

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 371 of 2009

Kutub Ali & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Bibaswan Bhattacharya
Mr. Madan Mohan Roy
Mr. Haripada Nayak

For the State : Mr. Madhusudan Sur
Mr. Mirza Firoj Ahmed Begg

Heard on : 22.02.2023, 21.03.2023, 22.03.2023, 04.08.2023.

Judgment on : 10.08.2023.

Ananya Bandyopadhyay, J.:-

1. This criminal appeal is preferred against the Judgment and Order dated 16.05.09 and 18.05.09 passed by Additional Sessions Judge, 1st Court, Bankura in Sessions Trial No. 2 of January 1999 arising out of Sessions Case No. 7 of September 1998 convicting and sentencing the appellants to suffer rigorous imprisonment for 5 years each and to pay a fine of Rs.2,000/- each in default to suffer rigorous imprisonment for 3 months each for the offence under Sections 306/34 of the Indian Penal Code and further sentencing the appellants to suffer rigorous imprisonment for 2 years each and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for 1 month each for the offence under Section 498A of the

Indian Penal Code and further directing that both the sentences shall run concurrently.

2. The prosecution case emanated on the basis of a complaint filed by the father of the victim, inter alia, stating that approximately one and a half years ago, the complainant's fourth daughter, Fatema Bibi, aged 20 years, entered into a marriage with Kutub Ali, son of deceased Remu Kha of Paramanandapur village, in accordance with Muslim rituals and customs. Concurrent with the solemnization of the said marriage, the de-facto complainant provided a sum of Rs. 30,000/- in cash to the accused, Kutub Ali.
3. Approximately six months following the aforementioned marriage, Fatema endured physical and mental abuse perpetrated by her husband, Kutub Ali, Bhasur Sabur Ali, Minu Bibi, wife of Sabur Ali and the mother-in-law. Over the ensuing six to seven months, Fatema recurrently visited her parental home to seek the demanded money, which the complainant was unable to furnish. Subsequently, Fatema faced further mistreatment and violence at the hands of her husband and in-laws.
4. In response to these distressing developments, the complainant made several trips to her daughter's in-laws' residence, taking Fatema to Dr. Sufal Pal for medical treatment, and appealing to both the family members and local villagers to intercede and prevent any further harm to her daughter. Despite these efforts, Fatema was subjected to severe physical abuse by her husband, necessitating the complainant to take her to a village doctor, Ranjan.

5. On 11.10.95, at noon, Fatema visited the complainant, weeping and pleading for a sum of Rs 30,000/-. She conveyed that failure to provide this amount would result in her expulsion death in her in-laws' house.
6. Unfortunately, on 12.10.95, at approximately 2 pm, the complainant received distressing news that Fatema had ingested poison and was admitted to Kamarpukur Hospital. Upon arrival at the hospital, the complainant found her daughter lifeless.
7. Based on the aforementioned facts, the complainant asserts that the untimely demise of her daughter, Fatema, resulted from the inflicted torture she endured at the hands of Kutub Ali, Sabur Ali, Minu Bibi and the mother-in-law. The complainant demands justice and urges the submission of these allegations for further investigation and appropriate legal action.
8. Based on the aforesaid complaint Kotulpur P.S. Case No. 38 of 1995 dated 12.10.1995 under Sections 498A/306/34 of the Indian Penal Code was instituted. On completion of investigation charge-sheet was filed. The charges were framed to which the appellant and the other accused persons pleaded to be not guilty and claimed to be tried.
9. The prosecution in order to substantiate its case examined 17 witnesses and exhibited certain documents.
10. PW-1, the de-facto complainant, inter alia, stated his daughter, the victim was subjected to physical and mental torture by the appellant and other accused persons for demand of money on various occasions. She was brutally subjected to injury resulting in profuse bleeding from her vagina terminating her pregnancy. The victim was taken to the chamber of Dr. Sufal Chandra Pal, wherein the victim underwent abortion and

subsequently she refused to return to her matrimonial home. However, the victim was persuaded to reside in her matrimonial house. PW-1 further requested the appellant and his family members to refrain from torturing the victim which eventually continued. On a further assault, the victim was treated at the chamber of the Dr. Ranjan Kumar Majhi. The victim visited the house of the PW-1 on 11.10.1995 for the last time and implored him to pay a Rs.3,000/- for installation of shallow tube-well on the landed property of the appellant. She further stated that on denial of the same she would be assaulted by the accused persons to death. PW-1 promised his daughter to pay Rs.3,000/- on Friday and on such assurance the victim returned to her matrimonial house. On 12.10.1995, PW-1 received an information that his victim daughter has expired and on reaching hospital witnessed the dead body of the victim marked with several injuries. He identified his signature on the inquest report which was objected to. He further identified his signature on the seizure marked Exhibit 2, 3, 4 and 5 with regard to three diaries and the seizure thereof.

11. During his cross-examination PW-1 stated that he did not mention in the FIR that he found blood oozing out to the private parts of the victim being assaulted by the accused persons while she was pregnant. During his cross-examination, he further stated that he did not produce the diaries to the police officers before the same were seized by Investigating Officer.
12. PW-2, the brother of the victim conceded to the deposition of the PW-1. He further stated on 12.10.1995 at about noon, they got information that while the accused persons were taking his sister to the hospital on the way she expired. He further stated that the accused persons had assaulted his sister

and snatched away her ear rings leading to a bleeding injury which was treated by Dr. Ranjan Majhi.

13. During his cross-examination PW-2 stated Ranjan Majhi was never a doctor nor did he ever treat his sister.
14. PW-3 in similar tone narrated the version of PW-1 and 2 being the sister of the victim.
15. PW-4 initiated the Goghat P.S. Case No. 34 of 1995 on 12.10.1995 and through a challan sent the dead body to Arambagh Sub-divisional Hospital for holding postmortem examination.
16. PW-5 had taken the dead body from the hospital to the morgue and identified the same to the doctor, who held the postmortem examination.
17. The evidence of PW-6 is based on hearsay who has referred to a meeting held in the village with the help of Panchayet members and Upa-pradhan at the house of the accused persons asking them to desist from torturing the victim.
18. PW-7 stated to have heard a quarrel between the victim and the appellant on demand of further sum of money.
19. PW-8 stated to have heard the assault of the victim by the accused persons on demand of money as aforesaid.
20. PW-9 was declared hostile by the prosecution.
21. PW-10, Ranjan Majhi stated to have examined the victim on many occasions. He stated that the victim had visited his chamber with pain in her abdomen sustaining bleeding injury and she was advised to meet Sufal doctor for treatment. The victim disclosed that her husband kicked on her

abdomen. PW-10 further stated he was not a registered medical practitioner with proper medical education.

22. PW-11 deposed that he did not admit the victim at his hospital who complained of incomplete abortion out of a stroke in the thigh.

23. PW- 12 and 13 were declared hostile by the prosecution.

24. PW-14, the medical officer stated to have attended the victim who was brought dead with a history of unknown poisoning.

25. PW-15, the mother of the victim stated that *“My daughter used to come to my house with crying condition and she reported the matter of physical assault on her and occasionally. I used to visit the house of the accd. Persons and from that I came to learn about the said torture on my daughter Fatema. While my daughter was conceived, at that time the accd. Persons used to assault my daughter and on 23.09.94 the accd. Persons mercilessly assaulted my daughter Fatema. Then receiving information we went to the house of the accd. Persons and by a rickshaw we took my daughter to the chamber of Dr. Sufal Roy at Kotulpur.*

She was treated and thereafter she went to her father-in-law’s house. Thereafter, again the accd. Persons assaulted my daughter Fatema and snatched her ear-rings. My said daughter has been murdered on 12.10.95 and one day before 12.10.95, my daughter came to our house at about 11/12 a.m. and told me to pay Rs.3000/- for installation of shallow by the accd. Persons and if she failed to pay that amount in that case she would be killed by the accd. Persons and at that time my husband and sons were present at out house. But we could not pay the said amount to my daughter as the Bank remained closed at that time and my husband told my daughter that after

1/2 days, he will go to the house of her father-in-law to pay the said amount. Then in crying condition my daughter Fatema went away to her father-in-law's house. Thereafter, we heard that Fatema had been murdered. We informed to our villagers and also the villagers of the accd. persons regarding the tortures caused by the accd. persons upon my daughter Fatema. When the dead body of my daughter was taken for P.M. examination then I found the dead body of my daughter with marks of injuries all over the body.

....I cannot say the specific date or incident when the ear-rings of my daughter Fatema was snatched away. As it was happened long ago, it is not possible or me to say the dates or incident for the reasons. I have not notes the dates in the diary or khata which I have stated above in my evidence. I cannot say about what was the English date day before yesterday. I have not given any information to the choukidar or to the P.S. regarding the said incident of snatching away the ear-rings of my daughter and the assault by the accd. persons and treatment by Dr. Sufal Roy.

...My said daughter Fatema used to come to our house from the house of her father-in-law and then on that day she used to go back to the house of her father-in-law and she would not stay at night at our house since after marriage.

... I found the injury on the head of dead body (Chot) of Fatema and marks of injury on her throat and waist and hands broken when I found her dead body after P.M. examination. Not a fact that my daughter Fatema while living at our house committed suicide taking poison. Not a fact that I am deposing falsely being tutored by my husband."

26. PW-16 conducted the inquest on the dead body of the victim.

27. PW-17 on completion of the investigation submitted the charge-sheet. He further stated that Sk. Rahul Amin, PW-2 did not state before him that Joynal and other persons of their village went to Paramanandpur and there was a meeting along with the Up-pradhan of Paramanandapur and other and it was decided in that meeting that the accused persons could not make any further torture upon his sister Fatema. PW-17 further stated Sk. Narul Amin, PW-3 did not state before him that on 23.09.94 Kutu Ali, Minu Bibi, Nurjhan Bibi assaulted his sister Fatema and on the result of such assault the baby in womb of his sister Fatema was spoiled.

PW-3, Narul Amin did not state before him that a meeting was held regarding affairs of his sister Fatema in the village of the accused or that for getting more money all the accused persons assaulted his sister and caused pre-matured abortion or that a person of the village of the accused came to their house on 12.10.95 and informed them regarding taking of poison by his sister or that on 12.10.95 after receiving the said information of Fatema he went to village Paramanandapur and learnt from the villagers that all the accused persons assaulted his sister Fatema and for that reason she was compelled to take poison. PW- 3, Narul Amin stated about the name of Subur Ali for causing the incident of 23.09.94 and snatching of ear ring.

He did not examine the witness named as Nur Ali Mallick.

PW-6 Joynal Mondal did not state before him that after marriage Fatema used to live at the house of her father-in-law.

PW-7 Shemed Mondal did not state before him that after marriage Fatema used to live at her father-in-law's house or that sitting in a Tea stall at village Radhadamodarpur he heard discussion amongst other persons about the

torture upon Fatema caused by the accused or that Liyakat Sk. Up-pradhan Shyama Pada Mondal and others sat for a discussion for settlement of the dispute or that on 12.10.95 while he was going to Goyal Para through the passage situated in front of the house of the accused Kutu Ali and at that time he heard quarreling inside the said house and also heard that Kutu Ali had told Fatema to bring money from her father.

PW-8 Kenar Bayen did not state before him that as per direction of the accused persons Fatema Bibi came to her father's house to bring money.

Ranjan Majhi did not hand over any paper of his registration as Medical Practitioner to him. PW-10, Ranjan Majhi did not state before me that on another occasion Fatema came to him with bleeding injury and she disclosed that her husband hit on her abdomen and as a result she sustained bleeding injury or that he came to learn from Fatema, that the family members of her husband assaulted causing pain all over her body or that he treated Fatema Bibi of Paramanandapur or that sometime Fatema alone come to him for treatment and sometime she came to him for treatment along with her father.

PW-15/Regia Khatun did not state before me that she used to visit the house of the accused persons occasionally and according she came to learn about the incident of torture caused by the accused persons upon her daughter or that on 23.09.94 Subur Ali, Minu Bibi and Nurjhan Bibi assaulted his daughter Fatema while she was carrying and thereafter receiving information she went to the house of the accused persons and took her by a Rickshaw to the chamber of Dr. Sufal at Kotulpur or that thereafter again Fatema went to the house of the accused persons assaulted her and snatched away her ear

ring or that before the incident of the death of Fatema. Fatema came to their house and told to pay Rs. 3000/- to the accused persons or that they could not pay the said amount due to closer of Bank or that her husband told her that after 1/2 days he would pay the said amount after going to her father-in-law's house.

28. The Learned Advocate for the appellants submitted that –

- i. The Learned Judge illegally relied upon the prosecution case and came to a finding of guilt against the appellants.
- ii. The Learned Judge lost sight of the fact that the neighbours of the matrimonial home of the deceased namely PW-9, PW-12 and PW-13 did not support the prosecution case and were declared hostile by the prosecution.
- iii. The Learned Judge ought to have considered that there is no evidence to the effect that the misdemeanor and/or acts of the appellants were the proximate cause of the suicide committed by the victim.
- iv. Abetment of commission of suicide when alleged must and ought to be proved with cogent evidence within the parameters of Section 107 of the Indian Penal code. The instant case on that yardstick fails to substantiate the prosecution case.
- v. Mere misbehavior or demand for an article is not within the purview of Section 498A of the Indian Penal Code and something more is necessary to fasten an accused with criminal liability failing under Section 498A of the Indian Penal Code.

- vi. While it is true that legitimacy of interested witnesses cannot be discredited in any way nor termed to be a suspect witness but the evidence before being ascribed to be trustworthy or being capable of creating confidence, the Court has to consider the same upon proper scrutiny. In the instant case, the Learned Judge was wholly in error in not considering the evidence available on record in its proper perspective.
- vii. It is the predominant duty of a Court to be more careful in the matter of scrutiny of the evidence of the interested witnesses.
- viii. The Court has to scrutinize the evidence of interested witnesses with a little bit of caution and scrutiny so as to judge their veracity. Admittedly all the supposed witnesses i.e. PW-1, PW-2, PW-3, PW-15 are relations of the deceased and as such they fall within the category of interested witnesses. It is not that the evidence ought to be discredited by reason of the witness being simply an interested witness but in that event the Court will be rather strict in its scrutiny as to the acceptability of such account.
- ix. If the relatives or interested witnesses are examined, the Court has a duty to analyze the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence is biased.
- x. The PW-6 is a hearsay witness and his version cannot be safely relied upon.

- xi. The investigation of the instant case has been done in a perfunctory manner and the same has caused extreme prejudice to the appellants.
 - xii. The evidence of the Prosecution witnesses suffer from gross contradictions and/or embellishments and the same is rendered highly unreliable in nature and ought not to form the basis of conviction in the instant case.
 - xiii. The deposition of the prosecution witnesses does not establish the essential ingredients of the offences punishable under Sections 498A/306/34 of the Indian Penal Code.
 - xiv. The Learned Judge has accepted the version of the prosecution witnesses as gospel truth and illegally convicted the appellant on such unreliable and flimsy evidence.
 - xv. The Learned Judge failed to consider the discrepancies in the testimonies of the prosecution witnesses and illegally came to a finding of conviction.
 - xvi. The sentence is too severe and the appeal shall be allowed.
29. The Learned Advocate for the State submitted the prosecution through oral and documentary evidence had aptly proved the prosecution case as would be evident from the corroborative oral evidence of the prosecution witnesses.
30. In the case of **Ude Singh & Ors. Vs. State of Haryana**¹, the Hon'ble Supreme Court held as follows:

“13. The offence of abetment of suicide is specified in Section 306 IPC as under:

¹ (2019) 17 SCC 301

"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 ten years, and shall also be liable to fine."*

13.1. The expression "abetment" within the meaning of Indian Penal Code is defined as follows:

"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 thing.

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.

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 facilitate the commission thereof, is said to aid the doing of that act."

31. In the case of **Girdhar Shankar Tawade vs. State of Maharashtra**², the Hon'ble Supreme Court observed as follows:

"3. The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances

² (2002) 5 SCC 177

have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A."

32. In the case of **M. Arjunan vs. State represented by its Inspector of Police**³ the Hon'ble Supreme Court observed as follows:

"7. The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or 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, accused cannot be convicted under Section 306 I.P.C."

33. In the case of **Mariano Anto Brunoand and Another vs. Inspector of Police**⁴ the Hon'ble Supreme Court held as follows:

"16. Two things have to be proved by the prosecution in order to sustain the appellants' conviction for the offences under Section 498(A) and 306 IPC, as to whether, the death of the deceased is

³ (2019) 3 SCC 315

⁴ (2022) SCC Online SC 1387

unnatural and as to whether the deceased committed suicide due to harassment, inducement and abetment of the appellants.”

34. In the case of **Gumansinh alias Lalo alias Raju Bhikhabhai Chauhan and Another vs. State of Gujarat**⁵, the Hon’ble Supreme Court held as follows:

“13. *It is undisputed that the suicidal death of the deceased occurred within a short span of eight months of marriage. Section 113-A of the Evidence Act, provides for presumption as to abetment of suicide by a married woman within seven years of marriage, by her husband or any of his relative. The said section reads as under:—*

“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 Penal Code, 1860.”

35. Inconsistencies in the deposition of the related witnesses cannot be disregarded. The medical evidence of an abortion in the chamber of a doctor due to an assault could not be proved. The post-mortem report did not mention any detectable external injury contrary to the description in the inquest report which was objected to, to establish cruelty on the victim lady.

⁵ (2021) SCC OnLine SC 660

There are contradictions with regard to the sum of dowry demanded. The child stated to have accompanied the victim on 11.10.1995 was not examined.

36. The prosecution could not cite any proximate reason to have triggered the victim to have committed suicide. Abetment was not proved through trustworthy credible evidence that the husband/appellant imminently instigated the victim to commit suicide.
37. Under the facts and circumstances of the case in absence of proof of commission of the offence by the appellants beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.
38. Accordingly, the instant criminal appeal stands disposed of.
39. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
40. 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.)