

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 299 of 2001

Sanjit Ghosh & Anr.

-Vs-

The State

For the Appellants : Mr. Subir Kumar Ganguly

For the State : Mr. Prasun Kumar Datta,
Md. Kutubuddin

Heard on : 14.09.2023, 15.09.2023, 21.09.2023, 12.12.2023.

Judgment on : 15.12.2023.

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction dated 15th June, 2001 and sentence dated 16th June, 2001 passed by the Learned Additional Sessions Judge, 2nd Court, Nadia in Sessions Trial No. 5 (April) 2001, arising out of Sessions Case No. 8(11) 2000, convicting the appellants of an offence punishable under Sections 498A/306 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for seven years for the offence punishable under Section 306 of the Indian Penal Code and to suffer rigorous imprisonment for three years and to pay fine of Rs.3,000/- each in default to suffer simple imprisonment for six months for the offence

punishable under Section 498A of the Indian Penal Code. Both substantive sentences being directed to run concurrently.

2. The written complaint dated 04.06.1999 filed by the PW-1 to the Officer-in-Charge, Dhubulia Police Station states as follows:

“I lodge this complaint to the effect that last 2 years and 5 months ago, in the month of Agrahayan, I gave my daughter Mithu Ghosh in marriage with Sanjit Ghosh, S/o. Sri Sachin Ghosh of Village Balainagar P.S. Dhubulia, District - Nadia according to Hindu rites. I gave dowry as per our capacity. Since after her marriage my daughter used to tell that 1) Sanjit Ghosh, the son-in-law, 2) Sachin Ghosh, s/o. Late Rahipada, 3) Bharati Ghosh, w/o. Sachin 4) Sunil Ghosh, s/o. Sachin, 5) Dipali Ghosh alias Sahela W/o. Sunil of Balajnagar, P.S. Dhubulia, Nadia(sentence not completed). The father-in-law and mother-in-law of my daughter again demanded Rs. Ten thousand. They began torturing my daughter both physically and mentally for money. My daughter came to me and claimed the aforesaid money. I expressed my inability when it was informed to the in-laws of my daughter, the elder brother of the husband of my daughter, his wife, son-in-law, father-in-law, mother-in-law and all those mentioned, increased the degree of torture upon my daughter. Since after the birth of a female baby to my daughter one year ago, the torture increased gradually. I narrated all to the people of the village. On last 13 Jaistha, 1406 B.S, Friday at about 3.30/4 p.m., I heard from Sri Dinu Ghosh, S/o. Sri Bharat Ghosh of village Belpukur that my daughter Mithu had expired. On reaching to the father-in-law's house of my daughter, I found my daughter lying dead on the veranda of Sachin Ghosh. Her baby was crying by her side. The persons mentioned earlier were not found present there. enquiry I came to know from the people of the locality that in the mother-in-law, father-in-law, son-in-law night of previous day

law(Jamai), Bhasur and Jaa(daughter's husband's brother and his wife) picked up quarrel with my daughter and they assaulted my I firmly believe that the aforesaid persons are daughter. responsible for the death of my daughter. The police, on being informed, took the dead body to the police station.”

3. Based on the written complaint, Dhubulia PS Case No. 17/99 dated 4.6.99 under Sections 498-A/306/34 IPC was registered. Investigation followed, and on completion of the same Charge Sheet was filed. Charges were framed to which the appellants pleaded not guilty and claimed them to be tried.
4. The prosecution in order to prove its case cited fifteen witnesses and executed certain documents.
5. The Learned Advocate for the appellants submitted that:-
 - i. The impugned order of conviction and sentence is against the evidence on record, is bad in law and is liable to be set aside.
 - ii. The Learned Judge having illegally relied upon inadmissible evidence, the entire order of conviction and sentence being based thereupon is liable to be set aside.
 - iii. The Learned Judge illegally relied upon surmises and conjectures not borne out by any materials on record as such the impugned order of conviction and sentence is liable to be set aside.
 - iv. The Learned Judge illegally refused to consider the defence case in its proper perspective and same has occasioned serious prejudice to the appellants and resulted in total miscarriage of justice.

- v. The Learned Judge was in error in not holding that charge framed was erroneous, misleading and bad in law causing substantial prejudice to the appellants.
- vi. The prosecution in Court having abandoned the story made out in the First Information Report, the entire case was liable to be dismissed.
- vii. The prosecution having objectively failed to prove the time, manner and place of assault, as urged by its witness, the Learned Judge erred in law in convicting the appellants.
- viii. The Learned Judge ought to have considered that the First Information Report exhibited in Court was not the information lodged first at the police station because PW-1, Santi Bala Ghosh, the informant stated in her evidence that police took away the dead body of her daughter after getting information from her and that information should be treated as the First Information Report.
- ix. The alleged offence had taken place on 28th May, 1999 and the complaint was lodged with the police station only on 4th June, 1999. Neither the prosecution nor any of its witness had given any reasonable explanation of this delay of seven days in lodging the First Information Report which is fatal to the prosecution case.
- x. The Learned Judge ought to have considered the contradictions in the evidence of PW-1, Santi Bala Ghosh and PW-2, Chandu Ghosh regarding payment of money to the appellants.
- xi. PW-2, Chandu Ghosh had introduced a new story of cash payment of Rs.30,000/- to the appellant Sanjit Ghosh by PW-1, Santi Bala Ghosh

during the time of marriage, and payment of cash money of Rs.10,000/- made three days prior to the death of Mithu Ghosh which is contradictory to the statement of the other witnesses stating the story of torture casts doubt on the entire prosecution story.

- xii. PW-6, Sudhangshu Ghosh, the next door neighbour of the deceased Mithu Ghosh, clearly admitted in his cross-examination that he did not hear of any dispute between Sanjit Ghosh and his wife and the other in-laws of said Mithu Ghosh which completely demolishes the prosecution case.
- xiii. PW-7, Raghu Nath Bag, a member of the Gram Panchayat of the village where deceased Mithu Ghosh resided, stated before the Court during cross-examination that he also did not hear of any dispute in between Mithu and her husband or other members of the family.
- xiv. The evidence of PW-15, Dr. Ajit Kumar Biswas does not support the prosecution case at all.
- xv. In absence of proof of the incident of demand for dowry the consequences of suicide resulting therefrom could not be connected to conclude that for the refusal to meet the demands of dowry deceased Mithu Ghosh had committed suicide.
- xvi. The prosecution nor any of its witness have given specifics dates and months when the alleged demands were first thereafter made. Therefore, in these circumstances the prosecution's story contains only vague allegation without details and without specific allegations with reference to dates and months was fatal.

- xvii. The Learned Judge illegally acted on the evidence of the prosecution witnesses in spite of the fact that those facts deposed in the Court were never mentioned in their statements recorded by the police during the course of investigation.
 - xviii. Nothing transpired from the evidence of the prosecution witness that there was any positive act on the part of the appellants which had compelled Mithu Ghosh to commit suicide.
 - xix. The Learned Judge ought to have drawn an adverse presumption against the prosecution because of the fact none of the independent prosecution witness had supported the prosecution case on any material point.
6. The Learned Advocate for the State submitted that the prosecution had been able to prove its case on the basis of corroborative evidence of the prosecution witnesses. The evidence of the relatives of the victim who are in a position to correctly narrate the torture inflicted upon the victim for demand of dowry and failure to comply the same had instigated the victim to commit suicide. The appeal should accordingly be dismissed.
7. PW-1 in her deposition stated as follows:

“I cannot say how she died. One Dinu Ghosh intimated to us that my daughter was ill and we had been there and found that our daughter Mithu lying as dead. But I could not see the mother and x son in-law at their house. My son-in- law and his other-in-laws did not make any good behave with my daughter at their house. They had subjected cruelty and torture upon my daughter, with a demand of further dowry of Rs.10,000/. But we gave cash amount of Rs.30,000 to our son-in-law during the time of

marriage. Accd. Sunil, Sanjit, Bharti, Dwipali and Sachin Ghosh had conjointly subjected cruelty and torture upon my daughter. ...

My daughter had passed her conjugal life at her in-laws' house for about two and half years and thereafter she died. I lodged one written complaint with the local P.S. at Dhubulia against the said five accd. persons and that by Pradyut Ghosh. Pradyut wrote the said ejahar under my instruction.

My daughter used to visit my house and she used to narrate her plight to me. My son Dinu Ghosh, my son-in-law, Chandu Ghosh knew about the said hapennings when Mithu used to narrate her plight to us."

8. PW-1 in her cross-examination stated as follows:

"I did not lodge any complain to the local prodhan over the incident of my daughter. I came to learn about the said incident from one Dinu who happens to be the brother-in-law of my son-in-law. The police took away the dead body of my daughter after getting information from me.

I did not conceal anything before daroga. Whatever I stated before daroga he took everything. I did not put any L.T.I. on the complaint. My son out L.T.I. on the complaint on my behalf. the misery and plight of my daughter

My house is mud-made wall and corrugated tin shade which is comprising of one bed-room, one cow-shade and one kitchen. At present I have got two bighas of cultivable land. My son Dinu used to cultivate the said land. There is a P.O.at our village but I have got no account in the said post office I have got no account in the nearby Bank

I sold the land of mine and gave cash of money of 30,000/-to my son-in-law during the time of my daughter's marriage. I have got papers to show that I sold my land during the time of marriage of my daughter. My son Dinu, my son-in-law and others knew about the said transfer of land. I wrote in the F.I.R. that I gave cash money to my son-in-law during the time of marriage of my daughter."

9. PW-2 in his cross-examination stated as follows:

“I did not state before daroga that the bridegroom party had demanded Rs. 40,0000 /- during the time of marrying and we pay only Rs.30,000 /-. That was balance of Rs.10,000 /- to the said agreement I stated before daroga about the said episode after the death of Mithu. I will stand before daroga that Santibala Ghosh gave Rs.10,000 /- to Sanjit 3 days prior to the death of Mithu. My mother-in-la Santi know about everything.”

10. PW-4 inter alia deposed to have learnt about the victim, his younger sister's death from one Dinu Ghosh.
11. PW-5, the brother of the victim stated the victim to have been subjected to cruelty and torture by the appellants claiming the remaining amount of Rs 12,000 as dowry.
12. PW-6 deposed that his house was situated near the house of the appellants who were not his relatives. He further stated that the victim committed suicide by taking poison, and the reason for such an act was not known to him. During his cross-examination PW-6 stated that he did not hear of any dispute between the appellant number 1 and the victim as well as the in-laws of the appellant. He further stated one Babu Ghosh and Pradyut Master had tried to settle up the matter in between the parties by demanding money. There was talk of compromise between the parties for Rupees One Lac Only but the accused person agreed to pay Rupees Sixty Thousand Only. Subsequently they retracted from their terms and the de-facto complainant filed the instant case.
13. PW-8 stated that he did not state before the 'daroga' that his elder sister used to visit their house after being assaulted by her husband and other in-laws and that she would narrate her plight before their mother who would

try to console her and send her back to her in-laws house. He stated before the 'daroga' that the accused people had subjected his elder sister to cruelty and torture for the balance amount of dowry being Rupees Ten Thousand Only. He states that the brother of Chandu Jamaibabu informed them that his elder sister had fallen ill. He states that his elder sister would narrate her plight to his mother, his 'jamaibabu', other relatives, men of his locality and him. He was unable to name the men of his locality. Neither his mother, his other relatives nor him informed the local gram panchayat of the plight of his sister. He states that he was not deposing falsely at the instant of his maternal uncle Basu. He also states that the accused persons subjected his elder sister to cruelty and torture for the balance amount of dowry.

14. PW-9, the elder sister of the victim stated that before the 'daroga', she affirmed that the accused persons had subjected the victim for the balance amount of dowry and that as a result of that the victim died by suicide in her in-laws house. She stated before the 'daroga' that the father-in-law of the victim, the elder brother of the victim's husband, the mother-in-law of the victim, and the sister-in-law of the victim had subjected the victim to cruelty and torture. She did not state before the 'daroga' that the victim used to narrate her plight before her at her house. She did not state before the 'daroga' that when she had been to the house of the victim after hearing about her death, she found the victim's child loitering around with no one in the house present. She states that one Dinu Ghosh, a resident of the village had reported the incident of the death of the victim to her.

15. PW-10, a resident of the village stated that he knew one Basu Ghosh of the village of Maycol. He knew one 'salish' took place at Bepukur and he was present along with one Mintu, Basu and Pradyut when the 'salish' took place. Basu Ghosh had demanded Rupees One Lac Only but the amount came down to Rupees Sixty Thousand Only. The accused persons did not agree to pay the said amount thus Basu Ghosh filled the instant case.
16. The Hon'ble Supreme Court observed the following in the case of ***Kashibai and others vs Sate of Karnataka***¹:-

“14. Though it is true that as per Section 113A of the Evidence Act, when the question arises as to whether commission of suicide by a woman had been abetted by her husband or any relative of her husband, and when 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 can presume, having regard to the other circumstances, that such suicide has been abetted by her husband or such relative of her husband. However, mere fact of commission of suicide by itself would not be sufficient for the court to raise the presumption under Section 113A of the Evidence Act, and to hold the accused guilty of Section 306 IPC.

15. In Mangat Ram v. State of Haryana, this Court considering the provisions of Section 498A and 306 of IPC in the light of the presumption under Section 113A of the Evidence Act, observed as under:—

“30. We are of the view that the mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under Section 113-A of the Evidence Act would not

¹ (2023) SCC Online SC 575

automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under Section 498-A IPC, may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The term “the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband” would indicate that the presumption is discretionary. So far as the present case is concerned, we have already indicated that the prosecution has not succeeded in showing that there was a dowry demand, nor would the reasoning adopted by the courts below would be sufficient enough to draw a presumption so as to fall under Section 113-A of the Evidence Act.

31. In this connection, we may refer to the judgment of this Court in Hans Raj v. State of Haryana, [(2004) 12 SCC 257 : 2004 SCC (Cri) 217], wherein this Court has examined the scope of Section 113-A of the Evidence Act and Sections 306, 107, 498-A, etc. and held that, unlike Section 113-B of the Evidence Act, a statutory presumption does not arise by operation of law merely on the proof of circumstances enumerated in Section 113-A of the Evidence Act. This Court held that, under Section 113-A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the court is not bound to presume that suicide has been abetted by her husband. Section 113-A, therefore, gives discretion to the court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider

the nature of cruelty to which the woman was subjected, having regard to the meaning of the word “cruelty” in Section 498-A IPC.”

16. So far as the evidence adduced by the prosecution in the instant case is concerned, in our opinion the prosecution had failed to adduce any clinching evidence to enable the Court to conclude that the appellants-accused had abetted the deceased to commit suicide. In absence of any satisfactory evidence having been brought on record, in our opinion both the Courts below had committed grave error in holding the appellants guilty of the offence under Section 306 of IPC.”

17. In **Gurcharan Singh vs. State of Punjab**², the Hon’ble Supreme Court observed the following:-

“13. Section 107 IPC defines “abetment” and in this case, the following part of the section will bear consideration: -

*“**107. Abetment of a thing** – A person abets the doing of a thing, who – First-Instigates any person to do that thing; or Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.”*

14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be

² (2020) 10 SCC 200

ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the mens rea for the crime, he is held to have committed. The conviction of Appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide, possibly because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.

16. The necessary ingredients for the offence under section 306 IPC was considered in the case SS Chheena Vs. Vijay Kumar Mahajan¹ where explaining the concept of abetment, Justice Dalveer Bhandari wrote as under:-

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

18. In the case of **M. Arjunan v. State**³, the Hon’ble Supreme Court held the following:-

“7. The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or

³ (2019) 3 SCC 315

instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

19. The Hon’ble Supreme Court in the case of **Amalendu Pal v. State of W.B.**,⁴ observed the following:-

“21. The perpetration of physical torture on the deceased on the day prior to the date of the incident which led the deceased to commit suicide is the prosecution case all throughout. It is nowhere the case of the prosecution that the appellant had played any active role either in instigating or aiding the commission of suicide by the deceased for denying to accept Anita as the wife of the appellant. Anita, the second wife of the appellant was brought by the appellant to his house about three months prior to the date of the incident of suicide by the deceased and therefore, bringing of the second wife to the house by the appellant cannot be said to have either incited or facilitated the commission of suicide by the deceased. It is also not the case of the prosecution as disclosed from the evidence led which we have scrutinised very minutely. The aforesaid contention, in our considered opinion, is far-fetched and is not established by the facts of the present case.”

20. The Hon’ble Supreme Court in the case of **Gangula Mohan Reddy v. State of A.P.**,⁵ held the following:-

⁴ (2010) 1 SCC 707

“13. In State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

...

17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

21. In the instant case the delay in filing the complaint has not been explained.

However, there is an indication of delay owing to disagreement between the disputant families with regard to a settlement to be arrived at on the payment of a certain amount of money as aforesaid. The appellants probably

⁵ (2010) 1 SCC 750

declined to pay the same and, on such refusal, the instant complaint was filed implicating the appellants. The evidence of the prosecution witnesses who were the relatives reflected general and omnibus allegations with regard to the torture being inflicted on the victim by the appellants, contrary to the evidence of the independent witness who claimed the relationship between the victim and her matrimonial relations to be cordial. The prosecution failed to establish any specific incident which imminently caused the victim to commit suicide which was instigative and provocative in nature which compelled her to commit suicide as an ultimate step to redress herself from the torture that was being inflicted on her without any other alternative. The elements to constitute the offence under Section 498-A and Section 306 of the Indian Penal Code with regard to continuous torture being inflicted upon the victim by the husband and his family members on account of demand of dowry and as a consequence further abetment to instigate the victim to commit suicide are absent.

22. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.

23. Accordingly, the judgment and order of conviction dated 15th June, 2001 and sentence dated 16th June, 2001 passed by the Learned Additional Sessions Judge, 2nd Court, Nadia in Sessions Trial No. 5 (April) 2001, arising out of Sessions Case No. 8(11) 2000, convicting the appellants of an offence punishable under Sections 498A/306 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for seven years for the

offence punishable under Section 306 of the Indian Penal Code and to suffer rigorous imprisonment for three years and to pay fine of Rs.3,000/- each in default to suffer simple imprisonment for six months for the offence punishable under Section 498A of the Indian Penal Code is set aside.

24. The instant criminal appeal being CRA 299 of 2001 stands disposed of.

25. There is no order as to cost.

26. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

27. 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.)