

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 949 OF 2006

SHYAMALI ROY

VS

STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Tapas Ghosh, Adv.
Mr. Tanmay Chowdhury, Adv.
For the State : Mr. Debasish Roy, Ld. P.P
Ms. Faria Hossain, A.P.P.
Last heard on : 08.08.2025
Judgement on : 26.09.2025

CHAITALI CHATTERJEE DAS, J. :-

- 1.** This is an application under Section 401 read with Section 482 of Code of Criminal Procedure 1973 filed by the petitioner /complainant against the judgement and order dated 31st January, 2006 passed by the Learned Additional Sessions Judge Arambagh, Hooghly allowing thereby criminal appeal No. 2 of 2004 acquitting the appellant Kumari Gouri Roy from the charge framed against her under Section 498-A of Indian Penal Code.
- 2.** The fact of the case of the petitioner in a nutshell is that she was given marriage with one Tinakari Roy on 17th June, 1990 and at the time of the said marriage a cash of Rs. 35,000/-, gold ornaments, utensils and other articles were presented as dowry, pursuant to the demand of her husband ,sister-in-

law, brother-in-law and mother-in-law. Initially up to second year of marriage she received cordial treatment but thereafter she was inflicted with mental and physical torture and was not even provided proper food, on demand of more dowry amounting of Rs. 50,000/- in cash in order to build the first floor of their residential house. The further case of the petitioner is that as she expressed her inability to meet the said demand the extent of torture increased and also her in-laws abated her for committing suicide and because of the severe assault on her ear she lost her hearing ability and her brother also found the torture inflicted upon her. On 24.09.1993 the husband gave an undertakings to maintain his wife properly thereafter again on 29th of August, 1994 the incident of such torture was reported to the local people and other respectable persons and then the husband Tinkari Roy gave a written undertaking to the effect and he and his other family members would not inflict any further mental or physical torture upon her in future.

- 3.** Again on 31st May, 1995 her in-laws and her husband abused her in a filthy language and started to assault her. Her husband kicked on her abdomen and the present Opposite Party Gouri Roy also kicked on her chest as a result she fell down on the ground when other accused persons took away the gold ornaments from her person and she was not given any medical aid and was driven away from her matrimonial home along with two minor daughters. On 5th March, 1996 when her father and brother went to settle the matter amicably they were also driven away by the accused persons and the husband expressed unwillingness to pay a single fathering for maintenance of the wife and her two minor daughters.

- 4.** On the basis of such complaint the case was started being Arambagh P.S. Case No 54 dated 16.3.96 under Section 498 A/323/326/307/506 of the Indian Penal Code and on completion of investigation the charge-sheet was submitted by the police on 31.7.1996 under Section 498A/323/506 of the Indian Penal Code and subsequently before the Learned Court where charge was framed under Section 498A/506 IPC to which they pleaded not guilty and claimed to be tried.
- 5.** The prosecution, in order to bring home the charges cited seven witnesses and also filed certain documents and after assessing the materials produced before the Court the Learned Judicial Magistrate at Arambagh, then SDJM Arambagh Hooghly by his judgement and order dated 20.11.2004 passed the order of conviction against the husband of the present petitioner Tinkari Roy and sister-in-law namely Kumari Gouri Roy for the offence under Section 498-A of the Indian Penal Code in G.R. case No. 113 of 1996 and sentencing them to suffer Rigorous Imprisonment for 2 years each with a fine of Rs. 2000/- each in default to suffer simple imprisonment for one month more. Other four accused persons were found not guilty and they were acquitted from the charges.
- 6.** Being aggrieved by the said judgement and order, both the appellants Tinkari Roy and Kumari Gouri Roy preferred an appeal before the Court of Session Judge Hooghly and the same was transferred before the Learned Additional Sessions Judge, Arambagh, Hooghly for hearing and after hearing the Learned Judge affirmed the order of conviction and sentence so far Tinkari Roy is concerned but acquitted the Opposite Party No. 2 herein from the charge

levelled against her and challenging the same this revisional application has been filed for setting aside such order of acquittal.

7. The submission advanced on behalf of the Learned Senior Advocate representing the petitioner that the Learned Court at the time of scanning the evidence adduced by the prosecution miserably failed in taking into judicial consideration that the prosecution witnesses and the de-facto complainant categorically stated how the victim was tortured physically and mentally by the present Opposite Party No. 2. The Court also did not consider the evidence of the doctor who examined the petitioner and also deposed that how she was tortured. On the basis of the same evidence as adduced by the prosecution witnesses, the learned court passed the order of conviction against the husband but acquitted the present Opposite Party No. 2 against whom serious allegations were found. That apart the Learned Court did not consider the report of the P.W.7. Dr. Gurudas Banerjee who treated her after she was assaulted on her ear by this Opposite Party No. 2. More so the undertakings given by the husband would reveal how she was treated by the Opposite Party No. 2.

8. The Learned Advocate representing the O.P. No. 2 on the other hand submits that no specific allegations were levelled so far the Opposite Party No. 2 is concerned and it was a vague and omnibus allegations put forward falsely implicating her in the complaint lodged by the de-facto complainant. That apart the allegations were initially under Section 498A/323/326/307/506 of Indian Penal code when ultimately the charge framed under Section 498A/506 of Indian Penal Code. Which prima facie proves that the Learned Court did not find enough material to substantiate those allegations which were levelled

falsely against the FIR named accused persons out of vengeance and in order to harass them. According pray for dismissal of this Revisional Application.

9. The Learned Public Prosecutor submits this Court has limited scope to interfere since the Learned Appellate Court after assessing the evidence of the prosecution has passed the order of Acquittal.

10. Having heard the Learned Advocate the primary issue which falls for consideration is that under the provisions of Section 482 of Code of Criminal Procedure how far this Court can exercise the power for setting aside the order of acquittal when the Learned Appellate Court after assessing the evidence adduced by the parties arrived at such a conclusion.

11. It would be worthwhile to first consider the scope of hearing of this revisional application against an order of acquittal. The provision u/s 372 of the Cr.Pc clearly mentioned that a victim shall have a right to prefer an appeal against any order of acquittal passed by the court or convicting for a lesser offence or imposing inadequate compensation .Section2 (wa) of Cr.Pc defines the word 'victim' who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir . The proviso clause of Section 372 Cr.Pc was incorporated after amendment in the year 2008 with effect from 31.12.2009 giving a statutory right to the victim to file appeal under Section 372 of Cr.Pc. Therefore prior to such amendment no provision existed for filing appeal against an order of acquittal . This revisional application was filed in the year 2006 hence the revisional application had to be filed under Section 482 Cr.Pc. on absence of any other available remedy.

12. Therefore the power to be exercised by this court is almost akin to hearing of appeal against an order of acquittal by the Appellate court and in doing so the High court has the power to reappreciate the evidence on record but certainly an order of acquittal can only be interfered when there existed substantial and compelling reasons. The paramount consideration of the court should be to prevent miscarriage of justice on account of perversity.

13. In the instant case from the contents of the complaint as discussed above the role attributed by this Opposite Party No. 2 or the specific overt act levelled against her can be found from the complaint lodged under Section 156 under Clause 3 of Cr.Pc. and from the evidence adduced by the de-facto complainant against Kumari Gouri Roy who is the unmarried sister of the husband and used to live with them under same roof. It was specifically averred in the written complaint that Gauri Roy and the mother-in-law slapped her on her ear and also kicked her as a result she lost her hearing capacity. In support of this allegation she relied upon the prescription of Dr. Gurudas Banerjee of the year 1996 when he treated her in the year 1993. No clear evidence was adduced either by the prosecution witnesses or by the Doctors regarding loss of her hearing capacity on account of any assault. No specific date or time can be found from the complaint as to when such physical assault was made over her ear by this Opposite Party. That apart further allegation was on 31st may, 1995 when the husband and this Opposite Party No. 2 kicked on her chest and as a result she fell down and then as par asking of the mother-in-law all the jewellerys were taken out from her and she was writhing in pain but none of the in-laws or her husband helped her.

14. After that when her brother found her lying in injured condition made arrangement of her treatment. No document regarding this treatment was produced by the prosecution .As per the written complaint later on she went to a gynaecologist who treated her and she was cured. On careful scrutiny of the entire written complaint no other allegation or overt act by Gauri can be found. The de-facto complainant was not medically treated at Arambagh Hospital and though Dr. Gokul Modak P.W. 10 was attached with Arambagh S.D. Hospital he treated her on 31.5.95 not at the hospital but at private chamber and she could only produce a prescription of the de-facto complainant which was marked with exhibit 5. The patient complained of bleeding from vagina since assaulted by her husband two days back that is on 29.05.93 and pain over her abdomen and weakness. He treated the patient on 31.05.95 where the history of assault by the husband on 2 days back was mentioned.

15. The above complaint was lodged in the year 1996. The other certificate issued by Doctor Gurudas Banerjee is dated.1.4.1996 in respect of an injury sustained by her in the year 1993 and no name of assailant or cause of such injury can be found but during her evidence she stated to have suffered such bleeding injuries on account of kicks by her husband on her belly. On-going through the declaration given by the husband dated 28.9.93 it can be found that there existed dispute between the mother in law and sister of the husband with the de-facto complainant for which he by way of declaration assured of no incident of torture upon the de-facto complainant. After that they lived together and no further complaint was filed before lodging of the complaint under Section 156(3) of Cr.Pc in the year 1996 where the incident dated 31.5.95 which was specifically against the husband was alleged and an

order of conviction was passed against him duly affirmed by the Appellate Court. P.W. 7 Dr. Gurudas Banerjee is a medical practitioner of Homeopathy who examined her on 3rd of March 1993 for bleeding injuries on her nose and one injury on her ear but this doctor was not examined by Investigation Officer and he could not also say who told him about the incident.

16. The Learned Court considered such evidence and was of the view that the nature of injury can be taken place if any women fall on hard and rough surface, on abdomen about no external injury was found on body of Shymali Roy. The learned trial court after assessing the entire evidence passed the order of acquittal in favour of all the accused persons excepting the husband and present appellant giving benefit of doubt. Curiously the de-facto complainant alleged similar nature of accusations also against the mother in-law but the learned trial court passed the order of acquittal against her, when passed the order of conviction against the appellant and the de facto, complainant also did not challenge the said order of acquittal of the mother in law.

17. The learned Appellate court arrived at a conclusion that from the evidence of de-facto complainant and other witnesses it is apparent that no clear specific evidence can be found to establish that the accused persons have subjected her to cruelty and accordingly passed the order of acquittal in favour of the present Opposite Party No. 2.

18. Considering the above facts and circumstances and also after going through the evidence as adduced even if it is considered that there were some incident which took place between the parties earlier and on the basis of which the undertaking was given by the husband no credible and clinching evidence can

be found to substantiate the prosecution to that extent for which the order of conviction can be passed against the Opposite Party No. 2. This court also do not find any perversity in the judgement passed by the Learned Appellate Court to show that has caused any miscarriage of justice.

19. Therefore this Court also concurs with the observation made by the Learned Appellate Court and do not find any merit in this revisional application to interfere with the judgement passed.

20. Accordingly this revisional application stands dismissed.

21. Let the TCR of this case be transmitted with a copy of the order to the learned trial court at an earliest.

22. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)