

17.3.2023
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SB
Ct. No.236

CRR 2737 of 2003

In the matter of : Jahar China & Ors.

Mr. Binay Panda
Ms. Puspita Saha ... for the State

None is appearing on behalf of the petitioners.

The matter is pending for last twenty years. Therefore, instead of adjourning the matter *suo moto*, I am inclined to dispose of the matter on merit based on materials available with the record.

This revisional application challenges the judgement and order passed by the learned Additional District and Sessions Judge, Fast Track Court, Hooghly, in Criminal Appeal No. 21 of 1998. By the impugned judgement, learned Appellate Court was pleased to affirm the judgement and order of conviction passed by the learned Assistant Sessions Judge, 1st Court, Hooghly on 22.5.1998 in S.T. No. 157 of 1996 holding the petitioners guilty to the charge under Sections 498A/306 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for six years with fine of Rs.2000/- each with default clause for committing offence under Section 306 of the Indian Penal Code, and three years rigorous imprisonment with fine of Rs.2000/- each for committing offence under Section 498A of the Indian Penal Code.

Briefly stated, Sri Mohanlal Kundu informed in writing to the Officer-in-Charge, Jangipara Police Station about the unnatural death of his daughter Aparna China, who died on 10.4.1995. Police took up investigation and submitted charge sheet against

the accused person under Sections 498A/306 of the Indian Penal Code, who stood trial, pleading their innocence. Prosecution in order to crown success examined ten witnesses. P.W.1 the *de facto complainant* and father of the victim stated that his daughter Aparna within 3 ½ years of marriage was subjected to torture in her matrimonial home primarily because her husband Arabinda had no income and he could not give any financial support to the family, and as a result the members of the joint family started inflicting torture upon the victim lady both mentally and physically. P.W. 1, is getting support from the testimony of P.W.2, P.W. 3 and P.W. 4 expressed their ignorance about the incident. P.W. 5 Susanta Kundu the brother of the victim stated that husband of Aparna since had no fixed and permanent income, the accused persons used to assault his sister Aparna. P.W. 6 is the Investigating Officer. P.W. 7 Swapan Roy is a witness to the inquest examination. P.W. 8 S.I. Uttam Kumar Ghosh is the recording officer. P.W. 9 is another police personnel who also took part in the examination and submitted charge-sheet. P.W. 10 is the Autopsy surgeon Dr. P.G. Bhattacharyay who held post-mortem examination of the dead body of the victim and after consulting the chemical examination report, he gave his final opinion that the victim committed suicide after consumption the endosulfan poison. No other witness was examined.

Upon perusal of the judgement impugned, I find that the Appellate Court endorsed the view of the learned Trial Court who recorded an order of conviction after drawing presumption under

Section 113A of the Evidence Act keeping in mind the fact that the victim died within seven years of marriage.

Section 113A of the Evidence Act enunciates that ;-

'113A-Presumption as to abetment of suicide by a married woman.-When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband'

In order to invoke the provision of Section 113A of the Evidence Act, it is essential on the part of the prosecution to prove that the victim was subjected to cruelty which shall have the meaning as given under Section 498A of the Indian Penal Code. Admittedly, the prosecution witnesses including the father and brother of the victim stated that victim was subjected to torture as her husband did not have any permanent income to contribute to the joint family. By no stretch of imagination such harassment can be brought within the ambit of cruelty as defined under Section 498A of the Indian Penal Code.

Explanation appended of Section 498A of Indian Penal Code enunciates that;-

'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.'

In absence of any evidence that the victim was ever threatened of cruelty laid down under Section 498A of the Indian Penal Code, learned Appellate Court had no reason to express his agreement with the view of learned Trial Court while recording an order of conviction.

In my humble opinion, the impugned judgement suffers from infirmity and should not be allowed remain in force, which I accordingly do. Consequently, the convict petitioners stands acquitted from the charge under Sections 498A 306 of the Indian Penal Code. The impugned judgement passed by the learned Trial Court is set aside. The appellants be released on bail bonds.

The revisional application is disposed of along with application, if any.

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.)