

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 722 of 2015

Hira Bittar

Vs

The State of West Bengal

For the appellant : Mr. Pratip Kumar Chatterjee.

For the State : Ms. Rita Datta.

Heard on : 14.07.2023

Judgment on : 04.08.2023

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred against the Judgment and Order dated 15.09.2015 passed by the learned Additional Sessions Judge, 1st Fast Track Court, Kandi, Murshidabad in Sessions Serial No. 190 of 2009, Sessions Trial No. 2(9) of 2012, arising out of Kandi P.S. case No.144/04 dated 10.08.2004 under Sections 498A/307/34 of the Indian Penal Code convicting thereby the appellant herein for the commission of offence punishable under Section 498A of the Indian Penal Code and sentencing him to suffer simple imprisonment for one year and also to pay a fine of Rs.1,00,000/- i.d. to suffer further simple imprisonment for six months.

2. **THE PROSECUTION :-**

i) **Ms. Rita Datta, learned counsel for the State** has submitted that on 10.08.2004 one Swarnalata Bittar, lodged a written complaint before the O.C., Kandi Police Station, alleging inter alia, that since twelve years ago she was married with the appellant according to Hindu rites and customs abiding all the demands. She alleged that after some years of marriage, her mother-in-law, sister-in-law (ja) and husband started mental and physical torture upon her. She was staying in her matrimonial house bearing several disputes and tortures. Presently, she is a mother of two children. Her husband created pressure upon her to bring Rs.10,000/- from her mother and for non fulfillment of such demand the degree of torture increased and they conspired to kill her. On 27.04.2004 at night (8.00 PM) when she was in her room with her two children, she heard her mother-in-law, sister-in-law(ja) and husband discussing in the adjacent room to kill her by pouring kerosene oil on her body and burning her. When she came out of her room, her husband took her inside the room by catching her hair and all of them assaulted her severely. On her shouting, her husband tried to kill her by gagging her mouth. She somehow escaped and tried to flee away from there with her two children but her mother-in-law and sister-in-law (Ja) forcibly took her daughter from her possession. The complainant returned to her mother's place. Since then she is staying with her mother in starvation. In the meantime, **her husband married one Pinki Dhara of Bandel and brought her to the matrimonial house and started**

leading conjugal life. She also alleged that all the above stated incident was informed earlier at the police station, and meeting was held for mutual settlement. At that time her in-laws and the friends of her husband threatened her and refused to give Rs.20,000/- and one katha land which was settled in their presence. In this situation, she being a helpless lady prayed for justice keeping in mind her son and daughter, having no means of substance.

ii) On the basis of the said complaint, Kandi Police Station registered a case being Kandi Police Station Case No.144/04 dated 10.08.2004 under Sections 498A/307/34 of the Indian Penal Code and started investigation.

iii) After completion of investigation, the investigating officer submitted charge-sheet under Sections 498A/307/34 of the Indian Penal Code against the appellant herein and one Gayatri Bittar. After submission of charge sheet, the case was committed to the Court of learned Additional Sessions Judge, Kandi from where the case was committed to the court of learned Additional Sessions Judge, 1st Fast Track Court, Kandi. Charge was framed against the present appellant and one Gayatri Bittar on 04.09.2012 under Sections 498A/307/34 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried.

iv) During trial, prosecution has examined 6 (six) witnesses and marked as many as 4 (four) documents as exhibits. No witnesses were examined by and on behalf of the appellant/defence.

v) The appellant was found guilty of charge under Section 498A of the Indian Penal Code and sentenced accordingly.

3. THE DEFENCE:-

i) **Mr. Pratip Chatterjee, learned counsel for the appellant** has submitted that the learned Judge failed to take note of the fact that out of the six witnesses examined in this case, there are only two witnesses who are the prime witnesses in this case i.e. the P.W. 2 Bimala Bittar (mother of the alleged victim) and P.W. 3 Swarnalata Bittar (alleged victim). It is stated that the said two witnesses deposed in an exaggerated manner before the court at the time of their evidence.

ii) It is further submitted that in the instant case the allegation of the prosecution is that the victim was tortured on the demand of dowry of Rs.10,000/-, as a result of which she was compelled to leave her matrimonial home and took shelter in her mother's house but the said fact is neither proved nor brought before the court at the time of evidence to prove the cruelty inflicted upon the alleged victim. In spite of that the learned Judge held the appellant guilty for the commission of offence under Section 498A of Indian Penal Code.

iii) It is also stated that the alleged victim (P.W.3) brought out a new story in her evidence that after few days of the marriage her husband was in the habit of not returning home regularly and he off and on used to remain outside the house and she left her in-law's house as her husband after marrying for the second time brought the second wife to her in-law's house. She stayed there for a few days in presence of the second wife of her husband. But as per the prosecution

case the alleged victim was tortured on the demand of dowry of Rs.10,000/- and on 27.04.2004 there was an attempt to kill her for which she was compelled to leave her matrimonial house and after few days she came to know about the alleged second marriage by her husband.

iv) That there was delay in lodging the instant case because as per the written complaint, the alleged incident of attempt to kill the alleged victim was on 27.04.2004 which was the reason for her leaving the matrimonial home and the complaint was lodged on 10.08.2004.

v) The mother of alleged victim (P.W.2) stated in her evidence that her daughter was living in peace in her matrimonial home but the dispute cropped after the marriage of the appellant with one Pinki. But as per the written complaint (Exbt. 1) there was torture both physical and mental and the same geared up due to non fulfillment of demand of Rs.10,000/- and on 27.04.2004 there was an attempt to kill her daughter (the victim) for which she left her matrimonial house. It is submitted that as such it can be seen that the prosecution witnesses brought out a new story, different from the complaint, which the learned Judge believed to be true and awarded punishment.

vi) It is thus prayed that the judgment and order of conviction and sentence as appealed against here is bad in law and not supported by the facts and circumstances and the materials on record and should be set aside.

4. THE EVIDENCE

The P.W. 2 is the mother of the de facto complainant. It appears from her evidence that her daughter stayed in her matrimonial home for **twelve years** and had two children.

The dispute started after the alleged second marriage of Hira Bittar, the appellant herein. The defacto complainant/wife was physically and mentally tortured by the appellant and his family members. **Though this witness has stated that she was assaulted by the appellant and his family members and suffered bleeding injuries, there are no medical papers nor any injury report on record.** She has further deposed **that her daughter voluntarily left her matrimonial home.**

P.W. 3, is the de facto complainant, Sarnalata Bittar. She has also stated that she left her matrimonial home as her husband, the appellant married for the second time and they all started to inflict torture upon her.

On being cross-examined, she has stated that she had lodged a complaint regarding her husband/the appellant's second marriage before the learned ACJM, Kandi, but the same was **withdrawn** about 7 years back.

Rest of the witnesses are all formal witnesses.

5. ANALYSIS OF EVIDENCE:-

The trial court held that cruelty upon the victim had been proved and thus convicted the appellant for offence punishable under Section 498A IPC.

The trial court held that the victim was tortured all along relying upon the evidence of the de facto complainant and her mother, though these two vital witnesses have not categorically stated such facts. All the statements regarding torture on oath relates to the period after the appellant allegedly married for the second time. It is also on record that the victim was taken

back to her matrimonial home after the appellant's alleged second marriage. But she returned to her mother after two months of alleged torture.

The trial court held that the appellant has evasively stated during his examination under Section 313 Cr.P.C. that as he did not agree to divorce the victim, she falsely lodged this complaint.

Section 498A of the Indian Penal Code, lays down:-

“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 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.*

Ingredients of offence. — The essential ingredients of the offence under Section 498A are as follows:-

- (1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in —*
 - (i) Any wilful conduct as was likely to drive such woman to commit suicide or to cause grave injury or*

- danger to her life, limb or health whether mental or physical;*
- (ii) *Harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand;*
- (iii) *The woman was subjected to such cruelty by her husband or any relation of her husband."*

According to Section 13(i) (a) of the **Hindu Marriage Act. Mental cruelty** is broadly defined as that moment when either party causes mental pain, agony, or suffering **of such a magnitude** that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party.

The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, and the environment in which they live.

The conduct of the concerned party should be grave and substantial and it must be much more serious than the ordinary wear and tear of daily life.

Mental cruelty can vary depending upon, the respective matrimonial cases. So it is impossible to have a uniform standard to decide 'mental cruelty' in different cases as facts and circumstances are not same.

Mental cruelty is a state of mind - The feeling of deep anguish, disappointment, or frustration in one spouse caused by the conduct of the other over a long period of time may lead to mental cruelty.

And such feeling and intensity are felt differently by each person. Some are stronger in mind than others.

In the present case there is absolutely no evidence/proof on record of any physical cruelty.

There is also no evidence to prove that the appellant married for the second time. The defacto complainant (PW 3) has herself admitted that though she had filed a complaint regarding her husband's alleged second marriage, **she has withdrawn it long back.** This goes to show that there is no materials on record to prima facie prove that the appellant has allegedly married again. **The mother of the defacto complainant (PW 2) has also deposed that her daughter voluntarily left her matrimonial home.**

From the evidence on record, there is nothing to show that there was:-

- (a) Any wilful conduct on the part of the appellant 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. Parties were married for 12 years and have two children.
- (b) There is also no evidence to substantiate the charge of demand of dowry.

6. CONCLUSION :-

Thus, the findings of the trial court being not in accordance with law the Judgment and Order dated 15.09.2015 passed by the learned Additional Sessions Judge, 1st Fast Track Court, Kandi, Murshidabad in Sessions Serial No. 190 of 2009, Sessions Trial No. 2(9) of 2012, convicting thereby the appellant herein for the commission of offence punishable under Section 498A of the Indian Penal Code and sentencing him to suffer simple imprisonment for one year and also to pay a fine of Rs.1,00,000/- i.d. to suffer further simple imprisonment for six months, **is set aside.**

The appellant is accordingly acquitted of the charge under Section 498A of the Indian Penal Code.

The appeal CRA 722 of 2015 thus stands allowed.

The appellant is accordingly acquitted of all charge and discharged/released from his Bail bond.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)