

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**Crl. A. No. 89 of 2009**

Sri Majid Miah,  
son of late Janab Ali,  
resident of Village-Biterban, Bhati Abhoynagar,  
P.S. West Agartala  
District – West Tripura

.....**Appellant**

**– Vs –**

The State of Tripura  
Represented by the Secretary to the  
Government of Tripura, Department of Home,  
Agartala

.....**Respondent**

**B E F O R E**  
**THE HON'BLE MR. JUSTICE S. TALAPATRA**

|   |                               |
|---|-------------------------------|
| For the appellant                                   | : Mr. A. Pal, Advocate        |
| For the respondent                                  | : Mr. R. C. Debnath, Addl. PP |
| Date of hearing and delivery<br>of Judgment & order | : <b>31.07.2014</b>           |
| Whether fit for reporting                           | : <b>NO</b>                   |

**JUDGMENT & ORDER (ORAL)**

Heard Mr. A Pal, learned counsel appearing for the appellant as well as Mr. R. C. Debnath, learned Addl. PP appearing for the State.

**02.** This is an appeal by the convict against the judgment and order dated 16.11.2009 delivered in ST126(WT/A) of 2008. By the said judgment, hereinafter referred to as the impugned judgment, the appellant was convicted under Section 498-A of the IPC for afflicting cruelty on her wife namely Jyotsna Begam and as consequence of that conviction he was sentenced to suffer RI for two years and six months and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer RI for a further period of three months.

**03.** At the instance of one Sahed Miah, PW-1, the father of deceased Jyotsna Begam, Agartala Women PS Case No.77 of 2007 under Sections 498-A/302 was registered on a written ejahar dated 16.08.2007 where it has been disclosed that from two years after the marriage Jyotsna Begam, deceased wife of the appellant was subjected to torture and his deceased wife had not been provided with the food and cloths. There was a village meeting to ironing out the differences between the appellant and his deceased wife. It has been further disclosed that the appellant used to threat his deceased wife that he would kill her. On 15.08.2007, the appellant and some other people had transported the deceased wife of the appellant to the IGM Hospital where after few hours she was declared dead.

**04.** After the investigation was complete, the final police form chargesheeting the appellant was filed. Since the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions, the case was committed to the Court of the Sessions Judge, West Tripura, Agartala. The Sessions Judge, however, had transferred the case to the Court of the Addl. Sessions Judge, West Tripura, Agartala, Court No.3 for conducting the trial in accordance with law. The charges under Sections 498-A and 302 of the IPC were framed by the Addl. Sessions Judge, West Tripura, Agartala, Court No.3. The charges were denied by the appellant and he had claimed to face the trial.

**05.** In order to substantiate the charge, the prosecution adduced as many as 15 witnesses including the doctor who carried out the post-mortem examination over the body of the deceased, namely Shri Ranjit Kr. Das, PW-11, the investigating officer namely Smti. Ila Deb, PW-15 and the father of the deceased namely Sahed Miah, PW-1. The prosecution has introduced in the evidence as many as 8 documents including the excerpts

from the statement of three witnesses namely Smti. Abiya Bibi, Md. Kusu Miah and Md. Abu Taher. After recording the evidence of the prosecution, the petitioner was examined under Section 313 of the Cr.P.C. when the appellant denied all the incriminating materials those surfaced in the evidence.

**06.** On the purported appreciation of the evidence, the Addl. Sessions Judge, West Tripura, Agartala, Court No.3 returned the impugned findings of conviction which have been questioned in this appeal

**07.** Mr. Pal, learned counsel for the appellant has succinctly submitted that the appellant has been convicted under Section 498-A even though there is no evidence on record to show that the appellant can be held guilty of committing the offence punishable under Section 498-A of the IPC. Mr. Pal, learned counsel for the appellant has further submitted that the death of his deceased wife is natural one as would be evident from the testimony of PW-11 and the findings of the post mortem report as regards the cause of death, Exbt.8. He has further submitted that there was no unlawful demand or any harassment for realising that demand. There were allegations of torture as the deceased wife of the appellant was raising her voice against the appellant for maintaining discreet sexual relations with some women when the other set of witness, according to Mr. Pal, learned counsel for the appellant, has stated that he contracted the second marriage in subsistence of the marriage between the deceased and the appellant. Mr. Pal, learned counsel for the appellant has suggested that such marriage may cause anguish but there is no evidence that there was any torture of such degree that might lead the deceased commit suicide or cause harm to her person or limb. No occurrence or incident, indicative of such act is borne in the record. The allegations are mostly sweeping in nature and Mr. Pal,

learned counsel has contended after drawing attention to the contents of the written ejahar that initially the appellant was accused of killing her wife. But according to the post mortem doctor the death is for cardio respiratory failure. Even though two witnesses, viz. PW-3 and PW-13 have stated that the appellant confessed that he throttled the deceased. Mr. Pal, learned counsel has submitted that such version is absolutely unbelievable inasmuch as no external injury was found at the time when the post mortem was carried out. Mr. Pal, learned counsel has further submitted that none of the witnesses who deposed of torture on the deceased was the eye witness of any alleged torture and they have stated without ambiguity that they heard of such incidents from the deceased. Mr. Pal, learned counsel as such submitted that such statement of the deceased as communicated to the witnesses is not at all within the purview of the provisions of Section 32(1) of the Indian Evidence Act. To support his contention Mr. Pal, learned counsel has relied on a decision in ***Bhairon Singh vs. State of Madhya Pradesh*** reported in ***(2009) 13 SCC 80*** where the apex court has reiterated the law as under:

***"13. The moot question is: whether the statements attributed to the deceased could be used as evidence for entering upon a finding that the accused subjected Ranjana Rani @ Raj Kumari to cruelty as contemplated under Section 498A, IPC.***

***14. In our considered view, the evidence of PW-4 and PW-5 about what the deceased Ranjana Rani @ Raj Kumari had told them against the accused about the torture and harassment is inadmissible under Section 32(1) of the Evidence Act and such evidence cannot be looked into for any purpose.***

***15. Except Section 32(1) of the Indian Evidence Act, there is no other provision under which the statement of a dead person can be looked into in evidence. The statement of a dead person is admissible in law if the statement is as to the cause of death or as to any of the circumstance of the transactions which resulted in her death, in a case in which the cause of death comes into question. What has been deposed by PW-4 and PW-5 has no connection with any circumstance of transaction which resulted in her death.***

**16. The death of Smt. Ranjana Rani @ Raj Kumari was neither homicidal nor suicidal; it was accidental. Since for an offence under Section 498A simpliciter, the question of death is not and cannot be an issue for consideration, we are afraid the evidence of PW-4 and PW-5 is hardly an evidence in law to establish such offence. In that situation Section 32(1) of the Evidence Act does not get attracted.**

**17. We are fortified in our view by the decision of this Court in *Inderpal v. State of M.P.* : (2001)10 SCC 736, wherein this Court considered the matter thus: (SCC pp.738-39, paras 4-7)**

**4. We will consider at first the contention as to whether there is any evidence against the appellant which can be used against him for entering upon a finding that he subjected Damyanti to cruelty as contemplated in Section 498A IPC. PW 1 father of the deceased and PW 8 mother of the deceased have stated that Damyanti had complained to them of her plight in the house of her husband and particularly about the conduct of the appellant. PW 4 sister of the deceased and PW 5 a relative of the deceased have also spoken more or less on the same line. Exhibit P-7 and Exhibit P-8 are letters said to have been written by Damyanti. In those two letters reference has been made to her life in the house of her in-laws and in one of the letters she said that her husband had subjected her to beating.**

**5. Apart from the statement attributed to the deceased none of the witnesses had spoken of anything which they had seen directly. The question is whether the statements attributed to the deceased could be used as evidence in this case including the contents of Exhibits P-7 and P-8 (letters).**

**6. Before deciding that question we have to point out that the High Court came to a conclusion that the allegation that she committed suicide was not substantiated. A dying declaration was recorded by the Executive Magistrate in which the deceased had stated that she got burns accidentally from a stove. If that be so, death could not be the result of either any harassment or any cruelty which she was subjected to. In this context we may point out that the State has not challenged the finding of the High Court that death of Damyanti was not due to commission of suicide.**

**7. Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the statements of Damyanti contained in Exhibit P-7 or**

***Exhibit P-8 and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under Section 498A IPC disjuncted from the offence under Section 306 IPC the question of her death is not an issue for consideration and on that premise also Section 32(1) of the Evidence Act will stand at bay so far as these materials are concerned."***

**08.** From the other side, Mr. Debnath, learned Addl. PP has submitted that the deceased wife of the appellant was a perennial victim of torture as she was raising her voice against the obnoxious sexual activities of the appellant. There had been a village meeting where the appellant himself promised to amend his ways. As such, there cannot be any doubt that the appellant afflicted cruelty on the deceased. Therefore, the finding of the conviction as returned by the Addl. Sessions Judge, West Tripura, Agartala, Court No.3 cannot be faulted with.

**09.** On appreciation of the rival contention as raised by the learned counsel for the parties as well as on scrutiny of the records the questions those have fallen for consideration of this Court are that (1) whether there is any evidence of torture of such extent that might lead the deceased to commit suicide or to cause harm to her life or limb and (2) whether the death of the deceased wife of the appellant has any relation with the alleged matrimonial strife or not. PW-11, Dr. Ranjit Kr. Das who conducted the post mortem examination on the body of the deceased Jyotsna Begam has categorically stated that "In my opinion, the cause of death based visceral toxicological analysis was due to cardio respiratory failure as a result of rheumatic valvular disease of the heart." He has also noted such cause in the post mortem report (Exbt.8). In the cross examination he has also stated that there was no injury mark of throttling or strangulation. There is possibility of death due to the reason aforesaid. Even for sexual intercourse the lady might face the failure. He has also stated that he did not give any

opinion relating to the possibility of death due to use of pillow. There cannot be any amount of doubt that the cause of death is cardio respiratory failure. The prosecution has also laboured to use the extra-judicial confession that the appellant pressed a pillow on the mouth of the deceased and she expired. The extra-judicial confession as made is admittedly made in a situation when the appellant was severely assaulted by a mob. As such, even if any extra-judicial confession was at all made by the appellant, it cannot be stated that such extra-judicial confession was made voluntarily. Unless any confession in the realm of extra-judicial confession is made voluntarily before the persons whose testimony are so trustworthy only in that event the court can rely on such evidence otherwise such piece of evidence can only be treated as a very weak piece of evidence for returning the finding of conviction. The probable cause of death may be that at the time of sexual intercourse for the excitement the deceased wife suffered a cardio respiratory failure. That was absolutely accidental in nature. Mr. Pal, learned counsel for the appellant has correctly placed the emphasis on that there are general and unspecified reference of the torture and PW-1 namely Sahed Miah, PW-2 namely Arshad Miah, PW-3 namely Rakman Miah and PW-8 namely Abul Kashem Miah had categorically stated that whatever they heard about the torture they heard from the deceased. Such statement made by the deceased to them was not obviously in the transaction which culminated into the death of the deceased. As such, those statements are not in the realm of Section 32(1) of the Indian Evidence Act. Rather those statements are hit by Section 60 of the Indian Evidence Act. That apart, the nature of evidence as regards the torture that has been placed by the prosecution in the evidence does not come within the ambit of the illustration (a) below the Section 498-A of the IPC which provides as under:

**(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;**

**10.** Having held so, this Court is of the considered opinion that the prosecution has failed to prove the charge under Section 498-A of the IPC beyond reasonable doubt and accordingly the appellant is acquitted from the charge on benefit of doubt. Mr. Pal, learned counsel for the appellant has submitted that the appellant is on bail and as such the sureties are discharged from their obligation.

In the result, the appeal stands allowed.

Send down the lower Court records forthwith.

**JUDGE**

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