

CRR 2147 of 2008  
CRAN 1 of 2009  
CRAN 2 of 2023  
CRAN 3 of 2023

In the matter of : Sri Ramendra Nath Pal & Anr.

Mr. Soumya Nag  
Mr. Rajib Ghosh  
Ms. Gargi Mukherjee ... for the petitioners

Mr. N.P. Agarwala  
Mr. P. Bose ... for the State

This criminal revision challenges the judgement passed by the learned Additional Sessions Judge, 3<sup>rd</sup> Court, Hooghly in Criminal Appeal No. 12 of 2006 affirming thereby the order of conviction passed by the learned Assistant Sessions Judge, Second Court, Hooghly in S.T. Case No. 13 of 2003. By the impugned judgement learned Appellate Court was pleased to uphold the view expressed by the learned Trial Court and the appeal was dismissed.

Briefly stated, that one Sahadeb Sarkar set the criminal proceeding into motion by informing the Chanditala Police Station in writing about the unnatural death of his younger sister Sefali Sarkar who was married to Balai Pal in the month of March, 1990. It is alleged that after marriage Sefali used to stay with her husband at her matrimonial home in a joint family mess. She was tortured both mentally and physically during her stay which Sefali could not endure and put an end to her life on 12.6.1994 by setting herself ablaze. The information since disclosed offence cognizable in nature, Chanditala P.S. Case No. 96 dated 13.6.94 was registered under Sections 498A/306 of the Indian Penal Code. Police took up investigation and submitted charge sheet. At the

time of commencement of trial the accused persons pleaded to be innocent. To bring home charges, prosecution examined eight witnesses. Learned Trial Court after considering the evidence on record, both oral and documentary, was pleased to hold accused Balai Pal, Ramendra Nath Pal and Pratima Pal to be guilty to the charge under Sections 498A /306 of the Indian Penal Code and sentenced them to suffer R.I. for three years and to pay fine of Rs.1,000/- each for committing offence under Section 498A of the Indian Penal Code and sentenced them to suffer R.I. for seven years and to pay a fine of Rs.3000/- each with a default clause for committing offence under Section 306 of the Indian Penal Code.

Heard Mr. Nag, learned counsel representing the petitioners and Mr. Bose, learned counsel representing the State.

From the attending facts of the case, it stands admitted that within seven years of marriage victim Sefali Paul died an unnatural death at her matrimonial home.

Upon perusal of the judgement, I find that learned Appellate Court was in agreement with the view expressed by the learned Trial Court and the learned Trial Court largely relied upon three letters purportedly written by the victim to her mother disclosing her plight in the matrimonial home.

It is rightly argued by Mr. Nag, learned counsel representing the petitioner that in order to prove the allegation under Section 498A of the Indian Penal Code the prosecution is under obligation to prove that the married lady Sefali Paul was subjected to cruelty which means any willful conduct as is likely to lead to the victim committing suicide or to cause grave injury. It is to be proved that she was harassed with a view to coerce her or any person related

to her, to meet any unlawful demand for any property or valuable security etc. or on account of her failure or failure of any person related to her to meet such demand.

Drawing my attention to the testimony of prosecution witnesses relied upon by the learned Trial Court Mr. Nag, submits that prosecution failed to prove the ingredient of offence within the meaning of Section 498A of Indian Penal Code which is necessary to make one culpable. The witnesses stated that the victim was tortured mentally and physically on demand of money but without satisfying the quantum of money demanded. The witnesses further stated that the second brother of the husband of Sefali and his wife tried to make the victim leave from her matrimonial home and her sister-in-law (Mejo Ja) and Kajal assaulted her. It was observed by the learned Trial Court that accused Balai Paul, his second elder brother and wife of second elder brother and his mother jointly inflicted the torture upon the victim both mentally and physically. This too is an omnibus statement which cannot be held to be sufficient to make one culpable for committing offence under Section 498A of the Indian Penal Code, more so, when it appears that husband of the victim used to stay at Domjur and on the fateful day the victim came back from her husband after taking the money for her maintenance. The letters revealed that the victim was even assaulted by her sister-in-law and niece of Balai Paul and they also abused her with filthy language. This kind of allegation cannot be held to be sufficient to prove the charge under Section 498A of the Indian Penal Code. Learned Trial Court admitted the letters in the exhibit three series to caper to a conclusion that the victim was treated with cruelty within the

meaning of Section 498A of the Indian Penal Code considering the same as relevant under Section 32 of the Evidence Act. The letters exhibits 3, 3A, 3B and 3C, I am afraid cannot be considered to be relevant under Section 32 of the Evidence Act when it does not relate to the cause of the death of the victim. Section 32(8) of the Evidence Act cannot be pressed into service to consider letters as relevant under Section 32 of the Evidence Act. However, if we consider the contents of those exhibits that attracted the attention of the learned Trial Court and inspired the learned Trial Court in order to record an order of conviction even then the same is not sufficient to bring the case within the ambit of Section 498A of the Indian Penal Code. Learned Trial Court in the judgement, affirmed by the learned Trial Court held that ;-

*‘So in order to prove cruelty it is not necessary to be depended upon the direct evidence only. Indirect evidence can also be helpful in this regard.’*

From the letters Exhibit - 3 series written by the victim we find that the victim informed husband her about the cruel behavior and brutal torture her matrimonial family of the inmates who inflicted torture on her, but the husband did not give her any shelter nor did he raise his voice against the misdeeds of the accused persons. On the contrary, he also assaulted the victim at the instigation of other accused persons.

But there is no whisper that she was ever harassed or tortured or there was any arm twisting in order to make her or her relatives pay more dowry money or any other valuables. True it is the victim committed suicide within less than seven years of her marriage but in order to draw the presumption under of Section

113A of the Evidence Act it is to be proved by the prosecution that the victim committed suicide within a period of seven years from the date of marriage and she was subjected to cruelty as explained in Section 498A of the I.P.C. Here the second limb is glaringly missing. There is nothing to suggest that the victim was treated with cruelty as it has been defined under Section 498A of the Indian Penal Code. Therefore, mere unnatural death of the victim, though unfortunate, is not sufficient without there being any evidence that she was treated with cruelty as explained under Section 498A of the Indian Penal Code to bring home charges under Section 498A/306 of the I.P.C.

Under such circumstances, I am of the view that learned Appellate Court failed to appreciate the facts of the case and arrived at an erroneous decision which should not be allowed to remain in force and should be set aside, which I accordingly do.

Petitioner being the accused is found not guilty to the charge under Sections 498A /306 of the Indian Penal Code and he be set at liberty and released upon execution of bonds under Section 437 of Cr.P.C. for six months.

With these observations, the revisional application is disposed of along with pending applications if any.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)