

**(2005) 05 CAL CK 0043**

**Calcutta High Court**

**Case No:** Criminal A. No. 154 of 1995

Niren Adhikary

APPELLANT

Vs

State of West Bengal

RESPONDENT

**Date of Decision:** May 5, 2005

**Acts Referred:**

- Evidence Act, 1872 - Section 113A
- Penal Code, 1860 (IPC) - Section 306, 498A

**Citation:** (2006) 4 CHN 703

**Hon'ble Judges:** V.S. Sirpurkar, C.J; Amit Talukdar, J

**Bench:** Division Bench

**Advocate:** Subir Banerjee and Jayanta Banerjee, for the Appellant; Rebatu Raman Biswas and Madhuri Datta, for the Respondent

### **Judgement**

V.S. Sirpurkar, C.J.

This is an appeal against the conviction of the appellant for offence under Sections 306, IPC and 498A of the IPC. On the first count the accused-appellant was convicted to undergo rigorous imprisonment for ten years and on the second count he was convicted rigorous imprisonment for three years along with fine.

2. The prosecution case was that Nepti, the unfortunate girl, who died, was married to the appellant, Niren Adhikary, and she committed suicide in her own marital house nearly one year and six months after her marriage by hanging herself. The prosecution case further was that Nepti, who was an orphan girl and grew up in her maternal uncle's house, even she used to tell her maternal uncle, her cousins and other relations like uncle, etc., that she used to be ill-treated by her husband as well as her father-in-law. Eventually, Dakeya Adhikary, who was also an accused, has been acquitted by the Trial Court and since there is no appeal against the acquittal of accused-appellant, we are not concerned with accused Dakeya.

3. Be that as it may, the unfortunate lady complained that she used to be beaten by her husband who refused to cohabit with her. Thereafter, on the fateful night her body was found hanging dead in her bedroom. Investigation was made and the Investigating Officer arranged for post-mortem of her body where it was confirmed that she died due to hanging. The Investigating Officer collected statements of various witnesses from the village at Kowagab and other village Dhoulaguri where maternal uncle and other relations lived. At the trial, the prosecution examined as many as eleven witnesses. The defence of the accused was of denial. He claimed that he did not compel the unfortunate girl to commit suicide by hanging as such.

4. The learned Counsel, appearing for the accused-appellant, contends that in this case the necessary ingredients of the offences u/s 306 as also u/s 498A have not been proved and the learned Sessions Judge has failed to properly appreciate the oral evidence. The learned Counsel took pains to point out that all the witnesses are interested witnesses and the Trial Court has not exercised its option to exercise caution while appreciating the evidence of the relations of the unfortunate girl as witnesses. The other contention of the learned Counsel is that it is the case of the prosecution that there were some steps taken for rapprochement and settlement between couple. But no evidence in Court was adduced by family members of the unfortunate girl nor the same was brought to the notice of the learned Sessions Judge. The learned Counsel for the defence submitted that from the village at Kowagab, where the unfortunate girl lived no witness had supported the prosecution. Therefore, the learned Sessions Judge relied only on the relations who were the admittedly not the residents of Kowagab village.

5. The learned Counsel for the State supported the judgment and pointed out that the accused had not put any proper defence before the Court so as to extricate himself out of the presumption raised u/s 113A of the Indian Evidence Act. The learned Counsel for the State, therefore, took pains to point out that the case of cruel treatment upon the unfortunate girl was established and rightly accepted by the Trial Court and under such circumstances, if the unfortunate lady committed suicide within seven years of her marriage, then the accused would be bound by the presumption raised u/s 113A of the Indian Evidence Act. The learned Counsel for the State further points out that there was undoubtedly cruel behaviour on the part of the accused towards the lady also in refusing to cohabit with her. In this background, it is to be seen as to whether the Sessions Judge was right in convicting the accused.

6. In support of the prosecution, witnesses were examined, who were the relations of the unfortunate girl. The first amongst them is PW 1, Bhabendra Nath Roy, who deposed that he was the only maternal uncle, in his oral evidence he stated that this girl was an orphan. He also pointed out that after her marriage, she used to come back to his house and complain about the ill-treatment at her maternal house. He, therefore, stated that efforts for rapprochement of the problems in between the

couple was made by some villagers. However, he candidly admitted that he had not got any letter from his niece nor had he made any complaint to anybody except holding Panchayat Salisi (mediation) in bringing about the compromise between the couple. There is nothing unnatural that the unfortunate girl made so many complaints against her husband about the ill-treatment. There is also circumstance that the husband had expressed his inability to cohabit with her. The prosecution witnesses can be classified into two groups. The first group is PW 1, Bhabendra Nath Roy, PW 4, Sukur Roy, PW 5, Paresh Chandra Roy, P.W. 7. Smt. Nandarani Roy. All these witnesses are relations of the unfortunate girl, Nepti. PW4 is her uncle, PW5 is her cousin brother, PW 7 is her sister-in-law. All these witnesses have, undoubtedly, stated that Nepti used to complain about ill-treatment meted against her husband, who used to beat her and also refused to cohabit with her. The only departure is to be found in the evidence of P.W. 7, Smt. Nandarani Roy, to whom Nepti had reported that her husband cohabited with her only during the first one month immediately after marriage and thereafter there was no cohabitation. Insofar as the ill-treatment, such as, beating, etc. is concerned there is hardly any cross-examination of these witnesses. The learned Counsel for the defence tried to take us through the evidence of all these witnesses and tried to rely on certain contradictions inter se. We do not give much importance to those contradictions which are insignificant. The main story of the prosecution is well-established by the evidence of these witnesses who in cross-examination had asserted that they were aware of the ill-treatment having been meted out by the accused to the unfortunate lady. The Trial Court has rightly accepted their evidence.

7. The other group of witnesses is PW2, Ananda Roy, PW 3, Bhabya Nath Roy, P.W. 6, Gajen Ray. Very significantly, all the three witnesses are residents of village Kowagab where the unfortunate lady resided. Needless to mention that all the three witnesses were declared as hostile witnesses. However, PW 3 has, however stated in examination-in-chief that about six months after her marriage, Nepti came to his house and reported to him and his wife that her husband did not reside with her and she also told that she came to learn that her husband had some illness in his penis. This is a clear indication of the fact that the unfortunate girl had complained to the concerned witness and his wife about the non-cohabitation on the part of the husband. It is trite law now that the evidence of a hostile witness can be relied on if it is found to be truthful.

8. We are not impressed by the evidence given by the PW 2, PW 3 and PW 6 as they were obviously the witnesses under the influence of the accused. One of the witnesses has even admitted in his cross-examination that he was a Panchayat member and was expecting to get votes of the accused person.

9. We are quite convinced by the evidence of the relations that the girl was being tortured and was being ill-treated by her husband, inasmuch as the husband used to beat her and also refused to cohabit with her.

10. The learned Counsel for the defence urged very earnestly that these witnesses were all relations and, therefore, the evidence should be accepted with a pinch of salt. We find from the judgment that the learned Sessions Judge has exercised caution appreciating evidence of relation witnesses. We have ourselves seen that the evidence of this witness was most natural and it was very natural on the part of the unfortunate lady to complain before a lady and other relations. After all in matrimonial matters, the witnesses were bound to be the relations because in matrimonial matters, such as the present one, a lady would not make any complaint to any outsider particularly regarding the intimate subject like cohabitation.

11. Learned Counsel for the defence then alleged that the suicide could have been as a result of the frustration on account of the refusal on the part of her husband to cohabit with her and there was no material on records that the husband had some physical deficiency and that his refusal to cohabit with her was deliberate or voluntary and there was no material on record to suggest that the accused had refused to cohabit with his wife with a view to punish her. Learned Counsel also pointed out that no word on demand of dowry was uttered by any of the witnesses and there was no question of any presumption u/s 113A of the Indian Evidence Act. Lastly, he points out that the parents of the accused had wasted no time in reporting the suicide to her relations.

12. Now as regards the non-cohabitation there is nothing brought out in the cross-examination of the witnesses that there was any deficiency on the part of the husband. Had there been no such deficiency the poor girl would not have complained to her relations and others regarding non-cohabitation. It is clear from the evidence of one of the witnesses that for one month the accused had cohabited with the unfortunate girl and then he had stopped. We have no doubt in our mind that in fact the accused had taken a deliberate step of non-cohabitation with the unfortunate girl only to punish her. Non-cohabitation when practised deliberately with a motive to punish the wife would also amount to cruel treatment within the meaning of Section 498A of IPC. In this case, of course, the non-cohabitation was in addition to the other kinds of cruelties like beating her and there is enough material on record in support of the same. Even as regards the question of demand of dowry, though the witnesses have not specifically stated about the demands the very fact that she had reported about the cruel treatment and the non-cohabitation and had committed suicide within seven years of her marriage, would be enough to raise the presumption u/s 113A of the Indian Evidence Act. PW 5 very clearly stated that the accused and his father did not tolerate Nepti and they used to beat her. Niren even did not cohabit with Nepti. We have absolutely no doubt in our mind that the girl committed suicide on account of the torture by her husband, the present accused. So also merely because the father of the accused did not waste any time in reporting the death, that by itself cannot absolve the accused of his criminal behaviour. We are quite convinced that Nepti who was barely 19/20 years old was given cruel treatment by the accused. We, therefore, see no reason to interfere with

the finding of the Sessions Judge.

13. We, therefore, are of the opinion that the prosecution had very properly proved the case of cruelty. Once cruelty is proved and once it is established that the lady committed suicide within seven years of marriage, then presumption u/s 113A of the Evidence Act would automatically spring up against the accused and there is very little or no endeavour on the part of the accused to extricate from that presumption. In our opinion, the learned Sessions Judge was right in using the presumption and it may be presumed that the accused had compelled the unfortunate lady to commit suicide.

14. We are, therefore, convinced that the judgment of the Sessions Judge is correct judgment and we confirm the same.

15. The accused, as we are reported, is on bail and he is directed to surrender his bail bond within one week from today.

Amit Talukdar, J.

I agree.