

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. No. 93 of 2010.

Shri Shefal Debnath,
son of Sri Jadav Debnath,
C/O- Shri Mantu Ghosh,
resident of Madhya Pratapgarh,
Agartala, P.S. East Agartala,
District – West Tripura.

..... Petitioner

- V e r s u s -

The State of Tripura,
represented by the Secretary-
cum-Commissioner,
Department of Home, Govt. of
Tripura, District – West Tripura.

..... Respondent

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. J. Bhattacharji, Advocate.
Mr. Nepal Majumder, Advocate.

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

Date of hearing : 10.02.2015

Date of delivery
of Judgment & Order : **20.03.2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

The petitioner who has been convicted for committing offence punishable under Section 498-A of the I.P.C by the trial court, the Chief Judicial Magistrate, West Tripura, Agartala by the judgment dated 04.01.2010 delivered in case No. GR 505 of 2004 and affirmed by the appellate court, the court of the Addl. Sessions Judge, West Tripura, Agartala, No.3 by the judgment dated 22.09.2010 delivered in Criminal Appeal No. 05(1) of 2010 has

questioned the said judgment of affirmation dated 22.09.2010 by filing this revision petition.

[2] For purpose of appreciating the challenge as projected in this petition, the essential facts leading to the conviction, may be introduced at the outset:

The petitioner married the victim, Anita Biswas (Debnath) as per Hindu Rites and Customs on 10.12.2001 and their marriage was registered by the Registrar, Hindu Marriages on 14.12.2001. Immediately after the marriage the victim subjected to cruelty on unlawful demand of Rs.1,00,000/- to be brought from her father. Apart that, the victim was tormented by the cruelty when the petitioner indulged in physical relation with one woman, name withheld, who was the school mother of the school where the petitioner has been working. As the victim raised objection against such illicit relation, she was subjected to physical torture on various occasions. On 19.03.2002, the victim had to be hospitalized for the trauma she has received for physical torture. On 02.07.2002, her husband left the rented house leaving her alone. After waiting 15-20 days in the rented house when the petitioner did not return, the victim had to take shelter in her parents' house at Taltala, Bordowali. The victim silently bore all such cruelty without making complaint as stated in the written ejahar with hope of change and rectification in the conduct of the petitioner and for a peaceful marital life but everything came to a halt when the petitioner filed a

petition for dissolution of marriage by the decree of divorce being Title Suit (Divorce) FC/140/2004 on slapping wild allegations against her. The petitioner then disclosed the cruelty afflicted by the petitioner by filing a written ejahar. Based on the said written ejahar, Agartala Women P.S. Case No.43/2004 under Section 498-A of the I.P.C. was registered on 15.08.2004 and taken up for investigation. On completion of the investigation, the final police report chargesheeting the petitioner under Section 498-A of the I.P.C. was submitted. On taking cognizance, the charge under Section 498-A of I.P.C. was framed against the petitioner. The petitioner pleaded innocence and claimed to face the trial.

[3] In order to substantiate the charge, the prosecution has adduced as many as 10(ten) witnesses including the victim (PW-1) and the Investigating Officer (PW-10). At the instance of prosecution, 5 (five) documentary evidences Exbt.1 to Exbt.5 have been introduced in the records of evidence. After recording the prosecution evidence, the petitioner was examined under Section 313 of the Cr.P.C. when he denied all the incriminating materials including unlawful demand or having found with another woman at the midnight etc. as false.

Even though initially several adjournments were taken for leading evidence but later on, the petitioner did not adduce any evidence. On appreciating the evidence on record, the trial court, the Chief Judicial Magistrate, West Tripura, Agartala by the

judgment dated 04.01.2010 delivered in case No. GR 508 of 2004 returned the finding of conviction under Section 498-A of the I.P.C. holding that the prosecution has proved that the accused used to treat the victim with cruelty by physical torture on unlawful demand of bringing money and also that he has treated with further cruelty by maintaining an illicit relation with another woman openly.

[4] As consequence of that finding of conviction, the petitioner has been sentenced to suffer rigorous imprisonment for 3(three) years with a fine of Rs.10,000/- (Rupees ten thousand) and in default of payment of fine, to suffer further period of imprisonment for 6(six) months.

Being aggrieved by that judgment dated 04.01.2010, the petitioner preferred an appeal under Section 374(3) of the Cr.P.C. in the court of the Sessions Judge, West Tripura, Agartala being Criminal Appeal No.05(1) of 2010. However, the said appeal was transferred for disposal in accordance with law to the Court of the Addl. Sessions Judge, West Tripura, Agartala, No.3. By the impugned judgment dated 22.09.2010, the appeal was dismissed holding that:

"Considering the evidence as discussed above, I am of the opinion that the prosecutrix has proved the case successfully by adducing sufficient evidence for which I find nothing to interfere with the Judgment of the Ld. Court below'.

[5] Mr. J. Bhattacharji, learned counsel appearing for the petitioner has seriously criticized the impugned judgment

contending that the said judgment is an outcome of non-appreciation of the materials on record following the cannons inasmuch as without any cautious scrutiny, the related witnesses have been relied. Even the divergence as regards the occurrence was not at all considered while returning the finding of conviction. Mr. Bhattacharji, learned counsel has emphatically raised another ground of objection contending that the written ejahar was filed 2(two) years after the last incident and as such, the cognizance as taken by the court is barred by the provisions of Section 468 of the Cr.P.C., 1973 which prohibits the court of taking cognizance of an offence of the categories specified in sub section 2 of Section 468 of the Cr.P.C. after expiry of the period of limitation. Sub section 2 provides as under:

(2) The period of limitation shall be -

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

According to him, the conviction is barred under Section 468 of the Cr.P.C. and the finding returned by the appellate court, which is extracted hereunder is absolutely perverse and wretchedly misconceived:

'The period of limitation in a case U/S 498-A of I.P.C. is 3 years. The prosecutrix was deserted on 2nd July, 2002 and she filed this case on 15.08.2004. As such, the case was filed just

after 2 years and C/S was submitted on 28.02.2004 and cognizance was taken 28.11.2004. Thus, I find that the cognizance was taken within the period of limitation.'

[6] Mr. Bhattacharji, learned counsel has to nourish his submissions referred a decision of the Gauhati High Court in **Rajib Neog vs. The State of Assam**, reported in **2011 CRI.L.J. 339** where it has been held that:

54. In the case of Manju Ram Kalita, AIR 2009 SC (supp) 2056 (supra), the Apex Court observed that:

22. "Cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

55. In the case of Sanju @ Sanjay Singh Sengar (2002 Cri LJ 2796) (supra), the Hon'ble Apex Court observed that the words uttered in a fit of anger or emotion cannot be said to be instigation. In the present case though the P.W. 1 stated that the appellant had said that his married life could not go in that way and that his mother had asked him to look for another girl, the said utterings appear to be made in a fit of anger being emotional outburst due marital discord. Though it has been alleged that the appellant used to assault the deceased, except the said slapping incident that too once, there is nothing on record to find that the appellant had repeated the same or that he had taken any steps for arranging his second marriage or divorcing the deceased. Rather the statement made by the deceased, in her dying declaration, indicates that the appellant wanted the deceased very much and that he was not ready

to live without her even for two days. In my considered opinion, keeping in mind the attending circumstances, the husband's refused to allow his wife to attend the conference at Kolkata, as the single lady member, cannot be deemed to be cruelty under Section 498-AIPC.

56. From the evidence as discussed above, it has been revealed that the appellant had given a slap on the deceased i.e. once in the breakfast table. This single act on the part of the appellant, appears to be an act done in a fit of anger as a result of emotional outburst. Therefore, this act can't amount to cruelty Under Section 498A IPC.

57. According to P.W. 9, the deceased was not allowed to enter her residence once for one and a half hours because of her late arrival from her office. There is nothing to find that this was the regular plight of the deceased. The allegation that the deceased was required to do all the household works, in the absence of any particulars regarding the nature of the work, it cannot be ascertained that the same amounted to torture. The allegation that the appellant was not to allow the use the telephone or to talk to her relatives is not supported by her father.

58. The father of the deceased, who deposed as P.W. 8, clearly stated that no adverse report, regarding the marital life, was received by him. What he stated was that the deceased informed him that she was tortured by her husband, but he failed to narrate the nature of torture meted out to his daughter. That apart, P.Ws. 1, 2 and 9 also failed to give detailed particulars about the nature of the tortures committed by the appellant. The word torture is vague term. In order to hold a person guilty of committing cruelty, it is necessary to examine if the alleged torture under Section 498-A IPC amounted to cruelty as defined by Section 498-A IPC. Therefore, the prosecution is required to state/explain the detailed particulars or nature of the alleged torture in a given case. But, as discussed above, in the present case the prosecution witnesses failed to describe the nature of the alleged torture. Considering the totality of the evidence on record, coupled with the dying declaration, it is found that the refusal of the husband to grant permission to go to Kolkata was the only cause which led the deceased to commit suicide. There is nothing on record to show that the appellant continuously/persistently treated the deceased with cruelty, in the close proximity of her committing suicide. Therefore, it can't be safely concluded that the deceased had committed

suicide due to any cruelty on the part of her husband. If cruelty or conduct of her husband was the cause of the suicide then she would have certainly disclose the same before the Magistrate at the time of making her dying declaration. But she did not state anything regarding such cruelty or harassment. Therefore, the said dying declaration and the statement of the P.W. 8 (father of the deceased) inspire confidence to believe that the deceased was not compelled to commit suicide due to any cruelty or ill treatment on the part of the appellant."

[7] Even Mr. Bhattacharji, learned counsel has relied on a decision of the apex court in **Gananath Pattnaik vs. State of Orissa**, reported in **(2002) 2 SCC 619** where in absence of legal evidence which could provide the basis of finding with respect of alleged cruelty with the accused, the accused was given benefit of doubt. In **Gananath Pattnaik vs. State of Orissa**, it has been held by the apex court as under:

"7. The concept of cruelty and its effect varies from individual to individual also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case."

[8] While refuting the submissions made by Mr. Bhattacharji, learned counsel appearing for the petitioner Mr. A. Ghosh, learned P.P. appearing for the State has submitted that the prosecution has proved the cruelty within the meaning of Section 498-A of the I.P.C. without any shred of doubt. Not only the victim but the independent witnesses such as the landlady and the persons who had the direct knowledge of the cruelty had come

forward and categorically stated that the victim was being assaulted by her husband on demand of money and of his leading adulterous life with another woman. Mr. Ghosh, learned P.P. has referred the oral testimonies of PW-5, PW-7 and PW-8 in particular. Even PW-6 has stated about the nature of dispute that was brought to their society. The testimonies of related witnesses have been so perfectly corroborated by the independent witnesses, no space has been left for any doubt. As such, no interference in the impugned judgment and order at all warranted.

[9] For appreciating the rival contentions, it would be apposite to glance through the evidence.

PW-1, Smt. Anita Debnath (nee Biswas) has narrated how her marriage took place with the petitioner. As the marriage has not been questioned that part of the evidence may not be dealt in details. It is admitted that the marriage took place on 14.12.2001. She has stated that the petitioner was maintaining illicit relation with another female(name withheld) and immediately after the marriage, he started to demand a sum of Rs.1,00,000/- (Rupees One lakh) to be brought from her father. She was physically assaulted on various occasions and about 20 pairs of conch bangles, a symbol of Hindu marriage, in her wearing were broken or damaged by the petitioner. The petitioner used to bring that female at their rented house and spent night with her forcing the victim live in a separate room. When they were living in

the rented house of Khokan Adhikari, son and wife of whom has been examined in the trial as PW-7 and PW-5 respectively, at Melarmath, the petitioner purchased a piece of land at Gangail Road. Khokan Adhikari being annoyed by the conduct of the petitioner asked them to leave his house. Thereafter, they started living in the rented house of one Anil Das. On 02.07.2002, she was deserted by him and she did not get any information of his whereabouts. After waiting for 15 days, she took shelter in her paternal house. The petitioner used to abuse the victim often times. Even he once stated that 'my marriage took place with my father'. After going to her parent's house, she informed her parents-in-law. They consoled her and did not approve the conduct of the petitioner as PW-1 has stated that 'they knew about illicit relation of my husband with that female (name withheld). Later on, when she knew about the whereabouts of the petitioner that he was living in the house of Mantu Ghosh of Pratapgarh, she visited their house but the petitioner refused to acknowledge her as his wife in presence of the landlord. She visited again that place with her father but the petitioner did not allow her to stay with him. One of the local clubs, intervened in the matter but no decision could be taken for non-cooperation of the petitioner. The victim has further stated that on 13.03.2002, when the petitioner was residing in the house of Anil Das, she was assaulted by the petitioner by kicks. She was hospitalised for about 4-5 days. After July, 2002 the victim had never been with the petitioner and waited for reconstruction of their

marriage. But on 01.08.2004, she received a notice from the Family Court, Agartala of the proceeding instituted by the petitioner for dissolution of marriage by grant of the decree. Only, thereafter she realized the intention of the petitioner and filed the written ejahar prepared by one lawyer, Exbt.1.

She has admitted in the cross-examination that she filed the ejahar having been persuaded by the notice she received for divorce proceeding. However, the other suggestions were made to her have been denied by PW-1.

[10] PW-2, Kohinoor Bhattacharjee, the friend of younger brother of the petitioner has stated that on several occasions he visited the rented of the petitioner and all the time, he found the victim in a depressed mood and found marks of injury on her face and hands and he did never find the conch bangles in her hand. When visited the last, the victim reported that the petitioner used to torture regularly on demand of a sum of Rs.1,00,000/-. The extent of torture was as such that leaving aside her shyness she reported the matter to him. He is also the seizure witness of the marriage certificate and the copy of the resolution of the club namely, Jewels club. He identified those materials and signature on the seizure list.

[11] PW-3, Shri Rebati Biswas is the father of the victim. He has corroborated the allegations of PW-1 and submitted that the petitioner had an illicit relation before his marriage with one female,

(name withheld). The petitioner continued that relation even after his marriage and the petitioner used to spend nights with her. That caused to annoyance the landlord, Khokan Adhikari and the other neighbours. He identified his signature on the seizure list. He has however has fairly stated that the petitioner never demanded any sum from him directly.

[12] PW-4, Chandan Biswas is the younger brother of the victim. He has stated that the petitioner used to torture her sister on demand of money amounting to Rs.1,00,000/-. He had illicit relation with one female (name withheld). He used to bring that lady in the rented house of Khokan Adhikari. The wife of Khokan Adhikar naemly, Sipra Paul (Adhikari), PW-5 raised serious objection. He has mentioned of a particular occasion that when on the day of Holi, he visited the rented house of his sister, he found her lying in a senseless condition in her bathroom. Thereafter, with the help of the landlady, he shifted her to GB hospital. From the hospital, he knew that the petitioner kicked on her head and she became senseless. The statement he shifted the victim to the hospital with the assistance of the landlady was not found in his previous statement recorded under Section 161 of the Cr.P.C. but there is a statement that in the March, 2011 the petitioner assaulted her sister at head for which he got her sister admitted to G.B. hospital. Such elaboration cannot be treated either as contradiction or omission amounting to the contradiction.

[13] PW-5, Smt. Sipra Paul (Adhikari) is the vital witness and she has stated as under:

"In the year 2001 he was a tenant for two months of my house and during his stay in my house as tenant he married one Anita Biswas. They used to stay in the ground floor and we used to stay in the first floor. One day at about 11 pm to 12 pm. at night hearing cries of Anita, the wife of Sefal Debnath I woke up. I found her outside the room and she complained that she was assaulted by her husband on demand of Rs. One lakh to be brought from her father's house. She also complained that her sakha were damaged by the accd. I did not see any sakha at her hands. She complained further that her husband is leading life adultery with another female inside the room. I asked the accd. Sefal to open the door. Thereafter taking some times he opened. I found another female inside that room and thereafter I cautioned him not to take entry in my house with such female and thereafter I asked him to leave my house and within few days he left my house."

She stood the cross-examination and firmly held what she has stated in the examination-in-chief.

[14] PW-6, Usha Ranjan Lodh, Secretary of the local club has stated that in the year 2003, Rebati Biswas (PW-3) lodged a complaint against the petitioner alleging the physical torture on his daughter, Anita on illegal demand of money and also for his illicit relation with another female. In the house of Mantu Ghosh where the petitioner was residing at that point of time there had been a meeting for finding out an amicable resolution. That meeting was attended by the members of the club and the relatives of the petitioner and the victim. But nothing could be achieved from that meeting. The copy of the resolution was also supplied to the parties.

[15] PW-7, Sunil Adhikari, son of PW-5 has categorically stated that the petitioner used to keep a mistress at his house in presence of his wife and his wife objected to that which resulted in chaos. They did not like such situation in their house. Accordingly, they asked the petitioner to leave their house. He has further stated that the female whom the petitioner used to keep was running canteen at the school where the petitioner was engaged and even she sometimes used to cook his food. The relationship was beyond that of a domestic aid.

[16] PW-8, Smt. Swapna Das, wife of Anil Ch. Das in whose house the petitioner used to stay as the tenant has stated that one day in the evening at about 8 pm, she found Anita lying in a senseless condition at her bathroom. At that time, brother of Anita came and thereafter, she was shifted to GB hospital. She has asserted in the trial that 'Anita reported that her husband assaulted at her head for which she became senseless'. She has further stated that the petitioner used to torture Anita on demand of money. They asked the petitioner to vacate their house. She was not cross-examined by the defence.

[17] PW-9, Smt. Shanti Debbarma is the recording officer. She was also not cross-examined.

[18] PW-10, Smt. Ila Deb, the Investigating Officer and she narrated how she conducted the investigation and on finding the

prima facie case surfaced, she submitted the charge sheet under Section 498-A of the I.P.C. Her cross-examination is of no material importance except that part where she has stated that the ejahar was lodged on 15.08.2004 whereas the last incident of assault took place on 02.07.2002.

[19] In the examination under Section 313 of the Cr.P.C., the petitioner simply denied some incriminating materials. However, he accepted that a complaint was lodged to a local club alleging that he was making illegal demand of money and maintaining relation with one female and on that issue, a meeting was held in the house of his landlord, Mantu Ghosh. Even he has admitted that he was tenant in the house of Swapna Das (PW-8). According to him, the criminal case is a counter blast for his instituting the divorce proceeding.

[20] From the evidence led by the prosecution, the fact that the petitioner used to assault the victim on unlawful demand and he was 'keeping' one female in his house and staying with her even at night in presence of the victim has been proved without any reasonable doubt. That apart, despite the victim approached several times for reconstruction of their matrimonial relation and for amendments in the character of the petitioner, the petitioner resisted such reconstruction keeping her at lurch and leading his own life. Thereafter, after about 2 years, the statutory period for desertion, the petitioner filed the divorce proceeding. In this regard,

analysis of the evidence by the trial court or affirmation thereof by the appellate court cannot be faulted with. However, the analysis as regards the limitation for taking cognizance requires some consideration. In the judgment of the trial court, the issue of the limitation has not been quite satisfactorily dealt with, rather it was not at all dealt with. It is even not clear from the records whether such objection was raised by the defence in the trial or not. But it has been succinctly raised in the appeal and while dealing with that objection the appellate court has recorded the observation as already reproduced stating that from the date of filing the ejahar the charge sheet was submitted within two years thereafter and thus, the cognizance was taken within the period of limitation. Such interpretation is entirely perverse as cognizance is taken of an offence not of the ejahar or the information. In this regard, reference may be made to Section 190 of the Cr.P.C. which categorically provides that the cognizance as taken by the Magistrate is the cognizance of any offence on receipt of the complaint of facts which reveals such offence or upon a police report of such facts or even the information received from any person other than a police officer or upon his own knowledge that such offence has been committed. In a decision, the apex court in **Gopal Das Sindhi and others vs. State of Assam**, reported in **AIR 1961 SC 896** has analysed this aspect of the matter. In another decision in **M/s. SWIL Ltd. vs. State of Delhi & another**, reported in **(2001) 6 SCC 670**, the apex has succinctly

laid down the law that cognizance is taken of the offence and not of the offender. Even under Section 193 of the Cr.P.C. the Sessions Court takes the cognizance of the offence as provided by the statute or on commitment.

[21] Now the question that falls for consideration whether the cognizance was barred by the provision of 468 of Cr.P.C. Provisions of Section 468 of the Cr.P.C. very clearly lays down the period of limitation. It is apparent from the evidence that the victim was inhumanly deserted by the petitioner on 02.07.2002 and the cognizance was taken on 24.11.2004 by the Chief Judicial Magistrate, West Tripura, Agartala. As such, there is no bar apparently in taking the cognizance. This observation is further strengthened as the offence committed by the petitioner comes within the category of the continuing offence as defined and described under Section 472 of the Cr.P.C. which provides as under:

472. Continuing offence – In the case of a confining offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

A continuing offence is one which continues and non continuing offence is committed once and all. The question whether a particular offence is a continuing offence must depend upon the language of the statute which brings such offence within the ambit of that class. The nature of the offence punishable under Section 498-A is a continuing offence. In the case in hand, it continued. The

wilful act of the petitioner to leave the victim at lurch for continuing his lascivious life is in continuation of the previous acts. Therefore, the limitation shall begin to run at every moment as the cruelty sprawls over. Thus, the cognizance taken on 24.11.2004 cannot be held to be barred under Section 468 of the Cr.P.C.

[22] It is further observed that the prosecution has succeeded in proving the offence of subjecting the victim by the petitioner to cruelty, as explained by Explanations (a) & (b) under Section 498-A of the I.P.C. The cruelty as surfaced from the evidence comes both under Explanations (a) & (b) under Section 498-A of the I.P.C. Therefore, there is no infirmity in the finding of conviction under Section 498-A of the I.P.C.

[23] Having held so, this petition is dismissed.

Send down the LCRs forthwith.

JUDGE

Sujay