

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 293 of 2007  
Ramu @ Ramapada Mondal  
-Vs-  
The State of West Bengal**

|                      |                                                   |
|----------------------|---------------------------------------------------|
| <i>Amicus Curiae</i> | : Mr. Santanu Talukdar                            |
| For the State        | : Mr. Narayan Prasad Agarwala<br>Mr. Pratick Bose |
| Heard on             | : 05.01.2023 & 10.01.2023                         |
| Judgment on          | : 17.03.2023                                      |

**Ananya Bandyopadhyay, J. :-**

1. The instant appeal is directed against the Judgment and Order of conviction dated 20.04.2007 and 21.04.2007 passed by Additional Sessions Judge, Fast Track Court-I, Uluberia in Sessions Trial No.127 of 2006 arising out of Bagnan P.S. Case No. 39/2002 dated 15.03.2002 convicting the appellant under Section 304 Part-II/498A of the Indian Penal Code sentencing him to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 1000/- in default to suffer further rigorous imprisonment for two months for the offence punishable under Section 304 Part-II I.P.C. and also to suffer rigorous imprisonment for one year and also to pay a fine of Rs. 500 in default, to suffer simple imprisonment for 15 days for the offence punishable under

Section 498A of the Indian Penal Code. Both the sentences shall run concurrently.

2. The prosecution case originated on the basis of a complaint dated 14.03.2002, lodged by the father of the victim, Shyamali Baur, who was married to the appellant six years ago. The younger son-in-law of the complainant had been to the house of the victim to invite her for *Puja*. An hour later, the appellant went to their place and informed a quarrel to have taken place with his wife concerning domestic issues, whereby he slapped his wife on her cheeks, which made her leave home. The complainant and his family members went in search of the victim. At about 1 PM, the victim approached the house of the complainant and stated to have consumed poison having been physically and mentally tortured by the appellant and her mother-in-law. On the way to the hospital the victim died. The complainant was of the opinion that the appellant and his mother were responsible for his daughter's death and sought for investigation.
3. Based on this aforesaid complaint, Bagnan P.S. Case No. 39/02 dated 15.03.2002, under Section 498A/306/34 IPC was initiated. On completion of investigation chargesheet was submitted. Charges were framed against the appellant and his mother to which they pleaded to be not guilty and claimed to be tried. During the pendency of the trial, Tuktuki Mondal, the mother-in-law of the victim expired.

4. The prosecution in order to prove its case examined thirteen witnesses and exhibited certain documents.
5. The Learned Advocate, Mr. Santanu Talukdar appearing as *Amicus Curiae* submitted that the Learned Trial Judge failed to appreciate the statements of the prosecution witnesses recorded under Section 161 of the Code of Criminal Procedure which could not be used as substantive evidence in favour of or against the accused. It was further submitted that the prosecution witnesses were primarily related witnesses whose statement did not corroborate with each other. Prior to the incident with the victim, complaint of any kind to any authority was not lodged. The prosecution failed to establish its case under Section 498A/304B of the Indian Penal Code. Two important witnesses namely “Boudi” of the appellant and one “Satya Baur” were not examined. Neither did the prosecution cite any witness from the neighbours or villagers of the matrimonial house of the victim to corroborate the statement of the relatives of the victim. Moreover, there was an inordinate delay to lodge the complaint since the statement of the PW-4 revealed that the victim died near Kalyanpur and he reached the said place at about 1.30/2 PM. However, the complaint was lodged at 22.05 hrs. without an explanation of delay. According to Learned *Amicus Curiae* the complaint lodged at 22.05 hrs, on 15.03.2002 appeared to ante-timed and ante-dated in contradiction to the evidence of PW-1

and PW-2. The verbal complaint to the Bagnan P.S., who arrived at the house of the appellant was deliberately suppressed giving rise to suspicion and conspiracy against the appellant. The prosecution failed to constitute the elements of the offence charged against the appellant and accordingly the appeal shall be allowed.

6. The Learned Advocate for the State submitted that the evidence of the related witnesses was trustworthy and can be relied upon. The inquest report as well as *post mortem* doctor's report establish the offence to have been committed by the appellant and the prosecution was able to prove its case. Therefore, the appeal shall be dismissed.
7. A circumspection of the evidence of the prosecution witnesses reveal PW-6, Jaydeb Ghara, to be the Deputy Magistrate and Deputy Collector, Ghatal who conducted the magisterial inquest over the dead body of the victim on 16.03.2002.
8. PW-7, Dulal Chandra Ghosh, the A.S.I. of the police held the inquest of the dead body of the victim in the presence of the witnesses on 15.03.2002 and sent the dead body of the victim to Uluberia S.D. Hospital Morgue.
9. PW-9, Doctor Chumindra Nath Pal, conducted the post mortem examination of the dead body of the victim and found as follows:

- “1. One deep seated sub cutaneous (sic) haematoma (Regnt.) Parietal region of scalp.
2. Sub cutaneous haemotoma (Regnt.) side of lower chest.

*On derrection I found:*

- (i) Subdural Haematoma (Regnt.) parictal region.*
- (ii) No fracture detected.*
- (iii) Stomach – congested and contains keorisene smell – ash colour. – liquid.*
- (iv) Liver – congested and raptured. Blood clot underneath the liver, in liver bed – within peritoneal cavity.*

*After holding such examination I preserved the visceras and sent for chemical analysis.*

*My opinion was – death was due to above mentioned injuries which were ante mortem and homicidal in nature.*

*I prepared post mortem report in triplicate (sic) in carbon process under my own hand writing and signature.*

*This is the carbon copy of said P. M. report prepared under my own hand writing and signatures (Exbt. 5).*

*Subsequently on 20.09.02 police of Bagnan P.S. came to me along with several papers and copy of the P.M. report in c/w Bagnan P.S. Case No. 39/02 dt. 15.03.02 and U. D. Case No. 15/02 dt. 15.03.02 and sook my opinion as to the cause of death.*

*At that time, I had given an opinion in writing as to the cause of death as –*

*Death of the above mentioned case is due to raptured liver (details mentioned in P.M. report) which is ante mortem, homicidal in nature. This is my said written opinion dated 20.09.02 written under my own hand writing and signature. (Exbt. 6)*

*Thereafter, on 22.03.03 I had again given an opinion as to the cause of death after consulting the P.M. Report and the chemical analysis report – wherein I opined that – death is due to injuries mentioned in the P.M. report and also as per chemical report and*

*also as per chemical analysis report, 'Endo sulphas' detected in the viscera of Shymali Mondal.*

*I Then consulted the chemical analysis report No. 362 dated 13.02.2003.*

*This is my said written opinion dt. 22.03.2003 written under my own hand writing and signature and also my office seal. (Exbt. 7)*

*I was then posted at District Hospital, Howrah.*

*The injuries No. 1 and 2 may not be detected by a non-medical personnel with his plain eyes unless it is extensive in nature.*

*The rupture of liver as I found could be possible due to assault with blunt weapon or even with kicks and blows.*

*The injuries which I found during post mortem could have been caused by blunt and hard weapon.*

*The rupture of liver which I found during examination by itself was sufficient to cause the death under usual course of nature."*

10. PW-10, Arjun Shome, the S.I of police received the written complaint and filled up formal FIR.
11. The PW-11, Sujata Baur, scribed the written complaint under the dictation of Paresh Chandra Baur, on 15.03.2002.
12. PW-12, Chittaranjan Jana, S.I of police collected the PM report and FSL report along with the final opinion of autopsy surgeon, and prayed for the addition of Section 302 Indian Penal Code against the accused persons, which was allowed by the court. On completion of investigation he submitted chargesheet against the accused persons under Sections 498A/302/34 Indian Penal Code.
13. PW-13, Jaydeb Senapati, was the S.I. to whom the investigation was entrusted at the inception. He visited the place of occurrence,

prepared a rough sketch map along with index and recorded the statements of the witnesses under Section 161 Cr.P.C. He prayed for magisterial inquest over the dead body of the victim. He prepared “nil” seizure list at the P.O. since he could not find the container of poison. He collected the inquest report and post mortem report in respect of the victim and send the viscera to the FSL for examination. On transfer he made over the case diary on 12.05.2002.

14. PW-1, PW-2, PW-3, PW-4, PW-8, PW-11 were the related witnesses of the victim.
15. PW-1, Paresh Chandra Baur the father of the deceased victim stated that his daughter was physically and mentally tortured by the appellant and his mother, who even starved her for food demanding her to bring money from her parents, since cash amount was not paid to them at the time marriage. The victim narrated the incident of torture inflicted on her when she visited her parent's house. A village “shalish” was organized over the dispute and on promise that the victim will not be tortured further she returned to her matrimonial house. The torture over domestic issue, demand for money and assassination of her character on false grounds however, continued. Thereafter on 15.03.2002 at about 9/9.30 AM the appellant reached to the house of PW-1 and informed them the victim being assaulted by him fled from the house. PW-1 sent his son to trace the victim and at about 1 PM the victim arrived at the

house of PW-1 and stated to have consumed poison expressing her anxiety for her son pleading them to look after him. Due to ill-treatment and torture at her in-laws house the victim died on her way to Bagnan Hospital. Subsequently a verbal complaint as well as a written complaint was filed.

16. PW-2, Basudeb Baur, the brother of the victim conceded to the evidence of the PW-1 and concurred the incident of physical and mental torture upon the victim for demand of money. The evidence of the PW-4 the mother of the victim conformed to the evidence of PW-1 and PW-2. The evidence of PW-3, PW-8 and PW-11 are based on hearsay ascribing to the evidence of PW-1, 2, 3 and 4.
17. The complaint was lodged during the course of the day after the incident occurred and could not be termed as inordinate considering the death of the victim and time consumed in performing ancillary activities connected to such a mishap in the family.
18. The evidence of the related witnesses if appears to be trustworthy cannot be disregarded. The deceased victim out of brutality and frustration committed suicide being assaulted as evident from the observation of the P.M. Doctor, leaving a child of five years alone at the mercy of others which reinforces the fact of physical torture inflicted upon her. The deviations and contradictions in the evidence of the related witnesses without affecting its kernel can be disregarded.

19. The neighbours generally have a proclivity not to be embroiled in a criminal case and remain aloof and disinterested unless there is a natural willingness on their part to advance and participate in a criminal case. Inability to cite an independent witness therefore cannot be a fault on the part of the prosecution.
20. The evidence of the P.M. Doctor, narrating the nature of the injuries and its cause, justifiably describes the assault sustained by the victim and her subsequent consumption of poison established the criminal act of the appellant to her inexplicable dismay beyond tolerance.
21. The prosecution has ably established its case beyond reasonable doubt.
22. In view of the above discussions, the appeal is dismissed.
23. The appellant according to records has already served out the sentence.
24. I record my appreciation for the able assistance rendered by Mr. Santanu Talukdar, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.
25. Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.
26. 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.)**