

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 447 of 2001

**Mrinal Kanti Ghosh & Ors.
-Vs-
The State of West Bengal**

For the Appellants : Mr. Manjit Singh

For the State : Mr. Avishek Sinha

Heard on : 13.02.2024, 03.05.2024, 17.02.2025

Judgment on : 15.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 25th September, 2001 passed by the Learned Additional Sessions Judge, 4th Court, Barasat, North 24-Parganas in connection with the Sessions Trial No.4(4) of 2000 arising out of Sessions Case No.9(12) of 1997 convicting the appellants under Sections 498A/306 of the Indian Penal Code and sentencing them thereunder to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.5,000/- each for their conviction under Section 498A and also sentenced to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- each for their conviction under Section 306 of the Indian Penal Code and, in default, to suffer rigorous imprisonment for 6 months.

2. The prosecution case precisely stated that the daughter of the de facto complainant was married with the appellant on 07.12.94 and for a few days the victim stayed peacefully at her in-law's house after her marriage. After few days the appellant started torturing the victim both physically and mentally for demand of money. The appellant in compliance to his transfer order shifted to his place of posting at Midnapur where they started living in unhabitable condition. Afterwards the appellant was further transferred from Midnapur and came to his native place and cohabited. At that time, the victim became pregnant and against 'the total non-cooperation of her in-laws' family members, she gave birth to a male child. After the birth of the child, the appellant started pressuring the victim to bring money from her father and assault the victim brutally. The appellant used to misbehave with the father of the victim whenever he went to the matrimonial house of his daughter. On 05.07.96 the victim committed suicide at her in-laws' house by setting fire on her body and when she was taken to Panihati Hospital, Doctor declared her brought dead. During the incident, local people heard hue and cry at to the in-laws' house of the victim and took her burnt body to Panihati Hospital.
3. On the basis of the aforesaid complaint Khardah Police Station Case no.336 dated 05.07.1996 under Sections 498A/306 of the Indian Penal Code was registered for investigation against the appellants.
4. After completion of investigation, the I.O. submitted charge-sheet in that case under Sections 498A/306 of the Indian Penal Code against all the appellants to whom they pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecutions were examined as many as 12 witnesses and exhibited certain documents and 4 witnesses were examined by the defence.
6. The Learned Advocate representing the appellants submitted as follows:-
 - i. A perusal of the depositions of the prosecution and defence witnesses reflected that the conviction rendered by the Learned Trial Court suffered from non-appreciation of material evidence, particularly those advanced by the defence. It was contended that no specific or direct allegation of cruelty or torture upon the deceased had emerged from the depositions of neighbours or domestic staff who were familiar with the family environment of the appellant and the deceased.
 - ii. The testimonies of PW-8, PW-9 and PW-11, who happened to be neighbours and house help engaged with the family of the in-laws of the deceased, were cited in support of the appellant's case. These witnesses, by their own admission, did not witness or hear of any act of cruelty or abuse perpetrated by either the appellant or his family members. One such neighbour, in fact, resided at a distance of merely 100 feet from the appellant's residence, thereby establishing sufficient proximity to have perceived any visible incidents of domestic discord had they taken place.
 - iii. It was further submitted that the defence witnesses DW-2, DW-3 and DW-4 categorically deposed that neither had they ever seen nor heard of any incident of torture being inflicted upon the

deceased by the appellant or his family members. DW-3, in particular, stated and corroborated that the deceased herself had chosen not to partake meals with the appellant's parents and sisters, and preferred to eat separately, an act that reflected interpersonal discomfort rather than an inference of abuse.

- iv. The Learned Advocate strenuously urged that the Trial Court erred in law by omitting to consider or discuss the evidence brought on record by the defence witnesses. It was incumbent upon the Trial Judge to consider all material testimonies, including those produced in defence, before arriving at a finding of guilt. Such omission, it was submitted, amounted to a significant procedural lapse and undermined the fairness of the trial.
- v. On the issue of the incidents allegedly dated 30.06.1996, 01.07.1996, and 03.07.1996, the defence pointed out that these were vague allegations solely founded on the uncorroborated testimony of PW-1. No independent witness or supporting document was produced to fortify these assertions, and no contemporaneous complaint was registered to evidence such acts.
- vi. The learned counsel further submitted that there was no specific allegation of domestic violence against the appellant during the period when the deceased had been staying with him at Midnapore, where he was posted for work. The very fact that the appellant took the deceased along with him to his workplace was

projected as a circumstance negating the possibility of sustained cruelty or malicious intent.

- vii. The allegations, to the extent that they existed, were remotely directed at the appellant's mother, who, at the time of trial, had passed away. As regards the appellant's sister and her husband, the defence emphasised that they resided separately and not in the same household as the appellant and the deceased. The absence of specific allegations against them, coupled with their separate residence, rendered the prosecution's narrative improbable and lacking in clarity.
- viii. It also emerged from the record that the appellant and the deceased resided in a separate mess within the same house, while the appellant's parents lived separately in another portion of the premises. This separation in domestic arrangements diminished the likelihood of consistent interference or opportunity for infliction of cruelty by other family members.
- ix. The learned defence counsel pointed out that the Trial Court failed to appreciate the independent witnesses who had testified in favour of the appellant and instead chose to rely heavily upon related witnesses, including PW-1, whose deposition was not only stereotypical in nature but also lacked corroboration from other sources. Many portions of PW-1's testimony, it was submitted, amounted to hearsay and could not form the sole basis for conviction under serious charges.

- x. It was further argued that the prosecution failed to establish any direct or proximate act on the part of the appellant that could have instigated the deceased to commit suicide — a sine qua non for conviction under Section 306 of the Indian Penal Code, as laid down by the Hon'ble Supreme Court in multiple precedents.
- xi. Even assuming for the sake of argument that PW-1's testimony regarding marks of torture on the deceased was to be considered, it was submitted that no such marks were reflected in the post-mortem report or the medical evidence provided by the examining doctor. Such discrepancy, it was argued, cast serious doubt on the veracity of the claims.
- xii. Another significant omission, according to the defence, was the non-examination of PW-1's son, who was allegedly an eyewitness to the marks of torture. His non-production as a witness created a vital gap in the evidentiary chain and prejudiced the prosecution's ability to prove Section 498A IPC charges to the required standard.
- xiii. Attention was also drawn to the letters written by the deceased, which were brought on record but were not adequately discussed by the Learned Trial Judge. These letters, it was asserted, made no reference to any instance of torture or harassment at the hands of the appellant or his family members. Instead, the deceased was found to have referred to her affairs with another individual, thereby altering the complexion of the mental state and personal choices of the deceased at the relevant point in time.

xiv. In view of the above submissions, the Learned Advocate for the appellants contended that the prosecution failed to establish the requisite elements under Sections 306 and 498A IPC, and that the conviction recorded by the Trial Court could not be sustained either in fact or in law. The evidentiary record, taken in its entirety, pointed not towards culpability but rather towards absence of direct involvement or instigation on part of the appellant leading to the unfortunate demise of the deceased.

7. The Learned Advocate representing the State in utmost fairness submitted that the elements to constitute an offence under Section 498A and 306 of the Indian Penal Code are absent in the instant case and left it to the discretion of the Court.

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

- i. PW-1, the father of the deceased, deposed that his daughter was married to the appellant on 07.12.1994. On 05.07.1996, she died at her matrimonial home. According to him, the deceased was subjected to continuous torture by her in-laws over demands for V.C.P., a scooter, and more money, which ultimately led her to commit suicide by pouring kerosene oil on herself. He lodged a written complaint regarding the incident of torture and suicide, which was marked as Exbt.-1. He stated that on 30.06.1996, after having sent his daughter back to her in-laws' house, the appellant asked him to come to the house around 2:30 p.m. There, his son noticed signs of torture on the face of the victim, and the victim made a request to her brother to

fulfil her in-laws' demands. On 05.07.1996, at about 1:30/2:00 p.m., PW-1 received a telephone call from a neighbouring house of the in-laws, informing him about the suicide.

- ii. In his cross-examination, PW-1 stated that he was examined by the police at Khardah P.S. on 05.07.1996, after the appellants had already been arrested. His statement was recorded at the police station.
- iii. PW-2, the mother of the deceased, corroborated the marriage date and deposed during marriage, cash and other articles were given. Initially, her daughter lived peacefully for 2 to 3 months after marriage. Thereafter, the in-laws began exerting pressure on the victim demanding V.C.P., cash, and other items. The appellant and his family allegedly assaulted the victim. The deceased had shared experiences of assault with her mother. Unable to bear the torture, the victim committed suicide by pouring kerosene oil on herself. PW-2 was examined by police.
- iv. In her cross-examination, PW-2 confirmed the appellant was the private tutor of her daughter for two years. With the consent of both the daughter and family, they allowed the marriage. She denied that her daughter had any love affair with anyone other than the appellant.
- v. PW-3 deposed that the deceased confided in her shortly after marriage, the torture she faced over dowry demands. After the birth of a child, mental and physical torture allegedly increased. The appellant

compelled the deceased to procure more money and articles from her parental home. On one occasion, when they visited the matrimonial home along with new garments, they were insulted and the in-laws reiterated demands for a V.C.P. and a scooter. PW-3 was examined by the police on the evening of the incident.

- vi. During her cross-examination, PW-3 admitted despite being informed about the torture, no complaint had been lodged at the police. She reiterated that all the appellants were involved in the inflicting torture upon the victim lady.
- vii. PW-4 knew the victim and confirmed her marriage with the appellant. He stated that shortly after the marriage, mental and physical torture began over demands for cash, a scooter, and other items. The deceased ultimately committed suicide by setting herself on fire on 05.07.1996 at her in-laws' house.
- viii. PW-5 deposed that on 05.07.1996, the victim committed suicide by pouring kerosene on her body at her in-laws' house due to torture. He went to Panihati Hospital and was present when the Executive Magistrate conducted the inquest. The inquest report was marked as Exbt.-2/1.
- ix. PW-6, a Medical Officer posted at Police Case Hospital, Barrackpore, conducted the post-mortem on 06.07.1996 and submitted a report marked as Exbt.-3. He observed that the deceased was a 4'10" medium-built female with cyanosis over fingernails and lips. First-degree burns were noted from the front of the face down to both feet,

excluding the umbilical region. The back also had similar burns extending from the neck to the ankles. A scar mark was found over the lower abdomen, and soot was present in the trachea and stomach contents (approximately 50 ml of blackish fluid with soot). He concluded that the death occurred due to the effects of the anti-mortem burn injuries.

- x. In his cross-examination, PW-6 clarified that first-degree burns are limited to the skin and that his report did not specify whether the death was accidental, suicidal, or homicidal. He acknowledged that in burn cases, heart failure often results from fluid loss and shock.
- xi. PW-7, posted at Khardah P.S. as S.I. of Police on 05.07.1996, held the inquest at Panihati State General Hospital and prepared a report, marked as Exbt.-4.
- xii. PW-8, PW-9, and PW-11 were declared hostile by the prosecution.
- xiii. PW-10 stated that he knew the deceased and the appellant. According to him, the appellant demanded dowry and tortured the victim physically and mentally. On 05.07.1996, the deceased committed suicide by setting fire to herself at her in-laws' home. He was present during the inquest which was marked as Exbt.-4/1.
- xiv. PW-12, the O.C. of New Barrackpore T.O.P., received the written complaint marked as Exbt.-1/1. He visited the place of occurrence, arrested the appellants, and arranged hospitalisation for the appellants who were injured by an agitating mob after the deceased's death. He interrogated the complainant and other witnesses. The

child of the deceased was entrusted to the maternal grandparents. A U.D. Case No. 63 dated 05.07.1996 at Khardah P.S. was registered based on the doctor's report from Panihati Hospital. He collected the inquest reports and post-mortem report. He further stated that PW-8 had allegedly informed him that the victim committed suicide due to torture. PW-9 allegedly spoke of pressure for money and V.C.P., and abuse on the day of the incident.

- xv. DW-1, the appellant and husband of the deceased, stated that on 05.07.1996 he was at his club when he heard from locals of a fire at his home. He returned immediately and saw his wife ablaze through a window. With the help of neighbours, he rescued her and transported her to Panihati Hospital, where she succumbed to the burn injuries on the same day. He denied the allegations of torture and described them as false.
- xvi. DW-2, a neighbour whose house was separated by one dwelling from that of the appellant, stated that she never saw the appellant or his family torture the deceased. She had signed a mass petition, which was marked as Exbt.-D/1.
- xvii. In cross-examination, DW-2 admitted she could not recall the date of the mass petition or when she had signed it. The appellant was present at the time of signing. She had not received a court summons.
- xviii. DW-3, a frequent visitor to the appellant's house, also stated he never saw or heard of any torture. He had signed a mass petition marked as Exbt.-D/2.

xix. DW-4 deposed that he had never heard any allegations of torture committed by the appellant or his family upon the deceased. He too had signed a mass petition marked as Exbt.-D/3.

9. 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.”

10. 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.”*

11. 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

³2023 SCC OnLine SC 1369

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 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.”

12. 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.”

⁴2023 SCC OnLine SC 575

13. 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 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.”

14. Apart from the relatives of the victim, the prosecution failed to cite any independent witness from the vicinity of the victim's matrimonial home. In order to establish an offence under Section 306 of the IPC, the prosecution had to establish marital disharmony between the couple to an enormity of physical and mental torture being inflicted upon the victim with a proximate reason or instance of instigation or incitement, provoking the victim to commit suicide without any other alternative. The prosecution failed to cite any independent witness from the locality whereas the defence witnesses in unison stated of cordial relationship between the victim and her husband.
15. The incident was a mere accident which was given a disguise of criminality to inculcate the appellants. The accusation by the relatives of the victim's had been general and omnibus which cannot be sustained in absence of direct evidence of demand of dowry. The alleged trauma of the victim for denial of fulfillment of dowry demand was not reported earlier to any agency for redressal. "Abetment" to form a part commission of offence under Section 306 of Indian Penal Code as enumerated in Section 107 of Indian Penal Code had not been presented by the prosecution. Mere wear and tear in domestic life, difference of opinion, considering the emotional quotient and psychology of a person which in a particular case would be negligible

and in other case can be exaggerated or blown out of proportion due to problems in adjustment, ego, adamancy etc. However, the prosecution failed to prove any of the circumstances whereby the victim was subjected to cruelty in truest sense of terms for demand of dowry to the knowledge of any independent person. The proclivity to incriminate the husband and in-laws of the victim in such cases where the prosecution fails to illustrate an iota of evidence to corroborate such claim of cruelty being inflicted on the wife, conviction cannot be sustained.

16. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant appeal stands allowed.
17. Under such facts and circumstances, the judgment and order dated 25th September, 2001 passed by the Learned Additional Sessions Judge, 4th Court, Barasat, North 24-Parganas in connection with the Sessions Trial No.4(4) of 2000 arising out of Sessions Case No.9(12) of 1997 is set aside.
18. Accordingly, the instant Criminal Appeal being CRA 447 of 2001 is disposed of.
19. There is no order as to costs.
20. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
21. 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.)

