

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO. 69 OF 2008

Sri Laxman Debnath,
S/O. Late Harimohan Debnath,
Village – Niharnagar,
P.S.- P.R.Bari,
South Tripura.

.....**Petitioner.**

- Versus -

The State of Tripura,

.....**Respondent.**

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

For the petitioner	: Mr. P. Majumder, Advocate.
For the respondent	: Mr. A. Ghosh, Public Prosecutor,
Date of hearing	: 21.01.2015.
Date of delivery of Judgment and Order	: 29.01.2015.
Whether fit for reporting	: No.

JUDGEMENT AND ORDER

This revisional application under Section 397 read with Section 401 of Cr.P.C. is directed against judgment and order dated 13.08.2008 passed by the learned Additional Sessions Judge, Belonia, South Tripura, in Criminal Appeal No. 10(3) of 2008, whereunder the learned Additional Sessions Judge upheld the judgment and order of conviction and

sentence dated 26.06.2008 passed by the learned Sub-Divisional Judicial Magistrate, Belonia, South Tripura in Case No. G.R. 14 of 2006.

2. Heard learned counsel, Mr. P. Majumder, for the petitioner and learned Public Prosecutor, Mr. A. Ghosh, for the State-respondent.

3. PW1, Smt. Lalita Debnath lodged an FIR in writing before O/C of P.R. Bari P.S. on 13.01.2006 alleging, *inter alia*, that her marriage was solemnized with accused-petitioner, Laxman Debnath, on a certain day of 29th Falgun about 14 years ago as per Hindu rites and custom and thereafter she lived and cohabited with her husband in the matrimonial home. After two years of marriage, her husband Laxman Debnath, on the instigation of her mother-in-law, Shishu Bala Debnath and married sister-in-law, Pratima Debnath demanded an amount of Rs.25,000/- and put pressure on her to bring the amount from her father's house. Her father being a poor man could not fulfill the demand and, therefore, she was subjected to physical and mental torture. She reported the incident to her parents and other relatives and they tried to pursue the accused persons not to assault her on the issue. Bearing all these physical and mental torture, she continued her matrimonial life with the accused persons and she gave birth two daughters and a son. Since torture continued on her, she reported the incident to the village panchayat and elderly

persons and a meeting was held on 27.08.2005 in the house of her husband and in that meeting her husband, mother-in-law and sister-in-law assured that she will not be tortured any more in future. Thereafter on 27.12.2005 at about 04-30 pm her husband at the instigation of her mother-in-law and sister-in-law beaten her severely and put her out of house with single cloth and even her wearing ornaments were forcefully taken away. She took shelter in her elder sister's house at South Rajnagar from where she was taken to Belonia hospital for treatment and she undergone treatment as an indoor patient and since she was under treatment and since she was expecting a settlement through the village panchayat and elders, there was delay in lodging the FIR.

4. On the basis of that FIR, P.R. Bari P.S. Case No.4/2006 under Section 498A of IPC was registered and after investigation, police submitted charge sheet against the accused persons for commission of offence punishable under Section 498A of IPC.

5. Cognizance was taken on the basis of the police report and in course of trial on 30.06.2006 learned Sub-Divisional Judicial magistrate framed charge against the accused persons including the accused petitioner for commission of offence punishable under Section 498A of IPC to which the accused persons pleaded not guilty and claimed to be tried.

6. Prosecution examined 17 witnesses to prove the charge. After closure of the prosecution evidence, the accused persons were examined under Section 313 of Cr.P.C. and in their turn the accused persons examined one DW, a member of the Gram Panchayat of accused.

7. Defence case so far ascertained from the trend of cross-examination as well as from the defence evidence is that the informant victim, Lalita Debnath, could not adjust herself in the matrimonial home and that she was ill tempered and she voluntarily left the house of her husband leaving three children, of whom eldest one is aged 12 years, and took shelter in her paternal house. The accused petitioner, Laxman Debnath sent DW1, a member of Gram Panchayat, to take back the complainant, Lalita Debnath to the matrimonial home, but she refused to come.

8. Learned SDJM at the conclusion of trial found accused-petitioner, Laxman Debnath guilty of the charge framed under Section 498A of IPC and sentenced him to suffer R.I. for two years and also to pay a fine of Rs.5,000/-, in default of payment to suffer S.I. for three months. He has acquitted the other two accused persons from the charge levelled against them.

9. Aggrieved, the accused petitioner preferred Criminal Appeal No. 10(3) of 2008 in the Court of learned Additional Sessions Judge, Belonia, South Tripura and the

appeal was dismissed by the learned Additional Sessions Judge by impugned Judgment dated 13.08.2008 and hence, this revisional application.

10. It is argued by learned counsel, Mr. Majumder that after 14 years of marriage the FIR was lodged by informant, Lalita Debnath. She alleged that the demand of Rs.25,000/- was made after two years of marriage and on that issue she was consistently subjected to physical and mental torture, which is totally unbelievable. The informant, Lalita Debnath, i.e., PW1, her father, Netai Charan Debnath(PW2), her brother, Joydeb Debnath(PW11) and her sister, Champaka Debnath(PW15) only stated about the allegation of torture, but there is no consistency in their statement. Regarding torture, omnibus statements made by the witnesses, which are not at all believable. Some of the witnesses of the parental village of the informant stated about the torture, but those are hearsay in nature having no evidentiary value at all. Regarding the meeting in the house of accused on 27.08.2005 the witnesses stated that in the meeting both side were advised to live peacefully and some of the witnesses stated that in the meeting the accused persons assured that she will not be tortured in the matrimonial home. Such evidence on record is not sufficient to prove the ingredients of cruelty as prescribed under Section 498A of IPC and hence, the accused person is entitled to get benefit of doubt and be acquitted.

11. Learned P.P., on the other hand, has submitted that the victim, Lalita Debnath, lived 14 years with the accused and three children were born. The eldest one is aged 12 years. She has been driven out from the matrimonial home. Unless she was tortured in the matrimonial home, it was unlikely for a woman to leave the matrimonial home leaving behind three children in the husband's house. So, the victim's version rightly believed by the trial Court and the appellate Court and the conviction and sentence may be sustained.

12. Admittedly, PW1, the informant lodged the FIR after 14 years of her marriage with accused petitioner Laxman Debnath. Her only allegation made in the FIR is that since after two years of marriage her husband at the instigation of her mother-in-law and sister-in-law put up a demand of Rs.25,000/- and put pressure on her to bring the amount from her father's house and since the demand could not be fulfilled by her father because of financial inability, she was subjected to physical and mental torture and that continued for many years and in the meantime she gave birth of three children, of whom the eldest one aged about 12 years.

13. In her deposition, PW1 did not specifically made any allegation of physical and mental torture or tormentation on demand of Rs.25,000/-. She stated –

"..... After lapse of two years of my marriage my husband started torturing me physically on the instigation of my mother in law and sister in law. My

husband also demanded Rs.25 thousand from me but due to poverty my father failed to fulfill the demand of my husband. About one year back I was physically tortured by all the accused persons and I informed the matter to the Panchayat of Niharnagar, Ekinpur and Gauranga bazaar. Accordingly Salish was held. In that Salish the matter was compromised at the intervention of the good offices. Accordingly again started living in my matrimonial home.”

A reading of the above deposition of PW1, the informant, makes it clear that she was subjected to torture physically since after two years of marriage and her husband also demanded Rs.25,000/-. There is no allegation made by her in her deposition that she was subjected to torture since demand of Rs.25,000/- was not fulfilled.

Father, brother and sister of Lalita Debnath, i.e., PW2, PW11 and PW15 stated that Lalita was subjected to torture since the demand of Rs.25,000/- was not fulfilled.

14. It is quite surprising that for about 12 years the victim was subjected to torture on demand of Rs.25,000/- as alleged or otherwise, but there was no case instituted by her. It is however, stated that Panchayat was reported about 4/5 times, but there is no cogent evidence to that effect. There is evidence on record in the statement of PWs 8, 9, 10, 14 and 16 that there was a village Salish on 27.08.2005 in the house of the accused and in that Salish both side made allegation and counter allegation and the village elders advised them to live peacefully and not to quarrel. Out of them some of the witnesses stated that in the meeting the accused persons

made commitment that they would not torture Lalita in future. Such statement in the meeting cannot be treated as a positive evidence of torture or tormentation on the demand of dowry or otherwise.

15. The charge framed against the accused petitioner and his mother and sister reads as follows :-

"C H A R G E

I, Sri P. K. Datta, Sub Divisional Judicial Magistrate, Belonia, South Tripura do hereby charge all of you namely, 1) Smti. Pratima Debnath, 2) Sri Laxman Debnath 3) Smti. Shishu Bala Debnath as follows :-

That all of you on or about the 27/12/2005 at about 16.30 hours at Niharnagar being the husband and in laws of Smti. Lalita Debnath subjected the said Lalita Debnath to cruelty of torture by doing unlawful demand of dowry and thereby committed an offence punishable U/S 498(A) of the I.P.C. and within the cognizance of this Court.

And I hereby direct that all of you be tried on the said charge."

16. It shows that the accused petitioner and two other accused were charged only for the incident alleged to have occurred on 27.12.2005 at about 04-30 pm. But regarding that charge PW1 in her deposition did not make any specific allegation. She stated –

"..... But after lapse of about 3/4 months they again torture me physically and driven out me from their house keeping my all golden articles in their custody. Due to their such assault I was hospitalized and was treated. On my release from the Hospital I lodged this case."

17. The above deposition of PW1 does not prove the charge framed against the accused persons. There is no other

iota of evidence in support of the contention that on 27.12.2005 she was beaten out from the house of the accused persons. No medical witness also examined to prove that she was hospitalized for the assault and she was treated there.

18. The statements of all the witnesses are generalized statements regarding torture and tormentation of Lalita in the matrimonial home. It is very difficult to believe such statement and to arrive at a conclusion that Lalita was subjected to cruelty in the matrimonial home for about 12 years since after her marriage and that she was driven out from the matrimonial home by the accused petitioner and his mother and sister.

19. It is apparent from the evidence on record that her three children are living with the accused petitioner and she is living apart even from the children. The allegation that she was driven out on 27.12.2005 since is not established by any convincing evidence, the trial Court and the appellate Court wrongly arrived at a conclusion of guilt of the accused petitioner and so, I think it is a fit case where the accused may be given the benefit of doubt and the revisional application may be allowed.

20. Accordingly, the revisional application is allowed. The judgment and order of conviction and sentence passed by the learned SDJM dated 26.06.2008 in case No. G.R. 14 of 2006 and the judgment and order dated 13.08.2008 passed by

the learned Additional Sessions Judge, Belonia, South Tripura in Criminal Appeal No.10(3)2008 are set aside. The accused petitioner be set at liberty.

21. The revisional application accordingly stands disposed of.

22. Send back the lower court record along with a copy of this judgment.

JUDGE