

- 1.** The judgment of conviction and order of sentence dated 24.01.2017 and 25.01.2017 passed by learned Additional District and Sessions Judge, Fast Track Court-I, Raiganj, Uttar Dinajpur convicting the appellants under Section 498 A/ 306 of IPC was challenged on the ground that the learned Trial Judge has failed to consider the evidence on record in its proper perspective. Although the IO was called/summoned for appearing as a prosecution witness during trial, the IO did not appear and as a result of

which the defence was unable to show the contradiction already on the record.

2. Mr. Basu, the learned senior advocate has submitted that the evidence of PWs do not inspire confidence with regard to allegation that the present appellants tortured the victim for dowry or abated the commission of suicide of the victim. The inquest report was signed by 3 persons namely the de-facto complainant, Babla Chanda, cousin brother of the deceased and one Narayan Chandra De Sarkar, the cousin brother of the appellant no. 1. Apart from the father of the deceased the other two witnesses to the inquest report were never examined by the Investigating Agency nor were they ever cited as prosecution witnesses.

3. Mr. Basu has further submitted that the prosecution examined 3 independent witnesses being PW 4, PW 5 and PW 7. Out of these witnesses PW 7, one of the neighbours of the appellants was declared hostile by the prosecution. The deposition of PW 4 and PW 7 are not supportive of the prosecution case. PW 5 was the priest of the marriage of the appellant No. 1 and the victim. No fruitful conclusions could be drawn from the deposition of these witnesses and they were given unnecessary importance by the investigating agency. The inquest Officer i.e. PW 6 has stated in his cross-examination that there was no whisper in his report regarding how or by whom the body of the victim was brought to Raiganj District Hospital. Besides himself, one Executive Magistrate namely, Pravat Chatterjee was also present at the time of conducting inquest over the dead body but his signature was never obtained on the said inquest report nor was he ever cited as a witness to support the prosecution's story. The inquest report also did

not mention the duration of the inquest. The close relatives namely PW 1, the father of the victim, PW2, brother of the victim, PW 3, the mother of the victim were examined but their evidence does not show that the present appellants were ever involved in abating the commission of suicide of the victim.

4. Mr. Basu has further submitted that the Investigating Officer namely SI Mohitlal Mondal was cited as chargesheet witness No. 10. The record reveals that the trial of the instant case was stalled for the want of the examination of the I.O. On several occasions, summons were issued against him but he did not turn up for recording his deposition. A warrant was also issued against him but the same was not executed till 31.05.2016, although his first date of examination was fixed on 05.08.2015. Ultimately, the evidence of the IO was finally closed without being examined. 3 witnesses were cited as defence witnesses and the appellant no. 1, the husband of the victim lady was examined as PW 1 and as per his examination-in-chief he alleged that the members of the family of the victim used to defame him by uttering certain derogatory words whenever he used to visit his paternal house of his wife. His wife could not bear such untoward behaviour of her husband and often told him that she will not keep any relationship with her family members if they continue to do so.

5. Mr. Basu has further pointed out that when the victim lady got pregnant, PW 1 frequently used to take her to the doctor (Gynaecologist) and also named the doctors under whose supervision his wife was being treated. The prescriptions were marked for identification.

6. Dr. Bipasa Adhvaryu, a sonologist by profession was also examined as DW 2.

7. DW 3, Dr. Sachi Nandan Chowdhury proved the blood report of the victim lady which was prepared by him.

8. Mr. Basu has further submitted that no witness has divulged anything showing that there was any abatement for the commission of suicide by the victim. Mr. Basu has referred to a decision of **Wasim vs. State (NCT of Delhi)** reported in **(2019) 7 SCC 435**. Paragraph Nos. 11, 12 and 13 of the said judgment are quoted hereinbelow:

“11. Cruelty is dealt with in the Explanation to Section 498-A as follows:

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

Explanation.—For the purposes of this section, “cruelty” means—

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

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

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.”

9. Mr. Basu has further added that as there is no clear mens rea to commit the offence for conviction under Section 306 IPC, the appellants are entitled to the order of acquittal.

10. The learned Counsel for the State, Mr. Chakraborti has submitted that it is not correct that for non-examination of I.O, the prosecution case suffers any fatal blow. He has referred to a judgment of **Behari Prasad vs. State of Bihar** reported in **1996 Cri L. J. 1653** in support of his contention that for non-examination of the Investigating Officer, the prosecution case should not fail.

11. Mr. Chakrabarti has further drawn the attention of this Court to the inquest/Surathal Report and argued that there were old injuries on the back of the victim which are suggestive of the fact that the victim was under the mental and physical torture at the instance of the appellants. Mr. Chakrabarti has also pointed out that there was a mark of pressing by leg on the right feet. Mark on the down side of the left thigh and stain of some blood was seen on the left earlobe of the victim. The prosecution has, therefore, been able to prove the allegation of torture since the body of the victim contained the marks of injuries. The place of occurrence is inside the premises of the appellants and, therefore, as the unnatural death of the victim occurred within 7 months of her marriage, the appellants are reliable

under Section 304 B of IPC also. The learned Counsel for the State, Mr. Chakraborti has further drawn the attention of this Court to the Post Mortem Report showing that at the time of unnatural death of the victim, she was pregnant.

12. Mr. Chakraborti has specifically drawn the attention of this Court to para 22 of the judgment of **Behari Prasad (supra)**. The **paragraph 22** of the said judgment is quoted hereunder:-

“22. It, however, appears to us that the entire case diary should not have been allowed to be exhibited by the learned Additional Sessions Judge. In the facts of the case, it appears to us that the involvement of the accused in committing the murder has been clearly established by the evidences of the eye witnesses. Such evidences are in conformity with the case made out in F.I.R. and also with the medical evidence. Hence, for non examination of Investigating Officer, the prosecution case should not fail. We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of Investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence.”

13. The learned Trial Judge has considered the evidence in his judgment dated 24th day of January, 2017 and in convicting the appellants under Section 498 A/ 306 of IPC, the learned Trial Judge has discussed the evidence of the prosecution witnesses. He has also recorded in his judgment that non-examination of the I.O does not falsify the prosecution case on the ground that the accused were deprived of the opportunity to effectively cross-examine the Investigating Officer. It is also observed in the judgment that a case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non-examination of the Investigating Officers per say vitiates the trial. Another judgment of 2000 CRI. L.J. 2466, the Supreme Court has also been referred to. In the said judgment it is observed that non-examination of the investigating Officer is of no consequence when the defence has failed to point out any material contradictions in the prosecution case. By referring to two judgments i.e. 2013 Cri. L.J. 3944(supreme Court) the learned Trial Judge held that non-examination of a material witness is not a mathematical formula for discharging the weight of the testimony available on record, however natural, trustworthy, convincing it may be.

Court's view:

14. Admittedly, the victim committed suicide by hanging. The post mortem report has supported this view. The post mortem also shows that the victim was pregnant at the relevant time. Section 498 A of IPC indicates that the magnitude of the torture upon the victim wife would be of such a nature that would drive her to commit suicide. Indeed it is very much relevant that a married lady having 7 months foetus will not commit suicide unless the

magnitude of torture is of such a nature and gravity that she thinks it is better to commit suicide rather than to live a life like an animal. Now, this is not a case under Section 304B of IPC and, therefore, the prosecution is under a heavy duty to prove such serious torture upon the victim at the instance of the appellants.

15. PW 1 Charitra Ranjan Chanda has stated that his daughter has narrated “Tomra Amake amon jaigay biye diyecho, jekhane ami sikshito hoye kono marjada paina.” PW 1 has also submitted that there was demand for mangal sutra, pressure cooker, sofa set etc. and he filled up her demand. PW 1 has further stated after becoming pregnant the victim received a call letter for service for multipurpose Nursing but the family members of the husband of the victim created pressure on her for aborting her pregnancy which she did not agree with. PW 1 has categorically stated that there was a pressure from the in-laws of the victim for aborting her child. In his cross-examination PW 1 admitted that he did not state the Police and Magistrate and in his FIR that his daughter stated him that “Tomra Amake amon jaigay biye diyecho, jekhane ami sikshito hoye kono marjada paina.” He has also stated therein that he did not narrate the Police and Magistrate and in his complaint that he purchased mangal sutra and gave it to the victim. He did not narrate to the Police and Magistrate and in his complaint that his daughter demanded household articles like pressure cooker, sofa set etc. on several occasions and he filled up her demand. He did not state before the Police and the Magistrate and in his complaint that his daughter became pregnant and she received a call letter for service. In fact, the cross-examination of PW 1 shows that he did not make any previous statement of

the allegations which he made before the Trial Court at the time of his examination as PW 1.

16. PW 2 Ajay Kumar Chanda, the brother of the victim has also deposed that the accused used to inflict torture upon the victim physically and mentally on the plea to abort her pregnancy. The victim did not agree to abort her pregnancy. The victim disclosed to him that the accused persons did not agree to bear the expense in respect of her treatment. PW 2 assured her to meet all the expenses on 14.02.2007. He went to her in-law's house and gave Rs. 15000/- in the hand of the victim. On 22.02.2007 he came to know from his father through telephone that the victim is no more. The victim according to PW 2 committed suicide due to mental and physical torture inflicted by the accused persons for abortion her pregnancy. In his cross-examination, he has stated that he was inflicted by the appellants on 28th February, 2006. He has stated before the police what he stated before the learned Trial Judge during his evidence.

17. PW 3 the mother of the victim Archana Chanda has deposed that her daughter and her husband demanded a motorcycle from her. He also demanded another article. She paid Rs. 30,000/- for purchasing a motorcycle and she paid the same in the hand of her son-in-law in presence of her daughter. After a few days, her son-in-law said that the appellant no. 1 again demanded a finger ring with stone from her. She met the demand of appellant no. 1 as per her capacity. Her daughter told her that the accused insisted on her getting a job. Her son-in-law demanded Rs. 50,000/- from her daughter for getting the job and accordingly, her daughter, the victim demanded the same from her. The victim withdrew money from her account

in the post office which was deposited prior to her marriage. Thereafter, disturbance cropped up out of the issue of her abortion. Her daughter did not agree to abort her pregnancy. On 07/08th January, the father-in-law of the victim was admitted to Upasham Nursing Home. The mother-in-law of her daughter asked PW 1 to meet them at the said Nursing home for a discussion on the issue of abortion of the pregnancy of her daughter. At that time, her daughter was carrying for six months. PW 1 went to the nursing home but he was very much annoyed. On the same day the appellants took her daughter to the said nursing home and created pressure on her for her abortion. But her daughter started crying. Subsequently, the husband of the victim created pressure for her abortion. On 2nd February, 2007 they were informed that their daughter was admitted in the Raiganj District Hospital and going there the husband of PW 3 found that their daughter was lying dead on the table. Family members of the appellant said that the accused persons killed her daughter by hanging. Apart from Debashis no other accused was present at the hospital at that time.

18. A neighbour of PW 1 namely Alok Datta was examined as PW 4. He did not state anything about the demand of dowry. On the other hand, he has stated that the husband of the victim and his relatives asked her to get a job. In the meantime the victim became pregnant. The victim applied to Sahapur Health Centre for the post of A.N.M and her name was enlisted. In the meantime the accused persons tried to abort the pregnancy of the victim so that she can easily join in her job. Due to torture of the accused both physically and mentally the victim committed suicide. In his cross-examination, he has admitted that he cannot say whether any interview was

called for the said post of A.N.M. He cannot say on which date the victim appeared for her interview. But he found her name in the list at Raiganj B.D.O. Office.

19. PW 5 the priest of the marriage of the victim with the appellant no. 1 was examined who has stated nothing about the dowry demand or abortion.

20. PW 6 Md. Ejabul Haque was examined as he prepared the inquest report.

21. PW 7 Shilpi Roy a neighbour of the appellants was examined but she was declared hostile.

22. PW 8 Pradip Kr. Chakraborty, retired DSP who received the complaint from PW 1 and recorded the same as Raiganj PS Case No. 64/07 dated 23.02.2007 under Section 498A/306 IPC, has identified the relevant endorsement on the Exhibit 1 and also proved the formal FIR of Raiganj P.S. It appears that PW 8 was examined on 05.08.2015 and examination of the accused under Section 313 Cr.P.C. was done on 07.06.2016. Therefore, it is not correct that the case was pending for 8 years for examination of the Investigating Officer.

23. Upon evaluating the testimonies of the victim's close relatives, significant contradictions emerge regarding the alleged demand for dowry:

23.1. Father's Testimony (PW 1):

PW 1 stated that he purchased a Mangalsutra and handed it to his daughter. He further deposed that she frequently requested household items—such as a pressure cooker and a sofa set—which he provided.

However, these assertions are entirely absent from the testimony of the victim's mother (PW 3).

23.2. Mother's Testimony (PW 3):

PW 3 deposed that her daughter and son-in-law demanded a motorcycle, for which she paid ₹30,000 directly to the son-in-law in the presence of her daughter. She further claimed that Appellant No. 1 later demanded a stone-studded finger ring, which she fulfilled according to her capacity, and that he subsequently demanded ₹50,000 to assist the victim in securing employment. Astonishingly, none of these specific monetary and itemized demands were mentioned by PW 1.

24. While requests for household articles from a married daughter to her parents may arise out of natural love and affection, they do not automatically constitute an offense. There is no documentary evidence indicating that the victim withdrew funds from her pre-marriage post office savings account to fulfil these alleged demands. Independent witnesses failed to corroborate any allegations regarding dowry demands. Consequently, the prosecution has failed to establish the allegation of dowry demand beyond a reasonable doubt.

25. While prosecution witnesses (PW 1 to PW 4) asserted in unison that the accused pressed the victim to abort her pregnancy, the following premise remains unsubstantiated:

25.1. The prosecution argued that the accused sought the abortion so the victim could immediately take up an appointment as an

Auxiliary Nurse Midwife (A.N.M.). However, no official enlistment, selection order, or documentary proof from the concerned authority was produced to show she was ever selected for the post.

25.2. Even assuming pressure was exerted regarding the pregnancy, domestic disagreements or pressure concerning abortion do not automatically satisfy the statutory ingredients of abetment to commit suicide without clear, convincing evidence connecting such pressure directly to the act of suicide.

26. The relevant provisions of Section 306 & 107 IPC are to be looked into:

“Section 306, IPC (Abetment of Suicide): *"If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

Section 107, IPC (Abetment of a Thing): *"A person abets the doing of a thing, who— (First) — Instigates any person to do that thing; or (Secondly) — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or (Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing."*

27. Abetment strictly requires proof of instigation, conspiracy, or intentional aid as defined under Section 107 of the IPC. In the present case,

there is no concrete or material evidence demonstrating that the appellants actively instigated, conspired, or intentionally aided the victim in committing suicide. General marital discord or domestic wear and tear cannot be elevated to the threshold of criminal abetment or cruelty under the IPC without direct proof.

28. The record reveals that PW 8 was examined on 05.08.2015, while the examination of the appellants under Section 313 Cr.P.C. took place on 07.06.2016. The case remained pending for nearly ten months solely for the examination of the I.O., whom the prosecution ultimately failed to produce.

29. While non-examination of an I.O. may not be fatal in every case, it causes serious prejudice here. PW 1 admitted during cross-examination that several material statements divulged during the trial were never stated to the I.O.

30. Key details deposed by PW 1, PW 2, and PW 3 during trial were completely absent from the First Information Report (FIR). While an FIR is not expected to be an encyclopaedia of events, such significant material omissions indicate a clear tendency toward embellishment and improvement during trial.

31. In light of the major discrepancies, lack of independent corroboration, missing documentary evidence, and procedural flaws, the prosecution has failed to establish the charges under Sections 498A and 306 of the IPC beyond a reasonable doubt. The appellants are accordingly entitled to the benefit of the doubt.

32. The judgment of conviction and order of sentence dated 24.01.2017 and 25.01.2017, passed by the learned Additional District and Sessions Judge, Fast Track Court-I, Raiganj, Uttar Dinajpur, convicting the appellants under Sections 498A and 306 of the IPC, are hereby set aside.

33. The appeal being **CRA 76 of 2017** is hereby **allowed**.

34. The appellants are acquitted of all charges under Sections 498A and 306 of the IPC. They shall be set at liberty forthwith, unless required in connection with any other case, and are discharged from their bail bonds.

35. The Trial Court Records, along with a certified copy of this judgment, shall be transmitted to the learned Trial Court forthwith for information and necessary compliance.

36. All parties shall act on the server copy of this order downloaded from the official website of this Court.

37. Urgent photostat certified copies of this judgment, if applied for, shall be issued upon compliance with all requisite formalities.

[Apurba Sinha Ray, J.]