

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 69 of 2003

**Subrata Saha
-Vs-
The State of West Bengal**

For the Appellant : Ms. Shreyashee Biswas
Ms. Puja Goswami

For the State : Mr. Bidyut Kr. Roy
Ms. Rita Dutta

Heard on : 03.02.2023

Judgment on : 19.04.2023

Ananya Bandyopadhyay, J. :-

1. The instant appeal is preferred against the Judgment and Order dated January 20, 2003 passed by Learned Additional District and Sessions Judge, Fast Track Court-III, Alipore, South 24 Parganas, in connection with the Sessions Trial No. 58 (7) of 2002 arising out of Sessions Case No.- 39 (2) of 2002 convicting the appellant under Sections 498A/306 of the Indian Penal Code and sentencing the appellant thereunder to suffer rigorous imprisonment for two (2) years, and to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for one month for commission of offence under Section 498A of the Indian Penal Code and further sentencing the appellant to suffer rigorous

imprisonment for 6 years, and to pay a fine of Rs.3,000/- in default, to suffer rigorous imprisonment for 3 months for appellant's commission of offence under Section 306 of the Indian Penal Code. Both the sentences shall run concurrently.

2. The prosecution case emanated from the complaint filed by the father of the victim who precisely stated that his younger daughter was married to the appellant on 26.06.1996 and they gave birth to a daughter aged 3 months after a peaceful married life. After the death of his daughter's father-in-law her husband and both the sisters-in-law inflicted physical and mental torture upon the victim instigating her to commit suicide which was narrated by the victim to her mother.
3. On 25.05.1997 similar incident of torture recurred concerning family matters. Consequently she was starved and refused entrance into the house in case she informed the same to anybody else. On 26.05.1997, the victim set herself ablaze and was admitted at Bangur Hospital for treatment being seriously injured. The complainant received such information on 28.05.1997 and filed the complaint against the accused persons for punishment.
4. Based on the written complaint as aforesaid Regent Park P.S. Case No. 77 dated 28.05.1997 under Section 498(A) of the Indian Penal Code was registered. Thereafter, the victim succumbed to her injuries and expired on 14th June, 1997. On completion of the investigation charge sheet was submitted against the accused

persons under Section 498 (A)/306 of the Indian Penal Code to which the accused persons pleaded not guilty and claimed to be tried.

5. The Learned Trial Court acquitted the accuseds Sabita Patra and Mamata Das of the offence punishable under Sections 498(A)/306 of Indian Penal Code, however, convicted the present appellant under the aforesaid Sections.
6. The prosecution in order to prove its case cited 15 witnesses and exhibited certain documents.
7. The Learned Advocate for the appellant submitted the recording of the evidence of the deceased victim cannot be relied upon as the said statement was not recorded in the presence of the Executive Magistrate or by her attending doctor and therefore, it could not be considered as dying declaration devoid of probative value. There was no evidence that the burn injuries were a result of a proximate instigation to induce the victim to commit suicide and therefore the conviction under Section 306 of Indian Penal Code should be set aside. The prosecution further failed to establish the ingredients to constitute an offence under Section 498(A) of Indian Penal Code and accordingly failed to establish its case and the appeal should be allowed.
8. The Learned Advocate for the State submitted the corroborative evidence of the prosecution witnesses with regard to the infliction of physical and mental torture upon the victim fortified by her

dying declaration was sufficient enough to establish the prosecution case and the Learned Trial Court rightly convicted the appellant and the appeal shall be dismissed.

9. A circumspection of the evidence of the prosecution witnesses reveal the deposition of PW-1 the father of victim narrating the manner in which his daughter, the victim, was physically and mentally tortured at her matrimonial house which compelled her to put an end to her life by setting herself on fire which was corroborated by the evidence of PW-2 who had been the scribe to the complaint, PW-3, PW-4, PW-5, PW-6 and PW-7, the related witnesses, in unison. PW-8 and PW-9, the neighbours deposed to have been oblivious of the marital relationship between the victims and appellant. PW-10 was the Medical Officer who admitted the victim at emergency of SSKM Hospital with burn injury on 02.06.1997. PW-11 the Medical Officer, Surgeon at M. R. Bangur Hospital submitted that on 29.05.1997 the statement of the victim Barnali Saha was recorded by the Police Officer in his presence which was endorsed by him and identified his signature on the said statement recorded by the police under Section 161 of the Code of Criminal Procedure marked as 'Exhibit 4/1'. PW-12 conducted the post mortem on the body of the victim and the P. M. report marked as 'Exhibit-5'. PW-13 received the written complaint as a duty officer and drew the formal FIR marked as 'Exhibit-2' and the receipt of endorsement marked as 'Exhibit-

2/2'. PW-14 conducted the investigation, visited the place of occurrence, recorded the statement of the witnesses along with victim, prepared the seizure list marked as 'Exhibit-3' and 'Exhibit-6' respectively. He arrested the appellant and thereafter got transferred. PW-15 concluded the investigation and submitted the charge sheet.

10. From the assessment of the evidence on record it is indubitable that the victim was desperate and frustrated to an extent beyond tolerance and therefore committed suicide leaving her three month old child. The defence could not establish an element of acrimony or enmity between the parties to falsely implicate the appellant. The evidence of the related witnesses if trustworthy can be relied upon. In the instant case defence could not prove anything contrary to controvert the prosecution version. It is well settled that the statement of a victim of a crime recorded under Section 161 of the Code of Criminal Procedure during the investigation has a probative value if the victim expires during the course of the investigation. In the instant case the statement of the victim recorded by the investigating agency in the presence of the doctor i.e., PW-11 who thereafter deposed before the Court corroborating the statement of the victim during her hospitalization is a reliable piece of evidence.
11. Under the facts and circumstances of the case the Learned Trial Court has rightly convicted the appellant under Section

498(A)/306 of Indian Penal Code and this Court is not inclined to interfere with the impugned judgment and order.

12. I am of the opinion ingredients of the offence under Section 498A and Section 306 of the Indian Penal Code are also established in the light of the aforesaid discussion. I uphold the conviction of sentence of the appellant.
13. The appeal is accordingly dismissed.
14. It reveals from records that the appellant has served out the sentence.
15. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)