

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

CRA 707 of 2009

**Satyanarjan Sarkar & Ors.
-Vs-
The State of West Bengal**

For the Appellants	: Mr. Saryati Dutta Mr. Bratin Kumar Dey
For the State	: Ms. Faria Hossain Ms. Baisali Basu
Heard on	: 18.12.2023, 20.02.2024, 13.02.2024, 18.04.2024, 21.08.2024
Judgment on	: 06.12.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 26th August, 2009 passed by the Learned Additional Sessions Judge, Fast Track Court, 1st Court, Baruipur in Sessions Trial No. 9(6)05 in connection with Sessions Case No. 44(4)05, whereby convicted the appellants under Sections 498A/34 of the Indian Penal Code and Section 253(2) of the Code of Criminal Procedure Code and sentenced them to suffer simple imprisonment for three years and to pay a fine of Rs.10,000/- each, in default to suffer further simple imprisonment for one year each.
2. The prosecution case originated from a written complaint lodged by one Kanailal Mitra at the Baruipore Police Station on 20.04.2004, which

precisely stated the marriage of the daughter/victim of complainant/Kanailal Mitra, took place with Ranjan Sarkar, son of Satya Ranjan Sarkar of Duttapara, Baruipur on 01.05.2000 according to Hindu rites and ceremonies. It was revealed from the written complaint that at the time of marriage the complainant/Kanailal Mitra gave ten bhories of golden ornaments, one cot, beddings, dressing table, showcase, almirah and Rs.40,000/- in cash as per demands of the appellants. After some days of marriage it was alleged that the appellants used to create pressure upon the victim for bringing money for the purpose of business. Victim used to make know to her father/complainant and her mother, but due to their financial inability they failed to fulfill the demand of the appellants. On 20.04.2004 at 5.30 a.m. the complainant/father of the victim got a telephone message from appellant Satyaranjan Sarkar that his daughter had burnt and the appellants shifted the victim to M.R. Bangur Hospital. On 20.04.2004 at about 11.55 a.m. the victim expired.

3. On the basis of the aforesaid complaint, Baruipur P.S. Case No. 79 of 2004 dated 20.04.2004 under Sections 498A/304B of the Indian Penal Code was initiated.
4. Charges were framed against the appellants under Sections 498A/304B/34 of the Indian Penal Code to which the appellants pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution cited 15 witnesses and exhibited certain documents.

6. During the course of trial, 15 witnesses cited by the prosecution were interested witnesses save and except the doctor (PW-14) and the police witnesses were examined.
7. It was alleged that appellant Satyaranjan Sarkar, being the father-in-law of the victim discontinued her study and subjected to cruelty. However, there was no stringent evidence to prove the same.
8. The evidence of PW-4, who happened to be the mother of the victim, revealed after the victim went to her matrimonial home, the appellants forbade their maid servant to work in their house and the victim conducted the household work.
9. The evidence of PW-1, PW-2 and PW-4 reiterated the prosecution case. PW-3, PW-5, PW-6, PW-12 and PW-13 unaware as to the reasons for the death of the victim. The evidence of PW-9 was based on hearsay. PW-10 conducted the inquest and prepared the inquest report. PW-11 had scribed the complaint.
10. PW-14 the doctor recorded the statement of the victim who stated to have set herself on fire as she did not want to survive any longer. PW-15 the Investigating Officer filed the charge-sheet on completion of investigation.
11. In the case of ***Abhishek v. State of M.P.***¹, the Hon'ble Supreme Court held the following:-

“14. In Preeti Gupta v. State of Jharkhand [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with

¹2023 SCC OnLine SC 1083

matrimonial cases, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. *Earlier, in Neelu Chopra v. Bharti [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC."*

12. The following was observed by the Hon'ble Supreme Court in **Kahkashan**

Kausar v. State of Bihar²:-

"13. *Previously, in the landmark judgment of this Court in Arnesh Kumar v. State of Bihar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , it was also observed : (SCC p. 276, para 4)*

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-AIPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested."

²(2022) 6 SCC 599

14. Further in *Preeti Gupta v. State of Jharkhand* [*Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473], it has also been observed : (SCC pp. 676-77, paras 32-36)

“32. It is a matter of common experience that most of these complaints under Section 498-AIPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not

uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful.”

15. *In Geeta Mehrotra v. State of U.P. [Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741 : (2013) 1 SCC (Civ) 212 : (2013) 1 SCC (Cri) 120] it was observed : (SCC p. 749, para 21)*

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad [G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that : (SCC p. 698, para 12)

‘12. ... There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in

which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.’

The view taken by the Judges in this matter was that the courts would not encourage such disputes.”

16. *Recently, in K. Subba Rao v. State of Telangana [K. Subba Rao v. State of Telangana, (2018) 14 SCC 452 : (2019) 1 SCC (Cri) 605], it was also observed that : (SCC p. 454, para 6)*

“6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

17. *The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”*

13. Apart from vague assertions of torture being inflicted on the victim, the prosecution failed to produce cogent evidence to constitute an offence under Section 498A/34 of the Indian Penal Code. The allegations had been general and omnibus devoid any particular incident of torture inflicted on the victim being prolonged and continued. The prosecution failed to prove any factual matrix to correlate the torture upon the victim incessantly.
14. Asking the victim to resort to domesticity under no stretch of imagination be constructed as an offence. The victim was at liberty devoid of compulsion to disagree to perform domestic work. Moreover, the demand for further sum of money to justify the claim of dowry must be deprecated on failure towards the performance of the investigating agency the victim was suffering from mental disturbances as she was dissatisfied for being prevented from pursuing her further education. The overt act of the appellants could not be established.
15. In view of the above discussions, the instant criminal appeal being CRA 707 of 2009 is allowed.
16. Accordingly, CRA 707 of 2009 is disposed of.
17. There is no order as to costs.
18. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
19. 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.)