

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. PET. NO.34 OF 2006

1. Md. Major Ali,
S/O Late Anjab Ali,

2. Kutina Begam,
W/O Md. Major Ali.

Both are resident of Ichailal Cherra,
P.S. Chouraibari,
North Tripura District.

..... *Petitioners*

- *Vs* -

1. The State of Tripura,

2. Fatima Begam,
W/O Nazim Uddin,
D/O Late Firoj Ali of
Village-Padmabill(N),
P.S. Panisagar,
District-North Tripura,
Pin-799260.

..... *Respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioners : Mr. S. Chakraborty, Advocate

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

Date of hearing : **03.07.2015**

Date of delivery of
Judgment & order : **23.07.2015**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER

This revisional application under Section 397 read with
Section 401 of CrPC is directed against judgment and order dated

31.01.2006 passed by learned Addl. Sessions Judge, Dharmanagar, North Tripura in Criminal Appeal No.30(3) of 2005, whereunder learned Addl. Session Judge upheld the judgment and order of conviction and sentence of the accused petitioners dated 21.07.2005 passed by learned Judicial Magistrate, First Class, Dharmanagar, in case No. C.R.486/2004.

2. Heard learned counsel, Mr. S. Chakraborty for the accused petitioners and learned Addl. P.P., Mr. R.C. Debnath for the State respondent. Respondent No.2, the complainant did not participate in the hearing in spite of service of notice.

3. Respondent No.2, Smt. Fatima Begam(hereinafter mentioned as, *complainant*) filed a written complaint before the Court of SDJM, Dharmanagar, which was ultimately transferred to the Court of learned Judicial Magistrate, First Class, Dharmanagar, alleging *inter alia* that her marriage was solemnized as per *Muslim Shariat Laws* on 08.10.2003 which corresponds to 21st of Ashwin, 1410 B.S. with Md. Mafuddin, son of accused petitioners, Major Ali and Kutina Begam. After marriage Fatima entered the marital home holding the hands of her husband at village Ichailalcherra and lived and cohabited as husband and wife for about three and half months. On 24.01.2004 Mafuddin, husband of Fatima, left for Soudi Arabia in search of his job and started living there. After about fifteen days, *i.e. w.e.f.* 09.02.2004, the accused persons, namely Major Ali and Kutina Begam along with accused Faruk Uddin and Jamal Uddin started physical and mental torture on Fatima and they

set a demand of ₹1,00,000/-(rupees one lakh) to Fatima to bring the amount from her parents' house. They threatened her that if she fails to bring the amount she will be driven out of the matrimonial home. It was also alleged by the complainant that before her marriage with Mafuddin, accused Ashab Ali made a proposal for marriage of Fatima with his nephew but brother of Fatima refused the proposal and therefore accused persons at serial numbers 7 to 14 of the complaint petition entered into a conspiracy to defame and to scandal Fatima and they all happens to be the relatives of the accused Major Ali. On 29.06.2004, an information was sent to the parental house of Fatima that she was ill and on receipt of that information her brother, Asaid Ali(PW5) and her brother-in-law(sister's husband), Najim Uddin(PW3) went to the matrimonial home of Fatima on 30.06.2004 and found her well. On that day, *i.e.* on 30.06.2004, both Asaid Ali and Najim Uddin stayed in the house of accused Major Ali, *i.e.* the matrimonial home of Fatima and at night time at about 12.00 PM the accused persons along with some other unknown ten/twelve persons *gheraoed* them in the house and scandaled Fatima and also abused them and thereafter compelled them to put signature on some blank stamp papers and on the following day in the morning Fatima was also put out of the house of accused persons and Asaid Ali and Najim Uddin, both returned their village at Padmabill along with Fatima. Fatima reported the incident to her husband Mafuddin over telephone and her husband asked her not to institute a case and to wait for sometime. She also asked her husband to give her maintenance

and her husband asked her to wait. She was waiting for about two months but received no response from her husband and after about two months she again made a phone call to her husband and this time her husband denied her all allegations and also refused to give any maintenance to her. Finding no other alternative she lodged the complaint before learned SDJM, Dharmanagar on 29.09.2004 against fourteen accused persons, named in the complaint including the accused petitioners.

In course of trial, learned Judicial Magistrate, First Class, Dharmanagar on 29.01.2005 framed charges against all the fourteen accused persons including the accused petitioners for commission of offence punishable under Section 498A of IPC to which they pleaded not guilty and claimed to be tried.

In the course of trial, the complainant examined six witnesses including herself. PW1 Fatima Begam is the complainant herself, PW2 Samiran Nath is a co-villager and is a friend of her brother, PW3 Najim Uddin is the sister's husband of the complainant, PW4 is the sister of complainant who is the wife of PW3 and PWs 5 and 6 are the brothers of the complainant.

After closure of the prosecution evidence the accused persons were examined under Section 313 of CrPC and in their turn they examined three witnesses, namely DW1 Sabbir Ahmmed, a Deed Writer, DW2 Watir Ali, a co-villager of the complainant and

DW3 Afzal Miah. Defence also proved a deed of declaration dated 20.04.2004 alleged to have executed by the complainant whereunder she accepted the Moharana of the marriage with Mofuddin and voluntarily left the house of Mafuddin taking all other gifts and ornaments given in the marriage.

Defence case is that after Mafuddin left for Soudi Arabia the complainant voluntarily decided to leave the house of the accused persons and to that effect on 20.04.2004 a document was executed by the complainant in presence of her brother and brother-in-law and other witnesses and that document has been proved as *Exbt.A* wherein the signatures of brother and brother-in-law of the complainant proved and the signatures of DWs also proved. It is the case of the defence that the complainant voluntarily left the house of the accused persons and that there was no demand of any dowry and there was no harassment or cruelty by the accused persons.

4. The trial Court found the accused petitioners, Major Ali and Kutina Begam guilty of committing offence punishable under Section 498A of IPC and sentenced accused Major Ali to suffer RI for two years and Kutina Begam to suffer RI for a period of three months. The other twelve accused persons were acquitted from the charge.

5. Aggrieved, the convict accused Major Ali and Kutina Begam preferred Criminal Appeal No.30(3) of 2005 in the Court of Addl. Sessions Judge, Dharmanagar and learned Addl. Sessions Judge upheld the conviction and sentence by judgment dated 31.01.2006 and accordingly dismissed the appeal and hence this revisional application.

6. Mr. Chakraborty, learned counsel for the petitioners has candidly submitted that this is a case of no evidence of exercise of cruelty. Except a statement that Fatima was tortured mentally and physically on demand of ₹1,00,000/-(rupees one lakh) there is no specific evidence of physical or mental torture. Such omnibus statement of the complainant and her relatives cannot be accepted as an evidence of exercise of cruelty and so both the trial Court and the appellate Court committed serious injustice and hence the revisional application should be allowed. He has further submitted that all the witnesses except PW2 are the brothers, sister and sister's husband of the complainant and PW2 stated nothing incriminating. Under such circumstances, prosecution case has no leg to stand and therefore the judgment and order of conviction and sentence is liable to be interfered and set aside.

7. Learned Addl. P.P., Mr. Debnath for the State respondent has submitted that except a general statement that she was subjected to cruelty mentally and physically on demand of a cash amount of ₹1,00,000/-(rupees one lakh), there is no such particular allegation of exercise of cruelty and both the trial Court

as well as the appellate Court placed implicit reliance on that statement and the revisional Court may not interfere in the judgment passed by the trial Court and affirmed by the appellate Court.

8. Section 498A has been inserted in the Penal Code to contain the atrocity on married woman and to stop all sorts of cruelty towards the married woman which has been a burning problem of the society. The concept of cruelty and its effect varies from individual to individual, depending upon the social and economic status to which such person belongs. The basic facts from which cruelty is to be inferred are to be alleged and proved to take the guilt at home. It is not sufficient to say that the woman was subjected to physical and mental torture on demand of money. It has to be proved the manner and the acts or omissions by which cruelty has been exercised. For the purpose of an offence punishable under Section 498A of IPC cruelty has been defined under Explanation to the Section which reads thus—

- (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 account of*

failure by her or any person related to her to meet such demand.

Prosecution, therefore requires to prove the willful conduct on the part of the accused persons which is of such a nature as is likely to drive a woman to commit suicide or is likely to cause grave injury or danger to life, limb or health and secondly, so far as explanation (b) is concerned that such harassment of the woman where the harassment is with a view to coercing her or any persons 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, would also constitute cruelty.

9. According to the complainant, her husband Mafuddin left for Saudi Arabia on 24.01.2004. The accused persons at serial Nos.1 to 4 in the complaint petition which includes the accused petitioners started physical and mental torture on her after fifteen days of her husband left the matrimonial home *i.e. w.e.f.* 09.02.2004. She has further alleged that on 30.06.2004 her brother(PW5 Asaid Ali) and her brother-in-law Najim Uddin(PW3) on the basis of a false information went to her matrimonial home and signatures of the complainant and brother and brother-in-law of the complainant were obtained by force and under threat on some unwritten stamp papers and on 01.07.2004 she was put out of the matrimonial home along with her brother and brother-in-law and she took shelter in her parental home. On the following day,

i.e. on 02.07.2004 she informed her husband over telephone and was waiting for response from her husband and for the second time she telephoned her husband on 24.10.2004 and her husband even refused to give her maintenance and thereafter she lodged the complaint. The complaint was lodged on 29.09.2004 which means after about three months of her alleged putting out from matrimonial home she lodged the complaint before the Court of SDJM. In the complaint she stated that there was an attempt to solve the matter amicably but since it was not possible and since she was physically ill there was delay in filing the complaint.

10. Let us now see what the complainant stated in her complaint about the allegation of exercise of cruelty.

In the complaint the complainant stated that fifteen days of her husband left for Soudi Arabia *i.e.* from 09.02.2004 the accused Nos.1, 2, 3 and 4 named in the complaint, which includes the accused petitioners, had started inflicting torture upon her mentally and physically on demand of ₹1,00,000/-(rupees one lakh) often. Often they used to rebuke her in offensive words and she used to remain in frustrated condition without taking any food. The accused persons also threatened her that if she fails to fetch ₹1,00,000/-(rupees one lakh) from her father's house they will send her back to her father's house. She further stated that on 01.07.2004 when she was put out from her matrimonial home with her brother and brother-in-law, at that time also the accused

persons threatened that she will not be allowed to enter in the matrimonial home if she fails to arrange ₹1,00,000/-(rupees one lakh) as dowry. There is no other statement made in the complaint petition about the exercise of cruelty on demand of money. There are other stories stated in the complaint petition which are not at all related to the alleged exercise of cruelty.

In her deposition before Court the complainant stated that after fifteen days of departure of her husband from the house, the accused persons Major Ali and Kutina Begam being her parents-in-law and the other accused persons, namely Jamal Uddin and Faruk Uddin being the brother of her husband started mental and physical cruelty on her demanding dowry amounting to ₹1,00,000/-(rupees one lakh) and also they started hurling slang language every now and then and kept her in starvation and threatened her to drive her out from the matrimonial home. She also stated the fact that on 30.06.2004 at night her signature and the signatures of her brother and brother-in-law *i.e.* Asaid Ali and Najim Uddin were obtained in blank stamp papers and on 01.07.2004 she was driven out of the matrimonial home. She was threatened that she will not be allowed to enter in the matrimonial home unless she takes ₹1,00,000/-(rupees one lakh) with her. In her cross-examination she denied the suggestion that on 20.04.2004 she put her signature in a declaration scribed by one Sabbir Ahmed and she received the dowry price (Moharana) and other articles and thereafter left the matrimonial home voluntarily. In cross-examination she admitted

that she put her signatures in written document dated 20.04.2004 and the signatures are marked as *Exbts.A3, A4 and A5*.

PW2 Samiran Nath is a resident of the village of PW3 and since closely known to each other he used to know the complainant also. He stated that he heard that accused Major Ali claimed ₹1,00,000/-(rupees one lakh) from the complainant as dowry. In cross-examination he stated that he heard it from the witness Najim and Asaid. He further stated that he went to the house of Major Ali in the first part of June, 2004 and requested for an amicable settlement of the dispute but no decision could be arrived at and thereafter he returned.

PW3, the brother-in-law of the complainant has stated that after departure of Mafuddin, almost after fifteen days mother-in-law and father-in-law of the complainant, namely Kutina Begam and Major Ali and Faruk Uddin, cousin of Mafuddin started cruelty on the complainant demanding an amount of ₹1,00,000/-(rupees one lakh) as dowry. He stated another story which the complainant did not state. He stated that after fifteen days from the date of demand of dowry by the accused persons, the complainant with her father-in-law came to the residence of her father at Padmabill and in the residence of her father complainant narrated the fact of demand of dowry by the accused persons to her brother. At that time accused Major Ali told the brother of the complainant that if he fails to meet up the demand in that case he will not accept the

complainant to his residence. This story stated by PW3 has not even been stated by the complainant.

PW4 is the sister of the complainant and she also narrated in the same tune as that of the complainant that she was subjected to torture on demand of ₹1,00,000/-(rupees one lakh).

PW5 Asaid Ali stated in the same tune of PW3 that the complainant was subjected to torture on demand of ₹1,00,000/- (rupees one lakh) after fifteen days of departure of her husband. PW6 Ayaz Ali also narrated the same fact.

11. What transpires from the evidence of prosecution witnesses about the allegation of cruelty is that Fatima Begam was subjected to cruelty on demand of ₹1,00,000/-(rupees one lakh) and that demand was made after fifteen days of her husband left for Soudi Arabia. There is no whisper in the evidence that at the time of marriage there was any demand of dowry. There is nothing in the evidence on record as to why the petitioners being the parents-in-law and other accused persons suddenly put up a demand of dowry of ₹1,00,000/-(rupees one lakh) after her husband left the matrimonial home. A simple statement that she was subjected to cruelty both mentally and physically has been made by the complainant and her witnesses. Definitely, her witnesses stated the fact knowing it from her. What was the manner of exercise of cruelty or harassment, what acts or

omissions the accused persons did in exercise of cruelty has not been stated by the complainant.

12. Explanation (b) of Section 498A prescribes that harassment of the woman which is with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security amounts to cruelty. The complainant and her witnesses simply stated that she was subjected to cruelty and the complainant in her deposition stated that slang language was used and she was kept on starvation. What was the nature of the cruelty exercised has not been stated. What sort of act or omission exercised by the accused persons while causing the cruelty has not been stated. What sort of language was used which may be termed as slang language has also not been stated. A general statement that she was subjected to cruelty, food was not given, slang language was used have been made by the complainant. Evidence of the other witnesses are of little importance since they stated only after hearing from the complainant. Here the complainant's statement is of utmost importance which must inspire confidence. The trial Court as well as the appellate Court as I find simply taken into consideration the apparent statement of the complainant and did not consider it with that much of importance as to what was exactly happened which amounts to exercise of cruelty by way of harassment on demand of dowry.

13. The most interesting story which the complainant and the other witnesses brought is that an information was sent to the parents house of the complainant that she was seriously ill. On receipt of that information her brother and brother-in-law *i.e.* PW5 and PW3 went to the matrimonial house of the complainant on 30.06.2004 and they stayed in that house for that night. They stated that at about 12.00 PM the accused persons along with others encircled them, used filthy words against the complainant and scanded the complainant and thereafter compelled the complainant and her brother and brother-in-law to put signature on some white stamp papers. On the following day, the complainant was put out of the matrimonial home and along with her brother and brother-in-law she came back to her parents house and took shelter in her parents' house.

14. On the other hand defence set up a different story. It is in the evidence that on 20.04.2004 the complainant Fatima Begam executed a document in presence of her brother, brother-in-law and other witnesses declaring that there shall remain no relation between her and her husband Mafuddin and that she received the amount of Moharana in cash and other articles and that document has been exhibited as *Exbt.A* by the Deed Writer, *i.e.* DW1. Complainant put her signatures in each page of the document which are marked as *Exbts.A3, A4 and A5*. PWs 3 and 5 also proved their signatures in that document which marked as *Exbt.A1 and Exbt.A2*. DW1, the Deed Writer proved the document and DW3 also proved

his signature in that document. DW2 is a resident of Padmabill *i.e.* the matrimonial village of the complainant and he also stated about the fact of settlement and the document executed by Fatima. It is proved by the defence evidence that the document was executed on 20.04.2004. It means it was two months before the date, *i.e.* 30.06.2004 when the complainant and her brother and brother-in-law alleged that their signatures were obtained in blank stamp papers and they were forced out of her matrimonial home. No other witness examined by the complainant to show that on 30.04.2004 her brother and brother-in-law together went to the house of the accused persons and stayed there for the night or that on the following day any villager found them coming out of that house. The defence stand cannot be ruled out that to negate the document executed on 20.04.2004, the complainant and her brother and brother-in-law set up the story that their signatures were obtained on white stamp papers forcefully on the night of 30.06.2004.

15. PW3 was an Ex-Gram Pradhan of village Dupirband. If it was true that their signatures were obtained in blank stamp papers forcefully, it was natural for the complainant and her brother and brother-in-law to immediately lodge an FIR at police station or at least to inform other villagers that their signatures were obtained in blank stamp papers. The alleged signature on blank stamp papers was obtained on 30.06.2004 and the complaint of this case was lodged on 29.09.2004. Surprisingly, the complainant and her brother and brother-in-law were silent during this long period of

time which is quite unnatural and not consistent with normal human conduct. Therefore, the defence evidence that on 20.04.2004 complainant executed a document in presence of her brother and brother-in-law and other witnesses and thereby disclaimed her right as a wife and received Moharana, etc. and then she left the matrimonial home gains some evidentiary strength which overweighs the evidence adduced by the complainant about putting out her from the matrimonial home on 01.07.2004.

16. The defence suggestion cannot be ruled out that at a subsequent stage because of frustration the complainant made a false FIR against the accused petitioners and all other twelve relatives. The trial Court picked up the accused petitioners and held them guilty and sentenced them. Whereas, accused No.3 and 4 named in the complaint petition, have not been punished though the allegation made in the complaint and in the evidence of the complainant is almost same. A mere allegation of harassment is very easy to make but unless the acts and deeds or acts or omissions which constitute the harassment are specifically made and proved, I think in a case under Section 498A the Court should not hold the accused guilty of the charge. In the present case, except that of an omnibus statement of harassment on demand of ₹1,00,000/-(rupees one lakh) there is no specific or particular act or omission as to in what manner that harassment was exercised and in absence of any such evidence, the prosecution case should be treated as doubtful and not proved with sufficient evidence.

17. In view of the discussions made above I think it is a fit case where the revisional Court should interfere in the order of punishment since injustice has been caused by the punishment awarded by the Courts below. Accordingly, the judgment and order of conviction and sentence dated 21.07.2005 passed by learned SDJM, Dharmanagar in case No.C.R. 486 of 2004 and the judgment and order passed by learned Addl. Sessions Judge in Criminal Appeal No.30(3) of 2005 are set aside and quashed. The accused persons be set at liberty from the charge levelled against them.

Send back the LCRs along with a copy of this judgment.

JUDGE