

**In the 18th Court of Additional Sessions Judge,
Alipore, South 24 Parganas.**

**Present : Smt. Kaberi Basu
Additional Sessions Judge,
18th Court, Alipore
South 24 Parganas**

**S. T.Case No.10(07)08 WBSP04-000048-2008 & S.C.No.93(04)08
(In connection with B.G. R. case no.305/2007)
Bishnupur P. S. case no. 28/2007 dt. 28.01.2007**

The State

Vs.

Sanat Kumar Biswas

..... Accused person

Charge U/Secs..... 498A/306 of the I.P.C.

For the State : Sri Ramaprasad Basu

For the accused. : Sri Subhamoy Sammadar

Judgement delivered on : 31.08.2017

: J U D G E M E N T :

Apart from details, the prosecution case in a nutshell is that, on 28.01.2007 one Sanjoy Mondal S/O Late Mihirlal Mondal of Village Mukundapur, P.O-Khangramurih, P.S-Bishnupur lodged a written complaint before the O.C, Bishnupur P.S to the effect that in the year 2004, on the next day of Saraswati Puja his daughter Tofa Mondal, aged 20 years was married to Sanat Biswas, S/O Anath Biswas of Village Vetkia according to Hindu Rites and Customs. After the marriage the couple led their conjugal life peacefully for a considerable period but thereafter the bride groom Sanat started picking up quarrel and also assaulting Tofa on the pretext of house

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hold works and family property and money. At different points of time Tofa used to narrate the incidents to her father but the complainant did not inform anybody else expecting that the matter will be pacified during the course of time. But the degree of such physical and mental torture increased day by day. On 23.01.2007 it was reached its optimum level. At about 8.00 A.M on 24.01.2007 Tofa was found hanging from the bamboo groves of Ashoke Mondal, S/O Late Nidhiram Mondal of village Mukundapur. The complainant prayed for justice before the police.

On the basis of the written complaint police started Bishnupur P.S Case No.28/2007, dated 28.01.2007 under section 498A/306 of the I.P.C.

The accused Sanat Kumar Biswas was arrested and produced before the then Ld.C.J.M, Alipore, South 24 Parganas on 31.01.2007 and he was refused bail. The investigation proceeded with and on 14.03.2007 charge sheet has been submitted against accused Sanat Kumar Biswas under sections 498A/306/304B of I.P.C and section 3 /4 of the Dowry Provision Act. Cognizance was taken and the accused was granted with bail by the Ld. Sessions Judge, Alipore, South 24 Parganas under section 439 Cr.P.C. After service of the copies under section 207 of the Cr.P.C, the case has been committed to the court of Ld. Sessions Judge, South 24 Parganas, who, in due course, has been pleased to transfer the case to the erstwhile 10th Fast Track Court, Alipore, South 24 Parganas for trial and disposal. On 25.07.08 Vide its order No.6 the transferee court was pleased to frame charge under section 498A/306 I.P.C against the accused Sanat Kumar Biswas. When the charge has been read over and explained to the accused he pleaded not guilty and claimed for trial.

The trial started accordingly.

During the course of evidence of the case the erstwhile 10th Court of F.T.C was abolished by administrative order and it has been converted into the 18th Court of Additional District & Sessions Judge, Alipore, South 24 Parganas.

The prosecution, in order to prove its case, examined in total 14 witnesses of whom the P. W. 1 is the defacto complainant Sanjoy Mondal, P. W. 2 is Sujoy Mondal, P. W. 3 is Smt. Bharati Mondal, P. W. 4 is Biswanath Halder, P. W. 5 is Lakshman Pramanick, P. W. 6 is Brindaban Naskar, P. W. 7 is Basanti Mondal, P. W. 8 is Protul Chandra Biswas, P.W.9 is Pronay Mondal, 10 is Sannyasi Halder, P.W.11 is Fatik Mukherjee, P.W.12 is Anita Mondal, P.W.13 is Bijan Kumar Gayen and P.W.14 is Somnath Sarkar the I.O of this case.

Documents have been marked from Exbt. 1 to Exbt. 5/1 in favour of the prosecution, whereas the defence has examined none to support his case except for the accused person himself u/sec. 313 Cr. P. C. and no document has been filed on his behalf.

From the trend of the cross-examination of the prosecution witnesses and the examination of the accused person U/S 313 Cr.P.C. the defence case appears to be an admission of the marriage between the accused and Tofa Mondal (since deceased) but not of a negotiated marriage but as an outcome of their love affairs, in which the family of Tofa had no consent. It is the further defence case that there was continuous mental pressure from her paternal relations for breaking up the marriage tie which resulted in committing suicide by her. The accused pleaded of total innocence and of allegation of false implication.

After consideration of the respective cases of the parties, the following points have been taken up to be considered to decide this case:

:Points for decision:

1. Is the prosecution successful in bringing home the charge u/sec. 498A I.P.C. against the accused person beyond all reasonable doubts and disputes ?
2. Is the prosecution successful in bringing home the charge u/sec. 306 I.P.C. against the accused person beyond all reasonable doubts and disputes ?

:Decision with reasons:

I am taking the two points for discussion at a time for the sake of brevity and convenience as well as to avoid repetitions including the fact that the decision in respect of one point is closely co-related with the decision of another point.

In order to establish a charge U/S 498A of I.P.C. the incumbent duty caste upon the prosecution is to prove that the husband and/or the relatives of the husband of a married lady subjected that lady to cruelty, either physical or mental or both, specially on the demand of dowry.

In the instant case of ours the marriage in between the accused Sanat Kumar Biswas and the victim Tofa Mondal is admitted. Similarly the unnatural death of Tofa is also admitted.

In such admissible circumstances, now let us start our discussion with the analysis of the oral testimony on record.

Sanjoy Mondal, the P.W.1 is the father of the victim and the defacto complainant of this case. According to him the marriage of his daughter Tofa with the accused Sanat was solemnised as per Hindu Rites and Rituals and thereafter Tofa went to her matrimonial home at village Vetkia, P.S- Bishnupur and there she led happy matrimonial life for two months. After that the accused started torturing upon her on demand of money and even he tortured his wife physically and mentally having liquor. Tofa informed her father regarding such torture upon her and the matter was conveyed to the villagers of Sanat Biswas and a salish was held to that effect where Sanat himself, his father and elder brother assured that they would never torture Tofa. Subsequent to the salish Tofa lived peacefully for some period but again the torture recurred. Tofa again disclosed the matter to her mother and uncles. According to him the accused disclosed himself as working in a private company at the time of marriage but Tofa disclosed that her husband

used to torture her demanding money for the business. On 23.01.07 Tofa came to the house of P.W.1 and wanted Rs.150/- towards the treatment of the accused and Tofa's mother paid that money. This portion has been objected to by the defence and it can be seen that there is no statement to that effect under section 161 Cr.P.C and it appears to be an exaggeration. Sanjoy Mondal further stated that on 24.01.07 four boys of village Vetkia came and disclosed that Tofa died. Immediately the P.W.1 with others rushed to the bamboo grove of Ashoke Mondal in village Mukundapur and found that she was in a hanging condition by sari and also found some marks on the wrists of two hands. P.W.1 informed the matter orally to Bishnupur P.S. Police came and visited the P.O as well as the house of P.W.1. Then P.W.1 submitted one written complaint which was wrote by his nephew Pranoy Mondal (Exbt-1). According to P.W.1 he was present at the time of holding inquest by police and the Ld. Magistrate and he proved his signatures as witness on the carbon copy of the inquest reports (Exbt-2/1) and (Exbt.3/1) respectively. He also proved his signature on the seizure list dt. 29.01.04 (Exbt-4/1). He identified the accused on dock.

In the acid test of cross examination the P.W.1 stood on the same point that on the previous day of the fateful incident Tofa returned to her matrimonial home after taking Rs.150/- on the pretext of giving medical aid to her husband but after a few lines he states that as he was outside the village on the date of death of Tofa, after receiving the death news he rushed to the P.O which was the bamboo grove of Ashoke Mondal. Even though he denied that it was not possible for him to say as to where Tofa went on the previous day from his residential house but he stated that he did not accompany her on that date. According to him though Tofa was a literate lady she did not keep any paper or made any allegation against the accused person in writing, otherwise he denied all the suggestions put to him by the defence. Admittedly Tofa and Sanat had visiting terms to the house of P.W.1, similarly the P.W.1 and P.W.3 had visiting terms to the house of the accused. It is also admitted that the P.W.1 nowhere made any complaint in writing, not even before the panchayat authority of either village.

The P.W. 2 Sujoy Mondal is the paternal uncle of deceased Tofa. According to him he is residing in the house of P.W.1 and Tofa was his niece. Tofa got married on the next day of Saraswati Puja of 2004 with Sanat Biswas of village Vetkia, P.S-Bishnupur. This witness also deposed about the alleged torture in the same manner like P.W.1 but added that the accused used to dash the head of Tofa against the wall. He inflicted the torture with the demand of money for business. According to him after two years of marriage Tofa was killed on the next date of Saraswati Puja. On receiving the information of death of Tofa they went to the matrimonial house and enquired about her there and while returning some para people told them that Tofa committed suicide by hanging and he narrated the incident to police.

He deviated from his statement in cross examination to the extend that his house and the house of Tofa Mondal are situated at a distance of five minutes by foot. The P.W.2 failed to tell the exact date of marriage of Tofa though in his examination in chief he stated that it was the following day of Saraswati Puja 2004. Similarly in his cross examination he stated that he cannot say the cause of the death of Tofa.

The mother of the victim, the P.W.3, Smt. Bharati Mondal also deposed in her evidence in chief like P.W.1 and P.W.2 but she made some addition by stating on oath that at the marriage ceremony of her daughter, Tofa, they gifted household articles including cot, almirah, showcase, gold ornaments and other household articles amounting to Rs. 1,50,000/- and also paid cash of Rs.50,000/-. According to her, Tofa herself narrated the incident of alleged torture upon her by the accused and that thereafter Tofa was killed by the accused by hanging her with her wearing sari in a bamboo grove at Mukundapur. She was also examined by police.

This witness also deviated from her statement during cross examination when she stated that she was not interrogated by the I.O and it is her admission that Tofa had no issue and was in mental agony and pain for not having any child. She again admitted that the accused also took

attempts and steps for her medical treatment. It appears to the court that this lady is not tutored witness because she admitted that they had no consent in the marriage of Tofa with Sanat.

The P.W.4 Biswanath Mondal appears to be the uncle of Tofa who is resident of village Vetkia, i.e a co-villager of the accused person. He stated that he was present in the marriage of Sanat and Tofa and before marriage the accused disclosed that he was engineer by profession. After marriage Tofa went to her matrimonial home and when she used to visit her paternal house she disclosed that Sanat was not an engineer and actually he is unemployed. According to this witness the conjugal life of Tofa was not at all good because she has been subjected to cruelty, both physical and mental, on repeated demand of cash from the parent's house of Tofa. The parents of Tofa, in order to bring peace, used to pay cash to Sanat on most of the occasions. Tofa died in the year 2006 and got married in the year 2004. It is the version of P.W.4 that on the next date of Saraswati Puja of 2006 one para boy informed him that Tofa was found hanging by her wearing sari in the bamboo groves of Ashoke Mondal. Then they immediately went to the said bamboo groves and found her in hanging condition and also noticed some marks of physical assault on her person. P.W.4 was examined by police and he proved his signature on the seizure list dt.29.01.07 (Exbt.3/2). During cross examination the P.W.4 stated that Tofa was actually the daughter of his brother in law (Shala) and he saw Tofa two weeks prior to her death for the last time. This witness in cross examination failed to say that how Tofa died. The other suggestions given to this witness have been denied by him but he admitted that he is deposing falsely as he is closely related to Tofa. The last sentence of the cross examination makes the evidence of P.W.4 fully unbelievable and it cannot be relied upon.

Lakshman Pramanick claims himself as the barber who took part in the rituals of a barber in the marriage of Tofa with Sanat. Here, as P.W.5 he stated that he has heard that Tofa died of committing suicide by hanging but failed to say anything regarding the marital life of the victim. The cross examination has been declined.

The P.W.6 Brindaban Naskar is the co-villager of the defacto complainant Sanjoy Mondal. According to him the marriage between Tofa and Sanat Biswas of Vetkia was solemnised on 2nd Falgun, 1411 B.S as per Hindu Rites and Customs. It is further version that after four months of Tofa's marriage a dispute arose in her marital life. Once Tofa came and in his presence reported to her father that she was subjected to brutal torture by her husband at her matrimonial home. Being reported by Sanjoy Babu P.W.6 along with Sanjoy Mondal and others went to the matrimonial abode and tried their level best to solve the problem and console Tofa. Thereafter they lived peacefully for some months. Sanat had no income of his own and continuously demanded money from Tofa and also told her to bring the same from her father's house. The P.W.6 again stated that after hearing it the father of Tofa gave some money to Sanat in 2 /3 occasions, sometimes purchased grocery and other articles and gave the same to Sanat. Even the P.W.6 stated that Sanat demanded Rs.10,000/- from Tofa again and told her to fetch the same from her father's house. Tofa told everything to her father who assured her to pay that amount as a result of which the couple lived peacefully. In the month of Magh at the time of Saraswati Puja, Tofa was found missing from her matrimonial home and subsequently found in a hanging condition in the 'Bansh Bagan' of Ashoke Mondal.

During cross examination this witness affirmatively stated that he was interrogated by the I.O after four days of the fateful incident and in presence of many co-villagers.

Basanti Mondal, the P.W.7 stated that Sanjoy Mondal is her brother in law. He had a daughter named Tofa whose marriage was solemnised with Sanat Biswas according to Hindu Rites and Customs. Tofa died subsequently. She also knows Sanat Biswas and that he was a private tutor. This witness failed to say the actual cause of action of the death of Tofa as well as how was her marital life in her matrimonial home. She only stated that she has seen the body of Tofa hanging from a bamboo tree inside a ground situated at some distance from their village. Her cross examination was also declined.

Almost identical to the statement of P.W.7 is the evidence of P.W.8, Pratul Chandra Biswas. His cross examination has similarly been declined.

It is the evidence of Pranoy Mondal, the P.W.9 that Tofa was the daughter of his uncle and her marriage was solemnised with Sanat Biswas on 14th February, 2005 according to Hindu Rites and Customs. After marriage Tofa went to her matrimonial home with the accused and led her conjugal life there. She stayed in her matrimonial abode peacefully for only 2/ 3 months, thereafter Sanat started torturing upon Tofa both physically and mentally, he even assaulted her. Tofa used to narrate the incident before them when she visited her father's house. The P.W.9 further stated that once they went to the matrimonial abode of Tofa to settle the matter and after settlement she used to stay in her matrimonial home. But the same-thing recurred after 5/ 6 days and the accused increased the degree of torture. Ultimately on 22.01.07 Tofa left her matrimonial home due to unbearable torture. The witnesses got that news and tried their level best to trace out Tofa but failed. Subsequently on the following morning at about 8:00 hrs a boy reported that Tofa committed suicide in the bamboo bangan of Ashoke Mondal. Hearing that news the P.W.9 along with others went to the spot and noticed her body in a hanging condition from a bamboo tree. According to him Tofa committed suicide with the help of a sari, police were informed, they came there and subsequently P.W.9 Pronoy Mondal went to the P.S and submitted the written complaint which was written by him as per direction of the senior members of his family. He proved the entire written complaint (Exbt-1). He also put his signature on the seizure list (Exbt-3/3).

During cross examination this witness stucked to his evidence in chief. Rather he admitted that he went to the Marriage Registrar of Amtala along with Tofa and Sanat 6 months prior to their social marriage . He also admitted that both Tofa and Sanat signed in the Marriage Registry Office in his presence and similarly, he also signed as witness in their Marriage Registration Certificate. He again admitted that Tofa had love affairs with Sanat and that their marriage was the result of such love and that the father of Tofa knew that they went to the office of Marriage Registrar, Amtala for registration of the marriage.

I cannot consider the evidence of P.W.10- Sannyasi Halder and P.W.11-Fatik Mukherjee because their evidences have not been signed by my Predecessor in Office.

Anita Mondal, the P.W.12 stated that mother of Tofa namely, Bharati mondal, happens to be her 'Jaa' by relation. This witness continuously tried to establish that the marriage of Tofa with Sanat was negotiated one.

The P.W.13, Bijon Kumar Gayen, is quite similar in evidence to that of P.W.12. Nothing new could be achieved from him.

The P.W.14, Somnath Sarkar is the I.O of this case and he elaborately proved the steps taken by him during the course of investigation. He proved the formal F.I.R (Exbt-5), and the endorsement of the R.O on the formal F.I.R (Exbt.5/1). According to him during investigation he visited the P.O, made rough sketch map of the same, examined the available witnesses, recorded their statements under section 161 Cr.P.C, seized photographs of marriage between the accused Sanat Biswas and victim Tofa Biswas, seized the viscera and wearing apparels of the victim, arrested the accused Sanat Biswas, forwarded him to Ld. Court, collected the supplementary Case Diary, copy of police inquest, copy of Magisterial inquest and P.M report and thereafter obtaining permission of his Superior Officers submitted charge sheet against the accused Sanat Biswas under sections 498A/306/304B I.P.C and 3 /4 of the D.P.Act.

During his cross examination he corroborated some portion of the statement of P.W.1 to the effect that he stated before him (P.W.14) that on 22.01.2007 when he (P.W.1) was not at home, at that time Tofa came to their house and asked money amounting to Rs.150/- which was required for treatment of her husband. The P.W.14 admitted that at the time of interrogation of the de facto complainant he did not tell him(P.W.14) that the accused was in the habit of taking liquor or that the accused used to inflict torture upon her on the demand of money for his business purpose. It

is his further admission that he did not seize any General Diary though when any information regarding any cognizable offence comes to a P.S, General Diary is required to be drawn up. Admittedly in Column No.14 of the formal F.I.R there is no signature of the de facto complainant and in Column No.11 of the said document there is no mentioning of any inquest and P.M number. The other questions which were put to him as suggestions, have been denied by the P.W.14.

This is the entire oral testimony on record.

Before finally expressing the reasons for coming to the decision I would like to discuss the documentary evidence on record.

The Exhibit 1 is the written complaint where there is no whisper that some cash and kinds were given at the time of the marriage of the victim

with the accused. Moreover there is also no mention of any Salish as alleged by the witnesses. In addition thereto continuously the witnesses for the prosecution tried to hammer on the point that the marriage between the victim and the accused was a social one but that attempt has been nullified by P.W.3, the mother of the victim and P.W.9 Pronoy Mondal when they admitted that the marriage was an outcome of the love affairs between Tofa and Sanat. Pronoy, in addition thereto, also admitted that he accompanied the bride and the bride groom to the Registry Office where the marriage was registered and that he was also a witness to that marriage. These statements fixed the last nail into the coffin of the very plinth of the prosecution case.

Secondly, though the signature of P.W.1 has been proved on the carbon copy of the inquest report held by police, the body of the inquest report has not been proved at all. Similarly the signatures of P.W.1- Sanjoy Mondal, P.W.9- Pronoy Mondal and P.W.4- Biswanath Halder have been proved on the seizure list dt. 29.01.2007, the seizure list itself has not been proved. In the same manner the signatures of P.W.1 and P.W.2 have been proved on the Magisterial inquest report but the contents of the same as

well as the signatures of P.W.4 and P.W.9 thereon have not been proved at all.

The first and foremost ingredient to constitute an offence under section 498A I.P.C is admitted one in the instant case because nobody, including the accused himself in his examination under section 313 Cr.P.C, admitted the marriage of Tofa with accused Sanat. But from the very beginning the accused was claiming that his marriage was not at all a negotiated one and that it was not governed by Hindu Rites and Customs which gets strength in the evidence adduced by the prosecution witnesses.

Secondly, the other ingredient that Tofa, being a married lady, was subjected to cruelty, both physical and mental, also does not get support in the evidence for the prosecution. It is expected that when there is a written F.I.R which has been lodged immediately after the discovery of the fact of unnatural death of the victim, does not disclose any allegation regarding demand or payment of dowry by Tofa of her family members. In a criminal case, the F.I.R appears to be the mirror of the entire incident and allegations which are not applicable to this case. We cannot also go through the contents of the inquest reports for the lacuna on the part of the prosecution. Admittedly nowhere any complaint has been made regarding the alleged torture upon Tofa which can fill up the lacuna of the prosecution in this respect. Accordingly, I have no option but to hold that the prosecution has failed to establish the charge under section 498A I.P.C against the accused Sanat Biswas.

Next comes the alleged charge under section 306 I.P.C. The prominent draw back of the prosecution here is that, it has failed to produce any P.M report. Secondly, it has not come to the surface that being unable to tolerate the alleged torture by the accused, Tofa was compelled to commit suicide. Thirdly, there is no story of abetment by the accused upon Tofa which resulted in her committing the suicide. There is no doubt that Tofa died of unnatural death and also probably by committing suicide, the seized articles such as her wearing apparels have not been produced or proved during the course of trial. It is painful to engulf the death of a lady in

unnatural way but as a Court of Law there is no question of any sentiment. The prosecution witnesses, themselves, somewhere stated that Tofa has been murdered by the accused and somewhere stated that Tofa committed suicide by hanging herself. This dilemma could be solved if the P.M report has been placed before this Ld. Court but the same has not been even produced. We are also not getting that Tofa has been subjected to such cruelty that she had apprehended that if she or her near relatives could not meet the alleged demand of the accused, her or the near relatives' live/lives will be under threat.

So according to the considered view of this Court the prosecution has failed to prove the charge under section 306 I.P.C against the accused beyond all reasonable doubts and disputes.

Any charge under section 306 I.P.C can be brought in any case where there is allegation that somebody abetted the victim to commit suicide. But in the present case, the prosecution story is that the charge under section 306 I.P.C has been preceeded by an offence under section 498A I.P.C which the prosecution failed to establish.

Accordingly, it is held that the prosecution has utterly failed to bring home the charge under section 498A I.P.C and/or section 306 I.P.C beyond all reasonable doubts and disputes and the accused is, thus, entitled to be acquitted from this case.

Hence, it is,

: ORDERED :

that the accused person, namely – Sanat Kumar Biswas is found not guilty of committing offences punishable u/secs. 498A/306 of I. P. C.

Accordingly, he is acquitted u/sec. 235(1) of Cr. P.C. and he be set at liberty forthwith. He is also discharged from his respective bail bond/bonds at once.

The seized articles, if any, be destroyed after expiry of the period of Appeal.

Dic. & corr. by me:

(KABERI BASU)
Additional Sessions Judge,
18th Court, Alipore.
South 24 Parganas
31.08.2017.

Addl. Sess. Judge.