IN THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL. A. No.24 of 2011

1. **Md. Mujafar Ali,**
   son of Mubarak Ali

2. **Md. Mubarak Ali,**
   son of late Jafar Ali

3. **Mst. Hachibun Nessa**
   wife of Md. Mubarak Ali,
   -all are residents of Chandipur, P.S. Kailashahar, District – North Tripura

…… Appellants

– V e r s u s –

The State of Tripura

…… Respondent

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellants : Mr. D.C. Roy, Advocate.
Ms. S. Chakraborty, Advocate.

For the respondent : Mr. R.C. Debnath, Addl. P.P.
Mr. S.R. Dey, Advocate

Date of hearing : 05.02.2015

Date of delivery of Judgment & Order : **30.04.2015**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

This is an appeal under Section 374(2) of the Cr.P.C. by the convicts, namely Md. Mujafar Ali, Md. Mubarak Ali and Mst. Hachibun Nessa, hereinafter referred to as the appellants directed against the judgment of conviction dated 04.07.2011 delivered in S.T. 79(NT/K) 2010 by the Sessions Judge, North Tripura, Kailashahar, now Unakoti Judicial District. By the said judgment dated 04.07.2011, the appellants have been convicted under Section 498-A of the I.P.C. read with Section 34 of the I.P.C. and as consequence thereof, they have been sentenced to suffer 3(three) years rigorous imprisonment and to pay a fine of Rs.10,000/- each and in default of payment of fine, to suffer six months simple imprisonment. It is to be noted here that the appellants have been acquitted from the charge under Sections 302/304-B/306 read with Section 34 of the I.P.C.

[2] One Md. Wahid Ali by filing a written ejahar in the Kailashahar Police Station disclosed that the appellant No.1 married her daughter, namely Dilwara Begam as per personal law. Immediately after the marriage, the appellants started torturing her both physically and mentally on demand of dowry. They were insisting for giving them one vehicle, but for his poverty he could not provide such vehicle as per their demand. Even village mediation was held in presence of the members from both the families. As per the advice of that mediation, his daughter who was staying at his house, joined the appellant No.1 in his house. On the

day of filing the ejahar i.e. 01.07.2010, the informant Md. Wahid Ali (PW-4) received information from the appellant No.2 that his daughter had been admitted in the Kailashahar hospital. He did not reveal further details despite the informant's insistence. After a short while, the informant received further information from one Asif Ali, brother-in-law of his daughter that Dilwara had expired. He received the information at about 5 O' clock in the morning and he reported in the hospital on 7 O'clock along with other relatives. From the attending doctor he gathered the information that the death occurred for poisoning. The informant suspected the role of the appellants in the death of his daughter and he filed the written ejahar (Exbt.P/1).

[3] Based on the said complaint, Kailashahar P.S. case No.129 of 2010 under Sections 498-A/304-B/34 of the I.P.C. was registered and taken up for investigation. After completion of the investigation, the charge sheet was filed against the appellants and having taken cognizance, the matter was committed to the court of Sessions Judge. The Sessions Judge framed the charge against the appellants separately and distinctly under Section 498-A read with Section 34 of the I.P.C., under Section 304-B read with Section 34 of the I.P.C. and under Section 302 read with Section 34 of the I.P.C. The appellants pleaded total innocence and claimed to face the trial.

[4] To substantiate the charge, the prosecution has adduced as many as 15(fifteen) witnesses and introduced 7(seven)

documentary evidences (Exbts.P/1 to P/7) including the inquest report and the post mortem report. In order to project the defence case, the appellants adduced 2(two) witnesses. After the appellants were examined under Section 313 of the Cr.P.C. separately, on purported appreciation of the evidence, they were convicted as stated by the impugned judgment, whereby it has been observed that:

> **"27. In view of my above findings over the points, it is established that the accused persons committed no offence punishable under Section 304-B/306 of the I.P.C. They also committed no offence punishable under Section 302 read with Section 34 of I.P.C. Prosecution failed to bring home these charges against the accused persons. But the prosecution evidence successfully established under Section 498-A read with Section 34 of I.P.C. It is established by the evidence that accused persons committed offence punishable under Section 498-A read with Section 34 of the I.P.C."**

[5] Mr. D.C. Roy, learned counsel appearing for the appellants has emphatically submitted that from reading of the ejahar, it would appear that the appellants had been named in the written ejahar for committing offence merely on suspicion. No specific statement indicating that the appellants or any one of the appellants has committed any offence as alleged or otherwise. The entire ejahar (Exbt.P/1) is stuffed with general incrimination. He has therefore, emphatically submitted that the written ejahar is a product of shock and anger as from proper appreciation of the evidence, it would be apparent that there was no unlawful demand at all and no cruelty. Mr. Roy, learned counsel has relied on few decisions of the apex court and Gauhati High Court. He has placed

his reliance on **Appasaheb and another vs. State of Maharashtra,** reported in **AIR 2007 SC 763, Manju Ram Kalita Vs. State of Assam,** reported in **2010 (2) GLT (SC) 27, Arunava Bhowmik vs. State of Assam,** reported in **2005 (1) GLT 45**, **Billal Mia and another vs. State of Tripura**, reported in **2010 (2) GLT 736** and **Anup Kr. Guha vs. State of Tripura and another,** reported in **(2014) 1 TLR 397.** These reports have been relied on to show how to appreciate the law relating to cruelty, formation of dowry and other circumstances which may even though apparently incriminating but may not be of any relevance for an offence punishable under Section 498-A of the I.P.C.

[6] From the other side, Mr. R.C. Debnath, learned Addl. P.P. along with Mr. S.R. Deb, learned Advocate has submitted that adequate evidentiary materials are on record to establish the charge for committing offence punishable under Section 498-A read with Section 34 of the I.P.C. and there is no infirmity in the impugned judgment of conviction.

[7] For appreciating the rival submissions made by the learned counsel for the parties, it would be proper to appreciate the evidence placed by the prosecution and the defence.

PW-1, Mst. Nekjam Begam, a neighbour of the appellants has stated that when the appellant No.1 married Dilwara she was not accepted by his father, Md. Mujafar Ali and she was driven out from his rented house. After two and half years, Dilwara gave birth to a child when she was taken to her matrimonial home.

There had been a family dispute but she did not visit their house for misbehaviour of mother of Mujafar. She has categorically stated *'they pressurized her to collect Rs.50,000/- from her father's house for purchasing a auto rickshaw. Before one month of her death, she told it me. On the previous day of her death about 8 months back she told that there was severe quarrel in their house and continued till 5 pm.'* But her statement that she was assaulted by her mother-in-law for cash of Rs.50,000/- was not available in her previous statement recorded by the Investigating Officer.

[8] PW-2, Mst. Safirun Bibi is related to the appellant No.2. As she did not support the prosecution case, she has been declared hostile.

[9] PW-3, Sri Jagannath Sarkar is a hearsay witness as he heard the incident from one of his cousin brothers. He was also declared hostile for not supporting the prosecution case.

[10] PW-4, Md. Wahid Ali at whose information the prosecution has been lodged against the appellants, has stated that whenever he visited to see his daughter to her in-laws house, they used to misbehave with him. They demanded Rs.50,000/-. He agreed to pay the said amount on condition that her father-in-law should transfer one kani land in the name of his daughter and as the said transfer did not take place, PW-4 refused to pay Rs.50,000/-. For that reason, his daughter was continuously

tortured by her in-laws. She was mercilessly beaten up by the appellant No.1 and the other appellants and was driven out one month before her death. She took shelter in the house of PW-4. After 4 or 5 days Md. Mujafar Ali, the appellant No.1 forcibly took away her breast feeding child. Then PW-4 started a negotiation through Jagannath Sarkar (PW-3) and two others. After such negotiation, his daughter returned to the matrimonial home and stayed there for about 15 days before her death. On 01.07.2010, PW-4 got the information that his daughter being seriously ill had been hospitalized. After 15 minutes, one Arif Ali, a cousin of the appellant No.1 informed that Dilwara had expired in the hospital. He rushed to the hospital with the relatives and talked to the doctor. The Doctor revealed that the death occurred for consumption of poison. He filed the ejahar (Exbt.P/1).

In the cross-examination, he admitted that he did not mention that his daughter left the matrimonial home. He has also admitted that at time of marriage there was no demand from the appellants. Even though he has stated that being influenced by gift received in a neighbourhood marriage, the appellants demanded a sum of Rs.50,000/- but no such statement, he could find out in his previous statement. Even he has admitted that the appellant No.1 had demanded a sum of Rs.50,000/- for purchasing an auto for maintaining his family.

[11] PW-5, Md. Ahad Ali, the brother of the deceased, Dilwara Begam has stated that the appellant No.1 used to demand

money and his father continued to pay him on different instalments. His sister was tortured again and again on demand of cash to the extent of Rs.50,000/- for purchasing an auto rickshaw. But the said amount could not be paid. Dilwara was driven out from the matrimonial home and the appellant No.1 after Dilwara's coming to their house had forcibly taken away their son. Dilwara was in a state of mental shock. As a result, by the village negotiation, the appellants were influenced and Dilwara joined the matrimonial home. After 15 days of her returning to the matrimonial home, on 01.07.2010, the appellant No.2 informed his mother about illness of Dilwara. Later on, they gathered information about her death and went to the hospital with other relatives. They gathered from the Doctor that she died by taking poison. PW-5 is a witness to the inquest procedure and he signed on the inquest report (Exbt.P/3.)

[12] PW-6, Md. Tayib Ali is a member of Panchayet Samity of Gournagar Block. He has stated that PW-4 came to him and complained that his daughter had been beaten up by her husband and in laws. After 2/3 days when she was driven out from the matrimonial home, the appellant No.1 had taken away their breast feeding child. The local people brought about the compromise and Dilawara joined the matrimonial home. Having received the information from PW-4 that Dilwara had expired he visited the hospital. He assumed that Dilwara committee suicide due to torture for non-fulfilment of the cash as demanded. But his statement that

Dilwara told him that she was tortured by her husband was not found in his previous statement recorded by the police.

[13] PW-7, Md. Firoz Ali has stated nothing of material importance.

[14] Dilwara's aunt, Mst. Neharunnesa has been examined as PW-8. She almost replicated the statement of PW-4. But she admitted that she never visited Dilwara. It appears that she heard all these incidents either from her sister or the sister's husband (PW-4).

[15] PW-9, Mst. Yarunecha has been declared hostile for her not supporting the prosecution case and she did not state anything which might be used by the prosecution from her cross-examination.

[16] PW-10, Mst. Hanufa Bibi is the Dilwara's mother**.** She has stated that:

> **"I constructed a house for them and Dilwara lived with her husband there for two years. During her staying in my house Mujafar beat and assaulted my daughter on the demand of money. Mujafar also threatened me and assaulted me on some occasions. Mujafar demanded to transfer my house in his name. I did not agree to it. After staying in my house for two years, Dilwara went to her father's house at Bhadranagar. There Dilwara delivered child. She then went back to her in-laws house with the child. After stay for few months in in-laws house she was beaten up and was driven out on the demand of Rs.50,000/- to be paid by her father. She then taken shelter in the house of her father with the child. But after three days stay Mujafar took back the child to his**

home. So there was a dispute and attempt was taken through mediator. Mujafar and his parents refused to give back the child. So after mediation my daughter went back to her in laws house. But after 15 days she committed suicide by taking poison. Before two months of her death I went to her in- laws house to meet with her, but her mother-in-law misbehaved with me and did not permit to meet with my daughter as cash and articles not given in the marriage.'

After hearing the news of death of Dilwara she also rushed to the hospital. She stood the cross-examination without wavering.

[17] PW-11, Md. Tousid Ali scribed the written ejahar and he has stated that he wrote the ejahar as per dictation of PW-4.

[18] PW-12, Dr. Gopal Krishna Debnath who was a Medical Officer in the Kailashahar hospital, conducted the post-mortem examination and prepared the report in connection with Kailashahar P.S. Case No.129 of 2010. He has categorically opined that the death was suicidal in nature as he did not find any external injury on the dead body of Dilwara Begam.

[19] PW-13, Abdul Joynal has stated something which has nothing to do with the case.

[20] PW-14, Smt. Aparna Das was posted at the relevant time as Women Sub-Inspector in the Kailashahar Police Station. She was endorsed the Kailashahar P.S. case No.129 of 2010 for its investigation. She conducted the inquest procedure and prepared the report in presence of the witnesses. She has also recorded some statements of the witnesses.

[21] PW-15, Sri Jyotisman Das Choudhury took up the investigation from PW-14 as the SDPO and conducted the remaining part of the investigation. Since a *prima facie* case had surfaced, he submitted the charge sheet against the appellants under Sections 304-B/498-A/34 of the I.P.C.

[22] The evidence as led from the defence is restricted to examination of two witnesses, namely, Mst. Faijun Bibi (DW-1) and Sri Ratan Mani Debnath (DW-2). On scrutiny, it appears that their testimonies are hardly related to the transactions leading to death or to the death itself.

[23] What has surfaced from the scrutiny of the records is that there is virtually no evidence except one single incident of driving out the deceased from the matrimonial home treating her with cruelty by the appellant No.1 inasmuch as the testimony of PW-10 has been entirely introduced to the investigating officer and those parts, as reproduced, have not even been corroborated by PW-4 and PW-5. No other witness has stated that the appellant No.1 stayed in her house for two long years. This Court, therefore, is not in a position to give any credit to the testimony of PW-10. There had been no attempt to rebut the statement that Dilwara was thrown out of the matrimonial home and she took shelter in her parental house one month before her death and pursuant to a village mediation she joined the matrimonial home. After about 15 days of her joining, she committed suicide by consuming poison.

There is no dispute about the cause of death. The defence did not even make any attempt to disclose the special knowledge why she committed the suicide or in what manner. Except making an attempt to show that Dilwara was suffering from mental illness no further disclosure was made. But that suggestion was squarely denied. There is no evidence against the appellants No.2 and 3 at all unless the statements made by Dilwara before her death are entirely admitted in the evidence, but such evidence cannot be admitted in view of Section 32 (1) of the Evidence Act inasmuch as those statements do not relate to the cause of death or to transaction to death. In **Appasaheb Vs. State of Maharashtra,** the apex court enunciated what kind of demand constitutes dowry and held that demand for money on account of financial stringency or for meeting urgent domestic expense cannot be brought within the meaning of dowry. This report cannot have any application in this appeal as the appellants are already acquitted from the charge as framed under Section 304-B of the I.P.C. In **Manju Ram Kalita vs. State of Assam,** the apex court has held that if the mental or physical torture was not continuous that cannot constitute cruelty within the ambit of Section 498-A of the I.P.C. It has been observed in **Manju Ram Kalita vs. State of Assam** that cruelty has to be understood within the parameters and the context of Section 498-A of the I.P.C as it is and may be different from the meaning and purport of the other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to

whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as `cruelty' to attract the provisions of Section 498-A of the IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.' In **Arunava Guha vs. State of Assam**, the Gauhati High Court has also enunciated that the evidence against the accused is only of single assault on his wife, that cannot be termed as offence punishable under Section 498-A of the I.P.C. In **Billal Miah vs. State of Tripura and another,** it has been held that:

> **`if the deceased was treated with such cruelty as defined in Section 498A IPC, the witness, more particularly, the mother and the brothers of the deceased should have been able to specifically narrate the same. They simply stated that the deceased was assaulted. The word `assault' without indicating the nature and extent of hurt/injury, if any, sustained cannot be sufficient to the alleged conduct of the appellants falls within the definition of Section 498-A of I.P.C. and 306 of I.P.C.'**

[24] It is apparent that against the appellants No.2 and 3, there is no specific allegation except some broad and sweeping statements here and there and obviously those have been made to associate them in the crime by dint of provisions of Section 34 of the I.P.C. as no overt act could be attributed to either of them. But for associating a person to a crime by the dint of Section 34 of the I.P.C. is much onerous. Section 34 of the I.P.C. provides that when a criminal act is done by several persons in furtherance of the

common intention of all, each of such person is liable for that act in the said manner as it were done by him alone. Furtherance of the 'common intention of all' has fallen for consideration of the various decisions but there is commonness in all the decisions is that it implies prearranged plan and acting in concert pursuant to the said plan, though it may develop on the spot, it must be anterior in point of time **[Dani Singh & Ors. vs. State of Bihar,** reported in **(2004) 13 SCC 203].** Fundamentally this is the rule of liability. For purpose of proving the common intention, existence of direct evidence is not necessary, it can be proved from the attending circumstances. This Court on scrutiny of the evidence is of the considered opinion that the element of common intention, either from the direct evidence or from the circumstantial evidence, has not been proved by the prosecution against the appellants No.2 and 3 to make them liable for the offence of cruelty in terms of Section 34 of the I.P.C. Hence, those appellants, the appellants No.2 and 3 are entitled to get benefit of doubt.

[25] Having held so, they are acquitted from the charge under Section 498-A/34 of the I.P.C. From the evidence it has surfaced that the appellant No.1 failed to disclose the reason or the backdrop of the suicide, but that would not by itself be treated neither would it give leverage to presume that it is none but the appellant No.1 has harassed the deceased in such a manner that she was about to commit to suicide, and finally, she had committed suicide. This Court has not come across with any evidence of

cruelty, which would satisfy the requirement of the explanation provided below Section 498-A of the I.P.C. The prosecution has however proved one single incident which may broadly come within the explanation provided under Section 498-A of the I.P.C. The other incident would come in the category of 'mere quarrels'. Whether for the said single incident the appellant No.1 could be convicted? The apex court in **Manju Ram Kalita vs. State of Assam** has categorically observed that it is to be established that continuously or persistently or at least in close proximity of time of lodging complaint the victim was subjected to such bodily harm which might instigated the woman to commit suicide or there was coercive harassment for releasing the unlawful demand. Petty quarrels cannot attract the provisions of Section 498-A of the I.P.C. This Court does not find satisfactory evidence to that extent, against the appellant No.1. Thus on benefit of doubt the appellant No.1 is acquitted from the charge as framed under Section 498-A of the I.P.C.

[26] As consequence of what has been observed hereinabove, the impugned judgment and order are set aside. The sureties are discharged from their respective obligations.

In the result, the appeal stands allowed.

Send down the LCRs forthwith.

JUDGE

Sujay