

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. NO. 92 OF 2007

Sri Ranjit Chakraborty
son of Sri Amar Chakraborty,
of Kanchan Palli (ONGC),
P.S. Amtali, District : West Tripura

..... Petitioner

– Vs –

The State of Tripura,
represented by the Secretary,
Department of Home, Agartala

.....Respondent

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

For the petitioner : Mr. A. Bhowmik,
Amicus Curiae

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

Date of hearing & judgment & order : 27.04.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER(ORAL)

Heard Mr. A. Bhowmik, learned Amicus Curiae who has
been engaged by this court for presenting the case of the petitioner as

well as Mr. R.C. Debnath, learned Addl. Public Prosecutor 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 and order dated 02.06.2007, delivered in Criminal Appeal No.52(3) of 2006 by the Addl. Sessions Judge, West Tripura, Agartala, Court No.2, affirming the finding of conviction as returned by trial court, however, with modification in the sentence from three years' rigorous imprisonment and fine of ₹1,000 to one year's rigorous imprisonment and fine of ₹30,000 with the default sentence, under Section 498A of the IPC.

3. The victim, Sutapa Chakraborty (PW.1) lodged the complaint (Exbt.1), disclosing that after 8-9 months of her marriage, her father-in-law started pressurising her for fetching ₹25,000 from her parents and her husband also participated in such act for bringing cash. In order to coerce her in realising that unlawful demand from her parents, she was often subjected to physical torture by her husband, the petitioner herein. When she desperately informed the matter to her sister in law, elder brother-in-law and father-in-law, in order to protect her from physical assault, they asked her to fulfil the demand. Even they indicated that, otherwise they would arrange marriage of the petitioner somewhere else. Her father-in-law, elder brother-in-law and sister-in-law also asked the petitioner to set her ablaze. They also asked her husband not to bring rice and pulses for her food. In the year 2002, she became pregnant, but her husband and sister-in-law

assaulted her for fetching cash. In the course of such assault, when her husband, in particular, pushed her, she fell down and there had been abortion of the foetus. Again in the year 2003, she became pregnant, but she was forced to abort the pregnancy on 02.01.2004 at the instance of her husband, who was instigated by her father-in-law. The victim disclosed that she has suffered physical assault, mental torment and serious indignity from the behaviour of the inmates. When her father visited her matrimonial home for bringing peace in their conjugal life, he was humiliated by her father-in-law and her husband. There had been an attempt to conciliate the discord in presence of 3-4 village elders. She has also complained that the petitioner expressed his remorse in that meeting and assured that he would take all sorts of care of the victim. Thereafter, the victim for proper care stayed considerable time in her parent's house, but during that period, not for once the husband (the petitioner herein) visited her. During the time, she got information that the petitioner had developed an illicit relationship with one woman at a place called Indira Colony at Hapania. On 11.09.2005 at about 1230 hours when she visited the house of one Gopal Chakraborty alongwith her mother, younger sister and a friend, they found a woman had been sharing bed with the appellant. As the appellant found her inside the room, he rose up from the bed and pushed her. When she screamed, people from the locality rushed there and insulted the appellant. They handed over the articles which were given by her father at the time of her marriage. On

18.09.2005, a village meeting was held in the said locality and it was decided that, if the appellant continue the said relation, he would be socially boycotted. She has explained that since she made sincere attempts to reconcile the marriage, there had been some delay in lodging the written ejahar.

4. Based on the said ejahar, Amtali P.S. Case No.94/2005, under Sections 498A/34 of the IPC was registered and taken up for investigation. After investigation, the police filed the chargesheet under Sections 498A/34 of IPC. On taking cognizance, the charge was framed against the petitioner and other co-accused, namely Amar Chakraborty, Pradip Chakraborty and Smt. Kabita Chakraborty separately under Section 498A of the IPC. All the accused persons including the petitioner pleaded innocence and claimed to be tried.

5. In order to substantiate the charge, as many as ten witnesses including the victim, the Investigating Officer, namely Sankar Lal Purkayastha (PW.10) were examined. The prosecution has also introduced in the evidence, the written ejahar, hand-sketch map with index etc.

6. Mr. A. Bhowmik, learned Amicus Curiae, has submitted that if the evidence is scanned, it would be apparent that the fact on the basis of which the prosecution sought to prove the charge is not satisfactorily corroborated. What the victim (PW.1) has stated, has not been at all corroborated by the neighbouring witnesses, namely Smt.

Pushpa Bhattacharjee (PW.4) and Smt. Bijaya Bhattacharjee (PW.5) and they all have stated a different story. Again, Mr. Bhowmik, learned Amicus Curiae, has submitted that, to establish the veracity of the “unlawful demand”, the prosecution has miserably failed as there is no harmonious relation with the statements of the victim (PW.1) and the statement of Smt. Chandana Chakraborty, the mother of the victim (PW.2) and Arun Pada Chakraborty, the father of the victim (PW.6). They have stated the incidents of demand and meeting up the said demands so illogically that a reasonable man cannot place trust on such testimonies. Apart that, Mr. Bhowmik, learned Amicus Curiae, has submitted that if the element of unlawful demand is not established by cogent evidence, the charge under Section 498A of the IPC cannot be held to have been established. The prosecution’s case of cruelty is based on coercive harassment for realising unlawful demand. Thus the impugned judgment requires to be interfered with.

7. From the other side, Mr. R.C. Debnath, learned Addl. Public Prosecutor appearing for the state, has submitted that when the victim has candidly submitted that she wanted to reconcile the marriage, she was obviously cautious about stating what was happening within the four corners of the domestic life. It is only expected that she would share such traumatic fact only with the very close ones, not with others. What is obvious expected is that the victim of such circumstances would tell her misery to the people around her, which according to Mr. Debnath, learned Addl. Public Prosecutor had been

done by the victim and that would be apparent from the statements of PW.4 and PW.5. Mr. Debnath, learned Addl. Public Prosecutor has emphatically stated that if the statements of the victim, her parents (PWs. 2 and 6) alongwith the statement of PW.7 are conjointly read, it would emerge that there was unlawful demand and for realising such demand the victim was brutally tortured continuously till she was separated from the matrimonial home. Even the cruelty is of the nature that during subsistence of the marriage, the petitioner developed illicit relation with another lady, whose name has been disclosed in the evidence, but for protecting her identity, the name has not been referred to. There is no disjointing evidence as regards the discovery of that relation by the victim. Her sister, namely Susmita Chakraborty (PW.9) has corroborated the victim on material parts. But, Mr. Debnath, learned Addl. Public Prosecutor, has candidly submitted that unless all the pieces of evidence as led by the prosecution is considered as a whole, the nature of the cruelty that has been pounced on the victim cannot be had. According to him, the charge under Section 498A of the IPC has been well proved by the prosecution. Mr. Debnath, learned Addl. Public Prosecutor in the last lap of his submission, has stated that on re-appreciation of the evidence when the appellate court has affirmed the finding of conviction, this court may not exercise its revisional jurisdiction for upturning the finding of conviction.

8. Having regard to these rival contentions and for a very limited purpose, this court is required to glance through the evidence that has been placed by the prosecution.

9. PW.1, Sutapa Chakraborty is the victim of the circumstances. Out of a love affair, she married the petitioner, Ranjit Chakraborty. She has given the wretched saga of her life. After 8/9 months of her marriage, she was pressurised initially and thereafter she became the target of the physical assault by the petitioner and other inmates for realising that unlawful demand. Even some of the demands were fulfilled by the parents (PW.2 and PW.6) as the desired amount was not realised, the cruelty continued unabated. PW.1, the victim has stated that, there was a demand for cash of ₹25,000 to be brought from her father. Initially she brought ₹5,000 and then she brought ₹6,000. But, when the demand increased and she was subjected to pressure, she expressed her inability to bring money from her parents' house. As such, the petitioner started torturing her physically. Her father-in-law has clearly stated that, if she wanted to stay in the matrimonial home, she must bring that cash. Even he indicated that he would not mind to get his son married again for bringing such riches. Even during the occasion of 'simantara', she was asked to bring one gold chain for her husband. As she asked why such chain is required, then she was rebuked and threatened. In the year 2003, she became pregnant and ultimately for tremendous torture on her, the foetus got aborted. When the torture crossed the limit, she

informed the matter to her father through one Pushpa Bhattacharjee (PW.4). Thereafter, when her father, Arun Pada Chakraborty (PW.6) came to meet her husband, the petitioner herein and her father-in-law, they humiliated her father and drove him away from their house. When the victim fell seriously ill, with the intervention of the elderly people of the locality there had been a meeting in her matrimonial home at Kanchanpalli, ONGC, where Smt. Pushpa Bhattacharjee (PW.4), Smt. Anita Mitra and Smt. Khuku Ghosh and others were present with her parents. In that meeting, the petitioner admitted his guilt and promised not to repeat the same. But, her father-in-law did not attend that meeting. The petitioner also promised to give her proper maintenance and, on such assurance she agreed to stay with the petitioner. Once, when she came to the matrimonial home, she found the door locked. For query on that, her sister-in-law and mother-in-law started abusing her with filthy languages. Then she informed the matter to the neighbours. They suggested her to take the shelter of law. Thereafter, again on 18.09.2005 a meeting was held in a field near the house of Gopal Chakraborty at Indira Colony and in that meeting it was decided that unless the petitioner discontinued the illicit relation, they would boycott him and would not allow him to stay in that house. She however, denied the suggestion contrary to what she had stated in the examination-in-chief.

10. PW.2, Smt. Chandana Chakraborty, the mother of the victim, has stated how the marriage between the petitioner and the

victim took place. She has stated that, once she paid ₹5,000 to the father-in-law of her daughter on being approached. She has also stated that the petitioner and other inmates used to send her daughter for bringing money. When they took help of the neighbours of that locality, they were informed that the petitioner and the other inmates used to torture her daughter. Once, having received the information that her daughter was severely beaten up by the petitioner, she rushed to the matrimonial home of her daughter. But, on seeing her there, the sister-in-law of her daughter got infuriated and started abusing her with filthy language and also misbehaved with her. She asked the petitioner not to beat her daughter. Even for their welfare, the father of the victim (PW.6) arranged one employment for driving the vehicle of one physician, but he was thrown out from that job for some misconduct. The same thing happened in case of the second engagement also. PW.2 has also categorically stated that :

"Afterwards the torture by Ranjit to my daughter crossed its limit she was compelled to starve and was beaten up severely. One day in the morning Ranjit went to my house and requested my husband to come to his house. Accordingly my husband came to his house and after entering the room he found the things of his room scattered on the floor. And my daughter informed my husband that she was severely beaten up last night and also showed the scars on her back. She fell seriously ill. Afterwards one homely meeting was arranged in the house of Ranjit where few elderly people of their locality also attended. In the meeting it was decided that for the nursing of my daughter she would be shifted to our house but Ranjit will go to our house to look after and also give maintenance to her. Accordingly on the basis of his assurance and in view of the ailing condition of my daughter we took her to our house. Since then she had been residing with us in my house. I was informed by my daughter that she was once pushed down by Ranjit during

her pregnancy as a result there was miscarriage. Again she was pregnant and made miscarriage by Ranjit. After that several meetings were held. Once one Ajit Nama interfere and told us that he was trying to mitigate. One day I was informed by my daughter that she received an information that Ranjit was staying with the daughter of Gopal Deb illicitly at Indira Coloney. Accordingly I along with my daughter Sutapa and younger daughter and one Chaya Sarkar went to the house of Gopal and after going there we saw Ranjit and (name withheld), daughter of Gopal in a room. On seeing this my daughter started crying. On seeing my daughter Ranjit all on a sudden he pushed my daughter then I entered room and forbid him to beat my daughter."

PW.2 has further stated that, the local people intervened in the matter and they handed over all the articles given at the time of marriage, to them. In the cross-examination, she has admitted that she did not told the petitioner about seeing the occurrence of beating the victim, but she had informed the police that the petitioner admitted that he committed the mistake under the influence of liquor.

11. PW.3, Sri Amar Dey is the husband of the victim's sister. His statement may not materially affect in any manner. The statements of PW.4 and PW.5 are of vital importance as, according to the victim, they effectively intervened when she was having the torture, but unfortunately PW.4, Smt. Pushpa Bhattacharjee only restricted her statement to the extent that the victim used to express her grievance against her husband and that the petitioner did not behave well with her. She did not even state that at the intervention of PW.6, she visited the house of the petitioner. PW.5, Smt. Bijaya Bhattacharjee stated in the similar line.

12. PW.6, Arun Pada Chakraborty is the father of the victim and he has corroborated the statement of the victim, more particularly, what she stated regarding unlawful demand.

13. PW.7, Manik Biswas has stated that, he is the next door neighbour of the petitioner. Thereafter, he has stated that :

"Sutapa Chakraborty used to express her grievances against her husband. She used to tell me that some times she was compelled to starve, and tortured both mentally and physically. So far my information goes the dispute cropped up between Sutapa and Ranjit over demand of some money from her parents. In the year 2000 one day in the evening all on a sudden I heard the cry of Sutapa. On hearing the cry I rushed to her house and found Ranjit in the house. The parents of Sutapa were not at home. I found them scuffling. Then I said to Ranjit that he should wait for her parents. Several times I also went to his house along with the parents of Sutapa to make him understand, but we failed to mitigate the dispute between them. So far my information goes he is a man of loose character. I heard that near Aswini Market at Hapania he was bitten up by local people, over an illicit relation with a lady there."

But, he has admitted that he did not state that the incident which he witnessed while his statement was recorded by the police officer. He has also stated that he saw Smt. Chandana Chakraborty (PW.2) to give ₹3,000 to the victim. Even that statement was not found in the previous statements made under Section 161 of the Cr.P.C.

14. PW.8, Smt. Ganga Acharjee is a tenant in the house of the petitioner. She has stated that though there was altercation between the victim and the petitioner, but she did not enter inside their room as her husband did not like such interaction.

15. PW.9, Smt. Sushmita Chakraborty is the younger sister of the victim. She has stated that her mother (PW.2) gave ₹3,000 in presence of Manik Biswas (PW.7). She has also corroborated the demand made on the occasion of 'simantara' ceremony. She has narrated the occurrence that she witnessed at the Indira Colony, Hapania, where the petitioner was found with another woman. She has stated that, on that occasion the petitioner slapped the victim. On her cry the local people gathered and subsequently the petitioner was beaten up by them. She has also stated about the miscarriage of pregnancy, but she added that as the petitioner "kicked her" it caused the miscarriage. She has admitted that she did not state to the police officer that her mother gave ₹3,000 in presence of PW.7 to the victim.

16. PW.10, Sri Sankar Lal Purkayastha is the Investigating Officer, who has briefly narrated how he conducted the investigation and those are not very material in proving the charge. But, he has candidly admitted that he did not examine some of the persons who gave employment to the petitioner or the persons in whose house the petitioner was witnessed to have the illicit relation.

17. This case illustrates how the cases relating to matrimonial offences are casually and carelessly investigated and more so how the prosecutors have conducted the case. It appears that, for intervention of the prosecutor the witnesses were induced to say something, which appeared fatal for the prosecution case. This is the high time when both the investigators and the prosecutors shall introspect about their

role which often times results in the miscarriage of justice. But, this court cannot travel into the realm of conjecture throwing the legal principles in the wind.

18. From the scrutiny as aforesaid, this court is satisfied that there was unlawful demand for cash. The victim was assaulted and otherwise harassed for fulfilling the unlawful demand. Even though the witnesses were not very consistent in all material point, in their statements, but 'cruelty' within the meaning of Section 498A of the IPC has been established. It is a recognised principle for appreciation of evidence that the witnesses would state the transaction with little bit of difference in contour and semantics. What is required is that the material parts must be corroborated. It is not permissible under the criminal jurisprudence to find the contradiction between the statements of the different witnesses and the expression "contradiction" as referred in the explanation below under Section 162 of the Cr.P.C. is confined to the statement of one individual witness. After scrutiny of the testimony of the victim, this court is convinced that the victim has stated the truth and she has not exaggerated anything, but unfortunately our society or its members are not righteous enough to speak the truth in the court. PWs. 4 and 5 have not stated the transaction in a way they should have stated. But, from their testimonies the court finds the indication that PW.1 had immediately informed about the torture inflicted on her. As such, it enhances the veracity of the testimony of PW.1. Though there is apparent

inconsistency between the statements of PWs. 1 and 2 this court is not inclined to use that part of inconsistency to completely discard the testimony of the victim. The victim's statement has been totally corroborated by her father (PW.6). Even the other witnesses have been shown corroborating in some material parts of the victim's statement.

19. As such this is not a case where this court should interfere with the impugned judgment and order. Accordingly, this petition is dismissed.

Send down the LCRs forthwith.

Mr. A. Bhowmik, learned Amicus Curiae, who rendered assistance in presenting the case of the petitioner, would get a consolidated fee of ₹5,000 (rupees five thousand) and that amount has to be reimbursed by the Law Department, Govt. of Tripura. A copy of this order be furnished to Mr. A. Bhowmik, learned counsel so that he can raise the bill to the concerned Department. After the bill is submitted by Mr. Bhowmik, learned counsel, within 1(one) month from that day the said amount be paid to Mr. A. Bhowmik, learned counsel without fail.

JUDGE

ROY