

Form J(2)

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

**Present :
The Hon'ble Justice Siddhartha Roy Chowdhury**

CRR 3144 of 2005

**Ashim Ghosh
-Versus-
The State of West Bengal**

**For the Petitioner :Mr. Satadru Lahiri,
Mr. Mahfuzus Salam
Mollah**

For the Opposite Parties :

Heard & Judgment On : 5th December, 2022.

This criminal revision assails the judgment and order dated 28th October, 2005 passed by learned Additional Sessions Judge , Fast Track , 1st Court, Hooghly in Criminal Appeal No. 20 of 1999 whereby learned appellate was pleased to affirm the judgment passed by learned Assistant Sessions Judge in Sessions Trial case No. 25 of 1996

recording an order of conviction against Ashim Ghosh sentencing him to suffer rigorous imprisonment for 7 years for committing the offence punishable under Section 306 of the IPC and to pay fine of Rs. 3,000/- with default clause . The convict was further sentenced to suffer rigorous imprisonment for two years for committing offence under Section 498A of the Indian Penal Code and to pay fine of Rs. 1,000/- with default clause.

Briefly stated that after marriage between the Ashim Ghosh and Kanika Ghosh @ Kumu was submitted on 7th May, 1993. They started living as man and wife in the house of Ashim Ghosh. At the time of marriage a sum of Rs. 13,000/- was given in cash with gold ornaments and other articles Kanika Ghosh was subjected to torture both physically and mentally by her husband. The family members of Kanika advised the couple to live peacefully. On 1st February, 1994 the father of Kanika was informed about the unnatural death of his daughter. The family members of Kanika rushed to house of in-laws of Kanika and came to know that she committed suicide. Police was informed and Dhaniakhali P.S. Case No. 8 of 1994 dated 1-2-1994 was registered under Section 498A/306 of IPC.

Police took up investigation which culminated into submission of charge sheet.

Prosecution examined 16 witnesses to bring home charges. Learned trial Court after considering evidence on record was pleased to hold that prosecution successfully discharged its onus to prove the charge framed against the accused Ashim Ghosh and recorded an order of conviction.

Mr. Satadru Lahiri, learned counsel representing the petitioner assails the impugned judgment by submitting that learned appellate Court while affirming the judgment of learned trial Court did not find fault with the purported letter admitted as Ext. 2. According to the prosecution, the letter was written by Kanika soon after her death. The letter was written on 26th January, 2002 and she committed suicide on 1st February, 2002. Apart from that letter, there is no cogent evidence to indicate that Kanika was tortured by her husband either for the purpose of squeezing money as dowry or for any other purpose, to make himself culpable for committing offence within the meaning of Section 498A of the Indian Penal Code.

Mr. Lahiri vehemently argued that a lady died within one year of her marriage; it is unfortunate and learned trial Court recorded an

order of conviction after drawing presumption under Section 113A of the Evidence Act and in doing so, perhaps learned trial Court got swayed away by emotion. According to Mr. Lahiri to draw such presumption under Section 113A of the Evidence Act one has to prove that the victim was treated with cruelty by her husband which is glaringly missing in this case. According to Mr. Lahiri the letter Ext. 2 cannot be said to have been proved within the meaning of Section 67 of the Evidence Act.

Mr. Lahiri further submits that while examining the accused persons under Section 313 of the Cr P C learned trial Court did not draw the attention of the accused person about the testimony made by PW 11 and PW 12 who claimed to have learnt from the victim that she was subjected to torture by her husband. Those two witnesses stated that they came to know about the plight of the victim from the victim herself. As no opportunity was given to the accused person to explain the incriminating evidence transperancy against him but the same was relied upon by learned trial Court . Thus serious illegality has crept in and the learned appellate Court did not consider it while passing the judgment of affirmation. PW 1 Shri Srikanta Ghosh , PW 2, PW 3 Latika Sapui are

the maternal uncle, brother-in-law and sister of the victim who made some general and omnibus statement that Kanika told then during her visit that she was subjected to torture by her husband . PW 4 and PW 5 are the witnesses to the inquest . PW 6 Biswanath Sapui stated that relationship between Kanika and Ashim was good for couple of months after marriage. PW 7 Sefali Sapui stated that Kanika was assaulted by her husband and was treated with cruelty which she came to know being told by Kanika. Smt. Shyam Porel, , PW 8 also made a general statement that Kanika was tortured by her husband . PW 9 Ajoy Ghosh , PW 10 Susanta Ghosh found the dead body of Kanika. PW 11 Ganesh Chandra Porel and PW 12 Sulekha also claimed to have learnt the plight of Kanika from Kanika herself. PW 13 is Dr. P.G. Bhattacharya the Autopsy Surgeon who opined after P.M.examination that cited Kanika died because of the effect of hanging ante mortem in nature.

PW 14 and PW 15 are the witnesses to inquest. PW 16 is the investigating officer.

Upon perusal of oral testimony of prosecution witnesses I do not find anything to substantiate the allegation of cruelty within the meaning of Section 498A of the IPC . The witnesses

made some general and omnibus statement regarding torture perpetrated upon Kanika.

Learned appellate Court did not find fault with the manner, the letter purportedly written by the victim was admitted into evidence by learned trial Court .

It is expedient to set out the same from the testimony of PW 1: "I received such letter through the postal service . This is the said letter which I received from Kanika (this is marked as Ext. 2)." Section 47 of the Evidence Act enunciate:

" 47.Opinion as to handwriting, when relevant.-

When the Court has to form an opinion as to the person by whom any document was written or signed , the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person , is a relevant fact.

Explanation.- A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed that

person, or when, in the ordinary course of business , documents purporting to be written by that person have been habitually submitted to him.”

There is no doubt that the letter Ext. 2 is eloquent enough about torture perpetrated upon the victim by her husband but the documents since has not been proved according to law it cannot be taken into consideration , particularly when it reached to the destination after seven days of death of Kanika though written five days prior to her death.

Learned trial Court failed to take into consideration the provision of Section 47 of the Evidence Act while admitting the said letter into evidence. Learned appellate Court ignored the evidence regarding admission of the said letter into evidence by learned trial Court . In absence of Ext. 2 there is nothing to indicate that the victim was tortured treated with cruelty by her husband. When such evidence is lacking there is no scope of presumption under Section 113A of the Indian Evidence Act .

This would have been a fit case to remit the case back to the learned trial Court but after elapse of 23 years I find some justification in the submission of Mr. Lahiri that it may not serve any

purpose. The accused person has been suffering the agony of this trial and conviction for last 23 years which may be considered as sufficient punishment particularly when there is no specific evidence to hold the petitioner responsible for the suicidal death of the victim.

I am of the view that the judgment passed by learned appellate Court should not be allowed to remain in force and should be set aside which I accordingly do.

Consequently the petitioner is found not guilty to the charge under Section 498A/306 of the IPC . He be set at liberty and be released from bail bonds.

Let a copy of the order be sent to the learned trial Court for information and necessary action.

All parties are to act on the server copy of this order duly downloaded.

Urgent photostat certified copy of this order, if applied therefor, be given to the parties upon compliance of relevant rules.

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(**Siddhartha Roy Chowdhury, J.**)