
(2022) 09 CAL CK 0140
In the Calcutta High Court
Case No : Criminal Revision No. 3602 Of 2019

Manoranjan Pal & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 498A

Code Of Criminal Procedure, 1973 — Section 161, 313, 401, 482

Citation : (2022) 09 CAL CK 0140

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : R.D. Nandy, Sreeparna Das

Final Decision : Allowed

Judgement

Ajoy Kumar Mukherjee, J

1. This application under section 401 read with section 482 of the Code of Criminal Procedure (Cr.P.C.) has been preferred against impugned judgment and order dated 02.11.2019 passed by the court of learned Additional Sessions Judge, Bishnupur in Criminal Appeal No. 06 of 2016, thereby affirming the judgment of conviction and sentence dated 07.05.2016 passed by Learned Judicial Magistrate, 2nd Court, Bishnupur under Section 498A/34, of the Indian Penal code (IPC) in connection with GR Case No. 165 of 2010, arose out of Joypur P.S. Case No. 14/10 dated 04.04.2010.

2. Factual matrix of the said case is that one China Pal made a complain with Joypur Police station dated 04.04.2010, alleging inter-alia that her husband Sri Manoranjam Pal and mother-in-law Smt. Sankar Pal, the reviosionists, herein started to inflict physical torture upon her since after one month of her marriage. It is further alleged that the husband (petitioner no. 1) used to beat her up regularly and had driven her out from the house. They also did not give her sufficient food. On 01.04.2010 one "Khar Palui"(heap of straw) of her

matrimonial house caught fire, which was put out by the de-facto complainant/ opposite party herein, with the help of neighbor, however the husband coerced her to say, it is she who had set fire in said "Khar Palui" as she did not agree to accept such blame on herself, consequently the accused husband beat her up and both the petitioners herein drove her out from matrimonial home even when she was carrying for four months.

3. On the basis of aforesaid complain Joypur P.S. case No. 14/10 dated 4.04.2010 was started being G.R. Case No. 165 of 2010. After completion of investigation charge-sheet filed against both the accused persons under section 498A/34 of the I.P.C. After perusing the final report, the learned Magistrate had framed charge against the accused persons under section 498A/34 I.P.C. and with the framing of charges trial commenced. During trial nine witnesses were examined and documents were marked Exhibit. Accused persons were examined under section 313 of Cr.P.C. and on hearing arguments learned trial court held the petitioners guilty in connection with said G.R. Case No. 165/2010 and convict them accordingly under section 498A/34 I.P.C.

4. Challenging that judgment and order of conviction dated 07.05.2016 passed by learned judicial magistrate, 2nd Court, Bishnupur, petitioner preferred an appeal before the learned Additional Sessions Judge Bishnupur, being criminal appeal No. 06/2016, when the learned appellate court dismissed the said appeal on contest and affirmed the judgment of conviction and sentence vide impugned judgment dated 02.11.2019.

5. Mr. Sourav Pramanick learned counsel appearing on behalf of the petitioner strenuously argued that the impugned judgment of conviction recorded by the learned Trial Court is not sustainable as the same is not based on correct appreciation of evidence adduced by the prosecution witnesses. He further submits that bare perusal of the evidence laid on record by the prosecution suggests, that prosecution failed to prove its case beyond reasonable doubt and as such the petitioners are liable to be acquitted. He further argued that the judgment of conviction recorded by the court below is result of mis-reading, mis-interpretation and misconception about evidence laid on record by the prosecution and as such both the courts below have committed mistake in passing the impugned judgment. Mr. Pramanick further submits that the cardinal principle of criminal jurisprudence is the onus which lies upon the prosecution to prove its case beyond all reasonable doubt which the prosecution has not succeeded to discharge and the courts below without adjudicating truthfulness and veracity of the depositions has victimized the present petitioners. Needless to say that mere statements of torture by the husband and its relative allegedly inflicted on wife in matrimonial home will not be sufficient to book the petitioners herein under section 498A of IPC unless it surpasses all its tests of truthfulness through proper corroboration and other inferences, which the courts below failed to appreciate during scrutinization of depositions of prosecution witness-1 (PW-1) and prosecution witness-2 (PW-2) that is defacto complainant and her mother

respectively, where it has been revealed

(i) that there has been no medical treatment for the daily assault and torture inflicted allegedly during pregnancy.

(ii) PW2 deposed that defacto complainant was treated at Gogra Hospital but no such injury report has been placed either during investigation or at the time of trial.

(iii) The allegation leveled in connection with "Khar Palui" incident which emerged in the letter of complain and during examination-in-chief has not been stated at all at the time of investigation stage, when police recorded her statements under section 161 of Cr.P.C.

(iv) In the examination-in-chief, PW2 implicated Mashi and Mesho of husband/petitioner no. 1, who inflicted torture upon her daughter but has not been corroborated by a single piece of evidence which learned court below has failed to appreciate as major contradiction and omission and addition, during assessment of evidence adduced by the PWs before the trial court.

(v) The courts below failed to appreciate that the evidence adduced by the PW2 was not even supported by PW1 in the narration about torture in her letter of complain, Statement before investigating officer(I.O.) and in her examination-in-chief. Not only that she failed to recollect whether she was interrogated by I.O. which created a falsity of prosecution case and casts a negative bearing upon the evidentiary value of prosecution witness which is neither cogent nor trustworthy and mechanically tutored and after thought and cannot stand as a ground for awarding conviction.

(vi) In the letter of complain there has been no whisper about the demand of money or the amount of money as specified by PW2 in her examination-in-chief. Such statement of PW2 has also not been corroborated by the evidence adduced by her daughter PW-1 or other witnesses which casts a cloud in the fact in issue itself which has not been properly adjudicated. Moreover , there has not been any insinuation or taunting which could be subject as mental cruelty at all to book the petitioners under the said provisions.

(vii) The learned Appellate court did not give any emphasize to the evidence adduced by PW-3/grand-father of defacto complainant, who had not uttered a single word about inflicting torture upon his grand- daughter and on the contrary in his cross-examination he stated that the incident of torture was lodged to local party office but said statement has not been corroborated by PW-1 who negated about the fact to be apprised before any authority in writing.

(viii) Learned court below failed to place its reliance upon the evidence adduced by the prosecution witnesses No. 4, where the examination in-chief was not corroborated with the statement recorded before the investigation officer and element of torture or subjected her to cruelty meted out by husband and his mother was missing, has a bearing upon the case and its veracity.

(ix) Accordingly the learned courts below discarded the evidence in such a manner where manifold questions remained unanswered. The hearsay evidence of the prosecution witnesses and declination of cross-examination by defence, would not enable the court below to arrive at adverse finding against the present petitioners. Infact the courts below have been revolving around the social backdrop without appreciation of entire evidence adduced by the prosecution. The courts below had also not made any observation regarding the evidence adduced by investigating officer who carried out the investigation and has not stated about the torture and assault in his evidence that also raised doubt about the truthfulness of the prosecution story and the judgments of courts below prima facie unfolded the pre-conceived frame of mind in respect of social phenomena that has been impulsive instead of rational and judicious.

(x) The examination of the petitioners under section 313 of the code of Criminal Procedure has not been carried out by adhering the settled principle of law by the trial court which causes serious prejudice to petitioners and as such the judgment passed by the courts below on account of misreading of evidence and/or perverse appreciation of evidence makes it liable to be set aside.

6. Smt. Sreeparna Das learned Counsel appearing on behalf of the state submits that victim's statements before court below corroborated the statements made by her during investigation. It is quite natural that the victim will only be the witness of such torture and accordingly her evidence cannot be thrown away, in the absence of every corroboration by other witnesses. The in-laws of the victim and also the neighbors of the victims are not supposed to depose on behalf of the defacto complainant. Furthermore after long interval, the prosecution witnesses appeared before the court and as such minor contradiction if appeared in their evidences are to be ignored. The incidence as stated by PW1 in connection with "Khar Palui" incident also corroborated by other witnesses and as such the concurrent finding of the courts below in support of conviction should not be interfered with by this court, unless perversity is shown in the judgment.

7. I have heard argument on behalf of both the parties and have carefully gone through the record made available. In the instant case it appears that the judgment of conviction by the trial court is mainly based on following observations in reaching the aforesaid conclusion

(a) That the evidence so far shows that more or less all witnesses testifies that the victim women is now staying at her paternal house which is against the common fabric of the society, that a girl after getting married goes to her matrimonial house to stay for the rests of her life.

(b) It is quite unexpected for a village rustic women who married her husband out of love to falsely implicate him or desert him and stay at her paternal house with her new born baby for such long period taking stigma of society on her head, only because her husband did not agree to stay as Ghar Jamai, particularly when she admits that her husband used to stay with her separately from his

mother.

(c) It is not the defence case that the victim women could not adjust herself at matrimonial house at all. The defence could not show that the accused persons had ever tried to bring back the victim women and her new born baby.

(d) It is evident in the instant case that the victim is staying at her paternal house being driven out, while she was pregnant as evident from written complain , the deposition of PW1 , 2,3, 4 as a whole and she is continuing to stay there with her new born baby for such a long time and the defence could not establish any justification for such staying of the victim in her paternal house along with her child nor can even outweigh the fact of demanding dowry as alleged against them by the victim, which statement has been corroborated by her mother .

(e) Such conduct of the accused person in driving out the victim while she was pregnant and to force her to stay at her paternal house constitutes matrimonial cruelty upon the victim woman.

(f) Victim stated that she was subjected of being regularly demanding dowry and that she was not allowed to be treated by any doctor for such assault and the statement of PW-1 of being assaulted on non fulfillment of dowry was corroborated by PW-2. The evidence of PW1 and 2 cannot be discarded simply on the score of the absence of corroboration by independent witness. The acts of cruelty by the accused are expected to be known by very close relations like mother, sister and brother etc and it is not expected that the torture inflicted by the accused persons would be noticed by the adjoining house owners and as such it is not necessary to examine neighbors or tenants to prove prosecution case. Accordingly the close relatives are to be considered as best witnesses in a case under section 498 A IPC.

(g) Though in the instant case only the mother of the victim who corroborates the fact of assault as contended by the victim herself, however the fact of mental cruelty has been corroborated by all of the witnesses at least to some extent.

(h) Even though no injury report has come before this court in support of any injury caused to the victim women of being assaulted, however, possibility of being assaulted cannot be outweighed altogether particularly from persons who drove out a women while she was carrying.

(i) PW 1, 2 and 3 have stated they have informed about the torture to party members orally which is common practice in the life of village people. The defence did not try to outweigh such statement of informing party members, by calling any of them to depose in this regard.

8. Now in the above background let us see by scanning evidence as to whether aforesaid observations made by the trial court was justified in reaching to the conclusion that the petitioners are guilty of committing offence under section 498A/34 IPC. PW-1 victim in her examination-in-chief stated that she was

assaulted by the petitioner husband and she was pressurized for bringing money. But she has not mentioned when such incident occurred. She has not produced any medical evidence in support of her regular torture and she has not stated how much amount was demanded. She further stated she had informed about torture to party workers, Police Station and to her relatives but no such documents or evidence have come before the court in support of said contention. Learned trial court wrongly shifted burden upon the accused persons to disprove the said contention. Moreover in cross-examination said defacto complainant/ PW1 stated that Anant Rakshit, Anand Gure, Madan Digre, have their houses near her matrimonial house and these people and others know that she was tortured by the accused persons but they were not brought as witness to prove the victim's contention that she was tortured. She also admitted that she does not know whether she has stated in her written complain about demand of money as she is not educated. She further admitted in her cross examination that she cannot say exact date on which she was tortured by her husband or by her mother in-law . She further admitted that she had not informed the Panchayet or Police Station in writing about the torture inflicted upon her. She further stated that she was not treated by any doctor when the torture was inflicted upon her.

9. PW-2 the mother of the defacto complainant though stated about torture and demand of money to the tune of Rs. 10,000/- to 20,000/- and she has implicated defacto complainant's Mashi and Mesho with the alleged offence also, but in the cross-examination she admitted that they had not informed in writing about the torture anywhere though they informed the incident at the party office but at the same time she admitted that after her daughter's marriage she did not go to her daughters matrimonial home. The statement of the said PWs that the victim was driven out from her matrimonial house has not been stated by them before police during investigation. PW3 stated that they lodged complain before TMC party office before initiation of the case but no document in support of filing such complain has been produced before the court. Said PW3 though stated that the victim was driven out from her matrimonial house but said witness has also not made such statements during examination by the police. PW-4 who is aunt of the victim stated that victim now stays at her paternal house but he said that she stays at her paternal house due to some dispute. She has not stated anything further about alleged occurrence, though he is a relatives of the victim. PW5, PW-6, PW-7, PW-8 and PW-9 has not stated anything about the alleged incident of cruelty inflicted upon PW-1 by the petitioners herein and for which cross-examination of said witnesses were declined by the petitioners. PW-9 is the I.O. who has also not stated anything about the alleged occurrence.

10. Conjoint reading of the deposition of aforesaid witnesses are not sufficient to connect the petitioners with the alleged offence. It is contended by PW-1/victim that after regular torture inflicted by the petitioners, she was ultimately driven out from her matrimonial house and further stated that she reported the incident of torture to party workers, police station and also to her relatives but said

statement has not been corroborated by any document or evidence. None of the witnesses including the victim stated anything with regard to date on which petitioners have assaulted her physically or mentally.

By now it is well-settled that to prove a case under section 498A IPC, it is incumbent upon the prosecution to prove cruelty, if any, strongly in terms of explanation given to section 498A IPC, which may be reproduced below:-

"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."

11. It is apparent from the said provision that to prove cruelty it must be of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the women or to cause harassment of the women, 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, is required to be proved. In the instant case in the written complain no averment of demand of dowry has been stated nor in the evidence of complainant it has been specifically stated on which date and what amount was demanded from her. Similarly none of the prosecution witnesses including complainant stated before the court below that the conduct of the accused or beating injury inflicted by them to the complainant was of such a nature as is as defined in the section. No medical evidence has also been produced before the court. It may be that there is dispute between the parties and the relation may not be normal, but if there is no harassment or cruelty as defined by section 498A IPC, accused cannot be held guilty of having committed the offence punishable under section 498A. A general allegation against husband and her mother-in-law, without adverting to any concrete incident can not be termed as "cruelty" as defined in 498A IPC. Court himself cannot be in a position to hold that petitioner inflicted harassment or torture which amounts to "cruelty" falling within the parameters fixed in section 498A IPC.

12. Their Lordship in Girdhar Shankar Tawade Vs. State of Maharashtra reported in AIR 2002 SC 2078 held in paragraph 16:-

"16. We have already noted Section 498-A hereinbefore in this judgment and as

such we need not delve into the same in greater detail herein excepting recording that the same stands attributed only in the event of proof of cruelty by the husband or the relatives of the husband of the woman. Admittedly, the finding of the trial court as regards the death negated suicide with a positive finding of accidental death. If suicide is ruled out then in that event applicability of Section 498-A can be had only in terms of Explanation (b) thereto which in no uncertain terms records harassment of the woman and the statute itself thereafter clarifies it to the effect that it is not every such harassment but only in the event of such a harassment being with a view to coerce 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— there is total absence of any of the requirements of the statute in terms of Section 498-A. The three letters said to have been written and as noticed earlier cannot possibly lend any credence to the requirement of the statute or even a simple demand for dowry.”(emphasis added)

13. In *S. Hanumantha Rao Vs. S. Ramani* reported in (1993) 3 SCC 620 the court considered the test of “mental cruelty” and was pleased to hold as follows:-

“Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and the husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party”.

14. Accordingly it is not every harassment or every type of cruelty (mental or physical) that would attract section 498-A, but it must be established that beating and harassment was with a view to force wife to commit suicide or to fulfill illegal demands of husband and in-laws. In *Smt. Raj Rani Vs. State Delhi Administration* reported in AIR 2000 SC 3559 the Apex Court held that while considering the case of cruelty in the context to the provisions of section 498A IPC, the Court itself examined that allegation and acquisition must be of a very grave in nature and should be proved beyond reasonable doubt. Pretty quarrel cannot be termed as cruelty to attract the provisions of section 498A IPC. Moreover causing mental torture would be to such an extent that it became unbearable, so that it can be termed as mental cruelty. It is however true that there can never be a straight jacket formula or fixed parameter for determining mental cruelty in matrimonial matters but the prudent and appropriate way to adjudicate the case would be to evaluate it on its particular facts and circumstances to decide with the issue of the allegation of cruelty. Explanation 498-A involves three subsequent situations

i) To drive the women to commit suicide

ii) To cause grave injury

iii) Danger to life, limb or health both mental and physical and thus involving a physical torture or atrocity.

In explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment, which obviously as the legislative intent expressed is equally heinous to match the physical injury, whereas one is patent, the other one is latent but equally serious in terms of provisions of the statute, since the same would also embrace the attributes of cruelty in terms of section 498A.

15. in this context Apex Court in Md. Arif @ Ashfaq Vs. State of NCT of Delhi was pleased to hold :-

"76. There can be no dispute that in a case entirely dependent on the circumstantial evidence, the responsibility of the prosecution is more as compared to the case where the ocular testimony or the direct evidence, as the case may be, is available. The Court, before relying on the circumstantial evidence and convicting the accused thereby has to satisfy itself completely that there is no other inference consistent with the innocence of the accused possible nor is there any plausible explanation. The Court must, therefore, make up its mind about the inferences to be drawn from each proved circumstance and should also consider the cumulative effect thereof. In doing this, the Court has to satisfy its conscience that it is not proceeding on the imaginary inferences or its prejudices and that there could be no other inference possible excepting the guilt on the part of the accused. We respectfully agree with the principles drawn in the above mentioned cases and hold that the prosecution was successful in establishing the above mentioned circumstances against the appellant, individually, as well as, cumulatively. There indeed cannot be a universal test applicable commonly to all the situations for reaching an inference that the accused is guilty on the basis of the proved circumstances against him nor could there be any quantitative test made applicable. At times, there may be only a few circumstances available to reach a conclusion of the guilt on the part of the accused and at times, even if there are large numbers of circumstances proved, they may not be enough to reach the conclusion of guilt on the part of the accused. It is the quality of each individual circumstance that is material and that would essentially depend upon the quality of evidence. Fanciful imagination in such cases has no place. Clear and irrefutable logic would be an essential factor in arriving at the verdict of guilt on the basis of the proved circumstances. In our opinion, the present case is such, as would pass all the tests so far devised by this Court in the realm of criminal jurisprudence."

16. In view of aforesaid discussion this court finds that the judgments passed by courts below was not on the basis of the meticulous analysis of prosecution evidence and had been drawn on the basis of the social backdrop and socio economic phenomena instead of scanning evidence adduced by the witness. It was based on misreading of evidence and perverse appreciation of evidence and for which the impugned judgments are liable to be set aside. Be it also mentioned that the judgments of the Appeal Court is mainly based on quotations of the trial court judgments without having any independent finding and as such

the judgments are liable to be set aside. In view of above CRR 3602 of 2019 is allowed.

17. The impugned judgment and order dated 02.11.2019 passed by the court of Learned Additional Sessions Judge, Bishnupur in Criminal Appeal No. 06 of 2016 thereby affirming the judgment of conviction and sentence dated 7.05.2016 passed by learned Judicial Magistrate, 2nd Court, Bishnupur under section 498A/34, Indian Penal code in connection with GR Case No. 165 of 2010 is hereby set aside. The petitioners are hereby acquitted and released from their bail bonds.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.