

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

CRR 1585 of 2008

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CRAN 1 of 2023

Harekrishna Jana & Anr.

Vs.

The State of West Bengal

For the petitioners : Mr. Himangsu De
Mr. Somnath Banerjee
Mr. Partha Sarathi Basu
Mr. Subhrahmit Dey
Mr. Pronojit Dey

For the State : Mr. S. G. Mukherjee, Ld. P.P.
Mr. Imran Ali
Ms. Debjani Sahu

Heard on : 13th April 2023

Judgment on : 13th April 2023

The Court:

This criminal revision challenges the judgment and order of conviction passed by learned Additional Sessions Judge, First Court, Tamluk, Purba Medinipore in Criminal Appeal No. 4 of 2004 affirming thereby the judgment and order of conviction passed by Assistant Sessions Judge, First Court, Contai, Midnapore in

S.T. case No. XXV/August/98 corresponding to Egra P.S. case No. 140 of 1996 dated 10th December, 1996.

Heard Mr. Himangsu De, learned senior counsel for the petitioners and Ms. Sahu, learned counsel for the State. Briefly stated on 10th December, 1996 Sri Narayan Jana informed the Officer-in-charge of Egra Police Station in writing about the unnatural death of his daughter Sakuntala Jana. Sakuntala Jana got married to Harekrishna Jana on 28th Baisakh of 1402 B.S. according to Hindu rites. Sakuntala and Harekrishna lived happily for 2-3 months after marriage. Thereafter she was subjected to physical and mental torture by her husband and mother-in-law. Harekrishna told Sakuntala that he did not like her and she should put an end to her life so that he could marry for the second time the lady he loved. Sakuntala at one point of time failed to endure such mental torture and put an end to her life by hanging herself. This information led to registration of Egra Police Station case No. 140 of 1996. Police took up investigation which culminated into submission of charge sheet. The accused persons stood the trial pleading their innocence. Prosecution in order to prove charges examined as many as 12 witnesses. Learned Trial Court after considering the oral testimony of witnesses as well as documentary evidence was pleased to record an order of conviction against the accused persons Harekrishna Jana and Raikishori Jana and sentenced them to suffer imprisonment for a term of six years with a fine of Rs.2,000/- for committing an offence under Section 306 of the Indian Penal Code and two years imprisonment with fine of Rs.1000/- for committing offence under Section 498A of the I.P.C. The accused persons made an

unsuccessful attempt to get the order of conviction reversed by preferring the Criminal Appeal No. 4 of 2004. Hence this application.

Mr. Himangsu De, learned senior counsel drawing my attention to the testimony of prosecution witnesses stated that there is no evidence sufficient to record an order of conviction under Section 498A of the I.P.C. The parents of the victim and other witnesses who are related to them made some general and omnibus allegation regarding torture. It is alleged that Sakuntala was not provided with proper food and she was assaulted. Even if the same can be termed as cruelty, such cruelty does not bring the case of prosecution within the ambit of Section 498A of the I.P.C. According to Mr. De there is no evidence to show that victim was instigated or abetted to commit suicide within a proximate time. On the contrary the evidence of P.W. 8 would show that victim was unwilling to stay with Harekrishna and she used to live at her matrimonial home of and on, as a result of which Harekrishna took initiative to settle their dispute with the intervention of local people and P.W. 8 was one of them who attended the salish and came to know that sakuntala was a psychiatric patient. That Sakuntala was treated by Dr. S. P. Mukherjee, Midnapore and Ashim Mallick of Contai stands admitted the father of the victim. P.W. 1 admitted the said fact during cross-examination but did not produce the prescription to prove P.W. 8 wrong. On the contrary P.W. 8 was not examined within the meaning of Section 154 of the Evidence Act. Mr. De, learned senior counsel submits that there is no evidence to hold that cruelty and harassment as alleged by the prosecution was meted out to the victim that had left the victim with no other option but to put her end to her life. Refuting such contention Ms. Debjani Sahu, learned counsel for the State vehemently

submits that the victim was tortured and treated with cruelty within the meaning of Section 498A of the I.P.C. Her husband used to tell the victim that she should put her end life making way for her husband to marry his old time sweet heart, cousin sister and accumulate wealth in the form of dowry. Three months after the death of Sakuntala, Harekrishna married Jyotsna Jana and this very conduct of the husband would show that with an intention to acquire wealth in the form of dowry he was instrumental in pushing his wife to the point of no return and compelled her to commit suicide. Drawing my attention to the testimony of P.W. 10 Ms. Sahu submits that Harekrishna threatened Sakuntala. He not only threatened Sakuntala to drive her out of his house he also instigated Sakuntala to commit suicide as he was in love with the daughter of his maternal uncle.

It is further contented by Ms. Sahu, learned counsel for the State that the testimony of prosecution when unerringly suggests that the victim was treated with cruelty within the meaning of Section 498A of the I.P.C. and she died within 18 months of her marriage, there is every reason to presume that she was instigated by her husband and mother-in-law to commit suicide taking recourse to the provision of Section 113A of the Evidence Act.

It is rightly pointed out by Mr. De, senior counsel that Jyotsna Misra, P.W. 8 attended the salish and there she came to know that Sakuntala was suffering from some kind of metal disorder. Her testimony remains unchallenged. Rather, the testimony of P.W. 1, the father of the victim, to the effect that Sakuntala was under treatment of Dr. S.P. Mukherjee of Midnapore and Dr. Ashim Mallick of Contai is lending support to claim of P.W. 8. Prosecution did not examine P.W. 8 in the light of

Section 154 of the Evidence Act and at the same time despite having opportunity prosecution did not produce the prescription of the Doctors who attended the victim to neutralize the claim of P.W. 8. This testimony of P.W. 8 as has been accepted by the prosecution undoubtedly strikes at the root of the case.

Prosecution witnesses stated that Sakuntala was treated that cruelty. Even P.W. 4 stated that she was told by her husband either to die by diving into water or to consume poison or to hang herself. Though parents of the victim P.W. 1 and P.W. 3, P.W. 4, P.W. 8 stated that the victim was treated with cruelty, they did not have any knowledge of the marital life of Sakuntala for the last 10 months of her life. The father of the victim stated that he had been to the house of Harekrishna till the first 8 months after marriage. Sakuntala was alive for 10 more months. Therefore there is no evidence as to the state of mind or as to the condition of life of Sakuntala as a whole in her matrimonial home for last 10 months of her marriage, and this lack of information makes the testimony of witnesses doubtful and unsafe to rely upon. In my humble opinion mere utterances like “you die since you are not of my choice, I shall marry another woman” are not sufficient to bring the case within the meaning of Section 107 of the Indian Penal Code. True it is under Section 113A of the Evidence Act a presumption could be drawn that the victim was abetted to commit suicide but for that prosecution is under obligation to prove that she was treated with cruelty within the meaning of Section 498A of the I.P.C. I feel no hesitation to hold that prosecution failed to prove the same. The testimony of P.W. 10 and P.W. 4 are nothing but hearsay and not admissible in view of Section 60 of the Evidence Act. The conduct of the husband undoubtedly creates suspicion towards his culpability but

suspicion howsoever strong cannot relieve the prosecution from proving the case beyond reasonable doubt.

In my humble opinion the impugned judgment suffers from infirmity and should not be allowed to remain in force and should be set aside, which I accordingly do. Consequently the revisional application succeeds.

The accused persons be set at liberty upon execution of bond under 437A of the Cr.P.C. for six months.

I place on record my appreciation for the sincere effort made by Ms. Sahu, learned counsel, for the State in placing the case.

The revisional application is thus disposed of. There shall, however, be no order as to costs.

Let a copy of the order be sent down to the learned Trial Court for information and necessary action.

Department is directed to send a copy of this judgment to the correctional home of West Mindnapore at the earliest.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities

(Siddhartha Roy Chowdhury,J)