

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 296 of 1998

Sankar Mondal

-Vs-

The State of West Bengal

For the Appellant : Mr. Tapan Dutta Gupta
Mr. Parvez Anam

For the State : Ms. Faria Hossain

Heard on : 12.03.2024, 15.03.2024, 20.06.2024

Judgment on : 13.08.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the order dated 09.09.1998 passed by the Learned Additional Sessions Judge, 5th Court, Alipore, convicting the appellant under Section 498A of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.2,000/, in default, to suffer further rigorous imprisonment for 6 months in Sessions Trial No.3(6)/1998, Sessions Case No.14(5)/98, Mograhat P.S. Case No.26 dated 24.03.1994.
2. The prosecution case precisely narrated appellant's wife committing suicide consuming poison being subjected to ill-treatment by the appellant and his parents.

3. Based on the aforesaid complaint, Mograhat P.S. Case No.26 dated 24.03.1994 under Section 498A/306 of the Indian Penal Code was registered.
4. Investigation ensued and culminated in submission of charge-sheet under the aforesaid Sections.
5. Charges were framed under Section 498A/306 of the Indian Penal Code to which the accused persons pleaded not guilty and claimed to be tried.
6. The present appellant was convicted and sentenced as stated above and the other two accused persons were acquitted of all the charges.
7. The prosecution, in order to prove its case, cited 24 witnesses and exhibited certain documents.
8. The Learned Advocate for the appellant submitted the body of the deceased was devoid of any mark of injury either old or recent to substantiate the claim of torture inflicted upon the victim compelling her to commit suicide. None of the independent witnesses supported the prosecution case. The related witnesses were interested witnesses and the Trial Court erred in considering their evidence of the same. Since the other co-accused persons were acquitted of similar charges, the present appellant was also entitled to an order of acquittal and the appeal should be allowed.
9. The Learned Advocate for the State stressed upon the corroborative evidence of PW-1, PW-13 and PW-17 including the doctor and the Investigating Officer stating that the ingredients to constitute the offence under Section 498A of the Indian Penal Code had been sufficiently proved by the prosecution and the appeal shall be dismissed.

10. A circumspection of the evidence adduced by the prosecution witnesses revealed majority of the same being declared hostile by the prosecution namely PW-2, PW-3, PW-4, PW-5, PW-6, PW-7, PW-8, PW-10, PW-11 and PW-12.
11. The evidence of PW-9 and PW-18 was based on hearsay.
12. PW-19 the Chemical Examiner of S.F.S.L. Belgachia, Calcutta deposed to have detected “phosphamidon” (a kind of pesticide) in the viscera of the deceased vide his report marked as Exhibit-2. It was further testified that the aforesaid pesticide due to its poisonous effect might cause death of humans.
13. PW-1, PW-13, PW-14, PW-15, PW-16 and PW-17 being the related witnesses in unison claimed the victim to have been tortured by the appellant and his family members on demand of a gold button which was yet to be provided to the appellant groom as promised at the time of the marriage.
14. PW-1 stated to have given “a cash of Rs.7,000/-, two gachas of gold Bauti (Bangle), a pair of gold earring, gold finger ring for son-in-law, silver ornaments and other articles and utensils” at the time of marriage. PW-1 the father of the victim further stated that the victim used to be repeatedly asked by her mother-in-law as to why the article of gold button was not provided by the parents of the victim to which the victim replied that PW-1 had taken a year’s time to provide the said ornament.
15. The Learned Advocate for the State relied upon the testimony of PW-1 with regard to the demand of the gold button and further referred to the deposition of PW-1 who stated that his wife had persuaded the family members of the appellant to get the victim medically examined as she was

sick. Dulal and Arati the parents of the appellant on the contrary asked PW-1's wife to take the victim to her house. The victim was thereafter treated at the son's house of PW-1. On return to her matrimonial house, the victim was further tortured who thereafter committed suicide. PW-1 during his cross-examination stated *"Four months after marriage I brought my daughter back to my home and a few days thereafter Sankar was driven out from his house by his parents and then Sankar and my daughter had been staying in my house."*

16. PW-13 the mother of the victim reiterated the narrative of PW-1 with regard to the agreement between the parties to provide the ornament as aforesaid within a year of their marriage and the annoyance created by the appellant and his family members for the delay in receiving the same. PW-13 further stated that the victim was abused with aspersions cast upon PW-1 the father of the victim to be a cheat. After the birth of the child of the victim, the torture inflicted by the accused persons intensified and the victim was starved and ill-treated. PW-13 went to her matrimonial house and had witnessed the victim to be assaulted and refusal of food. PW-13 further provided a sum of Rs.400/- to enable the victim to reach her house.

17. PW-14, PW-15 and PW-16 acceded to the evidence of PW-1 and PW-13.

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

"10. The said provision came up for consideration in Girdhar Shankar Tawade v. State of Maharashtra [Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177 : 2002 SCC

¹(2017) 11 SCC 176

(Cri) 971] , where the Court dwelling upon the scope and purport of Section 498-A IPC has held thus : (SCC p. 180, para 3)

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

(emphasis supplied)

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

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

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

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his

²(2018) 10 SCC 472

relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression “cruelty” in Section 498-A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. [Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was warranted [Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473] . The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the judgment. The abuse of the provision was also noted in the judgments of this Court referred to earlier. Some High Courts have issued directions to check such abuse. In Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable.”

20. The complaint filed by the complainant did not state the demand of dowry at the time of marriage or any incident of an agreement or claim of a gold button at the relevant time. The inquest report though not a substantive

piece of evidence narrated of an incident of disagreement between the victim and the family involving domestic chores of cooking food. Thereafter the victim consumed poison and died.

21. Apart from the claim of a golden button transpiring during the course of the testimony of the related witnesses in Court though absent in the complaint, the aforesaid witnesses did not cite a single instance where the victim was subjected to harassment causing grave mental and physical injury, danger to her life in order to meet their unlawful demand which consequently coerced her to commit suicide.
22. Instances of annoyance in performance of domestic chores cannot be considered to be unconscionable. Discords and wrangles are common incidents among family members over trivial issues affecting their daily life which get resolved with time and amiability, understanding and care amongst them. However, there can be occasions when impulsiveness can drag a person to a extent uncontrolled by individual wit and power over senses to commit the ultimatum.
23. The post mortem report did not reveal any kind of injury inflicted upon the victim. The post mortem report was inconclusive. There had been inconsistencies in the depositions of the related witnesses and omissions thereto which were evident from testimony of the Investigating Officer.
24. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
25. Accordingly, the instant criminal appeal being CRA 296 of 1998 is disposed of.
26. There is no order as to costs.

27. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
28. 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.)