

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

G.A. 26 of 1996

**The State of West Bengal
-Vs-
Raj Kumar Banerjee**

For the Appellant/State : Mr. Avishek Sinha

For the Opposite Party : Ms. Pallavi Priyadarshee
(Amicus Curiae)

Heard on : 11.12.2023, 02.02.2024, 08.04.2024

Judgment on : 18.07.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order in connection with Criminal Appeal No.8/94 of acquittal dated 20.02.1995 passed by the Learned 6th Additional Sessions Judge, Alipore, against the order passed by the Learned 10th Judicial Magistrate, Alipore dated 30.12.1993 in connection with Thakurpukur P.S. Case No.121 dated 21.03.1991 under Sections 498A/406 of the Indian Penal Code corresponding to G.R. No.1160/91, T.R. No.311/91.

2. The prosecution case precisely stated:-

The complainant Manjulika Mukherjee married the opposite party according to Hindu rites, through negotiations. Soon after her marriage,

the opposite party urged the complainant to seek money from her parent and on refusal her mother-in-law and husband used to torture her both mentally and physically. On 24.02.1990, the inebriated opposite party tortured her physically. The opposite party was a man of disrepute being associated with disreputable women. Whenever the complainant objected to immoral activities of the opposite party, she was incidentally assaulted. On 24.03.1990 the opposite party again assaulted the complainant. On 25.03.1990 he came home at night along with a woman and asked the complainant to leave her bedroom as he desired to share his bed with that woman. As the complainant refused to leave, the opposite party assaulted her and pushed her into the drawing room attached to the bed room and locked her for the entire night. On 26.03.1990 the opposite party threatened the complainant in filthy language and demanded money. To save her life, complainant agreed to do so and came to her father's place and narrated the incident to her family members. As a result of torture of the opposite party, the complainant became sick and was medically treated.

3. Based on the aforesaid complaint Thakurpukur P.S. Case No.121 dated 21.03.1991 under Sections 498A/406 of the Indian Penal Code was initiated. After completion of the investigation, charge-sheet was submitted against the accused/opposite party.
4. Charges were framed against the accused to which he pleaded not guilty and claimed to be tried.
5. The prosecution examined 6 witnesses and exhibited certain documents.

6. PW-1 the de facto complainant stated that she was married to the opposite party on 29.07.1989 and on 26.03.1990 she came back to her father's place from her matrimonial home. She alleged that the opposite party used to torture her physically and mentally at her matrimonial home since the 'Astamongala' ceremony. PW-1 stated that her marriage was negotiated and the main reason behind her torture was the opposite party's demand for money. She stated that the accused at times did not return home at night and when she objected to the same the opposite party used to abuse her and assault her physically. She stated that in October 1989, she paid the accused Rs.5,000/- in cash after bringing the same from her father and she also brought a "mixi" and "utensils" from her mother to her matrimonial home as per demand of the accused. PW-1 further alleged that on 24th and 25th March, 1990, opposite party assaulted her before she left her matrimonial home on 26th March, 1990. PW-1 on her return she was medically treated as she sustained injury due to the assault of the opposite party. On 25.03.1990 the opposite party came home with a woman but as PW-1 objected, the opposite party forcibly pushed her into the adjoining room where she had to spend the night. She disclosed her parents and brothers of the accused's affairs with other woman eventually.
7. PW-2, father of PW-1, stated that the opposite party on several occasion demanded PW-1 to bring money from PW-2 but as she refused to comply, the opposite party used to torture her mentally and physically. He stated in September, October, 1990, his eldest son paid Rs.10,000/- to the opposite party while PW-1 had paid Rs.5,000/- to the opposite party. PW-2 stated

that on 26.03.1990 when PW-1 returned to his house he learnt from his daughter about accused's companionship with another woman on the previous night and subsequently assaulted the victim.

8. PW-3, the mother of PW-1, stated that the opposite party used to assault PW-1 and demand money from her. She also stated that on 26.03.1990 after PW-1 returned to father's house, she disclosed to the parents about the occurrence of assault and torture.
9. PW-4, Debjyoti Mukherjee, the elder brother PW-1, stated in his evidence that on different occasions they paid the money as per demand of the accused. He also stated that he heard from PW-1 that the opposite party used to torture PW-1 both mentally and physically.
10. PW-5, Dhrubajyoti Mukherjee, another brother of PW-1, stated that he gave the opposite party Rs.10,000/- in October, 1989 while his mother gave Rs.5,000/- to the opposite party sometime after marriage of PW-1.
11. PW-6, the Investigating Officer, submitted the charge-sheet.
12. Learned Advocate for the appellant/State submitted that:-
 - i. The ingredients of the offence charged against the opposite party had been proved beyond any reasonable doubt.
 - ii. There were material irregularities, manifest errors and illegality in the impugned judgment and order of acquittal resulting in failure and gross miscarriage of justice.
 - iii. In spite of sincerest endeavour on the part of the prosecution, the doctor who examined the victim could not be produced before the Trial Court. However, the evidence of the doctor on this point was

earlier recorded by the Learned Additional District Judge, Alipore in a Matrimonial Suit was submitted and particular judicial record was marked Exhibit-3 and the Trial Court was right in considering the to that judicial record.

13. Considered the rival contentions of the Learned Amicus Curiae for the opposite party.

14. Section 498A of the Indian Penal Code states 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 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.”

15. Section 406 of the Indian Penal Code States as follows:-

“Punishment for criminal breach of trust. -

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

16. The course of evidence of the prosecution witnesses revealed the allegations to be general and omnibus in nature. From the submission of the Learned Advocate for the State it transpired that a matrimonial suit was instituted between the parties. There is a proclivity of implicating the husband and

other family members in false criminal cases to sub-serve the atrocities between the couple in a matrimonial relationship. The instant case is exemplary to the fact of exaggerations as reflected from the evidence on record. The element to constitute the offences under Section 498A and 406 of the Indian Penal Code was not justifiably substantiated by the prosecution and the Learned Trial Court was justified in passing the impugned order.

17. In view of the above discussions, the instant appeal being GA 26 of 1996 is dismissed.

18. I record my appreciation for the able assistance rendered by Ms. Pallavi Priyadarshee, Learned Advocate as Amicus Curiae in disposing of this appeal.

19. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

20. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)