

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. 69 of 2006

Md. Achadur Rahman,
S/O Md. Dulu Mia,
resident of Kalacharra, P.S.- Dharmanagar,
District- North Tripura.

... **Petitioner.**

- **Versus** -

The State of Tripura

... **Respondent.**

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA**

For the petitioner : Mr. DC Roy, Advocate.

For the respondent : Mr. A.Ghosh, Public Prosecutor

Date of hearing & delivery
of Judgment and Order : **02.02.2015.**

Whether fit for reporting : **YES / NO**

JUDGEMENT AND ORDER (ORAL)

The instant revision petition is directed against the judgment dated 31.03.2006 passed by the learned Additional Sessions Judge, North Tripura, Dharmanagar in Criminal Appeal No. 05(1) of 2006 whereby the learned Additional Sessions Judge upheld the order of conviction of the accused petitioner under Section 498(A) IPC passed by the learned Judicial Magistrate (First class), North Tripura, Dharmanagar and modified the sentence from R.I. for 2 years to S.I. for 2 years.

2. Heard Mr. DC Roy, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned Public Prosecutor.

3. The fact of the prosecution case leading to this revision petition, in short, is that on 13.06.1998 the marriage of the informant Halima Khatoon was solemnized with the accused petitioner

Achadur Rahman as per Mohamedan customary law. After marriage she was leading conjugal life with the convict petitioner as husband and wife but after few days the accused persons i.e. the accused petitioner and others started physical and mental torture on her on demand of dowry of one Yamaha motorcycle and cash of Rs. 50,000/- but her parents were unable to meet the demand of dowry, as a result her husband and his family members increased their torture and also induced her to commit suicide by taking poison or by pouring kerosene and lighting fire or by hanging etc. Her husband also express that in case he married second time, he would have got more quantity of dowry. The other accused persons also would encourage and abet him for causing torture on her on demand of dowry. Prior to the case, in question, she also filed another case under Section 498(A) IPC but subsequently the same was compromised for the sake of her happy conjugal life. She gave birth of a male child on 4.3.1999 during her wedlock with the accused petitioner Achadur Rahman. She could get no proper nursing, treatment and medicine during and after her delivery. On 15.6.1999 the accused petitioner Achadur Rahman assaulted the informant and on 20.9.1999 also demanded dowry and assaulted her. On 1.8.1999 the accused petitioner along with other accused persons assaulted the informant on demand of dowry as a result of which she left her matrimonial house only with her wearing apparels to save herself leaving her son. On the following day with the intervention of police her son was rescued.

4. The learned trial Court framed charge against the accused petitioner and other accused persons, in total six in numbers for

committing offence punishable under Section 498(A) IPC and proceeded with the trial when they pleaded not guilty and claimed to be tried. On the conclusion of trial, the learned trial Court held both the husband of the informant and her father-in-law are guilty and adjourned the case sine-die against the remaining four accused persons.

5. The learned trial Court convicted the accused petitioner Achadur Rahman under Section 498(A) IPC and sentenced him to suffer R.I. for a period of two years and also convicted the father-in-law Dilu Miah under the said section of 498(A) IPC and sentenced to suffer R.I. for a period of six months.

6. Being aggrieved by the judgment and order of the learned Judicial Magistrate (First class), North Tripura, Dharmanagar, the accused petitioner and his father preferred an appeal and the said appeal was heard by the learned Additional Sessions Judge, North Tripura, Dharmanagar being Criminal Appeal No. 5(1) of 2006. Upon hearing the appeal and going through the evidences on record, the learned appellate Court acquitted the accused Dilu Miah, father-in-law of the informant as there was no direct evidence against him and upheld the conviction so far the present accused petitioner is concerned and modified the sentence, as stated supra. Hence, the instant revision petition.

7. It appears from the record that the prosecution has examined in total seven numbers of witnesses and also relied upon some documents.

8. Mr. Roy, learned counsel appearing for the convict petitioner submits that though there are some omnivous statements made by the informant and PW-6 (Sayad Sufia) but those statements cannot be the basis for conviction under Section 498(A) IPC. He also submits that there is no specific evidence when the informant was allegedly tortured and on which date the demand of dowry was made. He further submits that the informant earlier also filed one case against the accused petitioner under Section 498(A) IPC and the same was subsequently compromised. Therefore, it can be said that the informant is in the habit of filing false case without any basis. He further submits that an offence under Section 498(A) IPC does not cover a single incident of altercation or assault between a husband and wife and in support of his aforesaid contention he has placed reliance on a decision in ***Arunava Bhowmik v. State of Assam*** reported in ***2005(1) GLT 45***, wherein the Gauhati High Court held that:

“ The second submission of the learned counsel for the petitioner is that an offence under section 498A, IPC does not cover a single incident of altercation or assault between the husband and wife.

In this case, there is no allegation against the petitioner that he had demanded a colour T.V. or harassed the informant for that purpose. There is absolutely no evidence that beating or the alleged act in question was with the view to compel the informant to commit suicide. As a matter of fact, there is no evidence of PW 1 that the husband had assaulted her on any previous occasion. The witness has deposed about the single incident of assault by the husband and even if we accept the above evidence of PW 1, which is not supported by other witnesses, it does not amount to cruelty as defined under section 498A, IPC. We find that the trial court as well as the appellate court has failed to appreciate the evidence in its proper perspective.

Both the courts below also erred in holding that the single incident of alleged assault on 4.9.1992 amounts to an offence under section 498A, IPC. Accordingly, we allow this revision

and set aside the order of conviction and sentence entered against the accused petitioner. The accused is acquitted and set at liberty forthwith. He need not surrender to the bail bonds.”

9. Mr. Ghosh, learned Public Prosecutor in his usual fairness submits that there is no direct evidence regarding the demand of dowry except some omnivous statements. He also submits that PW-6 also did not state anything in her statement that the informant Halema Khatoon informed her regarding the demand of dowry except one incident of physical torture by the accused petitioner Achadur Rahman.

10. This Court has gone through the evidence on record and it appears that the informant PW-1 (Halema Khatoon) has made some statements regarding the demand of dowry but she has not stated when the said demand was made though she stated that her brother Sihabuddin (PW-4) paid Rs. 25,000/- to her husband. PW-4, her brother in his statement nowhere stated that he paid Rs. 25,000/- to the accused petitioner. PW-5 (Ishaq Ali), an independent witness in his statement though stated that the accused petitioner demanded one Yamaha motorcycle and cash amount of Rs.50,000/- but he did not disclose from whom he heard about the said demand and torture.

11. The learned appellate Court in its judgment has specifically stated that there is no direct evidence against the father-in-law, Dulu Mlah for causing torture and harassment on demand of said dowry of motorcycle and cash. He has also stated that there is also no strong and corroborative evidence except the version of PW-1, the complainant. The learned appellate Court also did not record

anything on the basis of what evidence he has found the accused person guilty for committing an offence under Section 498(A) IPC.

12. After going through the evidences on record, this Court is of considered opinion that the whole conviction is based on omnivous statements of PW-1 and, according to this Court, on such omnivous statements, an order of conviction cannot be upheld, particularly, when the said evidence is not corroborated by other witnesses. Even if the statement of PW-1 is believed then also the same cannot be considered as an offence under Section 498(A) IPC as mere single torture or single quarrel cannot be a ground for convicting under Section 498(A) IPC. Admittedly, in the instant case also, the prosecution failed to prove any quarrel between the accused petitioner and the informant wife to the alleged incident except some omnivous statements, as stated supra.

13. Considering the entire facts and circumstances, the order of conviction passed by the learned Additional Sessions Judge, North Tripura, Dharmanagar is hereby set aside and the accused petitioner is acquitted from the charge leveled against him. As the petitioner is on bail, he is discharged from the bail bond.

14. In the result, the revision petition is allowed. Send down the LCRs forthwith.

JUDGE

Saikat