

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

Present:

The Hon'ble Justice Partha Sarathi Sen

CRA 87 of 1999

**Sri Santosh Chakraborty & Ors.
Vs.
The State of West Bengal**

For the appellants : Mr. Subir Ganguly
Mr. Ashis Kumar Paul

For the State : Ms. Faria Hossain, APP
Ms. Suparna Chatterjee

Heard on : 19.08.2024

Judgement on : 19.08.2024

PARTHA SARATHI SEN, J.:

1. In this appeal the judgment and order of sentence dated 02.02.1999 as passed in Sessions Trial No. 1 of November, 1997 (Sessions Case No. 41 of 1996) by the learned Additional Sessions Judge, 1st Court, Suri, Birbhum has been assailed at the instance of the three convicts of the said sessions trial. It is pertinent to mention herein that during the pendency of the instant appeal, the appellant no. 3,

Tagar Chakraborty died and accordingly, the instant appeal stands abated as regards the said appellant no. 3, Tagar Chakraborty.

2. For effective disposal of the instant appeal, the facts leading to initiation of the aforesaid Sessions Trial are required to be discussed in a nutshell.
3. On 27.07.1995, one Sankari Chatterjee of Village- Pachundi P.S. Ketugram lodged a written complaint with the Officer-in-Charge, Nanoor Police Station, District – Birbhum stating, *inter alia*, that on December 12, 1991, the marriage between her youngest daughter Manasi Chakraborty @ Chaina was solemnized with one Santosh Chakraborty, the appellant no. 1 herein and at the time of such marriage, various nuptial gifts including gold ornaments and Rs. 70,000-75,000/- in cash were given. It has been alleged further in the said written complaint that since such marriage the said Santosh Chakraborty, one Tagar Chakraborty, the mother of the Santosh Chakraborty, since deceased and one Noton Chakraborty, the brother of the said Santosh Chakraborty, the appellant no. 2 herein on some pretext or other used to inflict torture, both physical and mental upon her said daughter. It has also been alleged that the said three accused persons did not provide any medical treatment at the time of her illness and on the contrary, the said three accused persons used to pressurized her said daughter to provide a job to the son-in-law of the informant.

4. It has been stated further in the said written complaint that her daughter Manasi Chakraborty @ Chaina, since deceased during her lifetime stated about such torture to her mother, the informant and her relatives but with the expectation that she would lead a happy married life in future, the informant used to pacify her grievance by soft words and, thereafter, sent back her to her matrimonial home.
5. It has been stated further in the said written complaint that on 22.07.1995, an information was given at her house at Pachundi that her daughter was suffering from Diarrhoea. On receipt of such information, when her eldest son-in-law went to the matrimonial home of the said Manasi Chakraborty, he came to learn that the victim suffered burn injury and she was taken to Bolpur Sub-Divisional Hospital where she succumbed to her injuries.
6. On the basis of such written complaint, Nanoor P.S. Case No. 54 of 1995 dated 27.07.1995 under Sections 498A/306 IPC was started.
7. Investigation was taken up and on completion of the same, charge-sheet was submitted under Sections 498A/306 IPC against the aforementioned three accused persons.
8. After commitment and transfer, the learned trial Court on 11.09.1996 considered the charges against the accused persons on the basis of the materials placed before him and thus, framed charges under Sections 498A/306 IPC against the accused persons.

9. In order to bring home the charges as against the aforementioned three accused persons, the prosecution before the learned trial Court had examined 12 witnesses in all and some documents have been exhibited on their behalf. Before the learned trial Court, no witness was tendered by the defence. However, from the trend of cross-examination of the prosecution witnesses as well as from the answers as given by the accused persons in their respective examinations under Section 313 Cr.P.C., it appears to this Court that the defence case is based on clear denial and false implication.
10. Learned trial Court after considering the evidence of the prosecution witnesses, both oral and documentary as well as the documentary evidence on the part of the defence (which was tendered during cross-examination of P.W. 1) found the accused persons are not guilty under Section 306 IPC and thus they were acquitted from the said charge.
11. However, in the self-same judgment, the learned trial Court found that the said three accused persons are guilty under Section 498A IPC and thus, sentenced the said three accused persons to suffer R.I. for two years and to pay fine of Rs. 3,000/- each i/d to suffer S.I. for three months each. The said judgment of conviction and order of sentence is assailed before this Court by preferring an appeal.

12. In course of his argument, Mr. Ganguly, learned advocate for the appellants submits before this Court that the learned trial Court while convicting the present appellants under Section 498A IPC basically relied upon the evidence of P.W.s 1 to 3 but the said trial Court has miserably failed to consider that the evidence of those three prosecution witnesses with regard alleged torture are omnibus in nature.
13. It is further submitted on behalf of the appellant that in the Post Mortem report of the victim, the autopsy surgeon found no external bodily injury in the person of the deceased which nullifies the case of the prosecution regarding alleged physical assault. It is further submitted by Mr. Ganguly that though P.W. 1 in her examination-in-chief has mentioned some names of the neighbours of the accused persons but those neighbours were never examined for the reasons best known to the prosecution. It is further submitted that had those neighbours have been examined as prosecution witnesses, a true and clear picture regarding the alleged conduct of the present appellants would come out.
14. Drawing attention of this Court to internal page no. 23 of the impugned judgment (page no. 70 of the paper book), it is submitted that learned trial Court though came to a finding that the said trial Court would not disbelieve the testimony of P.W. 1 and P.W. 3 but in the said judgment, no reason has been assigned by the trial

Court as to what prompted the trial Court to believe the testimony of the P.W. 1 and P.W. 3. It is further submitted that while coming to such finding with regard to the alleged guilt of the present appellants, learned trial Court has failed to consider material contradiction and/or omission in the evidence of the prosecution witnesses, more specifically, P.W. 1 to P.W. 3.

15. It is thus, submitted by Mr. Ganguly that it is a fit case for allowing the instant appeal by setting aside the impugned judgment and order of sentence.
16. *Per contra*, Ms. Faria Hossain, learned Additional Public Prosecutor for the State submits before this Court that considering the peculiar nature of the crime, it is very difficult to get any independent witnesses with regard to the alleged torture upon the deceased at the instance of the present appellants and, therefore, the learned trial Court is very much justified in placing his reliance upon the testimonies of those three witnesses who are the close relatives of the deceased. It is further submitted by Ms. Hossain, learned APP that the evidence of P.W.1, P.W. 2 and P.W. 3 are found to be consistent and their evidence may be treated as direct evidence since all the three prosecution witnesses being the close relatives of the deceased unerringly stated about the alleged role of the present appellants in commission of crime under Section 498A IPC by inflicting torture upon the deceased both physical and mental.

17. It is further submitted by Ms. Hossain, learned APP that from the evidence of P.W. 1 to P.W. 3, it would reveal that apart from the physical and mental torture, the accused persons used to keep the deceased unfed which tantamounts to cruelty within the meaning of 498A IPC and there are materials in the case record that she was not treated by the present appellants during days of her illness.
18. It is thus submitted on behalf of the State that there cannot be any cogent reason to interfere with the judgment impugned. Ms. Faria Hossain, learned APP thus, submits that it is a fit case for dismissal of the instant appeal.
19. For effective adjudication of the instant appeal, the detailed discussion over the evidence of the prosecution witnesses all over again is not necessary since those have been elaborately discussed by the learned trial Court in the impugned judgment. This Court thus proposes to discuss the evidence of those prosecution witnesses which are necessary for the disposal of the instant appeal.
20. From the deposition of P.W. 10 who is a doctor of Bolpur, Sub-Divisional Hospital and who performed postmortem examination over the dead body of the deceased as well as from the postmortem report which has been exhibited before the trial court it would reveal that the said P.W. 10 categorically opined that the death of the deceased was due to burn causing shock and suicidal in nature. As discussed supra though charge under Section 306 IPC was framed

against the accused persons but they were acquitted from the said charge by the trial court. So far as acquisition under Section 498A is concerned it appears to this Court that since the learned trial court in his impugned judgment placed his reliance upon the evidence of P.W.s 1, 2 and 3, this Court proposes to discuss about the evidence adduced by those prosecution witnesses in a nutshell.

21. P.W. 1 being the mother of the deceased and the informant testified that at the time of marriage between her said daughter and the present appellant no. 1, her husband Santosh Chakraborty was an employee of a local rice mill but subsequently, he lost his job and thereafter the accused persons started pressurizing her daughter (Manasi Chakraborty) to make arrangement for employment of her husband through her brother who deposed as P.W. 3. She testified further that the accused Santosh Chakraborty used to threaten his wife (Manasi Chakraborty) that in the event such employment was not secured he would divorce Manasi Chakraborty. She further testified that Manasi Chakraborty was not medically treated at her matrimonial home and the accused persons used to neglect regarding her medical treatment and she was not even given adequate food. She further testified about the physical and mental torture upon the deceased during her lifetime.

22. At the time of cross-examination P.W. 1 was tendered with several letters exchanged between the informant and her daughter and/or

the appellant no. 3 who died during the pendency of the appeal. All those letters have been marked by the learned trial court on admission. In her cross-examination she stated that though she approached the 'para' people of the appellants for settlement of the marital dispute but she could not recollect any name/names of those 'para' people who intervened during such settlement.

23. P.W. 2 is the daughter-in-law of P.W. 1 who happened to be the sister-in-law (brother's wife) of the deceased. She in her examination-in-chief testified about the alleged ill treatment and alleged assault by the accused persons upon the accused she further testified that on account of loss of job the appellant no. 1 herein used to pressurize his wife for securing an employment at the office of her husband and on her failure she was subjected to torture by the accused persons. In her cross-examination she testified that she never stated to any other people regarding the alleged torture upon the Manasi Chakraborty by the present appellants.

24. P.W. 3 is the son of P.W. 1 and the brother of the deceased. In his examination-in-chief he testified that whenever Manasi visited her paternal home she used to tell about the alleged torture upon her by the present appellants. He also testified that on account of his failure to secure a job for his brother-in-law (appellant no. 1) the accused persons used to assault the deceased. He further testified

that immediately prior to the incident, an accident took place at the matrimonial home of the deceased whereby the minor daughter of the deceased suffered acid injury on her leg over which the accused persons assaulted his sister, Manasi Chakraborty for which she committed suicide.

25. At this juncture, if I look to the evidence of the P.W. 12 being the I.O. it reveals from his cross-examination that in course of his cross-examination he stated that P.W. 2 never stated to him that the accused persons slapped the deceased and he further testified that the P.W. 2 did not state about the mode of alleged torture upon the victim by the accused persons. He further testified that P.W. 2 did not state to him that the accused persons assaulted Manasi Chakraborty as a minor child of Manasi Chakraborty suffered acid injury.
26. As noted earlier at the instance of the defence some letters have been tendered to the P.W. 1 in course of her cross-examination which have been marked Exhibit-A (series) on admission. This Court has occasioned to go through the contents of those letters. Basically those letters were written by the informant either to his son-in-law, Santosh Chakraborty or to the P.W. 1 being mother of the deceased or to his daughter who had died.
27. On perusal of the contents of those letters it appears that those letters contained normal conversation with regard to the welfare of

the author of the letter as well as the recipient of the letter and their family members.

28. In the said letters, I find no whisper either with regard to alleged demand of dowry or with regard to alleged harassment both physical and mental upon the deceased or with regard to the alleged demand by the accused persons for securing employment of the present appellant no. 1.
29. It appears from the evidence of P.W.s 1 and 3 that though the said two witnesses being the mother and the brother of the deceased had testified with regard to the assault, non-treatment and keeping the victim unfed but those are basically omnibus in nature in absence of any detailed particulars.
30. From the evidence of P.W. 3 this Court finds justification for the treatment of the deceased at the working place of her brother since P.W. 4 in his examination-in-chief categorically stated that being an employee of SAIL he and his family members used to get medical treatment in the said hospital and the said hospital is equipped with modern machineries like ultra-sound machine, scanning machine etc.
31. As rightly pointed out by Mr. Ganguly that learned trial court while passing the impugned judgment failed to notice a material omission in the evidence of the P.W. 2 since P.W. 2 in course of her examination under Section 161 never stated to the I.O. (P.W. 12)

regarding the mode of torture upon the deceased and also regarding the alleged infliction of slap by the accused persons on the person of the deceased.

32. In considered view of this Court, the omission as pointed out by the learned Advocate for the appellants is a material omission within the meaning of proviso of Section 162 of the Cr.P.C. read with Section 145 of the Evidence Act which tantamounts to material contradiction.
33. In the reported decision of **'Amar Singh vs. State of Rajasthan'** reported in **2010 (3) C.Cr.L.R. (SC 446)** the Hon'ble Apex Court while dealing with a case under Section 498A/304B IPC express the following view:

"A prosecution witness who merely uses the word "harass or torture" and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498A/304B IPC".

34. As discussed supra and as rightly pointed out by Mr. Ganguly, learned Advocate for the appellants that in the impugned judgment learned trial court has not assigned any reason as to what prompted him to believe the testimony of P.W.s 1 and 3.

35. In considered view of this Court while writing the impugned judgment the trial court was bound to disclose as to why he has accepted the testimonies of the P.W. 1 to P.W. 3 as reliable especially when in considered view of this Court those evidences are found to be either omnibus or full of contradiction.
36. In view of the discussion made hereinabove, this Court thus finds the instant appeal deserves to be allowed. Accordingly, **CRA 87 of 1999** is hereby allowed.
37. Consequently, the impugned judgment and order of sentence dated 02.02.1999 as passed by learned 1st Additional Sessions Judge, Suri, Birbhum in Sessions Case No. 41 of 1996/Sessions Trial No. 1 of November, 1997 is hereby set aside.
38. Consequently, the present appellant no. 1, Sri Santosh Chakraborty, appellant no. 2, Sri Paritosh @ Noton Chakraborty and appellant no. 3, Smt. Tagar Chakraborty (since deceased) are found not guilty of the offence under Section 498A IPC.
39. The appellant no. 1, Sri Santosh Chakraborty and the appellant no. 2, Sri Paritosh @ Noton Chakraborty are thus discharged from their respective bail bonds and be set at liberty at once if not wanted in connection with any other case.
40. Department is directed to forward a copy of this judgment along with the L.C.R. to the learned trial court forthwith.

41. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)