

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 193 of 2013

**Pradip Kanti Khan Chatterjee @ Dolon Chatterjee
-Vs-
The State of West Bengal**

For the Appellant	: Mr. Milon Mukherjee Mr. Aritra Bhattacharyya
For the State	: Ms. Faria Hossain Mr. Sandip Chakraborty
Heard on	: 19.01.2024, 22.01.2024, 20.02.2024 14.03.2024, 20.06.2024
Judgment on	: 24.09.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment of conviction dated 13.03.2013 and order of sentence dated 14.03.2013 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Serampore in Sessions Trial No.19 of 2011 which corresponds to Sessions Case No.190 of 2009, convicting thereby the appellant of the charges for commission of offences punishable under Sections 498A/306 of the Indian Penal Code and sentencing him to suffer imprisonment for 6 years and to pay a fine of Rs.5000/- in default to suffer simple imprisonment for 1 year for the offence under Section 306 of

the Indian Penal code and also to suffer simple imprisonment for 3 years and to pay a fine of Rs.2000/- in default to suffer simple imprisonment for a further period of 6 months for the offence under Section 498A of the Indian Penal Code and both the aforesaid sentences were directed to run concurrently.

2. The prosecution case precisely stated one Uday Prokash Varshney lodged a written complaint, alleging inter alia, on 03.11.1995 socially married his sister to the appellant.

Since a year the appellant continuously tortured the de-facto complainant's sister both physically and mentally being in an illicit relationship with another lady named 'Bobby'. The appellant instigated the de-facto complainant's sister to commit suicide threatening to divorce her and bring 'Bobby' to his house. It was further alleged that on 8.12.2008 at about 17:45 hours the de-facto complainant received a phone call from his wife who informed him that his sister hanged herself to death at her husband's house.

3. On the basis of the complaint lodged by the de-facto complainant at the local Police Station, Uttara Para Police Station Case No. 259/2008 dated 08.12.2008 under Sections 498A/306 of the Indian Penal Code was initiated against the appellant and registered for investigation.

4. After completion of the investigation, the Investigating Agency submitted Charge Sheet against the appellant vide Charge Sheet No. 27/2009 dated 4.2.2009 under Sections 498A/306 of the Indian Penal Code.

5. Charges were framed against the appellant under Sections 498A/306 of the Indian Penal Code to which he pleaded not guilty and claimed to be tried.

6. In order to prove its case the prosecution examined as many as 17 witnesses and exhibited certain documents.

7. Learned Advocate for the appellant submitted that –

- i. The prosecution had come up with the story of illicit relationship between the appellant and one Bobby which had resulted into the sudden death of the victim lady. However, after the completion of investigation or during the trial, the prosecution failed to find out the existence of the said mysterious lady.
- ii. The Learned Judge concluded that the onus lay upon the accused/appellant to prove his innocence as it was a matter of special knowledge. However, the Learned Judge failed to appreciate the exact position of law which enumerated the fact that in cases which depend upon circumstantial evidence, the onus lay upon the prosecution to prove the case beyond reasonable doubt.
- iii. Section 306 of the Indian Penal Code regarded abetting an individual to such an extent being compelled to commit suicide. The evidence adduced by the prosecution did not fulfil the criteria of abetment as had been provided under Sections 109 vis-à-vis Section 306 of the Indian Penal Code.
- iv. The Learned Trial Court had failed to appreciate the glaring inconsistencies in the evidence of the prosecution witnesses. Such contradictions raised serious doubt on the credibility of the said witnesses. The witnesses time and again stated that the deceased was regularly assaulted by the assailant. However, the post-mortem

report revealed the absence of injuries of any kind whatsoever on the person of the deceased. In view of the close relationship and affection, any person in the position of a witness would naturally have a tendency to exaggerate or add facts which might not have been stated to them. It was obvious that such love and affection for the deceased would create a psychological hatred against the supposed accused and therefore the Learned Trial Court ought to have examined the evidence with great care and caution. Being revengetic against the appellant, the relevant witnesses distorted the facts.

- i. The independent witnesses did not possess any direct knowledge of the factum of torture inflicted upon the deceased by the appellant or to have been in an illicit relationship with one 'Bobby'. The evidence of the independent witnesses were based on hearsay witnesses and unreliable to be credited.
- ii. In order to bring home a charge under Section 306 of the Indian Penal Code, the prosecution must establish the following:-
 - a) a person committed suicide.
 - b) such suicide was abetted by the accused.

In other words, an offence under Section 306 of the Indian Penal Code would stand only if there is an abetment for the commission of the crime. The parameters of abetment have been stated under Section 107 of the Indian Penal Code which reads as follows:-

“A person abets the doing of a thing, who-

First.-Instigates any person to do that thing; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing”.

It was further submitted that whenever a person instigated or intentionally aided any act or illegal omission, the doing of a thing, the person can be said to have abetted in doing that thing. The prosecution in the instant case ought to have conclusively proved the state of mind of the appellant to commit the alleged offence in order to establish his culpability. The prosecution should have brought home the ingredients of Section 107 of the Indian Penal Code. Abetment involved a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or to aid in committing suicide, an order of conviction cannot be sustained. Thus in order to prove a charge under Section 306 of the Indian Penal Code, there has to be a clear *mens rea* to commit the offence. It also required an active act or direct act which led the deceased to commit suicide,

seeing no option and that act must have been intended to push the deceased to a position that he committed suicide. The Learned Trial Court must have scrupulously examined the facts and circumstances of the case and also assessed the evidence adduced before it in order to come to a conclusion whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. In the instant case, the prosecution story revolved around the fact that the appellant was involved in an illicit relationship with one lady namely Bobby and in pursuance of such illicit relationship, he inflicted tremendous torture upon the deceased. However, the prosecution had miserably failed to establish the identity of said Bobby before the Learned Trial Court and in such circumstances, the primary reason that had been attributed for commission of suicide remained inconclusive and as such, the findings of the Learned Trial Court were perverse in the eye of law.

- iii. From the foregoing discussions, it was palpable that the prosecution had miserably failed to bring home the charges under Section 306 of the Indian Penal Code and in such circumstances; this Hon'ble Court may be pleased to set aside the impugned order of conviction and sentence.

8. Learned Advocate for the State submitted as follows –

- i. In the present case, admittedly the deceased victim was married to the accused Pradip Kanti Khan Chatterjee in the year 1995 and she was his legally married wife. After marriage, the deceased victim started residing with her husband at her matrimonial home. It appeared from the evidence on record that the accused Pradip Kanti Khan Chatterjee had a 'promoting business' and used to construct buildings. The disturbance in the family life of said accused and the deceased started in the year 2007 due to the development of one illicit relationship between the accused and the lady named 'Bobby' @ Suchorita Pal. The evidence revealed that since the affair with the aforesaid lady called 'Bobby', the accused gradually transformed and he used to return to his house late at night between 12:00 am and 03:00 a.m., inebriated and would physically assault the deceased. He kicked her in her abdomen and threw her from the cot. The deceased narrated such incidents of assault to her brothers, sister-in-laws, brother-in-laws and her parents. The said brother, sister-in-laws and brother in-laws (being PW-1 to PW-4 and PW-11) supported the said incident of torture by giving their evidence in the course of trial. Besides their deposition, the neighbours of the accused namely Raitindra Nath Chatterjee had also corroborated the evidence of the related witness by stating there was a disturbance in their family, and he had heard clamour in their house. Sri Sisir Kr. Chakraborty (PW-8) had stated the father and mother of the accused told him about the torture and assault inflicted by the accused upon the

deceased in her presence who weeped. It was stated by Pijush Khan Chatterjee (father of accused) that the assault of the accused could not be explained. The mother of the accused stated that the torture and assault upon the victim was unbearable. In view of the said evidence of the witnesses on record it had been clearly established that the accused Pradip Khan Chatterjee Dolon used to physically assault and torture his wife. The incident of assault and torture had also been corroborated by Dr. Sandip Kr. Ghoshal (PW-9), a medical practitioner showing his medical prescription dated 09.11.2008 (exbt.-A) stating that on 09.11.2008 he examined the victim who told him that she was hurt and had swelling on her back posterior chest wall and on the right knee. On examination, he found swelling on the left hand as well as for abrasion and one cut mark on the right knee and hematoma on the right leg. On being asked she (deceased) told him that at night there had been an altercation with her husband who assaulted her. Therefore, the physical torture and assault by the accused upon the deceased during her life time was well established in the case.

9. A circumsppection of the prosecution witnesses revealed as follows:

- i. PW-1 recounted the death of his sister, the victim. On 08.12.08 the victim committed suicide at her matrimonial home by hanging with rope. She was married to Pradip Kanti Khan Chatterjee @ Dolon. Initially his sister had been living peacefully at her matrimonial home. From the middle of 2007 there had been tension in their family

life due to development of an illicit relation between the accused and a lady named 'Bobby'. The husband of his sister used to physically assault and humiliate her. The victim complained of such assault and misbehavior at the house of PW-1. The entire family including her father, mother, brother, himself, his wife and the wife of his brother knew about the said incident. His sister had a child namely Simran @ Sini, staying in the custody of her father.

The neighbours of Pradip Kanti Chatterjee namely Pasupati Nath Chatterjee and Rathindra Nath Chatterjee knew about the torture caused upon his sister, as revealed by the victim who had told the parents of Dolon about the said torture. His parents took his sister to the ex-councilor Sri Sisir Kr. Chakraborty and informed him about the matter. After hearing about that matter, he called Dolon to the party office on a fixed date. But, Dolon did not appear at the party office as he had been arrested about 2 days ago in connection with a forgery case and he had been sent to Jail. After returning from jail, he had not met them. Since the year 2007, mental and physical torture had been inflicted upon his sister because Dolon had an illicit relation with Bobby @ Suchorita Pal. His sister had knowledge about the said relationship and whenever she used to protest against it, she was subjected to torture and the accused used to abuse her in filthy languages. Further, the accused used to instigate his sister to commit suicide by stating that *"you commit suicide yourself by hang putting*

cord on the throat because I do not love you no more. I love Bobby, she is very beautiful. You are nothing to her. You are an obstacle on my way. I shall marry Bobby if you die. I shall bring her as my wife.” He also used to threat her by stating that *“if you do not die, I shall convert you to a insane and send you to a Lunatic asylum. You will have to stay as her maid-servant.”*

His sister used to tell him about the said facts whenever she was subjected to torture or assault by the accused. Whenever, his said sister used to come to his house they used to persuade her and send her to matrimonial home. They informed the neighbours, Sisirbabu and the maternal uncle of Dolon about the aforesaid incidents. They also persuaded Dolon stating that *“you leave off the relation with Bobby and stop torture upon my sister”* but all their efforts went in vain and the torture increased. Dolon used to consume liquor every day and after consuming liquor he used to return to his house at 12:00/12:30 a.m., in the night. He tortured his sister and abused her in filthy language when she protested against it. Dolon rode his motor cycle with ‘Bobby’. He used to dance with her also. The daughter of his sister namely ‘Simi’ had her 5th birthday in the month of September, 2007 and one function was held at “Appayan Guest House”. They had also attended the said function. Bobby had also been invited there. At the time of the function, Dolon ignored his sister and she was humiliated in the presence of all the guests. At the time of his return at night, his sister had been assaulted severely by

the accused. Dolon had a promoting business, and he started to construct one building in the name of Bobby namely "Bobby Tower". He used to tell his sister that *"I have made a building in the name of Bobby. I have not done any in your name. Bobby will be my queen and you will be her maid servant."* Prior to one month of her death, his sister was severely assaulted by the accused. His sister came before them and cried. They kept her in their house and got her treated by a doctor, Sandip Ghosal. After few days they again persuaded her and sent her to her matrimonial home. In the month of December, 2008, on 08.12.08 in the afternoon at about 05:45 p.m. he had been informed over telephone by his wife that had committed suicide. After hearing this, he had rushed to the matrimonial home of the victim and saw that the victim was lying on the bed and Dolon, his mother and others had been crying but no medical treatment had been provided. Seeing that, he immediately called an ambulance and took his sister to the nursing home. When he arrived at the nursing home the doctor examined his sister and the doctor told them that his sister had expired and so he would not admit her. Thereafter he took the dead body of his sister to her matrimonial home and he had called Konnagar T.O.P. under P.S. Uttara para on the telephone. After receiving his phone call, the police came to the spot along with a photographer. Then he had lodged one written complaint to the police on the spot. The said written complaint which was written by him in his own hand writing with his signature was marked as Exbt.-1.

Thereafter, the police officer took a photograph of the place where his sister died, with the help of one photographer. One inquest report had also been prepared and he had put his signature on the Inquest Report. Police seized the “orna” in two parts with which his sister had committed suicide through a seizure list marked as Exbt.-3. During investigation, police had also seized one statement/letter written by Sisir Kr. Chakraborty which had been sent by him marked as Exbt.-4 and Exbt.-5. During investigation, police also had seized the photographs, taken at the time of marriage of his sister and the video C.D. which had been produced by them marked as Exbt.-6. Four photographs showing the marriage of his sister were marked as Mat. Exbt.-I collectively. The photographs of the dead body of his sister was taken at the P.O. were marked as Mat. Exbt.-II collectively. Bobby tower was situated at a distance of 1 km. from his house and he had went there to take the photograph of the said building which was marked as Mat. Exbt.-III collectively. The prescription of the doctor by which his sister was medically treated had been in his custody and he had handed over the said prescription to the I.O. in that case.

- ii. PW-1 in his cross-examination inter alia deposed that Sisir Chakraborty had been an Ex-councilor of a political party. Besides that, he had also been the Chairman of L.C. Sisir Chakraborty used to settle the family dispute being the chairman of L.C. He did not know whether Sisir Chakraborty used to look after the sanctioning of

building plan or would keep the building materials on the road etc. or not.

It had been written on the third page addressing Dolon that *“you are asked to come in the party office at 11 a.m. in the morning on next 19.04.2008. The matter is urgent”* - Sisir Chakraborty. They had not complained to Sisir Chakraborty in writing. He had complained verbally to Sisir Babu but he could not recall the exact date of complaint. After that letter to Dolon in connection with the complaint, he had complained to Sisir Babu verbally. (Prescription was referred to the witness). He had handed over the prescription to the police but he could not say whether any seizure list was prepared in connection with that medical prescription or not. (The Medical prescription is marked as Exbt.-A He could not recall the exact date when he had handed over the prescription. He then deposed that after one week or 10 days after the death of his sister, he had handed over the prescription to the police. He had not written in his complaint that he took the dead body of his sister to Kamala Roy Nursing Home. Pasupati and Rathindra Nath were the neighbours of Dolon and they resided in between the house of Dolon and himself. Pasupati Nath Chakraborty and Rathindra Nath were the father-in-law and the uncle-in-law of the elder brother of Dolon. He used to go to the matrimonial home of his sister every day. They used to welcome him, including his mother whenever he used to go to their house. He had stated to the police that Dolon had stated *“Bobby will be my queen*

and you will be her maid-servant". He used to go to court whenever there was any bail petition by Dolon. He used to go to court to look after the case of his sister.

- iii. PW-2, the wife of PW-1 reiterated the evidence of PW-1 in substance.
- iv. PW-3 in her deposition stated that tension between the accused and the victim had started when a building had been constructed in the name of 'Bobby'. For the said reasons, there had been altercations between them and for which her said 'Nanad' had been tortured and assaulted by the accused person in his drunken condition. She came to know about it as the deceased had told her. She would console her. The deceased had also told her parents about the said incidents of torture. They had told the father and mother of Dolon about the said incidents of torture. In connection with the said building, there was a forgery case for which Dolon had to go into custody. After he returned from jail, he started to torture her and stated that he would construct a building in the name of Bobby namely 'Bobby Tower'. Thereafter, on the birthday of her daughter, 'Bobby' was invited. During the function, Dolon danced with 'Bobby'. He had neglected the victim at that time. On being asked, he had refused to dance with her. After the end of the said programme, she had come to her house. Thereafter, at night an altercation had taken place between them in relation to 'Bobby'. The victim had told him that at the function, Dolon had not cared for her. He had told the victim that "*Bobby is good but you are not good*". The deceased had showed her the bruises

on her hand and on the back side of the body. She had not been present at her house when the victim died. She had been at her father's house at Baijori, Moradabad, U.P. Her son had informed her that the victim had committed suicide.

- v. PW-3 in her cross-examination stated that she had been married in the year 1981 at Boijoi in Moradabad district. After marriage she started to live in her matrimonial home. Her father-in-law's house had been at Konnagar and her father's house had been at Boijoi. She used to visit her father's house once or twice a year. She had deposed that the police had not interrogated her. She thereafter contradicted herself and deposed that after the death of the victim the police had examined him. All the facts she had stated before the court had been stated to the police.
- vi. PW-4, PW-11, PW-12, PW-13 reiterated the evidence of PW-1, PW-2 and PW-3 in essence and substance.
- vii. PW-5 endorsed as a seizure list witness to the wearing apparels of the deceased victim.
- viii. PW-6 posted at Walsh Hospital, Serampore conducted the P.M. examination of the victim and observed the tongue of the deceased had been protruded and there had been cyanosed strain of dribbling of saliva from the angle of the mouth. A non-continuous ligature mark had been found, high up in the neck, oblique in direction with parchmentization underneath with a gap on the right side just below the angle of the mandible. On internal examination the important

organs such as the brain, lungs, heart, liver and kidney were congested. In the trachea, blood strained froth had been found and the stomach had been found to be empty. The time of death was within 36 hours of the autopsy. The cause of death had been asphyxia due to hanging and had been ante-mortem and suicidal in nature. The P.M. Report prepared and signed by him was marked as exbt.-10. The injury which he found might have been caused if any person had died by hanging.

- ix. PW-6 in his cross-examination stated that he did not find any other injury on the body of the deceased except the ligature mark and the protruding of the tongue.
- x. PW-7 deposed to have registered G.D. entry was marked as exbt.-11.
- xi. The evidence of PW-8 was based on hearsay.
- xii. PW-9 was a medical practitioner. On 09.11.2008, the elder brother of the victim called him to his house. On arrival, he examined Mrs. the victim, aged 42 years. On asking the patient what were his/her inconveniences, she had told him that she has pain and swelling on the back posterior chest wall and on the right knee. After hearing the problem of the patient, he asked how the injuries had been caused. On examining her, he found B.P.- 105/75, Pulse – 92 per minutes, swelling on the left hand as well as pain and one abrasion and one cut mark on the right knee and 'Hematoma' on the right leg. On being asked, she told him the night before there was an altercation whereby her husband assaulted her. On 16.11.2008, the patient came to him

again and told him that she was better but there was some pain on the back side and on her right knee. If any person was assaulted by fist and blows or with a lathi then that type of injury could have been caused.

- xiii. PW-10, an A.S.I. of Police attached to Dadpur P.S. On 08.12. had initiated Uttarpara P.S. Case No.259/08 dated 08.12.2008 under Sections 498A/306 of the I.P.C. The formal F.I.R., which was filed by him in his own hand writing and bore his signature was marked as Exbt.-12. One U/D case was also started being no.188/2008 dated 08.12.2008.
- xiv. PW-14 was declared hostile by the prosecution.
- xv. PW-15, a photographer by profession clicked photographs of 'Bobby Tower'. On the back side of those photographs he had also put his signatures. Photographs were marked as exhibits.
- xvi. PW-17 the Investigating Officer recounted during investigation of the case he went to the P.O., held the inquest over the dead body, arranged to send the dead body for P.M. examination at Walsh Hospital, Serampore. He received the complaint on 08.12.2008 at 19:30 hours and forwarded the same to O.C. Uttarpara P.S. through C/1051, Chinmoy Ghosh for starting the case u/s. 498A/306 I.P.C. He seized certain articles, such as a part of 'Orna' measuring 5 ft., of 'Ghee' colour of which one part was torn and which was seen in a hanging condition in the bed room of Pradip Kanti Khan Chatterjee @ Dolon. Another part of said 'Orna' measure 3 ft., 'Ghee' colour which

had been seen on the sofa set. The seizure list had been prepared and had been signed by him was marked as Exbt.-3/2. He had also seized the wearing apparels of the deceased. He also seized 4 post card size photographs showing that the victim and Pradip Khan were exchanging garlands. He also seized one Marriage Registration Certificate and 3 CDs of Frontech Co. marking as Bulbul-I, Bulbul-II, Bulbul-III and it contains the video of their marriage ceremony. He had seized 9 Post card size Photographs and CDs showing the photographs of the victim and 4 photographs showing that one construction was going on in the name of Bobby Tower under Maa Tara Enterprise of Pradip Kanti Khan Chatterjee. He also seized one letter of Sisir Kr. Chakraborty, which had described the torture inflicted upon the victim by Pradip Kanti Khan Chatterjee. The statement of Pashupati Nath Chatterjee had referred to the witness. He stated before him during the investigation that his only daughter Madhumita Chatterjee had married the elder brother of Pradip namely Pratap and she had been subjected to torture and she could not live there. The wife of Pradip namely the victim had been a good lady and she had a good relation with the other neighbours. The victim used to come to their house regularly and she had stated that she did not want to live more. Her husband Pradip often used to return to their house at night in a drunken condition and would assault her. Often, she was driven out of her house. For several times they had given shelter to the victim at their house. Three months

before her death Pradip severely assaulted the victim and on that day she went to the rail line to commit suicide. The neighbours as well as them, persuaded the victim not to commit suicide and brought her to the house. The only reason for the trouble in their family was the relationship of Pradip with another lady namely Bobby. For that reason on 08.12.2008, the victim committed suicide by hanging. In that regard one U/D case vide No. 188/2008 dated 08.12.2008 was also started. The U/D Register and the said copy of the register were marked as Exbt.16 simultaneously. The number of the said G.D. copy had been wrongly registered. But in the original register the number had been corrected. After proper investigation he submitted the charge-sheet in that case.

- xvii. PW-17 in his cross-examination stated that he started the investigation of that case at 20:30 hours. The U/D case was started at 20:45 hours. The witness namely Uday Prakash Varshney stated that the body of the victim was brought to Kamala Roy Nursing Home. He had not examined the said doctor and the driver of the said ambulance or any other person of the said ambulance u/s.161 Cr.P.C. On that subject he had not investigated for support of the said statement. It had not been stated by Uday Prakash Varshney in his statement that he took the body of the victim to Kamala Roy Nursing Home at about 07:00/7:30 p.m. He had stated that he took the body to Ananta Roy Nursing Home. During his investigation he did not find any nursing home namely Ananta Roy Nursing Home

within the jurisdiction of Uttarpara P.S. He knew Pawan Varshney who was present in court. He had not met Uday Prakash Varshney before his deposition. He examined Uday Varshney at the P.S. at 22:05 hours. He received the complaint at Konnagar T.O.P. It had not been stated by Uday Prakash Varshney that accused stated *"You commit suicide by hanging putting cord on the throat because I do not love you no more. I love Bobby, she is very beautiful, you are nothing to her. You are obstacle on my life I shall marry Bobby after your death. I shall convert you a mad and depute you to the lunatic asylum"*. However he stated that the accused said *"You die yourself by hanging putting cord on the throat. I shall bring Bobby as wife in my family"*. The said witness Uday Varshney had not stated to him that the accused said *"Bobby will be my queen and you will be my maid servant"*. During the course of investigation, he seized one Medical Certificate issued by doctor Vargoby Chatterjee (Bhattacharyya). On the back side of the prescription it was advised not to drink alcohol, not to conceive while on medicine, not to miss doses, to take blood test in every six months and the only "pain killer" allowed was 'Paracetamol'. It had not been mentioned whether any investigation had been done in respect of the same or not. As per instruction of the police photographer Arup Mukherjee took the photographs of Bobby Tower mentioned as M/S. Maa Tara Enterprise. He enquired at the spot and he came to learn from a number of people that Manoj Roy and Pradip Kanti Khan Chatterjee were jointly running a promoting

business in Konnagar and presently at 40, Kriper Road at Konnagar and the name of the site in the hoarding at Bobby Tower. The names of the people had not been mentioned. He had enquired about the ownership of Maa Tara Enterprise. In the year 2006, Manoj Roy and Pradip Kanti Khan Chatterjee purchased a plot at Konnagar Mahesh Tala which was behind Milon Sangha Club. It was purchased from the father of Bobby, Rabindra Dasgupta. He had not seized any document in support of the same. He had not made any inquiry as to the registration of the said Maa Tara Enterprise at Konnagar Municipality. While examination Bina Varshney (P.W.3), had not stated before him that the body of the victim was lying on a sofa. She had not stated that the accused had said *“you are the obstacle on my life. You leave away from here. If you do not go away then die yourself by hang by putting cord on the throat. If you do not die than I shall convert you a mad and depute you to the lunatic asylum. Bobby is very beautiful and a smart lady. She rides on the motorcycle smartly and used to drink with me”*. The witness Pawan Kr. Varshney (PW-4) had not stated before him that *“My sister was in the outside of the house whole night on that day on which she was driven away from the house and reached to our house after the dawn”* and he had not also stated that *“My sister had gone near the railway truck to commit suicide. We saved her anyhow”*. He had also not stated that *“Dolon had gone to Duars with Bobby and caused to drink there together”*. He examined Pawan Varshney on 08.12.2008 at the P.O. One diary was lodged

being No.10 on 01.01.2009. The said G.D. was lodged by Uday Prakash Varshney. He had not taken any action in respect of the threat as per the G.D. It had not been mentioned that Anup Babu informed him about the said matter. At that time the accused was in custody. It had been mentioned in the G.D. that one Jhunu Banerjee 45, Mansha Tala Road had sent threats which was not inquired into. He examined Sisir Kr. Chakraborty on 10.01.2009. He seized the said letter on 03.02.2009. On 10.01.2009 he mentioned the said letter but he had not received the said letter as it was not produced before him. On 03.02.2009 he went to the house of Sisir Babu at 08.00 p.m. Thereafter the said letter was seized in the presence of Uday Babu and Sisir Babu. On 12.01.2009 he examined the said Doctor. The doctor had given him the Medical Certificate. It was collected but not seized. The complainant Uday Prakash Varshney supplied the same on 12.01.2009. He got the prescription first and then he went to the doctor. The doctor had not mentioned the term of the prescription. He examined him on 10.12.2001 at 10.35 a.m. in the morning at 79/9, S.C. Chatterjee St., Konnagar. He had given the statement before him in Bengali.

10. The Hon'ble Supreme Court held the following in ***Kumar v. State of Karnataka***¹:-

“72. Reverting back to the decision in M. Mohan (supra), this Court observed that abetment would involve a mental process of

¹2024 SCC OnLine SC 216

instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Delineating the intention of the legislature and having regard to the ratio of the cases decided by this Court, it was concluded that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It would also require an active act or direct act which led the deceased to commit suicide seeing no other option and that this act of the accused must have been intended to push the deceased into such a position that he committed suicide.

73. *Sounding a note of caution, this Court in State of West Bengal v. Orilal Jaiswal⁶ observed that the court should be extremely careful in assessing the facts and circumstances of each case as well as the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the court that the 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 to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”*

17. The Hon’ble Supreme Court in **Geo Varghese v. State of Rajasthan**² held the following:-

“15. *The ordinary dictionary meaning of the word “instigate” is to bring about or initiate, incite someone to do something. This Court*

²(2021) 19 SCC 144

in Ramesh Kumar v. State of Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has defined the word “instigate” as under : (SCC p. 629, para 20)

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”.”

16. *The scope and ambit of Section 107IPC and its co-relation with Section 306IPC has been discussed repeatedly by this Court. In S.S. Chheena v. Vijay Kumar Mahajan [S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190 : (2011) 2 SCC (Cri) 465] , it was observed as under : (SCC p. 197, para 25)*

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

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22. *What is required to constitute an alleged abetment of suicide under Section 306IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused are otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be*

unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.

18. The Hon'ble Supreme Court in **Mariano Anto Bruno v. State**³ held the following:-

“42. To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased. In the present case, both the elements are absent.

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

“22. This Court in Kashibai v. State of Karnataka [Kashibai v. State of Karnataka, (2023) 15 SCC 751 : 2023 SCC OnLine SC 575] , observed that to bring the case within the purview of “abetment” under Section 107IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306IPC, also there has to be an evidence with regard to the positive act on the

³2022 SCC OnLine SC 1387

⁴ (2024) 3 SCC 573

part of the accused to instigate or aid to drive a person to commit suicide.

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.

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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.*

36. *In the absence of any cogent evidence of harassment or cruelty, an accused cannot be held guilty for the offence under Section 306IPC by raising presumption under Section 113-A.”*

21. In the case of **Girdhar Shankar Tawade v. State of Maharashtra**⁵, the Hon’ble Supreme Court held the following:-

“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.”*

⁵(2002) 5 SCC 177

22. In **K.V. Prakash Babu v. State of Karnataka**⁶, the following was observed by the Hon'ble Supreme Court:-

“13. In this regard, Mr Singh has drawn our attention to the authority in Pinakin Mahipatray Rawal v. State of Gujarat [Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801] . In the said case, the Court was dealing with as to whether relationship between the appellant and the second accused therein was extra-marital leading to cruelty within the meaning of Section 498-A IPC and whether that would amount to abetment leading to the act of suicide within the meaning of Section 306 IPC. Dealing with the extra-marital relationship, the Court has opined that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their upbringing, services in the home, support, affection, love, liking and so on, but extra-marital relationship as such is not defined in the Penal Code. The Court analysing further in the context of Section 498-A observed that the mere fact that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to Section 498-A IPC. The Court further elucidated that harassment need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think

⁶(2017) 11 SCC 176

of ending one's life. The Court ruled that in the facts of the said case the alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide. The two-Judge Bench further opined that : (Pinakin Mahipatray case [Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801] , SCC p. 58, para 27)

“27. Section 306 refers to abetment of suicide [which] says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra-marital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide.”

(emphasis added)

14. *Slightly recently in Ghusabhai Raisangbhai Chorasiya v. State of Gujarat [Ghusabhai Raisangbhai Chorasiya v. State of Gujarat, (2015) 11 SCC 753 : (2015) 4 SCC (Cri) 545] , the Court perusing the material on record opined that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the Explanation (a) to Section 498-A IPC which includes cruelty to drive the woman to commit suicide, would not be attracted. The relevant passage from the said authority is reproduced below : (SCC pp. 759-60, para 21)*

“21. ...True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498-A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in Pinakin Mahipatray Rawal [Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801] , but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with Appellant 4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A IPC which includes cruelty to drive a woman to commit suicide, would not be attracted.”

15. *The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalise but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of*

wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.”

23. The Prosecution Witnesses compromised of

- a) Interested Witnesses - PW-1, PW-2, PW-3, PW-4 and PW-12.
 - b) Police Witnesses - PW-5, PW-7, PW-10, PW-16, PW-15, PW-17.
 - c) Independent Witnesses – PW-8, PW-13 and PW-14 who was declared hostile by the prosecution.
 - d) Medical Witnesses- PW-6, PW-9.
1. From the evidences of PWs - 1, 2, 3, 4, 11, 12, it would be clear that the marriage between the appellant and the deceased was solemnized on 03.11.1995. On 08.12.2008 the deceased committed suicide at her matrimonial home. The related prosecution witnesses claimed the appellant to have been involved in an illicit relationship with a lady viz Bobby and assaulted the deceased on numerous occasions, being abusive too. The deceased herself had informed PW-1 of such tortures being inflicted on her.
 2. The related witnesses referred to a specific incident which took place on 5.9.2007, being the birthday of the daughter of the appellant and the deceased celebrated at Appayan Guest House which was attended by several other guests. It was deposed that the appellant had invited the said Bobby at the function and ignored the deceased. The appellant humiliated the deceased in presence of all the guests and severely assaulted her after the function was over. It was further testified that the appellant hurled

castigating remarks on the deceased on a number of occasions instigating her repeatedly to commit suicide.

24. The victim was married to the appellant on 3.11.1995 and committed suicide on 8.12.2008 after nearly thirteen years of marriage. The defacto complainant being PW-1 and other family members of the victim, namely PW-2, PW-3, PW-4, PW-8, PW-11, PW-12, PW-13 and PW-14 in unison deposed that the appellant was in an illicit relationship with a woman named 'Bobby' and the appellant desired to discard his wife, the victim for his affinity towards the lady who according to the appellant was good looking in comparison to the victim. Most of the prosecution witnesses claimed the appellant to have been in the company of the said lady roaming around with her on his motorbike. The victim lady suffered trauma on account of such deprecating behavior on the part of the appellant who had assaulted her on several occasions, humiliating her, lowering her dignity repeatedly to devastate a woman attached to a marital bond for a significant period of time. The victim was psychologically affected and had to be treated for the same. The psychiatrist, however, was not examined.

25. It was heart wrenching and astounding that each relative of the victim lady, having known about the vicious character of the appellant to have been indulged in immoral activity and inflicting physical and mental torture on the victim did not recourse to legal step against the appellant prior to her death which she had to desperately resort to by committing suicide. The prosecution witnesses, being aware of the identity of the lady called 'Bobby'

did not reveal her whereabouts to the investigating officer. The investigating officer irresponsibly and evadingly did not endeavor to trace out the lady to establish the prosecution case, fortifying the corroborative and probative value of the same. Moreover PW-1 had stated to have assisted the appellant in obtaining an order of bail from the court concerning a forgery case. The appellant pursuing a construction business had been in the company of several people. The name of the company was provided to the investigating agency. The investigating agency obtained the photograph of the construction site where the building by the name Bobby Tower was constructed. The prosecution should have identified the lady to complete the chain of the events as to whether the construction site was named after her as PW-17 the investigating officer in his cross examination stated that the enquired at the spot and he came to learn from good number of people that Manoj Roy and Pradip Kanti Khan Chatterjee were jointly running promoting business in Konnagar and presently at 40, Kriper Road at Konnagar and the name of the site in the hoarding at Bobby Tower. But the names of the number of people had not been mentioned. He had enquired as to the ownership of Maa Tara Enterprise, in the year 2006 Manoj Roy and Pradip Kanti Khan Chatterjee purchased a plot at Konnagar Mahesh Tala in the back side of Milon Sangha Club and it was purchased from the father of Bobby, Rabindra Dasgupta. But he had not seized any document in support of the same. He had not made any inquiry as to the registration of the said Maa Tara Enterprise at Konnagar Municipality.

26. PW-17, the investigating officer did not cite the persons from whom he came to know about Monoj Roy and Rabinda Dasgupta, the father of said 'Bobby'. PW-17 did not even trace out of the identity of Monoj Roy and Rabinda Dasgupta to substantiate the claim of the prosecution witnesses of the existence of the woman named 'Bobby' under whose spell the appellant dubiously and manipulatively harassed, assaulted and traumatized the victim lady. The prosecution witnesses cited incidents of social function with the presence of the woman named 'Bobby' who was embraced by the appellant in public, dancing with her in gaiety to the discontentment and disgust of others, in the presence of the victim, ignoring her.
27. Normally a woman would dislike and disapprove the act of her husband to be in close company with a lady who was not a family member or a relative, near or distant who had been a constant cause of comparison with terms of her beauty and at the threat of being disowned and expelled from marital ties. A lady might not be strong enough to display a bold face and accept such indignation, where the husband unabashedly flaunted his proximity to another woman in public. A homely and emotionally attached lady will automatically be impulsive to be at a crisis of apprehending loss of identity and dignity of a status of a wife and a mother.
28. Human psychology differs from person to person. An incident of similar nature may be easily ignored by a lady similarly circumstanced whereas be deeply hurt by someone else. The prosecution failed to cite the psychiatrist as a witness to divulge the reason for treating the victim as to whether she

was affected by the abominable conduct of the appellant or for some other medical reasons. Apart from exaggerating the presence of a woman named 'Bobby' which could not be proved by the prosecution attributing her to be a figmentary character, the effect to have caused cruelty upon the victim on that score became nugatory. The prosecution failed to establish the proximate, imminent incident of instigation or incitation caused to the victim instantaneously severely grave to overpower her wit and resilience, coercing her desperately to commit suicide. The prosecution failed to prove the ingredients to continue the offence committed under Section 498A and Section 306 of the IPC

29. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
30. Accordingly, the criminal appeal being CRA 193 of 2013 stands disposed of.
31. There is no order as to costs.
32. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
33. 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.)