 being the de facto complainant and the brother of the deceased in his written complaint (Exhibit 1) had disclosed that the death of his sister Mianti was unnatural and since the learned trial court framed charges under Sections 498A/306 IPC as against all the accused persons before commencement of trial, we propose to look to the evidence of PW10 vis-à-vis the post mortem report dated 26.01.1996 (Exhibit 6).

14. On perusal of the post mortem report of the victim it appears to us that PW10 after conducting autopsy over the dead body of deceased Minati Paul expressed following opinion:-

“the cause of death in my opinion is to be kept pending till final analysis (chemical analysis) report of the preserved specimen is available from the State Forensic Department at Kolkata”

15. On perusal of the evidence of PW10 (autopsy surgeon) it reveals to us that it is his version in his examination-in-chief that he find no external injury on the person of the deceased and on dissection of the body, he found in the stomach of the deceased ‘as coloured’ fluid materials of about four ounce. He also noticed that all vital organs were healthy and congested. In his examination-in-chief, with regard to cause of death of the deceased he stated the following:-

“the cause of death in my opinion is to be kept pending till final analysis (chemical analysis) report of the preserved specimen is available from the State Forensic Department at Kolkata”

He was not cross-examined from the defence side. On conjoint perusal of Exhibit 6 (post mortem report of the deceased) and the evidence as adduced by PW10, it thus appears to us that from the aforesaid oral and documentary evidence it has not become clear as to whether the death of the deceased occurred on account of consumption of poison or not or the same is homicidal or suicidal. It is pertinent to mention therein that before the learned trial court the prosecution for the best reason known to them, made no endeavour to tender Forensic Department's Chemical Analysis Report which is evident from the evidence of PW8 (second I.O) who stated that he submitted charge sheet pending Chemical Analysis Report of the viscera of the deceased. In view of such we have got no hesitation to hold that the before the learned trial court the prosecution has miserably failed to prove that the deceased committed suicide or not at least from the evidence of PW10 vis-à-vis (Exhibit 6). At this stage we consider it necessary to have a glance to the evidence of PW1 i.e the de facto complainant and PW9 who is the cousin brother of the deceased as well as mediator of the marriage and neighbour of the accused persons.

16. On perusal of the evidence of PW1 (de facto complainant) it reveals to us that it is his specific version in his examination-in-chief that his sister Minati was subjected to physical and mental torture at her matrimonial home at the instance of the accused persons and whenever he and his family members got the information of such assault they visited the house of the accused persons and even sometimes they used to take Minati to their own home and thereafter they used to sent her

back to her matrimonial home. Though while lodging his written complaint, he was not sure as to whether Minati's death was suicidal or homicidal in nature but in his examination-in-chief he categorically stated that the accused persons murdered Minati by strangulation after hitting her severely and that he noticed mark of injuries on the person of his sister namely; on her face, neck and her chest. At this juncture we consider it necessary to have a look to his cross-examination. He stated that he was a witness to the inquest of the dead body of his sister. He categorically stated that he found inflammation and marks of injury on the left side of mouth of her dead body. So far as the evidence of PW1 with regard to the allegation of physical torture upon his sister by the accused persons and the presence of injuries as claimed to have been seen by him practically gets no corroboration either from evidence of PW10 (autopsy surgeon) or from Exhibit 6 (post mortem report) or from Exhibit 2/3 (inquest report). Since from the said oral and documentary evidence, it reveals to us that no such wound was found either at the time of doing inquest or at the time of autopsy over the dead body of the deceased.

17. So far as the evidence of PW9 is concerned, it appears to us that in his examination-in-chief he stated that after one year of her marriage the accused persons started torturing Minati and on this issue two 'salisis' (village conciliation) took place and once the matter was taken to the Police Station also. From his cross-examination it reveals to us that in between the accused and him both civil and criminal litigations are

pending. It is pertinent to mention that in his cross-examination he stated that he was not examined by the I.O.

18. On perusal of the evidence of PW11 who is a co-villager of the present appellants, it reveals that in his examination-in-chief he stated that Minati during her life time was subjected to cruelty at the instance of the accused persons. He stated further that the accused persons' behaviour towards her was not good and she was not even given sufficient food. He stated further that in one evening the accused persons had beaten Minati and on the next morning he heard that Minati is no more. Cross-examination of PW11 in our considered view is little bit interesting. PW11 in his cross-examination stated that the victim Minati was murdered and in his opinion she did not commit suicide. He stated that he made no statement to the I.O. He further stated that he and the accused persons belonged to rival political parties. He stated in his cross-examination that on the relevant day, he received the information from the villagers in the morning and after receiving such news he heard from the villagers that the deceased was subjected to torture and was ultimately killed. In our considered view since the evidence of PW11 as adduced by him in his examination-in-chief is totally contrary to his cross-examination, it would be very risky if any reliance is placed upon the evidence as adduced by PW11 and according to us PW11 is not a truthful witness.

19. In order to decide as to whether the learned trial court by the impugned judgement and order was at all justified in convicting the

present appellants under Sections 498A/306 IPC on the basis of the evidence as adduced by PW1, PW9, PW7, PW8 and PW10, we consider it necessary to have a glance to the relevant provisions of law as well as to some important reported decisions on the subject. Section 498A of IPC is as under:-

“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 purposes 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.]”

Section 306 IPC is reproduced hereunder:-

Section 306 in The Indian Penal Code

“306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Section 107 is as under:-

“107.Abetment of a thing

A person abets the doing of a thing, who—

First.—Instigates any person to do that thing;

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal

omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.”

At this juncture we propose to look to a reported decision of **Amar Singh vs State of Rajasthan** reported in **(2010) 3 C CrLR (SC)446** wherein in a case under Section 498A/304B IPC the Hon’ble Apex Court of our country held the following:-

“A prosecution witness who merely uses the word “harassed or tortured” and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498A/304 B IPC.

Where accusations of dowry deaths are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths A tendency has developed for roping in all relations of the in-laws of the deceased wives in the matter of dowry deaths which, if not discouraged, is likely to affect the case of prosecution even against the real culprits.”

The same view was taken in an earlier reported decision **Kans Raj vs. State of Punjab** reported in **(2000) 5 SCC 207**.

20. Admittedly in the case before us neither PW1 nor PW9 stated before the learned trial court that the deceased Minati was subjected to cruelty at the instance of the appellants on account of unlawful demand of dowry. On the contrary both the aforesaid two witnesses categorically stated that one year after marriage the victim was subjected to physical and mental torture at the instance of the accused persons and sometimes they got news of such assault. As discussed

above, the allegation of physical assault as raised by PW1 and PW9 practically gets no support either from her inquest report or from the post mortem report and thus on account of such glaring contradiction and in absence of alleged specific conduct of the present appellants towards the victim, it is not at all believable to us that before the learned trial court, the prosecution is successful in proving that deceased Minati during her life time was subjected to cruelty at the instance of the present appellants and thus in our considered view the finding of the learned trial court that the present appellants namely; Gautam Paul and Dhanubala Paul are guilty under Section 498A IPC is not sustainable in law and the same is thus set aside.

21. In order to come to a logical conclusion as to whether the learned trial court is at all justified to hold that the present two appellants are guilty under Sections 306 IPC we propose to place our reliance to a reported decision in ***P.J Agro Tech Limited vs. Water Base Limited*** reported in ***(2010) 3 C CrLR (SC)1*** wherein the Hon'ble Apex Court expressed the following view:-

“Abatement involves a mental process of instigating a person or intentionally aiding a person in doing of thing. Without a positive act on part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. It also requires an active part or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

In another reported decision ***Madan Mohan Singh vs State of Gujarat*** reported in **(2011)1 C CrLR (SC) 190** the Hon'ble Supreme Court of India while deciding a case under Section 306 IPC expressed the following view:-

“In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC.”

The same view was taken by the Hon'ble Courts in the reported decisions of ***Mangat Ram vs. State of Haryana*** reported in **(2014) 12 Supreme Court Cases 595**; ***Niharbala Banerjee & Anr. Vs. State*** reported in **1988 SCC Online Cal226: (1988) 2 CHN 398: (1989) 1 Cal LT 307: 1989 Cri LJ (NOC 38) 19**; ***Amalendu Pal @Jhantu vs. State of West Bengal*** reported in **(2010) 1 SCC 707** as cited from the bar.

22. Keeping in mind the above proposition of law if we once again look to the evidence of the prosecution witnesses, it appears to us that none of the prosecution witnesses uttered a single word against the present appellants that they abated Minati to commit suicide. In absence of any positive evidence on the part of the PWs that there was either active or passive instigation on the part of the present appellants in favour of the deceased Minati to commit suicide, we consider that the learned trial

court is equally not justified in convicting the present appellants holding that they are guilty under Section 306 IPC.

23. Before parting with, we feel it obligatory to discuss that in page 7 of the impugned judgement the learned trial court specifically held that the present appellants had failed to explain the injuries as occurred to the victim during her stay at her matrimonial home and the present appellants equally failed to explain as to why the victim committed suicide in her matrimonial home. In considered view of us, learned trial court while making the aforementioned observation wrongly interpreted Section 106 of the Indian Evidence Act, 1972, since before the learned trial court nothing could be produced to show that there were injuries on the person of the deceased and the alleged reason of committing suicide by the victim Minati, under no stretch of imagination can come under the purview of 'special knowledge' of the present appellants in view of the aforementioned provisions of Indian Evidence Act.

24. As a result the present appeal succeeds. The impugned judgement and order dated 25.05.2007 and 28.05.2007 as passed in S.T. No. 2nd April, 2003, arising out of Sessions Case No. 35/1998 by the Learned Additional Sessions Judge, 1st Fast Track Court, Kandi, Murshidabad is set aside. The present appellants namely; Gautam Paul and Dhanubala Paul are found not guilty of the offence under Sections 498A/306 IPC and thus they are acquitted from S.T. Case No. 2nd April, 2003, arising out of Sessions Case No. 35/1998. The present appellants namely; Gautam Paul

and Dhanubala Paul are thus discharged from their respective bail bonds and be set at liberty; if not wanted in connection with any other case.

25. Let a copy of this judgement along with LCR be sent down at once.

26. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)