

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 170 of 2001

Dulal Roy and Anr.

-Vs-

The State of West Bengal

For the Appellants : Mr. Tapas Ghosh
Mr. Tanmay Chowdhury

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 08.02.2024, 21.03.2024, 21.06.2024

Judgment on : 20.09.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 16.03.2001 passed by the Learned Additional Sessions Judge, 2nd Court, Jalpaiguri arising out of Sessions Case No.137 of 1996 convicting the appellants under Sections 498A/34 of the Indian Penal Code and sentencing the appellants to suffer rigorous imprisonment for 2 years each and to pay a fine of Rs.1000/- each in default to suffer rigorous imprisonment for 3 months each.
2. The prosecution case precisely stated on 20.03.1992 at about 00:25 hrs., one Debendra Nath Roy, son of B. Nabanu Roy of Simulguri, P.S. – Bhaktinagar, District – Jalpaiguri lodged a written complaint at the Raigunj

P.S. narrating that on 19.03.1992 at about 16:30 hrs., he learnt his sister (the victim) expired at her matrimonial house. Reaching her matrimonial house, the de-facto complainant along with four other neighbours found the dead body of his sister lying in the courtyard. He suspected foul play and on enquiry he came to know from the house that she died due to fever and toothache.

3. The complainant apprehended that his sister was killed by her husband and other inmates of her matrimonial house or she was compelled to commit suicide at her matrimonial house due to torture as his sister was married to the appellant no.1 herein Dulal Roy, eight years ago and had given birth to a daughter. Thereafter Dulal Roy, the appellant no.1 herein married one Putul Rani Roy. It was further alleged that the appellant no.1 ill-treated the deceased and abused her being intoxicated. The deceased due to such inhuman torture upon her by her husband/appellant no.1 herein, came to her father's house and stayed for one and half month and thereafter Smt. Chatanyeswary, mother of the deceased took her daughter, after convincing her, to her matrimonial home, on 14.03.92 and asked both of them to live happily. It was also alleged that the deceased was subjected to both mental and physical torture.
4. Based on the complaint, Raigunj P.S. Case No.23 of 1992 dated 20.03.1992 under Section 306 of the Indian Penal Code was initiated against Dulal Roy, Putul Roy (the appellants) and Tukun Roy and after completion of investigation, the police submitted charge-sheet under Sections 302/201/498A/34 of the Indian Penal code.

5. Charges were framed against the accused persons under Sections 498A/302/201/34 of the Indian Penal Code.
6. The contents of the charge so framed were read over and explained to the accused persons to whom they pleaded not guilty and claimed to be tried.
7. The prosecution cited sixteen witnesses and exhibited certain documents.
8. The Learned Advocate for the appellant submitted as follows:-
 - a) Prior complaint to the police regarding ill-treatment to the deceased was not filed.
 - b) The Medical Officer who held post-mortem examination over the dead body of the deceased was indecisive of the cause of her death as elicited in the cross-examination in the court. He deposed that injuries found on the body of the deceased might be post-mortem in nature, it could not be opined that the death of the deceased was caused by throttling, anti-mortem and homicidal in nature.
 - c) The testimony of the prosecution witnesses' no.1, 3 and 13 reflected suspicions in their minds that the accused persons tortured their deceased.
 - d) The body of the deceased did not portray any mark which may lead to the conclusion that the death was homicidal or suicidal in nature as a result of torture. It was plainly due to illness.
 - e) There was an unexplained delay in lodging the F.I.R. The de-facto complainant came to know of the incident on 19.03.92 at 16:30 hrs., and therefore rushed to the matrimonial home of his sister along with

PW-3 and PW-4 neighbours and reached at 19:30 hrs., but lodged the F.I.R., on 20.03.2001 at 00:25 hrs.

- f) The prosecution failed to adduce any eye witness in the instant case and the sentence of the appellants in view of the facts and circumstances of the case, had been solely on the basis of contradictory evidence.
- g) Moreover, no history of torture on the victim was expressed except that the husband had re-married one Putul Roy and therefore the appeal should be allowed.

9. A circumspection of the prosecution witnesses revealed as follows:-

- i. PW-1 the brother of the deceased victim recounted that after marrying his sister, the appellant no.1 remarried and appellant no.1 tutored his sister. She was starved and would come to his house to take food for survival. She stayed at his house for 1 ½ months and thereafter at the insistence of her mother, she returned to her matrimonial house and after 2 days she died. On the day of her death, PW-1 went to her matrimonial house along with Japendranath Ray and his brother Khagendranath Ray and found his sister's dead body at "Tulsitala", covered with cloth. He found three men in the courtyard – Dulal Ray, Ananda Ray and Basudev. Ananda and Basudev informed him his sister's well-being on the previous day. Dulal and Tukun were inebriated and told that his sister was suffering from diarrhea, divergently stating she had been suffering from fever for 1 to 2 days. He went to Raiganj P.S. and lodged diary.

In 1987 Dulal remarried Putul and both of them tortured the victim and removed her from the bedroom. Dulal Ray used to assault his sister and sometimes did not provide food to her. His sister narrated her plight to him whenever she would come to his house. A Panchayet meeting of Shikarpur Anchal was convened to resolve the dispute. When torture continued unabated, PW-1 asked the accused to give 5/7 bighas of land to his sister but in vain. During inquest, blood was seen to come out of the mouth and the police suspected his sister had been throttled to death. He stated that his sister had been murdered.

- ii. PW-1 in his cross-examination stated the meeting with Panchayet was held before the complaint. Anchal Prodhan, Panchayet Members and others were present in the meeting at North Bengal farm at his sister's matrimonial home, which continued for 2 hours, after Dulal remarried Putul. For his sister.
- iii. PW-2 a Constable at Raiganj P.S. signed the seizure list as a witness marked as Exhibit-3 for seizure of the wearing apparels of the victim.
- iv. PW-3 deposed that the victim came to his house and disclosed Dulal and his second wife used to assault her, starved her and she used to be drowned in water. He found injury on her head, as he learnt that she was assaulted on her head. PW-3 claimed Dulal and Putul were responsible for torture on the victim.

PW-3 accompanied PW-1 and Deben to Dulal's house and found the victim lying dead at Tulsitala of Dulal's house. Dulal, Tukun and 2/3

others present told different versions of death from time to time. Tukun told that the victim was suffering from fever. Putul told she was suffering from toothache. He suspected that the victim had been tortured and died unnatural death. Thereafter they went to Raigunj P.S. and lodged ejahar. His signature in the inquest report was marked as Exhibit-2/2. His signature in the complaint was marked as Exhibit-1/2.

- v. PW-3 in his cross-examination stated that one year before her death, The victim narrated him of her torture and assault. He could not reveal the date of such statement. He did not meet police on any other day after he wrote the ejahar.
- vi. PW-4 and PW-5 were declared hostile by the prosecution.
- vii. PW-6 a Constable no.1107 and attached to D.I.B., Sadar carried a dead body of a person to Jalpaiguri Sadar Hospital under a Challan and his signature in the Challan was marked as Exbt.-4. He identified the dead body to the Doctor.
- viii. PW-7 in his deposition stated he lived Shikarpur under Raigunj P.S. On 20.03.92 he was the Pradhan of the Gram Panchayet. He knew Dulal Ray, Tukun Ray and Putul. Dulal was married. He was not examined by the I.O. He did not try to mediate the dispute between Dulal and the Complainant after the death of the victim. He did not know anything.
- ix. The evidence of PW-8 and PW-9 was based on hearsay.

- x. PW-10 an S.I. of Police was the O/C of Raigunj P.S. who received a complaint at about 12:25 hrs., between the night of 19.03.92 and 20.03.92 from Sri Debendra Nath Roy of Shimulguri., P.S. Bhaktinagar. On receipt of the complaint he drew up formal F.I.R., and initiated Raigunj P.S. Case No. 23/92 dated 20.03.92 under Section 306 I.P.C., against accused Dulal Ray, Tukun Ray and Putul Rani Ray. The formal F.I.R., drawn up by him was marked as Exhibit-5. His endorsement on the margin of the written complaint was marked as Exhibit-1/3. He endorsed the case to S.I. S.B. Bagchi for investigation.
- xi. PW-11 reiterated the evidence of the de-facto complainant.
- xii. PW-12 did not have any personal knowledge of the incident.
- xiii. PW-13 recounted to have been entrusted to conduct investigation. During investigation he visited the P.O. which was the house of Dulal Roy of Shimulguri in North Bengal Farm. He prepared a sketch map of the P.O. with index. The sketch map with index was marked exhibit-6. He held inquest over the dead body of one the victim wife of Dulal Roy in presence of witnesses and prepared a report duly signed by him marked as exhibit-2. He arranged for sending the dead body to the hospital for postmortem exam through constable 1107 Man Mohan Majumder with a challan on suspicion of unnatural death. He examined witnesses and recorded their statements. He arrested three accused persons and forwarded them to court. After P.M. examination was over he seized the wearing apparels and P.M. blood

under a seizure list on being procured by Constable Man Mohan Majumder marked as exhibit-3.

Then he made a prayer for addition of Section 302 of the I.P.C. before the Ld. S.D.J.M., Jalpaiguri. On 09.04.92 he made owner the C.D. to the O.C., because of his transfer from the station.

- xiv. PW-15 deposed after taking charge of the said case, he visited the O.P. and examined one Tribendra Nath Roy, Smt. Yatri Roy and Basudev Roy under Section 161 Cr.P.C. As he could not collect any other material evidence, submitted the charge-sheet against the accused persons.

PW-15 in his cross-examination stated that he had not mentioned in his C.D. as to who were the neighbours of accused Tukun Roy.

- xv. PW-16 in his deposition stated that he was a Gynecologist attached to Abinash Dutta Maternity Hospital, B.K.Pal Avenue, Calcutta. On 20.3.92 he was attached to Sadar Hospital, Jalpaiguri, in the same capacity. On 20.3.92 he held post-mortem examination in respect of a dead body of one the victim, female 24 years brought and identified by constable Manmohan Majumder, c/1107 in connection with Raiganj P.S. Case 23/92 dated 20.3.92 and he found the following injuries:

- a) *One crescent nail marks over the front and back side of the neck and three on the left side and one on the right side.*
- b) *Face highly congested on account of accumulation of blood.*
- c) *Acchymosis over left dorsum of the hand with multiple nail marks.*

d) Small abrasion on the back of the index and middle finger of right hands.

e) Fracture of the hyoid (upper part of trachea) bone with surrounding blood clots which resist washing.

f) One liner acchymosis mark over back of left shoulder.

Death in his opinion was caused due to asphyxia following throttling which was ante mortem and homicidal in nature. The carbon copy of the P.M. report prepared and signed by him in the same mechanical process which was marked Exhibit – 7.

- xvi. During cross-examination PW-16 stated that no nail mark was visible on the back side of the victim. His P.M. report did not disclose whether any froth was coming out from the mouth of the victim. He had not mentioned specifically the colour of the lip in his report. The particular term ‘subcutaneous tissue’ was not mentioned in his report but his report referred to acchymosis in the region of the hyoid bone. Injury no.5 mentioned in his report medically signified that there was acchymosis. He had already reiterated that though the aforesaid specific term had not used in his report but the injury noted against column no.5 signified the same. All the injuries noted in his report might be post mortem in nature. The witness volunteered that he made an opinion in the report that both lungs, trachea, larynges and membrane of brain were congested. He further stated that mouth, faring, oesophagous (food passage) being the trachea were congested and uterus was small. No opinion had been

given by him in his report with regard to the tongue of the victim. Death by throttling sometimes might cause injury to the subcutaneous tissue. He did not agree that death by throttling must cause injury always to subcutaneous tissue. Congestion of lung as appearing in his P.M. report could not be caused by pneumonia in this particular case though pneumonia caused congestion of lungs.

10. Section 498-A of the Indian Penal Code is reproduced below:-

“498A. 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 purposes 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.]”

11. In **K.V. Prakash Babu v. State of Karnataka**¹, the following was observed by the Hon’ble Supreme Court:-

“10. The said provision came up for consideration in *Girdhar Shankar Tawade v. State of Maharashtra* [*Girdhar Shankar Tawade v. State of Maharashtra*, (2002) 5 SCC 177 : 2002 SCC (Cri) 971] , where the Court dwelling upon the scope and purport of Section 498-A IPC has held thus : (SCC p. 180, para 3)

¹(2017) 11 SCC 176

“3. The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislatures : whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide, or (ii) to cause grave injury or, (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of “cruelty” in terms of Section 498-A.”

(emphasis supplied)

11. *In Gurnaub Singh v. State of Punjab [Gurnaub Singh v. State of Punjab, (2013) 7 SCC 108 : (2013) 3 SCC (Cri) 49] , while dwelling upon the concept of “cruelty” enshrined under Section 498-A the Court has opined thus : (SCC pp. 118-19, para 18)*

“18. ... Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide”. Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty.”

12. In the case of **Rajesh Sharma v. State of U.P.**², the Hon’ble Supreme Court held the following:-

“14. *Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or*

²(2018) 10 SCC 472

murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression “cruelty” in Section 498-A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. [Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women....”

13. In ***Pinakin Mahipatray Rawal v. State of Gujarat***³, the Hon’ble Supreme Court held the following:-

“20. *We have to examine the correctness or otherwise of the findings recorded by the trial court, affirmed by the High Court, as to whether the alleged relationship between A-1 and A-2 has in any way constituted “cruelty” within the meaning of the Explanation to Section 498-A IPC. The facts in this case have clearly proved that A-1 has not ill-treated the deceased, either physically or mentally, demanding dowry and was living with A-1 in the matrimonial home till the date she committed suicide. Cruelty includes both physical and mental cruelty for the purpose of Section 498-A. Section 498-A IPC reads as under:*

“498-A. 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 purposes 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

³(2013) 10 SCC 48

(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. This Court in *Girdhar Shankar Tawade v. State of Maharashtra* [(2002) 5 SCC 177 : 2002 SCC (Cri) 971] , examined the scope of the Explanation and held as follows: (SCC p. 180, para 3)

“3. The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word ‘cruelty’ as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of ‘cruelty’ in terms of Section 498-A.”

22. In *Gananath Pattnaik v. State of Orissa* [(2002) 2 SCC 619 : 2002 SCC (Cri) 461] , this Court held that the concept of cruelty under Section 498-A IPC and its effect under Section 306 IPC varies from individual to individual also depending upon the social and economic status to which such person belongs. This Court held that cruelty for the purpose of offence and the said section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case.

14. The Hon'ble Supreme Court held the following in ***Naresh Kumar v. State of Haryana***⁴:-

“23. *Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he : (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a “subjective” test).*

24. *For intention in English law, Section 8 of the Criminal Justice Act, 1967 provides the frame in which the mens rea is assessed. It states:*

“A court or jury, in determining whether a person has committed an offence,

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.”

Under Section 8(b), therefore, the jury is allowed a wide latitude in applying a hybrid test to impute intent or foresight on the basis of all the evidence.

25. *It is now well settled that in order to convict a person under Section 306IPC there has to be a clear mens rea to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.*

⁴(2024) 3 SCC 573

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31. *In this appeal, we are concerned with Section 113-A of the Evidence Act. The mere fact that the deceased committed 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 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 had subjected her to cruelty, the presumption under Section 113-A of the Evidence Act may be raised, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.*

32. *What is important to note is that the term “the court may presume having regard to all other circumstances of the case that such suicide had been abetted by her husband” would indicate that the presumption is discretionary, unlike the presumption under Section 113-B of the Evidence Act, which is mandatory. Therefore, before the presumption under Section 113-A is raised, the prosecution must show evidence of cruelty or incessant harassment in that regard.*

33. *The court should be extremely careful in assessing evidence under Section 113-A for finding out if cruelty was meted out. If it transpires that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.*

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35. *This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words “may presume”. It must*

take into account all the circumstances of the case which is an additional safeguard.”

15. The following was observed by the Hon’ble Supreme Court in **Kahkashan Kausar v. State of Bihar**⁵:-

“17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”

16. PW-1, PW-3 and PW-13 the related witnesses in their testimony described the misery of the victim being tortured by the appellants. Certain instances as afore-mentioned were emphasized to describe her plight after the appellant no.1 married for the second time during the subsistence of his earlier marriage with the victim. PW-1 the de facto complainant and his family members were suspicious of criminal intent and act on the part of the appellants to have tortured and murdered the victim.

17. In order to attract the provisions concerning the commission of an offence under Section 498A of the Indian Penal Code, the husband or the relative of the husband must subject her to cruelty or harassment to cause grave injury or danger to life, limb or health (whether mental or physical) and

⁵(2022) 6 SCC 599

harass her in order to coerce her or any person related to her to meet any unlawful demand for any property or valuable security and on their failure to satisfy the demand, the lady becomes vulnerable to commit suicide.

18. The complaint filed by the de facto complainant apart from suspicion that the victim might have committed suicide being tortured and harassed by the appellants did not mention the gravity, intensity and continuity of such cruelty inflicted upon the victim. PW-4 and PW-5 turned hostile.
19. The evidence of the doctor conducting the post mortem examination had been inconclusive stating that the injuries found on the body of the victim to be post mortem in nature. The appellant no.2 cannot be legally considered to be his second wife and, therefore, cannot be related to the husband either closely or distinctly to be a relative. If the second wife is given the recognition of a relative of the husband, the same would be contrary to the legal precepts of giving her the status of a wife contrary to the laws prevailing in India. The second wife does not fall within the ambit of a definition of a relative with regard to Section 498A of the Indian Penal Code but can definitely assume the status of an abettor to abet the suicide of the victim. However, apart from vague allegations by the de facto complainant and his family members, the role of the appellant no.2 had not been stated either concisely or vividly. Indisputably the marriage of the husband during the lifetime of the victim surely affected the mental health of the victim amounting to cruelty. However, the prosecution failed to cite the obvious, absolute and exclusive reason for committing suicide by the victim was due to the second marriage of the appellant no.1 and its repercussions along with cruelty and

harassment inflicted upon her by both the appellants. Moreover, the opinion of the doctor conducting the post mortem examination had been ambiguous and indecisive. Mere suspicion, without evidence of continuous cruelty and harassment of the victim leading her to a desperate state to commit suicide, cannot attribute criminality to the appellants and indict them accordingly.

20. Under the facts and circumstances of the case in absence of proof of commission of the offences by the appellant beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.

21. Accordingly, the instant criminal appeal being CRA 170 of 2001 is disposed of.

22. There is no order as to costs.

23. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

24. 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.)