

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

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 513 of 2011

Goutam Gope & Anr.

Vs.

State of West Bengal

The Amicus Curiae

: Ms. Sibangi Chattopadhyay,

: Ms. Sruti Dey, Adv.

For the Appellants

: Mr. Bibaswan Bhattacharya,

: Mr. Sanjib Kumar Dawn.

For the State

: Mr. Binay Panda,

: Ms. Puspita Saha.

Hearing concluded on: 16/01/2023

Judgment on: 15/03/2023

Rai Chattopadhyay, J.

1. Appellants are the husband and mother-in-law of the victim, who has challenged in this appeal, the judgment and order of conviction dated August 19, 2011 and August 20, 2011 respectively, delivered by the Additional Sessions Judge, 1st Court, Bankura in Sessions Trial No. 4 (1) 2009. In the judgment, the Court has held the appellants to be guilty of the offence under sections 498A/306/34 IPC.

Appellant no.1, i.e, Goutam Gope was sentenced to suffer rigorous imprisonment for a period of seven (7) years and three (3) years, for the offences under Sections 306/34 and 498A IPC respectively. Appellant no. 2 was sentenced to suffer simple imprisonment for a period of five (5) years and two (2) years respectively, for the offences under Sections 306/34 and 498A IPC respectively. Both the convicts were directed to pay additionally a fine of Rs. 5,000/- each and in default to payment of such fine to suffer simple imprisonment for three (3) months more. Being aggrieved the appellants have preferred the present appeal.

2. The grounds of appeal may be stated to be that impugned judgment and order of sentence is a result of non-application of judicious mind by the trial Court and to the evidence on record. It results miscarriage of justice and that the impugned judgment is dehors the provisions of law. Also that the Court has failed to consider the inadequacy/inconsistency in the evidence and came to an erroneous finding, that the ingredients of the offence of which the appellants have been convicted were not satisfied and that the prosecution, though, has failed to bring home the charges against the appellants, the Court has misdirected itself by wrongly appreciating the evidence on record, to find the appellants as guilty in the case.

3. The police case was lodged by one Basudeb Gope, i.e, the father of the victim on April 22, 2008 (FIR is marked as Exhibit 3). In the

FIR the informant has stated inter alia that his eldest daughter, i.e, the victim / deceased [herein after referred to as the victim], was given in marriage with the appellant no.1 on July 21, 2006. Complainant informs that since after marriage the victim was subjected to torture, both physically and mentally by both the present appellants, particularly on demand of more dowries. Complainant further states that at 7.30 a.m in the morning on April 22, 2008 the complainant came to know from one of his relatives namely, Sandhya Gope, regarding the fact of his daughter, i.e, the victim having suffered burned injuries. Complainant has said to have immediately rushed to the matrimonial house of the victim and found that his daughter has already been removed to Bankura Medical Hospital. At about 11.00 a.m, with the complainant reached the hospital, he found that his daughter as dead. Complainant has alleged to have noticed profound burn injuries covering the whole body of the victim, including a cut mark on her right leg. Complainant alleges that the appellants were responsible for the victim's death and lodged the said FIR against both of them.

4. Pursuant to the said FIR investigation commenced and ultimately culminated into filing of charge sheet by police against both the appellants under Section 498A/304B/302/34 IPC.
5. Trial commenced on January 21, 2009, with framing of charges under Sections 498A/304B/34 IPC. Ultimately after completion

of trial the impugned judgment was delivered, holding the present appellants guilty of the offences under Sections 498A/306/34 IPC and sentencing both of them in the manner as mentioned above.

6. Appellant was not represented in this case. Hence, the Court appointed Ms. Sibangi Chattopadhyay as Amicus Curiae, to assist. Mr. Binay Panda along with Ms. Puspita Saha appeared for the State.
7. Ld. Amicus Curiae has exhaustively and categorically pointed out from the records that the evidence on record would not actually be sufficient to have brought the charges against the accused persons/appellants to home. It has been pointed out that no dying declaration is available in this case. It has also been pointed out that the evidence on record would possibly fall short to meet the standard of being beyond all reasonable doubts, in so far as the guilt of the accused persons/appellants regarding abetment of suicide of the victim is concerned.
8. State has however indicated about no requirement of interference of this Court to the judgment impugned, on the ground of the same having been based on appropriate appreciation of evidence and settled laws on the points involved. According to it , appeal may not have any merit.

9. Though in this trial charges were framed under Section 498A and 304B IPC the trial Court ultimately has convicted the appellants having found them guilty of offences under Section 498A/306/34 IPC. The trial Court has believed the evidence of P.W 9 being corroborated by P.W 10 and P.W 13 regarding remittance of cash amount of money of Rs. 1,75,000/-, motor bike and also house hold articles etc. as dowry to the present appellants, it has believed the evidences of giving away of a colour television set at a subsequent period on demand allegedly by the present appellants. The trial Court has also believed the evidence regarding infliction of torture by the appellants upon the victim. It has taken note of the fact that the victim died within two (2) years of her marriage. It has found that a lady being married for a very short period of time and having a sucking baby in her lap, would not normally commits suicide excepting being tortured and provoked for the same. It has noted absence of any evidence to show any endeavour on part on the appellants to save the victim, in case it was an accidental fire. Thus the trial Court has come to the finding of guilt of the accused persons and convicted them and sentence them vide the impugned judgment.

10. There are twenty two (22) witnesses examined in this case. P.W 1 is the neighbour of the appellants, whose evidence is based

on heresy. Same are P.W 2, P.W 3, P.W 4, P.W 5, P.W 11, P.W 12 and P.W 15. The cross-examination of all these witnesses were declined.

- 11.** P.W 6 is the doctor at Bankura Sammilani Medical College and Hospital who held post-mortem of the dead body of the victim. Witness says that he conducted post-mortem on April 23, 2008 in connection with Bankura P.S UID Case No. 195 of 2008. The witness has deposed his findings as follows:-

“On examination I found a moderately built and nourished adult female subject and found the following injuries:-

Evidence Dermo-epidermal burn injuries over (i) medial part of right and left parietal regions of scalp and adjacent area of frontal region of the scalp.

Whole face, all aspects of neck, (4) all aspect of right knee, (5) all aspects of left limb, whole chest walls, all aspects of abdominal wall, both glutial region of back including scral region, all aspect of right lower limb, except middle part of right sole, all aspects of left lower limb, whole external geneteria including perineum.

All the injuries mentioned above were ante mortem in nature.

Death, in my opinion, was due to the effect of the burn injuries, as described above, which were ante mortem in nature.

The above burn injuries were supposed to be above 90%.

Besides the above burn injuries, I found another injury, namely, i.e, evidence vene-seation. The said injury was caused by the doctor at the time of treatment of the patient.”

- 12.** P.W, 7 is the Deputy Magistrate under Bankura Collectorate, who is the inquest officer. He has deposed to have held inquest over the dead body of the victim at Bankura Sammilani Medical College and Hospital, found burn injuries on the body, prepared inquest report.

Witness has indentified the inquest report (being marked as Exhibit 2). This witness is a formal witness. P.W 16 is also a formal witness who moved the dead body to the morgue against dead body challan. So is P.W 18 who is police constable and seizure witness. Cross-examination of P.W 18 is declined. P.W 21 is also formal witness who was the last investigating officer of the case to submit the charge sheet. His cross-examination has also been declined.

13. P.W 8 is the hostile witness who happens to be a neighbour and co-villager of the appellants. He has deposed that the victim died due to burn injuries. He has also deposed that the victim lived a peacefully life in her matrimonial home and the appellants used to behave with her well there. When the prosecution cross-examined this hostile witness, he stated not to have been examined by police. Defence declined cross-examining this witness.

14. P.W 9 is the defacto complainant, Basudeb. He has deposed that the victim's marriage was solemnized with the appellant no. 1 on July 21, 2006. He further says that at her marriage, he handed over a cash amount of Rs. 1,25,000/-, one Hero Honda Motor Bike and other house hold articles to the appellant. He has asserted the fact that the victim died due to burn injuries sustained by her at her in-law's house on April 21, 2008, and that she had a nine (9) months old child at the time of her death. This witness stated that the victim was subjected to

torture at her in-laws house on demand of a television set which he was forced to supply. He further says that afterwards the victim was again tortured on demand of a refrigerator, when however she was unable to give the same due to scarcity of money. Pertinent to note that the witness has stated that "I have no knowledge the reason for which the victim was burnt". He has identified his signature in the inquest report (marked as Exhibit 2/1) and that on the FIR.

From the trend of cross-examination of this prime witness, it appears that the defence has tried to make out a case and throw reasonable doubt regarding his evidence by cross examining him and suggesting him that the death of the victim was due to an accidental fire and also that the appellants were pressurised for money and transferring some property in the name of the victim's child, which the appellants declined and the present case has been lodged against them for the said reason to wrack vengeance.

- 15.** P.W 10 is the mother of the victim namely, Sanaka. She duly corroborates the evidence of P.W 9. She added that all the incidents of torture were used to be described by the victim herself to her, whenever the victim used to visit her house. Some pertinent facts have emerged from the cross-examination this witness like the appellant no.1 undertook entire responsibility of the victim during her pregnancy

for medical check-up, delivery of child and also first rice rituals of the child.

16. P.W 13 is Nirmal, the elder brother of the victim. This witness have duly corroborated the evidence of P.W 9 and P.W 10 with subtle variations like the amount of cash given in dowry, which the witness says to be Rs. 1,75,000/-. He says that all these facts of torture was informed by the victim, when she used to come to her matrimonial house. This witness has further stated that the victim was compelled to commit suicide by setting herself on fire, due to such unbearable torture.

17. P.W 14 is the driver of the vehicle who carried in his vehicle the victim to the hospital, after the occurrence. He says that he took the victim from outside the house of the appellants and carried her to Mejia Hospital at about 7.30 in the morning. During his cross-examination he has stated that the victim was brought by the appellant no.1 and others from inside the house and was carried to his vehicle. According to this witness the appellant no. 1 was all along present with the victim while she was being taken to the hospital. This witness has stated that according his information the victim caught fire, while preparing meal in the stove for her baby.

18. P.W 17 is the medical officer at Mejia B.P.H.C where the victim was brought on the relevant date, i.e, April 22, 2008. This witness has stated that the victim was brought to the B.P.H.C by the appellant no. 1. He has further deposed that 90% burn was found on the person of the victim, though the patient was conscious. After primary treatment the patient was referred to the Medical College and Hospital. The time of occurrence has been mentioned to be about 7.30 hours in the morning. He identified the injury report (marked as Exhibit 6). This witness has stated that the victim did not disclose any history of injury to him.

19. P.W 19, is the scribe of the FIR who indentified the FIR and deposes that the same was written by him as per instructions of the defacto complainant. P.W 20 is the relative of the defacto complainant, who has stated about her information derived from her husband regarding the victim catching accidental fire from the stove, during the course of preparation of meal for her baby. This witness has deposed to have informed the defacto complainant about the incident over telephone. This witness has been declared hostile and during her cross-examination by the prosecution she has stated that she was not examined by the police.

20. P.W 22 is the investigating officer of the case. The investigating officer has negated the fact of the defacto complainant or

other witnesses supporting prosecution case, to have stated before him regarding remittance of cash amount of money, motor bike and other articles as dowry to the present appellants. However, he has asserted about mention of demand of dowry in the complaint though declined to have stated about the appellants being given any colour television set on demand.

21. Appellant no.1 was examined under Section 313 Cr.P.C, 1973 on February 2, 2011. During his such examination, when he was put to the question regarding the manner of death of the victim. He replied that the victim caught hold of fire while pouring oil into the stove. According to accused person this has resulted into severe burn injuries caused to the victim who ultimately succumbed to those injuries. This appellant as well as appellant no.2 had pleaded their innocence.

22. So far as the charge against the appellants under Section 498A IPC is concerned, the statute mandates the prosecution to prove beyond scope of all reasonable doubt regarding infliction of cruelty upon the victim. What should be an act of 'cruelty' is explained vide 'explanation' under Section 498A IPC, which may be extracted as follows:-

***"Explanation.—For the purposes of this section, "cruelty means"—
(a) any wilful conduct which is of such a nature as is likely to drive***

the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

23. As discussed earlier, in this case the trial Court on the basis of the materials on record has found the appellants guilty of an offence under Section 306 IPC also, instead of that under Section 304B IPC, regarding which previously the Court had framed charges against them. Be that as it may, what an abetment of a thing would mean as per Section 107 IPC, is instigation to any person to do that thing, or engaging with one or more other person and persons in any conspiracy for doing that thing, if an act and illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, or thirdly intentionally aiding by any act or illegal omission, doing of that thing.

24. To emphasize as to what would be construed to be an act of ‘abetment’, one may resort to the ratio of the decision of **Gurcharan Singh vs. State of Punjab** reported in **(2020) 10 SCC 200**, as follows:-

“15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 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 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 the appellant had the mens rea for the crime he is held to have committed. The conviction of the 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.”

25. The other case may profitably be referred to, i.e, **S.S Chheena vs. Vijay Kumar Mahajan & Anr.** reported in (2010) 12 SCC 190. The Hon’ble Court has been pleased to hold as follows:-

“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.”

26. It is better that a further reference may be drawn in this regard from the judgment of the Hon’ble Apex Court in the decision of **Amalendu Pal vs. State of West Bengal** reported in (2010) 1 SCC 707, is as follows:-

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find

out whether the cruelty and harassment meted out to the the victim had left the the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.”

27. Thus, the statutory provision as well as the ratio of the above stated judicial pronouncements prompt this Court to find that to prove an offence of abetment, i.e, abetment to suicide of the victim in this case, not only the ‘mens rea’ of the accused persons but also their overt and specific action in pursuance of their culpable intention to drive the victim to commit suicide, would be imperative, to bring home the charges as above, against the present appellants. It is to be seen that the cruelty and harassment meted out to the victim had left the victim with no other alternative but to end her life. Direct or indirect act of incitement by the present petitioners to the commission of suicide by the victim would be a sine qua non, to find guilt of the accused persons in this case.

28. Thus, having discussed the requirements under law which the prosecution would have to satisfied in the trial to bring whom the charges against the appellants, now there is a necessity for this Court to deal upon the evidence in the case once again and assess whether

the same has been properly considered by the trial Court, and it's judgment is not palpably illegal as alleged by the appellants.

29. The trial Court has relied on the evidence of the victim's brother, i.e, P.W 13, to come to a finding that there has been torture perpetrated upon the victim by the present appellants, leaving no other alternative for her but to commit suicide, due to such unbearable physical and mental torture.

30. P.W 13 and also P.W's 9 and 10 are the witnesses who have deposed in support of the prosecution case. So far as the offence of abetment to suicide by the appellants under Section 306 IPC is concerned, it is already seen that direct and indirect acts of incitement should have been perpetrated by the appellants to hold them guilty under the afore stated provisions of law. It is also seen excepting possessing culpable intention to let the victim to commit suicide, the appellants should also have perpetrated direct and overt instigation to force the victim to commit such an act. However, upon perusal of the evidence of all these witnesses such clinching material do not appear to be available against the appellants. None of the witnesses have deposed about any act of instigation or incitements caused by the appellants upon the victim resulting her to commit suicide. There is no proximity or immediate causal connection divulged from the evidence of the appellant's instigating the victim and her committing

alleged suicide, to bring the appellant's actions within the purview of law. Mere mention of the victim's grievance, when she was alive, if the same is taken to be sacrosanct, regarding torture being inflicted upon her by the appellants, would not come within the purview of an act of abetment of her suicide, unless it can be shown that the suicide is the immediate and direct result of the instigation by the appellants made out to the victim to commit such an act. It has been settled well now that the reaction of the victim to any alleged act of the accused persons may depend upon the mental strength and stability of the victim for which the accused may not directly to be liable, until and unless it is prove that the victim was so oppressed that she had no other alternative than to commit suicide. This is however not a case here.

31. It is found that situation does not vary from as stated above, on perusal of the evidence of other supporting witnesses of the prosecution, i.e, P.W 9 and P.W 10.

32. Though the witnesses have stated regarding injury mark on the right leg of the victim's dead body, the same fact is not supported in the evidence of doctors as well as the documentary evidence like post-mortem report. No less important is to note that the appellant no.1 has all along accompanied the victim since after the incident as it is disclosed from the evidence of the driver of vehicle who carried the

victim to the hospital. There is no challenge to such evidence of the witness. As discussed earlier, that the father of the victim/defacto complainant has also expressed her lack of knowledge regarding specific cause of death of her daughter. Mother of the victim has asserted regarding appellant No.1 being a dutiful husband. All these and lack of any substantial evidence of instigation and incitement by the appellants, direct and proximate enough to the suicide of the victim, has rendered the prosecution case to have failed miserably.

33. On this discussion it is found that in this case the trial Court has based its reasoning and finding on an erroneous premise of the appellants being involved in the act of abetting suicide of the victim, which is, however, found not to be available there against appellants, as per the settled laws. Hence, such finding of the trial Court in this case appear to be baseless and not in accordance with the settled laws.

34. So far as the offence under Section 498A IPC is concerned, as discussed earlier, the allegations of cruelty against the appellants should be of the gravity to indicate that the same has driven the victim to commit suicide. As elaborately discussed earlier, in this case there is no such compulsive material before the Court to find guilt of the accused persons as above. Matrimonial discord or disharmony for what so ever reason cannot and should not casually be weighed with

such gravity to have driven a person to commit suicide unless there is some seriously implicating materials available against the accused persons. Their specific intention, overt act and direct incitement would have been the necessary ingredients for the prosecution to bring home the charges against the accused persons, which in this trial the prosecution is found to have failed to bring on record. Under such circumstances the finding of the trial Court appears to be dehors the settled laws and thus improper and illegal.

35. Hence, the appeal succeeds. The judgment and order of the trial Court dated August 19, 2011 and August 20, 2011 respectively, in Sessions Trial No. 4 (1) 2009, under Section 498A/306/34 IPC is set aside. Both the appellants are found not guilty of the offence as alleged against them and they are acquitted. They may be immediately released from the bail bond.

36. Court appreciates the efforts put in by the Ld. Amicus Curiae in this case, to assist the Court in the matter. The Secretary, High Court Legal Services Committee is directed to do the needful to pay fees in this case to Ld. Amicus Curiae, at a rate commensurate to that of a category 'A' lawyer in its panel, preferably within one month from the date of this judgment.

37. Appellants, though never appeared in the Court, for a considerable period of time, have lastly entered appearance, through their Id. Advocate Mr. Bibaswan Bhattacharya on 13.03.2023, when the matter was listed, for delivery of judgment. Upon liberty, a written notes of argument has been submitted, on their behalf, which has been kept with the records and taken into consideration while writing this judgment.

38. Appeal is disposed of, with the finding and directions as above. Connected application, if any, is disposed of.

39. Certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

RAI
CHATTOPADHYAY
(Rai Chattopadhyay, J.)

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