

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

C.R.A. 328 of 2009

Shiba Prasad Chakravorty @ Kanchan & Ors.

Vs

The State of West Bengal

As *Amicus Curiae* : Ms. Puja Goswami

Last Heard on : 08.04.2022.

Delivered on : 04.05.2022.

Moushumi Bhattacharya, J.

1. The present appeal is against a judgment dated 30.03.2009 passed by the learned Additional District & Sessions Judge, Fast Track, 2nd Court, Suri, Birbhum in Sessions Case No. 152 of 2005 by which the three appellants before this Court were convicted for commission of offences punishable under Section 498A of the Indian Penal Code, 1860. The appellants were sentenced to rigorous imprisonment for two years and fine of Rs. 1000/- each. The appellant no. 1 is the husband of the victim lady/defacto complainant, the appellant nos. 2 and 3 are the father and mother, respectively of the appellant no. 1.

2. The prosecution case, in summary, is as follows. The First Information Report (FIR) was registered on 20.05.2003 on the basis of a written complainant lodged by PW/1, Shampa Chakravorty, the wife of the appellant no. 1. According to FIR, the complainant was married to the appellant no. 1 on 13.03.2001 and sufficient amount of dowry was provided by the family members of the complainant. After a few months into the marriage, the appellant nos. 2 and 3 started to torture the defacto complainant for additional dowry which included the complainant not being given proper food. The complainant became pregnant but was forced to abort her child. The complainant was driven out of her matrimonial home in February, 2002 and lodged a complaint on 20.05.2003. On the basis of such complaint, a Police Case was registered and resulted in the Sessions Trial arising out of Sessions Case No. 152/05. The appellants were convicted in the Sessions Trial.

3. A total of seven witnesses were examined by the prosecution which were as follows:

PW/1 Shampa Chakravorty – Defacto complainant and wife of the appellant no.1

PW/2 Maya Sutradhar – Mother of the complainant

PW/3 Rebati Sutradhar – Father of the complainant

PW/4 Swapan Mazumder – The priest who conducted the marriage

PW/5 Arunagshu Banerjee – The doctor who treated the victim/complainant on 26.07.2001 at Suri Hospital

PW/6 Dr. B.S. Pal – The doctor who treated the victim on 30.12.2001

PW/7 Partha Sakha Mandal – Investigating Officer

The impugned judgment records and considers the evidence of these witnesses. The learned Trial Court has arrived at several conclusions which are however not corroborated by the evidence. The case sought to be made out by the prosecution contains numerous lacunae and loopholes.

4. The above observation arises out of the following factors. First, there was a palpable delay in lodging of the FIR. The complainant was allegedly driven out of her matrimonial home in February, 2002 but the FIR was lodged on 20.05.2003, after a gap of one year and three months. This delay has not only remained unexplained by the complainant but has also not been dealt with by the prosecution. The complainant has also not explained why she or her family members failed to intimate the fact of torture on her to the police from the period 13.03.2001 (being the date of marriage) to February 2002.

5. Second, no local witnesses were examined to prove the fact of torture on the complainant save and except the parents of the victim lady/complainant.

6. Third, it appears from the deposition of the complainant/PW1 that she was treated by one doctor namely Biswajit Dey and another Dr. D. Chatterjee who issued prescriptions to her. However, none of these doctors were examined by the prosecution. On the other hand, the deposition of PW/5, Arunagshu Banerjee, who treated the victim on 26.07.2001 at Suri Hospital indicates that the victim consumed pain killer and consequently became ill. There is no mention of the victim consuming poison. Further,

the other doctor from Suri Hospital who examined the victim on 30.12.2001 namely PW/6 Dr. B.S. Pal disclosed that the medical documents with regard to the admission of the victim could not be found. The statements also record that Dr. B.S. Pal was not in a position to recollect the cause of illness of the patient (victim). It is also curious that the fact of the victim suffering from various mental ailments and undergoing treatment for the same, which would be evident from the deposition of the parents of the victim, were not given any importance by the prosecution. The prosecution did not bring the statements of these doctors on record.

7. Fourth, the evidence of the victim PW/1 that the appellant no. 1 (the husband of the victim) demanded further dowry from her parents for business purpose is not corroborated from the evidence of PW/2 and PW/3, being the parents of the victim.

8. The above factors point to the patent infirmities in the case of the prosecution. The story of forced abortion was not proved by the doctor who treated the victim on 26.07.2001. The victim's mother, namely PW/2, deposed about the forced abortion after four years from the FIR and did not disclose said facts to the police while recording her statement under Section 161 of The Code of Criminal Procedure, 1973. The doctor deposed that the victim had consumed pain killers. Besides, the victim was admitted at Suri Hospital on two occasions and went back to her matrimonial home. As stated above, the mental ailments suffered by the victim and the treatment which she was undergoing was not brought on record by the prosecution.

9. There is also no evidence which would prove the cruelty allegedly suffered by the victim lady. The standard of proof has to be beyond reasonable doubt and the burden was upon the prosecution to prove its case. However, the prosecution failed to discharge the burden by failing to examine any independent witnesses who could have corroborated the story of cruelty suffered by the victim lady. Further, although the case of the prosecution is that sufficient amount of dowry was given to the appellants by the family of the victim lady, there is no indication, in the FIR or otherwise, as to whether the Investigating Officer made any effort to recover these articles (stridhan) or seized them by way of a seizure list.

10. The impugned judgment by which the appellants were convicted and sentenced is replete with findings without the evidence to show for it. For instance, the learned Court considers the written complaint and the evidence of PW/1, 2 and 3 being the victim lady, her mother and her father respectively with regard to the allegation of torture and comes to the finding that the material 'clearly proved and established' the fact that the victim lady was subjected to cruelty and harassment by her husband and in-laws. The learned Judge also concludes that the victim lady consumed poisonous drug in order to commit suicide and further concludes that all the evidence clearly established that the victim lady was subjected to cruelty by the husband and parents-in-law during her stay in the matrimonial house. The learned Judge also concludes that it has no reason to disbelieve the case of the prosecution that the victim lady was subjected to cruelty by the husband and in-laws in her matrimonial house and therefore the charge

under section 498-A of the Indian Penal Code was proved by sufficient and cogent evidence.

11. Section 498-A of the Indian Penal Code contemplates a married woman being subjected to cruelty by the husband or the relative of the husband where 'cruelty' is defined as wilful conduct of a nature which is likely to drive the woman to commit suicide or cause grave injury to the life or health of the woman or harassment for coercing the woman or any person related to her to meet any unlawful demand for any property. *Explanations* (a) and (b) to 498-A requires a close and proximate connection between the wilful conduct of the perpetrator and the suicide committed by or injury suffered by the woman. The harassment of woman must also be for an unlawful demand of property or valuable property. Therefore, for a charge to be established under section 498-A, the fact of cruelty must not only be proved beyond all reasonable doubt but must also result in or have a causal connection to the suicide or injury suffered by the woman. It was hence incumbent on the Court to establish through the material before it that the appellants had inflicted cruelty on the complainant/victim lady as defined in *Explanation* (a) or (b) which in turn drove her to commit suicide. The impugned judgment has not established this fact.

12. There is also no discussion in the impugned judgment of the fact of delay in lodging the FIR or the absence of evidence of at least two doctors who had examined and issued medical prescriptions to the victim lady. The judgment also does not discuss the failure of the witnesses deposing on behalf of the victim to disclose material facts while recording their

statements including the fact that the victim was suffering from a mental condition. These were crucial to the case for establishing or negating the charge under section 498-A and the non-consideration of these factors renders the decision vulnerable for interference.

13. For the above reasons, this Court finds no justification to convict and sentence the appellants under section 498-A of the Indian Penal Code. CRA 328 of 2009 is accordingly allowed. The impugned judgment dated 30th March, 2009 is set aside and the order of conviction of the same date passed by the Additional District & Sessions Judge, Fast Track, 2nd Court, Suri, Birbhum in Sessions Trial No. 3 (November)/2005 arising out of Sessions Case No. 152/2005 and the consequential sentence awarded against the appellants is set aside. The appellants are hereby acquitted of the charges framed against them and are discharged from any bond and or condition, if furnished by the appellants, in connection with any bail application in respect of the present conviction at any point of time. All connected applications are disposed of.

14. This Court records its appreciation to the learned Amicus whose assistance in the matter has been invaluable.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfilment of requisite formalities.

(Moushumi Bhattacharya, J.)