

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

Present:

The Hon'ble Justice Partha Sarathi Sen

CRA 211 of 1999

**Durjodhan Dey
Vs.
The State of West Bengal**

For the appellant : Mr. Aniruddha Tewari
Ms. Kausiki Bose

For the State : Ms. Faria Hossain, APP
Ms. Baisali Basu

Heard on : 05.03.2025

Judgment on : 05.03.2025

PARTHA SARATHI SEN, J.:

1. In this appeal the judgment of conviction dated 02.07.1999 and the order of sentence dated 03.07.1999 as passed in Sessions Trial No. IX (III) 99 (Sessions Case 9 (12) 96) by the learned Additional Sessions Judge, Nadia, 2nd Court, Krishnagar is assailed. By the said judgment the learned trial court found accused Madhusudan Dey guilty under Sections 498A/306 IPC and thus sentenced him to suffer R.I. for three and half years with fine of Rs. 1,000/- I.D. to

suffer S.I. for six months more. By the self-same judgment the said Trial Court also found accused Durjodhan Dey guilty of charge under Section 498A IPC and thus sentenced him to pay fine of Rs. 2,000/- I.D. to suffer S.I. for six months.

2. The aforesaid two convicts felt aggrieved and thus preferred the instant appeal. It is pertinent to mention herein that during the pendency of the instant appeal the appellant No. 1, Madhusudan Dey died on 05.02.2018 and as such the instant appeal stood abated as against the appellant No. 1, Madhusudan Dey vide order dated 08.07.2024. It is equally pertinent to mention herein that on 29.07.2024 when the instant appeal was taken up for hearing this Court noticed that though learned Trial Court found the appellant no. 2, Durjodhan Dey guilty under Section 498A IPC but the said Trial Court in the impugned judgment passed no substantive sentence against the appellant no. 2, Durjodhan Dey though Section 498A IPC clearly prescribes punishment with the imprisonment for a term which may extend three years and fine. In view of such, this Court issued a *suo moto* Rule against the appellant Durjodhan Dey asking him to show-cause as to why the sentence as awarded by the learned Trial Court shall not be increased commensurate to the legislative provision of Section 498A IPC, in the event the instant appeal is disallowed. In answer

to such Rule the appellant Durjodhan Dey files his affidavit which was affirmed on 23.09.2024 and which was taken on record.

3. For effective adjudication of the instant appeal the facts leading to initiation of the aforementioned sessions trial is required to be dealt with in a nutshell.
4. On 20.06.1993 one Mohan Ch. Dey of Village – Matiary, P.S. – Kaliganj, District – Nadia lodged a written complaint with the Officer-in-Charge of Kaliganj Police Station stating *inter alia* that on the said day at 14.00 hrs. he came to learn from one habitant of Village – Jayrampur that his sister Chabi Dey consumed poison at her matrimonial home. It has also been stated in the said written complaint that soon thereafter the informant and his other brothers rushed to Village – Jayrampur and on reaching at the P.O. he found that his said sister was lying dead on the courtyard of her matrimonial home. In the said written complaint it has been stated further that the marriage of the said deceased was solemnized with appellant Madhusudan Dey (since deceased) in 1379 B.S. It has been averred further that after three years of marriage torture was inflicted upon his said sister at the instance of the family members of her matrimonial home. The said written complaint discloses further that on account of various trivial issues, the husband of the deceased and her in-laws used to assault her and thus, his said sister was unable to forebear the

said torture as inflicted upon her and thus consumed poison on the said day at 12.00 hrs. and committed suicide.

5. On the basis of the said written complaint, Kaliganj P.S. Case No. 166/93 dated 20.06.1993 under Sections 498A/306 IPC was started. Investigation was taken up and on completion of the same charge-sheet under Sections 498A/306 IPC was submitted against the accused persons. Trial Court Record reveals that after commitment and transfer learned Trial Court on 06.08.1998 considered the charges against all the eight charge-sheeted accused persons and on consideration of the entire materials as placed before him framed charges under Sections 498A/306 IPC against the accused persons. Since at the time of framing of charge the accused persons pleaded their innocence and claimed to be tried the aforementioned trial proceeded.
6. Trial Court Record reveals further that in order to bring home the charges as against the accused persons the prosecution has examined 14 witnesses in all and some documents have been exhibited on their behalf. On behalf of the accused persons no evidence was adduced. However, from the trend of cross-examination of the prosecution witnesses and the answers given by the accused persons in their respective examination under Section 313 Cr.P.C. it appears to this Court that the defence case is based on clear denial and false implication. As discussed hereinabove the

learned Trial Court after considering the evidence of the prosecution witnesses, both oral and documentary found the aforementioned two accused persons guilty and thus sentenced them in the manner indicated in the foregoing paragraphs. By the self-same judgment the said Trial Court, however, acquitted the six other co-accused persons from all the charges as framed against them.

7. In course of his argument Mr. Tewari, learned advocate appearing on behalf of the appellant no. 2, Durjodhan Dey at the very outset draws attention of this Court to the evidence of P.W. 1. It is submitted that the said P.W. 1 did not support the case of the prosecution at all and even then he has not been declared hostile by the prosecution and thus the evidence of P.W. 1 may be considered against the prosecution. Drawing attention of this Court to the evidence of P.W. 2 it is submitted by Mr. Tewari that though the said P.W. 2 in his examination-in-chief testified that the brothers of Madhu (husband of the deceased Chabi) used to assault the said Chabi during her lifetime after three years of her marriage but the said version is omnibus in nature as the said P.W. 2 has failed to explain as to how, when and what manner the present appellant no. 2 used to assault the deceased during her lifetime.

8. Drawing attention of this Court to the cross-examination of P.W. 2 it is submitted by Mr. Tewari that from the testimony of the P.W. 2 it would reveal that the deceased prior to commission of suicide was mentally disturbed on account of untimely death of her two children and that is the reason she has committed suicide which the learned Trial Court failed to visualize. Drawing further attention of this Court to the cross-examination of P.W. 2 it is submitted by Mr. Tewari that from such cross-examination it would reveal that the other family members of the P.W. 2 as well as deceased Chabi were found to be prone to commit suicide since P.W. 2 categorically testified that his another sister and one of his sister-in-laws also committed suicide.
9. It is further submitted by Mr. Tewari that the evidence of P.W. 3 is of no use since the said P.W. 3 had mechanically taken the names of all the accused persons without disclosing their alleged specific overt act with regard to the alleged infliction of torture upon the deceased during her lifetime at her matrimonial home. It is further submitted by Mr. Tewari that surprisingly P.W. 4 did not utter the name of the present appellant no. 2, Durjodhan Dey in her testimony which clearly indicates that the present appellant no. 2 has been wrongly framed in the said trial.
10. Mr. Tewari further submits that admittedly in his examination-in-chief P.W. 5 categorically stated that the present appellant no. 2,

Durjodhan Dey once assaulted the said Chabi during his lifetime causing fracture injury on her head, however, from her cross-examination it would reveal that even after commission of the alleged crime by the present appellant no. 2 no complaint was lodged either with the local Police Station or with the local Gram Panchayat.

11. In course of his argument Mr. Tewari draws attention of this Court to the P.M. report as well as to the evidence of P.W. 10 (autopsy surgeon). It is submitted by Mr. Tewari that during autopsy the said autopsy surgeon found no external or internal injury on the person of the deceased and such finding negatives the case of the prosecution that the appellant no. 2, Durjodhan Dey was guilty of commission of torture upon the deceased during her lifetime.
12. In course of his argument, Mr. Tewari further submits before this Court that while passing the impugned judgment, learned Trial Court unnecessarily placed reliance upon the evidence of P.W. 5 and in doing so, the said Court has miserably failed to visualize the infirmity in such evidence as reveals from the cross-examination of P.W. 5.
13. It is further submitted by Mr. Tewari that the learned Trial Court while passing the impugned judgment, misconstrued the provision of Section 113A of the Indian Evidence Act inasmuch as the learned Trial Court has failed to visualize that the death

of the deceased occurred not within the seven years of her marriage but after 20 years of her marriage. It is thus, submitted by Mr. Tewari that it is a fit case for allowing the instant appeal by setting aside the impugned judgment.

14. *Per contra*, Ms. Basu, learned advocate led by Ms. Faria Hossaion, learned Additional Public Prosecutor for the State submits before this Court that the learned Trial Court has committed no error of fact or of law in placing reliance upon the evidence of P.W. 5 since the deposition of P.W. 5 gets due support from the evidence as adduced by P.W. 2 and P.W. 3. It is further submitted by Ms. Basu that considering the peculiar nature of offence as enshrined under Section 498A IPC which is normally committed within the periphery of a domestic house, it is very difficult to get independent witnesses. It is, thus, submitted by Ms. Basu that the learned Trial Court after considering the evidence of the relative witnesses, found such evidence consistent and thus rightly placed reliance upon such evidence while passing the impugned judgment. Ms. Basu, thus, submits that it is a fit case for dismissal of the instant appeal.
15. Since in the impugned judgment, the learned Trial Court has elaborately discussed the evidence of all the prosecution witnesses, this Court considers that discussion of the evidence of the said prosecution witnesses all over again is unnecessary

except to the extent the same is required for the effective adjudication of the instant appeal.

16. On close scrutiny of evidence of P.W.1, it reveals that P.W. 1 before the learned Trial Court testified that all the accused persons used to make good behaviour with Chabi, since deceased. It is pertinent to mention herein that even after such deposition, the prosecution thought it fit not to declare such witness hostile and, therefore, such evidence must affect the case of the prosecution. It further reveals from the cross-examination of P.W. 1 that he testified that he had not seen any assault or torture upon Chabi by any inmates of her matrimonial home.
17. I have meticulously gone through the evidence of P.W. 2 as recorded by the learned Trial Court. Admittedly, the P.W. 2 in his examination-in-chief testified that the brothers of Madhu used to assault Chabi after three years of her marriage and the said Chabi used to narrate such incident of torture to him. However, from the cross-examination of P.W. 2, it reveals that it has been testified by the said P.W. 2 that for the first time, he was stating the incident of assault and torture before the Court and prior to that he had not stated the same to anyone.
18. In considered view of this Court, the omission as found in the cross-examination of P.W. 2 tantamounts to material omission

vis-à-vis material contradiction within the meaning of the proviso of Section 162 of the Code of Criminal Procedure read with Section 145 of the Evidence Act.

19. On perusal of the evidence of P.W. 5, it reveals to this Court that the said P.W. 5 testified before the learned Trial Court that on one occasion, the present appellant no. 2, Durjodhan Dey had assaulted the said Chabi causing fracture injury on her head. In his cross-examination, he stated that he did not intimate the local P.S. and/or local Gram Panchayat about such incident and he further stated that he did not state the same to the I.O. In absence of any specific details regarding day and time of such alleged assault and on account of the material omission for not stating the same before the I.O., this Court considers that the learned Trial Court is not at all justified to accept the evidence of P.W. 5 as gospel truth.
20. As rightly pointed out by Mr. Tewari that P.W. 4 being the mother of the deceased for the reasons best known to her, in her examination-in-chief stated nothing about the present appellant no. 2 and on the contrary, she stated much about the deceased appellant no. 1.
21. At this juncture, I propose to look to the provision of Section 498A IPC and the same is reproduced hereinbelow in verbatim:

“Section 498A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, ‘cruelty’ means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet demand.”

22. Keeping in mind the aforementioned legislative provision, if I once again look to the evidence of prosecution witnesses, it appears to this Court that none of the prosecution witnesses have stated anything against the present appellant no. 2 regarding his willful conduct which drove Chabi to commit suicide. Though P.W. 5 testified that at one occasion he assaulted Chabi and caused fracture injury on her head but no material is forthcoming as to when such assault was committed

and on account of such assault, the said Chabi found no other alternative but to commit suicide.

23. It thus appears to this Court that the learned Trial Court while passing the impugned judgment has miserably failed to consider the infirmity in the evidence of the prosecution witnesses. This Court further considers that learned Trial Court while passing the impugned judgment has failed to consider that the suicidal death of the deceased occurred 20 years of her marriage and, therefore, the provision of Section 113A Evidence Act cannot be attracted.
24. In view of the discussion made hereinabove, this Court thus finds sufficient merit in the instant appeal and accordingly, the instant appeal being **CRA 211 of 1999** is hereby allowed.
25. Consequently, the impugned judgment of conviction dated 02.07.1999 and the order of sentence dated 03.07.1999 as passed in Sessions Trial No. IX (III) 99 (Sessions Case 9(12)96) by the learned Additional Sessions Judge, Nadia, 2nd Court, Krishnagar is hereby set aside.
26. Consequently, the appellant no. 2, Durjodhan Dey is found not guilty under Seciton 498A IPC in connection with Sessions Trial No. IX (III) 99 (Sessions Case 9(12)96) as disposed of by the learned Trial Court.

27. He is thus acquitted from the said Sessions Trial No. IX (III) 99 (Sessions Case 9(12)96).
28. The appellant no. 2, Durjodhan Dey is thus discharged from his bail bond and be set at liberty at once, if not wanted in any other case.
29. The Rule as issued against the appellant no. 2 regarding enhancement of punishment is also discharged.
30. Department is directed to send down the Trial Court Record along with a copy of this judgment forthwith.
31. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)