

Form J(2)

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

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

C.R.A. 724 of 2017

**Sankar Shyamal
-Vs-
The State of West Bengal**

For the Appellant: Mr. A.K.Samanta

For the State: Mr. Gautam Banerjee

Heard on: **15.3.2022 and 21.03.2022**

Judgement on: **21.03.2022.**

Bibek Chaudhuri, J.:-

The moot question involved in the instant appeal is whether on conviction of Section 498A of the Indian Penal Code, a conviction under Section 306 of the Indian Penal Code naturally follows or not.

Law on this point is no longer res integra. The relevant provisions of the Indian Penal Code that falls for consideration are as under:-

Section 107: "Abatement 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".

Section 306. Abatement 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 498-A. Husband or relative of a 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]

Along with the above-mentioned provisions of the Indian Penal Code, Section 113A of the Evidence Act, 1872 also requires consideration. And the said provision

runs thus:-

Section 113A.-

"Presumption as to abetment of suicide by a married woman". -When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the IPC (45 of 1860.)".

A married lady had met with an unnatural death after twenty years of marriage on 16th March, 2014. The mother of the deceased Smt. Rekha Dutta lodged a written complaint with the Inspector-In-Charge, Contai P.S. alleging, inter alia, that marriage of her deceased daughter was solemnized according to Hindu rites and Ceremonies with the appellant, named, Sankar Shyamal. After few months of marriage Sankar started torturing her both physically and mentally on illegal demand of money. The deceased used to work in

N.R.G.S Project during her lifetime. Her husband demanded the said money from her because he was intoxicated to liquor and gambling. During her lifetime, the de facto complainant and other family members of her paternal side tried to settle the dispute amicably. The de facto complainant personally requested the appellant not to inflict torture upon her but on 10th March, 2014, the deceased informed her brother that the appellant was inflicting unbearable torture upon her on demand of money which she saved for the future of her children. The brother of the deceased told her that she would go to her matrimonial home on the next day. However, on that very night, the deceased received severe burn injury. She was admitted to Contai S.D. Hospital. On 16th March, 2014, she succumbed to her injury by burn. The de facto complainant lodged a complainant on 18th March, 2014.

It is also stated in the complaint that as her sister was battling with death in the hospital and she was busy after the death her sister for her last rites, there was delay in lodging the complaint.

The above written complaint initiated the local Police Station to start Contai P.S. Case No. 110 of 2014 dated 18th March, 2014 under Section 498A/302 of the Indian Penal Code.

The investigation culminated in filing charge-sheet against the appellant. The learned Trial Judge framed charge against the

appellant under Section 498A/306 of the Indian Penal Code. Trial commenced as the accused pleaded not guilty when the charge was explained to him.

It is submitted by Mr. Samanta, learned advocate for the appellant that the appellant was convicted for committing offence under Sections 498A/306 of the Indian Penal Code by the learned Trial Judge on the basis of evidence on record. During trial, prosecution examined thirteen witnesses, amongst them the evidence of the de facto complainant (PW-3), the elder brother of the deceased (PW-4), PW-5, Anil Das and PW-9, Sukumar Dutta is material.

Apart from the above named witnesses, the medical officer namely, Dr. Prasenjit Sinha, who initially treated the victim lady and Dr. Chandan Ray are also relevant. P.W. 12 Dr. Amitesh Das Adhikary, autopsy surgeon and P.W.13 Partha Biswas was the investigating officer of the case. Other witnesses include the witnesses to seizure and some witnesses from the village of the matrimonial home of the deceased but they did not support the prosecution case and state on oath that they were unaware about any bad relationship persisting between the deceased and the appellant.

Mr. Samanta submits that from the evidence of the de facto complainant, it is found that the deceased used to work in N.R.G.S. Project and said Rs. 8,000/- for her son. The accused demanded that

amount from the deceased. However, she refused to hand over the said amount to the appellant. On this ground, the deceased was physically assaulted and then the appellant poured kerosene oil on her body and set her on fire. However, it is admitted by the de facto complainant that the marriage of the daughter of the deceased was solemnized 2/3 months prior to her death. The de facto complainant (P.W.3) attended the said marriage of her granddaughter and that time she found cordial relationship between the deceased and her husband. The learned counsel for the appellant has also pointed out that the appellant received burn injury on her left hand when she tried to save his wife. The appellant herself brought her to the hospital and admitted her. The victim died on 16th March, 2014 in the hospital. From the evidence of the de facto complainant, it is found that she went to the hospital only one day to see her daughter and subsequently, during her lifetime she did not go to the hospital. Therefore, it is clear from the evidence on record that the appellant took all steps for medical treatment of his wife who suffered burn injury on her person.

It is also pointed out by Mr. Samanta that the evidence of P.W.3 to the effect that the appellant allegedly poured kerosene oil on the body of his wife and ablazed her. He is proved to have been false because the autopsy surgeon in his post-mortem report clearly opined that the death of the victim was suicidal in nature.

Mr. Samanta also draws my attention to the inquest report of the deceased prepared by one Ashok Kr. Das, ASI, Contai Police Station. The said inquest was held on the very date of the death of the deceased in presence of the elder brother of the deceased namely, Nandalal Dutta (P.W.4) and Sukumar Dutta, a cousin brother of Nandalal Dutta. During inquest, the police officer recorded the statement of the witnesses as to the cause of the death of the deceased. According to Mr. Samanta, witnesses only stated that during her lifetime, there was quarrel between the appellant and his wife and she had burned herself failing to bear such torture made by her husband. Therefore, the allegation of committing murder of the deceased by the de facto complainant could not stand and finally, charge sheet was filed under Section 306 of the Indian Penal Code.

It is submitted by Mr. Samanta that in the F.I.R., the de facto complainant did not state that the victim was allegedly tortured by her husband on demanding of Rs. 8,000/- which she saved for her son. It is also not stated in the F.I.R. that the deceased informed her elder brother (P.W.4) on 10th March, 2014 that her husband was demanding money to consume liquor and play gambling. In cross-examination, P.W. 4 clearly admitted that he never saw any incident of quarrel between the deceased and her husband or that the appellant demanded money from his sister and no such incident took place in his presence. Finally, it was

admitted by P.W. 4 that the money problem of the family of the appellant and the deceased was acute poverty. It is rightly pointed out by Mr. Samanta that the evidence of P.W. 6 Anil Das cannot be taken into consideration because his evidence is hearsay in nature. It is alleged by the prosecution that over the matrimonial discord between the appellant and his wife, village 'salis' was held but the prosecution could not produce even a single document to prove that any such village 'salis' was held to solve the dispute between the appellant and the deceased. The witnesses to the inquest namely, Sukumar Dutta deposed during trial as P.W. 9 though he corroborated the evidence of the de facto complainant in his examination-in-chief but his evidence suffers from material contradictions in view of the fact that he himself admitted that during the lifetime of the victim he had no talk over the matrimonial dispute with the deceased or her children. He also admitted that the appellant took his wife to hospital and informed them about the incident. It is submitted by Mr. Samanta that the conduct of the appellant shows that he left no stone unturned to save the life of his wife. Had there been any inimical relationship between the husband and wife, the appellant might not have taken his wife to hospital. Moreover, there could not have been any injury on the person of the appellant while trying to save his wife from burn injuries.

The injury report of the deceased prepared by Dr. Chandan Ray (P.W. 11) is the most important document in order to ascertain the actual incident that took place in the night of 11th March, 2014. The medical officer recorded in the injury report that the appellant himself brought his wife for medical treatment. The patient has 50% deep injury. In the emergency ward of the hospital, the patient told P.W. 11 that she herself poured kerosene oil on her body and set herself on fire in order to commit suicide after quarrel with her husband Sankar Shyamal, who is a rickshaw puller by profession.

It is needless to say that P. W. 11 is a disinterested witness. He had no intention to record something against the appellant in his injury report. From the injury report, it is found that the deceased herself made statement to the effect that the following quarrel with her husband, she poured kerosene oil on her body and set herself ablaze.

It is submitted by Mr. Samanta that even if the statement made by the de facto complainant is expected as a dying declaration because the victim had died receiving the injury due to burn on 16th March, 2014, charge under Section 498A and 306 of the Indian Penal Code cannot be held to be proved. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of **Jagdishraj Khatta Vs. State of Himachal Pradesh**, reported in **(2019) 9 SCC 248**, the Hon'ble Supreme Court has held in the above mentioned report that in order to

prove abatement of suicide and cruelty, it is necessary for the prosecution to establish the conduct of the accused which drove the deceased to commit suicide. Referring to paragraph 9 of the above mentioned report, it is submitted by Mr. Samanta that the marriage of the appellant and the deceased was solemnized about 20 years back. During her lifetime, no complaint was lodged against the appellant to the effect that she was subjected to torture by her husband. The daughter of the appellant deposed during trial as D.W. 1. She said in her evidence that during the lifetime of her mother, she told D.W. 1 that she tried to commit suicide pouring kerosene oil on her body and set herself ablaze.

The question that fell for consideration before the trial court is whether the commission of suicide by the deceased was abetted by the appellant.

It is needless to say that in order to prove the charge for abetment to suicide within the meaning of Section 306 of the Indian Penal Code, the prosecution is required to prove that the accused has instigated the victim to commit suicide or engages with some other persons in any conspiracy in order to instigate the victim lady to commit suicide or intentionally aids the victim lady to commit suicide. It is needless to say that Section 113A of the Evidence Act is not applicable to the instant case because the wife of the appellant committed suicide after twenty years of marriage. It is pertinent to

mention here that the offence under Section 498A and Section 306 of the Indian Penal Code are not mutually inclusive in view of explanation (a) of Section 498A of the Indian Penal Code. The said two provisions are distinct offences and exclusive in nature. Only when the presumption under Section 113A of the Evidence Act is intended to operate against the accused, on proof of cruelty by the husband or his relatives within the meaning of Section 498A, offence under Section 306 of the Indian Penal Code is presumed to be committed though the said presumption is not mandatory. It is only permissive as the provision says "may presume". Secondly, the existence and availability of three circumstances envisaged in Section 113(A) of the Evidence Act shall not, like a formula, enable the presumption being drawn. Before the presumption may be drawn, the Court shall have to regard to "all other circumstances of the case". A consideration of "all other circumstances of the case" may strengthen the presumption or may dictate the conscience of the Court to abstain from drawing the presumption. The expression can "the other circumstances of the case" used in Section 113A suggests the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising presumption. It presupposes a circumstance when such presumption may be drawn if the suicide is the result or proximate cause of cruelty. Relying on the

decision of the Hon'ble Supreme Court in **Sushil Kumar Sharma versus Union of India and others** reported in **(2005) SCC (CRI) 1473** this Court must keep it in mind that the basic difference between Sections 306 and 498A of the India Penal Code is that of intention. Under the latter, cruelty committed by the husband or his relatives drag the woman concerned to commit suicide, under the former even suicide is abetted and intended. The same principle is also laid down in a very recent decision of the Hon'ble Supreme Court in **Gurucharan Singh versus State of Punjab** reported in **(2021) 1 SCC (CRI), 417**.

This Court also holds the same principle of law on appreciation of evidence on the charge of Section 306 of the Indian Penal Code. Reference may be made of **Bishnu Chakraborty and another versus State of West Bengal** reported in **2007 (1) C. Cr. L.R. (Cal) 714** and **Ananta Kumar Mondal versus State of West Bengal and another** reported in **2018 (4) C. Cr. L.R. (Cal) 27**.

I have carefully considered the entire evidence on record and the law on the point as discussed above. The learned trial Judge undoubtedly committed an error while convicted the appellant under Section 306 of the Indian Penal Code. The evidence on record is absolutely silent to show that the appellant had the primary intention to instigate his wife to commit suicide and for this purpose he treated

her with cruelty. If in course of a quarrel between a husband and a wife some hot and extreme words are exchanged between them and out of rage and fury, all on a sudden the wife commits suicide, such case will not come within the purview of Section 306 of the Indian Penal Code.

Therefore, I am of the considered view that the learned trial Judge failed to appreciate the evidence of the witnesses on behalf of the prosecution in its proper perspective and the order of conviction and sentence passed against the appellant under Section 306 of the Indian Penal Code is liable to be set aside.

Now comes the question as to whether the evidence on record is sufficient to prove charge under Section 498A of the Indian Penal Code against the appellant.

It is true that during life time of the deceased, neither she nor her mother or elder brother lodged any complaint against the appellant alleging that the victim was subjected to cruelty by her husband. Only after her death the complaint was lodged alleging demand of money by the husband from his wife and when the wife refused to pay the money to her husband, she was subjected to cruelty. Some of the witnesses stated about village 'salis' but no document whatsoever was produced from the side of the prosecution during trial.

However, Exhibit-5 is the injury report of the deceased prepared by PW-11, Dr. Chandan Ray. The victim herself gave a statement before PW-11 that she herself poured kerosene oil on her body and set her ablaze following a quarrel with her husband. The said document was examined without any objection. During cross examination the medical officer was not even asked reason doubt of the physical and mental state of the deceased to create a reasonable suspicion as to whether the injured lady had the capacity to speak and narrate the history of injury.

In view of such circumstances and when the victim is dead, the said document can be treated as a dying declaration. Viewing Exhibit-5 in such perspective, it appears to the court that the victim committed suicide in course of quarrel with her husband. Thus, it is proved beyond any shadow of doubt that the appellant picked up quarrel with his wife and such willful conduct was of such a nature that drove her to commit suicide. Thus, explanation (a) of Section 498A of the Indian Penal Code is squarely applicable against the appellant. Accordingly, while the appellant is liable to be acquitted from the charge under Section 306 of the Indian Penal Code, the prosecution was able to prove the charge under Section 498A of the Indian Penal Code and the conviction of the appellant under Section 498A of the Indian Penal Code sustains.

Now, comes the question of sentence. The incident is of March, 2014. Eight years have already elapsed. The appellant suffered tremendous mental agony during pendency of the trial and appeal. Under such circumstances, this court is inclined to take a lenient view with regard to sentence.

The appellant, namely, Sankar Shyamal is sentenced to suffer simple imprisonment for two years and fine of Rs.1,000/- only, in default, to suffer further simple imprisonment for one month for committing offence under Section 498A of the Indian Penal Code.

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

Let a copy of this judgement be sent to the trial court along with lower court records.

The appellant is directed to appear before the trial court to suffer sentence within three weeks from the date of communication of this judgement.

The period of detention already undergone by the appellant shall be set off against the actual period of punishment.

A copy of this judgement be handed over duly counter signed by the Assistant Court Officer of this Court to the learned advocate for the appellant free of costs.

(Bibek Chaudhuri, J.)

SK/BM/AKG/suman, A.R.s. (Court)