

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(Circuit Bench at Jalpaiguri)**

PRESENT: THE HON'BLE JUSTICE SUGATO MAJUMDAR

CRA 05 of 2019

**Gopal Manta
Vs.
The State of West Bengal**

For the Petitioner : Mr. Partha Pratim Sarkar

For the State : Mr. Aditi Shankar Chakraborty
Mr. Abhijit Sarkar

Hearing concluded on : 17.08.2023

Judgment on : 21.08.2023

Sugato Majumdar, J:-

The instant appeal is preferred against the judgment dated 30/03/2019 and the order of sentence dated 01/04/2019 passed by the Additional Sessions Judge, Fast Track Court, Cooch Behar in Sessions Case No. 421 of 2013 corresponding T.R. Case No. 02 (01) of 2015, arising out of Boxirhat P.S. Case No. 04 of 2010. In terms of the aforesaid judgment the Learned Trial Judge convicted the Appellant under Section 306 of the Indian Penal Code. In terms of the order of sentence, the Appellant was sentenced to rigorous imprisonment of five years and was also sentenced to pay fine of Rs.25,000/- to the District Legal Services Authority, Cooch Behar in default to suffer simple imprisonment for a term of six months.

The father of the victim is the de-facto complainant who lodged written complaint in Boxirhat Police Station, Cooch Behar alleging tortures on demand of dowry and dowry death. Formal F.I.R was drawn up registering the case as Boxirhat P.S Case No. 04/2010 under Sections 498A/304B of the Indian Penal Code. Inquest reports was prepared, post mortem examination was conducted and after completion of investigation charge sheet was filed under Sections 304B/498A/34 of the Indian Penal Code against all the accused persons, being the husband and the in-laws of the victim.

Charges were considered under Sections 304B/498A/34 of the Indian Penal Code which were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Hence, the trial began.

In course of the trial prosecution examined fifteen witnesses and produced various documents which were marked and exhibited.

The accused persons were examined under Section 313 of the Code of Criminal Procedure, 1973. Defense of the accused persons were false implication and innocence. The Trial Court acquitted all the accused persons from the charges framed against them. Only the husband, the present Appellant was convicted and sentenced under Section 306 of the Indian Penal Code, as aforesaid.

On being aggrieved and dissatisfied the instant appeal is preferred.

The Learned Counsel for the Appellant vehemently argued that the Appellant is convicted of an offence for which no charge was framed. It was further argued that no iota of evidence is there that the Appellant caused abetment of suicide of the victim. He further submitted that it is also not established beyond reasonable

doubt that the victim committed suicide. Enough evidences are there to show that death was accidental one. Therefore, as suicide is not proved, conviction and sentence under Section 306 of the Indian Penal Code is liable to be set aside, according to him.

Per contra, the argument on behalf of the prosecution is that there are evidences of dowry demand and perpetration of torture on the victim. The Appellant did not adduce any evidence to explain how death took place since it happened within there house and it is within their special knowledge under Section 106 of the Indian Evidence Act, 1872 was referred to. In other words, the prosecution supported the judgment of conviction and the order of sentence.

I have heard rival submissions.

Propriety of the order of acquittal under Sections 304B/498A of the Indian Penal Code is not challenged by any cross appeal. Statements of the witnesses contain sweeping allegations of tortures without any particulars. Nothing is there in the statement of the witnesses to indicate that the Appellant used any word at any point of time or behaved in such manner tantamount to goading the victim to commit suicide. There is no evidence in this respect. It was stated by P.W.5 that he learned from the grand mother of the Appellant that while cooking the victim caught fire. Although hearsay, this fact was echoed by P.W.13, Dr. Debi Prasad Das who attended the victim in hospital and to whom the victim stated that she accidentally caught fire while cooking. This cast doubt whether death was by accident or a suicide. The father of the Appellant tried to put off fire by blanket as stated by P.W.5. Unless it is established that death was a suicide, a person cannot be fastened with liability under Section 306 of the Indian Penal Code. Not a single question was asked

to the Appellant in course of examination under Section 313 of the Code of Criminal Procedure, 1973 asking him whether he committed any act of abetment of suicide. No hint was given to the Appellant that he may be fastened with a different liability so that he can explain or reply the allegation. No evidence is there that the Appellant is guilty of offence under Section 306 of the Indian Penal Code. It is manifest that the Appellant was confronted with surprise when the conviction was ordered. There is failure to appreciate evidence as well as failure to apply correct principle of law by the Trial Court. Therefore, the impugned judgment of conviction under Section 306 of the Indian Penal Code is not sustainable.

In nutshell, the instant appeal is allowed. The impugned judgment of conviction and order of sentence, as aforesaid, is hereby set aside.

The Appellant is set at liberty and released from the bail bond.

A copy of this order along with the lower court record be remitted to the Trial Court.

The instant appeal is disposed of along with pending applications, if any.

(Sugato Majumdar, J.)