

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 363 of 2001**

**Sarat Mondal @ Sorab Mondal**

**-Vs-**

**The State of West Bengal & Anr.**

For the Appellant : Mr. Dipankar Dandapath  
Mr. Debangshu Biswas

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

Heard on : 09.10.2023, 18.12.2023, 18.01.2024

Judgment on : 19.03.2024

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against the impugned order of conviction and sentence dated 09.08.2001 passed by the Learned Additional Sessions Judge, 2<sup>nd</sup> Court, Nadia in Sessions Trail No. III (July) 001 arising out of the Sessions Case No. 1 (7) 2000 convicting under Section 498A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 5000/- in default to suffer simple imprisonment for 6 months and it was further ordered that if the amount of fine was realized, fifty percent thereof would be given to the respondent no. 2 of the de-facto complainant.
2. The prosecution case precisely stated that Altaf Mondal – one of appellant's brother informed the respondent no. 2 at 01:30 p.m. on 08.04.1998 that his

daughter, being the wife of the petitioner (Armina) was admitted in Kalyani J.N.M. Hospital. After that the respondent no. 2 had been to the village of the petitioner and came to learn that the petitioner, his parents and brother instigated her to commit suicide. Cruelty and torture were also meted to her. He also came to learn from the Hospital that the wife of the petitioner had expired.

3. Based on the written complaint Chakdaha P.S. Case No. 36/98 dated 11.4.98 was instituted under Sections 498A/306/341 IPC. Investigation ensued and on completion of the same charge-sheet was filed. Charges were framed to which the appellant pleaded not guilty and claimed to be tried.
4. The prosecution examined 12 witnesses and exhibited certain documents.
5. Learned Advocate for the appellant submitted that the complaint was lodged after 4 days of the incident. The specific allegation for demand of dowry could not be established by the prosecution. Apart from general and omnibus allegations, the prosecution failed to establish corroborative evidence with regard to a continuous torture being inflicted upon the victim.
6. Learned Advocate for the State submitted that the incident took place within 2 years of the marriage and presumption under Section 113B of Indian Evidence Act, therefore, gets attracted. The opinion of P.M. doctor was not conclusively decided as to whether the death was accidental or suicidal. The stove was not produced before the Court to be marked as Mat Exhibit.
7. Learned Advocate for the State admitted lapses on the part of the prosecution and left it to the discretion of the Court.
8. A circumspection of evidence of the prosecution witnesses stated as follows:-

- i. PW-1 provided a cash amount of Rs. 9000/- during the time of marriage of his daughter to Naiyim Mandal. During the time of marriage his son-in-law and his father and Saraf's mother Anowara Bibi and one Jakir (Arbina's husband's elder brother) and Altaf Mandal had subjected cruelty and torture upon his daughter with a demand of further dowry. PW-1's daughter used to come to his house and narrate her plight and he had tried to console the matter and sent his daughter to her in-laws' house along with his relatives. He along with one Abdul Ganif Mollah had requested his son-in-law and other in-laws not to create any pressure on him on 5-4-98 through his daughter. His daughter Arbina came to his house ten days prior to her death. On 8-4-98 at about 1-30 p.m. Altaf Mandal (brother-in-law of his daughter) reported to him that his daughter Arbina was admitted at Kalayni J.N.M hospital. He had been to Kalyani J.N.M. hospital and found his daughter already died. He could not file the case in time because he was busy performing the last rites of his daughter as because the accused persons refused to do anything. He also became ill. One Abdul Majid Mollah wrote the written ejahar. He signed his name on the said written ejahar. The witness identified his name and signature on the said written ejahar which was marked Ext. 1. He had kept his daughter at her in-laws' house three days prior to her death on a Sunday and his daughter died on Wednesday.
- ii. During cross-examination by the defence PW-1 stated that his daughter died on the day of Iddujoha. PW-1 had been to his daughter's house for

about 10/12 times since his daughter's marriage. His son-in-law had been to his house for about 5/6 days. He received one intimation from the younger brother of his son-in-law Altaf that his daughter was admitted at hospital for some disease. His son-in-law used to deal in green vegetables at Sodhpur and he used to return at his house at 12' clock. He gave one juricane oil to my daughter to his daughter for cooking. He gave Rs. 3000/- to his son-in-law for meeting up the loan money to others along with interest. PW-1's daughter along with the women folk of his son-in-law remained at their house when the male members went to the mosque for congregation prayer. His daughter read up to class VIII. He was not present during the time of preparation of surathal report over the dead body of his daughter. It was stated in his FIR that he used to send said Majid to the house of accused persons for reconciliation. Said Majid was still alive at his village. He had not aranged any salish with the help of the local panchayat over the demand of further dowry money from his by the accused persons through his daughter. He did not know whether his daughter picked up a quarrel with her husband as to why her husband purchased a saree for his mother and why he did not purchase a saree for her mother.

- iii. PW-2 stated that he knew one Saraf Mandal and his other in-laws. He knew the wife of Saraf namely Arbina who died after explosion of stove as PW-2 heard from his neighbours but he did not see the said accident. Saraf and his other in-laws behaved well with Arbina.

- iv. During the cross-examination by PW-2 stated that he was examined by the daroga. He stated a quarrel took place between Saraf and his wife over the purchase of saree for his mother.
- v. PW-3 stated that she knew the accused Saraf Mandal, his parents and his brothers. She also knew the wife of Saraf who died by explosion of kerosene stove. She stated that accused Saraf and his other in-laws used to behave well with Arbina. Prosecution declared PW-3as hostile.
- vi. During cross-examination PW-3 stated she was examined by daroga over the said incident. She stated before daroga that the wife of Saraf died by the fire of kerosene stove.
- vii. During cross-examination by the defence PW-3 stated neighbours had taken the deceased Arbina to the hospital.
- viii. PW-4 stated that one Arbina Bibi was her daughter. Her daughter was married to Sarab at Jamadarpore Madanpur. Her daughter used to reside at her in-laws house after her marriage. Her son-in-law used to assault her daughter. Her other-in-laws used to rebuke her. Her daughter came to her house and narrated her plight. PW-4 stated that accused persons had subjected her daughter to cruelty and tortured her daughter for a demand of further dowry. Her said daughter Arbina died at her in-laws' house after setting fire on her. Her daughter died at her in-laws house 3 days after her departure from her house. Arbina's husband's younger brother reported to her that she died by Cholera or diarrhoea. They had been to Kalyani Hospital and found

that her daughter Arbina died by fire. She stated that none of the inmates of Arbina were present at the hospital.

- ix. During her cross-examination PW-4 deposed to have stated Daroga that her son-in-law used to assault upon her daughter, but not in details. Her daughter did not intend to go to her in-laws house. Her daughter intimated to her that she was not in a position to bear the torture at her in-laws house. The said incident took place three days after the departure of her daughter from her house. She did not state before Daroga that her daughter died by Cholera.
- x. PW-5 stated that Arbina, since deceased was his younger brother's daughter. She was married to Saraf. She used to reside in her in-laws house after her marriage. Said Arbina died after setting fire on her within one year since the date of her marriage. The son-in-law and his other in-laws used to behave well with Arbina for about six months from the date of her marriage. Thereafter, she was subjected to cruelty and they tortured her for demand of money. PW-5 stated that Arbina had visited their house 4/5 times and she had narrated her plight to their inmates. He stated that his brother's house was adjacent to his house. Arbina came to their house 8/10 days prior to her death. She went to her in-laws' house 3 days prior to her death from their house.
- xi. Prosecution declared PW-5 as hostile.
- xii. PW-6 stated in his deposition that he knew Arbina, wife of Saraf Mandal. Her house was situated near to his house. The said Arbina died one year after her marriage on the date of Iduj-Joha festival. She

died after setting fire on her at her in-laws house. But PW-6 could not say how she got ablaze on fire. He used to hear the quarrel as bickering between Arbina and her other in-laws. He wrote the written complaint at the instance of police person. The written complaint was written by himself in his own hand writing which was marked Ext. 1/1. The signature of the witness be marked as Ext. 1/2. Prosecution declared the witness as hostile.

xiii. PW-7 in his deposition stated that one Arbina Khatun since deceased was his cousin sister. Arbina used to reside at her husband's house after her marriage. Arbina died at her in-laws' house one year after her marriage who died after setting herself ablaze. He had been to the house of Saraf after the said incident. PW-7 stated that his house was about one and half kms off from the house of accused Saraf. He entered into the room of Saraf and found the stove lying under a cot and with a smell of fire. He found Arbina was not at the house as she was forwarded to the hospital but none of the in-laws of Arbina had accompanied her. He stated that accused persons behaved well with the deceased Arbina for about six months since the date of her marriage and thereafter they had subjected her to cruelty and torture. Whenever he used to visit the house of Arbina she narrated her plight of being subjected to cruelty and torture.

xiv. PW-8 in his deposition that he was an ASI of Police, attached to Bankura Sadar P.S. He stated that on 8/4/98, he was posted at Kalyani P.S. He did not investigate any U.D Case. He had recorded U.D

Case 110/98 dated 9/4/98 at Kalyani P.S. under the intimation of Ward Master, Kalyani Hospital.

- xv. During cross-examination PW-7 stated that he did not prepare the Surathal Report.
- xvi. PW-9 during deposition stated that he was a constable and had taken the dead body of the women at the instance of Daroga in support of a challan for investigation before police. PW-9 identified his signature on the challan which was marked as (ext.-2).
- xvii. PW-10 in his deposition stated that he was Medical Officer then attached to Ranaghat Sub-Divisional Hospital. On 9-4-98 he had performed P.M. examination over the dead body of Sufiya Khatun, aged about 20 years, Muslim female, in connection with Kalyani U.D. Case P.S. Case No.110/98 dated 9-4-98. The body was identified by constable 422, Biswanath. He stated during examination he found the following injuries:-1. Second and third degree burnt on chest, both sides of face, neck, both upper arms, upper part of abdomen, whole of back, major part of lower limb was also burnt. He sent the viscera for chemical opinion. He reserved the opinion. The said P.M. report was marked Ext.3.
- xviii. PW-11 was declared hostile by the prosecution.
- xix. PW-12 in his deposition stated that he was S.I. of Police then attached to Kalyani P.S. That on 12-4-98 he was posted at Chakdaha P.S. He received one written complaint from one Amir Hossain Biswas. He put his endorsement on the said written ejahar marked Ext.1/3. He started

thereafter the Chakdaha P.S. Case No. 36/98 dated 11-4-98. The formal FIR was prepared by himself in his own handwriting. The formal FIR was marked Ext.4. The said Chakdaha P.S. case was endorsed to him for investigation. During investigation he visited the P.O. at Alaipur Zamidarpara. He prepared one sketch map with index at the P.O. The sketch map with index was marked Ext.5. He examined the witnesses and recorded their statements under Section 161 Cr.P.C. He seized some alamats from the P.O. namely Omex Table fan, T.V., one stove, some burnt clothes and wrappers. The said seizure list was written in his own handwriting. The said seizure list was marked Ext.6. PW-12 examined the complainant and his relations. He arrested the FIR named accused Saraf Mandal on 4-5-98. He made one prayer before Kalyani P.S. in connection with investigation. He made prayer before Kalyani hospital for medical certificate of the said deceased. He collected the bed head ticket. The said U.D. Case being No. 110/98 dated 9-4-98. He stated that he received the inquest report and P.M. report. The said inquest report was prepared by Kalyani P.S which was marked as X for identification. He arrested another FIR named accused Rahim Mandal on 21-12-98 and forwarded him to the Court. After completion of investigation he submitted the C.S. on 24-4-99 vide C.S. No. 36/99. He examined one Kapasa Bibi (PW-3). He examined the witness Marjina Bibi who stated before him that the relation of Sufiya and her in-laws became strained.

xx. During cross-examination by defence PW-12 stated that he seized the bed head ticket. He stated that there was a note on a paper that there was a stove burnt injury. He also mentioned the same in his C.D. He had cited one Sushil Mandal as C.S. witness. He did not found the seized alamats before the Court that day. He did not seize any letter of the deceased from anywhere. PW-12 stated that Halema, P.W.4 (mother of the deceased) did not state before him that the husband of Sufiya assaulted her at her in-laws' house but she stated before him that her husband tortured her. He stated that said Halema stated before him that her daughter Sufiya narrated her plight that she could not bear their words. He perused the P.M. report before submitting the charge sheet. He stated that PW-7 Abdul Hossain Mandal did not state before him that he entered into the room of Saraf and found a stove under a cot and he felt a smell of fire. Kapasa Bibi (PW-3) stated before him that she did not hear any quarrel between Saraf and Sufiya and she did not also hear any demand of money. She stated before him that there was an altercation between Saraf and his wife over offering clothes to his mother and she committed suicide after setting ablaze fire on her while the male persons went out to attend the prayer of Iddujoha. PW-12 stated that Sushil Mandal stated before him that he did not see the accused Saraf to assault his wife but there was a dispute between them and that there was strained relation. PW-12 further stated that witness Marjina stated before him that Saraf was outside in shop and he rushed to the P.O. and had recovered wet katha

on her body who also stated before him that the wife of Saraf was taken away to hospital after hiring a car.

9. PW-1, the de facto complainant in his testimony mentioned the name of one Abdul Ganif Mollah who incidentally requested the present appellant and his family members to refrain from creating pressure on him through his daughter. Abdul Ganif Mollah was not examined by the prosecution. PW-1 further stated to have been busy in performing the last rites of his daughter which precluded him from filing the complaint at the earliest which was an acceptable proposition.
10. During his cross-examination PW-2 stated to have given a sum of Rs. 3,000/- to the appellant to disburse his loan to others along with interest which necessarily did not amount to a demand of dowry.
11. There are contradictions in the statements of PW-1 before the Court and the complaint. Majid who had been referred to negotiate the dispute between the parties was not examined. The inquest report apart from burn injuries did not reflect any other injury.
12. The primary investigation had revealed of an altercation between deceased victim and her husband over his addiction to alcohol which led to a brawl between the couple whereby the victim was desperately frustrated concerning the inebriated state of her husband to try to commit suicide by pouring kerosene oil and ablazing herself. There was a suggestion on the part of the defence that the victim was annoyed with the appellant for having purchased a saree for his mother or not for her mother.

13. PW-2 conceded to the incident by purchase of saree and the differences between the couple owing to the same.
14. PW-4, mother of the deceased victim reiterated the evidence of the PW-1 acceding to the incident of cruelty and torture inflicted upon the deceased victim for demand of dowry. However, PW-4 did admit the fact that her daughter might have been a stubborn or obstinate woman. However, denied the fact that such stubbornness or obstinacy would have propelled her to commit suicide.
15. The evidence of PW-5 was based on hearsay.
16. PW-6 was declared hostile by the prosecution.
17. The evidence of PW-7 appeared to tutored.
18. PW-10 had conducted the post mortem examination mentioning the death to be caused by burn injuries.
19. PW-11 was declared hostile by the prosecution who during cross-examination sated that the victim caught fire while she was cooking.
20. PW-12, the Investigation Officer during his cross-examination stated that one of the witnesses Marjina stated before me that the appellant was outside in a shop and he placed wet quilt on the body of the victim. One of the witnesses Tapasa stated before PW-12 that she did not hear any quarrel between the husband of the victim and herself regarding the demand of any money. However, an altercation between the couple for offering clothes by the appellant to his mother for which the victim committed suicide.
21. With variations in the evidence of the prosecution witnesses, the primary ingredient of torture being inflicted upon the victim for demand of money

could not established. A victim committing suicide within 7 years of marriage does not necessarily attract the presumption under Section 113B of the Indian Evidence Act in absence of cogent proof of torture being inflicted upon the victim for demand of dowry.

22. In the instant case apart from general and omnibus allegations on the part of the immediate relatives of the victims, the prosecution failed to prove any substantial corroborative evident to indict the appellant.

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

24. Accordingly, the instant criminal appeal being CRA 363 of 2001 is disposed of.

25. There is no order as to costs.

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

27. 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.)**