

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 158 of 2013

Mantu Chandra Shil

-Vs-

The State of West Bengal

For the Appellant : Mr. Sabir Ahmed
(*Amicus Curiae*)

For the State : Mr. Binoy Panda
Ms. Pushpita Saha

Heard on : 08.04.2024, 30.04.2024, 20.08.2025

Judgment on : 02.09.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 3rd February, 2012 and 4th February, 2012 passed by the Learned Additional Sessions Judge, 2nd Fast Track Court, Sadar, Cooch Behar in Sessions Trial No. 2(01) 08 arising out of Sessions Case No. 265 of 2007 convicting the appellant for commission of offence punishable under Sections 498A of the Indian Penal Code and sentencing the appellant to suffer simple imprisonment for three years and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for another six months and further convicting him for the offence punishable under Section 306 of the Indian Penal Code and

sentencing him to suffer simple imprisonment for five years and to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for another one year.

2. The prosecution case precisely stated about four year back the deceased victim lady was married to the appellant and continued to cohabit at her matrimonial home as a married couple. After one year of marriage the accused persons subjected her to torture both mentally and physically. The accused persons pressured the deceased to fetch money from her father the de facto complainant. Her father succumbed to the demand and paid Rs.40,000/- in two installments. However, the victim was starved and assaulted for further demand of money, which she tolerated maintain peace in the family. The complainant being impoverished and old, failed to satisfy their demand which enraged Smt. Chhaya Rani Shill and Sri Bhanu Shill to aggravate the torture on the victim.
3. On 13.12.2006, Sri Kartick Chandra Shill, brother of Smt. Usha Rani Shill had been to her matrimonial home but she was not permitted to go to her parent's house. Being severely tortured by the accused persons the victim ultimately committed suicide on 15.12.2006 at around 10 a.m. by ablazing herself. On 18.12.2006 at around 10:35 p.m., she succumbed to her injuries at Cooch Behar Hospital.
4. On the basis of the aforesaid allegations, Tufanganj P.S. Case No.105 of 2006 dated 20.12.2006 under Sections 498A/306 of the Indian Penal Code was registered for investigation against the appellant and other co-accused persons.

5. Upon completion of investigation, the Investigating Agency submitted its report in the final form being Charge-Sheet No.36 of 2006 dated 30.04.2007 under Sections 498A/306 of the Indian Penal Code against the present appellant and 5 others before the Court of the Learned Additional Chief Judicial Magistrate, Tufanganj and the Learned Magistrate took cognizance of the same.
6. Charges were framed for commission of offences punishable under Sections 498A/306 of the Indian Penal Code against the appellants and 3 other accused persons and two other accused persons died during pendency of the trial. The appellant pleaded not guilty to the charges and claimed to be tried.
7. In order to prove its case, the prosecution examined 16 witnesses and also relied upon documentary evidence which included the written complaint, FIR, dying declaration and inquest report.
8. Finally the Learned Judge, upon conclusion of the trial and after hearing the parties, passed the judgment and order dated 03.02.2012 convicting the appellant on the charge framed for the commission of offence punishable under Section 498A of the Indian Penal Code and sentencing him to suffer simple imprisonment for three years and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for another six months and further convicting the appellant on the charge framed for the commission of an offence punishable under Section 306 of the Indian Penal Code and sentencing him to suffer simple imprisonment for five years and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for another one

year, however, in the self-same judgment acquitted Chhayarani Shill, Jhantu Shill, Bhanu Shill from the charges framed against them.

9. The Learned Advocate representing the appellant contended the prosecution case to have been inherently vitiation by unexplained delay in lodging the complaint without proper explanation which doubted the veracity of the prosecution case. It was further submitted that the Learned Trial Judge erred in not drawing the adverse presumption under Section 114(g) of the Indian Evidence Act. It was the prosecution which failed to produce satisfactory material and to place reliance on such omissions. Though the incident had taken place on 19th day of December, 2006 at about 22:35 hrs., which was evident from the First Information Report, the charge had been framed depicting the incident alleged to have been committed on 13th day of December, 2006 and 15th day of December, 2006 and there was no parity between the prosecution story and the framing of charge. Moreover, the dying declaration did not bear either the signature or thumb impression of the victim and the said condition of maker had not been recorded by the doctor. Neither the doctor had issued any certificate showing at the material point of time that the patient was conscious and mentally fit so as to give her statements.
10. The Learned Advocate representing the appellant further submitted the prosecution did not follow the procedure for recording the dying declaration and relying on such dying declaration, the Learned Trial Court had awarded punishment to the appellant. The Learned Trial Court had failed to appreciate that the statement was recorded in presence of one of the police

officers. To attract the ingredients of the offence under Section 306 of the Indian Penal Code, 1860 was of an abatement as the innocence of the accused should be to aid or instigate or abate the deceased to commit suicide and, in the instant case, the victim had stated that she was assaulted by her husband that did not amount to instigation for committing suicide and came to a wrong finding and convicted the appellant. The Learned Trial Court had failed to appreciate the testimony of PWs- 5, 6 and 8 who had specifically stated that they did not hear any quarrel in the house of the accused/appellant and without relying upon such statements made by PWs-5, 6 and the Learned Trial Court came to an erroneous finding and awarded punishment under Section 306 of the Indian Penal Code, 1860 was abatement for such suicide, but, there was no iota of evidence to substantiate the guilt of the appellant that there was abatement immediately before the death of the victim. No independent witness had supported the prosecution story of demand of dowry and no witness had come forward to establish that the appellant had assaulted with the bamboo stick. PWs-2 and 3 had never been examined by the Investigating Agency and they had deposed before the Court at the first instance, though reliance had been made upon the testimony of PWs-2 and 3, who were the mother and brother of the victim girl.

11. The Learned Advocate representing the State submitted that the incident occurred within 4 years of marriage and the evidence of PW-7 who recorded the dying declaration proved the offence committed by the appellant and, accordingly, the prosecution was successful in proving its case.

12. PW-1 the father of the victim, PW-2 the elder brother of the victim, PW-3 the mother of the victim in unison narrated the complaint case assertively emphasizing the torture inflicted upon the victim for a continuous period of time for demand of dowry. PW-4 was declared hostile by the prosecution. PW-5, 6 and 8 were tendered to be cross-examined by the prosecution. PW-7 being the Medical Officer attached to S.D. Hospital Tufanganj, *inter alia*, stated as follows:-

*“I am presently posted as M.O., S.D. Hospital, Tufanganj. On 15.12.2006 also I was posted in the same hospital in the same capacity. I was on duty on that date. One patient with burn injuries namely **XXXX**, aged 25 years, had been admitted in our hospital with admission registration number being 13234 at 10:10 a.m. on 15.12.2006 in the Female Ward. On that date when I had visited the patient, the patient had made a statement in presence of staff nurses Sakti Sarkar and Bela Das that her husband had beaten her last evening by a bamboo stick (Falta) and used abusive languages and today she had poured kerosene oil on her body and set fire on her body herself. This is the said statement written by me in presence of witnesses along with my signature (Ext. 2). The patient had the ability to make the statement when the statement was made (objected to).”*

13. PW-7 being the independent witness, unknown to either of the parties, could not have been interested to be biased towards the victim to act to the prejudice of the appellant-husband. The victim being a mother of a child could not have set herself on fire without an extreme reason of helplessness, trauma, pain and agony beyond the control of her wits and senses to have recklessly, intolerably become irrational and appalling to commit suicide ignoring carelessly the fate and future of the child. A mother could not have

taken such violent and excessive step if it was within her control to surmount and grapple a precarious situation to the best of her ability, capacity and tolerance not to cause any harm to the child. The victim's oblivion of the child's status proved the dire consequences which challenged her in the form of an abetment to commit suicide. The evidence of PW-7 the dying declaration marked as Exhibit-2 corroborated the deposition of PW-9 who prepared the inquest report marked as Exhibit-6. The opinion of the doctor being PW-13 who conducted the post mortem and prepared the report marked as Exhibit-7. PW-14 the Investigating Officer, PW-15 and PW-16 endorsed the reliability of the dying declaration aptly reasoned by the Learned Trial Court.

14. In the above premise, this Court is not inclined to interfere with the order of the Learned Trial Court and hence, the instant criminal appeal being CRA 158 of 2013 is dismissed.

15. There is no order as to costs.

16. I record my appreciation for the able assistance rendered by the Learned Advocate Mr. Sabir Ahmed as *Amicus Curiae* in disposing of this appeal.

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

18. 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.)