

Form J(2)

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

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

CRA 720 of 2017

**Smt. Durga Mukherjee
-Vs.-
The State of West Bengal**

**For the appellant : Mr. Dipanjan Chatterjee, Adv.,
Ms. Sonali Das, Adv.,
Mr. Abhinaba Mukherjee, Adv.**

**For the State : Mr. Imran Ali, Adv.,
Mr. Mirza Firoj Ahmed Begg, Adv.**

Heard on : 26.04.2022, 27.04.2022

Judgment on : 27.04.2022

Bibek Chaudhuri, J.

After the death of her husband, the widow being the daughter-in-law of the appellant used to stay at her matrimonial home with two minor children. On 28th January, 2007 at about 10.00 a.m. she committed suicide at her matrimonial home by setting herself in fire.

The mother of the deceased lodged a complaint before the Inspector-in-Charge, Ranaghat Police Station on 29th January, 2007 lodging, *inter alia*, that the parents-in-law, sisters-in-law and the husband of one of the sister-in-law used to treat the deceased with cruelty. She was physically assaulted. She was compelled to leave her matrimonial home and took shelter at her paternal home. However, at the intervention of a local leader of a particular political party the deceased was again sent to her matrimonial home. However, she could not lead a peaceful life in her matrimonial home and committed suicide.

On the basis of the above-mentioned written complaint filed by the mother of the deceased on the next date of her death of her daughter, Police registered a case against the appellant and other matrimonial relations under Sections 498A/302 of the Indian Penal Code. After filing of charge-sheet the case was committed to the Court of sessions. Subsequently, the case was transferred to the Court of the Learned Additional Sessions Judge, Fast Track Court at Ranaghat for trial. The Learned Trial Judge framed charge against the accused persons under Sections 498A/306 of the Indian Penal Code on 28th September, 2007. He recorded evidence of the witnesses on behalf of the prosecution as many as 22 witnesses were examined. Some documents were admitted to evidence by marking exhibits and

on conclusion of trial all the accused persons except the appellant was acquitted from the charge. The appellant was committed for committing offence under Section 498A of the Indian Penal Code and sentenced accordingly. The instant appeal is against the judgment and order of conviction and sentence passed by the Learned Court below on 30th October, 2017 convicting the appellant/mother-in-law of the deceased for committing offence under Section 498A of the Indian Penal Code.

It is submitted by the learned Advocate for the appellant at the outset that charge was framed against the accused persons under Sections 498A/306 of the Indian Penal Code. All the accused persons were acquitted of the charge under Section 306 of the Indian Penal Code.

It is under this backdrop that prompted the learned Counsel for the appellant to submit that as the charge under Section 306 of the Indian Penal Code failed, Explanation (a) of Section 498A ought to have been held in favour of the accused persons. In other words, it is submitted by the learned Advocate for the appellant that when the appellant was acquitted of the charge under Section 306 of the Indian Penal Code, he cannot be held to be guilty for committing offence under Section 498A, Explanation(a) of the said Section.

Section 498A of the Indian Penal Code is a penal provision for cruelty committed by the husband or relative of the husband of a woman.

Section 498A of the Indian Penal Code 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 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 demand.*

It is true that all kinds of torture does fall within the definition of cruelty under Section 498A of the Indian Penal Code. It is contended by the learned Advocate for the

appellant that when the charge of abetment of suicide under Section 306 of the Indian Penal Code fails, the charge under Section 498A of the Indian Penal Code will automatically fail.

This Court not in a position to accept such submission made by the learned Advocate for the appellant. Sections 498A and 306 of the Indian Penal Code are two independent and different offences. They are not dependent to each other. Though depending on 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 amount to cruelty is established leaving no other option for the woman except to commit suicide. However, merely because an accused held liable to be punished under Section 498A of the Indian Penal Code, it does not follow that on the same evidence he must also necessarily be held guilty of having abetted of commission of suicide by the woman concerned. In order to prove charge under Section 306 of the Indian Penal Code, the prosecution is under obligation to prove that the accused has abetted the commission of such suicide. Section 107 refers to abetment. It runs thus:-

107. Abetment of a thing.-A person abets the doing of a thing, who-

First.- Instigates any person to do that thing; or

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.

Explanation1.-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

In order to prove a charge under Section 306 of the Indian Penal Code, the prosecution is under obligation to prove that the accused either instigates the victim to commit suicide or engages with one or more other person or persons in any conspiracy for instigating the victim to commit suicide, or intentionally aiding by an act or illegal omission that may lead a person to commit suicide. Even in a case where there is sufficient evidence to show ill treatment made out by the husband and/or in-laws of the wife which warrants a conviction under Section 498A, it cannot be an automatic conclusion that the husband and others abetted the commission of suicide in the event, the wife finally committed suicide. In case of alleged abetment of suicide, there must be proved of direct or indirect acts of incitement to the commission of suicide.

Therefore, this Court is not in a position to hold that conviction of the appellant under Section 498A of the Indian Penal Code should be set aside because of the fact that the prosecution failed to prove the charge under Section 306 of the Indian Penal Code.

Therefore, it is the bounden duty of this Court to consider the evidence independently afresh to come to a finding as to whether the learned Trial Judge correctly convicted the appellant under Section 498A of the Indian Penal Code or not.

In the FIR, the de-facto complainant stated that her daughter was subjected to cruelty by the appellant and the other matrimonial relations. It is also stated that failing to bear such torture, the daughter of the de-facto complainant committed suicide by setting herself in fire on 28th January, 2007. In the FIR, it is not alleged that the accused persons made any illegal demand of dowry from the deceased. The deceased made dying declaration recorded by the Executive Magistrate, Ranaghat and also by the police officer attached to Ranaghat Police Station. Both dying declarations were recorded in presence of the Medical Officer who certified that the patient was mentally alert and sound at the time of giving dying declaration. It is found from both dying declarations that the deceased committed suicide because her mother-in-law often used to hold her responsible for the death of her son. It will not be out of list to record her that the husband of the deceased died of his disease about one and half years before the death of the deceased.

The de-facto complainant deposed in the Trial Court as P.W.1. In her evidence she stated that the deceased was tortured by her matrimonial relations on illegal demand of money. This allegation was not made by the de-facto complainant in her written statement. P.W.2, Debasish Chakraborty, a neighbour of the matrimonial home of the deceased deposed that the deceased was treated in her

matrimonial home as a maid servant. She was also abused by the appellant saying that she was responsible for the death of her son. Other witnesses also deposed that the appellant used to treat the deceased with cruelty, blaming her responsible for the death of her son.

I am in agreement with the learned Advocate for the appellant that the witnesses were trying their best to develop a new story of cruelty meted out by the appellant to the deceased. The said fact has narrated by the deceased did not find place in the FIR and in view of such contradictions the evidence of the witnesses on behalf of the prosecution cannot be believed. Even assuming that the deceased was often abused by her mother-in-law in her matrimonial home saying that she was responsible for the death of her son and the deceased committed suicide failing to bear such torture, the Court is not in a position to accept such evidence but such case being made out by the de-facto complainant in her written complaint.

In view of the above discussion, I have no other alternative but to hold that the learned Trial Judge failed to consider the evidence on record in its true perspective. The order of conviction passed against the appellant cannot be sustained under the facts and circumstances of the case. Therefore, the instant appeal is **allowed on contest**. The judgment and order of conviction and sentence passed by the

learned Additional Sessions Judge, Fast Track Court, Ranaghat, Nadia in Sessions Trail No.13(9)07, arising out of Sessions Case No.148(7)2007 dated 30.10.2017 against the appellant is set aside.

The appellant be acquitted from the charge and discharged from her bail bond.

[Bibek Chaudhuri, J.]

**Srimanta/Mithun
A. Rs. (Court)**