

10.05.2022

Sl. No.53.
Mithun/Srimanta
Ct.No.42.

CRR/1984/2012

(Via Video Conference)

In the matter of : **Abu Jafar Jamadar & Anr.**

...petitioners.

Mr. Dipanjan Chatterjee, Adv.
Mr. Atanu Ghosh, Adv.

...for the petitioners.

In the instant criminal revision, legality, validity and propriety of the order dated 27th February, 2012 passed by the learned Additional Sessions Judge, Fast Track, 4th Court at Alipore in Criminal Appeal No.37 of 2006 affirming the judgment and order of conviction and sentence dated 30th June, 2006 passed by the learned 4th Assistant Sessions Judge at Alipore in Sessions Trial No.5(9)02 convicting the petitioners under Sections 498A and Section 306 read with Section 34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for 1 year with fine and default clause and also to undergo rigorous imprisonment for 3 years with fine and default clause for the offence punishable under Sections 306/34 of the Indian Penal Code is challenged by the accused persons/petitioners.

It is not in disputed that one Meherunassa Bibi married to one Abdul Malek Jamadar about 1 year before she had met with an unnatural death on 5th May, 1999. The accused

persons/petitioners are the son and son's wife of the said Abdul Malek Jamadar. The accused No.1 is the son from the first marriage of Abdul Malek Jamadar.

Prosecution case in brief is that the accused persons used to treat deceased Meherunassa Bibi with cruelty. They also compelled her to mortgage her landed property to satisfy their monetary demand. Ultimately, failing to bear such torture, Meheuneswara Bibi committed suicide on 5th May, 1999 pouring kerosene oil of her body and setting herself on fire. The petitioners faced trial and charge of Section 498A/306 of the Indian Penal Code was framed and subsequently they were convicted and sentenced in the manner described above.

It is submitted by the learned Advocate for the petitioners that during trial of the case P.W.1 Rupbanu Bibi , P.W.2, Abdul Samat, P.W.3, Abu Tahar Jamadar, P.W.4, Rafikul Jamadar and P.W.5, Manowar Hossain stated on oath that the relation between the Meherunassa Bibi and her husband was cordial and on 5th May, 1999 she had met with an accidental death when a kerosene stove had burst.

It is further submitted by the learned Advocate for the petitioners that P.W.7, Noorunessa Bibi is the younger sister of Meherunassa, since deceased. In her evidence, she stated that Meherunassa used to tell her during her lifetime that her husband and son of her husband from his first marriage and

his wife used to torture her both physically and mentally. They compelled her to sell the share of her paternal property at Kakdwip for celebrating "Mukhebbhat" ceremony of the grand son of her husband. Meherunassa collected sum of Rs.7,000/- by selling her land and handed it over to her husband but her husband was not happy and she was assaulted severally.

It is submitted by the learned Advocate for the petitioner that except P.W.7, no other witnesses supported the prosecution case. The learned Trial Judge held the accused persons guilty for committing offence under Sections 498A/306/34 of the Indian Penal Code without having any evidence against the petitioners.

It is needless to say that the power of the Revisional Court is very limited and the Court sitting in revision cannot reappreciate the evidence on record. But if it is found from the impugned judgment per se that the impugned judgment and consequent order of conviction is perverse from the face of the record, the Revisional Court has the jurisdiction to interfere so that illegality may not be caused to the parties to a litigation.

On perusal of the impugned judgment it is absolutely clear that except P.W.7, all the witnesses stated that the death of Meherunassa was accidental in nature. It is also found from the evidence that the present petitioners namely

Abu Jafar Jamadar and his wife Mst. Jasmina Bibi used to live in a separate mess and they had no connection with the family of the father of the petitioner No.1 namely Abdul Malek Jamadar. From the evidence of P.W.7, it is ascertained that Abdul Malek Jamadar allegedly used to put pressure upon the deceased to satisfy the illegal demand of money even by mortgaging and selling her paternal property. No allegation has been made against the present petitioners. I failed to understand as to why the learned Trial Judge held the petitioners guilty for committing offence under Section 498A/306/34 of the Indian Penal Code. The Learned Trial Judge convicted the accused persons mainly on two fold grounds. First, the Investigating Officer failed to seize the stove which was burst inflicting portion injury to the deceased and secondly, the defence failed to produce any witness to substantiate the story of bursting of stove. It is needless to say that the Investigating officer had the duty to seize incriminating material that may be necessary for the purpose of proving charge against the accused. For the fault of investigation the accused cannot suffer. On the other hand, they are entitled to benefit of doubt as a result of faulted investigation. Moreover, it is the cardinal axiom of criminal administration of justice that prosecution must prove its case beyond any shadow of doubt. The accused persons are to be held innocent till their guilt is held to be proved by

satisfactory evidence. Criminal justice delivery system does not postulate proof of innocence by the accused persons. The Learned Trial Judge convicted the accused persons as defence failed to prove that the victim died due to bursting of a kerosene stove. The Learned Trial Judge wrongly placed the burden upon the accused persons to disprove the case of the prosecution. The Learned Trial Judge failed to consider that the accused persons had no liability to prove their innocence in criminal trial.

The judgement of affirmation passed by the Learned Additional Sessions Judge, 4th Fast Track Court at Alipore in Criminal Appeal No. 37/2006 also suffers from above material irregularity and illegality. In view of the above discussion, I have no other alternative but to hold that the impugned judgement and order of conviction and sentence is liable to be set aside. Accordingly, the instant criminal revision is **allowed**. The accused persons are held to be acquitted and discharged from their bail bonds.

(**Bibek Chaudhuri, J.**)