

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 2375 of 2004

CHITTYA GOPAL BASKAR & ORS.

VS.

THE STATE OF WEST BENGAL

For the Petitioners : Mr. Sandipan Ganguly, Sr. Adv.
Ms. Sreyashee Biswas

For the Opposite Party : Mr. Bidyut Kumar Roy, Adv.

Hearing concluded on : 21st November, 2022

Judgement on : 29th November, 2022

Siddhartha Roy Chowdhury, J.:

1. Challenge in this revisional application is to the judgement and order passed by learned Sessions Judge, Balurghat, Dakshin Dinajpur on 25th of August, 2004 in connection with Criminal Appeal No. 3 of 2004, affirming the judgement and order of conviction passed by learned Assistant Sessions Judge, Balurghat on 29th April, 2004 in Sessions Case No. 128 of 2002 being Sessions Trial No. 15 of 2002.
2. Briefly stated, Chandan Basak set the criminal administration of justice into motions by informing the Inspector-in-charge of Balurghat Police Station in writing about the unnatural death of his sister Chandana Basak. Smt. Chandana Basak was married to Chittya Gopal Basak and during their nine years of conjugal life Chandana was subjected to physical and mental torture by her husband. She was put

under pressure to fetch money and gold from her father. Nilima Basak, the sister-in-law of Chittya Gopal Basak used to assault Chandana every now and then. Though the matter was brought to the notice of Panchayat Pradhan and member as well as some respectable persons of the locality, they preferred to remain indifferent on this issue. Chittya Gopal Basak used to maintain extra marital relation with his sister-in-law. He could not protect his wife from the torture of Nilima. Even Chittya Gopal Basak himself and his elder brother Nittya Gopal Basak used to assault Chandana with lathi. Ultimately Chandana being assaulted by Nilima, Nittya and Chittya decided to put an end to her life and on 17th March, 2002, she set herself ablaze by pouring kerosene oil on her person.

3. The information since disclosed offence cognizable in nature Balurghat P.S. Case No. 106 of 2002 was registered and after investigation police submitted charge sheet against the accused persons who stood the trial before the learned Assistant Sessions Judge, Balurghat. After considering the evidence adduced by the prosecution witnesses learned Trial Court was pleased to record an order of conviction holding the accused persons guilty for committing of offence punishable under Section 498A of the I.P.C.
4. The convicts made an unsuccessful attempt to reverse the finding of learned Trial Court in Criminal Appeal being no. 3 of 2004. Learned Sessions Judge, Dakshin Dinajpur was pleased to affirm the order of conviction.
5. Challenging the impugned judgement of learned Appellate Court, Mr. Sandipan Ganguly, learned Senior Counsel representing the

petitioners submits that learned Appellate Court failed to appreciate the evidence on record and pronounced the judgement absolutely on misreading of evidence. There is no ingredient of offence within the meaning of Section 498A of the I.P.C.

6. While Mr. Bidyut Kumar Roy, learned Counsel representing the State submits that a lady had no reason to put to an end to her life by setting herself ablaze in absence of any compelling reason. Victim was not accorded with dignity. Her husband used to maintain illicit relation with his sister-in-law which was the cause of immense mental torture to her; that apart she was assaulted physically not only by her husband but also by his elder brother and Nilima, the sister-in-law of the victim. According to Mr. Roy, learned Counsel representing the State, the order of conviction as affirmed by learned Sessions Judge, Balurghat does not warrant interference. An offence against society has been committed and it should be dealt with an iron rod.

7. Section 498A of the I.P.C. enunciates:

“Section 498A. Husband or relative of husband of a woman subjecting her to cruelty.

¹/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 purposes of this section, "cruelty means"—

(a) any wilful 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.]”

On a plain reading of the provision of Section 498A of the I.P.C. explains the term “cruelty”.

8. Upon careful perusal of the evidence on record, I find that in order to crown success prosecution examined 7 witnesses. P.W. 1 is the informant who narrated the information in writing and gave the same to the police. Mr. Ganguly, learned Counsel representing the petitioners submitted that the alleged incident took place on 17th March, 2002 and the victim succumbed to burn injury on 9th April, 2002. During this long span of time no attempt was made to record dying declaration of the victim. P.W. 1 the brother of the victim. P.W. 2 her mother though in their oral testimony claimed to have heard the victim Chandana saying that as she voiced her protest against the illicit relationship between her husband and his sister-in-law Nilima, she was tortured and she set herself ablaze but such evidence of P.W. 1 and P.W. 2 as to the cause of death of victim cannot be relied upon, in absence of any explanation as to why the Investigating Officer did not take any step to get the dying declaration recorded formally in order to make such declaration a substantive piece of evidence. The Court is required to have an assurance that the maker of such statement was in fit state of mind to make such statement, which is missing in this case. Both P.W. 1 and 2 stated that Chandana was tortured over the demand of money and gold ornament but none of the witnesses could say that specific amount of money or specific volume of gold Chandana was asked to fetch from her father’s house. P.W. 3

did not have any direct knowledge about the incident. P.W. 4 stated that Chandana died of burn injury. P.W. 5 is the Autopsy Surgeon, while P.W. 6 being the Investigating Officer cannot be said to have any direct knowledge about the incident. P.W. 7 is another Police Officer, who held inquest over the dead body of Chandana.

9. Upon careful perusal of the evidence on record, I do not find any material sufficient to constitute an offence under Section 498A of the I.P.C. Some general allegations have been brought against the accused/petitioners which are not sufficient to saddle them with any kind of criminal liability.
10. Though both the learned Trial Court and learned Appellate Court expressed their concurrent opinion as to the culpability of the petitioners, on plain reading of evidence, I find no reason to express my agreement with the learned Courts below, without substituting any personal opinion over the matter.
11. It is settled principle of law that prosecution is to prove charges against the accused persons, who are presumed to be innocent, beyond reasonable doubt. The evidence on record, if considered from the point of view, it sounds improbable that husband of victim had extramarital relation with his sister-in-law and his elder brother would inflict torture upon the victim joining with his wife and brother. The lady died after nine years of marriage, and it is difficult to swallow for any man of ordinary prudence that she decided to commit suicide particularly when no inflammable substance and container was seized.
12. In my opinion, the impugned judgement suffers from infirmities and if it is allowed to remain in force it would amount to miscarriage of

justice. Hence, invoking inherent jurisdiction conferred under Section 482 of the Criminal Procedure Code, I am inclined to quash the impugned judgement. The accused/petitioners be set at liberty and be released from respective bail bond.

13. Let a copy of this judgement be sent down to learned Trial Court along with lower Court record for information and taking necessary action.
14. Parties are to act on the server copy of this judgement.
15. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)