

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1295 of 2010

SUSHIL BISWAS
VS.
STATE OF WEST BENGAL

For the Petitioner : Mr. Debojyoti Das, Adv.

For the Opposite Party : N.P. Agarwala, Adv.

Hearing concluded on : 6th September, 2022

Judgement on : 8th September, 2022

Siddhartha Roy Chowdhury, J:-

1. This application under Section 401 read with Section 482 of the Code of Criminal Procedure is filed challenging the judgement of the learned Additional District Judge, Kalna in Criminal Appeal No. 1 of 2009 affirming the judgement and order of conviction passed by learned Assistant Sessions Judge in Sessions Case No. 36 of 2003 (S.T. No. 27 of 2003) against the petitioner Sushil Biswas for committing an offence under Section 498A of the I.P.C.
2. Briefly stated, Monindra Nath Sarkar father of Alhadi Sarkar informed the Office-in-charge of Kalna Police Station in writing about the unnatural death of Alhadi on 13th April, 1998.

3. It is alleged that Alhadi Sarkar was assaulted by her husband, parents-in-law and brother-in-law physically and mentally, as a result, Alhadi lost her sense. She was taken to Kalna Hospital, wherefrom she was transferred to Burdwan District Hospital. The accused persons demanded Rs. 10,000/- from his daughter which Alhadi failed to meet and invited plight. The information since disclosed offence cognizable in nature Kalna P.S. No. 78 of 1998 was registered on 4th April, 1998.
4. Police took up investigation which culminated into submission of charge sheet against all the accused persons. Charge was framed under Section 306/498A of the I.P.C.
5. Learned Trial Court however, after considering the evidence did not record any order of conviction under Section 306 of the I.P.C. against the accused persons. All the accused persons except Sushil Biswas (the husband) were also absolved from the charge under Section 498A of the I.P.C. as well and set at liberty.
6. To bring home charges prosecution examined as many as 11 witnesses. Hasi Sarkar and Nibhas Sarkar were examined as Court Witness No. 1 and 2.
7. It is trite to say that consequence of cruelty which is likely to drive a woman to commit suicide or to cause grave injury whether mental or physical of the woman is required to be established in order to prove the charge of offence within the meaning of Section 498A of the I.P.C. which reads as follows:-

“Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be

punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

8. Section 498A of the I.P.C. has two limbs – the first limb provides that whoever being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished. The cruelty has been defined in Clause (a) of the explanation to the said Section as any willful conduct which is of such nature as is likely to drive a woman to commit suicide. When there is demand of dowry the case comes under Clause (b) of the explanation to Section 498A of the I.P.C.
9. Here in this case we find from the F.I.R. that the accused persons assaulted his wife on 13th April, 1998. As a result, the victim lost sense and was taken to Kalna Hospital. The FIR further discloses that failure of the victim lady to pay Rs. 10,000/- so demanded by her husband was the sole cause of such assault on the fateful day. The autopsy report however, suggests that the cause of death was the effect of anti mortem hanging, without indicating any sign of physical torture to support the averment of the de-facto complainant.

10. PW 1 Monindra Nath Sarkar is the person who set the criminal administration of justice into motion. From the oral testimony of PW 1 we find that Alhadi was touchy and sentimental, slightest pressure in life used to make her sad. Sushil and Alhadi used to visit his house as off and on. His wife also used to visit the matrimonial home of Alhadi. He further stated that he did not lodge any complaint before any authority about the alleged torture upon the victim. His narrative before the Court on oath was his maiden statement regarding the torture allegedly perpetrated upon his daughter.
11. PW 2 is the mother of the victim who stated that after marriage while visiting their house with Alhadi, her son-in-law, the convict herein used to demand kinds and cash through Alhadi. They paid a sum of Rs. 6000/-, thereafter, again demand of Rs. 10,000/- was made which they failed to meet. PW 2 has stated that Alhadi used to reside at a separate mess. Alhadi was not provided with food and clothing at par with the standard of her father's house. She had grievances on that issue. Alhadi expressed her dissatisfaction as the status of the family of the convict was not at par with the status of the family of her father. Alhadi was very soft and she was sad as her demands were not fulfilled. PW 2 divulged those information for the first time before the Court on dock.
12. PW 3 Asim Sarkar, the elder brother of the victim who however, stated that in lieu of gold ornaments a sum Rs. 6000/- was paid after marriage. Sushil Sarkar further demanded a sum of Rs. 10,000/- for the purpose of business which could not be met. Sushil used to torture

his sister. PW 3 also disclosed about the plight of his sister Alhadi in her matrimonial home for the first time before the Court on oath.

13. Learned Trial Court and learned Appellate Court took into consideration the evidence of two witnesses Hasi Sarkar and Nibhas Sarkar who were examined as CW 1 and CW 2. According to CW 2 Nibhas Sarkar, he along with his cousin Hasi had been to the house of Alhadi. One day prior to her date of death the victim Alhadi was beaten up with a stick by her husband in their presence. Hasi voiced her protest and was slapped by Sushil.
14. Hasi Sarkar as CW 1 however, stated that having found her sister being beaten up by her husband, when she voiced her protest Sushil slapped her. But she could not say as to when such incident took place.
15. CW 2, Nibhas Sarkar stated that when the de-facto complainant lodged complaint he was present. In fact he dictated his uncle Monindra Nath Sarkar the content and Monindra Babu wrote it down. Even CW 1, Hasi was present in the house. But the content of written information which led to registration of the FIR is silent about such incident of assault upon victim and her sister Hasi. Court Witness 1 and Court Witness 2 are not attuned to each other.
16. Oral testimony of PW 9 suggests that on the date of incident Sushil went to hospital for the treatment of his nephew, hearing the news Sushil rushed to the hospital.
17. The Investigating Officer was not told by any of the witnesses that Alhadi was assaulted in presence of Hasi or Hasi was slapped by

Sushil. Nothing was told by witnesses regarding alleged demand of Rs. 10,000/-.

18. Therefore, in my considered opinion, no evidence is forthcoming to hold that the convict used to torture his wife or used to treat her with cruelty within the meaning of Section 498A of the I.P.C.
19. Allegation is made that Sushil used to demand money and failure to meet such demand pushed the victim to put an end to her life. This allegation has not been proved beyond doubt. On the contrary, we find from the oral testimony of the parents of Alhadi that the victim was sentimental and was not happy with the convict as there was a mismatch in the status between the two families and also because all her demands could not be fulfilled by her parents.
20. Having considered the entire evidence on record, I am of the view that the impugned judgement, recording order of conviction appears to be unjust and both the learned Trial Court and learned Appellate Court failed to exercise jurisdiction vested upon them properly. The impugned judgment should not be allowed to remain in force. This is a fit case to invoke the inherent power to set aside the impugned judgement and order of conviction to avert abuse of process of law, which I accordingly do.
21. Convict Sushil Biswas is acquitted and be discharged from bail bond. Interim order if any stands vacated.
22. Consequently revisional application succeeds.
23. Let a copy of the judgement be sent down to learned Trial Court for information and necessary action.

24. Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)