

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE PARTHA SARATHI SEN

CRA 303 of 1999

Hajira Bibi

-Versus-

Dulal Sarkar And Anr.

For the appellant	: Ms. Monami Mukherjee, Adv.
For the State	: Mr. Suman De, Adv., : Mr. Karan Bapuli, Adv.
For respondent no.1	: Mr. Dipanjan Chatterjee, Adv., Mrs. Sonali Das, Adv., Miss. Kakan Das. Adv, Miss. Rimpa Adhikari, Adv.
Last Heard on	: 01.08.2024
Judgment on	: 07.08.2024

PARTHA SARATHI SEN, J. : –

1. In this appeal as filed under Section 378(3) of the Code of Criminal Procedure the judgement and order of acquittal dated 29.04.1999 as passed by learned Chief Judicial Magistrate, Malda has been assailed by the complainant.

2. By the impugned judgement the accused/respondent no.1 herein is found not guilty under Section 498A IPC and he is thus acquitted under Section 248 (1) CrPC in case no.1238(c) of 1996.

3. The complainant felt aggrieved and thus filed the instant appeal after taking leave of the High Court.

4. For effective adjudication of the instant appeal the facts leading to initiation of complaint case no.1238(c) of 1996 is required to be dealt with in a nut shell. The complainant who is the appellant before this Court filed a complaint against the respondent no.1 herein as well as against one Yasin Ali, one Mohasin Ali and one Moslim Ali stating that respondent no.1 herein is her husband while the other accused persons are her in-laws. She complained that immediately after her marriage all the accused persons used to inflict torture upon her on account of demand of Rs.1,00,000/-. She stated in her complaint that on 14.11.1996 at about 8 pm when she was standing in front of her paternal home at that time all the accused persons armed with deadly weapons like Hasua, stick, etc. started assaulting her by pulling her hair and also assaulted her by kicks and blows. Seeing such incident the inmates of her paternal home and the witnesses of such incident (whose names have been mentioned in the said written complaint) rushed to the spot and thereafter the accused persons fled away.

5. Trial court record reveals that the learned Magistrate after taking cognizance examined the complainant and the witnesses and directed for investigation under Section 200 CrPC and on receipt of such investigation report, issued process under Section 204 CrPC in the name of the respondent no.1, however, he dismissed the complaint as against the other accused person under Section 203 CrPC.

6. Pursuant to the summons the respondent no.2/accused appeared before the learned trial court and prayed for bail and such prayer was allowed. On 04.06.1998 the trial court considered the charge under Section 498A IPC as against the accused and on the self same day charge under Section 498A IPC was framed against him.

7. In order to bring home the charge, the complainant has examined 6 witnesses in all and on behalf of the defence four witnesses have also been examined. From the deposition of the complaint witnesses it reveals that PW1 is the complainant herself, PW2 is a resident of Uttar Kaliganj, PW3 is a resident of Kaliganj and PW4 is the brother-in-law of PW1. PW5 is a Muslim Marriage Registrar and PW6 is the father of the complainant. So far as defence witnesses are concerned it appears that all the defence witnesses are co-villagers of the complainant and they reside in and around the house of the complainant. On behalf of the complainant two documents have been exhibited also.

8. It is pertinent to mention herein that the appellant who is a lady appeared in person before this Court on 08.07.2024 and requested this Court to appoint a lawyer on her behalf and accordingly this Court appointed Ms. Momami Mukherjee, learned advocate for the appellant with a request to the Secretary, High Court Legal Service Committee to regularize her appointment in connection with the instant appeal.

9. In course of her hearing Ms. Monami Mukherjee, learned advocate for the appellant at the very outset draws attention of this Court to the evidence of PW1. It is argued that from the evidence of PW1 it would

reveal that she testified that her marriage was solemnized with respondent no.1 according to the Muslim Rites on 24th June, 1995 and thereafter she started living with her husband. She further testified that she was thrown out of her matrimonial home by her husband on account of her failure to fulfil the demand of Rs.1,00,000/- towards dowry. It is argued that learned trial court is not justified in holding that marriage between the present appellant and the respondent no. 1 was not proved inasmuch as learned trial court failed to visualize the true implication of Exhibit 2 being the certified copy of Marriage Registration Certificate which has been proved in accordance with law and further the oral testimony of PW1 with regard to her marriage gets due support from the testimony of the remaining PWs.

10. With regard to the alleged assault it is argued by Ms. Monami Mukherjee, Ld. Advocate that all the PWs have adduced clinching evidence with regard to the date, time, place and mode of assault by the present appellant upon the victim (PW1) and therefore the learned trial court is not at all justified in holding that the complainant has failed to prove such assault in order to attract provisions of Section 498A IPC.

11. On the point of demand of dowry Ms. Monami Mukherjee, Ld. Advocate in course of her argument places her reliance upon Exhibit 1 which is a letter written by the respondent no.1 to the appellant claiming dowry. It is submitted on behalf of the appellant that learned trial court has equally failed to visualize that such letter has been duly proved by PW1 in her evidence and the alleged demand of dowry has been fully

established from the evidence of the prosecution witnesses. It is lastly submitted that strict proof of marriage in a case under Section 498A is not necessary as is required in a civil proceeding. Placing her reliance upon the reported decision of ***Reema Aggarwal vs. Anupam and Ors.*** reported in **(2004) SCC (Cri) 699** it is submitted that establishment of marital relationship between the complainant/informant and the accused in a criminal case involving marriage is sufficient which the learned trial court failed to consider.

12. Ms. Monami Mukherjee, learned advocate for the appellant thus submits that the instant appeal may be allowed and the impugned judgement of acquittal may be converted into a judgement of conviction holding that the respondent no.1 is guilty of offence under Section 498A IPC.

13. Per contra, Mr. Chatterjee, learned advocate for the respondent no.1 at the very outset submits before this Court that before the learned trial court no charge was framed under Section 323 IPC though initially the complaint was filed under Section 498A/323/506 IPC. Mr. Chatterjee submits before this Court that the judgement impugned is based on three facets namely:-

- a. Marriage between the appellant and the respondent no.1 is disputed;
- b. Alleged demand of dowry by the respondent no.1 from the appellant is not proved.

c. The alleged assault by the respondent no.1 upon the appellant is also not proved

14. In course of his submission Mr. Chatterjee also places his reliance upon the evidence of PW1. It is submitted that from the deposition of PW1 it would reveal that the alleged marriage between the appellant and the respondent no.1 was solemnized in the month of June 1995 and according to PW1 she was driven out in the month of October/November, 1995. It is submitted further that PW1 further testified that since thereafter she was residing at her paternal home and the alleged incident of assault occurred on 14.11.1996. It is thus submitted that from the chain of events it can be perceived that the alleged assault cannot be connected with the alleged demand of dowry and thus the learned trial court is very much justified to hold that the charge under Section 498A IPC has not been proved.

15. Drawing attention to the evidence of PW2 and PW3 it is submitted that they are mere chance witnesses. It is further submitted that from the cross-examination of the said PWs it would reveal that in between the appellant and the respondent no.1 herein a series of litigations were pending in which PW2 and PW3 also deposed and therefore there cannot be any iota of doubt that those witnesses have been set up by the complainant. It is further submitted by Mr. Chatterjee that from the cross-examination of PW1 it would reveal that immediately after the alleged assault she went to the local P.S where she lodged a G.D however, the said G.D was not proved. It is further submitted by Mr. Chatterjee

that PW4 is the brother-in-law of PW1 and from his evidence it would reveal that there was inimical relationship between PW4 and the respondent no.1 herein.

16. In course of his argument Mr. Chatterjee placed his much reliance upon the DWs. It is submitted that from the testimonies of DWs it would reveal that all the DWs practically are the next door neighbours of the complainant and all the DWs have testified in the same tune that they had never seen the complainant and the respondent no.1 leading a conjugal life and they have also not seen the alleged incident of assault on the fateful day and hour at the P.O. Mr. Chatterjee placed his reliance upon the reported decision of ***Mustt Rehana Begum vs. State of Assam and Anr.*** reported in ***(2022) SCC Online SC 82.***

17. On consideration of the entire materials as placed before this Court and after hearing the learned advocates for the appellant and the respondent no.1 this Court notices that the learned trial court has come to a finding that as the marital relationship between the appellant and the respondent no.1 has not been proved, the charge under Section 498A must fail. In order to assess as to whether such finding is at all justified or not this Court proposes to look to the evidence of PW5, a person who is 'naib' of a marriage registrar. Pursuant to the summon, PW5 brought the original volume of the marriage register for the year 1995 wherefrom, it reveals that marriage took place between the appellant and the respondent no.1 under the Muslim Marriage Registration Act and the certified copy of such certificate has also been proved while returning the

original volume of the marriage register. From the cross-examination of PW5 this Court finds that nothing could be elicited that such certificate of marriage (Exhibit 2) is a fake one.

18. In view of such and on production of a documentary evidence of the marriage between the appellant and the respondent no.1 this Court finds that the learned trial court is not justified in holding that there was no marital relationship between the appellant and the respondent no.1.

19. As rightly pointed out by Ms. Monami Mukherjee, learned advocate for the appellant that in the reported decision of **Reema Aggarwal (supra)** the Hon'ble Apex Court while dealing with the case under Section 498A/304 IPC expressed the following views:-

"The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B-IPC and Section 113B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry

does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions // Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract

marriages ostensibly and cohabitate with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

20. From the reported decision of **Reema Aggarwal (supra)** it thus appears to this Court that for the purpose of Section 498A/304IPC a strict proof of marriage is not mandatory as is required in a civil suit. All that is necessary to prove is that a man and a woman entered into a marital relationship and has become a victim of an offence arising out of such marital relationship.

21. In order to assess as to whether before the learned trial court the PWs are successful in establishing the alleged assault upon the complainant it appears that admittedly all the prosecution witnesses adduced sufficient oral evidence with regard to the place, time and mode of alleged assault upon the complainant by the alleged accused and his companions but at the same time it cannot be overlooked that though according to the complainant the accused persons were armed with deadly weapons the appellant/complainant got no bleeding injuries and that though she claimed to have lodged a G.D in the local P.S, she failed to produce the G.D before the learned trial court for the reason best known to her. From the cross-examination of the PWs it reveals that in between the appellant and the respondent no.1 series of litigations were pending then and therefore the chance of false implication cannot be ruled out especially when all the DWs who are practically the next door neighbours

of the appellant/complainant testified that they witnessed no such incident though according to the appellant the incident occurred only at 8p.m on the fatal day.

22. So far as the alleged demand of dowry is concerned admittedly the appellant has proved a letter (Exhibit 1) wherefrom I find a demand of Rs.1,00,000/- however the letter is addressed to one 'H' and the said letter is also an undated letter.

23. As rightly pointed out by Mr. Chatterjee that from the evidence of PW1 it would reveal that the alleged marriage between the appellant and the respondent no.1 was solemnized in the month of June 1995 and she was driven out from her matrimonial home in the month of October/November 1995. However, the alleged incident took place on 14.11.1996 and none of the prosecution witnesses have stated that the respondent no.1 assaulted the appellant on account of demand of dowry. In view of such, it has become very difficult to connect the assault with the alleged demand of dowry by the respondent no.1 in a case where charge has been framed under Section 498A only leaving apart the charge under Section 323 IPC.

24. While deciding the instant appeal arising out of a judgement of acquittal this Court must not be unmindful to the duty of a superior court while dealing with a judgment of acquittal. In this regard reliance can be placed upon the reported decision of ***State of Rajasthan vs. Naresh*** reported in ***(2010) 1 CCrLR SC 58*** wherein the Hon'ble Apex Court expressed the following view:-

“There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from the acquittal of the guilty is not less than from the conviction of an innocent.”

The same view was taken in the following reported decisions namely:-

- i. Anil Kumar vs. State of U.P** reported in **(2004)13 SCC 257;**
- ii. Chandrappa vs. State of Karnataka** reported in **(2007) 4 SCC 415;**
- iii. State of U.P vs. Gambhir Singh** reported in **(2005) 11 SCC 271.**

25. In view of the proposition of law as discussed supra and in view of the facts and circumstances as also discussed supra this Court finds no reason at all to interfere with the judgement impugned.

26. As a result the instant appeal fails and is dismissed. The impugned judgement dated 29.04.1999 as passed by learned Chief Judicial Magistrate, Malda in case no.1238(c) of 1996 is hereby affirmed.

27. Before parting with this Court must not forget to extend its thanks to Ms. Monami Mukherjee, learned advocate for the appellant who has been appointed by this Court to argue on behalf of the appellant for her

endless effort in arguing on behalf of the appellant *pro bono* with utmost satisfaction.

28. Department is directed to forward a copy of this judgement to the learned trial court along with the LCR forthwith.

29. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)