

24.03.2023
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SB
Ct. No.236

CRA 276 of 2018

In the matter of : Somenath Ghorai

Mr. Amal Krishna Samanta	
Mr. Subhas Jana	... for the appellant
Mr. Bidyut Kr. Ray	... for the State

This appeal challenges the judgement and order of conviction passed by the learned Additional Sessions Judge, 1st Court, Purba Medinipur at Tamluk pronounced in Session Trial No. 01(01)2011 dated 15.5.2018 whereby learned Trial Court was pleased to hold the appellant Somenath Ghorai, who happens to be the husband of the victim, guilty for committing offence within the meaning of Section 498A of the Indian Penal Code and sentenced him to suffer simple imprisonment for three years and to pay a fine of Rs.5000/- with default clause subject to Section 428 of the Code of Criminal Procedure.

Heard Mr. Samanta learned counsel appearing on behalf of the appellant.

Mr. Bidyut Roy, learned counsel who ordinarily appears for the State is requested to appear in the matter and his engagement may be regularized by the competent authority.

Sri Surya Maity the father of the victim set the criminal proceeding into motion by informing the Officer-in-Charge of Nandakumar P.S. about the unnatural death of his daughter Babita. Babita was married to Somenath Ghorai. At the time of

marriage a sum of Rs.50,000/-, ornaments made of gold, bi-cycle, utensils etc. were presented. After five-six months of their marriage Babita was subjected to torture in her matrimonial home by the inmates who demanded a further sum of Rs.50,000/-. The victim was not accorded with dignity. She was denied food. She was neglected and even accused persons refused to address to her medical issues. The father of victim when came to know about the plight of his daughter, he approached the inmates of the matrimonial home of Babita, and requested them not to misbehave with his daughter. Once he had to bring his daughter back to his home for her treatment as the husband and other inmates from her matrimonial home denied to take Babita to the Doctor. On 27.11.2008 Somenath and his relatives throttled Babita and killed her. On 29.11.2008 this information was given which since disclosed offence cognizable in nature Nandakumar P.S. Case No. 177 of 2008 was registered under Sections 498A/302 of Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act. Police took up investigation and submitted charge sheet under Sections 498A/ 304B read with Section 34 of the Indian Penal Code and all of them stood the trial pleading their innocence.

To bring home charges, Prosecution examined ten witnesses and from the side of the accused person two witnesses were examined. Learned Trial Court after considering the evidence adduced by the witness was pleased to record an order of conviction against Somenath for committing offence within the meaning of Section 498A.

Section 498A enunciates :-

“498A. 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 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.”

The appellants of the victim adduced evidence as P.Ws. 1 & 2 and in their testimony they did not specify the amount of money alleged to have been claimed by the accused person or in other words the specific amount of money was not disclosed which Babita failed to fetch from her parents and was subjected to torture. However, the witnesses like P.Ws. 4, 5 & 6 stated before the Court that the accused persons inflicted torture upon Babita claiming a sum of Rs.50,000/- .

P.W. 6 during cross examination stated that for the first time she disclosed such fact before the Court

P.W.8 Dr. B. Bandyopadhyay, gave final opinion as to the cause of death of the victim and exhibit 4 the chemical examination report shows that the victim died after consuming the poison like carbofuran.

P.W.9 is the autopsy surgeon and the P.W. 10 is the Investigating Officer.

Prosecution witnesses made some general allegation of demand of money and torture etc. Based on such omnibus and

general statement a person cannot be held to be guilty for committing offence within the meaning of Section 498A of the Indian Penal Code.

Mr. Ray, learned counsel representing the State submits that admittedly the victim died within seven years of marriage and it was an unnatural death. There is no evidence that the victim had mental problem. Therefore, she cannot be said to have committed suicide without any reason. Husband of the victim had special knowledge as to why his wife committed suicide and he failed to discharge his obligation. Therefore, it should be presumed that the victim committed suicide being tortured by her husband.

In my humble opinion prosecution has failed to prove the charges beyond reasonable doubt and the impugned judgement and the order of conviction should not be allowed to remain in force and should be set aside which I accordingly do.

Consequently, the appeal is allowed.

The accused person is set at liberty and be released on bail subject to execution of bond under Section 437A of Code of Criminal Procedure for six months.

Let a copy of the order along with lower court record be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)