

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL.REV.P. NO.60 OF 2011

Shri Bijan Nath,
son of Shri Binode Behari Nath,
resident of Village : South Baruakandi,
P.S. Dharmanagar, District : North Tripura

..... Petitioner

– Vs –

The State of Tripura

.....Respondent

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

For the petitioner : Mr. A. Das Gupta, Advocate.

For the respondent : Mr. A. Ghosh, PP.

Date of hearing & order : 05.06.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Das Gupta, learned counsel appearing for the petitioner as well as Mr. A Ghosh, learned counsel appearing for the State.

2. This is a petition under Section 397 read with Section 401 of the Cr.P.C., questioning the legality of the judgment dated 28.05.2011 by the Addl. Sessions Judge, North Tripura, Dharmanagar, affirming the finding of conviction as returned by the trial Judge. It is to be noted that, by the judgment and order dated 28.05.2011, the sentence as was awarded by the trial court has been reduced from 2½ years rigorous imprisonment with fine of ₹20,000, in default to suffer 6 months simple imprisonment for commission of offence under Section 498A of the I.P.C to 1(one) year's rigorous imprisonment with fine of ₹10,000, in default to suffer 3(three) months rigorous imprisonment. The trial court, the court of the Assistant Sessions Judge, North Tripura, Dharmanagar, by the judgment dated 07.02.2011 delivered in ST No.03 (NT/D) of 2010, arising out of GR No.358 of 2009 and Dharmanagar P.S Case No.114 of 2009, has convicted the petitioner under Section 498A of the I.P.C., but acquitted him from the charge as framed under Section 306 of the IPC. It is to be noted that the other co-accused were also acquitted from the charge.

3. The genesis of the case is rooted in the written ezahar (Exbt.1), filed by Barada Kanta Nath (PW.1) on 13.08.2009, disclosing that his daughter namely Sreemati Nath was married

to the petitioner. After marriage, she was subjected to physical and mental torture on demand of dowry by the petitioner alongwith his parents and one sister. On 20.07.2009 Sreemati came to stay in their house and during that time she had narrated about the demand of dowry by the petitioner and her inmates. She had also stated that her husband did not like her. She had informed that there had been no cohabitation even for once after the marriage. On 11.08.2009 at about 5:00 a.m. the mother-in-law of her daughter informed that her daughter had consumed poison and requested them to rush to the Dharmanagar hospital. It has been also disclosed that the petitioner on the pretext of bringing money from their residence left the hospital but never returned. When the attending Medical Officer advised them to take his daughter somewhere else for better treatment, the informant took his daughter to the Makunda hospital, Assam but that hospital refused to treat his daughter and thereafter, she was taken back to the Kailasahar hospital. During the time of her treatment neither the petitioner nor anyone else from his family visited his daughter in the hospital. On the day of filing the written ezahar i.e. 13.08.2009, his daughter expired. He has stated that it is his belief that the parents-in-law, sister-in-law and the petitioner forcibly administered poison to his daughter.

4. Based on the said written ezahar, Dharmanagar P.S case No.114 of 2009 under Sections 498(A)/306 of the I.P.C. was registered and was taken up for investigation. On completion of the investigation, the final police report under Section 173 of the Cr.P.C. has been filed against the petitioner, Sri Bijan Nath, his father, Sri Binode Behari Nath, his sister Smt. Purnima Nath and his mother Smt. Pramodini Nath under Sections 498A/306 of the IPC. Since the case was exclusively triable by the court of sessions, police papers were committed to the court of the Addl. Sessions Judge, North Tripura, Dharmanagar for trial. In the course of time, the case was transferred to the court of the Assistant Sessions Judge, North Tripura, Dharmanagar for conducting the trial in accordance with law. The Assistant Sessions Judge, North Tripura, Dharmanagar, hereinafter referred to as the trial court, framed the charge under Sections 498A/306 read with Section 34 of the I.P.C against all the said accused persons. The petitioner and the said accused persons denied the charges and claimed to face the trial.

5. To substantiate the charge, the prosecution adduced 14 witnesses including the informant (PW.1), the doctor who conducted the autopsy, namely Dr. Gitesh Bhattacharjee (PW.13), the investigating officer, namely Smt. Aparna Debnath (PW.12) and others. In addition to the oral evidence, the

prosecution introduced 10 documentary evidence including the written ezahar, the inquest report, the post mortem examination report etc. Thereafter, the petitioner and the other accused persons were examined under section 313 of the Cr.P.C. to have their response on the incriminating materials those surfaced in the evidence. The petitioner and the other accused persons reiterated that they were innocent and falsely implicated in the case.

6. The trial court, on purported appreciating the evidence, returned the finding of conviction only against the petitioner under Section 498A of the I.P.C. and in terms thereof awarded the sentence as stated. Being aggrieved by that finding of conviction, the petitioner preferred an appeal under Section 374(3) of the Cr.P.C. to the court of Addl. Sessions Judge, North Tripura, Dharmanagar as the sentence was less than 7(seven) years. The Addl. Sessions Judge dismissed that appeal, being Criminal Appeal No.10(1) of 2011, affirming the finding of conviction, but modified the sentence by way of reduction to 1(one) year rigorous imprisonment with fine of ₹10,000, in default to suffer further rigorous imprisonment for 3(three) months. This revision petition is directed against that judgment and order.

7. Mr. A. Das Gupta, learned counsel appearing for the petitioner has submitted that there is no convincing evidence of any unlawful demand or of torture constituting cruelty in terms of Section 498A of the IPC. He has succinctly contended that both the trial court and the appellate court did not appreciate the evidence properly. While appreciating, the part of the statement recorded under the cross-examination was not at all considered. Apart that, even though the statements recorded under Section 164(5) of the Cr.P.C. was not as a whole admitted in the evidence, except the signature of the witnesses those statements were read to the accused persons during their examination under Section 313 of the Cr.P.C. and those were read for the purpose of returning the finding of conviction. He has further submitted that, the prosecution witness, particularly PW.1 has stated that his daughter, the victim was severely depressed as there had been no cohabitation or consummation of the marriage even after 9(nine) months of the marriage. The other part regarding the torture, according to Mr. Das Gupta, learned counsel is afterthought. For purpose of illustration he has shown from the records that even though the petitioner admitted his daughter in the Dharmanagar hospital and went for bringing money from his home and thereafter for taking his wife to the other hospital signed the risk bond, PW.1 has stated that he did not return after he had left for bringing the money. According to him, the

statements relating to the torture or demand are completely fashioned to punish the petitioner and her inmates knowing well they are innocent. Delay in filing the information is a definite indicator to that aspect. Mr. Das Gupta learned counsel has further submitted that the statements as to the torture for the demand of dowry cannot be made part of the transaction relating to the death. Those are several and as such if those statements which are not made by the victim in contemplation of her death cannot be admitted in the evidence as those statements are hit by the provisions of Section 60 of the Evidence Act and not exempted under Section 32(1) of the Evidence Act. But, the trial court and the appellate court have not at all considered that aspect of the matter.

8. Mr. A Ghosh, learned Public Prosecutor appearing for the state, has submitted that if the statements of PWs. 1, 2, 3 and 4 are believed, the prosecution has definitely succeeded in substantiating the charge under Section 498A of the IPC against the petitioner. He has fairly submitted that they are related witnesses and when the court would appreciate their evidence, the ordinary rule of caution may not be strictly applied when the offence under Section 498A of the IPC is being tried by the court, inasmuch as what happened within the four corners of the domestic walls can usually be learnt or shared with the close

relatives like parents, sisters and others. Thus, if on the face their evidence are discarded or not considered, that only would occasion failure of justice.

9. For appreciating the rival contentions as stated, it is required that this Court would make a short survey of the evidence as recorded during the trial having regard to the narrow expanse of the judicial scrutiny.

10. The informant Barada Kanta Nath (PW.1) has stated in the trial that his daughter Sreemati Nath (or Gita by nick name) was married to the petitioner. After 8/9 months of her marriage she died unnaturally in Kailashahar hospital. Before her death she was subjected to torture in the house of the petitioner. When her daughter last visited in their house, she told her mother and sister about her sufferings. The mother-in-law of his daughter informed him in the early morning on 11.08.2009 that his daughter consumed poison and she had been taken to the Dharmanagar hospital. Having received such information he rushed to the hospital and saw her daughter was rinsing in pain and she was not in a position to speak. The attending Medical Officer advised to take her to other hospital for better treatment. Initially her daughter was taken to the Makunda hospital at Assam, but the attending doctors of the said hospital refused to provide any treatment and as such they were compelled to take

her back to the Kailasahar hospital. On the pretext of bringing money for purchasing medicine, his son-in-law left for his house, but did not return. In the Kailasahar hospital, his daughter breathed her last. He received her dead body for cremation after the post mortem examination. He has further stated that he filed the written ezahar which was written by one Panna Lal Nath. In the cross-examination he has admitted that he came to know about the torture on his daughter two days after the written ezahar was filed. He has admitted that, when his daughter was released from the hospital, the petitioner had signed the risk-bond. The informant (PW.1), has also made the following statements :

“I cannot say whether my accused son in law went to Kailashahar hospital with cash for treatment of my daughter. I cannot say whether he went to Makunda hospital and then to Silchar when he did not see us in Kailasahar hospital. I cannot say whether my accused son in law sitting near the bridge nearby Kailasahar hospital in depressed condition.”

He has also admitted that his son-in-law purchased saline and medicine for treatment of his daughter at the Dharmanagar hospital.

11. PW.2, Radha Rani Nath is the mother of the deceased. She has simply stated that the victim told her that she was subjected to torture for cash, dish-antenna etc. and the demand

for cash was made for constructing toilet and bathroom. She has also complained that the other inmates also taunted her by saying that she was infertile. As such, she could not bear the torture and committed suicide. She has also admitted in the cross-examination that :

"I did not state to police officer or the Magistrate while making the statement to them that the accused demanded money for building bathroom in his house."

12. PW-3, Sujit Nath, younger brother of the victim, has stated that his sister was subjected to torture in her in-laws house for cash and dish-antenna. During his examination, he broke down into tears He has stated that :

"It is not a fact that my sister herself demanded money from my father for buying antenna and construction of sanitary latrine in her in laws' house because she was accustomed to those facilities in our house."

13. PW.4 Smt. Jhuma Nath, another younger sister of the deceased, has stated as under :

"We had come to know from her that she was unhappy at her in laws house because her husband told her that he married her unwillingly only to show respect to the wish of his father and he did not accept my sister as his wife. Moreover her husband also tortured my sister because the demand of dowry was unfulfilled. He

claimed a dish antenna which was not given by my parents."

She has further stated that her sister told that her husband had love affair with another woman prior to their marriage. She came to know about that affair after the marriage. Her husband was so inclined to that woman that he used to assault her sister whenever she raised protest. But, no such statement was available in her previous statement that the victim's husband had affair with another woman before their marriage. Even such statement was not found in the previous statement that the petitioner demanded cash, dish-antenna etc.

14. PW.5 Dilip Ghosh, a witness from the neighbourhood, has stated that he did not have any idea about the cause of death of the victim. PW.6 Radha Kanta Nath, another neighbour also followed the suit of PW.5. PW.7 Aditya Sukla Baidya has been tendered by the prosecution and he was released without cross-examination by the defence.

15. PW.8 Sukhendra Das was an Assistant Sub-Inspector of Police who carried out the inquest report. He has categorically stated that during the inquest, the wearing apparels of the victim were seized and he was witness to that seizure.

16. PW.9 Jadu Sukla Baidya is another witness from the neighbourhood. He also did not divulge any materials of importance.

17. PW.10 Suresh Ghosh followed the suit of PW.9. Similarly, PW.11 Smt. Haimanti Nath, another witness from the neighbourhood also followed that suit. They did not know why the victim had consumed poison.

18. PW.12, Smt. Aparna Debnath, who investigated the case, has briefly narrated how she collected the material objects and recorded the statement of the witness or facilitated in recording the statement under Section 164(5) of the Cr.P.C. After the investigation was complete, finding a strong *prima facie* case, she filed the chargesheet under Sections 498A/306 read with Section 34 of the IPC.

19. PW.13, Dr. Gitesh Bhattacharjee who conducted the post mortem examination on the body of the victim, has categorically stated that the cause of death was due to pulmonary oedema for poisoning which is suicidal in nature. He has categorically stated that the body of the deceased had been identified by her husband, Bijan Nath.

20. After scrutinizing the records, this Court finds that neither of the statements recorded under Section 164(5) of the

Cr.P.C. was introduced in the evidence by the Judicial Magistrate who recorded the statement. Only the signatures of Radha Rani Nath (PW.2) and Smt. Jhuma Nath (PW.4) have been introduced in the evidence respectively as Exbt.4/1 and Exbt.5/1. This Court is at dismay to discover that there is no such document at Exbts. 4 and 5 at all. This is the reason why Mr. Das Gupta, learned counsel appearing for the petitioner has raised objection that the trial court has committed illegality by relying on those contents. What has appeared from the plain reading of the evidence is that the informant did not speak the truth in the trial, inasmuch as the petitioner, the principal accused in the case was all through in the hospital and the traces of his presence are manifest in the records. Apart that, PW.1 has categorically admitted that he came to know that the victim has been tortured by the petitioner and the other in-laws came to know that after 2/3 days of her death. It becomes apparent that the allegation of physical torture might be after thought. This becomes probable as the information was not lodged immediately after the occurrence. Even PW.4 has categorically admitted that such demand was never raised by the victim to her father and it has also been apparent that the allegation of such torture was not initially stated to the Investigating Officer and those statements were later on introduced while making the statement in the trial.

21. Having regard to the materials those surfaced in the evidence, this court is of the opinion that based on such materials the finding of conviction under Section 498A of the IPC cannot be maintained. By way of interpretation, the substance of the evidence cannot be improved. Thus reliance of the trial court in the **State of West Bengal Vs. Orilal Jaiswal & Anr.**, reported in **1994 Cri.L.J. 2104**, according to this court is entirely misplaced. In **State of West Bengal Vs. Orilal Jaiswal**, it has been observed by the apex court that :

“It is not expected that physical torture or the abuses hurled on the wife by the husband and the mother in law should be made in such a way as to be noticed by the tenants living in the adjoining portion of the house.”

22. In this case real life version has been contextualised altogether in different fact-situation. Here, one solitary discovery that has come to the fore is that while after 8/9 months of the marriage the victim came to her parents’ house, she disclosed that she was being tortured. But, if the testimonies of PWs. 1, 2 and 3 are juxtaposed with the statement of PW.4, it will be also apparent that these witnesses were giving reasons at variance. One of the stories is for demand and other story is the petitioner’s having a pre-marital affair. But, beneath all these stories another story that has been implanted is that the victim was being deprived of cohabitation after her marriage. It thus

appears that none of these witnesses did know for sure what was the reason for the victim's committing suicide. But, the prosecution has provided that the victim was under serious depression. If the prosecution stories provide the figment of depression preceding to the suicide, this court is of the opinion that under 106 of the Evidence Act it is not even expected from the defence to explain the special knowledge. Apart that, Mr. Das Gupta has raised objection regarding admissibility of the statement which are not directly related to the death. Whether those can be admitted in the evidence or not, calls for serious attention. Unless it is shown that the statement that the victim made is relating to the death or is inextricably related to the transaction of the death in view of the apex court's decision rendered in **Inderpal Vs State of M.P.**, reported in **(2001) 10 SCC 736**, such statement is inadmissible in view of the provisions of Section 32(1) of the Evidence Act. Section 32(1) of the Evidence Act is an exception to the general rule provided under Section 60 of the Evidence Act which is known popularly as the hearsay evidence. If the statements are not excepted under subsection (1) of Section 32 of the Evidence Act, those statements are bound to be hit by the hearsay rule. Mr. Das Gupta, learned counsel appearing for the petitioner is substantially correct. The trial court as well as the appellate court, by not noticing that

aspect of the matter, has failed to appreciate the evidence in the perspective.

23. Having held so, this court is of the opinion that the prosecution's case has run amok and no cohesive evidence was built up to return the finding of conviction. As such, the petitioner is entitled to the benefit of doubt.

24. Thus the impugned judgment and order is interfered with and set aside. The petitioner is acquitted from the charge under Section 498A of the IPC on benefit of doubt.

25. In the result, this revision petition stands allowed.

Send down the LCRs forthwith.

JUDGE

ROY/Dipesh