

(2021) 12 CAL CK 0096
In the Calcutta High Court
Case No : Criminal Appeal No. 63 Of 2020

Aparajita Chakroborty

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Indian Penal Code, 1860 — Section 498A

Citation : (2021) 12 CAL CK 0096

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Suchismita Dutta, Sudipa Banerjee, Bidyut Kumar Roy, Rita Dutta

Final Decision : Dismissed

Judgement

Bibek Chaudhuri, J

This is an appeal against acquittal filed by the de facto complainant of G.R. Case No.199 of 2003 arising out of Jagatdal Police Station Case N.392/03

dated 29th January, 2003.. The accused persons/Private respondents were acquitted from the charge under Section 498A of the Indian Penal Code.

The de facto complainant being aggrieved has assailed the said judgment and order of acquittal.

On 29th January, 2003, the de facto complainant lodged a written complaint before the Officer-in-Charge, Jagatdal Police Station alleging, inter alia,

that her marriage was solemnized with the respondent No.2, Anup Chakroborty according to Hindu Rites and Ceremonies. After marriage she went

to her matrimonial home to lead conjugal life with her husband. It is alleged that her husband and mother-in-law were not satisfied with the bridal gifts

given at the time of her marriage and they demanded a sum of Rs.20,000/- to be brought by the de facto complainant from her parents. When the de

facto complainant refused to such proposal, her husband put pressure upon her to be engaged with surrogacy to bear a baby of one of his friend. The

de facto complainant sternly refused such proposal. At this, the husband of the de facto complainant and her mother-in-law started torturing her both

physically and mentally. She was not offered with proper food. On one occasion, the mother-in-law of the de facto complainant spilt hot oil on her

body causing burn injury. Failing to bear such torture she returned to her paternal home on 21st October, 2001. However, after view days, the husband

of the de facto complainant went to her paternal home and bring her back to his house with the assurance that she would not be tortured in future. But

subsequently also the de facto complainant was subjected to physical and mental torture and she was compelled to leave her matrimonial home on 9th

June, 2002. The husband and the mother-in-law of the de facto complainant did not even allow her to take her minor children with her. On the basis of

the said complaint, police registered a case under Section 498A of the Indian Penal Code and took up the case for investigation. On completion of

investigation, charge-sheet was submitted against the husband and mother-in-law of the de facto complainant and both of them face trial. Charge was

framed against them under Section 498A of the Indian Penal Code. The mother-in-law of the de facto complainant died during the pendency of the

case and the case was filed as against the accused Alpana Chakroborty by the Trial Court.

The husband of the de facto complainant face trial. On completion of trial, the learned Trial Judge recorded an order of acquittal in favour of

respondent No.2, Anup Chakroborty. Hence the appeal.

It is pertinent to mention here that in order to bring home the charge against the respondent No.2, prosecution examined only 4 witnesses. Amongst

them, the de facto complainant is the wife of the respondent No.2 and P.W.2, Raghunath Mukherjee is the father of the de facto complainant. P.W.3,

Biswanath Chakroborty is a resident of Serampore in the district of Hooghly. P.W.4, Tarak Das is a resident of Jagatdal in the district of North 24-

Parganas.

In course of evidence, P.W.1 has proved her written complaint, which was marked as exhibit.1. The signature of the de facto complainant on the

written complaint is marked as exhibit.1/1. In her evidence, it was stated by

P.W.1 on oath that after marriage her husband and mother-in-law were dissatisfied with the bridal present and demanded a further sum of Rs.20,000/- in cash. When she refused to bring the said sum of Rs.20,000/-, her husband proposed her to be a surrogate mother of one of his friend, when she refused, the accused persons inflicted mental and physical torture upon her. It is further stated by the de facto complainant in her evidence that once her mother-in-law put fire on her wearing apparel causing burn injuries on her hands. She also spilt hot oil on her hand to inflict injury. She was never medically treated where she was ill. Immediately after such statement she stated that she underwent treatment at SSKM Hospital when she received burn injury on her person. Failing to bear such torture, the de facto complainant returned to her paternal home on 21st October, 2001. On 21st April, 2002 her husband took her back to his house on assurance that he would live with her and their children separately at a rented house. But the respondent No.2 failed to keep up his promise. He continued torturing the de facto complainant physically and mentally. Finally on 9th June, 2002, the de facto complainant left her matrimonial home and took shelter permanently at her paternal home.

P.W.2, Raghunath Mukherjee being the father of the de facto complainant has corroborated the evidence of P.W.1.

P.W.3 Biswanath Chakraborty and P.W.4, Tarak Das failed to state anything in respect of the relation between the parties in their evidence.

The learned Trial Judge acquitted respondent No.2 on the ground that P.W.2 failed to corroborate the evidence of P.W.1 on the point that she was

allegedly pressurized for surrogacy by her husband for a sum of Rs.20,000/-. It is also held by the learned Magistrate that except oral evidence, P.W.1

failed to produce any documentary evidence with regard to torture upon her by respondent No.2. P.W.1 admitted that she was medically treated at

SSKM Hospital after she received burn injury but the said injury report and treatment sheets were not produced during trial. Thus, the learned Trial

Judge held that the prosecution failed to bring home the charge against the accused/respondent No.2 and accordingly, he was acquitted from the

charge.

The Honâ??ble Supreme Court in catena of decision was pleased to frame necessary guidelines to be followed by the Court of appeal in respect of

an appeal against acquittal. In this respect, decision of the Hon^{ble} Supreme Court in V.Sejappa Vs. State reported in (2017) 3 SCC (Cri) 699

may be referred to. The guidelines framed by the Supreme Court are as hereunder:-

“If the evaluation of the evidence and the findings recorded by the Trial Court do not suffer from any illegality or perversity and the grounds on

which the Trial Court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view

is possible. Merely because the Appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference

with the judgment of acquittal is not justified if the view taken by Trial Court is a possible view. The well-settled principle is that if two views are

possible, the Appellate Court should not interfere with the acquittal by the lower Court and that only where the material on record leads to a

inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court.

Explanation of Section 498A of the Indian Penal Code defines “Cruelty”. The explanation runs thus :-

“498A. 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 purpose 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.”

Thus, all physical and mental torture does not amount to cruelty within the meaning of Section 498A of the Indian Penal Code. Only the wilful conduct

of the accused which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the

woman amounts to cruelty within the meaning of Section 498A of the Indian Penal Code. In the instant case, though P.W.1 stated that she was

subjected to physical torture by the respondent No.2, she failed to state any date of such torture or any medical document to prove the extent of

torture to come to a specific finding by the Court with regard to the nature of torture which may likely to drive her to commit suicide or cause grave

injury to life, limb or health of the woman. Omnibus allegation is not sufficient for proving a case of cruelty.

Similarly, the de facto complainant/appellant failed to prove to the satisfaction of the Court that the respondent demanded a sum of Rs.20,000/- and

when she refused to bring the said sum from her paternal home, he put pressure upon her to perform the act of surrogate for a sum of Rs.20,000/-.

The de facto complainant did not lodge any complain or diary in the local police station after she left her matrimonial home in the year 2001 and again

to went back to her matrimonial home on the basis of assurance of her husband in the month of April, 2002. Considering all such aspect of the matter,

the evidence on record is not sufficient to take an alternative view against the respondent No.2 and this Court does not find sufficient ground to

change the order of acquittal to the order of conviction.

Accordingly, the instant appeal fails.

The appeal be dismissed on contest, however, without costs. Let a copy of this judgment be sent to the lower court below for information and

necessary action.

Urgent photostat certified copy of this judgment, if applied for, be given to the learned Advocates for the parties on usual undertakings.