

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 292 of 2001**

**Sayeed Hossain  
-Vs-  
State**

For the Appellant : Mr. Niladri Sekhar Ghosh  
Mr. Shaharyar Alam  
Ms. Sompurna Chatterjee

For the State : Mr. Saryati Dutta

Heard on : 14.09.2023, 09.10.2023

Judgment on : 08.01.2024.

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against the judgment and order of conviction dated 14.06.2001 passed by the Learned Additional Sessions Judge, Islampur, District – Uttar Dinajpur in Sessions Trial No. 31 of 2000 arising out of Sessions Case No. 76 of 1999 under Sections 498A/306 of the Indian Penal Code, 1860 and sentencing to suffer rigorous imprisonment for 3 years under Section 498A of IPC and to suffer rigorous imprisonment for 3 years under Section 306 of IPC and both sentence will run concurrently.
2. The prosecution case emanated on the basis of a complaint lodged by one Nazrul Islam, inter alia, stating that his eldest daughter was married to the

appellant no. 1 about one and a half years ago and the married couple resided at the house of his son-in-law at Berhangaon. His daughter used to be physically and mentally tortured after her marriage and by virtue of such torture, the complainant was propelled to implore his son-in-law to desist himself from such torture. On 06.09.1996 at 11:00 am, the complainant was informed by one Akhtar, the resident of Berhangaon, that his daughter had been admitted at Islampur Hospital and the complainant, on reaching the said hospital, found the dead body of his daughter lying on the ground of the hospital morgue and he was suspicious of the fact that the accused persons had compelled his daughter to commit suicide by consuming poison and he sought for necessary legal steps to be taken against the accused persons.

3. Based on the aforesaid complaint, Islampur Police Station Case No. 209/96 dated 06.09.1996 under Section 498A/306 of the Indian Penal Code was instituted.
4. On completion of the investigation, the charge-sheet was filed subsequent to which charges were framed and the appellants pleaded not guilty and claimed to be tried.
5. The prosecution, in order to prove its case, cited 11 witnesses and exhibited certain documents.
6. Learned Advocate for the appellant submitted that –
  - i. The order of conviction and sentence is bad in law and not warranted by the facts and circumstances of the case and the evidence and materials

on the record of the said Session Case No. 76 of 1999/ S.T. No. 31 of 2000.

- ii. The Learned Court below acted illegally in not considering the evidence and materials available on record of the said Session Case.
  - iii. The Learned Court below failed to assess the evidence of the 11 witnesses i.e. PW-1 to PW-11 whereby the prosecution could not prove its case beyond reasonable doubt.
  - iv. The ingredients prescribed under the Sections 498A and 306 of I.P.C. would not be proved in evidence and/or materials on record.
7. Learned Advocate for the State submitted that the victim-wife committed suicide within one and a half years of her marriage raising strong presumption of abetment of suicide on demand of dowry through continuous mental and physical torture and the prosecution aptly proved its case and the appeal should be dismissed.
8. A circumspection of the prosecution witnesses revealed as follows:
- i. PW-1 mentioned that the victim was his “*bhagni*”. He stated that the demise of the victim, which occurred approximately four years prior, was due to the ingestion of poison. PW-1 described encountering the deceased's body at the Islampur S.D. Hospital, where he observed froth emanating from the mouth of the victim's dead body. He noted the presence of other villagers at the hospital at that time. PW-1 further mentioned that PW-6 had filed the complaint. PW-6 was a staff of B.L.R.O. office at Chopra. Furthermore, PW-1 imparted that the victim was married to the

appellant. It was through hearsay that PW-1 became aware of the alleged physical and mental abuse the victim suffered at the hands of the appellant, purportedly due to her failure to provide additional dowry. This maltreatment culminated in the victim consuming poison at the appellant's house that transpired six months subsequent to her marriage.

- ii. During the process of cross-examination, PW-1 acknowledged that the victim had once visited his residence and complained of the maltreatment she was enduring. However, PW-1 admitted to not having taken any measures to intervene the ongoing abuse.
- iii. PW-2, who was related to the appellant, acknowledged being informed about the marriage that had transpired between the appellant and the victim. He was also cognizant of the unfortunate death of the victim, which had occurred approximately two to three years prior, resulting from an act of self-poisoning. However, PW-2 expressed a lack of knowledge regarding the underlying circumstances that led the victim to commit suicide.
- iv. PW-3 mentioned that the appellant was his uncle. He acknowledged the marriage between the appellant and the victim, noting that it took place in the year 1995. He further recounted that his aunt, the victim, met her demise subsequent to ingesting poison, an incident that occurred at the residence of the appellant. Additionally, PW-3 indicated his awareness of the reason that led to the victim consuming the poison.

- v. PW-4 was related to the appellant and was also his neighbour. He acknowledged the appellant's marriage to the victim, which was stated to have occurred in 1995. He further reported that approximately one and a half years subsequent to their marriage, the victim ingested poison, leading to her suicide. This contradicted with the deposition of PW-1.
- vi. PW-5 mentioned that the appellant was his friend. He corroborated the information that the appellant's marriage to the victim took place in 1995. He recounted that the victim ended her life by consuming poison, that occurred approximately one and a half years following their marriage. Furthermore, PW-5 indicated his knowledge of the circumstances or reasons that led to the victim's decision to commit suicide.
- vii. PW-6, who served as the defacto complainant in this instant case, identified himself as the father of the victim and the father-in-law of the appellant. He reported that his daughter, the victim, had committed suicide by consuming poison on 6.9.96. He recalled that at around 11 am on 6.9.96, PW-4 had informed him of his daughter's critical condition at Islampur S.D. Hospital. Accompanied by PW-7 and an individual named Alam, PW-6 proceeded to the hospital. Despite their search in the hospital wards, they were unable to locate the victim and later discovered that she had already passed away, with her body being in the hospital morgue. Upon their arrival at the morgue, PW-6 noted the

absence of the appellant and his family members. He observed froth at the victim's mouth and a blackish mark on her neck. PW-6 elaborated on the motive behind the victim's suicide, attributing it to the physical and mental torture she endured from her husband, the appellant, over dowry demands. He stated that despite fulfilling the dowry requirements at the time of their marriage and subsequently providing a television, the appellant persisted in his demands. The culmination of this continued harassment led to the victim consuming poison one and a half years into her marriage. Following the discovery of his daughter's body, PW-6 filed a written complaint at the Islampur police station, which was marked as Ext.1. His signature on the complaint was marked as Ext.1/1, and the signature of the author of the complaint, Anowar Alam, was marked as Ext.1/2. PW-6 further stated that the victim's body was sent to Raiganj District Hospital for a post-mortem examination. On 11.9.96, the Investigating Officer seized various items, including letters written by the victim and the appellant, a photograph of the appellant, and a marriage invitation card. These items were listed in a seizure list, marked as Ext.2, with PW-6's signature on it marked as Ext.2/1. The seized items were individually marked as Mat. Ext. I to IV.

- viii. During cross-examination, PW-6 mentioned her failure in the matriculation examination and her desire for higher education and employment, specifically as a Junior Nurse, which she had hoped

to pursue post-marriage. PW-6 was uncertain whether his daughter had expressed to her mother a wish to continue her studies instead of getting married. He confirmed that there were no objections from his wife regarding the victim's marriage. He further recounted his daughter's complaints about the mental and physical abuse inflicted upon her by the appellant.

ix. PW-7 mentioned that he was related to PW-6, the complainant. He acknowledged that the victim was his "bhagni". He confirmed that her death occurred on 6.9.96, resulting from the ingestion of poison at the residence of the appellant. PW-7 further stated that on 11.9.96, the Investigating Officer conducted a seizure of various items, a process which was documented in a seizure list. This statement was corroborated by PW-6. The signature of PW-7 on the seizure list was marked as Ext.2/2.

x. PW-8, who held the position of Superintendent at Raiganj District Hospital, reported receiving the deceased body of the victim on 6.9.96. He described the victim as being a 20-year-old female of the Muslim faith. He proceeded to conduct the post-mortem examination on the following day, specifically at 5 pm on 7.9.96. Upon examination, the doctor opined that:-

*"1. No wounds on her person, 2. Stomach contained was whitish tick fluid mixed with rice; 50+50, smell of insecticide.*

*Opinion – Death was due to effect of organo phosphorus poison.*

*Viscera preserved for chemical exam.....*

*On seeing the stomach contents I ascertained that death was due to effect of organo phosphorus poison. Organo phosphorus poison is a dangerous type of poison, and one may die then and there or after sometimes but it depends on amount consumed and on body resistance. F.S.L. report will confirm the type of poison."*

The post-mortem report was marked as Ext. 3 and the signature of PW-8 was marked as Ext. 3/1.

xi. During cross-examination, PW-8 further stated:-

*"Walls, ribs and cartridge were healthy and body decomposed upto neck as per P.M. report.....pericardian, heart and vessles healthy. On my presumption I wrote 50-50. Opinion was my clinical opinion. We form clinical opinion without X-ray and on seeing (sic) and on diagnosis of the patient.*

*I did not mention the type of poison. Without Laboratory test I cannot specifically say the nature of poison.*

*I mentioned the colour as (illegible) fluid in P.M. report. I did not mention the time between taking of poison and death."*

xii. PW-9, who was serving as the O.C. at Islampur police station on 6.9.96, acknowledged the receipt of a written complaint from PW-6, the complainant, on that date. Upon receiving this complaint, he initiated the case known as Islampur P.S. Case no. 209/96, dated 6.9.96. This instant case was filed under Sections 498A and 306 of the Indian Penal Code against the appellant. The signature of PW-9 on the received written complaint was identified and marked as Ext. 1/3.

- xiii. PW-10, who was serving as the S.I. at Islampur police station on 6.9.96, reported that on this particular date, he was despatched from the police station to Islampur Hospital. He conducted an inquest on the deceased body of the victim. Following the completion of this inquest, PW-10 affirmed that he did not have any further involvement in the instant matter.
- xiv. PW-11 was serving as the S.I. at Islampur police station on 6.9.96. During investigation, he despatched the dead body of the victim to Raniganj Hospital for the post-mortem examination. He further stated that he visited the place of occurrence at Barhangoachh village house of the appellant. At the place of occurrence, he examined the said place of occurrence, the witnesses and prepared a rough sketch map along with an Index of the place of occurrence. The rough sketch map was marked as Ext.5. He seized a few articles under the seizure list marked as Ext.2. He held a raid against the appellant but failed as all the male individuals of the village were absconding. He collected the post mortem report from the hospital. He despatched the report for chemical analysis to F.S.L. He collected the F.S.L. report marked as Ext.6. He examined the defacto complainant and submitted the charge sheet against the appellant.
- xv. PW-11, who was serving as the S.I. at Islampur police station on 6.9.96, stated that he was responsible for dispatching the deceased body of the victim to Raniganj Hospital for post-mortem

examination. PW-11 further detailed that he visited the place of occurrence, which was located in the village house of the appellant in Berhangaon. During his visit to the place of occurrence, he conducted examinations of the location and the witnesses, and prepared a rough sketch map along with an index of the site. The sketch map was marked as Ext.5. During the investigation, PW-11 also seized several articles, which were documented in a seizure list marked as Ext.2. He recounted attempting a raid to apprehend the appellant but was unsuccessful as all the male individuals in the village were absconding. PW-11 further stated that he obtained the post-mortem report from the hospital and despatched it for chemical analysis to the F.S.L. Upon receipt of the F.S.L. report, which was marked as Ext.6, he carried out further examination of the defacto complainant, PW-6. Thereafter, he submitted the charge sheet against the appellant.

- xvi. The evidence of PW-1 was based on hearsay and he was not declared hostile by the prosecution.
- xvii. PW-2 was unaware of the reason of the victim's suicide.
- xviii. PW-3 deposed that the victim was unsuccessful in her Madhyamik examination and was childless on the date she consumed poison.
- xix. PW-4 reiterated the evidence of PW-3.
- xx. PW-5 declined his knowledge of the victim's suicide.
- xxi. PW-6, the father of the victim, reaffirmed the essence of his complaint. However, during his cross-examination, PW-6 stated

*“My deceased daughter failed Matric & she had intention of higher education but I have no capability to give her higher education. My daughter disclosed about joining service after her marriage but not before her marriage .... I do not know if my daughter told her mother not to give her marriage and to allow her to read more... My wife did not raise objection in her marriage.”*

- xxii. There were contradictions in the evidence of PW-6 with regard to examination-in-chief and cross-examination.
  - xxiii. PW-7 was the seizure list witness who could not enlighten the prosecution case in its substance.
  - xxiv. PW-8, the Medical Officer, confirmed the death of the victim due to consumption of poison.
  - xxv. PW-9 filled up the Formal F.I.R.
  - xxvi. PW-10 held the inquest by virtue of being an Executive Magistrate.
  - xxvii. PW-11 was the Investigating Officer who conducted the investigation and submitted the charge-sheet.
9. The evidence of the prosecution witnesses apart from the evidence of PW-6, the de facto complainant, in his chief, there was no material on record to constitute an offence under Section 498A/306 of the Indian Penal Code. The evidence of PW-6, in his cross-examination, controverted his evidence on examination-in-chief and a presumption of torture leading to the victim to commit suicide within one and a half years of marriage cannot be universally applicable in absence of an iota of evidence on record to justify demand of dowry, physical and mental torture compelling the victim to

cross the threshold of her tolerance to commit suicide on an abetment. Moreover, none of the prosecution witnesses could cite any immediate, proximate incident of instigation or provocation or an impelling circumstance which imminently had a grave effect on the will and wisdom of the victim to take her own life as an ultimatum without any alternative.

10. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.
11. Under such facts and circumstances, the judgment and order of conviction dated 14.06.2001 passed by the Learned Additional Sessions Judge, Islampur, District – Uttar Dinajpur in Sessions Trial No. 31 of 2000 arising out of Sessions Case No. 76 of 1999 under Sections 498A/306 of the Indian Penal Code, 1860 is set aside.
12. The instant criminal appeal being CRA 292 of 2001 stands disposed of.
13. There is no order as to cost.
14. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
15. 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.)**