

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION  
Appellate Side**

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

***C.R.A. 775 of 2009***

**Naresh Patwari & Anr.**

**-Vs-**

***State of West Bengal***

***Amicus Curiae*** : Ms. Pallavi Priyadarshree

**For the State** : Mr. Avishek Sinha

**Heard on** : 13.12.2022 & 22.12.2022

**Judgment on** : 17.03.2023

**Ananya Bandyopadhyay, J. :-**

1. This is an appeal against the judgment and order dated 08.12.2009 passed by the Additional Sessions Judge, F.T.C. 3, Bongaon, North 24-Pgs. in Sessions Trial No. 02(05)08 arising out of Sessions Case No. 19(04)2007 convicting the appellants under Section 306, 498A of the Indian Penal Code. Appellant No.1 to suffer rigorous imprisonment for seven years each and to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for further three months for the offence under Section 306 of the Indian Penal Code and also sentenced to simple imprisonment for two years for the offence under Section 498A of the Indian Penal Code. Both the sentences shall run concurrently.
2. The prosecution case emanated from the complaint filed by the complainant mother of the Purnima who was married to Arjun Patuuri, son of the appellant Naresh Patuuri on 02.03.2006. A sum of Rs.

100,000/-, 15 bharies of gold ornaments, motorcycle, T.V, fridge, almirah, wooden cot, utensils etc comprised the dowry as demanded. The victim on visiting her parents house after marriage narrated the incident of torture inflicted on her by the parents-in-law, brother-in-law and sister-in-law. The victim stated to have informed her husband about the aforesaid torture, but in vain. On her second visit to her parents house, the victim reiterated the prolonged torture upon her with a demand of Rs. 5,00,000/- by the aforesaid in laws as her father had enough money. On the protest of the complainant the aforesaid in laws of her daughter tortured her both physically and mentally. On 15.04.2006, the victim was admitted at Banagram Hospital being ill for some unknown reason. On 16.04.2006 the complainant was informed of her daughter's hospitalisation. On reaching the hospital the complainant learnt her daughter died after consuming poison.

3. The complainant demanded adequate steps to be taken against the accused persons according punishment to them.
4. Based on the above complaint, Gaighata P.S. Case No. 112/06 dated 04.05.2006 was filed under sections 498A/306 IPC. Investigation initiated and culminated in submission of charge sheet under sections 498A/306/34 IPC. Charges were framed to which the four accused persons pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution cited 13 witnesses and exhibited certain documents.
6. The Learned Advocate Ms. Pallavi Priyadarshee as Amicus Curiae submitted the delay of 19 days of filling the complaint after the

occurrence of the alleged incident was not explained therein. The evidence of PW-1, PW-2 and PW-3 delineated in consistencies and self contradictions devoid of corroboration. The Learned Trial Court erred in considering the evidence of PW-1 concerning delay to lodge the FIR owing to mental agony and shock and her daughter's complaint to her husband about the torture by her in laws as claimed by PW-1 to have earlier stated to the IO and the same being denied by the IO. The demand of Rs. 5,00,000/- by the in laws of the victim could not be established through corroborative evidence. The prosecution failed to prove the ingredients to constitute the offences under section 498A and 306 IPC. The testimony of PW-4 and PW-9 revealed the affinity between the victim and one Liton Roy, to have been the cause of suicide by the victim who was forced to marry Arjun Patwari by her parents. Doctor opined the possibility of detection of old burn injury at the time post mortem examination in case the same materialized. The prosecution failed to prove its case beyond reasonable doubt and the presumption u/s 113A of the Indian Evidence Act cannot be the ground of conviction of the appellants and accordingly the appeal shall be allowed.

7. The Learned Advocate for the State, Mr. Avishek Sinha submitted there was no evidence of demand for dowry, however the PW-1 & PW-2 deposed a claim of Rs. 5,00,000/- of the appellants from the father of the victim by her in laws. List of streedhan articles were elucidative of provision for the same. There has been strong presumption under section 113A of the Evidence Act and the prosecution had been successful in establishing its and the appeal shall be dismissed.

8. The circumsppection of the evidence prosecution witlessness revealed that the evidence of PW-4 Haridas Biswas was based on hearsay having learnt the entire episode from PW-1 Sefali Biswas. The testimony of PW-5 is negligible on account of acting as a barber at the marriage of the victim incognizant of the accused persons. Similarly PW-7 performed the marriage of the victim which was arranged being oblivious of the case. PW-8 the member of gram panchayat of Gazipur village was ignorant of the reason of the victims suicide consuming poison. PW-10 & 11 had been the seizure list witnesses. PW-13 conducted the investigation and submitted the charge sheet.
9. The evidence of PW-1, 2, 3 are rudimentary of assessment.
10. PW-1 deposed in conformity to her statement in the complaint dated 04.05.2006. She further emphasized that her daughter was deprived of food and clothing by the accused persons who *'also gave her burn injury by means of khunti'*. PW-1 further stated *"Purnima has shown her burn injury after coming to me at my place. We, spouse used to make Purnima understand and to settle at her in law's house. Purnima told me that accused persons asked her to kill her, as they were aware of the trick. Purnima protested against the demand of Rs. 5 lakhs (Five lakhs) as of further dowry. No fruitful result took place ever after sending Purnima to her matrimonial home to settle these.*

*On 16.04.2006, Purnima died. She committed suicide by consuming poison on 15.04.2006 as she was subjected to cruelty. We came to learn about the fact of committing suicide by Purnima, on 16.04.2006 at morning hours after receiving a Telephone call. After knowing that we went to Dr. J.*

*R. Dhar, S. D. Hospital, Bongaon. After going there we found Purnima in dead condition.*

*After eighteen days of the incident, we lodged a written with Gaighata PS as we were not in good state of mind due to death of Purnima. Subir Sarkar wrote the written complaint as per my instructions, on 04/05/2006. He wrote it in my presence. This is the said written complaint written by Subir Sarkar. I am able to identify his handwriting. He readover and explained the written complaint (FIR) to me. I signed on it after understanding its contents as written are true. The document is marked as Ext. 1 (Except of the endorsement made by police on it).*

*I gave my statement before a police officer as C/W this case. Dead body of Purnima was brought by us. Accused persons did not make any arrangement for medical treatment of Purnima at the hospital. I did not find any of the accused persons at the hospital.”*

12. During her cross examination PW-1 stated that *“I had not visited the hospital after the death of Purnima. My son in law Arjun Patwari was in employment of Indian Army at the time Purnima was given in marriage with him. Since after the marriage, Purnima visited our house thrice including auspicious occasion of Milani and on interval of a week thereafter. I cannot say that how many days of leave taken by Arjun for the purpose of marriage, but he stayed for about 15 to 16 days at that time he made visits to our place also. Two times Purnima visited our place with her husband Arjun our of her said three visits at our place. It is fact that we paid the case and presented several ornaments, articles, utensils etc. to see that our daughter remains in peace at her matrimonial home. After the death of Purnima we cot (palang),*

*silver plate, motor-cycle, alna. Yes, it contains signatures of Sushanta Ghosh, Sukumar Bose from our side on receipt of certain articles, cash and ornaments on 25.04.2006. The document was prepared in presence of member , Jaleswar No. 2 Gram Panchayat, Signatures of Sushanta Ghosh and Sukumar Bose are marked on identification as exhibit-A and A/1. I had not been to attend marriage reception (baubhat) at Purnima's in-law's place. I had visited in all two times at Purnima's in-law's place, including once with my husband and once all alone. Besides Arjun, my son-in-law his father had also visited our place. On all two occasions I stayed at Purnima's in-law's place with my husband since after 5 to 6 days of the death of Purnima. Besides my husband Sukumar Bose and other 2/3 persons visited Purnima's in-law's place. We went there in the evening hours. We visited there for some time. We met with the Purnima's father-in-law and other villagers. After visiting my daughter's in-law' place 3/4 days after death of Purnima I informed all about the cause of Purnima's death to the villagers. No medical treatment was extended to Purnima after sustaining burn injuries of Khunti. I cannot say that a love affair was developed with Purnima and Liton Roy since before her marriage."*

13. PW-2 deposed as follows :-

*Accused persons used to torture her on demand of Rs. 5,00,000/- lakhs as further dowry. We came to learn of the fact when Purnima came to us at our house narrated the factum of demand to us. Myself and my wife both used to pacify Purnima assuring her that things would be settled with the passage of time. Purnima told us that if*

the demanded sum of Rs. 5,00,000/- would not be paid then the accused persons may have to kill her as they had already threatened her. Once the accused persons caused burn injury on the left arm of Purnima by means of a piece of hot iron rod. Purnima had shown her burn injury to us after coming to our place. On 15.04.2006 Purnima committed suicide by consuming poison. We came to learn about the fact of death of Purnima. On 15.04.2006 morning hours after receiving a telephone call. Thereafter, we went to Dr. J. R. Dhar of S. D. Hospital, Bongaon and we found Purnima in dead condition. We could not get any opportunity to provide any medical aid to Purnima. Nobody had provided any medical facility to Purnima, since deceased. I came three days before the marriage of Purnima from Rajasthan. Since after twenty to twenty five days of the marriage I returned back to Rajasthan. I had been to Purnima's in-law's place to attend her marriage reception (baubhat) and since thereafter. I had never been to there. Arjun Patwari had once come to my place to take back his wife Purnima. Besides that he had also come to my place once at the auspicious occasion of Milani. Arjun brought his wife Purnima at my place and he also took her back on both the occasions. After solemnisation of the marriage Purnima's husband returned to his place of posting. He made his return journey before me. We did not

*receive back the gifted cash and articles as dowry at the time of marriage of Purnima. It was about  $\frac{3}{4}$  days after the death of Purnima. I had been there to know about the manner in which the last rite of my daughter was to be performed but the accused persons refused to perform the last rite of my deceased daughter in any manner whatsoever. I had no talk with the local people or local panchayat or local police in connection with any matter relating to my daughter of her matrimonial home. I stated to the police officer that due to loss of mental balance or shock there was delay in lodging of the complaint. I did not state to police officer that due to torturing inflicted by the accused persons on Purnima she committed suicide by consuming poison. I heard that the accused persons brought Purnima after consuming poison to Bongaon SD Hospital by hiring taxi.*

14. PW-3 deposed as follows:-

*“After solemnisation of the marriage Purnima went to her in-law’s house. Her marital life was not satisfactory. As since after her marriage her husband Arjun Patwari had left for Kashmir, his place of employment with the army. Thereafter once Purnima Patwari, when came at her father’s house I had talk with her and she disclosed to me that she was not happy at her matrimonial home as the atmosphere there not suited to her. There was problem as*

*regard to provision of food and the treatment meter out to her by father-in-law, mother-in-law, Nanad and Dbar. She also disclosed to me that her said relatives in laws used to torture her. Besides that she disclosed nothing tome. Purnima had also met me once, when she visited her father's house at the occasion of Dashabardhan and at that time also she disclosed the same fact to me. The accused persons after being invited came a day or two days after the occasion of bowbhat (reception). On the said, I was not invited to attend dasha-bandhan at the house of Ashok Biswas".*

*"On the subsequent day of the dasha-bandhan, I saw Purnima and her husband visited the house of Ashok Biswas. Besides the occasion, I never witnessed Purnima or her husband at the house of Ashok Biswas and as such, I had no talk with them. After 7/8 days of the death of Purnima, I accompanied Ashok Biswas at the house of the accused persons to take back streedhan of Purnima. We did not stay there. Purnima's streedhan was brought after a week thereafter.*

*It is fact that accused person brought Purnima to the Hospital by a car and admitted her in the hospital. I had talk with her, only once regarding her marital life, when she visited her father's house on the occasion of Dashabandhan. She informed me that her marital life was not happy and there was problem regarding the provision of food and non-suitability of the atmosphere thereof. Besides that, I have no other talk with her. I had no talk with her husband in connection with it."*

15. PW-2 in his deposition stated to have visited the matrimonial house of the victim to discuss the manner of accomplishing the rituals concerning the victim after 3 – 4 days of her death and was confronted with disinterestedness to his annoyance, which infused the fact of imputation. PW-8 deposed that the parents of Purnima did not lodge any complaint with the panchayat of Gazipur. PW-2 denied of having received the streedhan articles vide the document marked as Enlist A, as conceded by PW-1, PW-3. PW-8, was a signatory to the list of documents returned. PW-1 specifically stated the articles to be wedding gifts in her testimony, rendering his evidence to be untrustworthy.

16. The evidence of PW-12, Bhuban Mondal an independent witness narrated the role of appellant Naresh Patwari and his wife Nilima Patwari in order to save the life of the victim *“by extending assistance of medicine etc. Accused Nilima Patwari, wife of accused Naresh Patwari have remained in the Hospital with the patient to take her care.”*

17. PW-12 further stated that Purnima was taken to S. D. Hospital, Bongaon, by his private vehicle. She was admitted there. Doctor prescribed some medicines to Purnima. Accused – Naresh Patwari bought the medicines and supplied to the patient. Wife of accused Naresh Patwari remained with the patient at the Hospital during night and the accused Naresh Patwari returned with him by his vehicle. Next day, he heard the patient Purnima died at the Hospital. Accused – Raju Patwari informed him at his house that victim Purnima Patwari, wife of his elder brother consumed poison, requesting him to take her to the Hospital by his vehicle. Accused – Naresh Patwari informed parents of the victim Purnima Patwari

over telephone that their daughter Purnima had consumed poison and was being hospitalised in the Hospital at Bongaon. At all material time, he was present with the accused Naresh Patwari.

18. The document marked as Enlist – 5 evinced the presence of the appellant Naresh Patwari at the hospital contrary to the evidence of PW-2, which therefore had been false. PW-1 and PW-2 stated the victim to have been inflicted with burn injury. PW-1 did not mention the specific part of her body to be burnt, however PW-2 stated the burn to occur on the left arm of the victim. PW-9, Dr. Dipak Moitra in his evidence stated, *“if there was any burn injury, including of the old burn injury of 1½ months old, that could be detected at the time of post mortem of the deceased.”* The opinion of PW-9 negated the possibility of a burn injury to have been caused to the victim.

19. Admittedly the families were on visiting terms, but none of the parents of victim objected to the torture meted out to their daughter. None of the prosecution witnesses described the mode and manner in which the victim was tortured apart from the burn injury inflicted on the victim without specifying the name of the person to have injured her.

20. Sec 498A of IPC –

*“Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable*

*to fine. Explanation.—For the purpose 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”.*

21. Sec 306 IPC –

*“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”.*

22. The defence case of a love affair between the victim and another person is reflected in the evidence of PW-4 and PW-6. However, the prosecution failed to cite any incident of instigation or active participation on the part of the appellants to abet the suicide of the victim.

23. The inconsistencies and contradiction in the evidence of PW-1, 2 and 3 supplements mendacity being worthy of discredence. The complaint filed by PW-1 is an afterthought with deliberate prevarication to implicate the appellants and cannot attract the presumption under

Section 113A of the Indian Evidence Act without an iota of incriminating materials against the appellants.

24. The Hon'ble Supreme Court has observed in *Kashibai & Ors. Vs. The State of Karnataka*<sup>1</sup> that:

*“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 Vs. 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 automatically apply. The*

---

<sup>1</sup> 2023 LiveLaw (SC)149

*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 subjected 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.”*

25. Under the facts and circumstances of the case in absence of prove 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.

26. The appellants are acquitted of the charges. The appellants if in custody, be released forthwith if not required in connection with any other case. The appellants shall, however, furnish a bail bond to the satisfaction of the trial Court which shall continue for six months from date in terms of Section 437A of the Criminal Procedure Code.
27. CRA 775 of 2009 is disposed of accordingly.
28. Record my appreciation for the able assistance rendered by Learned Advocate, Ms. Pallavi Priyadarshee, as *Amicus Curiae* in disposing of the appeal.
29. Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.
30. 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.)**