

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 182 of 2001

Gouranga Biswas

-Vs-

The State of West Bengal

For the Appellant : Ms. Pallavi Priyadarshee
(*Amicus Curiae*)

For the State : Mr. Saswata Gopal Mukherjee
Mr. Aniket Mitra
Ms. Jonaki Saha

Heard on : 01.08.2023, 21.09.2023, 09.10.2023

Judgment on : 09.01.2023

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order of conviction passed by Learned Additional Sessions Judge, Birbhum at Rampurhat in Sessions Trial No. 2 of May, 1999 arising out of the Sessions Case No. 55 of 1993 convicting the appellant under Sections 498A/306 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for two years and a fine of Rs. 1000/-, in default, to suffer simple imprisonment for six months for the offence under Section 498A IPC and further sentenced the appellant to suffer rigorous imprisonment for five years and a fine of Rs. 1000/-, in

default, to suffer simple imprisonment for six months for the offence under Section 306 IPC and both the sentences directed to be run concurrently.

2. The prosecution case initiated on the basis of a complaint filed by the father of the victim precisely stating that the victim was third daughter who was married to the appellant and had given birth to a male child for about a year prior to the complaint. The appellant, the father-in-law, the maternal mother-in-law, brother of her husband severely tortured the victim who narrated such event of torture to the complainant stating her helplessness to continue her married life under such circumstances. On being consoled by the complainant with a hope for future improvement of the situation, the victim being persuaded, continued her matrimonial life. However, the situation did not improve and the victim was starved for food on several occasions and she finally consumed poison. The complainant requested the police to investigate.
3. Based on the aforesaid complaint, Nalhati P.S. Case No. 169 dated 11.10.89 under Section 498A/306 of Indian Penal Code was instituted. Pursuant to the completion of investigation, charge-sheet was submitted against four accused persons namely Lalit Mohan Biswas, Gouranga Biswas, Bamacharan Biswas and Koshalya Biswas. Charges were framed to which the aforesaid accused persons pleaded not guilty and claimed to be tried.
4. The prosecution in order to establish its case cited 16 witnesses and exhibited certain documents.

5. The Learned Trial Judge acquitted the other three accused persons and convicted accused Gouranga Biswas the present appellant under Sections 498A/306 of Indian Penal Code.

6. Learned Advocate for the appellant submitted that –

- i. The impugned order of conviction and sentence dated 31.03.2001 is per se bad in law.
- ii. Impugned Judgment bristles with illegalities and infirmities which go to the very root of the matter rendering the same unsustainable in law and as such liable to be set aside by this Hon'ble Court.
- iii. Framing of charge is not an idle formality since the same puts at peril the liberty of a citizen being arraigned in criminal trial and even a cursory glance of the order dated 4th November, 1997 by Learned Additional Sessions Judge, Birbhum at Rampurhat framing charge against the accused/appellant and another under Sections 498A/306 of the Indian Penal Code, which is cryptic, vague and omnibus in nature, causing great prejudice to the accused/appellant in his defence and as such entire trial should be deemed to be void-ab-initio.
- iv. It is a well settled principle of law that a statement recorded under Section 161 of the Code of Criminal Procedure of a witness, who is to be confronted at the trial vis-à-vis his evidence in court and whereas in the instant case and his statement not having been recorded under Section 161 of the Code of Criminal Procedure, his testimony is to be deemed to be non-est in the eye of law and the

concerned Learned Judge having taken into consideration the evidence of PW-1 in arriving at the finding impugned herein, the same should be deemed to be nullity in the eye of law and as such liable to be quashed by this Hon'ble Court.

- v. The embellished evidence of PW-1 vis-à-vis his First Information Report, makes him a witness being untrustworthy and reliance upon such embellished evidence had rendered the impugned judgment per se bad in law.
- vi. The evidence of PW-2 *"that she personally saw the accused persons to assault her daughter"* factum of which had weighed with the Learned Judge who unfortunately never took into consideration the substantive evidence of PW-13, the Investigating Officer who stated *"PW-2 has categorically stated that the victim was subjected to torture but not in so many words that she saw"*, thereby amply establishing the evidence in Court of PW-2 being 'tutored' in nature and failure on the part of the concerned Learned court below to take such a serious infirmities, which has rendered the impugned judgment per se bad in law.
- vii. Finding of the Learned Judge to the effect *"it is highly significant to note that both the matrimonial home and the paternal home of the deceased are in the same village. It is the normal custom of every Bengali Hindu Family that the daughter shall pay visit to her paternal house at least once during the Puja Period. The accused persons did not allow Madhumita to meet her parents and brothers*

during those festive days which can be said to be a mental torture”, narration of the above ipso facto proves that the said Learned Judge had imputed his own personal knowledge which to say the least not only unheard of in the realm of law but the same is also untenable in law, thereby, establishing the biased attitude of the concerned Learned Judge.

viii. There being no reference in the judgment of PW-3’s evidence vis-à-vis the statement recorded under Section 161 of the Code of Criminal Procedure, which be speak of a close mind attitude on the part of the said Learned Judge.

ix. Analysis of the evidence of PW-4 by the concerned Learned Judge goes to the extent of, as would be evident from the following:-

“PW-4 is a relation of the deceased. She says that the accused persons used to torture upon Madhumita and as a result she committed suicide by hanging herself” and whereas if the Learned Judge had bothered to bestow his judicial care and caution in taking into account the previous statement of the aforesaid PW-4 recorded under Section 161 of the Code of Criminal Procedure, than it would have immediately apparent to him the sheer improved version of the entire narratives as would be evident from her evidence and since reliance having been placed on the evidence of PW-4, the entire order of conviction and sentence had rendered a nullity in the eye of law.

- x. Analysis of evidence of PW-5 by the concerned Learned Judge speaks of complete non-application of judicial mind on his word inasmuch as the said Learned Judge, from the tenure of impugned Judgment which conclusively establishes his closed mind attitude in as much as the Learned Judge played the role of a mute spectator not bothering to ask the said PW-5 about his improved version tendered in evidence from the statement he had made under Section 161 of the Code of Criminal Procedure and the same being at variance with each other no reliance should have been placed upon such embellished person given by way of evidence in court by the said PW-5, resulting in grave miscarriage of justice.
- xi. Analysis of the evidence of PW-6 in the impugned judgment clearly establishes that the concerned Learned Judge nurtured a vindictive attitude which is amply supported by his finding vis. “the daring acts of cruelty of the accused persons ...” coupled with his categorical assertions in evidence that the deceased was subjected physical torture by way of assault even in his presence, which relied by the Investigating Officer PW-13 himself, thereby amply establishing that the impugned judgment is unsustainable in the eye of law.
- xii. Failure on the part of the Learned Court below to take into consideration the evidence of PW-7, which if being analyzed in its proper perspective especially in his evidence in cross examination to the effect inter-alia “The accused persons never tortured upon

Madhumita for demand of dowry or for any other reasons. There was good relationship in between the two families. The dispute arose after the demise of Madhumita”, and the said PW-7 having been relied upon whether the concerned court below for passing the order of conviction and sentence without least bit application of judicial mind to the said evidence on record and/or care and caution resulting in the impugned order having caused flagrant miscarriage of justice and as such liable to be quashed by this Hon’ble Court.

- xiii. The Learned Judge having recorded that the victim having committed suicide on ‘Bijoya Dashmi’ day, which being a day of festivity “adds further momentum to the fact that unless subjected to extreme mental and physical cruelty. It can be hardly conceived of that a man shall commit suicide”, which ipso facto establishes that the guiding factor for the said Learned Judge was sentiment and not letters of law, which to say the least is impermissible in law.
- xiv. Reflection of sentiments as aforesaid would further be evident from the factum of the said Learned Judge having come to the conclusion that a mother having a suckling baby would not commit suicide unless compelled so to do and the such reflects the mind of the said Learned Judge being over powered with sentiments having allowed his judicial mind to approach a case in the strictest terms of law thereby resulting in failure of justice.

- xv. Failure on the part of the Learned Judge to take note of the defence contention that death by hanging could not be proved on account of the ocular testimony of PW-9, the doctor who had held postmortem examination on the dead body of Madhumita and the same being decomposed, no definite opinion could be arrived at excepting the inquest report (which is not admissible in evidence) but curiously enough such a lacunae, which goes to the very root of the matter had been explained away by worst kind of heresay evidence, factum of which had resulted in the impugned order of conviction and sentence per se bad in law.
- xvi. Delay in lodging the F.I.R. was fatal to the prosecution but curiously enough the same was explained away by the Learned Judge.
- xvii. Reliance had been placed by the said Learned Judge of the statement by the accused/appellant made under Section 313 of the Code of Criminal Procedure and if the said examination is carefully scrutinized, it would immediately go to reveal sheer non conformance of the judgment law laid down by the Apex Court of the land inasmuch as the questions being put to the accused/appellant were omnibus in nature and not relating to each and every incriminating circumstances appearing in evidence of individual prosecution's witness, factum of which had vitiated the entire order of conviction and sentence.

xviii. The sentence imposed upon the accused/appellant is far too severe.

7. The Learned Advocate for the State submitted that the incident of suicide by the victim committed within one year of the marriage and the evidence of PW-1, 2, 3, 6 and 7 revealed that the victim was continuously tortured for further demand of a gold ring and a gold bangle as dowry. The prosecution has been able to prove its case on the basis of corroborated evidence of the prosecution witnesses as aforesaid who had individually deposed that the victim was tortured for demand of dowry and was kept under starvation.

8. The assessment of the evidence of the prosecution witnesses revealed that the victim was subjected to torture for demand of dowry and was ill-treated on several occasions including compelling starvation, however the same was general and omnibus in nature.

9. Section 498A of the Indian Penal Code states as follows:

“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.”

10. Section 306 of the Indian Penal Code states as follows:

“306. Abetment of suicide.—

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

11. The prosecution was not able to prove the case under Section 498A of the Indian Penal Code as also could not prove the basic ingredients of Section 306 of the Indian Penal Code. None of the prosecution witnesses could state an incident of proximate incitement, provocation or instigating or to abet the victim to commit suicide.
12. In view of the above discussions, the instant criminal appeal is allowed.
13. There is no order as to costs.
14. I record my appreciation for the able assistance rendered by Learned Advocate, Ms. Pallavi Priyadarshee, as *Amicus Curiae* in disposing of the appeal.
15. Lower Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
16. 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.)