

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

Present:

The Hon'ble Justice Jay Sengupta

**CRA 330 of 2016
Chandan Bera & Ors.
Vs.
The State of West Bengal**

For the appellant : Mr. Sekhar Kumar Basu
Mr. Amarta Ghose
Mr. Sanat Kumar Das
Mr. Sujan Chatterjee

.....Advocates

For the State : Ms. Subhasree Patel

.....Advocate

Heard lastly on : 22.08.2024

Judgment on : 18.11.2024

Jay Sengupta, J:

1. This is an appeal challenging the judgement and order dated 28.04.2016 passed by the learned Additional Sessions Judge, 3rd Court, Tamluk, Purba Medinipore in Sessions Case No. 175 (June) of 2011: Sessions Trial No.2(06) of 2014 arising out of GR Case No. 1305 of 2010

corresponding to Mahisadal Police Station Case No. 302 of 2010 dated 30.11.2010 under Sections 498A/307/329/120B of the Indian Penal Code, thereby convicting the appellants for the commission of offence punishable under Section 498A of the Indian Penal Code and sentencing them to suffer simple imprisonment for 3 years each and to pay a fine a sum of Rs.10,000/- each, in default to suffer simple imprisonment for another 2 months.

2. The prosecution case, in brief, is that on 07.11.2010 the complainant was mercilessly assaulted by the appellants with fists and blows and also with wooden bar while she protested against the illegal hotel business of her husband and in laws, which resulted in her injury on her backbone and she became senseless. But, she was not given any medical treatment. Thereafter, her brother came and took her to Tamluk Seva Nursing Home where she was kept admitted for two days and thereafter, she came to her parental home where she was also tortured by the inmates as her son was with the accused persons and forced her to return to her matrimonial home. On being tortured, the complainant went to commit suicide in the railway tracks, but was rescued by one Subhas Babu (PW5) who took her to his house. Once she disclosed the facts, the police was approached.

3. On 06.02.2011 Charge Sheet being no. 33 of 2011 under Sections 498a/323/120B of the Indian Penal Code was filed by the Investigating Agency against the appellants. Charges were thereafter framed under Sections 498A/307/329/120B of the Indian Penal Code against the appellants.

4. In course of trial the prosecution examined as many as 9 witnesses PW1 – Ruma Bera (Victim), PW2 – Chapala Das (Mother of PW1), PW3 – Gour Hari Das (Uncle of PW1), PW4 – Balaram Das (Elder brother of PW1), PW5 – Subhash Chandra Das (Van rickshaw puller), PW6 – Narayan Manna (co-villager – barber), PW7 – Dr. Bhajan Sarkar (Examined the victim), PW8 – S.I. Ajay Kumar Misra (Received the written complaint from PW1), PW9 – S.I. Bivas Dalai (Investigating Officer).

5. Learned senior counsel representing the appellants submitted as follows. The F.I.R. was lodged on 30.11.2010. The first incident of assault allegedly took place on 07.11.2010. But, she did not inform the same to the local P.S. However, there was no allegation that cruelty was inflicted for the demand of dowry. Therefore, the ingredients of Section 498A Indian Penal Code were completely absent in the F.I.R. The medical officer, being PW7, stated during his deposition that he had examined PW1 on 15.11.2010 and 16.11.2010. PW1 stated to him that she fell down three days back. Therefore, the allegations of assault were not corroborated by PW7. During cross-examination, PW1 did not state the following facts in her written complaint – a) The earlier facts happened prior to 07.11.2010, b) The time of incident whether it was night or day, c) She sustained injury on her spinal cord, but that was not a bleeding injury, d) The accused persons had been running the business of prostitution from their hotels Gitanjali and Sradhanjali, e) The accused were running nasty business, f) Her husband and father in law were looking after the administration of said prostitution business and her mother in law and sister in law were directly involved in the business, g) The accused

took the customers in her matrimonial house and forced her to sexual intercourse, h) On refusal of sexual intercourse, the accused used to assault her, i) On two occasions she went to the office of the S.P., Purba Medinipur. On first occasion the S.P. was not there at his office, j) The O/C of P.S. Mahisadal brought her before the learned District Judge, Purba Medinipur to inform the incident in writing. PW2, the mother of PW1, did not state to the investigating officer, PW9, that the accused had been running flesh business from their hotels. PW2 did not tell him that the accused had inflicted torture upon her as she made protest for the same. She did not state that the accused went to her house and threatened her. PW3 was the uncle of the victim. It appeared from his examination-in-chief that he was never interrogated by the investigating officer for the sake of investigation. Therefore, the statements made before the Court at the time of trial were for the first time. PW9 during his evidence stated that PW3 did not tell him that after few days from the date of marriage of Ruma or the accused Chandan Bera (A1) started inflicting torture upon her, the accused Chandan was doing illegal business by dealing with girls or on one occasion he went to the house of accused when Ruma was assaulted and at that time the father and mother of accused were present in the house. PW4 was the elder brother of the victim. From the examination-in-chief no allegation under Section 498A Indian Penal Code was made out against the appellants. However, he did not state the following facts in his statements recorded under Section 161 Cr.P.C. to the I.O. (PW9) of this case - a) One day when he was in his in laws house at Sabang at that time Rama Prosad Pramanik (NE) by phone

informed him that Ruma was assaulted by the accused Chandan and after receiving that information he along with Ram Prosad and 3/4 others went to Tamluk for treatment of Ruma and Ruma was treated by the doctors, namely, Tanusree Patra and D.K. Patra and thereafter, he went to the house of the accused persons to know how the incident of assault happened. The aunt of the accused was the Anchal Pradhan. She was in a meeting for negotiation and during the course of meeting he came to know that Chandan used to take liquors and had the habit of playing gambling and while PW1 called Chandan in the midnight at that time any girl abused her; b) He requested the parents of accused Chandan to solve the disputes, but the parents of the accused Chandan stated that Chandan was reckless and they had no control over him. After the meeting PW4 came back to his house, leaving PW1 in the house at accused persons; c) Once, he was in his in laws' house at Sabang, at that time he received phone call from Ruma and she told that she was assaulted by the accused Chandan and in said circumstances, Ruma by bus reached to Temathani, Sabang crossing and in the meantime he also reached to said place and Ruma was taken to his in laws house from said Temathani. Thereafter, Chandan along with two others reached to his in laws house, but there was a hot talk in between PW4 and Chandan. At about 12.00 a.m. at night, he went to the house of accused persons along with Ruma and left her there and his brother Krishna Prasad Das had been staying in Andaman and after few days. Krishna Prasad Das came back to the house of accused persons and the accused persons and his brother Krishna Prasad Das had a good business relation and accused Mantulal

Bera appointed Krishna Das to look after the truck business of the accused persons and since then for 2/3 years they did not have any relation with Krishna Prasad. PW5 Subhash Chandra Das, the rickshaw puller, did not state that following facts to the investigating officer, PW9 at the time of recording his statement under Section 161 Cr.P.C. - a) On his repeated question the said lady refused to go to her destination by riding his van rickshaw and she lastly told that she had come to die and she would kill herself on that day, b) On his repeated request lastly the said lady decided to come to his house and before that she asked about his family and family members, c) On 29.12.2010 the lady told his wife and daughter-in-law that her and her in-laws used to torture upon her. Her in-laws had one lodge and the family members of her conjugal house ran a business of prostitution from said lodge. They were forcing her to join business and on her refusal she was beaten up by her in-laws and few days ago she was admitted in the running home, d) None came from her in-laws house in said nursing home Seva to return her back and for that on 27.12.2010 she decided to kill herself at the place, e) When said lady told all such facts to his wife and daughter-in-law he was present there and after hearing such incident, he suggested her to go to Police Station along with him but the lady refused to go to Mahisadal P.S. on such ground that said Police Station did not take any step against her in-laws, f) In the said night the SP over telephone called the O/C of Mahisadal P.S. and thereafter, the O/C came to the SP and at first there was a talk in between O/C and SP and thereafter, the O/C of Mahisadal PS interrogated the lady first and thereafter he was also interrogated by the

O/C. PW7 Dr. Bhajan Sarkar, Medical Officer, examined the victim on 15.11.2010 and 16.11.2010. He stated in his examination-in-chief that he did not find any abnormality. During his cross-examination he stated that Ruma Bera on his query told that she fell down three days ago. PW8, S.I. stated that the written complaint was received by the O/C of Tamluk P.S. and thereafter it was forwarded to Mahisadal P.S. PW9, the Investigating Officer, stated during his examination-in-chief that there were several cases pending against the present accused under the Immoral Traffic Act. During cross-examination, he stated that the O/C directed him to recover the child. On the date of incident, the I.O. examined Sahadeb Bera, Mahadeb Bera and Durjadhan Kar. However, the prosecution did not ask to depose before the Trial Court. The victim girl was admitted in the Seva Nursing Home on 15.11.2020 at about 8.20 p.m. and was discharged from the said Nursing Home on 16.11.2020 at 10.08 a.m. From Ext.7 it appeared that the V.G. was admitted for 14 hrs. The V.G. did state him where she was in between 11.11.2020 to 15.11.2020. The statement of PW5 was recorded u/s 161 Cr.P.C. on 30.11.2020 and the statement of the victim on 27.11.2020. The father of the victim was examined on 10.12.2020 though prosecution did not place him on trial. PW2 Chapala Das was examined on 10.12.2010 and her statement did not reflect that PW1 stated her about any physical torture on the accused person force her in prostitution. PW3 Gourhari Das was examined on 10.12.2010. He did not state that PW1 had informed him about any torture or they forced her in prostitution. PW6 Narayan Manna, the barber of marriage, same as above. Thus, the prosecution evidence suffered

from serious commissions and contradictions and were clearly insufficient to warrant a conviction. Reliance was placed on – i) 2003 SCC (Criminal) 596 – Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. and Another; ii) 2003 SCC (Criminal) 1052 – Tarun Alias Gautam Mukherjee Vs. State of West Bengal; iii) 1972 SCC (Criminal) 543 – Thulia Kali Vs. The State of Tamil Nadu.

6. Learned counsel for the State submitted as follows. No delay in FIR was found. As per the evidence of witnesses it was well proved that the present appellants were running brothel from two hotels namely, Gitanjali and Sradhanjali and by way of evidence of PW1-PW5, and it was also proved that they inflicted torture upon PW1 and with such aim and object to compel her to sexual intercourse with others. No defence taken by the present appellants that they were not involved in flesh business. This fact was itself sufficient to punish the present appellants under Section 498A IPC. Relying on ext. 4 and 7, it was submitted further that the present appellants on 07.11.2010 mercilessly assaulted the victim and for which she was hospitalized. The statement given under Section 164 Cr.P.C. was in total corroboration of the evidence of PW1 and conclusion can be drawn under Section 157 of the Evidence Act to hold that there was a case under Section 301/329 IPC. The evidence led by PW1 to PW9 and the exhibited documents created a solid chain in evidence and when the evidence was cogent, consistent and coherent, prosecution case was said to be proved. As per the prosecution case, the present appellants (Chandan Bera, Montulal Bera and Gita Rani Bera) being the present appellants were running a prostitution

business from two hotels namely, Gitanjali and Sradhanjali situated at Kapasaria. The present appellants from time to time inflicted mental and physical torture upon the PW1 and thereafter kept her without treatment for four days. Brother of PW1, Krishna Das was also involved with the present appellant in the said business. PW1 also wanted to commit suicide, but was saved by PW5. PW2 (Chapala Das), PW3 (Gour Hari Das), PW4 (Balaram Das), PW5 (Subhas Chandra Das) corroborated the fact that PW1 was assaulted repeatedly by the present appellants because of the protest that she used to make. She was also forced by the present appellants to join them in their prostitution business that the present appellants used to run in their hotels namely, Gitanjali and Sradhanjali. PW4 further corroborated the factum of assault by the appellants when his “bhagnipati” (Ram Prasad Pramanik) informed him about the same and he took PW1 for treatment. PW9 corroborated the said fact and stated that he had collected the medical documents pertaining to the treatment of PW1 from Seva Nursing Home where she had been admitted after the said torture. The torture was so grave that it compelled the PW1 to attempt to commit suicide when PW5 rescued her and took her to his place wherefrom the police was informed. The motive behind some torture as illustrated by PW1 was further corroborated by PW9 who noticed and had knowledge that prior to the registration of the instant case several other cases under Immoral Traffic Act had been initiated against the present appellants. Under some said facts and circumstances, it could be safely be concluded that the prosecution had unerringly been able to establish the prosecution story beyond reasonable doubt. Reliance was

placed on 2001 9 SCC 618: Ramesh Kumar Vs. State of Chhatisgarh; 2015 SCC Online Cal 2777: Sikha Kar Vs. The State of West Bengal; 1994 1 SCC 73: State of West Bengal Vs. Orilal Jaiswal and Another.

7. I heard the learned counsels for the parties, perused the petition in appeal, the impugned judgement and order, the evidence and other materials on record and the written notes of submissions.

8. First, there is no unexplained delay in lodging the first information report, especially when one considers the facts from the angle that the victim who, after being pushed into trying to commit suicide, was, by chance, found by a rickshaw puller (PW5) standing on the railway tracks and was taken to his shelter. The injury allegedly inflicted on 07.11.2010 was surely not the last date of occurrence.

9. Not complaining about the earlier incidents is hardly a means to discredit a de-facto complainant, especially if the disputes arise in the context of a matrimony and where the victim is in a relatively weaker position than the perpetrators of crime. One can hardly speculate about what could be the breaking point at which the victim wife would come out of the shackles of a violent marriage and decide to bring out in open the misdeeds of her husband and in-laws.

10. The existence of prior allegations of immoral traffic (as per PW9) against the accused set an appropriate backdrop in which the prosecution case needs to be looked at.

11. The other special feature of the case is that the family members of the victim did not go that extra mile in trying to ensure justice for her. It has to be remembered that one of the brothers of the victim was working for the accused at another place and was assisting the latter in their business there. The financial and social standing of the victim's family appeared to be lower compared to the in-laws' house.

12. Even after the incidents, the victim was found forsaken. She had to take refuge in a shelter home purportedly to stave off threats from her in-laws.

13. In spite of the above, the relatives like, PW2, the mother and PW3, the uncle, corroborated the prosecution case in some material particulars, especially so far as the question of torture upon the victim and running of flesh trade were concerned. PW4, however, deposed mainly against the accused husband.

14. Section 498A of the Penal Code has two parts – one, that relates to torture due to dowry demand and the other, that is so severe as would prompt the wife to commit suicide or cause any other serious harm to herself. In the instant case, there is no question of dowry demand being there. But, there is evidence in abundance to establish the second part of Section 498A of the Penal Code.

15. If a wife is tortured by her husband and in-laws and is pressurised to enter into flesh trade organised by them, then such pressure or torture is

sufficient to bring the case within the ambit of Section 498A of the Penal Code.

16. The prime contention of the appellants that the victim did not specifically state in the FIR that she had gone to the railway lines to commit suicide is hardly of any consequence as factually the victim was found standing on the railway tracks in the dead of night by a total stranger (PW5) in a rather incoherent state of mind. This incident is preceded by severe torture, as alleged. The law does not require that the victim has to actually try committing suicide for attracting Section 498A of the Penal Code. It only warrants that the torture should be such as capable of driving a woman to commit suicide or to do other serious harm to herself. In any event, the victim clarified the facts in her evidence and stated that she went to the railway line to commit suicide. In fact, PW5 said in his evidence that the victim was seen standing at the same place on the railway line for about 30 minutes. He saw her first while going past and thereafter, while returning.

17. The victim clearly alluded to a dirty business going on in the hotels in the FIR. But, in her statement before the Magistrate, she made a more direct disclosure. In her evidence, the victim gave out all the details. It is trite law that in such cases, the victim's statement is of utmost importance.

18. It is true that the mother-in-law's name is not specifically taken in the statement before the learned Magistrate. But, both the FIR, the document

first in point of time, as well as the evidence adduced in Court contain sufficient incriminating materials against her.

19. Minor contradictions in the evidence of witnesses and even between what is stated in Court and what is stated before the police officer cannot be treated as fatal to a prosecution case. In this case, the contradictions, if at all, are indeed very minor.

20. Witnesses may lie, but documents and circumstances do not. The seized medical prescription/document contained in the records cannot be washed away. The circumstances under which the lady was found by an independent witness like the rickshaw puller (PW5) at the railway tracks in the night and the subsequent visit to the police station are circumstances that cannot be disbelieved either.

21. In fact, the best evidence available is perhaps that of PW5. His version could not be shaken in cross-examination. He is an independent witness who has no animus towards the accused and therefore, has no reason to lie. The evidence of PW5 completes the chain of circumstances that appear against the accused in this case.

22. It is unfortunate that the investigating agency did not explore the possibility of including other charges like under the Immoral Traffic Act in the instant case. However, it is too late in the day to consider all these.

23. The evidence adduced during trial and the materials collected during investigation, thus, unerringly point towards the guilt of the appellants in respect of the charge under Section 498A of the Penal Code.

24. Considering the nature and the seriousness of the offence committed by the appellants, no lenient view can be taken on the question of imposition of sentence either.

25. In view of the above discussions, the appeal is dismissed and the judgement and order passed by the learned Sessions Court is affirmed.

26. Let a copy of this judgement along with trial Court records be send down to the Learned Trial Court forthwith by special Messenger.

27. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)