

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL.REV.P. NO.55 OF 2011

1. Shri Amarjit Biswas,
son of Shri Jishu Biswas

2. Smt. Usha Biswas,
wife of Shri Jishu Biswas

- both are residents of Village : Kamalnagar,
Uttarpara, P.S. Kalyanpur, District : Khowai, Tripura

..... Petitioners

- Vs -

The State of Tripura

.....Respondent

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

For the petitioners : Mr. A. Das, Advocate

For the respondent : Mr. A. Ghosh, PP

Date of hearing & order : 18.06.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Das, learned counsel appearing for the petitioners as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the State.

2. As the appeal filed by the petitioners, being C.R. Appl. No.4 of 2010 in the court of Addl. Sessions Judge, Khowai, West Tripura from the judgment and order dated 30.09.2010 has fallen through, by this petition filed under Section 401 read with Section 397 of the Cr.P.C., the judgment and order dated 20.04.2011 by which the appellate court has affirmed the conviction passed by the trial court against the petitioners, namely Amarjit Biswas and his mother Smt. Usha Biswas has been assailed. It is to be noted that, the petitioners have been sentenced by way of affirmation, to suffer rigorous imprisonment for two years with a fine of ₹1,000 each, in default to suffer rigorous imprisonment for three months for committing the offence punishable under Section 498A of the IPC.

3. The trial court, the Sub Divisional Judicial Magistrate, Khowai convicted two other accused, namely Jishu Biswas and Jugalpada Biswas by the judgment of conviction dated 30.09.2010, delivered in G.R. No.146 of 2009, but they have been acquitted by the appellate court by the judgment and order 20.04.2011.

4. The genesis of the prosecution case is rooted in the written complaint filed by Nakul Sarkar (PW.1) before the Sub Divisional Judicial Magistrate, Khowai on 18.06.2009,

disclosing that on 13.03.2008 his daughter married the petitioner No.1, Amarjit Biswas. Immediately after the marriage, she faced "rough behaviour" from her marital inmates. She had been treated like a maid-servant. She faced various forms of cruelty including not providing of food for her survival. Even she was forced to work in the paddy-field. But, the saga did not end there. She was asked to bring a sum of ₹25,000 for purchasing bike and golden chain from her parents and on that pretext she was subjected to physical assaults on numerous occasions. Even the petitioner No.1 threatened the informant by saying that he would employ his wife, the daughter of the informant, in the prostitution. In such circumstances, the informant paid a sum of ₹10,000 to one of the co-accused, namely Jishu Biswas. For about three months there was a short respite, but again torture started. The village panchayet intervened in the matter twice, but noting could change the situation in her matrimonial home and on 20.04.2009, the accused persons severely assaulted the victim (PW.7) and drove her out from the matrimonial home. Then the complaint was filed.

5. Without taking cognizance, the said complaint was forwarded to the Officer-in-charge of Kalyanpur police station under Section 156(3) of the Cr.P.C. In turn, Kalyanpur P.S.

Case No.31 of 2009 under Section 498A was registered and taken up for investigation.

6. Sri Prabir Debbarma (PW.9), Sub-Inspector of Police, carried out the investigation and on completion of the investigation, he filed the final police report chargesheeting the accused persons. After taking cognizance, the charge was framed against all the accused persons under Section 498A of the I.P.C., to which they pleaded innocence and claimed to face the trial.

7. In order to substantiate the charge, the prosecution adduced as many as 9(nine) witnesses and introduced 4(four) documents including the complaint (Exbt.1). After the prosecution evidence was recorded, the accused persons were examined under Section 313 of the Cr.P.C., where they all reiterated that they were innocent and have been impleaded in the case falsely.

8. On appreciation of the evidence, the trial court returned the finding of conviction against the petitioners and two other accused persons, namely Jishu Biswas and Jugalpada Biswas, but acquitted the co-accused, namely Smt. Dalia Sarkar from the charge under Section 498A of the I.P.C., but the petitioners and other accused persons were sentenced

in pursuance to that conviction to suffer rigorous imprisonment for 2(two) years and to pay a fine of ₹1,000 each, with default imprisonment.

9. Being aggrieved by the said judgment of conviction, the petitioners and those two accused persons preferred an appeal under Section 374(3) of the Cr.P.C in the court of the Addl. Sessions Judge, Khowai, West Tripura, being C.R. Appl. No.4/2010. On hearing the appeal, by the impugned judgment those two accused persons, namely Jishu Biswas and Jugalpada Biswas were acquitted, but the finding of conviction of the petitioners were confirmed without any interference even in the order of sentence. That judgment dated 20.04.2011 is under challenge in this petition.

10. Mr. A. Das, learned counsel appearing for the petitioners has submitted that at the instance of the informant, Nakul Sarkar, the victim, Rakhi Sarkar (PW.7) made tutored versions improving the previous statement to such extent that the testimonies of both PW.1 and PW.7 have been rendered untrustworthy. Apart that, he has submitted that there is no legal proof against Smt. Usha Biswas (the petitioner No.2) i.e. the mother of Amarjit Biswas (the petitioner No.1).

11. From the other side, Mr. A. Ghosh, learned Public Prosecutor appearing for the State, while refuting such submissions, has submitted that the defence has utterly failed to carry out their responsibility to prove the contradictions or the omission that has been brought in the cross-examination and hence, that part of the cross-examination cannot be treated as the legal evidence. Hence, those would not create an embargo in relying the evidence of PWs. 1 and 7 what they stated in their examination-in-chief. In addition to that, Mr. Ghosh, learned Public Prosecutor has submitted that the occurrences those had taken place before 20.04.2009, were brought to the notice of the local panchayet twice and one of the Upapradhan, namely Pradip Sarkar has been examined during the investigation and he has also made a statement in the trial as PW.8. He has categorically stated that the father of the victim, PW.1, reported to him that at her matrimonial home she was subjected to physical torture for dowry. He advised the father of the accused to look into the matter and he assured not to cause any cruelty upon the victim. He has also stated that he has knowledge that another panchayet was convened at Mohorchara, but he was not present there. But in the cross-examination, he has admitted that in the meeting neither the informant nor the victim stated in detail what form

of cruelty the victim faced in her matrimonial home. Mr. Ghosh, learned Public Prosecutor, therefore, has submitted that there is no such infirmity in the impugned judgment calling this court for interference.

12. For a very limited purpose, as this Court is in season of a criminal revision petition, the evidence on record would be glanced through.

13. In the written complaint, which was subsequently treated as the First Information Report, PW.1, Nakul Sarkar has disclosed as aforestated. In the trial, PW.1 has categorically stated that when he visited the matrimonial home of his daughter, the accused persons, namely Amarjit Biswas, Smt. Usha Biswas, Jishu Biswas and the younger brother of the accused, Judgal Pada Biswas were found assaulting his daughter for fetching a sum of ₹25,000 for purchasing golden chain and bike. He has also stated that at the advice of the local panchayet, he took his daughter to his residence and after few days his daughter returned to the matrimonial home. But after few days again she was subjected to mental and physical torture on demand of dowry. Again his daughter came back to his residence. After about seven days, when the petitioner No.1 came to his residence for taking the victim back, he refused at that time. But, the

petitioner No.1 again came to his residence to take back his daughter to the matrimonial home, when some of the local panchayet members had accompanied him. Initially, his daughter was reluctant, but later on she went to the matrimonial home. Though the members of the panchayet who accompanied the petitioner No.1 had assured that nothing would happen, but the cruelty recurred within few days after her joining the matrimonial home. The matter was taken to the knowledge of the local panchayet and on their interference again the victim joined the accused persons in their house. In the cross-examination, the suggestion given by the defence was denied by the informant.

14. PW.2, Narayan Sarkar was one of the persons who attended the panchayet meeting and he has categorically stated that *"the accused persons assured not to cause any cruelty upon her. Then she returned back to her matrimonial home for conjugal life. But after 3/4 months again she went back to her parents' house. That time accused persons did not turn up and ultimately this prosecution was registered"*.

15. PW.3, Sri Hari Charan Biswas is a hearsay witness. PW.4, Nitai Malakar has stated that after the marriage the victim went to her matrimonial home for consummation of conjugal life, but after two months she came back to her

parents' house with allegation that at her matrimonial home she was subjected to cruelty, both mentally and physically. The matter was reported to panchayet and as per their interference she again went to her matrimonial home, but after few days the victim returned with the same allegation of cruelty upon her by the accused persons. PW.5, Nanda Lal Rudra Paul has almost followed the suit of PW-4.

16. P.W.6, Maran Sarkar is another person who attended the panchayet proceeding on the complaint of PW.1. He has stated that after long discussion the panchayet advised the accused not to cause any cruelty upon the victim and requested the victim to go back to her matrimonial home. Accordingly, the victim went to the matrimonial home. Later on, the father of the victim reported him that his daughter could not lead conjugal life at her matrimonial home and came back to his home. But, nothing could be elicited from the cross-examination.

17. PW.7 is the victim, who has stated that after her marriage with the petitioner, she was initially subjected to rough behaviour from the sister of her husband, namely Dalia Sarkar on the ground of non-fulfilment of the dowry. After that, her husband and Jugal Biswas also started hearing cruelty on her for doing work in their paddy-field. But,

whenever she refused to go to the paddy field, they used slang language against her. Even they kept her in starvation every now and then, but she tolerated silently. After about two months when her father came to visit her, finding her husband and mother-in-law assaulting her, took her back to his residence. The matter was informed to the panchayet and in the panchayet meeting the accused persons again assured not to cause any further cruelty on her and on such assurance she again joined the matrimonial home. For ensuring that no further cruelty is hit on her daughter, her father (PW.1) somehow managed a sum of ₹10,000 out of ₹25,000, which was demanded by the accused persons and paid the amount to one of the co-accused. But, on 20.04.2009, the accused persons assaulted her severely and driven her out from their home. As a result, she was compelled to take shelter in her parents' home. The accused persons claimed bike and golden chain and for that purpose they wanted to have a sum of ₹25,000. She was cross-examined elaborately and it is found that most of her statements are not available in her statements recorded under Section 161 of the Cr.P.C. But, when this court has compared the statements in this regard of Prabir Debbarma (PW.9) it appeared that no endeavour was made by the defence to ask the Investigating Officer whether

such statements had been made by the victim to him during the investigation or not and as such, the defence cannot utilise that contradiction/omission as has been successfully elicited in the cross-examination.

18. PW.8, Pradip Sarkar, is the Upapradhan of Madhyakrishnapur where the matrimonial home of the victim situates. He has stated that on the complaint of PW.1, a panchayet meeting was convened, when Nakul Sarkar (PW.1) raised allegation against the accused persons of physical torture on his daughter for dowry. The accused persons had assured the panchayet not to cause any cruelty on the victim. Accordingly, the victim was persuaded to join the matrimonial home. He has also stated that he had heard that there was another panchayet meeting in Moharchara. He has admitted in the cross-examination that neither of the parties in detail disclosed in the panchayet meeting how the victim had suffered in their hands.

19. PW.9, Prabir Debbarma has stated how he conducted the investigation by recording the statements of the witnesses and preparing the hand-sketch map, but in the cross-examination, he has not stated anything very material except that he did not examine any witness from the neighbourhood of the victim's matrimonial home. This piece of

evidence may also be read with the testimony of the victim wherein she has stated that she did not disclose the occurrence to the people living in the neighbourhood as she was not allowed to mix with others.

20. Having regard to the submissions and scrutinising the records, this court finds that there is one sweeping statement against the petitioner No.2, Smt. Usha Biswas. As such, this court is of the view that based on the said statement alone the petitioner No.2, namely Smt. Usha Biswas cannot be convicted under Section 498A of the I.P.C. and as such, she is acquitted from the charge under Section 498A of the I.P.C. on benefit of doubt and the impugned judgment and order, so far it relates to the petitioner No.2, stands set aside. However, this court is not inclined to set aside the conviction as returned against the petitioner No.1, Amarjit Biswas. But, having regard to the circumstances, nature of the offence and the transaction, this court is of the view that the sentence is required to be modified. Accordingly, it is modified. The petitioner No.1, Amarjit Biswas shall suffer simple imprisonment for 6(six) months and pay a fine of ₹5,000 (rupees five thousand), in default, he shall suffer further simple imprisonment for 3(three) months. Accordingly,

the petitioner No.1, Amarjit Biswas shall surrender before the trial court within a period of 15(fifteen) days from today.

21. In the result, this petition stands partly allowed.

Send down the LCRs forthwith.

JUDGE

ROY/Dipesh