

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

**PRESENT:**

**THE HON'BLE JUSTICE PRASENJIT BISWAS**

**CRA 97 of 1994**

**Jharna Sarkar @ Bulu & Ors.**

**-Vs-**

**State of West Bengal**

|                      |   |                                                                           |
|----------------------|---|---------------------------------------------------------------------------|
| For the Petitioner   | : | Mr. Dhananjay Banerjee,<br>Mr. Pralay Hatra,<br>Mr. Parth Sarathi Mishra. |
| For the Petitioner   | : | Ms. Faria Hossain, Ld. APP,<br>Ms. Trina Mitra.                           |
| Hearing concluded on | : | 30.01.2026                                                                |
| Judgment on          | : | 30.01.2026                                                                |
| (In Court :-)        |   |                                                                           |

**PRASENJIT BISWAS, J.: –**

1. This appeal is directed against the impugned judgment and order of conviction dated 30.03.1994 passed by the learned Additional Sessions Judge, 3<sup>rd</sup> Court, Bankura in connection with the Sessions Case 5(3)/90 corresponding to Sessions Trial No.2(7)91 at the instance of the appellants.
2. By passing the impugned judgment, these appellants were found guilty for commission of offence punishable under Section 498A and under Section 306 of the I.P.C. The appellant No.3 Joydeb Sarkar was sentenced to suffer imprisonment for six years along with a fine of Rs.3000/- and in

default of payment of fine to suffer rigorous imprisonment for three months for the offence committed under Section 306 of the IPC. He was also sentenced to suffer Rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default of payment of fine to suffer further rigorous imprisonment for two months for the offence committed under Section 498A of I.P.C. The appellant No.1 was sentenced to suffer rigorous imprisonment for three years along with a fine of Rs.3000/- and in default of payment of fine to suffer rigorous imprisonment for three months for the offence committed under Section 306 of the Indian Penal Code and she was also sentenced to suffer rigorous imprisonment for two years along with a payment of fine of Rs.2000/- and in default of payment of fine to suffer rigorous imprisonment for two months for the offence punishable under Section 498A of the Indian Penal Code.

3. Being aggrieved by and dissatisfied with the said judgment and order of conviction, the present appeal is preferred at the behest of the appellants.
4. During the pendency of this appeal, the appellant No. 2 was expired and the present appeal was stood abated against him.
5. In a short compass, the prosecution story, as unfolded from the records, may be delineated thus:

*"The victim, being the sister of the de facto complainant, was married to appellant no. 3 on the 18<sup>th</sup> day of Joishtho, 1392 B.S. Initially, the marital relationship between the deceased and the members of her matrimonial family was stated to be cordial and normal. However, according to the*

*prosecution, such normalcy did not last long. After about seven to eight months of the marriage, the husband of the victim and his family members allegedly began subjecting her to both mental and physical cruelty. It is the further case of the prosecution that due to such alleged torture and ill-treatment, a village 'salish' (local mediation) was convened with the intervention of the local Panchayat in an attempt to resolve the disputes between the parties. However, the said mediation reportedly did not yield any fruitful result, and the alleged acts of cruelty continued. The prosecution version further discloses that on the 31st day of Aashar, 1395 B.S., the defacto complainant, who is the brother of the victim, came to learn about the death of his sister. He allegedly received such information from one Sunil Pal. Significantly, it is alleged that no intimation regarding the death of the victim was sent by the members of her matrimonial household to her parental family. Upon receiving the information, the defacto complainant immediately rushed to the village where the victim's matrimonial home was situated. On arrival, he found his sister lying dead inside the house. Thereafter, the de facto complainant approached the concerned police station and lodged a written complaint narrating the alleged incidents. On the basis of the said complaint, Joypur Police Station Case No. 2 dated 16.08.1988 was*

*registered against the present appellants, thereby setting the criminal law into motion. Upon completion of investigation, the investigating agency submitted charge-sheet against the appellants under Sections 498A and 306 of the Indian Penal Code. Subsequently, the learned Trial Court framed charges against the appellants under Sections 498A and 302 read with Section 34 of the IPC, and in the alternative under Section 306 IPC, on 12.07.1991, to which the accused persons pleaded not guilty and claimed to be tried.”*

6. In the present case, the prosecution, in order to substantiate the charges brought against the accused persons, examined as many as ten witnesses and also caused several documents to be marked as exhibits in support of its case. Through these witnesses and documentary exhibits, the prosecution sought to establish the allegations forming the foundation of the charge and to bring home the guilt of the accused.
7. On the other hand, it is noteworthy that the defence did not adduce any evidence whatsoever, either oral or documentary. No witness was examined on behalf of the defence, nor was any document brought on record in support of the defence version. Thus, the defence case rested solely on cross-examination of the prosecution witnesses and on the suggestions put to them during trial, without leading any independent evidence in rebuttal.

8. This aspect of the matter is relevant while appreciating the overall evidentiary scenario on record, as the entire adjudication primarily turns upon the quality, credibility and sufficiency of the evidence adduced by the prosecution.
9. Mr. Dhananjay Banerjee, learned Advocate appearing for the appellant, has strenuously contended that the prosecution case suffers from material omissions and contradictions in the testimonies of its witnesses, thereby rendering the impugned judgment and order of conviction legally unsustainable. According to him, the conviction has been recorded on the basis of evidence which is neither consistent nor trustworthy, and hence the same cannot be upheld in the eye of law.
10. It is submitted that from the evidence of PW1 it transpires that he allegedly received information regarding the death of his sister from one Sunil Pal. However, in a case of such serious nature, the said Sunil Pal, being the first informant as per PW1's own version, was neither cited nor examined as a prosecution witness. The deliberate non-examination of such a material witness, who could have thrown light on the circumstances under which the information was conveyed and the nature of the incident, gives rise to a legitimate adverse presumption against the prosecution under the settled principles of evidence law.
11. The learned Advocate further submits that PW1, PW6, PW7 and PW8 are all related to the victim and, therefore, their testimonies require careful scrutiny. It is contended that their depositions are not only interested in nature but also doubtful with regard to the cause of death of

the victim. Their statements do not inspire confidence and lack independent corroboration on material particulars.

**12.** It is emphatically argued that there is no reliable evidence on record to establish that the victim was subjected to torture or cruelty at the hands of the appellants which could have led to her unnatural death. The allegation of torture at the matrimonial home remains a bald assertion, unsupported by any cogent, independent or contemporaneous evidence. Although some witnesses made vague references to a purported 'salish' at the Panchayat, not a single Panchayat member was examined to prove that any such 'salish' was actually held or to disclose the reason and outcome of the same. This omission, according to the learned Advocate, significantly weakens the prosecution case.

**13.** Drawing attention to the medical evidence, the learned Advocate submits that as per the deposition of PW14, the post-mortem doctor, the cause of death was opined to be due to "unknown poison." The autopsy surgeon had preserved certain viscera for chemical examination, but candidly admitted in cross-examination that he did not receive any chemical examiner's report. Thus, the medical evidence remains inconclusive. In the absence of the viscera report and in the absence of the post-mortem report being duly proved and brought on record, the precise cause of death remains shrouded in mystery, thereby creating a serious dent in the prosecution case.

**14.** It is further contended that the depositions of PW6 and PW7, who are the parents of the victim, are materially contradictory. PW6 stated that he received information about his daughter's death from Sunil Pal, who, as

noted earlier, was not examined. On the other hand, PW7, the mother of the victim, introduced an altogether different version by stating that her daughter was killed by administering poison in food. This allegation was neither supported by medical evidence nor corroborated by any other witness. Such inconsistent and uncorroborated statements, it is argued, cannot form the basis of a conviction.

15. With regard to PW8, the maternal uncle ('mesomoshai') of the victim, it is pointed out that he claimed to have been informed about the incident by one Basudeb Kaibarta, a member of the Gram Panchayat. Yet again, the said person was not examined by the prosecution. PW8 further stated that the victim fell ill after taking a meal and that no doctor was called for her treatment. Interestingly, he also deposed that the victim initially received good treatment at her matrimonial home and the situation allegedly deteriorated only later. Such statements, according to the learned Advocate, dilute the allegation of continuous cruelty or torture.

16. On the cumulative assessment of these testimonies, it is argued that the learned Trial Court committed errors of law in appreciating the evidence of PW1, PW6, PW7 and PW8, particularly on the aspect of alleged torture upon the victim at the matrimonial home. The findings, it is submitted, are based on conjectures rather than legally admissible and reliable evidence.

17. In support of his submissions, the learned Advocate has relied upon the decisions of the Hon'ble Supreme Court in **Ram Pyari vs. State of Uttar Pradesh (Neutral Citation: 2025 INSC 71)** and **Lolita vs. Vishwanath & Ors. (Neutral Citation: 2025 INSC 173)**. Placing reliance on these

authorities, he submits that in the absence of cogent evidence of harassment, instigation, or intentional aid, the Court cannot mechanically invoke the presumption under Section 113A of the Evidence Act to hold that the accused abetted the commission of suicide.

**18.** Referring particularly to the decision in **Lolita (supra)**, it is contended that the Apex Court has categorically held that mere harassment or cruelty, by itself, is insufficient to infer abetment of suicide. There must be credible and proximate evidence showing that the accused had actively aided, instigated or created such circumstances as would drive the victim to take the extreme step. In the absence of such evidence, a conviction under the relevant provisions cannot be sustained.

**19.** On these premises, Mr. Banerjee submits that the impugned judgment and order of conviction are vitiated by improper appreciation of evidence and misapplication of legal principles. Consequently, the same are liable to be set aside by extending the benefit of doubt to the appellants.

**20.** Ms. Faria Hossain, learned Advocate appearing for the State, has contended that the impugned judgment and order of conviction suffer from no infirmity, either on facts or in law, so as to warrant interference by the appellate court. According to her, the learned Trial Court has properly appreciated the evidence on record and arrived at a just and reasoned conclusion, and therefore the conviction calls for affirmation rather than interference.

**21.** It is submitted by the learned Advocate that the core prosecution witnesses, namely PW1, PW6, PW7 and PW8, have consistently deposed about the physical and mental torture to which the victim was subjected at

her matrimonial home. Their testimonies, according to the State, clearly disclose a pattern of cruelty and harassment meted out to the victim, which ultimately drove her to commit suicide. It is argued that nothing material has been elicited in their cross-examinations to discredit their versions or to render their evidence unreliable. Merely because these witnesses are related to the victim does not, by itself, make their testimonies suspect, particularly when their statements are found to be natural, consistent, and in consonance with the prosecution case.

**22.** The learned Advocate for the State has further drawn attention to the medical evidence adduced through PW14, the autopsy surgeon. It is contended that the doctor's evidence supports the prosecution case insofar as it establishes that the death of the victim was unnatural and ante mortem in nature. The opinion regarding death due to poisoning, even if described as caused by "unknown poison," nonetheless points to an unnatural death and lends assurance to the prosecution narrative that the victim did not die a natural death. According to the State, this medical evidence corroborates the oral testimonies regarding the victim's suffering and the circumstances leading to her death.

**23.** It is further argued that the prosecution has successfully proved the substratum of the written complaint through the consistent and cogent testimonies of its witnesses. The narrative of cruelty and torture preceding the death of the victim has been spoken to by multiple witnesses, and their depositions, when read as a whole, form a coherent and credible chain. The learned Advocate emphasizes that minor discrepancies, if any,

are natural in human testimony and do not go to the root of the matter so as to demolish the prosecution case.

**24.** The State's counsel has stressed that PW1, PW6, PW7 and PW8 have all unequivocally stated about the torture inflicted upon the victim by the appellants and have linked such cruelty to the victim's eventual unnatural death. Their evidence, according to the State, clearly establishes the circumstances that compelled the victim to take the extreme step. The learned Trial Court, after careful evaluation of the entire evidence, has rightly relied upon these testimonies and recorded the finding of guilt.

**25.** On these premises, it is submitted that the findings recorded by the learned Trial Court are based on proper appreciation of evidence and settled principles of law. No perversity, illegality, or material irregularity has been shown in the impugned judgment. Consequently, the learned Advocate for the State has urged that the appeal preferred by the appellant, being devoid of merit, is liable to be dismissed outright and the conviction and sentence be upheld.

**26.** I have given my anxious and thoughtful consideration to the rival submissions advanced by the learned Advocates appearing for the respective parties. I have also carefully and meticulously gone through the entire materials available on record, including the oral and documentary evidence, the depositions of the witnesses, the exhibits proved in the case, and the reasoning assigned by the learned Trial Court in the impugned judgment.

**27.** Upon a comprehensive examination of the record, I have assessed the submissions of both sides in the light of the evidence adduced and the

settled principles of law governing appreciation of evidence in criminal cases. The contentions raised on behalf of the appellant as well as those advanced by the State have been evaluated in their proper perspective, with due regard to the cumulative effect of the materials on record.

**28.** Such consideration has been undertaken with the caution and circumspection required in an appellate court, particularly in an appeal against conviction, where the court is duty-bound to reappraise the evidence to ascertain whether the findings recorded by the learned Trial Court are supported by the evidence on record and are in accordance with law.

**29.** PW 1, Sahadeb Mondal, defacto complainant and brother of the victim in his deposition before the learned Trial Court, stated that upon receiving information, he immediately rushed to the house of the victim at Ashurali village and, after reaching there, personally noticed the victim lying dead inside the house. This assertion of direct and personal knowledge, however, stands in stark, material, and irreconcilable contradiction to the contents of the written complaint lodged by PW-1 himself, which constitutes the foundation of the prosecution case.

**30.** In the written complaint, PW-1 did not claim to have personally witnessed the dead body of the victim. On the contrary, he categorically stated that he heard that his sister's dead body was lying in the house of her father-in-law. Thus, in the earliest and most contemporaneous version of events, PW-1 projected his knowledge as being purely hearsay in nature and not derived from any personal observation. This divergence between the written complaint and the sworn testimony before the Court is not

merely a semantic variation but a substantive contradiction touching upon the very source of the witness's knowledge and his presence at the place of occurrence.

**31.** The written complaint, being the first version of the prosecution story, is expected to reflect a natural, spontaneous, and truthful account of the informant, uninfluenced by deliberation, tutoring, or afterthought. Any subsequent departure from such an account, particularly on a material aspect such as the informant's presence at the scene and his direct perception of the alleged occurrence, seriously undermines the credibility of the witness. The later statement of PW-1 in Court, wherein he claimed to have rushed to the spot and personally seen the dead body, is a clear improvement and embellishment upon a vital fact, which was conspicuously absent in the written complaint.

**32.** Further, PW-1 deposed in his examination-in-chief that cash and other presents were given at the time of marriage and that there was a normal relationship between the victim and the inmates of her matrimonial home. However, in his cross-examination, he stated that he had narrated the factum of giving cash and other presents in the written complaint. This assertion is demonstrably incorrect, as the written complaint is conspicuously silent on any such allegation. This self-contradiction and incorrect assertion further erodes the credibility of PW1 and creates serious doubt about his truthfulness and reliability as a witness. Such inconsistencies cannot be brushed aside as minor discrepancies or lapses of memory. They go to the root of the prosecution case and strike at the credibility of PW1 as a whole. When a witness makes material

improvements on crucial facts and attempts to introduce allegations which are absent in the earliest version of the case, the Court must approach such testimony with extreme caution.

**33.** Moreover, PW1 further deposed that he received information about the death of the victim from one Samir Pal. Strikingly; the prosecution has not examined the said Samir Pal, who was the alleged source of information and the first person to inform PW1 about the death. No explanation has been offered for his non-examination. Samir Pal was a vital and material witness, whose testimony could have clarified when, how and under what circumstances the information regarding the death was conveyed to PW1. The deliberate or unexplained omission to examine such a crucial witness gives rise to a strong adverse inference against the prosecution. When the informant himself admits that he received information from a particular person, failure to examine that person deprives the Court of an opportunity to test the veracity of the informant's claim and the authenticity of the prosecution narrative.

**34.** Therefore, the contradictory stand of PW1 regarding his source of knowledge whether he merely heard about the dead body or actually saw it himself coupled with the non-examination of the person who allegedly supplied the information, creates a serious dent in the prosecution case. These infirmities strike at the very root of the prosecution story and render the testimony of PW1 unsafe to be relied upon.

**35.** PW6, the father of the deceased victim, has deposed that he received information in the afternoon of 30<sup>th</sup> Sravan that his daughter had died after taking poison, whereupon his son, PW1, proceeded to Ashureli

village. At the outset, PW6 has categorically admitted in his evidence that he was disclosing the incident for the first time before the Court. He has further stated that, except for narrating the incident to his para people, his family members, and at the bazaar of Rough Khanda, he did not disclose the occurrence to any other person. Such an admission strikes at the very root of spontaneity and credibility of his version. A witness who claims knowledge of an unnatural death of his own daughter but fails to report the matter to any authority, police, village elders, or responsible persons, and admits that he is narrating the incident for the first time before Court, cannot be treated as a natural, reliable, or truthful witness.

**36.** More importantly, PW6 has specifically deposed that Samir Pal was the person who gave him the information regarding the death and that Samir Pal was deputed by the Panchayat to convey such information. This is a crucial piece of evidence. If Samir Pal was indeed the source of information and was acting under the authority of the Panchayat, then he becomes a most vital, natural and independent witness to the genesis of the prosecution story.

**37.** However, it is an admitted position that Samir Pal has not been cited as a prosecution witness, nor examined before the Court. No explanation whatsoever has been offered by the prosecution for withholding such a material witness. This deliberate non-examination attracts the settled principle of law that withholding the best available evidence gives rise to an adverse inference, that had such witness been examined, his evidence would not have supported the prosecution case.

- 38.** The conduct of PW6 is also wholly unnatural. A father who is informed that his daughter has died after consuming poison would ordinarily rush to the place of occurrence, lodge a complaint, inform the police, or at least approach local authorities. Instead, PW6 claims that he merely sent his son (PW1) to Ashureli village and he did not take any immediate legal or social steps. Such conduct is inconsistent with normal human behavior and renders his testimony doubtful.
- 39.** Further, his admission that he narrated the incident casually to villagers and at a bazaar, but did not report it to any competent authority, creates serious doubt about the authenticity and truthfulness of his version. This conduct clearly indicates that the narrative is post-occurrence reconstruction, rather than a spontaneous and truthful disclosure.
- 40.** Thus, the evidence of PW6 suffers from lack of spontaneity, absence of contemporaneous disclosure, non-examination of the material informant Samir Pal, unnatural conduct of the father, and first-time disclosure before Court, all of which cumulatively destroy the credibility of his testimony. Such a witness cannot be treated as reliable or trustworthy, particularly when his version is not corroborated by independent, natural, or documentary evidence. His testimony, being uncorroborated, belated, and unsupported by the primary source of information, remains a weak, hearsay based and legally infirm piece of evidence, incapable of sustaining the prosecution case.
- 41.** Accordingly, the evidence of PW6 does not advance the prosecution case in any manner and, on the contrary, creates serious doubt about the

genesis, authenticity, and truthfulness of the prosecution version, thereby entitling the accused to the benefit of doubt.

**42.** PW7, the mother of the deceased victim and the wife of PW6, has deposed before the learned Trial Court in a manner substantially similar to the testimony of PW6, thereby not adding any independent or corroborative dimension to the prosecution case. Her evidence appears to be a mere repetition of what has already been stated by PW6. Significantly, PW7 has categorically admitted in her deposition that she was narrating the incident in question for the first time before the Court. This clear and unambiguous admission is of considerable importance, as it conclusively establishes that PW7 had not made any prior statement to the police or to any other authority regarding either the alleged torture of her daughter at her matrimonial home or the circumstances allegedly leading to her death. Such an unexplained silence at the earliest opportunity casts a serious doubt on the credibility and spontaneity of her testimony and renders her version suspect.

**43.** PW7 further stated in her deposition that her daughter was killed by administering poison and asserted that she was certain that her daughter had been put to death in such a manner. However, this assertion is wholly unsupported by, and uncorroborated with, any other oral or documentary evidence on record. No independent witness has supported her version, nor has any medical or forensic evidence conclusively established death by administration of poison at the instance of the accused. On the contrary, the medical evidence on record does not lend assurance to such a categorical claim.

- 44.** A witness's mere belief or suspicion, however strongly expressed, cannot take the place of legal proof. PW7's assertion that she was "sure" that her daughter was killed by poisoning is clearly based on conjecture and surmise rather than on any direct knowledge or admissible evidence. In the absence of corroboration from medical findings, forensic reports, or independent witnesses, such a statement remains a bare allegation devoid of probative value. Thus, the testimony of PW7, being belated, uncorroborated, and founded on assumption rather than established facts, does not inspire confidence and fails to advance the prosecution case in any meaningful manner. On the contrary, her own admission that she was deposing for the first time before the Court further weakens the prosecution version and entitles the accused to the benefit of doubt.
- 45.** PW7 further stated that after her marriage, the victim visited the parental house on three occasions, including during Asthamangala. During those visits, the victim allegedly reported to PW7 that the appellants used to inflict torture upon her. On the face of it, this assertion is sought to be relied upon by the prosecution to establish cruelty or harassment. However, when examined in the light of the overall conduct of PW7 and PW6, this evidence appears highly improbable and unworthy of reliance.
- 46.** Admittedly, PW6 and PW7 are the parents of the victim. If, as claimed by PW7, their daughter had repeatedly complained of being subjected to torture by the appellants during her visits to the parental home, the normal and expected human conduct would have been to take immediate and effective steps to protect their daughter. Such steps could have included lodging a complaint before the police, informing the matrimonial

family, or at least making some contemporaneous protest or intervention.

However, neither PW6 nor PW7 took any such step at any point of time.

**47.** The complete inaction on the part of PW6 and PW7, despite being allegedly informed on more than one occasion about serious acts of torture inflicted upon their daughter, is wholly abnormal and contrary to ordinary human behaviour. This unexplained silence and passivity seriously undermines the credibility of their testimony and raises a strong inference that the allegations of torture were not made at the relevant time and have been introduced subsequently as an afterthought.

**48.** It is also noteworthy that both PW6 and PW7 have admitted that they were disclosing the facts of the incident for the first time before the Court. Such belated disclosure, unaccompanied by any prior complaint or contemporaneous record, renders their evidence inherently weak and unsafe to act upon, particularly in a case involving serious penal consequences.

**49.** In the absence of any contemporaneous complaint, corroborative evidence, or independent testimony, the Court would be justified in drawing an adverse inference against the prosecution for the abnormal conduct of the parents and for their failure to take any action despite alleged repeated complaints of torture. The cumulative effect of the evidence of PW6 and PW7, therefore, creates a serious dent in the prosecution case and entitles the appellants to the benefit of doubt.

**50.** The prosecution case, insofar as it seeks to establish cruelty or ill-treatment of the victim at the hands of the appellants, rests primarily upon the oral testimonies of PW6, PW7, and PW8, all of whom are closely

related to the victim. A careful and conjoint reading of their evidences, however, unmistakably reveals serious infirmities, material contradictions, unexplained omissions, and withholding of vital witnesses, which collectively demolish the substratum of the prosecution case.

**51.** At the outset, it is of great significance that PW6 (father of the victim) and PW7 (mother of the victim) have both categorically admitted that they were narrating the incident for the first time before the Court. Neither of them made any contemporaneous statement to the police or to any authority regarding the alleged cruelty or harassment of their daughter. Such first-time disclosure at the stage of trial, without any prior complaint or record, is inherently weak and unsafe to rely upon.

**52.** PW7 has deposed that during three visits of the victim to the parental house after marriage, including Asthamangala, the victim complained of being ill-treated by the appellants. PW6 has broadly supported this version. PW8, a relative of the victim, on the other hand, stated that the victim disclosed the alleged ill-treatment to him when she visited his house. These versions, far from being corroborative, disclose inherent and material differences as to where, to whom, and on which occasion the alleged disclosures were made.

**53.** PW 8 Sukumar Nandi, who is a close relative of the victim, deposed that he had received information regarding the incident from one Basudeb Kaibarta, stated to be a member of the concerned Gram Panchayat. However, it is significant to note that the said Basudeb Kaibarta, admittedly the first informant to this witness and a crucial link in the chain of events, was neither cited nor examined as a prosecution witness in the

present case. The non-examination of such a vital witness, without any explanation from the prosecution, casts a serious doubt on the veracity of the version put forth by this PW8 and amounts to withholding of the best available evidence.

**54.** Further, PW8 made a statement which stands in complete aberration and material contradiction to the depositions of the other prosecution witnesses. He stated that after taking her meal, the victim suddenly became ill and that no doctor was called for her treatment. This version is not only inconsistent with the evidence of the other witnesses but also creates serious uncertainty regarding the actual circumstances preceding the death of the victim. Such a contradictory narrative strikes at the root of the prosecution case and renders the testimony of this witness unreliable.

**55.** This PW8 further claimed that the victim had narrated to him about the alleged ill-treatment meted out to her about seven days prior to her death. However, in his cross-examination, he candidly admitted that he did not disclose or report this alleged disclosure to the police at any point of time. This material omission assumes grave significance, particularly when the witness seeks to introduce allegations of cruelty or ill-treatment as a precursor to the victim's death. The unexplained silence and failure to inform the police immediately or at any subsequent stage substantially weakens the credibility of his testimony and gives rise to a reasonable inference that such statements are afterthoughts, introduced at a belated stage to fill up lacunae in the prosecution case.

**56.** Thus, the deposition of PW8, riddled with contradictions, material omissions, and unsupported assertions, does not inspire confidence and falls far short of the standard of proof required in a criminal trial. His evidence, therefore, cannot be safely relied upon to sustain the prosecution case.

**57.** If the victim had in fact been subjected to persistent cruelty, and if such cruelty had been disclosed to multiple close relatives on different occasions, the testimonies of PW1, PW6, PW7, and PW8 ought to have been consistent and natural. Instead, the prosecution witnesses have given varying and shifting accounts, which strike at the root of their credibility. Such contradictions are not minor discrepancies but go to the core issue of alleged cruelty itself.

**58.** More importantly, despite claiming that the victim repeatedly complained of torture, PW6 and PW7 admittedly did not take any step whatsoever neither lodging a complaint nor confronting the matrimonial family. This complete inaction on the part of the parents is wholly abnormal and contrary to ordinary human conduct.

**59.** PW4, in his deposition before the learned Trial Court, has referred to a 'salish' allegedly held in the village concerning the affairs of the deceased victim. While he spoke about the occurrence of such a meeting, it is crucial to note that he himself admitted that his knowledge regarding the death of the victim was entirely hearsay in nature. Specifically, PW4 stated that he heard that the victim had died due to heart failure, rather than having personally witnessed or ascertained the circumstances surrounding her death.

- 60.** This admission is of substantial significance, as it underscores that PW4's testimony lacks firsthand knowledge of either the cause of death or any alleged incidents of torture or cruelty purportedly preceding the death. In criminal jurisprudence, evidence based purely on hearsay, especially concerning a critical fact such as the cause of death, cannot be accorded any independent probative value. A witness who merely recounts what he has heard does not satisfy the legal threshold of direct evidence required to establish culpability in criminal proceedings.
- 61.** Moreover, the mere reference to a village 'salish', without any independent corroboration or details from the actual participants of the meeting, cannot serve as proof of any misconduct or torture. Since PW4 had no personal knowledge of the discussions or findings of the 'salish', and his statement regarding the cause of death is purely based on what he heard, his deposition is inherently unreliable and cannot be taken into consideration to support the prosecution case.
- 62.** PW-14, the autopsy surgeon, has categorically deposed in his examination-in-chief that, according to his opinion, the death of the victim was due to unknown poison, and that the said poisoning was ante-mortem in nature. He further stated that, in the course of post-mortem examination, he preserved the kidney, a portion of the liver and stomach contents for the purpose of chemical examination, which was the only scientific method to ascertain the exact nature of the poison and to conclusively determine the cause of death.
- 63.** However, in his cross-examination, PW-14 admitted a crucial fact, namely, that although he had preserved the viscera, he did not receive

any report of viscera or chemical examination. This admission strikes at the root of the prosecution case. Once the medical witness himself admits that the cause of death was due to "unknown poison" and that no chemical examiner's report was available, the opinion as to the cause of death remains inconclusive and incomplete. More significantly, the post-mortem report itself was not brought on record by the prosecution. No explanation whatsoever has been offered for such non-production of a vital and foundational document. The post-mortem report is the primary medical document which forms the basis of the doctor's opinion and enables the Court to independently assess the correctness, consistency and reliability of the medical evidence. Suppression or non-production of such a crucial document, without any plausible explanation, gives rise to an adverse inference against the prosecution and renders the medical evidence doubtful.

- 64.** In the absence of the post-mortem report, and the chemical examiner's report on the preserved viscera, the exact cause of death remained shrouded in mystery. The Court is left only with an oral assertion of PW14 that death was due to "unknown poison", which, by its very nature, is vague, uncertain and uncorroborated by scientific evidence. When medical evidence is inconclusive and incomplete, it cannot be used to conclusively establish the cause of death, particularly in cases where the prosecution is required to prove the same beyond reasonable doubt.
- 65.** In such a factual backdrop, the prosecution's reliance on the oral testimony of PW14 to establish the cause of death becomes wholly unsafe. Oral evidence, howsoever strong, cannot substitute or cure the absence of

cogent medical and scientific evidence, especially when the death is alleged to have occurred due to poisoning. The unexplained non-production of the post-mortem report and the viscera examination report creates a serious dent in the prosecution case and casts a cloud of doubt over the entire prosecution version.

**66.** Therefore, it is evident that the prosecution has failed to establish the cause of death of the victim with certainty. This fundamental lacuna goes to the root of the matter and vitiates the prosecution case, entitling the accused to the benefit of doubt.

**67.** To bring home a charge under Section 306 of the Indian Penal Code, the prosecution must establish beyond reasonable doubt that the accused had abetted the commission of suicide within the meaning of Section 107 IPC. Abetment, as defined under Section 107 IPC, consists of instigation, conspiracy, or intentional aid to the act of suicide. Mere allegations of harassment, quarrels, or strained relations, without more, do not satisfy the statutory requirements of abetment.

**68.** The abetment to commit suicide involves a mental process of instigating a person or intentionally aiding a person to commit suicide. There must be a clear mensrea on the part of the accused to push or compel the victim to take the extreme step. In the absence of such intention, no offence under Section 306 IPC is made out.

**69.** It is further well settled that there must be a direct or proximate act of instigation or intentional aid on the part of the accused, which has a live and close nexus with the act of suicide. Remote acts, past incidents, or general allegations of cruelty or harassment, howsoever reprehensible,

cannot by themselves constitute abetment unless they are shown to be of such a nature that they left the victim with no option but to commit suicide.

**70.** Thus, in order to sustain a conviction under Section 306 IPC, the prosecution must prove:

- (i) a clear case of instigation, conspiracy, or intentional aid as defined under Section 107 IPC;
- (ii) the existence of a positive, proximate, and active act on the part of the accused leading directly to the suicide;
- (iii) a clear mensrea on the part of the accused to abet the commission of suicide.

**71.** The courts have repeatedly emphasised that mere harassment, ordinary domestic discord, or differences arising out of matrimonial life are not sufficient to attract Section 306 IPC. The prosecution must prove that the accused, by words or conduct, had actively goaded, provoked, or encouraged the victim to commit suicide, or had intentionally facilitated the act. In the absence of such proof, conviction under Section 306 IPC cannot be sustained.

**72.** In the absence of such essential ingredients, mere allegations of harassment, cruelty, or domestic discord even if assumed to be true cannot automatically be stretched to constitute abetment to suicide. Any conviction based on conjectures, inferences, or generalized allegations would be contrary to settled legal principles and unsustainable in law.

**73.** The presumption under Section 113A of the Indian Evidence Act is not automatic and cannot be mechanically invoked merely because the death

of a married woman has occurred otherwise than under normal circumstances. Such a presumption arises only when the foundational facts namely, cruelty, harassment, or abetment in the nature of instigation or intentional aid are first established by cogent and credible evidence.

**74.** From a careful and conjoint reading of the depositions of the relative witnesses of the victim, it clearly emerges that there exists serious and unresolved doubt as to the actual cause of death of the victim. The evidence adduced by these witnesses does not conclusively establish whether the victim died as a result of food poisoning or whether she committed suicide. Such ambiguity on a fundamental aspect of the prosecution case strikes at its very root and renders the prosecution version inherently doubtful. In a criminal trial, where the burden squarely lies upon the prosecution to prove its case beyond all reasonable doubt, such uncertainty regarding the cause of death is fatal.

**75.** Further, the allegation of torture or cruelty upon the victim at her matrimonial home is not supported by any cogent, consistent, or reliable evidence. The relative witnesses have made only vague and omnibus allegations, without specifying the nature, extent, or frequency of the alleged torture, the persons responsible there for, or any proximate incident having a live link with the death of the victim. Such bald assertions, unsupported by independent evidence, are wholly insufficient to establish cruelty or harassment in the eye of law.

**76.** It is also the consistent version of these relative witnesses that a village 'salish' was allegedly held at the Gram Panchayat in connection with the matrimonial affairs of the victim. However, it is an admitted position that

no member of the concerned Panchayat, nor any independent villager who allegedly participated in such 'salish', was cited or examined by the prosecution to prove either the factum of holding such a meeting or the reasons which necessitated the same. The non-examination of these natural and independent witnesses, without any explanation, gives rise to an adverse inference against the prosecution and further weakens its case.

**77.** Mere reference to the holding of a village 'salish' at the Panchayat does not, by itself, establish that the victim was subjected to torture or cruelty. A 'salish' may be convened for a variety of reasons, including routine domestic discord, misunderstandings, or efforts at reconciliation, and its mere existence cannot be equated with proof of harassment or cruelty unless the specific allegations and outcomes thereof are established through reliable evidence. In the absence of any proof as to what transpired in such a 'salish', who raised complaints, and what findings, if any, were arrived at, the prosecution cannot seek to draw an adverse inference against the accused.

**78.** The factum of torture or cruelty alleged to have been inflicted upon the deceased at her matrimonial home has not, in any manner, been established from the depositions on record. The evidence of the relative witnesses, who are central to the prosecution case, is vague, inconsistent, and bereft of any precise details regarding the nature, frequency, or perpetrators of the alleged harassment. These witnesses have failed to specify when, how, or by whom the victim was purportedly subjected to torture, and no independent or corroborative evidence has been brought on record to substantiate their assertions.

- 79.** The depositions of these witnesses are riddled with omissions and inconsistencies. Material facts, such as the actual circumstances of the victim's death, the alleged incidents of ill-treatment, or the identities of those responsible, have either been left unexplained or have been contradicted by other evidence on record. For instance, while some witnesses speak vaguely of a village 'salish' or complaints made regarding domestic discord, no member of the Panchayat was examined, and there is no independent evidence to show that such meetings in any way demonstrated cruelty or harassment. Similarly, assertions regarding the cause of death, including claims of poisoning, remain uncorroborated and speculative, with no medical or forensic evidence to support them.
- 80.** The cumulative effect of these deficiencies is highly significant. The prosecution has not been able to discharge its primary burden of proof to establish that the victim was subjected to torture or cruelty, or that such conduct had a proximate link to her death. In the absence of cogent, consistent, and credible evidence, the story projected by the prosecution is replete with gaps and uncertainties. As a matter of settled criminal law, where the evidence on record suffers from such material omissions and inconsistencies, the accused is entitled to the benefit of doubt.
- 81.** In this context, reliance is placed on the authoritative pronouncement of the Hon'ble Supreme Court in **Ram Pyarey (supra)**, wherein at paragraph 13, the Court categorically observed that in the absence of reliable and substantive evidence demonstrating harassment or any form of abetment, the court cannot straightway draw a presumption under Section 113A of the Evidence Act. The Court underscored that the

statutory presumption is discretionary in nature and must be exercised with great circumspection, only after the prosecution discharges its primary burden of proving conduct amounting to cruelty or abetment having a proximate nexus with the act of suicide.

**82.** Similarly, in case of **Lalita (supra)**, the Hon'ble Apex Court, at paragraph 22, reiterated that mere allegations, omnibus statements, or vague assertions of ill-treatment are wholly insufficient to attract the presumption under Section 113A. The Court held that unless there is clear, convincing, and credible evidence to show that the accused persons had either aided, abetted, or instigated the deceased to take the extreme step of ending her life, the presumption cannot be invoked. The existence of some form of marital discord or routine domestic differences, without more, does not satisfy the legal threshold required for drawing such a presumption.

**83.** The law, as crystallized by the aforesaid decisions, makes it abundantly clear that there must be positive and proximate evidence establishing a direct link between the conduct of the accused and the suicide of the deceased. Abetment involves a mental process of instigation or intentional aid, and such culpable conduct cannot be inferred in the absence of credible material on record. To presume abetment without foundational proof would amount to reversing the burden of proof in a criminal trial, which is impermissible in law.

**84.** Therefore, in the absence of cogent, consistent, and trustworthy evidence demonstrating harassment or abetment in any form, the

invocation of Section 113A of the Evidence Act is wholly unwarranted, and no adverse presumption can be drawn against the accused.

**85.** Accordingly, where the prosecution evidence fails to establish instigation, proximate conduct, or intentional aid with the requisite mensrea, the accused is entitled to acquittal.

**86.** In view of the above facts and circumstances, I am of the opinion that there is no illegality and material irregularity in the judgement and order of conviction passed by the learned trial court which is not sustainable in law.

**87.** Accordingly, the instant appeal be and the same is **allowed**.

**88.** The impugned judgement and order of conviction passed by the learned trial court dated 30.03.1994 in connection with Sessions Case No. 5 (3)/90 (Sessions Trial No. 2(7)/ 91) arising out of Jaypur Police Station Case No.2 dated 16.08.88 is hereby set aside.

**89.** The appellant nos. 1 and 3 are on bail. They are to be discharged from their respective bail bonds and be set at liberty, if they are not wanted in connection with other cases.

**90.** In accordance with the mandate of Section 437A of the Code of Criminal Procedure (Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023) it is incumbent upon the appellants to furnish bail bonds, accompanied by suitable sureties. Such bonds, once executed, shall remain in full force and effect for a period of six months, ensuring the presence of the appellant as required by law and securing the due administration of justice.

**91.** Let a copy of this judgement along with trial court record be sent down to the learned trial court immediately.

**92.** Urgent Photostat certified copy of this judgement, if applied for, be given to the parties, upon compliance with the requisite formalities.

**(Prasenjit Biswas, J.)**

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