

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 313 OF 2008

GUNOSINDHU PANDA @ BIPAD & ANR.

VS.

THE STATE OF WEST BENGAL

For the Appellants: Mr. Ramashis Mukherjee, Adv.

Ms. Debanjana Sen, Adv.

For the state : Ms. Faria Hossain, Adv.

Mr. Atulya Sinha, Adv.

Last Heard On: 24.04.2025

Judgement On: 20.05.2025

CHAITALI CHATTERJEE DAS, J:-

1. This criminal appeal has been filed at the instance of the Appellants against the judgement and order of conviction dated May 2, 2008 passed by the learned court of Additional Sessions Judge, Fast track, 2nd court at Basirhat 24 Parganas North in Sessions Trial case number S.T 5 (3) 2005 arising out of Sessions case No. 2 (9) 2004 under Section 498A/306 of the Indian Penal Code.

Prosecution case

2. The sister of the de facto complainant Smt. Sandhya Rani Panda got married with Gunno Sindhu Panda (Bipod Panda) about 10 to 11 years ago, from the date of lodging of the FIR. After 4/5 years of their marriage, she became subject to torture by her mother-in-law, brother-in-law and uncle in law, namely Geeta, Ajit & Chhidam Panda on the pretext of bringing dowry as sufficient amount of dowry was not given to the in-laws at the time of her marriage. Gunno Sindhu panda during subsistence of his marriage lived with one lady as husband and wife for about six months and thereafter he returned to his father's place but continue to visit the said lady. On January 7, 1991, the sister of the complainant was assaulted by her husband, mother-in-law, and brother-in-law, and uncle in law, namely Gunasindhu, Geeta, Ajit and Chhidam. On January 8, 1991, the younger brother of Bipad informed the complainant that his sister is very ill, and after being informed, his mother went to her son-in-law's house at number 4 CHAITAL and found her daughter dead. She came to know about the reason of death as of poison and it is believed by the complainant that his sister committed, suicide by consuming poison, being unable to bear the severe torture inflicted upon her. Accordingly filed the written complaint before the officer in charge Minakhan police station, 24parganas North on January 11, 1991. On the basis of which Minakhan PS case No. 2 dated 11 .1 .91 under section 498A/306 I.P.C started and after completion of investigation, the charge sheet was submitted under the aforesaid sections. The charges being exclusively triable by the sessions court, the case was committed to

the court of learned District Judge, 24 Parganas North, and from there, it was transferred to the learned court of additional sessions judge, Fastrack, second court, Bashirhat North 24 Parganas.

Being aggrieved by the order of conviction passed by the learned court, the instant Appeal has been filed by the appellants with a prayer to set aside the said Judgement and order of conviction.

Submissions

3. Argument advanced on behalf of the learned Defence Council is primarily on the quality of the evidence adduced by the Prosecution witnesses who have miserably failed to support the prosecution case. The attention of this court is drawn to the evidence of PW3 who is a family member of the de facto complainant. Who heard that, because of assault by the accused Bipod, Sondhyarani committed suicide by taking pesticide. He denied to be examined by the police. It is argued that the said witness was not declared as hostile by the prosecution. In his cross examination, also, he failed to assign any reason why the accused assaulted Sandhya. He came to learn that Sandhyarani was subjected to torture and cruelty by the accused persons.
4. The learned Defence Council further submits that even though the prosecution tried to make out a story of continuous assault and physical torture upon the victim lady, failed to establish the same by adducing any cogent or reliable evidence. No case of previous complaint lodged prior to lodging of the present complaint by the deceased victim or any member of her family against the accused persons could be make out. PW1, Smt.

Chaya Rani, Panda did not support the case of prosecution. According to the P.W.2 Shri Sudarshan Panda the deceased committed suicide by taking pesticide though stated that the relation with accused persons with Sandhya was good, but he denied to have been examined by the police. The evidence of P.W.4 and P.W. 5 is of no help to the prosecution being hearsay evidence that to regarding committing suicide by taking pesticide. PW6 being the de-facto complainant who lodged the written complaint, deposed that it was written by one Shankar panda, his brother-in-law as per his dictation however Shankar Panda was not cited as a witness. Therefore, the content of the F.I.R which was lodged after two days from the date of incident, cannot be said to be proved for taking consideration by the court for passing an order of conviction .The de-facto complainant failed to give any dates when such torture was inflicted as alleged upon her sister. He could not recollect when his sister last visited his place.

- 5.** The learned Defence Counsel took reference to the evidence adduced by the P.W.7 and P.W. 10, who are the elder brother and the father respectively that Sandhya was beaten to death, and strenuously argued the glaring inconsistencies with the content of the F.I.R. The Learned Advocate further took note of the testimony of the mother revealing a new version of the torture inflicted upon the victim which is an embellishment of the prosecution story .More so being apprised of such situation that her daughter was suffering for such torture she didn't take any step against the accused person. It is argued that the mother could not recollect when she visited her daughter's place before her demise though she deposed that she often visited the house of accused persons with vegetables and different

articles because of their poor financial condition. It is therefore argued that the credentials of the witnesses cannot be said to be believable or trustworthy enough on the basis of which an order of conviction can be passed.

6. The learned Defence Council has strenuously argued that in this case most interestingly, the doctor has not examined as a witness, therefore, in absence of the evidence of the doctor and also in absence of the viscera report the real cause of death of the victim cannot be ascertained. The learned court though observed that the doctor is the best person to determine the nature of death, considered the other evidences and came to the conclusion that the victim girl committed suicide.

7. It is further argued that the learned court, despite observing the above heavily considered the evidence of the prosecution witnesses specially of P.W. 6, which are full of inconsistencies, and a departure from the content of the F.I.R, came to the conclusion that the Appellants are guilty of the offences under section 498A and 306 of the Indian Penal Code and passed the order of conviction. Hence the Learned Judge has caused gross miscarriage of justice by convicting the Appellants believing the prosecution case as a gospel truth. It is also argued that section 113 A of the Evidence Act lays down that the court may presume suicide was abated by her husband or his relative only when it can be shown that the woman had been subjected to cruelty by such relatives of her husband within 7 years from the date of marriage . The court may presume having regard to all other circumstances of the case but the Learned court has caused serious prejudice to the Appellants by convicting them on the basis of the overall

appreciation of the materials on record, despite the fact the prosecution has miserably failed to prove the case beyond all reasonable doubts, and therefore, the judgement is liable to be set aside after passing an order of acquittal in favour of the appellants.

8. Par Contra, argument advanced by the prosecution is continuous torture by the husband and in-laws on demand of dowry upon the victim who being unable to bear any further torture committed suicide and that the Prosecution has been able to prove the same by adducing several witnesses who have fully corroborated the prosecution story. It is further contended that the De-facto complainant adduced evidence as PW6 and proved the complaint and his testimony could not have been impeached in course of cross examination. His version has been corroborated by the mother and brother of the victim. The cause of death has not been ascertained since the viscera report could not be collected by the IO however, non-availability of such report cannot be the cause for not believing the complainant. More so admittedly, the victim died by committing suicide. It is also admitted that there was a matrimonial discord and the husband of the deceased victim married twice and despite having victim as his wife, lived with the other lady for a period of six months, which itself can be construed as severe mental torture upon the deceased /victim. Accordingly prayed for dismissal of this Appeal.

Heard the submissions.

9. On the basis of the rival contentions, coupled with the materials on records and evidences adduced the questions which falls for consideration by this court are as follows;

- a) Whether the prosecution has been able to prove the case beyond all reasonable doubt, or
- b) Whether the learned court was right in passing the judgement and order of conviction, against the present appellant.

Analysis

10. The prosecution case was launched in order to set the police in motion by filing an FIR on 11.1.91 before the officer in charge Minakhan police station at the behest of the de-facto complainant being the brother of the deceased victim alleging that his sister has committed suicide on account of torture inflicted upon her by the mother-in-law, husband and uncle in law on January 8, 1991 and he heard that his sister died of poison. The said complaint has been marked with exhibit 1. On perusal, of the written complaint it appears that name of writer/scribe has been mentioned as Shashanka Panda, son of late Sonshi panda village Bhawanipur. On the basis of such complaint the Minakhan PS case No. 2 dated 11.1.91 started under Section 498 A/306 of the Indian Penal Code. After completion of the investigation, the IO submitted the charge sheet under Section 498A/306 of the Indian Penal Code against the present appellant along with Ajit Panda, who was found not guilty by the learned trial court.

11. In course of evidence, the formal F.I.R has been proved and marked with exhibit 3. The inquest report was prepared on 9 January 1991, on the basis of U/D case number 1 dated 9.1.91. The PM report has been marked with exhibit 4, where the opinion of the cause of death has been kept pending till chemical analysis of Viscera. The post-mortem report reveals that the stomach contains violet fluid amount. Both the inquest report and the post-mortem report are silent about any mark of injury, external or internal in the body of the deceased. The charges were framed by the learned Fast Track court after commitment and the contents were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Hence, the trial commenced.

12. The prosecution in order to prove the case cited as many as 13 witnesses out of whom PW1, 2, 3 & 4 are the neighbours and PW3, 6, 7, 8, 9& 10 are the family members of the victim. P.W. 11 was only tendered by prosecution and the cross examination was denied. P.W. 12 P.W.13 are the police personnel. In this case, since there is no eye witness or any direct evidence to support the prosecution case, the circumstances are to be considered from which the conclusion is to be drawn and such circumstances must be proved and conclusive in nature. Furthermore the corroborations are necessary either from oral evidence or documentary evidence in order to test the veracity of the deposition of the prosecution. In the instant case, the order of conviction was passed against the appellant for commission of offences under Section 498 A/306 of the Indian penal court. The trial court relied upon the evidence adduced by the prosecution

witnesses specially P.W.2, P.W.3, P.W.4, P.W.5, P.W.6 and PW8, therefore it is necessary to revisit such evidences for the purpose of proper assessment. P.W1 & P.W 4 admitted the marriage between Gun Sindhu Panda and Sandhyarani Panda and that she gave birth to 3 children. P.W 4 the mother of the victim failed to depose as to how the victim died. PW2 Sudarshan Panda also admitted the marriage and that the victim committed suicide by taking pesticide. This witness deposed that the relation with the accused persons with Sandhya was good and this evidence certainly weakens the prosecution case as he was not declared as hostile witness. The prosecution made no prayer to declare him as a hostile witness. The evidence of these two witnesses can never be said to be the supporting witnesses of the prosecution case. PW3, Sri Bottu Krishna Acharya is the brother of the de-facto complainant who deposed that the husband used to assault the victim and the other family members, including Geeta Rani used to misbehave with Sondhani. He heard that she committed suicide by taking pesticide and also that because of assault by the husband, she took pesticide. This witness denied to be examined by the police and he was also not declared hostile by the prosecution. That issue being kept apart, the evidence of this witness is hearsay evidence. In his cross examination, also he could not give any specific date of assault. The interesting part as appears from his evidence is that he went around 9:30 A.M. on the date before that date of death to the house of accused persons in connection with Puja purpose. He claimed to be an eye witness as when he went to the house of the accused person, saw the appellant/husband assaulting Sandhya. He also said that such assault

was in presence of the parents of the accused. He further deposed that he came to know from Sandhya that she was subjected to torture and cruelty by the accused persons. From the testimony of P.W.8, the mother Bhanu Moti Acharya, nothing is found corroborating the same as has been stated by P.W.3 that the deceased victim was assaulted in presence of the parents. P.W.8 though not supported the version of her son, deposed that when she used to go to the house of the accused person, saw the accused torturing the victim and she was not supplied with adequate food and Sandhya found one day some earth warms mix up with rice. She further stated that Geeta Rani the mother in law used to utter about death of Sandhya. However, she could not collect how many days before the date of death of Sandhya, she went to the house of accused person, lastly, in her examination in chief she said that one wrist watch, one gold ring and a radio was given to accused and never said that any demand of dowry was made on behalf of the appellant. In cross-examination, she said that they did not able to give sufficient dowry and accused persons used to torture upon her daughter that is why she died. P.W.5 being a neighbour, only said that about 13/14 years ago, wife of the accused Bipad died, and he is not aware how the accused persons behaved with the deceased victim. PW6 is the brother and the de facto complainant who lodged the F.I.R. From his evidence, it would come that because of his illness he was not in a position to go regularly at the house of accused. The court cannot be oblivion of the fact that the marriage was of 20 to 25 years old and the deceased / victim gave birth to one son and two daughters and were residing at her matrimonial house. Not a single averment can be found from the evidence

of either the de-facto complainant or the parents of the deceased victim about lodging of any complaint regarding the severe torture inflicted upon her and no previous complaints were lodged. Nothing can be seen regarding the scribe, Shankar panda who wrote the complaint pursuant to the direction of this witness. In cross examination, he said one gold ring and gold earring was given to accused. He volunteered that accused persons used to demand dowry, but they could not able to fulfil the same. The accused person being the husband is by avocation a priest and has his landed properties. He also said that his sister used to report them about the torture but remained silent about not taking any step against the accused. Sri Vishwanath Acharya deposed as P.W.7 and he corroborates the version of the father of the victim that she was beaten to death but the post-mortem report do not indicate any external injuries, excepting the fluids in the stomach which was sent for Forensic examination. No such F.S.L report was placed before the court. Therefore in absence of any documentary evidence in support of the cause of the death no concrete finding can be arrived at regarding the cause of death. However, on marinating the evidences adduced by the prosecution witnesses excepting P.W.7 and 10 all the other witnesses have deposed in the same tune that the victim committed suicide by taking pesticide/poison.

13. In the above factual backdrop let the provision under Section 306 IPC be look into. Section 306 deals with abetment of suicide which reads as follows:-

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also liable to fine.

In a decision reported in **Sohan Raj Sharma vs State of Haryana** ¹ the essential things to complete abetment as a crime was discussed taking note of the observation made in **State of W.B vs Orilal Jaiswal** ² . It was observed that a person abates doing of a thing are 1) He instigates any person to do the thing 2) engages with one or more other persons in any conspiracy for the doing of that thing, 3) Intentionally aids, by act or legal omission, the doing of that thing.

- 14.** In the instant case, from the F.I.R the second marriage of the husband of the deceased victim is admitted and that ultimately both of them were living under the same roof. No previous complaint over any incident of torture can be found. No case has been made out that on account of such second marriage, the deceased victim had to return to her parents or raised any protest. The mother of the victim stated in her evidence that accused persons were so poor that she often visited their place to give some vegetables and other articles, but she failed to recollect the last date when she went there or at least how many days before the date of incident, she visited her daughter's place. However it is evident that the victim resided with her husband and in laws and was not a frequent visitor of her parental home.

¹ (2008) 11 SCC 215

² (1994) 1 SCC 73

- 15.** So far, the allegation of cruelty is concerned after examining the evidences of the prosecution witnesses I find that during the marriage of the victim lady, one wrist watch ,one gold earring, one gold, nose pin, and one radio where among the articles and jewelleries which were given during marriage and now described as Dowry . The marriage is of 25 years old and though the prosecution tried to make out the case of continuous demand of dowry and torture for non-fulfilment of the same failed to prove in course of evidence. The learned trial judge relied upon the evidence of P.W.6, the de-facto complainant and the mother P.W.8 and came to the conclusion there was demand of dowry and it corroborates the F.I.R and therefore prosecution was successful in establishing the charge under section 498 A of the Indian Penal Code which after analysis of their evidences with other evidence find no legs to stand on.
- 16.** Considering the factual scenario, nothing can be found to attract the ingredients of Section 306 of the Indian Penal Code and that there was instigation or conspiracy or intentional aids in terms of section 107 of the Indian Penal Code which compelled the victim to commit suicide.
- 17.** Thus it appears that the Learned Trial Judge proceeded on surmise and conjecture and passed the order of conviction for the offence committed under Section 306 of the Indian Penal Code erroneously and hence is not tenable in the eye of law.
- 18.** In view of the above discussion, I am unable to concur with the finding of the learned trial court.
- 19.** In summation of the supra it is well established that the prosecution has miserably failed to prove the case beyond all reasonable doubts and

accordingly the judgement and order of conviction as passed by the learned trial court against the present appellants are liable to be set side.

20. This Criminal Appeal is allowed.

21. The Judgement and Order of conviction and sentence imposed upon the Appellant by the learned Session Court is set aside.

22. The Appellant shall be discharged from his bail bond in terms of Section 437 A of the Code of Criminal Procedure.

23. Photostat certified copy of this order if applied for, will be made available to the applicants within a week from the date of pending requisite.

(CHAITALI CHATTERJEE DAS, J.)

