

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**CRA 929 of 2013
Sk. Noor Mohamad @ Sk. Noor Mohammed & Anr.
-Vs-
The State of West Bengal
With
CRA 930 of 2013
Suriya Bibi
-Vs-
The State of West Bengal
With
CRA 931 of 2013
Faruk Ahmad Hossain @ Faruk Ahamed Hossain
-Vs-
The State of West Bengal**

For the Appellants	: Mr. Satadru Lahiri
For the State	: Mr. Narayan Prasad Agarwala
In CRA 929 of 2013	Mr. Pratick Bose
& CRA 931 of 2013	
Heard on	: 07.12.2023, 03.01.2024, 22.01.2024, 25.01.2024, 19.02.2024, 08.03.2024, 13.06.2024
Judgment on	: 25.09.2024

Ananya Bandyopadhyay, J.:-

1. These instant appeals are preferred against judgment and order of conviction dated 07.11.2013 and 08.11.2013 passed by the Learned Additional District and Sessions Judge, Fast Track Court No. 5, Barasat, 24 – Parganas (N) in

Sessions Trial No. 9(04)08, arising out of Sessions Case No. 17(8)07, in connection with G.R. Case No. 2194/06 convicting the appellants under Sections 498(A)/306 of the Indian Penal Code.

2. The prosecution case precisely alleged, near about eight years ago deceased got married to the nephew of the appellant no. 1 in accordance with Muslim rites and customs, certain articles, gold ornaments and cash were given as dowry. In course of their marital life the couple gave birth to two children. Subsequently, she was subjected to torture for further demand of Rs.10,000/- by all the accused persons and the father of the deceased provided a sum of Rs.2,000/-. Ultimately on/or about 4th June, at about 3 p.m. the father of the deceased learnt the death of the victim. Further, he came to know the dead body of his daughter was lying at Amdanga Police Station.
3. On the basis of the aforesaid complaint addressed to the Officer-in-Charge of the Amdanga Police Station by Ali Ahmed Mondal, father of the deceased, Amdanga Police Station Case No. 166 dated 04.12.2006 was registered for investigation against the appellants under Sections 498A/304/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.
4. On completion of investigation, the investigating agency submitted charge-sheet against the appellants under Sections 498A/306/34 of the Indian Penal Code and under Sections 3/4 of the Dowry Prohibition Act.
5. Charges were framed against the appellants under Sections 498A/306/34 of the Indian Penal Code to which the appellants pleaded not guilty and claimed to be tried.

6. The prosecution cited twenty three witnesses and exhibited certain documents. The defence examined two witnesses.

7. The Learned Advocate for the appellants submitted as follows:-

- a. The defective framing of charge caused immense prejudice to the appellant and relied on the case of **Anil Kumar Choulia, Santosh Kumar Choulia and Parul Bala Choulia v. State of W.B., 2003 SCC OnLine Cal 22** pronounced by the Hon'ble High Court of Calcutta.
- b. It was further submitted that all gifts were not dowry, and relied upon the case of **Narayanamurthy Vs. State of Karnataka, (2008) 16 SCC 312** pronounced by the Hon'ble Supreme Court.
- c. It was contended that no ingredient of the offence under Section 498A of Indian Penal Code was satisfied and cited several judgments pronounced by Hon'ble Supreme Court and High Court of Calcutta. The judgments are as follows: -

- i. **Jagdishraj Khatta Vs State of Himachal Pradesh, (2019) 9 SCC 248**
- ii. **Atmaram Vs. State of Maharashtra, (2013) 12 SCC 286**
- iii. **Kantilal Martaji Pandor Vs State of Gujarat and Anr., (2013) 8 SCC 781**
- iv. **Pohtash Vs. State of Haryana, (2012) 6 SCC 589**
- v. **Sakharam and Anr. Vs State of Maharashtra, (2003) 12 SCC 368**
- vi. **Bappa Ghosh Vs. State of West Bengal, 2013 SCC Online Cal 2323**

- d. The Learned Advocate for the appellants argued there were no circumstances available to convict the appellant for abetting the

deceased to commit suicide as punishable under Section 306 of the Indian Penal Code, 1806, and referred to the following judgments of the Hon'ble Supreme Court: -

i. *Shambhubhai Kalabhai Raval Vs State of Gujarat, 2023 SCC OnLine SC 1420*

ii. *Shabbir Hussain Vs State of Madhya Pradesh and Others, (2021) 17 SCC 807*

iii. *Asoo. Vs. State of Madhya Pradesh, (2011) 14 SCC 448*

- e. The Learned Advocate for the appellants asserted that the deposition of the prosecution witnesses were hearsay and suffering from sheer contradiction, embellishment and improvement, and no reliance could be placed on the same. He relied on the following judgment of the Hon'ble Supreme Court: -

i. *State of AP Vs. Patnam Anandam, (2005) 9 SCC 237*

ii. *Vijender Vs. State of Delhi, (1997) 6 SCC 17*

- f. It was further submitted that the prosecution had withheld the best evidence to the circumstances without any explanation and cited the following judgments pronounced by the Hon'ble Supreme Court:-

i. *Gadadhar Chandra Vs. State of West Bengal, (2022) 6 SCC 57*

ii. *Govindaraju Vs State and Anr., (2012) 4 SCC 722*

iii. *Pawan Kumar Vs. State of Haryana, (2003) SCC 241*

- g. Relying on the judgment of ***Mobarak Sk. Vs. State of West Bengal, 2011 SCC OnLine Cal 190*** pronounced by the Hon'ble High Court of Calcutta, the Learned Advocate for the appellants submitted that the non-disclosure of the allegation in the inquest report was relevant

when the inquest report and FIR were drawn up either simultaneously or in close proximity.

- h. The Learned Advocate for the appellants further stated that as per the observations of the Hon'ble Supreme Court in **Anil Phukan Vs State of Assam, (1993) 3 SCC 282**, the unnatural conduct of the witness completely dislodged the veracity of the witness's deposition.
- i. The Learned Advocate for the appellants contended that the children staying with the appellant being their father was a relevant circumstance for acquitting the appellant and relied on the case of **Gurcharan Singh Vs State of Punjab, (2020) 10 SCC 200** pronounced by the Hon'ble Supreme Court
- j. The Learned Advocate for the appellants argued that the sentence pronounced by the Ld. Trial Court was improper and submitted the following judgments of the Hon'ble Supreme Court: -

i. Mohd. Hoshan, A.P. An Anr. Vs. State of A.P., (2002) 7 SCC 414

ii. Kamalakar Vs State of Karnataka, 2023 SCC OnLine SC 1458

iii. Gulmahmad Abdulla Dall Vs. State of Gujarat and Anr., (2015) 15 SCC 506

iv. Paranagouda and Anr. Vs. State of Karnataka and Anr., 2023 SCC OnLine Sc 1369

8. The Learned Advocate for the State submitted that the torture upon the victim continued from her marriage till her death. It was further submitted PW-11 deposed for the first two years the relationship between the victim and her husband and in-laws was good. Further the victim was pressurized

to seek money from her father and on failure to provide the same the victim was assaulted by the matrimonial relations. Moreover, PW-11 had witnessed marks of assault on the body of the victim, reddish in colour. PW-13 and PW-14 corroborated to the evidence of PW-11 that the victim narrated the incident of torture inflicted upon her. The prosecution was able to prove its case and the appeals should be dismissed.

9. A circumspection of evidences of the prosecution witnesses revealed as follows:-

- i. PW-1 deposed his victim daughter was married to Faruk Ahamed Hossain of Khansapara according to Muslim rites and customs. At the time of marriage PW-1 provided a cash of Rs.20,000/- along with specific ornaments to his son-in-law as dowry. Subsequently, his daughter had two children, one daughter and son. PW-1 went to the matrimonial house of his daughter being informed of her death which was locked. PW-1 went to Amdanga P.S. and found the dead body of his daughter lying on the ground. He noticed a blood scar mark around her neck. PW-1 disclosed that the mother-in-law of his daughter used to torture her along with his son-in-law being instigated by his mother. PW-1 further stated his daughter came to their house with her son and demanded a sum of Rs.10,000/- for the husband and in-laws otherwise her husband and in-laws would kill her. Reluctantly PW-1 provided a sum of Rs.2,000/- and told his son-in-law and mother-in-law to amend in peace. After one month of such incident his daughter died. PW-1 further stated the uncle and aunt of

his son-in-law used to torture his daughter along with his son-in-law and his mother.

- ii. During cross-examination PW-1 stated to have received the news of his daughter's death from one Vina Kochi being his daughter by village courtesy. PW-1 did not inform anybody during 8 years of living of his daughter's married life that the accused persons used to torture her. PW-1 disclosed that his son-in-law had a small tea stall. His son-in-law used to run the tea stall from 6 a.m. to 9 a.m. and from 3 p.m. to 9 p.m and used to cultivate land from 7 am. PW-1 further disclosed about 6 to 8 times dispute between the accused persons and his daughter occasioned however PW-1 did not complain to anybody.
- iii. PW-2 and PW-5 reiterated the deposition of PW-1, their father.
- iv. The evidence of PW-3 and PW-4 was based on hearsay conforming to the evidence of the related witnesses. PW-4 had been a seizure list witness too.
- v. PW-5 further deposed the victim used to come to their house. His sister did not tell him or anybody anything about the torture. In cross-examination PW-5 stated he did not know anything about the facts.
- vi. PW-6 deposed his ignorance of facts of the instant case.
- vii. PW-6 in his cross-examination stated the house of the uncle was adjacent to Faruk's house and their relation was not cordial. PW-6 did not hear any dispute between Faruk and his wife, the victim.
- viii. PW-7, a neighbour of appellant/Faruk was unaware as to why the victim committed suicide. PW-7 was ignorant of the family affairs of Faruk.

- ix. The evidence of PW-8 was based on hearsay.
- x. PW-8 in his cross-examination stated that after the victim's marriage she used to come his house but she did not disclose any untoward incident of her matrimonial house. He did not have any personal knowledge about the incident. The victim had good relation with the members at her matrimonial house.
- xi. PW-9, the mother of the victim acceded to the evidence of PW-1.
- xii. PW-9 in her cross-examination stated that they did not lodge any complaint to the police for ongoing torture upon her daughter by the members of matrimonial house. They did not inform about the torture upon her daughter except the matchmaker Kudus. Faruk, Noor Md., Jahanara Bibi lived in a separate neighbouring house. She informed the torture and mark of assault upon her daughter to her neighbours and brother-in-law's. Her daughter stayed only one day when she visited her house after assault. She could not state the date, time and year of that day. She and her husband went to her matrimonial house. Her husband and other persons informed the incident to her mother-in-law.
- xiii. PW-10 in her deposition stated that victim was her sister and she came to learn about the torture inflicted on her sister from her parents.
- xiv. The evidence of PW-11, PW-12, was based on hearsay.
- xv. PW-13 deposed that the victim narrated the incidents of torture inflicted upon her.

xvi. PW-14 deposed that the victim was his uncle's son's daughter. They lived side by side. Victim was married to Faruque 11 years ago. Victim left two children and the victim died 3 years ago. PW-14 stated he knew all the appellants. PW-14 further stated victim died by hanging herself as she was tortured by her husband and in-laws. She was tortured physically and mentally on the demand of money to be brought by her from her father.

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

7. Applicability of Section 498A IPC.

7.1. Section 498A the IPC penalizes husbands or their relatives who subject a woman to cruelty, with penalties of up to three years' imprisonment and a possible fine. "Cruelty" encompasses actions that could drive the woman to suicide or cause severe mental or physical harm, and harassment aimed at coercing her or her family into unlawful property or valuable security demands.

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8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased.

11. In ***Mariano Anto Bruno v. State***², the Hon'ble Supreme Court 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

¹2023 SCC OnLine SC 1458

²2022 SCC OnLine SC 1387

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.

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44. *This Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out 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. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.*

12. The following was held by the Hon'ble Supreme Court in the case of

Paranagouda v. State of Karnataka³:-

"25. In Dinesh Seth v. State of NCT of Delhi, (2008) 14 SCC 94, this Court has examined the width and scope of two Sections i.e., 304B & 498A and was held to be different. Section 304B deals with cases of death as a result of cruelty or harassment within 7 years of marriage. Whereas Section 498A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce

³2023 SCC OnLine SC 1369

the woman or any person related to her to meet any unlawful demand of property or valuable security. We have already discussed hereinabove as to there being no nexus for the deceased to self-immolate herself on account of such demand having preceded immediately before her death. As such we have opined that convicting the accused/appellants under Section 304B was improper or the prosecution had failed to establish that the death had occurred and soon before her death she was subjected to cruelty or harassment by the appellants.”

13. The following was held by the Hon’ble Supreme Court in **Kashibai v. State of Karnataka**⁴:-

“8. From the bare reading of the said provisions, it clearly transpires that in order to convict a person for the offences under Section 306 IPC, the basic constituents of the offence namely where the death was suicidal and whether there was an abetment on the part of the accused as contemplated in Section 107 IPC have to be established.

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10. In view of the above, it is quite clear that in order to bring the case within the purview of ‘Abetment’ under Section 107 IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under Section 306 IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.”

14. The following was observed in **Wasim v. State (NCT of Delhi)** by the Hon’ble Supreme Court:-

“12. Conviction under Section 498-A IPC is for subjecting a woman to cruelty. Cruelty is explained as any wilful conduct which is likely to drive a woman to commit suicide or to cause grave injury or

⁴2023 SCC OnLine SC 575

danger to life, limb or health. Harassment of a woman by unlawful demand of dowry also partakes the character of “cruelty”. It is clear from a plain reading of Section 498-A that conviction for an offence under Section 498-A IPC can be for wilful conduct which is likely to drive a woman to commit suicide OR for dowry demand. Having held that there is no evidence of dowry demand, the trial court convicted the appellant under Section 498-A IPC for his wilful conduct which drove the deceased to commit suicide. The appellant was also convicted under Section 306 IPC as the trial court found him to have abetted the suicide by the deceased.

13. *Section 306 IPC provides for punishment with imprisonment that may extend to ten years. There should be clear mens rea to commit the offence for conviction under Section 306 IPC. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide—See M. Mohan v. State [M. Mohan v. State, (2011) 3 SCC 626 : (2011) 2 SCC (Cri) 1] . To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary—See Pallem Deniel Victor v. State of A.P. [Pallem Deniel Victor v. State of A.P., (1997) 1 Crimes 499 (AP)] Whereas, any wilful conduct which is likely to drive the woman to commit suicide is sufficient for conviction under Section 498-A IPC. In this case, the High Court recorded a categorical finding that neither mental nor physical cruelty on the part of the appellant was proved. Therefore, the conviction under Section 498-A IPC is not for wilful conduct that drove the deceased to commit suicide. The High Court held that though there was no demand of dowry soon before the death, the prosecution proved dowry demand by the appellant immediately after the marriage.”*

15. The specific defence of the appellants were that she committed suicide and had suicidal tendencies, which would be transparent from the admitted facts

that two of her near kin who committed suicide. The appellants further stated that they used to live in a separate mess and did not have cordial relationship with the family of the deceased and as such hardly got any opportunity to interfere with the day to day affairs of the deceased and her husband. Through a process of cross-examination and adducing defence evidence the appellants sought to improbabilize the prosecution case and probabilize their own defence.

16. For committing offence under Section 498A of the Indian Penal Code, there must be evidence of harassment to the extent so as to coerce deceased to meet any unlawful demand of dowry, or any willful conduct on the part of the appellants of such a nature as was like to drive her to commit suicide or to cause grave injury or danger to life, limb or health, which were absent in the instant case.
17. There was no evidence against the appellants that in close proximity of the alleged incident they had abetted the deceased to commit suicide continuously or for a considerable period of time with an intention to drive the deceased into such a position that she had no other option except committing suicide and as such in absence of such specific evidence they could not be convicted for commission of an offence punishable under Section 306 of the Indian Penal Code.
18. No person could be held liable for abetting the deceased to commit suicide if the deceased was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the deceased belonged and such petulance, discord and difference were not expected to

induce a similarly circumstanced individual in a given society to commit suicide.

19. For commission of an offence punishable under Section 306 of the Indian Penal Code, there must be evidence to hold that the appellants kept on irritating or annoying the deceased by their words, deeds or willful omission or conduct to such an unbearable and intolerable extent that the deceased was compelled to commit suicide. Presence of *mens rea* was the necessary concomitant of abetment because an intentional aiding and active complicity were essential ingredients of instigation, which was absent in the instant case.
20. The alleged incident occurred nearly eight years after the marriage between the couple was solemnized and in course of their marital life they were blessed with two children, therefore to bring into home the allegation of abetment to commit suicide and cruelty, there must be some overwhelming evidence which was also required to be corroborative in nature in support of such allegation to attract the presumption as available to the prosecution under Section 113A of the Indian Evidence Act which failed in the instant case.
21. The related witnesses despite one or two stray incidents failed to ascribe instances of continuous harassment or torture upon the victim compelling her to commit suicide. Contradictions and inconsistencies in the evidence of the related witnesses concerning the relationship between the victim and her in-laws and husband rendered the veracity of their claim of torture to be obscure and fallible. The victim herself during her lifetime in her matrimony did not reveal her plight to her sister and other related witnesses of being

tortured by the present appellants residing at a separate mess. The parents of the victim being agitated and infuriated at the death of the victim embroiled the appellants with the aspersion of criminality, which otherwise was not protested in 8 years of the victim's married life.

22. The proclivity to entangle the husband and his relatives the innocent people are harassed ruthlessly and contrarily victimized due to the wrath of the family members of the victim out of egregious acrimony and horrific petulance. The impact of being foisted in false criminal cases ruin the lives of such people being in matrimonial relationship devoid of an iota of criminal intent or fault on their part.
23. In the instant case apart from baseless, unfounded, general and omnibus allegations of torture, the prosecution failed to prove any episode of actual and real torture or harassment inflicted upon the victim culminating into cruelty for abhorrent, coercive and extortionate demand of dowry by the present appellants consequent to which her life was fettered, shattered and shackled with misery, agony, trauma and frustration, desperate enough to commit suicide.
24. None of the elements to constitute the offence under Section 498A of the Indian Penal Code was established by the prosecution.
25. The medical report did not mention any injury apart from the effects of suicide to have terminated her life. The extraneous circumstances of incitement and instigation, proximate and immediate on the part of the appellants to have provoked the victim to commit suicide in despair and dismay are absent to constitute an offence under Section 306 of the Indian Penal Code.

26. The prosecution failed to prove in close proximity of her unnatural death, the deceased was subjected to torture by the appellants to such extent which placed her in a position that she had no other option except committing suicide.
27. Mere perusal of the evidence on record would unerringly reveal that there were no specific allegations against either of the appellants as to how and in which manner the appellants tortured the deceased on the claim of further dowry. The specific allegation comprising of the manner and the reason why she was tortured by the appellants and/or her in-laws were absent. Vague mention of the Sections and/or language of the Sections or giving any bald allegations that the accused persons used to torture her both physically and mentally would not be sufficient to convict the appellants for commission of the alleged offences. The appellants used to live in a separate mess and did not have cordial relationship with the family of the deceased and as such hardly got any opportunity to interfere with the day to day family affairs of the deceased and her husband.
28. The self-contradictory, embellished and improved version of the interested/related witnesses lacking corroboration with the evidence of either of the independent witnesses blatantly contrary to the medical evidence, the prosecution failed to prove its case.
29. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeals are allowed.
30. Accordingly, the instant criminal appeals being CRA 929 of 2013, CRA 930 of 2013 and CRA 931 of 2013 stand 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.)