

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 541 of 2005

Binoy Mondal & Ors

-Versus-

The State of West Bengal

For the Appellant : **Ms. Jonaki Saha**

For the State : **Mrs. Faria Hossain,
Ms. Baisali Basu**

Hearing concluded on : **04.04.2025**

Judgment On : **10.04.2025**

Prasenjit Biswas, J:-

1. The instant appeal is directed against the judgment and order dated 30.06.2005 and 01.07.2005 passed by the learned Trial Court in connection with Sessions Trial No. 31 of 2003 corresponding to Sessions Case No. 190 of 2002 convicting the appellants for commission of offence punishable under Sections 498/306 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment

for three years and to pay a fine of Rs. 2000/- each in default to suffer imprisonment in a further period of three months for commission of an offence punishable under Section 498A of the Indian Penal Code. These appellants are further sentenced to suffer rigorous imprisonment of seven years and to pay a fine of Rs. 5000/- each in default to suffer imprisonment for further period of six months each for commission of an offence punishable under Section 306 of the Indian Penal Code.

2. In short campus the story of the prosecution is delineated hereunder-

The victim, the sister of the de-facto complainant was married with the accused Binoy Mondal three years ago since the lodging of FIR. It is stated that all the appellants convicts being the husband, mother-in-law and sister-in-law of the victim used to assault her on demand of more dowry. It is further stated that one month before the lodging of the FIR all the accused persons assaulted the victim and drove her out from their house. The de-facto complainant went to the matrimonial house of her sister (victim) and settled the disputes which cropped up in between them. The victim went to her matrimonial house on 03.11.1997 and on 05.11.1997 this de-facto complainant at about 8 o' clock in the morning came to know from the informant that all the appellants convicts assaulted his sister with feast and blows in the night of 04.11.1997 and for such torture inflicted upon her sister the victim committed suicide at about 11 o' clock in the night of 04.11.1997 by swallowing poison. This de-facto complainant

immediately rushed to the matrimonial house of her sister and found the dead body of the victim lying on a cot outside the house. He has reported the facts in writing to the police and concerned police station started case being Kaliachak P.S. Case No. 176/97 dated 05.11.1997 under Section 498A/306 of IPC. After completion of investigation police submitted charge-sheet under Section 498A/306 of Indian Penal Code against these appellants/ convicts. The charges were framed by the Trial Court against each of the accused persons under Sections 498A/304B/34 and 306/34 of the Indian Penal Code and the trial commenced. The appellants/convicts pleaded not guilty and claimed to be tried.

3. In this case, nine witnesses were cited by the side of the prosecution and documents were marked as exhibits on its behalf. Neither any oral nor any documentary evidence was adduced by the side of the defence.
4. Ms. Jonaki Saha, learned Amicus Curiae on behalf of the appellant submitted that there are apparent contradictions in the statements of the witnesses. Medical Officer had failed to give any positive opinion about cause of death of the victim. Although, PW1 stated in his evidence that he suspected that the cause of death of the victim was due to poisoning and as such, he preserved viscera for chemical examination report but the said report has not been produced by the side of the prosecution.

5. It is further said by the learned Advocate that although PW3/ de-facto complainant stated in his evidence that all the appellants/convicts used to torture upon the victim on demand of more dowry and his daughter committed suicide due to such torture inflicted upon her by this appellants /convicts but the said fact has not been stated in the written complaint by the de-facto complainant. This PW3 stated in his evidence that Namita Mondal who happens to be the sister of the victim and the de-facto complainant and was the neighbour of the appellants was not cited as witness by the side of the prosecution. It is further said by the learned Advocate that the de-facto complainant in his evidence stated about the demand of dowry during the lifetime of his sister but the written complaint lodged by this witness is silent about the said demand of dowry by the appellants/convicts. As per submission of the learned Advocate that it would appear from evidence of Medical Officer (PW1) that he found no injury over the dead body of the victim at the time of post-mortem examination. PW4, the sister of the victim stated in the same line of PW3 that she found marks of injury on the dead body of the deceased which is contrary to this statement made by the PW1. It is submitted by the learned Advocate that the prosecution hopelessly failed to bring home the charges levelled against the appellants/convicts and accordingly the impugned judgment and order of conviction may be set aside.

6. Mrs. Faria Hossain, learned Advocate for the State submitted that there is no illegality or irregularity in the impugned judgment and order of conviction passed by the learned Trial Court. It is said by the learned State Advocate that all the witnesses as cited by the prosecution corroborated the story of the prosecution; PW1 who is the Medical Officer proved the post-mortem report which is marked as exhibit in this case and as per his statement the victim faced an unnatural death due to swallowing poison. It is said that all the witnesses who are the relations of the victim i.e. PW3, PW4, PW5 and PW6 stated in the same line that these appellants/convicts used to inflict torture upon the victim and as such, she consumed poison and faced unnatural death. There is no reason to disbelieve the depositions of these witnesses and the veracity of these witnesses have not been shaken by the side of the defence in cross-examination. PW8, the Investigating Officer after completion of the investigation submitted charge-sheet against all these appellants/convicts. The learned Trial Court rightly appreciated the evidences which were brought on record by the side of the prosecution and convicted the accused persons under Sections 498A/306/34 of Indian Penal Code. As per submission of the learned Advocate there is nothing in the record for which the judgment and order of conviction passed by the learned Trial Court is to be interfered. It is submitted by the learned Advocate for the State that the present appeal is devoid of

any merit and as such, it is liable to be set aside and the judgment and order of conviction passed by the learned Trial court may be affirmed.

7. I have considered the rival submissions advanced by both the parties. Perused all the materials gathered in the record.

8. Admittedly, the victim who is the sister of the de-facto complainant was married with the appellant/convict Binoy Mondal and after one and half years of her marriage she died at her in laws house. It is the case of the prosecution that after marriage of the victim with the accused Binoy Mondal all the appellants used to inflict torture upon the victim frequently on demand of more dowries. PW3, the de-facto complainant (brother of the victim) stated in his deposition that the accused Binoy Mondal used to subject her sister to assault and cruelty and this accused used to drive the victim out from his house. It is said by PW3 that one occasion the victim was driven out by her husband and she came to their house. Thereafter, they given one wrist watch to the accused Binoy Mondal and sent back to his sister to the house of her husband. This witness further said that the mother and sister of the accused Binoy Mondal also used to ill-treat and assault upon the victim for bringing the wrist watch from their house. Over the unnatural death of the victim this de-facto complainant lodged written complaint before the concerned police station. But in the said written complaint, he did not mention that these appellants/convicts used to inflict torture upon the victim on demand of more dowries. It is stated

in the written complaint that three months before the incident, all the appellants used to beat Namita and drove her out of the house. It is stated by PW3 in his deposition that they have stated in the FIR that they had given the wrist watch to the husband of the victim but it is not stated in the written complaint by the de-facto complainant that on demand of the appellants they had given the wrist watch to the accused Binoy Mondal. This PW3 stated that he had seen marks around a throat of the victim and he had also seen swelling marks like marks of assault all over the dead body of his sister. PW4, the sister of the victim also stated in the same line of PW3 that she found victim lying death with marks of assault at different parts of the dead body. This mark of assault upon the dead body of the victim as stated by PW3 and PW4 is not corroborated by the evidence of PW1 who held post-mortem of the victim. So, there are apparent contradictions in the evidence of PW3 and PW4 with the evidence of Medical Officer (PW1). It is admitted by PW3 in cross examination that prior to the case they have not lodged any F.I.R. before the police for torture and assaults upon his sister.

9. PW1, Dr. Ajay Kumar Das who held the post-mortem of the victim stated that on dissection of the dead body of the victim, he found viscera congested whitish fluid in small intestine and he suspected that the death was caused by poison and preserved the stomach contents, portion of liver and right kidney for chemical analysis but no report was collected by the Investigating agency and produced before the Trial

Court. PW8, I.O. of the case stated in his deposition that during investigation he received the post-mortem report of the victim and for ascertaining the cause of death the viscera of the victim was despatched for forensic examination and for getting F.S.L. report. I have already stated that the said F.S.L. report was not collected by the Investigating Agency. Although, PW1 stated in his evidence that the opinion as regards cause of death of the victim kept preserved pending chemical examination of the preserved viscera. So, PW1 in such circumstances had failed to give any positive opinion about the cause of death of the victim.

10. PW3 stated in his evidence that Nirmala Mondal, the elder sister of PW3 as well as the victim had her house on the Northern side of the house of the husband of the victim and when he used to visit the house of the accused persons, he had also visited the house of his elder sister Namita. However, she was not cited as witness during the course of the trial. Like Nirmala no other people of the neighbourhood of the matrimonial home of the victim have been examined as the prosecution witnesses during the course of the trial. PW3 stated that after hearing the incident he rushed to the matrimonial home of the victim and found the dead body of his sister with marks of injury all over her body. It is already stated hereinabove that PW1 did not find any injury whatsoever over the dead body of the victim. The conduct of this witness (PW3) is appeared to be strange one. This witness found the

dead body of his sister and after the dead body of the deceased was removed to the hospital, he being the brother till being unconcerned of the dead body of the victim left for his home and he did not take any further steps in respect of the dead body of the victim.

11. It is stated by PW3 and PW4 (sister of the victim) that all these appellants convicts used to inflict torture upon the victim for demand of more dowry but before the death of the victim they did not lodge any FIR before the police for such alleged torture inflicted upon his sister and it is admitted by PW3 in his cross examination.
12. Like Pw3 the sister of the victim (PW4) stated that she found marks of assault on different parts of the body of the victim but the contentions of PW4 were not supported by the Medical Officer (PW1). PW5, Pratima Mondal who happens to be the wife of PW1 also stated in the same line of her husband that after marriage of the victim all the appellants started demanding wristwatch and money from themselves as further dowry and they have started creating pressure upon the victim for realisation of the same. This witness further said that the accused persons used to inflict torture, ill-treatment and misbehaviour upon the victim for realising the wristwatch and money. PW6 uncle of the victim also stated about demand of more dowries by the appellants/convicts from the victim. This witness echoed the same voice of PW3, PW4 and PW5 and stated that these appellants used to inflict torture upon the victim for realising the wristwatch and money from the house of the

elder brother of the victim (PW3). Although, these witnesses i.e. PW3, PW4, PW5 and PW6 who are the relations of the victim stated that there was a consistent demand of more dowry by these appellants/convicts and due to failure of fulfilment of their demand they used to inflict torture upon the victim but astonishingly these witnesses did not take any action or lodge any complaint before any authorities like police stations or village panchayats. These witnesses who are the well wishers of the victim and after being aware about the alleged infliction of torture upon the victim they remained silent which give rise to great suspicion with regard to the credibility of these witnesses regarding their statements of alleged torture upon the victim on demand of more dowry.

13. Hence, the appellants cannot be convicted for the offence under Section 498A of Indian Penal Code.
14. Section 306 of the Indian Penal Code provides for punishment for the offence of abatement of suicide. It has to be read with Section 106 of the Indian Penal Code which defines the act of abatement for person to be charged under Section. The prosecution must establish that the accused contributed to the act of suicide by the deceased and it must satisfy between the three conditions as enumerated in Section 107 of the Indian Penal Code. For a conviction under Section 306 of the Indian Penal Code, the mensrea i.e. the intention to abate the act is essential. Mere statement of harassment by itself is not sufficient to find the

accused guilty of abating suicide. The element of mensrea cannot simply be presumed or inferred; it must be evident and explicitly discernible. It is the duty of the prosecution to demonstrate an active and direct action by the accused that lead the deceased to take her own life. In the absence of mens rea required for establishing abatement under the law is not satisfied.

15. The Hon'ble Apex Court in a recent case of **Pattel Babubhai Manohardas & Ors.-vs.- State of Gujarat**¹ set aside the conviction of a man accused of committing an offence of abatement of suicide by blackmailing the deceased, using compromising photographs and videos. In that report the Apex Court observed that for invoking the offence of abatement to suicide under Section 306 of Indian Penal Code, the prosecution must prove instigation, conspiracy or intentional aid with a clear mensrea to abate suicide. Mere harassment or differences are not sufficient unless there was a proximate act leading to suicide. It is said by the Apex Court in that report, inter alia, that :

“Abatement to commit suicide involves a mental process of instigating a person or intentional aiding a person in doing of a thing. A positive proximate act on the part of the accused to instigate or aid in committing suicide conviction cannot be sustained. Besides, in order to convict a person under Section 306 IPC, there has to be a clear mensrea to commit an offence.”

¹ 2025 SCC OnLine SC 503

16. In **Pattel Babubhai Manohardas (supra)** the Hon'ble Apex Court observed at paragraph 16 and 17 inter alia, that:

"16. Therefore, the crucial word in Section 306 IPC is 'abets'. 'Abetment' is defined in Section 107 of IPC. As per Section 107 IPC, a person would be abetting the doing of a thing if he instigates any person to do that thing or if he encourages with one or more person or persons in any conspiracy for doing that thing or if he intentionally aids by any act or illegal omission doing of that thing. There are two explanations to Section 107. As per Explanation 1, even if a person by way of willful misrepresentation or concealment of a material fact which he is otherwise bound to disclose voluntarily causes or procures or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing. Explanation 2 clarifies that whoever does anything in order to facilitate the commission of an act, either prior to or at the time of commission of the act, is said to aid the doing of that act.

17. Section 114 IPC is an explanation or clarification of Section 107 IPC. What Section 114 IPC says is that whenever any person is absent but was present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such an act or offence and would be liable to be punished as an abettor."

17. It is discerned from the said report that to convict a person under Section 306 Indian Penal code, the prosecution must prove that the accused instigated or aided the deceased to commit suicide, with a

clear mensrea (intention) to abate the suicide. To bring a conviction under section 306 IPC it is necessary to establish a clear mensrea to instigate or push the deceased to commit suicide. It requires certain such act, omission, creation of circumstances or words which would incite or provoke another person to commit suicide. Thus to bring a case under this provision it is imperative that the accused intended by their act to instigate the deceased to commit suicide.

18. So, there would be direct and reasonable nexus of the commission of suicide by the deceased with the act of cruelty to which the deceased was subjected by the accused appellants. In this case, no evidence was laid or placed on record by the prosecution that there was action of the appellants/convicts which compelled the victim perceived no alternative but to take her own life. Be it mentioned such action of the appellants/convicts must also be proximate to the time of the suicide. I have already stated that mere harassment by itself is not sufficient to find an accused guilty and abating suicide as to bring a conclusion under Section 306 of the Indian Penal Code. It is necessary to establish a clear *mensrea* to induce the deceased to commit suicide. It requires, certain such act, omission, creation of circumstances or which would entice or prefer the person to commit suicide. So, to bring a case under this provision it is imperative that the accused appellants intended by their acts to instigate the deceased to commit suicide. In cases of alleged suicide there must be complete proof of either direct or indirect

incitement that led to suicide and the act of abatement must be explicitly demonstrated through actions or behaviours of the appellants that they directly contributed to the victims or decision to take her own life. Mere harassment unless it is accompanied by deliberate acts of incitement or facilitation does not suffice. In cases of alleged abetment of suicide, there must be concrete proof of either direct or indirect acts of incitement that prompted the victim to commit suicide. It is only through the establishment of this direct link that a conviction under Section 306 of the Indian Penal Code can be justified.

19. There are apparent contradictions with the statement of I.O. (PW8) with regard to the previous statement made by PWs 3, 4 and 5. In this case, PW3 stated in his evidence that on demand by the husband of the victim they had given one a wrist watch to him and sent back the victim to the house of her husband. After going back from the house of in laws of the victim, then within two days in the early morning he had received the information that the victim died by swallowing poison. Prosecution was not able to prove the proximate act of the appellants that directly led to the suicide of the victim. I have already stated hereinabove that the prosecution must prove that the accused persons instigated or aided deceased to commit suicide with a clear mens rea to abate the suicide but there is nothing in the evidences of the prosecution from which it can be ascertained that the accused appellants instigated or aided the deceased. The prosecution also failed

to prove direct and reasonable nexus of the commission of suicide by the deceased with the act of cruelty allegedly inflicted by the appellants/convicts upon the victim.

20. So, the essential ingredients to book a person for abatement of suicide is missing in this case as there was no direct evidence of abatement such as instigation or enticement to prove their guilt under Section 306 of IPC and there was no proximate act on the part of the appellants/convicts that directly led to the suicide of the victim. Moreover, it would be appeared from the evidence of PW3 that he and the victim had another sister named Nirmala Mondal who had her house on the northern side of the matrimonial house of the victim. I have already said that she has not cited as witness in this case and if she was cited as witness by the prosecution she might throw light upon any act attributable to the appellants/convicts which had reasonable nexus of the commission of the suicide by the deceased. No other people of the neighbourhood of the matrimonial home of the victim were also cited as witnesses to the prosecution. As per deposition of PW1 he suspected that the cause of death of the victim was due to poisoning and for giving opinion as regards cause of death he kept preserved viscera pending chemical examination. PW1 suspected that the cause of death of the victim was due to the poisoning and as the report of chemical examination of the viscera of the victim was not placed before him, he could not be able to give final opinion regarding

the definite cause of death of the victim. So, there is no substantive evidence to show that the victim at all had died due to any poisoning or not.

21. The prosecution bears the burden of proving the active involvement to hold the appellants accountable for the alleged abetment of suicide. There is nothing in the record for which it can be said that actions or behaviors of the appellants directly contributed to the victim's decision to take her own life. This link is missing in this case for which conviction under section 306 IPC can not be said to be justified.
22. Under such circumstances and after scanning of the entire evidences brought on record, I am of the opinion that each part of the prosecution case is tainted with meagreness of evidence or absence of satisfactory evidence. In view of the above facts and circumstances and discussion made above. I am of the opinion that the impugned judgment and order of conviction passed by the learned Trial Court is not tenable under the eye of law and it is liable to be set aside.
23. Accordingly, the Criminal Appeal being No. 541 of 2005 is hereby allowed.
24. The judgement and order of conviction passed by the learned Trial Court dated 30.06.2005/01.07.2005 in connection with Sessions Trial No. 31/2003 corresponding to Sessions Case No. 190 of 2002 for committing offence under Section 498A/306/34 of Indian Penal Code is hereby set aside.

25. The accused persons are on bail. They are discharged from their respective bail bonds and be set at a liberty if they are not wanted in connection with other cases.
26. Trial Court Records along with a copy of this judgement is to be sent down to the Trial Court immediately
27. Urgent certified copy of the judgement, be supplied to the parties after payment of proper court fees.

(Prasenjit Biswas, J.)