

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 551 of 2017

KAMRUL HUDA

VS.

STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Jayanta Narayan Chatterjee, Adv.,
Ms. Moumita Pandit, Adv.,
Ms. Jayashree Patra, Adv.,
Ms. Sreeparna Ghosh, Adv.,
Ms. Ritashree Banerjee, Adv.,
Ms. Dipanwita Das, Adv.

For the Opposite Party : Mr. Saryati Dutta, Adv.

Hearing concluded on : 16th September, 2022

Judgement on : 19th September, 2022

Siddhartha Roy Chowdhury, J:-

1. This appeal is directed against the judgement and order of conviction passed by learned Additional Sessions Judge, Fast Track, 2nd Court, Islampur, Uttar Dinajpur in S.C Case No. 42 of 2013, S.T. Case No. 35 of 2013. By the impugned judgement learned Trial Court was pleased to record an order of conviction against the appellant for committing offence under Section 498A of the I.P.C. and sentenced him to suffer simple imprisonment for two years and to pay fine of Rs. 5000/- with a default clause.

2. Briefly stated, Khurshid Ali of Kishangunj set the criminal administration of justice into motion by informing the Officer-in-charge of Islampur Police Station, Uttar Dinajpur about the unnatural death of his daughter Jarina Khatun who was married to Md. Kamrul Huda. It was disclosed that at the time of marriage a sum of Rs. 10,000/-, ornaments made of gold and silver, utensils and furniture, wrist watch, bi-cycle etc. were presented. His daughter gave birth to two children. After marriage Jarina was subjected to physical and mental torture over the demand of money by her husband and parents-in-law. Jarina was put under pressure to fetch money from her father and her failure invited plight in marital life. Torture was reached to such an extent that Panchayet Pradhan had to intervene to settle the dispute. On 29th January, 2005 around 8.30 p.m. Khurshid Ali came to learn that his daughter Jarina succumbed to burn injury, in her matrimonial home. As the information disclosed offence cognizable in nature Islampur P.S. Case No. 19 of 2005 dated 13 January, 2005 was registered under Section 498A/302/34 of the I.P.C.
3. After compliance of provision of Section 207 of Cr.P.C. and 209 of Cr.P.C. the case was transferred to learned Additional Sessions Judge, Fast Track, 2nd Court, Islampur for disposal.
4. Charge was framed against accused persons under Section 498A/304B of the I.P.C. alternatively under Section 498A/302/34 of the I.P.C. against the accused persons and pleading innocence to the charges, they claimed to be tried.

5. To bring home charges prosecution examined as many as 13 witnesses and having considered the evidence adduced by the prosecution witnesses learned Trial Court passed the impugned judgement recording an order of conviction only against Md. Kamrul Huda for committing offence under Section 498A of the I.P.C. Charges under Section 304B or 302 I.P.C. were not proved as against him while rest of the accused persons were acquitted under Section 235(2) of Cr.P.C. from the case.
6. Learned Advocate, Mr. Jayanta Narayan Chatterjee for the appellant assailing the impugned judgement adverted that the prosecution has failed to establish any ingredient of offence within the meaning of Section 498A of the I.P.C. by adducing cogent evidence. The evidence adduced by prosecution witnesses is full of discrepancies. Learned Trial Court recorded an order of conviction absolutely on misreading of evidence.
7. Drawing my attention the oral testimony of the witnesses Mr. Chatterjee argued that PW-1 the informant during cross-examination stated that her daughter gave birth to two children and started living in separate mess with her husband. No complaint was ever made by the said witness before any authority over the torture allegedly perpetrated upon his daughter.
8. The elder son of the victim was aged about 8 years at the time of incident but said child was not examined as witness. Mother of the victim as PW-2 stated that a cow was given to her daughter after she gave birth to two children so that her grandchildren can be provided

with milk. PW-4 Samsul Hoque stated about Jhagrajhati (quarrel) used to take place between the couple but according to PW-4 it was normal wear and tear of life and nothing else. PW-8 Asir Md. Stated in his evidence in-chief that husband of Jarina used to tell Jarina to bring money from her parents as he wanted to start business. He was the matchmaker so Jarina used to come to his house only to blame him for her miseries, in the hand of her husband. But during cross-examination he stated that he did not tell the police about the alleged demand of money or that Jarina used to come to his house and used to narrate her plight in her matrimonial home. PW-10 is a scribe, Md. Nasiruddin who was the retired member of the B.S.F. He stated that being attracted by the hue and cry in the village he came out of his house, someone was shouting as if thief came. Some persons were shouting and telling about breaking out of fire. He went to the house of Jarina and heard some people saying that Jarina caught fire accidentally, some were saying that she committed suicide. According to another group of people she was killed. PW-11 Md. Mainuddin stated that marital life of Kamrul and Jarina was quite normal. PW-12 Noor Md. stated that a meeting was held at Bhakti village as Jarina was tortured in her matrimonial home. In the said meeting it was settled that father of Jarina would give a cow to his daughter and son-in-law who would continue to live separately from the parents of Kamrul. During cross-examination he stated that the settlement or Salish took place in the house of Kamrul Huda which was attended by Panchayat Member and Panchayat Pradhan and the resolution of the meeting was

reduced into writing. PW-13 is the Police Officer who held inquest. No other witness was examined. Mr. Chatterjee submits that the offence within the meaning of Section 498A I.P.C. has not been proved beyond doubt.

9. Mr. Sourya Dutta, learned Advocate representing the State refuting such argument submits that the victim died within 5 years of marriage and admittedly her husband used to inflict torture upon her. She sustained burn injury but did not scream for help. It could have been post-mortem burn injury. However, in absence of doctor, it can be presumed under Section 113A of the Evidence Act that the victim died an unnatural death within 7 years of marriage and she was subjected to torture by her husband. There is every reason to presume that her husband committed an offence within the meaning of Section 304B of the I.P.C.
10. Under such circumstances, according to Mr. Dutta Court should invoke the power conferred under Section 386 of the Criminal Procedure Code and to issue notice upon the accused person directed him to explain as to why the sentence imposed upon him by learned Trial Court should not be altered and enhanced.
11. In this regard Mr. Dutta relied upon the judgements passed by the Hon'ble Supreme Court in the case of **GOVIND RAMJI JADAV VS. STATE OF MAHARASHTRA** reported in **(1990) 4 SCC 718** and **A.K. DEVALIAH VS. STATE OF KARNATAKA** reported in **(2015) 1 SCC 752**.
12. I have carefully perused the evidence adduced by the prosecution witness which is nothing but general allegation full of discrepancies; I

do not find any reason to imbibe myself with the argument of Mr. Dutta to invoke the provision of Section 386 of the Cr.P.C.

13. In view of the oral testimony of the scribe of the F.I.R. PW-10 and in absence of any evidence of autopsy Surgeon it cannot be said with certainty that the victim was set on fire after being killed. Merely the fact that the victim died an unnatural death it cannot be said that she committed suicide.

14. 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.”

15. 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.
16. Upon careful perusal of the evidence on record I do not find any convincing evidence to hold that the victim was harassed or tortured in her matrimonial home that would drive her to commit suicide. Upon careful reading of evidence I find that the victim used to stay in a separate mess. Father-in-law of the victim was not happy with such decision which is why he requested PW-6 to tell his son and Jarina not to live in separate mess. According to PW-12 a meeting took place to resolve a dispute and PW-12 stated that it was resolved that the husband of the victim would continue to stay in separate mess. This statement of PW-12 indicates the root of dispute was not harassment or torture upon the victim by her husband, but the disharmony between the victim and her parents-in-law. Witness like PW-7, PW-11 indicated that Jarina used to lead normal life in her matrimonial home. Though some prosecution witness stated that that cow was given in lieu of money demanded, PW-2 however did not support such claim. There are some general allegations that the victim was tortured in her matrimonial home over the demand of money but such general

allegation is not sufficient to saddle any person with the criminal liability for committing offence under Section 498A of the I.P.C.

17. Learned Trial Court perhaps got swayed by emotion and passed the impugned judgements which in my considered opinion based on surmise and conjecture bereft of sufficient evidence to constitute offence under Section 498A of the I.P.C. Suspicion howsoever strong cannot replace proof.
18. In my view the impugned judgement should not be allowed to remain in force and should be set aside which I accordingly do. The appellant be released from bail bond.
19. Let a copy of the judgement be sent down to Additional Sessions Judge, Fast Track, 2nd Court, Islampur, Uttar Dinajpur for information and necessary action.
20. Parties to act on server copy duly downloaded.
21. 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.)