

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 662 of 2004

Jogomaya Basak & Ors.

-Vs-

State of West Bengal

For the Petitioners : Mr. Prabir Majumder, Adv.,
 Mr. Snehansu Majumder, Adv.

For the State : None appears

Heard on: 7th June, 2022.

Judgment on: 2nd August, 2022.

BIBEK CHAUDHURI, J. : –

1. The instant revision is directed against the judgment and order dated 11th February, 2004 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Krishnagar, Nadia in Criminal Appeal No.17 of 2003 affirming the order of conviction and sentence passed by the learned Assistant Sessions Judge, Ranaghat, Nadia in Sessions Trial No.1 (11) of 2002 arising out of Sessions Case No.13(8) of 2000 thereby convicting the petitioners/accused persons for committing offence punishable under Section 498A of the IPC and sentencing them to suffer simple imprisonment for three years each with fine and default clause.

2. At the outset it is recorded that petitioner No.1 died during pendency of the instant criminal revision and therefore, the case against the petitioner No.1 abets finally.

3. The following issues have been raised challenging the legality and propriety of the order passed by the learned Additional Sessions Judge Fast Track Court II at Krishnagar in Criminal Appeal No.17 of 2003 affirming the order of conviction and sentence passed by the learned Assistant Sessions Judge, Ranaghat in Sessions Trial No.1 (11) of 2002:-

- i) Prosecution case is vitiated by delay in lodging complaint in the jurisdictional police station.
- ii) Prosecution failed to examine any independent witness in support of the charge under Section 498A of the IPC.
- iii) All the material witnesses are close relatives of the deceased and they are interested witnesses.
- iv) When the learned Assistant Sessions Judge recorded an order of acquittal against the accused persons/petitioners from the charge under Section 306 of the IPC, on the basis of same evidence, the accused persons cannot be held guilty for committing offence under Section 498A of the IPC.

4. I have considered the submissions in the light of the materials on record. I find from the impugned judgment that deceased Aduri Basak was the legally married wife of the petitioner No.3 Ganesh Basak. Her marriage was solemnized on 20th Agrayan, 1401 B.S. according to Hindu

Rites and Customs. She was allegedly tortured by her husband and other accused persons on illegal demand of dowry at her matrimonial home. On 18th November, 1995 Aduri consumed poison. The defacto complainant, father of the deceased got such information from a neighbour of her matrimonial home. He immediately rushed to the matrimonial home of his daughter and admitted her to Ranaghat Sub-Divisional Hospital. Subsequently, she was referred to Kalyani Jawaharlal Nehru Hospital. She died at Kalyani Hospital on 21st November, 1995.

5. The defacto complainant lodged complaint against the accused persons before the Officer-in-Charge Shantipur Police Station on 22nd November, 1995. On the basis of the said complaint police registered a case and finally filed charge-sheet under Section 498A/306 of the IPC against them. The petitioners faced trial. During trial prosecution examined as many as 12 witnesses. All the witnesses except one are close relatives of the deceased. One witness who happens to be the neighbour of the accused persons failed to throw any light with regard to the relationship between the accused persons and the deceased in her matrimonial home.

6. It is pointed out by Mr. Prabir Majumder, learned Advocate for the petitioners that both the learned trial court as well as the first court of appeal held the accused persons guilty for committing offence under Section 498A of the IPC on the ground that none of the family members of the matrimonial home of the deceased were found in their house at the time of death of the daughter of the defacto complainant. Their

disappearance was due to the reason that they were involved in treating the daughter of the defacto complainant with cruelty. They also abated commission of suicide of the deceased by consuming poison. The accused persons also did not inform the defacto complainant that her daughter consumed poison. Thus the specific conduct of the accused persons pointed out that they were involved in committing the offence.

7. It is also submitted by Mr. Majumder that both the trial court as well as first court of appeal refused to disbelieve the evidence of the relatives of the defacto complainant. But, both the courts below failed to consider that the deceased was allegedly subjected to physical and mental torture for a long time on illegal demand of dowry. Both the courts below failed to consider that during the life time of the deceased neither she nor her father ever tried to settle the dispute between her and her matrimonial relations. Even they did not make any complaint before the local panchayat or any other respectable person of the locality. It is further submitted by the learned Advocate for the petitioners that both the courts below failed to appreciate the evidence of PW4 who is an independent and disinterested witness. On 18th November, 1995 PW4 went to the matrimonial home of deceased Aduri Basak with her father and asked her about the condition of her health. The deceased did not make any complaint of consuming poison to him. She only complained of having stomach pain. Moreover, the evidence of PW1 and PW2 (father and mother of the victim) suffers from material infirmity and inconsistency regarding the persons who accompanied the victim to the hospital. The

court of appeal failed to consider that the accused persons were not examined properly under Section 313 of the Code of Criminal Procedure.

8. Before I deal with the submission made by the learned Advocate for the petitioners, I like to dwell upon the scope of the revisional jurisdiction. It is needless to say that there is a distinction between a revision and an appeal. In appeal, the appellant enjoys a statutory right to demand an adjudication from the court either on a question of fact or on a question of law or both. When a matter comes up in revisional jurisdiction, the applicant has no right whatsoever beyond the right of bringing the case to the notice of the court. It is for the court to interfere in exceptional cases where it seems that some real and substantial injustice has been done. Thus, a revision is a procedural facility afforded to a party, but it is not a continuation of the original case, appeal or trial, while an appeal is a statutory right conferred on a party. In **Amit Kapoor vs Ramesh Chander & Anr** reported in **(2012) 9 SCC 460**, the Hon'ble Supreme Court held as hereunder:-

“8.. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and Section 482 of the Code. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial

discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

9. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the Code of Criminal Procedure.”

9. It is significant to note that the court in revision cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction. The Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is the decision of the inferior court if allowed to be retained would be an abuse of the process of the court leading to injustice. In revision the court cannot appreciate evidence adduced by the witnesses to come to a finding as to whether the order of acquittal or conviction passed by the trial court and affirmed by the lower appellate court is liable to be altered and set aside or not.

10. Bearing the above principle in my mind let me now consider the submission made by the learned Advocate for the petitioners. It is true that the witnesses who supported the prosecution case are close relatives of the deceased. The father of the deceased is the defacto complainant. He

stated on oath that after the marriage of his daughter, she was subjected to cruelty by her husband and other matrimonial relations. The husband of the deceased demanded money from his father-in-law, i.e., the defacto complainant. The defacto complainant heard the said incident of torture from her daughter in order to restore peace in the family life of her daughter he paid Rs.15000/- in all three installments. In spite of such payment the husband of the daughter of the defacto complainant went on torturing her physically and mentally on demand of dowry. The said fact was corroborated by other related witnesses.

11. It should be borne in mind that matrimonial torture and cruelty happen within the four corners of the matrimonial house of the victim. In most of the cases a married woman is tortured inside the four corners of the matrimonial home without the knowledge of outsiders. It is obvious that a married woman would state her grievance to her parents and other relatives of her paternal home. It often happens that independent witnesses do not want to depose against an accused even if he is aware of the fact and circumstances of the case. They do not want to state anything against their neighbours. Under such circumstances, in a case relating to matrimonial dispute, the close relatives of the paternal home of the married woman are the most natural and reliable witnesses and their evidence cannot be discarded on the ground of interestedness.

12. Coming to the instant case this Court records that the court has perused the judgment and order of conviction passed by the learned trial court as well as the learned court of appeal. Both the courts below

discussed the evidence on record dispassionately in objective manner. On careful scrutiny of evidence on record both the courts below found that the victim committed suicide failing to bear torture inflicted upon her by her husband and other matrimonial relations. Therefore, the learned trial judge came to the finding that the accused persons committed offence punishable under Section 498A of the IPC. In arriving at such decision both the courts below considered the evidence on record compared oral evidence with the postmortem examination report and other documents and held that the accused persons/petitioners treated the victim in such a manner which compelled her to commit suicide.

13. In view of the above discussion, I do not find any merit in the instant criminal revision and therefore, the instant revision is dismissed.

14. The judgment passed by the lower appellate court is affirmed. The order of conviction and sentence passed by the trial court is affirmed.

15. The petitioners are directed to surrender before the trial court to suffer sentence.

(Bibek Chaudhuri, J.)