

23.08.2021

Ct No. 34

SL. No.14

PA

**CRR 1813 of 2019
(Through Video Conference)**

**Deopriya Singh & Anr
-Vs.-
The State of West Bengal & Anr.**

Mr. Iqbal Hussain,

....for the petitioners

Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Swapan Banerjee, Sr. Govt. Advocate
Mr. Suman De

.... for the State.

Ms. Aiswariya Gupta,

....for the opposite party no.2

The present revisional application has been preferred against the judgment and order dated 05.07.2019 passed by the learned Judge, Bench-I, City Sessions Court, Calcutta in connection with the Criminal Appeal No. 47 of 2016 where the learned appellate Court was pleased to dismiss the appeal and affirm the judgment and order dated 20th May, 2016 passed by the Learned Metropolitan Magistrate, 13th Court, Calcutta in connection with the G.R. No. 873 of 2010 (TR No. 84 of 2010).

Records reflect that the learned Magistrate on conclusion of trial was pleased to hold the present

petitioners being Deopriya Singh and Asha Devi Singh guilty of the offence punishable under Section 498A/34 of the Indian Penal Code and sentenced them to suffer simple imprisonment for three years and to pay a fine of Rs.5,000/- each, i.d., to suffer further simple imprisonment for six months.

Records also reflect that the prosecution case was initiated on the basis of complaint filed by Laxmi Singh with the Officer-in-charge, Posta Police Station on 20.03.2010 alleging that she was subjected to mental and physical torture by the petitioners when she was staying at her matrimonial home on the plea of un-lawful demand of further dowry. The evidence of the said Laxmi Singh who was examined as the Prosecution Witness No.1 (PW1) reflects that the marriage was solemnized on 14.02.2004 and the same was an arranged marriage. The witness on 15.02.2004 went to her matrimonial home at Konnagar, Hooghly with her husband and from that day onwards she was subjected to mental torture by her husband and in-laws for inadequacy of dowry. The witness narrated that at the time of marriage two gold chains, five gold finger rings, and two rings, one necklace of gold, two bangles, one ear ring, silver payel, komar bandh and other bangles of silver were given by her mother and relations. Rs.1,00,000/- cash was given to the accused person and Rs.65,000/- for purchasing

motorbike was handed over to the husband in cash. All the golden jewellerys were taken away by the mother-in-law and her husband asked her to follow the instructions of the mother-in-law. On 16.02.2004 there was reception ceremony and on that day also the in-laws misbehaved. It has been alleged that the husband at the time of marriage disclosed that he was BHMS doctor and one visiting card to that effect was also handed over, however, the same subsequently revealed to be a false one and the husband is an un-employed person.

The defacto complainant/PW1 alleged that the husband and her other in-laws had taken away her savings which she earned as a teacher by way of private tuition and also being aggrieved by her for leaving the job forced her to work as a maid servant. Moreover, the husband used to assault her with whatever he had nearby and she was even abused after her child was born and on two occasions the husband tried to kill her by pressing pillow on her mouth but somehow she escaped. In order to save her she left the matrimonial house with the child on 30th June, 2009 but subsequently on August, 2009 she returned back to her matrimonial home but after few months again the husband started to assault and abuse her and as such she was forced to leave her matrimonial home.

The prosecution in order to prove its case also relied upon the evidence of four other witnesses. The learned Magistrate assessed the oral evidence as also the document relied upon by the prosecution being written complaint which was marked as Ext.1; signature of the defacto complainant/PW1 in the seizure list which was marked as Ext.2; signature of PW3/Sujit Singh in the seizure list which is marked as Ext.2/1; formal FIR which was marked as Ext.3; signature of PW5 in the formal FIR which was marked as Ext.3/1; seizure list dated 14.04.2010 which was marked as Ext.4 and signature of PW5 in the seizure list which was marked as Ext.4/1; seizure list dated 07.07.2010 marked as Ext.2/3 and the signature of PW6 in seizure list was marked as Ext.2/2.

The defence basically relied upon the cross-examination of prosecution witnesses and admitted three documents in evidence which included the enquiry Report of PW5 dated 06.04.2010 marked as Ext.A; prayer of issuance of search warrant dated 11.04.2010 as Ext.B and the signature of PW5 in the said search warrant marked as Ext.B/1.

On close scrutiny of the judgment delivered by the learned Magistrate on 20.05.2016 which reflects that the learned Magistrate has taken into consideration in detail the evidence of the defacto complainant/PW1. The evidence of

Sujit Singh, PW2; Ram Kumar Singh, PW3; Kiran Devi Singh, PW4 who are relations of the PW1 and also the evidence adduced by the two police witnesses being PW5 and PW6.

The learned Court in details applied the facts of the case and the evidence so deposited before the Court along with charge which was framed against the accused persons and was pleased to hold that no offence has been made out under Section 406/34 of the Indian Penal Code. However, the learned Magistrate was pleased to arrive at a finding of guilt so far as offence under Section 498A/34 of the Indian Penal Code is concerned and convicted the accused being the present petitioners herein for the said offences.

The petitioner approached the learned Sessions Court, invoking appellate jurisdiction and the Appellate Court took into account the evidence and the observations made by the learned Magistrate and thereafter affirmed the order of conviction and sentence so passed by the learned Magistrate.

Mr. Iqbal, learned Advocate appearing for the petitioners submits that the prosecution case is full of contradiction and the learned Courts below refused to appreciate the same in its true spirit thereby erroneously convicting both the petitioners. Learned Advocate further

submits that the prosecution case taken as a whole fails to make out any case so far as the petitioner no. 2 Asha Singh being mother-in-law, attention to this effect are drawn to the relevant part of the observations made by the learned Magistrate as well as learned Sessions Judge. It has further been emphasized that even if the allegation against the husband are taken to be true the same do not make out any offence and complainant after long delay has implicated the present petitioners by way of an afterthought with an oblique motive for settling score with the members of the matrimonial home.

Mr. Saswata Gopal Mukherjee, learned public Prosecutor appearing for the State submits that so far as ingredients of the offence are concerned the same has been made out and there are consistency in the statement of all the witnesses regarding demand of dowry and torture being inflicted upon the victim. Prosecution by way of cogent evidence has been able to prove the case beyond all reasonable doubt and the present petitioners have failed to shake the evidence of the prosecution witnesses. Learned Public Prosecutor has further stated that exaggerating the minor inconsistencies in the statement of the witnesses cannot in any manner reduce the spirit of the prosecution case which unerringly point to the guilt of the accused persons.

Ms. Aiswariya Gupta, learned Advocate appearing for the opposite party no. 2 submits that the victim lady has been cheated initially by representing the husband to be a doctor, huge amount of gold ornaments, cash were given at the time of marriage as per the demand of in-laws family. Defacto complainant/PW1 was assaulted initially and also after the child was born. Further she was forced to work as a maid servant. The consistencies in the statement of the witness according to the learned Advocate do not call for any interference by this Court.

I have perused the judgment delivered by the Learned Courts below and applied my mind to the issue whether there has been manifest error by the Courts below while arriving at their conclusion on the basis of the evidence which have been adduced by the parties. On a close scrutiny of the materials I find that there were accusations against the petitioner no.2/ mother-in-law but the same do not constitute offence under Section 498A of the Indian Penal Code, as no overact and specific act has been divulged against her, rather the evidence overwhelmingly point to the guilt of the petitioner no. 1/husband.

As such the order of conviction and sentence so passed against the petitioner no.2/ Asha Devi Singh by the learned Magistrate and affirmed by the Appellate Court is

hereby set aside. The petitioner no.2/Asha Devi Singh is acquitted of all the charges.

Now so far as the petitioner no.1/Deopriya Singh is concerned, even the sole testimony of PW1 is sufficient to convict him. As such no interference is called for in respect of the order of finding of guilt and conviction so far as he is concerned.

However, the sentence of three years simple imprisonment so passed upon the petitioner no.1 seems to be very excessive in the background of facts and circumstances of the case. Having regard to the nature of the allegations made against him and the fact that the petitioner has been suffering from mental agony for more than ten years as he has been facing the trial and following the Courts, I am of the view that the sentence so imposed by the learned Magistrate be reduced to a period of three months with the fine and default clause remaining unaltered. The petitioner no.1 is directed to surrender within a period of seven days from the date for serving the sentence. If he is on bail his bail bond stands cancelled.

Accordingly, CRR 1813 of 2019 is partly allowed.

Pending applications, if any, is consequently disposed of. Interim order, if any, is hereby vacated.

LCR be sent to learned courts below. Copy of the order sent to the learned Metropolitan Magistrate 13th Court, Calcutta for execution in respect of the petitioner no.1.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)