

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No.87 of 2007

Shri Akhil Sarkar,
son of late Sukhamoy Sarkar,
resident of Bijohnagar,
P.S. Sidhai, Distt. West 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. H. K. Bhowmik, Advocate
For the respondents	:	Mr. R. C. Debnath, Addl. PP
Date of hearing	:	06.11.2014
Date of delivery of Judgment and order	:	22.01.2015
Whether fit for reporting	:	NO

JUDGMENT & ORDER

To question the legality of the judgment and order dated 29.06.2007 delivered in Criminal Appeal No.36(2) of 2006 by the Additional Sessions Judge, West Tripura, Agartala, Court No.3, this petition has been filed under Section 397 read with Section 401 of the IPC. By the said judgment and order dated 29.06.2007, hereinafter the impugned judgment, the judgment of conviction and order of sentence dated 12.06.2006 delivered in ST 42(WT/A) of 2002 has been partly reversed on affirming the conviction under Section 498-A of the IPC and setting aside the conviction under Section 306 IPC. There is no appeal or revision from the State

against the order of acquittal from the charge framed under Section 306 of the IPC in favour of the petitioner herein.

02. Based on a complaint dated 03.08.2001 filed by one Tapan Das (PW-1) to the Officer-in-Charge, Sidhai Police Station disclosing that within one and half years of marriage, her daughter namely Shipra Das, hereinafter referred to as the victim, committed suicide by taking poison failing to bear the cruelty of the petitioner by means of physical torture.

03. Having received the said complaint, Sidhai PS Case No.55 of 2001 under Section 498-A/306 IPC was registered and was taken up for investigation. On completion of the investigation the charge-sheet was filed under Section 498-A/306 of the IPC against the petitioner, one Smti. Minati Sarkar, wife of the petitioner's elder brother and Smti. Drupati Sarkar, the mother of the petitioner and on taking cognizance the case was committed to the Court of the Sessions Judge, West Tripura, Agartala as the offence punishable under Section 306 of the IPC is exclusively triable by the court of Sessions. In turn, the Sessions Judge, West Tripura, Agartala transferred the case to the Court of the Addl. Sessions Judge, Court No.4, West Tripura, Agartala for trial in accordance with law. The Addl. Sessions Judge, framed the charge against the petitioner and Minati Sarkar on 03.12.2002 under Section 498-A and Section 306 of the IPC read with Section 109 and 34 of the IPC to which the accused persons pleaded total innocence. Since Smti. Drupati Sarkar on 03.12.2002 and onwards was absent in the trial, the similar

charge was framed against her on 14.03.2005. She also pleaded innocence and claimed to face the trial. The said case being ST 42(WT/A) of 2002 was again transferred from the Court of the Addl. Sessions Judge, Court No.4 to the Court of the Asstt. Sessions Judge, Court No.1, Agartala, West Tripura for disposal in accordance with law by the order of the Sessions Judge dated 05.08.2005 and on receipt of the case record trial commenced.

04. To substantiate the charge, the prosecution adduced as many as 13 witnesses including the informant, the Doctor who carried out the post mortem examination (PW-6). After the prosecution evidence was recorded the petitioner and Smti. Minati Sarkar was strangely examined jointly under Section 313 of the Cr.P.C. This practice calls for serious deprecation as the examination under Section 313 of the Cr.P.C. has to be carried out separately not jointly as had been carried out in this case. However, it is to be noted that by the order dated 27.03.2006 Drupati Sarkar was acquitted from the charge as it appeared from the records that there was no incriminating material in the evidence against her. Even no examination under Section 313 of the Cr.P.C. was carried out against Smti. Drupati Sarkar very rightly as there was no incriminating material surfaced in the evidence. Thereafter, on analysis of the evidence the trial court by the judgment dated 12.06.2006 convicted the petitioner herein under Section 498-A and 306 of the IPC whereas the other accused namely Smti. Minati Sarkar was acquitted from those charges. As consequence the petitioner has been sentenced as stated.

05. The finding of the trial court was seriously questioned in the appeal filed by the petitioner under Section 374(3) of the Cr.P.C. in the court of the Sessions Judge, West Tripura, Agartala. The said appeal being Criminal Appeal No.36(2) of 2006 was transferred to the court of the Addl. Sessions Judge, West Tripura, Agartala and by the impugned judgment the appeal was partly allowed reversing the finding of conviction under Section 306 of the IPC. However, the finding of conviction under Section 498-A of the IPC was affirmed and there had been no interference with the sentence so awarded by the trial court.

06. Mr. H. Bhowmik, learned counsel appearing for the petitioner has taken to the very finding of the appellate court to show that the impugned judgment suffers from absolute non-application of mind to the records. It has been observed by the appellate court in para-7 of the said judgment as under:

"7.

In so far as allegation of demand of dowry during course of trial is concerned, P.W.1 Tapan Das stated that after few days of marriage Akhil begun to torture his daughter Shipra physically on the demand of dowry. It is quite apparent that he improved upon the version given by him in the FIR (Ext.1). In the F.I.R. he stated that about 10/12 days after the marriage Akhil and other in-laws of Shipra started torturing Shipra physically and did not mention anything about demand of dowry by the appellant. Smt. Sabitri Das, mother of victim has been examined as P.W.8 and she also corroborated the testimony of her husband (P.W.1) in regard to torture on Shipra by the accused persons in connection with demand of dowry. Father and mother appeared to have improved upon the prosecution version with regard to demand of dowry perhaps be conscious of the fact that narration of events given in the FIR may not bring home the offence against the appellant u/s 306 I.P.C. P.W.1 in his deposition stated that after few days of marriage, Akhil along with his

boudi Minati started torturing on Shipra and being failed to tolerate such inhuman torture on her she fled away from her matrimonial house and took shelter in her parents house when she informed her parents and other neighbours about cruelty and ill treatment meted out to her by the appellant and other in-laws. P.W.3 Paltu Das is the Pradhan and he stated that after 3/4 months of their marriage Shipra told him that she was subjected to mental and physical torture by her husband and on 31.5.01 a meeting was held where Akhil confessed his guilt and assured the persons present in the meeting that he would never repeat mental and physical torture on Shipra and he also gave an undertaking in this regard in writing (Ext.2). P.W.4 Smt. Sandhya Deb, P.W.5 Smt. Laxmi Das also stated that they were told by Shipra that Akhil used to torture on her suspecting that she had illicit relation with another person. P.S.8 Smt. Sabitri Das also corroborated the testimony of P.W.1, 3, 4 and 5 about torture on Shipra by the appellant. P.W.3, 4 and 5 are three independent witnesses. There is no reason as to why they should have come and depose falsely against the appellant and to implicate an innocent person in such heinous crime. These witnesses have been cross examined at length but nothing material came out from their cross examination to raise any doubt as to the veracity of their statement. Statement of these witnesses are quite consistent and there is no contradiction and I, therefore, believe that these witnesses are speaking the truth. Offence against married woman have been committed within the four corners of a house and normally direct evidence regarding cruelty or harassment of the woman by her husband or relatives is not available.

It is not a case of single beating. Frequent beatings on Shipra as revealed from the evidence of independent witnesses and also admitted by the appellant in Ext.2 does amount to cruelty within the definition as encompassed in Section 498(A) I.P.C.

In the present facts and circumstances of the case that itself cannot be foundation for convicting the appellant for abatement of suicide in question as contemplated u/s. 306 of I.P.C. The evidence of witnesses disclosed that husband of the deceased entertained a suspicion about her chastity and that was the reason why she was tortured by him. The victim also did not state to the witnesses that the cause for ill-treatment/torture was a demand for money. There is also no evidence by any witness to show that appellant abated, instigated or intentionally aided Shipra to commit suicide."

07. Mr. Bhowmik, learned counsel has further submitted that having returned such finding the appellate ought not have affirmed the finding returned by the trial court holding that the evidentiary materials so placed by the prosecution is sufficient to return the finding that the charge under Section 498-A of the IPC has been proved beyond reasonable doubt. Apart that, having referred to the depositions Mr. Bhowmik, learned counsel has contended that the statements are not only improved by the related witnesses but also as bald as to give any creditworthiness to such statement. To buttress his contention he has relied on a decision of the apex court in ***Amar Singh Vs. State of Rajasthan*** reported in **(2010)9 SCC 64** where the apex court has observed as under:

"A prosecution witness who merely uses the word "harassed" or "tortured" and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498A and 304B IPC. For this reason, the High Court has taken a view that the charges against Jagdish and Gordhani have not been established beyond reasonable doubt and that their case is distinguishable from that of Amar Singh and that Jagdish and Gordhani appear to have been implicated because they were members of Amar Singh's family."

08. From the other side, Mr. R. C. Debnath, learned Addl. PP appearing for the State has submitted that not only from the testimonies of the witnesses namely Tapan Das, PW1, Paltu Das, PW3 and Sabitri Das, PW8, even from the muchleka (declaration), Exbt.2, it would appear that the petitioner committed cruelty on the victim on unlawful demand. As such no interference is called for.

09. As there is no challenge against the order of acquittal, this Court thinks it apposite to confine its appreciation to the aspect that whether the prosecution has succeeded in proving the charge under Section 498-A against the petitioner without reasonable doubt or in other word whether the appreciation of the trial court or the appellate court suffers from any perversity. There cannot be any dispute that on the first instance PW1 Tapan Das, father of the victim did not disclose of any torture on unlawful demand. But he has stated so in the trial and admitted that he did not state to the Investigating Officer that there was unlawful demand from the petition. However he has submitted that in a family negotiation the petitioner had given a 'muchleka' (declaration) that he would not treat the petitioner badly. He has also admitted that this fact was not divulged in the written complaint which he had filed to the police. At his instance the said 'muchleka' has been introduced in the evidence as Exbt.2. PW2 Pranesh Sarkar did not support the prosecution case and as a result he was declared hostile. PW3 Shri Paltu Das, a hearsay witness has stated a different story that the victim told him that she was subjected to mental and physical torture by her husband for her laziness and he did not detailed anything more. But he identified his signature to the 'muchleka'. PW4 Sandhya Deb has placed another version that the petitioner used to suspect that the victim having an illicit relation with someone. She has also proved the petitioner's making of the 'muchleka' and the 'muchleka' itself. PW5 Laxmi Das followed the same suit of PW3. PW6 Dr. Babul Roy has stated that he recorded

the cause of death as cardio respiratory failure following oliander seed poisoning. PW7 Krishna Kanta Sarkar did not support the prosecution case and was declared hostile. PW8 Sabitri Das, the mother of the victim has somehow replicated the statement of PW1 including the 'muchleka' given by the petitioner. But she did not give any description how or on which day the victim was subjected to physical torture by the petitioner or by the other accused persons. PW9, Pradip Das, Sub-Inspector of Police, had received the information from PW6 regarding unnatural death of the victim and immediately he registered the case being UD Case No.28 of 2001 under Section 174 of the Cr.P.C. He had as well prepared the inquest report. PW10, Sunil Sarkar is a cousin of the petitioner. He admitted that there was a panchayat meeting and from that panchayat meeting the petitioner by furnishing the 'muchleka' took back the victim to his house. He supported that PW9 conducted the inquest and prepared the report. But that report was not placed in the evidence. PW11 Narayan Nama Das is a witness to the seizure and he did not make any other statement supporting the case of the prosecution. Ranjit Singh, a constable of police, was examined as PW12 who had escorted the dead body of the victim for post mortem examination whereas PW13, Nani Gopal Sharma as the IO, has stated how he conducted the investigation by recording the statement of the witnesses, collecting the medical opinion in the form of post mortem examination report and seizing the material object, the 'muchleka', Exbt.2 by preparing the seizure list, Exbt.7 in presence of the witnesses. He has stated that he submitted the

charge-sheet against the accused persons under Section 498-A and 306 of the IPC as a prima facie case appeared from the materials. In the cross examination, he has admitted that the cause of torture has not been mentioned in the charge-sheet. He has also admitted that he did not examine the persons living in the close neighbourhood of the accused persons to verify the truth. He has also stated that he did not enter anything in the charge-sheet that there was some unlawful demand etc.

10. It would be pertinent to read the 'muchleka' (declaration) dated 31.05.2001, Exbt.2, as allegedly made by the petitioner. It appears therefrom the petitioner has stated that he had been assaulting his wife "since the wedding gifts of my marriage were not of best quality and I had a wrongful doubt relating to the character of my wife." He has undertaken not to inflict torture unlawfully on his wife. The declaration dated 31.05.2001 has been witnessed by Laxmi Das, PW5, Paltu Das, PW3 Sandhya Deb, PW4, Tapan Das, PW1 and the petitioner himself. Whether that statement can be treated as the 'admission' for the purpose of this case or whether that can be accepted as an extra-judicial confession is required to be examined by this Court. This Court does not find from the evidence as led by the prosecution that the said statement was voluntarily made by the petitioner. On the contrary, it appears that for bringing his wife back to the matrimonial home he had signed that declaration. For that purpose when the statement of PW3, PW4, PW5 and PW1 are revisited it appears that there is nothing like the voluntariness of the petitioner to make the purported confessional

statement, which is extra-judicial in nature. When the petitioner was examined under Section 313 of the Cr.P.C. in this regard he denied such confession. It is trite law that the court must exercise strict scrutiny as to the voluntariness of such extra-judicial confession and for that purpose the circumstances under which such statement, if at all has been made, the circumstances are to be given much importance to infer the voluntariness of such extra-judicial confession. This Court has catalogued in whose presence the statement was made and recorded. The circumstances are not adequately eloquent to draw inference of the voluntariness. More so, it is apparent that the meeting was attended alone by the petitioner when such statement was purportedly made by him and was recorded in writing. As such, it would not be safe to hold that the statement was made voluntarily and not for other purpose. For the same reason it cannot be taken as the admission of any fact, particularly so, when making of such statement has been categorically denied by the petitioner during his examination under Section 313 of the Cr.P.C.

11. This Court is constrained to observe that after the finding as recorded in the para-4 of the impugned judgment, the appellate court ought not have affirmed the finding of conviction of the petitioner under Section 498-A of the Cr.P.C. On exercising abundant caution this Court has carried out the scrutiny of the evidence afresh to ascertain whether on the basis of such evidence the petitioner can be convicted under Section 498-A of the IPC.

12. In *Kans Raj v. State of Punjab* reported in **(2000)5 SCC 207** the apex court has sounded caution that in cases where accusation related to the dowry is made, the overt act attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjecture or implication such relation cannot be held guilty for the offence relating to dowry deaths. It has been further observed that a tendency has developed for framing all the relation of the in-laws of the deceased wife in the matter of dowry deaths, which if not discouraged is likely to affect the case of the prosecution, even may evade conviction of the real culprits.

13. Even though this case was not tried on the charge for committing offence punishable under Section 304B of the IPC but the said observation has its implication on appreciation of the evidence. More so, this observation has been considered approvingly in *Amar Singh Vs. State of Rajasthan* reported in **(2010)9 SCC 64** as relied on by Mr. Bhowmik, learned counsel for the petitioner. In *Amar Singh Vs. State of Rajasthan* a definite tool has been culled out by the apex court enunciating that mere bald statement of harassment or torture without describing **"the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498A and 304B IPC."** Here is a case where the array of acquisitions are bald without any description of the exact conduct of the accused which according to the prosecution amounted to harassment or torture constituting the cruelty. As such

in the considered opinion of this Court the prosecution has failed to prove the charge as framed under Section 498A of the IPC against the petitioner, beyond reasonable doubt.

14. Having held so, the petitioner is acquitted from the charge on benefit of doubt and as consequence thereof the impugned judgment is interfered with and set aside.

In the result, this revision petition stands allowed and disposed of.

Send down the LCRs forthwith.

JUDGE

MB