

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No.16 of 2023

Md. Kurban Ali, S/o – Manjil Miah, of Mulla Tilla, Palatana, P.S. Kakraban,
Gomati District, Tripura.

.....Petitioner(s)

Versus

The State of Tripura

.....Respondent(s)

For Petitioner(s) : Mr. D. Datta, Advocate.

For Respondent(s) : Mr. Ratan Datta, Public Prosecutor.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of Judgment & Order: **25.08.2023**

Whether Fit for Reporting : **YES/ NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Datta, learned counsel for the petitioner and Mr.
Ratan Datta, learned Public Prosecutor for the respondent-State.

[2] This revision petition is directed against the judgment of conviction and sentence dated 9th June, 2022 passed in Criminal Appeal No.13 of 2021 by learned Sessions Judge, Gomati Judicial District, Udaipur whereby the conviction of the petitioner under Section 498A of IPC and sentence of 1(one) year simple imprisonment with a fine of Rs.5,000/- and a default sentence imposed by learned Judicial Magistrate, First Class, Court No.3, Udaipur, Gomati, Tripura in PRC(WP) 32 of 2019 dated 10.11.2021 has been affirmed.

[3] The prosecution case in brief is as follows:

The marriage of PW-10, the daughter of PW-7 (complainant) and PW-8, was solemnized with the petitioner after fixing Rs.50,001/- as Moharana in the house of the complainant on 22nd day of Bengali month of Shravana in the year 2018 A.D. Within fifteen days she was pressurized to bring Rs.50,000/- from her father which she expressed her inability. She was subjected to physical and mental torture. It is also alleged by the complainant that one Parul Bibi, Jahanara Bibi and the next door neighbors instigated the petitioner and other persons in doing wrongful activities against his daughter. On 7th December, 2018 the aforesaid petitioner and other persons inhumanly assaulted his daughter and the petitioner and one Jahanara Bibi broke two fingers of her right hand. On the same night at around 09:30 pm the complainant took his daughter back to his house for getting her to be treated. Since then the daughter of the complainant has been living in his house in a helpless state. On the basis of these allegations Kakaraban PS Case No.2018/KKB/116 was registered under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961. After completion of investigation charge-sheet was submitted under Sections 341/448/427/325/506/34 of IPC against the petitioner and other accused persons namely, Bikash Dey, Ajit Debnath, Khokan Paul and Rup Chand Paul. Cognizance was taken on 02.03.2019 under Section 498A of IPC and Section 4 of the Dowry Prohibition Act, 1961. Charges were framed under Section 498A of IPC against the petitioner and other accused persons namely, Sri Majil Miah, Kurban Ali and Smt. Khateja Bibi which they pleaded not guilty and claimed to be tried. During course of trial 10(ten) prosecution witnesses were examined by the prosecution and certain documents were also exhibited. In his statement under Section 313 of

Cr.P.C. petitioner pleaded innocence and stated that he had committed no offence. The learned Trial Court after evaluation of the evidence and upon hearing of the parties, convicted the petitioner under Section 498A of IPC and acquitted the rest two accused persons. The petitioner was imposed with the punishment of simple imprisonment of 1(one) year with a fine of Rs.5,000/- and a default sentence.

[4] The conviction was challenged by the petitioner before the learned Appellate Court on number of grounds. The learned Appellate Court vide impugned Judgment dated 09.06.2022 considered the grounds urged. During trial, prosecution examined 10 prosecution witnesses which are as under:-

- PW-1 :- Najrul Islam,
- PW-2 :- Smt. Nur Jahan Begam,
- PW-3 :- Sri Samir Chandra Das,
- PW-4 :- Smt. Anima Begam,
- PW-5 :- Smt. Rabiya Begam,
- PW-6 :- WSI Ripita Bhattacharjee,
- PW-7 :- Md. Dhanu Miah, informant,
- PW-8 :- Mst. Anu Bibi,
- PW-9 :-Md. Billal Miah and
- PW-10 :- Mst. Jesmin Aktar, the victim.

[5] The prosecution had also exhibited and proved some documents which are as under:-

- Ext. 1 :- The ejahar,
- Ext.1(i) :- Signature of scribe in the ejahar,
- Ext.1(ii) :- Signature of the informant in the ejahar,

Ext.2 :- Hand sketch map and

Ext.3 :- Index of hand sketch map.

[6] The statement of the appellant was recorded under Section 313 of Cr.P.C. and Trial Court framed the following points for determination:-

- i) whether the appellant Md. Kurban Ali subjected the victim Jesmin Aktar to cruelty by physically assaulting her in order to coerce her to meet unlawful demand of dowry;
- ii) whether there is any legal infirmity in the judgment and order dated 10.11.2021 passed by Ld. Judicial Magistrate, First Class (Court No.3), Udaipur convicting the appellant under Section 498A of IPC.

[7] The learned Appellate Court after discussion of the evidence, the decisions cited and the reasons recorded, upheld the conviction recorded by the learned Trial Court, also holding that since the offence is against the woman and is a curse to the society, petitioner would not be entitled to release on probation of good conduct under the Probation of Offenders' Act, 1958.

[8] Mr. D. Datta, learned counsel for the petitioner has assailed the impugned judgment *inter alia* on a number of grounds touching the appreciation of evidence of prosecution witnesses both by the Trial Court and the Appellate Court. Learned counsel for the petitioner submits that there is inconsistency in the statement of the material witnesses that is PW-7 (complainant), father of the victim; PW-8, mother of the victim and PW-10, Mst. Jesmin Aktar, the victim. Apart from that, it is further submitted that all the prosecution witnesses except the Investigating Officer are interested

witnesses. It is further submitted that there are inherent contradiction in the deposition of the evidence of the informant, his wife and the victim as also on the place of occurrence and the manner of assault upon the victim. It is submitted that the informant has, in the FIR, stated that two whole fingers of the right hand of the victim were broken in the assault. However, the victim hasn't corroborated the allegation in her deposition as PW-10. Nor is there any medical report corroborating such allegation. It is submitted that the deposition of other prosecution witnesses also suffers from inconsistency and they are either said to be neighbors of the accused but are in fact witnesses who are interested in conviction of the petitioner. Therefore, their testimony cannot be relied upon without a pinch of salt. The other prosecution witnesses have also disputed the filing of GD entry in the police station. Petitioner is a physically handicapped person. In fact, PW-1, Najrul Islam in his cross-examination has stated that he has never seen the petitioner, the father-in-law and the mother-in-law of the victim/PW-10 as being assaulting and tortured by them. The Kakraban PHC falls in the way from Mulla Tilla to Kakraban Police Station. He also denied that the informant had ever told him that there was a demand of Rs.50,000/- from the victim and she was tortured physically. He was neither called on phone by his sister on 7th December, 2018. However, this witness has at the end of his cross-examination also stated that it is not a fact that he did not rescue Jasmin Aktar, the victim and then they did not go to the Kakraban Police Station and did not filed a GD entry and thereafter took her to her parental house. He has also stated that it is not a fact that he has deposed falsely as he has close relation with the informant.

[9] However, learned counsel for the petitioner submits that this contradiction in the statement of prosecution witness No.1 and lack of corroboration of the allegations made in the FIR by the victim and her mother or any medical injury report all discredit the prosecution story and render the whole case doubtful. Petitioner, therefore, should be granted the benefit of doubt since the learned Trial Court and the Appellant Court have failed to appreciate the evidence in its correct prospective. The petitioner may be acquitted of the charges.

[10] Mr. Ratan Datta, learned Public Prosecutor has strongly opposed the prayer. He has referred to the deposition of the prosecution witnesses, the FIR which has also been exhibited by PW-7, the complainant as Exhibit-1, the statement of the Investigating Officer, PW-6 who had prepared the sketch and index of the place of occurrence and had examined other witnesses after serving notice under Section 41 of Cr.P.C. and submitted that the ingredients of cruelty soon after the marriage, on failure to fulfill the demand of Rs.50,000/- as dowry for purchase of a vehicle are duly established by the prosecution to bring home the charge under Section 498A of the IPC. The findings of the Trial Court and Appellate Court do not suffer any perversity in the appreciation of evidence. As such, this court in exercise of revisional jurisdiction may not be required to re-appreciate the evidence in the manner in which the petitioner has canvassed since the scope of revisional jurisdiction is limited to questions of illegality, irregularity and impropriety in the findings of the learned inferior Courts. The learned Trial Court has imposed a sentence of only one year upon him which is commensurate with the charges proved against him. As such, no interference

may be made in the judgment of conviction and order of sentence as upheld by the learned Appellate Court.

[11] I have considered the submissions of the learned counsel for the parties and taken note of the material evidence placed from the lower court records by learned counsel for the petitioner and also by the learned Public Prosecutor for the State. In order to establish a charge under Section 498A of the IPC, the ingredients that are to be fulfilled, are *inter alia* cruelty within the meaning of explanation (a) & (b) of the Section 498A which means (a) any willful 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] If the evidence of the prosecution witness particularly PW-10, the victim; PW-7, the complainant/father of the victim and PW-8, the mother of the victim is read together the inference is obvious that the daughter of the complainant was married with the petitioner after payment of Moharana as per Muslim Rights & Customs and within a short time, she was subjected to torture on non-fulfillment of demand of Rs. 50,000/- from her parents. On account of non-fulfillment of the demand of dowry, she was then subjected to physical assault whereafter she was brought to her parents house by the complainant on 07.12.2018. Though, in the FIR, the complainant has alleged that the victim has suffered a fracture in two fingers in the right hand but this allegation is not corroborated by any medical evidence. However, the allegations of demand of

Rs.50,000/- and mental & physical torture upon the victim on failure to meet the demand, are supported by not only the prosecution witnesses that is PW-7, father of the victim; PW-8, mother of the victim and PW-10, the victim herself and that too in the matrimonial house of the victim but corroborated by prosecution witnesses such as PW-2, Nur Jahan Begam who heard the hue and cry of the victim in the evening of 07.12.2018 in her matrimonial home and went to the house of the petitioner and saw the victim being assaulted. She has stated that her brother informed the matter to the parents of the victim, PW-10. She has denied the suggestions of the defence that the victim had not told her that the petitioner had started torturing her physically and mentally, a few days after her marriage. She has refuted the suggestions of the defence in cross-examination that she had not gone to the house of the petitioner after hearing hue and cry in the evening of 7th December, 2018 and that she did not try to prevent them from assaulting her. PW-3, Sri Samir Ch. Das wrote the ejahar as per the version of the complainant on 11th December, 2018 and read over and explained it to him which is Exhibit-1, and the signature of the witness in the ejahar is Exhibit-1(i). He has denied the suggestion made by the defence in cross-examination. PW-4, Smt. Anima Begam, is a hearsay witness. The witness though had stated in her cross-examination that she had stated the entire incidence to the police but the Investigating Officer has denied the same. She denied that she has deposed falsely. PW-5, Smt. Rabiya Begam, is a relative of the victim. She had gone to the house of the petitioner on 7th December, 2018 at around 10:00 pm to 11:00 pm after hearing the hue and cry of the victim. She had also made statement before the police during investigation. This witness has therefore corroborated the statement of the complainant, his wife/PW-8 and the victim. PW-6 is the Investigating Officer has submitted the charge-sheet

bearing C/S No.3 of 2019, dated 14th February, 2019 against the petitioner and two others under Section 498A of IPC and Section 4 of the Dowry Prohibition Act. However, in her cross-examination she had stated that the complainant did not produce any medical report regarding the treatment she underwent due to the torture. She did not record this statement of Anima Begam and Rabiya Begam. PW-7, is the complainant who has, in substance, supported the allegations made in the FIR regarding demand of Rs.50,000/- from her daughter by the petitioner and his family members and also the physical and mental torture that she was subjected too. PW-8, the mother of the victim also supported the prosecution story in substance. Minor contradictions, if any, in the deposition of the material witnesses could not cause a dent to the prosecution case as the prosecution story and the evidence of witnesses if taken in its entirety, the ingredients of Section 498A and cruelty upon the victim PW-10, by her husband to meet his unlawful demand are duly substantiated.

[13] As such, the findings of the learned Trial Court and the Appellate Court do not appear from any perversity in the appreciation of evidence so as to warrant interference in exercise of revisional jurisdiction of the Court. The findings do not suffer from any illegality or impropriety either. However, it is informed by the learned counsel for the petitioner that the victim has remarried. The parties were divorced. The accused is a handicapped person who has disabilities in his legs. As such, he has submitted that some leniency may be shown in the matter of awarding of sentence. On consideration of rival submission of the parties and on the basis of discussions made hereinabove, this Court though is not inclined to interfere in the findings of the learned Courts below so far as the conviction of the petitioner is concerned, but keeping into

account that the petitioner is a handicapped person and the fact that the victim has also stated to have remarried, ends of justice would be made if the sentence awarded by the learned Trial Court as affirmed by the Appellate Court is reduced to six months of simple imprisonment. The period of custody served by the petitioner shall be set off against the modified sentence as above. The fine amount imposed upon her however, is confirmed and require no interference. The revision petitioner is disposed of with the modification in the sentence imposed upon the petitioner by the learned Trial Court as affirmed by the learned Appellate Court in the impugned judgment dated 09.06.2022.

[14] Stay order, if any, stands vacated. Send down the lower court records forthwith.

[15] Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ