

**In the High Court at Calcutta
Criminal Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Siddhartha Roy Chowdhury.

CRA 143 of 2019

IA No. CRAN 2 of 2020

Arabinda Roy

Vs

The State of West Bengal

For the appellants : Mr. Subrata Bhattachaya Adv.

For the State : Mr. Bidyut Kumar Ray,
Ms. Sima Biswas

For Judgment : 31.01.2023

Siddhartha Roy Chowdhury, J:-

Challenging this appeal is to the judgment and order of conviction passed by additional Session Judge, 1st Court Cooch Behar in Sessions Case No. 309 of 2013 whereby learned Trial Court was pleased to record an order of conviction against Arabinda Roy for committing offence under Section 306 of IPC and sentenced him to suffer rigorous imprisonment for seven years and to pay fine of Rs.50,000/- with a default

clause subject to provision of Section 428 of the Code of Criminal Procedure.

In order to appreciate the appeal in its proper perspective, it is expedient to consider the facts of the case. From the attending facts of the case, it appears that victim, Shakuntala Roy, was the legally married wife of Arabinda Roy, who died an unnatural death being engulfed by fire on 31st March, 2013 at about 12.30 PM, together with her two babies. Sri Prasenjit Roy, the elder brother of the victim set the criminal administration of justice into motion by informing the officer-in-charge of Mekhliganj Police Station in writing, disclosing inter alia, that after the short period of marriage, the accused persons started inflicting physical and mental torture upon his sister to make her fetch a sum of Rs. 20,000/- from the paternal house, which the victim informed over phone on 31st March, 2013. The victim failed to endure torture anymore and decided to put an end to her life and thus she committed suicide. As the information disclosed offence cognizable in nature Mekhliganj Police Station Case No. 74/2013 dated 31st March, 2013 was registered under Section 498A and 304B of the Indian Penal Code. Police took up investigation which culminated into submission of charge-sheet against accused the persons. The accused persons stood trial pleading their innocence prosecution examined as many as 21 witnesses to prove the charge-sheet under Section 498A and 304B of IPC.

Learned Trial Court having considered the oral testimony as well as documentary evidence adduced on behalf of the prosecution was

pleased to hold that the victim did not suffer dowry death, so no offence under Section 304B of IPC was found to have been committed by the accused persons. Even learned Trial Court did not find any ingredient of offence within the meaning of Section 498A of IPC. As I have already pointed out that one of the two accused persons Arabinda Roy, husband of the victim was convicted for committing of offence punishable under Section 306 of the IPC.

Section 306 of the IPC envisages:

“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 10 years, and shall also be liable to fine”.

It goes without saying that in order to prove a charge under Section 306 of the IPC, the ingredients of offence within the meaning of Section 107 of IPC under Chapter V is required to be proved, or otherwise there has to have some kind of instigation on the part of the abated.

Section 107 of the IPC envisages:

“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 things.

Explanation 1.—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 authorised 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 facilitates the commission thereof, is said to aid the doing of that act.”

Upon perusal of the evidence on record, I find that Autopsy Surgeon after holding post-mortem examination could not come to a conclusion that the victim committed suicide. The post-mortem report Exhibit-7 is silent about nature of death. According to Autopsy Surgeon the cause of death was due to shock caused by burn. Though, no explicit opinion given by the Autopsy Surgeon, but presence of kerosene oil was perceived by Autopsy Surgeon, PW-16, which may lead us to infer that the victim might have committed suicide but it cannot be said beyond doubt that she committed suicide, or otherwise the possibility of accidental fire cannot be ruled out.

Now let us consider the fact of the case taking lumen from the provision of Section 107 of the IPC. There is no evidence to suggest that accused/husband instigated the victim to commit suicide. Some of the

prosecution witnesses stated that on the date of Swarasati Puja, the husband of victim Arobindo Roy came to his house with a lady. The lady was introduced to his wife as his domestic help. Some of the witnesses stated that Arabinda Roy wanted to marry the lady, which soured the relationship between the husband and wife. According to some other witnesses there was demand of Rs.20,000/- which the victim failed to fulfil.

As I have already pointed out though the accused persons were charged under Section 498 A and 304B of IPC, the learned Trial Court recorded an order of conviction under Section 306 of IPC, relying upon the provision of Section 113A of IPC, as the victim died an unnatural death within seven years of marriage.

Section 113A of the Evidence Act enunciates:-

“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. 1/113A. 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 Indian Penal Code.”

Having found no ingredients of offence within the meaning of Section 498A of IPC, learned Trial court could not have drawn such presumption of Section 113A of Evidence Act for the simple reason that in order to draw such presumption as abetment of suicide by the married woman, there has to have evidence that husband or such relative of her husband had subjected her to cruelty and for the purpose of the section cruelty shall have the same meaning as in Section 498A of the IPC. At the cost of repetition, I would like to say that having found no ingredients of offence within the meaning Section 498A of the IPC, learned Trial Court had no reason to draw presumption under Section 113A of the Evidence Act, to caper to conclusion that husband abetted the victim to commit suicide, as this is mutually contradictory.

In the absence of any ingredients of offence under Section 107 of IPC, a charge under Section 306 of IPC cannot be said to have been proved, accordingly in my humble opinion the impugned judgment cannot be upheld. I am inclined to set aside the impugned judgment. Consequently the appeal is accepted. The accused person is found not guilty to the charge under Section 306 of IPC. He be set at liberty and be

released from bail bond. However, the appellant shall have to execute a bond under Section 437A of Cr.PC for six months. Connected application, if any, also stands disposed of.

Let a copy of the judgment along with Trial Court record be sent to the learned Trial Court for information and necessary action.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(Siddhartha Roy Chowdhury, J.)