

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 108 of 2019

***Ashok Kumar Jana @ Ashok Jana
versus
The State of West Bengal***

For the Appellant : Mr. Navanil De,
Mr. Rajeshwar Chakraborty,
Mr. Srinjan Ghosh,
Mr. Subhrajit Dey,
Ms. Monami Mukherjee,
Ms. Shoumilya Mazumder.

For the State : Mr. Debasish Roy, Ld.P.P,
Ms. Sreyashee Biswas,
Mr. Santanu Talukdar.

Heard On : 04.10.2024.

Judgement On : 13.11.2024.

Tirthankar Ghosh, J. :

The present appeal has been preferred against the Judgment and Order of conviction and sentence dated 24.01.2019 and 25.01.2019 passed by the learned Additional Sessions Judge, 1st Court, Purba Medinipur at Tamluk in connection with Sessions Trial No. 05(09)2003 thereby convicting the appellant under Section 498A & 306 of the Indian Penal Code and sentencing him as follows:

- i) For the offence under Section 498A - simple imprisonment for two years and fine of Rs 5000/-, in default to suffer simple imprisonment for one month.
- ii) For the offence under Section 306 of the Indian Penal Code - simple imprisonment for five years and fine of Rs 5000/-, in default to suffer simple imprisonment for one month.

Tamluk P.S. case No. 223 of 1997 dated 24.11.1997 was registered for investigation under Section 498A/304B of Indian Penal Code on the basis of a written complaint submitted by Dilip Metla against the appellant and four others. The allegations made in the written information/complaint were to the effect that sister of the informant namely Madhabi (deceased) was married to the appellant Ashok Kumar Jana about 2 ¹/₂ years prior to the date of the incident and at the time of marriage cash of Rs. 13000/- (Thirteen thousand), ear rings, bangles, necklace, gold ring and a new hero cycle was given as dowry. After marriage the deceased was residing peacefully at her matrimonial home and a female child was born out of the said wedlock. After the birth of the female child the complainant's sister/deceased was abused and insulted by all the inmates of her matrimonial home including her husband. Further dowry to the extent of Rs. 8000/- to Rs. 9000/- was demanded on the pretext that the female child which was born had a dark complexion. On hearing such incidents of abuse and insult the complainant by pulling van rickshaw collected a sum of Rs. 1000/- with great hardship and went to her sister's home, requesting the in-laws to keep the money as a deposit in favour of his

niece/child. Complainant also requested his brother-in-law and other members of the family not to inflict further torture on her sister as he would try to bring more money. Despite the same, complainant heard that his sister was tortured/insulted at his in-laws house. On 21.11.1997 he heard at about 9:00 A.M. that his elder sister was assaulted and poison was administered forcefully on 20.11.1997. She was admitted at Janubasan Health Centre where she passed away within a short span of time. As such, the complainant prayed for investigating the incident in relation to the conspiracy to kill her sister at the instance of his brother-in-law and his relatives.

On receipt of such complaint the Officer-in-Charge, Tamluk Police Station assigned the case to Sub-Inspector D.N. Majumder. The investigating officer on completion of investigation submitted Charge-sheet dated 13-12-1999 against five accused persons namely Ashok Kumar Jana, Gouri Jana, Sadhan Jana, Ananda Mondal and Moni Mondal for the offences punishable under Section 498A, 306 and 304B of the Indian Penal Code. On or about 18-04-2000 the learned S.D.J.M. Tamluk, Medinipur committed the case to the Court of learned Sessions Judge, Medinipur who in turn transferred the case to the learned trial Court for disposal.

On or about 12th September 2003 charges were framed against five accused persons under Sections 498A/306/304B of the Indian Penal Code. The contents of the charges were read over to the accused persons to which they pleaded not guilty and claimed to be tried,

The prosecution in order to prove its case relied upon eight witnesses which included P.W.1 Dilip Metla, complainant and the brother of the deceased; P.W.2 Smt. Angurbala Metla mother of the deceased (Madhabi); P.W. 3 Naren Metla brother of the deceased; P.W.4 Gita Sharma an acquaintance who looked after Madhabi till she attained the age of 8/9 years; P.W. 5 Dr. Hiralal Bishai post-mortem doctor; P.W.6 Milan Kumar Bose the second investigating officer of the case; P.W.7 Alok Ranjan Adhikary scribe of the FIR; P.W.8 Achinta Kumar Manna, ASI of Police attached to Tamluk Police Station.

P.W.1 Dilip Metla the brother of the complainant deposed before the Court that Madhabi (deceased) was his elder sister who was married to Ashok Jana (appellant). He identified the appellant and stated that at the time of marriage a sum of Rs. 13,000/- in cash, two vories of gold ornaments and a cycle were given. After marriage his sister lived at her matrimonial home along with the appellant, his mother and sister. He identified all the accused persons in Court and continued to state that his sister gave birth to a child who had dark complexion for which the accused person demanded Rs. 5,000/- for her future and as they were unable to pay the same, her elder sister was assaulted by the accused persons and also mentally tortured by abusing her with filthy language. The witness further stated that her sister was assaulted as she could not bring money and such fact was narrated by his sister to him and other members of his family. It was also stated that he could arrange only Rs. 1000/- which he handed over to the husband of his sister and requested him to make some adjustments, however they continued to abuse his sister and even

abetted her to commit suicide by consuming poison or by hanging. Being unable to bear both the physical and mental torture his elder sister committed suicide by consuming poison in her matrimonial home. The information relating to death of his sister was received through the neighbours and after receiving such information they went to the matrimonial home where they did not find anyone and as per the statement of the local people they went to hospital where they found her dead. He received the dead body of his sister from the hospital and cremated her dead body and at that time the age of her niece was 8 months. He thereafter lodged FIR with the Police Station which was drafted by one Alok Adhikary as per his instruction and after the contents were read over and explained to him, he affixed his L.T.I. He explained that the delay in lodging the FIR was because of the post-cremation ceremony of his sister. In-cross-examination he denied the suggestions advanced by the defense that no dowry was given at the time of marriage and the further demand of dowry after the birth of the child. He also denied in cross - examination when he was confronted with the suggestion that the facts relating to assault and torture were false and baseless.

P.W.2 Smt. Angurbala Metla is the mother of the deceased Madhabi who identified all the accused persons in Court and stated that at the time of marriage she gave cash of Rs. 13000/-, some ornaments and a cycle to his son-in-law. After marriage her daughter lived in her matrimonial home with her husband, father-in-law and mother-in-law. The incident according to her took place after two years of marriage, when her daughter gave birth to a female

child who had dark complexion. According to her the deceased also had a dark complexion and his son-in-law often used to pressurize her for bringing in more money from her paternal home. When her daughter demanded such money, she along with her two sons used to make her understand and send her back to her in-laws' house by assuring that in future they would pay the money. But after her departure, she heard that at the instigation of her mother-in-law the appellant assaulted her daughter. The demand continued to worsen so later on, a sum of Rs 1,000/- could be arranged and the same was sent to the appellant. However, the appellant was dissatisfied and repeatedly assaulted and tortured her daughter and abetted her to commit suicide. Under compulsion, her daughter consumed poison at her in-laws' house. As she received information regarding the incident in the late hours, on the next day morning, she along with her son had been to the matrimonial home when they were informed that her daughter was taken to Tamluk hospital. None of the members of the in-laws' house were present and when they reached the hospital, they found her daughter to be dead. They took the body of her daughter for cremation and since then her grand-daughter had been staying with them. She also stated that her elder son informed the police and thereafter the investigating officer interrogated her. In cross-examination, she stated that she had two sons and one daughter. On further cross-examination, she stated that there was a sitting in Kharui Anchal, wherein they were present and the accused persons were present, which was after the death of her daughter. A salish was held before the panchayat and till then they did not

lodge any complaint. The subject matter of the salish was the death of her daughter. She also divulged in cross-examination that the name of Aanchal Pradhan was Madan Mohan Rana and their house, was situated adjacent to the house of the panchayat. On further cross-examination, she reiterated her contention that she informed the police that Ashok Jana asked her daughter to bring more money from their house on the grounds of dark complexion of her grand-daughter. She reiterated her earlier stand as she deposed in examination in chief, which included the incidents of assault as well as the dowry which was given at the time of marriage. On a specific query in cross-examination, the witness stated that it is true that Police came there and rescued accused persons and she further answered that other persons who were not members of their family assaulted the accused persons in the salish after the death of her daughter. She also admitted the fact that the FIR was lodged after the salish. However, she denied that to save them the criminal case was initiated after the salish by the panchayat.

P.W.3 Naren Metla is the brother of the deceased Madhabi who identified all the accused persons in Court and reiterated the facts relating to cash, articles and ornaments which were given at the time of marriage. Firstly he stated that after marriage his sister lived in her matrimonial home and after two years of marriage, his sister gave birth to a daughter who had dark complexion for which there was a dispute in the house. He further stated that his elder brother gave Rs.1000/- to Ashoke Jana. However, they demanded Rs.5000/-. After the same, the dispute continued and as a result, Ashoke Jana

assaulted his sister and drove her out. Consequently, his elder sister consumed poison and after that the appellant again got married. In cross-examination, he replied that he was not interrogated by the police and the incidents were for the first time disclosed by him in Court.

P.W. 4 is Gita Sharma who deposed that she raised Madhabi, since her childhood as she stayed in her house for 8/9 years. She was subsequently married to Ashoke Jana and stayed at her matrimonial home. She continued to state that during her stay at her matrimonial home, there was a dispute for which the deceased Madhabi used to come to her house and narrate the story of her suffering. The deceased narrated to her that she was assaulted by her husband and mother-in-law on the ground that she gave birth to a child who had dark complexion. The witness also stated that Madhabi died at her matrimonial home by consuming poison as a result of torture being inflicted upon her and for further demand of dowry which her brothers could not arrange. In cross-examination, however, she stated that the deceased came to her house before one year of her death.

P.W. 5 is Dr. Hiralal Bishai who deposed that on 21-11-1997, he was attached to Tamluk Sub-Divisional Hospital as Superintendent and on that date, he conducted post-mortem on the dead body of Madhabi Jana. The witness continued to state that the viscera were preserved and he could not give any opinion due to non-availability of biochemical analysis of preserved viscera on the same date. He identified the carbon copy of the original report

which was prepared by him. The witness continued to state that later on chemical report was obtained wherein the authority opined that endosulphur was detected in the viscera of Madhabi. He identified the report which was admitted in evidence. The witness thereafter opined after receipt of the report of chemical analysis and he gave his final opinion as to the cause of death and the same was endosulphur poisoning. He identified the report which was admitted in evidence. In cross-examination, however, he denied the suggestion that the post-mortem report was not prepared according to the legal formalities.

P.W.6 is Milan Kumar Bose, Sub-Inspector of Police, who was attached to Tamluk Police station. He deposed that on 24.06.1999, he received the case diary of Tamluk P.S. case No. 223/1997 dated 24-11-97 from S.I.N. Nandi. In course of investigation, he collected F.S.L. report of the viscera of the victim and arrested accused persons namely Ashok Jana and Sadhan Jana. After completion of investigation, he submitted Charge-sheet under Section 498A/304B of IPC against accused persons namely Ashok Kumar Jana, Gouri Jana, Sadhan Jana, Ananda Mondal and Moni Mondal. In cross-examination, he stated that he submitted the charge-sheet on the basis of the materials collected by the previous investigation Officer and also replied that he did not conduct any investigation with regard to date, time and place of arrest of accused Ashok Jana and Sadhan Jana.

P.W. 7 Aloke Ranjan Adhikary was the scribe of the FIR. The witness deposed that he is by profession a law clerk under an advocate and on that date, as per request of Dilip Metla, he wrote the complaint. He further stated that after writing the complaint, he read over and explained the contents to him, who affixed his L.T.I., which was identified by him. He identified the written complaint, which was admitted in evidence. In cross-examination, however, he stated that he had no personal knowledge about the contents of the complaint.

P.W. 8 is Achinta Kumar Manna, who was posted as ASI of Police at Tamluk Police Station. He deposed that on 21-11-1997 as per instruction of the then officer-in-charge in connection with Tamluk P.S. U.D. Case No. 336 of 1997, he conducted inquest at Janubasan BPHC morgue. The dead body according to him was identified by Tarani Mondal and Sk. Ashek. He conducted the inquest in presence of Tarani Mondal and Sk. Ashek, Pradip Kumar Das and Madhab Bera. He identified the carbon copy of the inquest report, which was prepared by him from the original. The same was admitted in evidence. He further stated that after conducting the inquest, he sent the dead body to the morgue of Sub-Divisional Hospital, Tamluk for post-mortem examination through Constable. He identified the carbon copy of the dead body challan, which was prepared and signed by him. The dead body challan was admitted in evidence. After post-mortem examination, he endorsed for handing over the dead body of Madhabi Jana to her brother Dilip Metla. He identified his endorsement on the carbon copy of the application of Dilip Metla for

delivery of the dead body of Madhabi Jana, which was in his handwriting, signed along with his official seal. He identified the same, which was admitted in evidence. In cross-examination, he replied that he examined the relatives of the deceased, who informed him that Madhabi Jana committed suicide for dispute in her family. Such fact was incorporated in the inquest report. He also stated that he did not detect any external injury over the dead body of the deceased.

Mr. Navanil De learned advocate appearing for the appellant, submitted that there are series of contradictions and omissions, which fails to make out any case for arriving at the guilt so far as the present appellant is concerned. Learned advocate submitted that there was delay in lodging of the FIR, and the reasons which have been assigned by the complainant was the time consumed for cremation ceremony of the sister, which is not an acceptable ground for explaining the delay. Further such a ground was contradicted by the mother, who in her cross-examination replied that there was a sitting at Kharui Anchal between the family members of the deceased and the accused person. The witness, P.W.2, i.e. the mother of the deceased, stated that salish was held in their panchayat after the death of Madhabi/deceased and till then they did not lodge any complaint. It was argued as such that the case was instituted and foisted upon the appellant and his family members as there were circumstances which were beyond the control of the complainant and the same would be evident from the deposition of P.W.2. It was further argued on behalf of the appellant that if the evidence of PW1 to PW4 are taken into account, the

same fails to make out any case under Section 306 of the Indian Penal Code or under Section 498A of the Indian Penal Code. In order to substantiate the same, learned advocate argued that none of the elements of Section 107 of the Indian Penal Code has been satisfied by the prosecution by way of evidence so that a circumstance is created for convicting the appellant under Section 306 of the Indian Penal Code. It was additionally argued that so far the elements of Section 498A of the Indian Penal Code is concerned, no case of cruelty has been made out and the same are afterthought as no independent witness has been examined or relied upon by the prosecution who could have supported the issue relating to the subject matter of dowry which was given at the time of marriage and the further demand of dowry which was claimed after the birth of the female child. According to the learned advocate, the factum of dowry, demand of dowry, physical and mental torture were an afterthought which would be evident from the fact that a salish was held before the panchayat in the area where the complainant used to reside. In order to substantiate his contention on issues relating to the foundation of applicability of Section 306 of the Indian Penal Code, learned advocate relied upon *Ramesh Kumar v. State of Chhattisgarh* reported in (2001) 9 SCC 618, *Rajesh v. State of Haryana*, (2020)15 SCC 359, *State of West Bengal v. Orilal Jaiswal*, (1994) 1 SCC 73, *Sabitri Barman v. State of West Bengal*, (2011) SCC Online Cal 903. For substantiating the contention relating to Section 498A of the Indian Penal Code, learned advocate relied upon *Neelu Chopra and Anr v. Bharti*, (2009) 10 SCC 184.

Learned advocate emphasized on the facts and the applicability of law in respect of the finding of guilt arrived at by the learned trial Court which according to him is not acceptable as the same are based on conjectures and surmises and as such, the appellate Court should interfere for setting aside the case.

On behalf of the State, it was submitted that the prosecution charges were framed under Section 498A/306/304B of the Indian Penal Code. Prosecution relied upon eight witnesses. There was consistent version of PW1 to PW4 relating to the dowry, further demand of dowry and the assault being inflicted upon the deceased which forced her to consume poison. The attention of the Court was also drawn to the factum of torture being committed pursuant to the birth of a female child who had a dark complexion.

Learned advocate submitted that there is a consistent version in the deposition of four witnesses which creates a foundation and attracts the provisions of Section 306, as well as Section 498A of the Indian Penal Code.

Further it was submitted that the issue relating to salish should be ignored as these are rural areas wherein it is a common practice. It was emphasized that admittedly, within 2¹/₂ years of marriage, the deceased committed suicide and as such, it was incumbent upon the accused persons to explain the circumstances which the accused failed to bring on record and it is only on mere denial the appellant has claimed for acquittal, which cannot be considered by an appellate Court. The learned advocate appearing for the

State, concluded by submitting that the reasons for suicide assigned by the learned trial Court being just, proper and cogent the same should not be interfered and the appeal should be dismissed.

I have considered the submissions advanced by the learned advocate appearing for the appellant as well as that of the State. There are certain issues which require consideration of the Court before arriving at a finding, one of the issues which has been canvassed is delay in lodging FIR, to that extent PW1, Dilip Metla, the de-facto complainant, assigned reason that he was involved in the post-cremation process, as such, there was a delay in lodging the FIR. On the other hand, PW2, Angurbala Metla, mother of the deceased, replied in cross-examination that a sitting was held at Kharui Anchal between their family and that of the accused person after the death of her daughter. Such a salish, according to the witness, was held at their panchayat and till then no complaint was lodged. She also replied that their house was situated adjacent to the house of the panchayat office. Another issue which has surfaced from the cross-examination of PW2 is that she admitted it in her cross-examination that the accused person denied to pay any money in the salish and they were assaulted by some persons when the police came and rescued the accused person from the salish and it is only thereafter the FIR was submitted before the police authorities.

In view of such difference of reasoning, it is not only the delay in lodging the FIR which assumes importance but also the fact of further demand of

dowry from the complainant's family which assumes importance, as also the issue relating to assault being inflicted upon deceased.

In this case, the first investigating officer who examined the witnesses was not examined as a witness in the present case. Ordinarily, non-examination of the investigating officer may not be at all fatal to the prosecution case but in this case, there are issues which require cross-examination of the investigating officer. Particularly with regard to the contents of the FIR, wherein the de-facto complainant - PW1 alleged that he heard from the neighbours that his brother-in-law along with the other accused persons assaulted his elder sister severely and poured poison into her mouth forcefully on 20-11-1997. In the postmortem report or the inquest report, there were no signs of injury. The issue relating to administering poison forcefully which was alleged in the FIR but in the course of evidence/deposition in Court, the same witness stated that his elder sister committed suicide by consuming poison at her matrimonial home. Such facts of consuming poison and administering poison is a relevant issue which required an answer from the investigating officer of the case which opportunity was not available to the accused person. Further, in cross-examination of PW2, i.e., the mother of the deceased (as earlier stated) she replied that police came there and rescued the accused person as the accused persons were assaulted in the salish by other members who were not suspects and it is only thereafter the FIR relating to the incident was submitted before the police authority. Thus, the probability of initiating the criminal case against the accused person by the complainant for

saving themselves cannot be ruled out in this case. Such fact is also required to be answered by the investigating officer of the case and as the said opportunity was not available to the accused person and the investigating officer was not examined.

Therefore, in the factual background of the present case, the non-examination of the investigating officer has seriously prejudiced the accused /the appellant and it would thus be dangerous to rely upon the prosecution witnesses to convict the appellant.

Thus, the judgment and order of conviction and sentence so passed by the learned Additional Sessions Judge, 1st Court, Purba Medinipur at Tamluk in connection with Sessions Trial Number 05(09)2003 calls for interference and the same as such is set aside.

Consequently, Criminal Appeal No. 108 of 2019 is allowed.

Appellant is acquitted from the charges.

Pending connected application, if any, is consequently disposed of.

The appellant is on bail and as such he is discharged from the bail bonds.

Department is directed to send back the trial court records immediately to the learned trial court and also communicate this order to the learned trial court.

All concerned parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)