

IN THE HIGH COURT AT CALCUTTA**Criminal Appellate Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. – 398 of 1987****IN THE MATTER OF****Sri Bimal Paul****Vs.****State of West Bengal**

**For the Appellant : Mr. Soubhik Mitter, Adv.,
Mr. Somnath Mukkopadhyay, Adv.
Mr. Sarayati Datta, Adv.,
Mr. Chitrak Biswas Adv.**

**For the State : Mr. Naryan Prasad Agarwala, Adv.,
Mr. Pratick Bose Adv.**

Judgment on : 15.01.2024

Subhendu Samanta, J.

The instant appeal has been preferred against the judgment and order of conviction dated 28.08.1987 passed by the Learned Additional Sessions 1st court Howrah in sessions trial case No. XVII/ October, 1985, convicting the accused/appellant u/s 306/34 IPC and sentencing to suffer rigorous imprisonment for 5 years each and to pay a fine of Rs. 1000/-in default to further rigorous imprisonment for 06

months each, and also u/s 498A of IPC and also sentencing to suffer rigorous imprisonment for three years each and to pay a fine of Rs 1000/- each in default of payment of fine rigorous imprisonment for 06 months.

The brief fact of the prosecution case is that, the police was started the case on the basis of a written complaint of one Gita Pal wife of Sri Bhadreswar Pal. The eldest daughter of de-facto complainant was given marriage with Madan Pal, the elder brother of present appellant. Accordingly, the present appellant being the relative had visiting farm at the house of the de-facto complainant, in such way the love relation cropped up between the second daughter of de-facto complainant namely Padma Pal with the appellant. By such intimacy between the appellant and Padma Pal, she secretly implicated herself with sexual intercourse with the appellant as man and wife consequent thereof Padma became pregnant by the appellant. On query, Bimal admitted the fact and agreed to marry Padma . However, he altered the dates of marriage on some occasions. On the other hand, Padma was carrying 06 months. Thus on 21Jaistha, 1390BS Padma was given marriage with the appellant at Klighat. After such Padma and appellant started living at the house of the appellant. In due course of time Padma given birth a female child. After three months the said baby could not survive. Thereafter the present appellant began to misbehave with Padma. Bimal also started to abuse and bit Padma. Latika Paul used to give her food once

a day and abuse unspeakably. The present appellant also did not share bed with Padma. Padma had to slept at Dalan. The present de-facto complainant had requested the appellant not to inflict torture upon Padma. In stead of which torture could not be stopped and on 26.04.1985 the de-facto complainant came to know from the local people that her younger daughter, Padma committed suicide by setting herself fire after pouring kerosene oil. It is the complaint of the de-facto complainant that due to the torture inflicted by the appellant, Padma committed suicide.

The present appellants had sent up for trial before the Learned Sessions Judge. The prosecution has produced as many as 18 witnesses to prove the case. The Learned Sessions Judge after hearing the witnesses and after finding the materials on record, has passed the impugned order of conviction and sentence against the appellant.

Hence this appeal.

Learned Advocate for the appellants submits that the impugned judgment and the order of conviction passed by the Learned Sessions judge is illegal in the eye of law.

He submits that ingredients of offence u/s 306/498A/34 of IPC having not been proved by the prosecution, Learned Sessions Judge erred in law in passing the impugned judgment the Learned Sessions has failed to appreciate the materials contradiction in the case of the prosecution thus there is a failure on the part of prosecution. The prosecution has failed to

prove the case beyond reasonable of doubt. The torture or the alleged torture or misbehaviour to the female married lady by the appellant has not been proved at all. So he submitted that the judgment and order of sentence passed by the Learned Sessions Judge is liable to be set aside.

Learned Advocate appearing on behalf of the state submits that the Learned Sessions Judge has taken the note of every evidence produced on behalf of the prosecution. There is a direct evidence of torture upon the victim by the appellant. Thus the Learned Sessions Judge has successfully passed the order of conviction. He further argued that the PW 1, the mother of the victim, has unequivocally stated before the Learned Sessions judge regarding the torture made out by the appellant upon the victim. Moreover, the version of PW 1 was supported by the PW 9, so the case of the prosecution has sufficiently proved beyond reasonable doubt. There is no scope to interfere with the impugned judgment and conviction by this appellant court.

Heard the Learned Advocates.

Perused the materials on record and also perused the evidences adduced before the Learned Sessions Judge, it appears that there are 18 witnesses of prosecution- PW1 is the mother of the victim who lodged the written complaint, PW 2 is one of the neighbour and a seizure witness, PW 3 is the elder sister of victim who became hostile, PW 4 is also a neighbour, PW 5 is a co-villager and seizure witness, PW 6 is co-villager of

accused, PW 7 is the elder brother of the appellant, PW 8 is the cousin, PW 9 is the brother of the deceased, PW 10 is the neighbour of PW 1, PW 11 is the co-villager of PW 1, PW 12 is the sister-in law of the deceased, PW 13 is the elder brother of the accused, PW 14 is the relative who declared hostile, PW 15 is the constable attached to Domjur PS carried the dead body of the deceased, PW 16 is the medical officer who hold the post mortem of the deceased, PW 17 is the one of the IO who conduct part of the investigation, PW 18 is the another IO who conducted the investigation and after completion of investigation he submitted a charge sheet.

I have been perused the impugned judgment passed by the Learned Sessions Judge. Learned Sessions Judge has convicted the appellant on the ground that the PW 1 i.e. the mother of the victim as well as the PW 9 i.e the brother of the victim has supported the prosecution case. One of the neighbour has seen that the Padma was crying. The witness also stated that were regular quarrel between the Padma and her mother-in law. The Learned Sessions Judge is a view that according to the provision of Section 113A of the Evidence Act when the question whether the commission of suicide by a woman had been abated by her husband or any relative of her husband and it has shown that she had committed suicide within a period of 07 years from the date of her marriage and that her husband and or such relative of her husband had subjected to her cruelty, the court may presume, having regard

to all other circumstances of the case, that such suicide had been abated by her husband or by such relative of her husband.

The Learned Sessions Judge is a view that the victim committed suicide within 07 years of her marriage and it is evident that the present appellant has inflicted torture and cruelty upon the victim before her death. So the case of prosecution has sufficiently proved.

Let me consider whether the observation of the Learned Sessions Judge is sound and applicable in the present facts and circumstances of this case.

In perusing the entire case it appears that the de-facto complainant i.e. the mother of the victim had come to know about the fact of suicide of Padma from the local people. When he reached at the matrimonial house of the victim, police has already took the dead body of her daughter to Thana. So, it is the fact that before arrival of PW 1(de-facto complainant) the police had the information about the death of the victim. PW 18 is one of the IO who stated that the accused Latika Pal i.e the mother-in law of the victim informed the PS regarding the death of Padma in writing PW 18 also stated that on the basis of such written complaint UD case was started bearing No. 22 dated 26.04.1985. In connection with the said UD case, some seizure was effected. The fact goes to show that the written complaint on the basis of which the UD case was started, had never been produced before the Learned Sessions Judge. The fact further

shows that, PW 9 i.e. one of the brothers of the victim, reached at PO when the police was already there. He was interrogated by the police at spot and during his interrogation PW 9(Jaydeb Paul) did not said to the IO that Padma could not bear the torture by Bimal and Latika, so she had to commit suicide. It further appears to me that some witnesses were produced by the prosecution who did not support the case of prosecution, but surprisingly, they are not declared hostile. Their version if believed can be said to be destroyed the case of prosecution. Learned Advocate for the appellant submits that by virtue of decision of Hon'ble Apex Court reported in **Mukhtiar Ahmed Ansari Vs. State (2005) 5 SCC 258**. If the witness of prosecution which is not supporting the case of prosecution was not declared hostile the accused can rely on that evidence. The same view was adopted in a case of **Rajaram Vs. State of Rajasthan (2005) 5 SCC 272**

B. Criminal Trial-Witnesses-Hostile witness-Evidence of PW not supporting the prosecution case-However, said witness not declared hostile-Held, defence can rely upon evidence of such witness and it would be binding on the prosecution- Witnesses-Prosecution witness-PW who did not support the prosecution case, not declared hostile-Held, evidence of such witness if relied upon by the defence would bind the prosecution.

He also cited the decision of Hon'ble Apex Court passed in Atma Ram Vs. State of Maharashtra (2013) 12 SCC 286.

Penal Code, 1860- Ss. 306 and 498A Expln. (a) or (b)- Abetment of suicide of married woman by her husband or his relative(s)- Invocation of presumption under S.113-A, Evidence Act-

Recruitment of-The purposes of S.113A of the Evidence Act,1872,"cruelty"has the same meaning as in S. 498A IPC _ Hence to convict a husband or any relative of the husband of a woman or to invoke the presumption as to abetment of suicide by a married woman by her husband or any relative of her husband in case of suicide committed by a woman, there must first be evidence to establish that such husband or the relative of her husband committed cruelty of the nature described in cls. (a) or (b) of the Explanation thereto-Words and Phrases-"Cruelty"

Considering the entire facts and circumstances of this case and considering the view of the Hon'ble Apex Court in a case of abatement of suicide of married woman by her husband or relatives, it appears to me that the presumptive value u/s 113A of evidence Act has to be looked into. The Learned Sessions is of opinion that the as the victim has committed suicide within 07 years of her marriage and has there is a fact of torture inflicted upon her by the husband and the relative of her husband, so the suicide committed by the victim must have been abated by the appellant.

Let me scan the evidence regarding the fact of torture the act goes to show that the marriage of Padma has cause due to some unnatural circumstances. Initially she got pregnant and naturally the present appellant had to marry her when she was carrying 06 months. It is also a fact that the victim lost her child after three months of her birth. The appellants are of poor family of potter. It is true that the Padma was under depression due to loss her daughter. A statement witness was there

regarding the crying of Padma. There are some witnesses that the neighbours have heard the quarrel at the house of the appellant. There is no direct evidence in this case regarding the fact that Padma was inflicted torture whether physically and mentally by the present appellant. PW 1 never had been to any occasions at the place where the appellant inflicted torture upon Padma. Amongst the witness none have sent that the present appellant has beaten Padma.

The poverty in the family of the potter may have raised some difference of opinion between their family members. It is true that they used to prepare earthen pot by manual labour. Padma being the member of the family has also employed for preparation of soil. Such fact cannot be said to be torture upon Padma.

Let me consider the legal consequences of the offence punishable u/s 306 IPC and its presumption enumerated u/s 113A of the Indian Evidence Act.

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 purpose of this section, “cruelty” shall have the same meaning

as in section 498A of the Indian Penal Code (45 of 1860).

There are three ingredients to be satisfied before section 113A of the Act can be applied

(i) That a woman has committed suicide.

(ii) Such suicide has been committed with a period of 07 years from the date of her marriage,

(iii) Husband or his relative who already had subjected her to cruelty.

The definition of cruelty shall have the same meaning as in Section 498A of IPC. The presumption u/s 113A of Evidence Act is a rebuttable presumption.

The Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is not permissive as the employment of expression 'may presume' suggests. Secondly, the existence and availability of the aforesaid three circumstances show, like a formula, unable the presumption being drawn; before the presumption may be drawn the court, shall have to have regard to; 'all the other circumstances of the case'. Consideration of all the circumstances of the case may strengthen the presumption or may detect the conscience of the court to abstain from trying the presumption. The expression – 'the other circumstances of this case' used in section 113A suggested the need to reach a cause—and-- fact relationship between the cruelty and suicide for the purpose of raising a presumption.

In Hemraj Vs. State (2004) 12 SCC 257. The Supreme Court held that the nature of presumption u/s 113A is discretionary in the sense that from the mere fact that the wife committed suicide within 07 years of marriage and that she had been subjected to cruelty by the husband, there will be no automatic presumption that the suicide had been abetted by the husband.

In this case there no direct evidence of cruelty inflicted by the present appellant against the victim. The facts suggests that there may have some stain relationship between the appellant and the victim that does not mean that the appellant inflicted physical and mental torture upon the victim which lead her to commit suicide.

The definition of cruelty mentioned u/s 498 A IPC has not been proved by the prosecution in this case. More over the case of the prosecution suggests that there was an earlier written information regarding death of the victim but the prosecution has not produced same before the Learned Sessions Judge, rather the PW 1 when appeared in the Thana did not lodged the written complaint but at night while she was staying at thana had lodged the written complaint. The alleged written complaint of this case may not said to be the reflection of fair intention of the de-facto complainant, there exists a chance of concoction. The prosecution could not bring home the charge against accused person beyond reasonable doubt. If

the first information received by the police is produced the case of prosecution may not be stand at all.

Considering the same, the observation of the Learned Sessions Judge in the impugned judgment and order of sentence passed by the Learned Sessions Judge appears to me based on the evidence which cast a reasonable doubt upon the case of the prosecution.

I find merit to entertain the appeal. Accordingly the instant appeal be allowed.

The impugned order of conviction and sentence passed by the Learned Sessions Judge is set aside.

The appellant namely Bimal Paul is acquitted from this case. The appellant is on bail he be set at liberty at once.

The sureties standing in her favour are also released.

The CRA is disposed of.

Connected CRAN applications are also disposed of. Any order of stay passed by this court during the pendency of the instant appeal be vacated

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)