

District: Jalpaiguri

IN THE COURT OF JUDICIAL MAGISTRATE

2nd COURT, JALPAIGURI

Present:- Shrinivas Prasad Shah

Judicial Magistrate,

2nd Court, Jalpaiguri.

G.R. Case No:- 3919 of 2013.

(C.I.S. Registration No. 1206 of 2016.

TR.630 of 2016.

STATE

Versus

Rahul Singh

Jibesh Singh

Minu Singh

Hari Narayan Singh

Sraboni Singh

.....Accused persons

Facing Trial for alleged commission of offence punishable under section 498A of the Indian Penal Code 1860.

Argument heard on 25th February, 2020.

Judgment delivered on 25th February, 2020.

J U D G E M E N T

The facts forming the gist of the criminal case lodged against the accused person is required to be discussed in brief to understand the entire controversy, however before narrating the facts, it is pertinent to mention that in the present case the accused persons namely Rahul Singh, Jibesh Singh, Minu Singh, Hari Narayan Singh and Sraboni Singh were sent for trial.

The wheels of criminal law was set into motion when on 20-07-2013, at about 21:50 hrs one Rakhi Singh @ Dutta W/O Rahul Singh of Nayabasti, Thutha Pukur, P.S. Kotwali, District – Jalpaiguri, (herein after called as Defacto-complainant) lodged a written complaint against Rahul

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Singh S/O Jibesh Singh, Jibesh Singh S/O Late Satrugan Singh, Minu Singh W/O Jibesh Singh all are resident of Nayabasti, Thutha Pukur, P.S. Kotwali, District – Jalpaiguri and Hari Narayan Singh S/O Late Aditya Narayan Singh and Sraban Singh S/O Hari Narayan Singh both are resident of Joynagar, P.O. Talma, P.S. Kotwali, District – Jalpaiguri, (herein after called as accused persons).

The crux of the allegation is that her marriage was solemnized with Rahul Singh as per Hindu Rites and Customs. After marriage she used to reside at her matrimonial house. But after few days the accused persons started physical and Mental Torture upon her. Further the accused persons also tried to kill her. And drove out from her matrimonial house and used to reside at her paternal house. Later she filed complaint against accused persons before Kotwali P.S.

It would be pertinent on the basis of written complaint Kotwali P.S case No. 905 of 2013, dated 20-07-2013, was started under sections 498A of the Indian Penal Code 1860, against this above named accused persons. Consequently, the investigation was set in motion by the police. Post investigation Police submitted Charge Sheet. At the initial stage the accused person has been charge-sheeted vide charge-sheet No. 417 (F) of 2013, dated 30-06-2013, under Section 498A of the Indian Penal Code 1860.

Learned Chief Judicial Magistrate, Jalpaiguri was pleased to take cognizance of the offence punishable under Section 498A of the Indian Penal Code 1860 and transferred the case under section 192 of Cr. P.C.1973 to this court for disposal. It would be further pertinent to mention that this court framed charge under Section 498A of the Indian Penal Code 1860, against the accused person. They being acquainted with such charge pleaded their innocence and for which trial of the case commenced.

The prosecution in support of its case examined the defacto-complainant Rakhi Singh @ Dutta as P.W.1, whereas the defence declined to adduce evidence.

It must be stated here that after the deposition of P.W. 1, Learned A.P.P. for the State prayed for closure of evidence from side of the Prosecution and considering the slim if not virtually non-existent chance of further development in the case, the Court allowed such prayer.

Thereafter, defence case is of denial as is evident from the statement of the accused recorded under section 313 Cr. PC. It is obligatory on the part of the Court to question the accused before he enters into the defence on any circumstance appearing in the prosecution evidence against him. This section incorporates a rule of audi-alteram-partem and is actually intended for the benefit of the accused persons.

Upon hearing and on perusal of record I have framed the following point for determination-

(A) Whether the accused person has committed offence punishable under Section 498A of the Indian Penal Code 1860 ?

(B) Whether the prosecution has been able to prove its case beyond all reasonable doubts ?

DISCUSSION AND REASONS FOR THE DECISION

Now let us discuss the materials on record and try to arrive at a definite finding as regards the point for determination. These points are taken up for discussion together as they are inter-linked with each other their decisions will decide the fate of the case.

In this case the accused person is facing trial for alleged commission of offence under Section 498A of the Indian Penal Code 1860.

Now, let see how far the prosecution has been able to prove its case.

The PW 1 (Rakhi Singh @ Dutta), states in her examination in chief as under:

“I have filed the said complaint. I cannot say the date, time of filing the instant complaint. I have filed the complaint two to three years ago. I have filed the said complaint before Kotwali P.S. against my husband and in-laws. The accused persons are present before this Court. I have filed the said complaint as there was small misunderstanding taken place

between me with accused persons. Nothing happen more. The said complaint has not been written by me. I can not say who has written the said complaint. I have put my signature on the said complaint.”

The PW1, further states in his cross-examination as under:

“Fact that at present I have no allegations against the accused persons. Fact that at present I am residing peacefully with my husband and in-laws at my matrimonial house”.

Learned advocate for the accused persons has pointed out that the defacto-complainant, has failed to discharge his onus to prove his own case as made out in the written complaint. According to him the prosecution has miserably failed to prove its case beyond any reasonable doubt. He pointed out the vital prosecution witness has failed to prove the alleged incident. He has sought for acquittal of the accused person from this case.

It is no longer res integra that in a criminal trial, it is always the duty of the prosecution to prove the case against the accused beyond reasonable doubt. In situations where the case has not been proved against the accused by the prosecution beyond reasonable doubt, the accused deserves to be acquitted of the offences charged against him, even if no defence evidence might have been led by him.

While on the other hand, if it is shown by the prosecution on the basis of the evidence either circumstantial or direct, that in all possible probabilities the alleged offence was or could be committed only by the accused, which facts thereafter are not disproved by the accused, then the offence is proved to have been committed by the accused who would thereafter be convicted of the offence charged against him.

Now Let us see and discuss as to whether the prosecution has succeeded in its task of proving the respective offences against the respective accused persons herein facing trial beyond the standard of reasonable doubt or not.

In the instant case, testimony of the P.W.1 is vital for proving the prosecution's case against the accused persons. Thus, entire prosecution's case is now based on the testimony of the P.W.1.

Before proceeding further, it would be apposite to refer to the law laid down by higher courts with respect to Section 498A of IPC.

In State of **H.P. v. Nikku Ram and Ors. Reported in 1995 (6) SCC 219 the Hon'ble Supreme Court** observed that harassment to constitute cruelty under Explanation (b) to Section 498A must have nexus with the demand of dowry and if this is missing the case will fall beyond the scope of Section 498A, IPC.

From the above noted principles, it is clear that precondition for attracting the provisions of explanation (b) to section 498A IPC is the demand and if the demand is missing and the cruelty is for the sake of giving torture to the women without any nexus with the demand then such a cruelty will not be covered under Explanation (b) to Section 498A IPC.

Meaning thereby, the prosecution has to either show (a) the wilful conduct of accused was 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 or (b) that a demand of dowry was made and the woman was subjected to harassment consequently in order to coerce her to fulfill the demand.

In order to prove an offence under section 498A IPC, first there has to be a demand & thereafter, harassment/ cruelty on account of nonfulfilment of that demand and the prosecution is duty bound to prove that the harassment of the woman was with a view to compel her to fulfill the dowry demands of the husband and his relatives. The demands have to be specific and clear. To secure the conviction of accused persons under said provision, the prosecution has to prove the time when such demands were made, by whom the demands were made and from whom such demands were made and sought to be fulfilled. It has been repeatedly held by Superior Courts that the allegations of dowry

demands in order to be strong enough to secure conviction of a person must have the necessary particulars such as time and dates and the nature of the demand.

The Hon'ble Supreme Court of India in case titled Satish Mehra vs. Delhi Administration & Anrs. reported in (1996) 9 SCC 766, that in case where there is no prospect of the case ending in conviction, the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on the future date.

The word cruelty in common English acceptation denotes a state of conduct which is painful and distressing to another. The legislative intent in Section 498A is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband, which can be attributed to be painful or distressing the same would be within the meaning of the section. In the instant case, there is no evidence to support the prosecution case.

Perusal of the deposition of the sole prosecution witness- the defacto complainant cum alleged the victim who needless to say is the most vital of cited prosecution witness reveals that nothing remotely incriminating has been said against the accused persons as such.

In the instant case the testimony of defacto-complainant is vital. And during her examination-in-chief she stated nebulous statement that the case has been filed due to small misunderstanding. And nothing more happen.

Now let us see the principles laid down by Apex Court in respect of testimony of Single witness. It is well settled principle of law that conviction can be based on the sole testimony of the complainant, if it's reliable and free from blemishes. However, there are catena of judgments of the Superior Courts cautioning that the court shall exercise utmost caution and care while relying on the sole testimony of a witness to the incident in order to exclude the possibility of false implication.

In **Bhimapa Chandappa Hosamani and Ors. Vs State of Karnataka**, reported in **JT 2006 (12) SC 76**, the Hon'ble Apex Court observed as follows:

“This court has repeatedly observed that on the basis of the testimony of a single eye witness a conviction may be recorded, but it has also cautioned that while doing so the court must be satisfied that the testimony of the solitary eye witness is of such sterling quality that the court finds it safe to base a conviction solely on the testimony of that witness. In doing so the court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness.”

Judging on the touchstone of above noted principles of law, the testimony of P.W.1, in the present case, falls within the ambit of neither wholly reliable nor wholly unreliable testimony inasmuch as, in her examination-in-chief she has made nebulous statement that there was small misunderstanding taken place between him with her husband and her in-laws.

The three cardinal principles of Criminal Jurisprudence which a judge must adhere to while administering justice in criminal cases are that, firstly, the accused must be presumed to be innocent until he is proved to be guilty. Secondly, the onus to prove its case beyond reasonable doubts lies affirmatively on the prosecution and thirdly, this onus of the prosecution never shifts. There are catena of rulings as to this principle of law that the burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the court cannot record a finding of the guilt of the accused. Prosecution must stand on its own legs and must prove the story told by it at the very first

stage. The manner of occurrence alleged by the prosecution must be established beyond doubt before the accused can be convicted.

The Hon'ble Supreme Court of India in case titled **Satish Mehra Vs. Delhi Administration & Anrs. reported in (1996) 9 SCC 766**, that in case where there is no prospect of the case ending in conviction, the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on the future date.

Nowhere is there any whisper of mental or physical torture over demand of dowry or cruelty of the nature contemplated under section 498A I.P.C. which are the basic ingredients of offence under Section 498A of I.P.C. Also though the defacto complainant stated nothing to support the prosecution case, she was not declared hostile by the prosecution either.

It appears from the evidence on record that defacto complainant cum victim of the alleged offence have withheld support from the prosecution and has deposed that the case was out infliction of torture on her by accused persons. She has not stated anything about the demand of dowry with her or ingredients of cruelty. There is no corroboration to the F.I.R. stated allegations that the accused persons inflicted torture upon her.

In the light of discussions made herein before, this court has no hesitation to say that the prosecution could not succeed in proving the case beyond all reasonable doubts.

Consequently, the ingredients to bring home the alleged charge has not been proved by the prosecution.

Hence, it is

Ordered

that the accused persons namely Rahul Singh S/O Jibesh Singh, Jibesh Singh S/O Late Satrugan Singh, Minu Singh W/O Jibesh Singh all are resident of Nayabasti, Thutha Pukur, P.S. Kotwali, District – Jalpaiguri and Hari Narayan Singh S/O Late Aditya Narayan Singh and

Sraban Singh S/O Hari Narayan Singh both are resident of Joynagar, P.O. Talma, P.S. Kotwali, District – Jalpaiguri, are found not guilty for the offence punishable under sections 498A of the Indian Penal Code 1860 and accordingly are acquitted from this case under section 255 (1) of the Code of Criminal Procedure 1973 and set at liberty forthwith.

The Judgment signed, sealed and delivered in the open court in presence of both the sides on 25-02-2020 and tagged with the records in separate Nine sheets.

They be set at unconditional liberty forthwith.

All the accused person be released from the bail bond.

Witnesses are also discharged from their liabilities.

Sureties are also discharged from their liabilities.

Seized alat, if any, be dealt with as per existing provisions of law after expiry of period of appeal.

Bench Clerk II is directed to note in T.R. and to take all the necessary steps and upload the case in C.I.S.

The case is disposed of accordingly.

Typed by me
S/d. S.P. Shah
Judicial Magistrate,
2nd Court, Jalpaiguri.

S/d. S.P. Shah
Judicial Magistrate,
2nd Court, Jalpaiguri.