

IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
2ND COURT, LALBAGH

Present : Smt. Nilanjana Ghosh (J/O Code: WB01095)
Additional Chief Judicial Magistrate,
2nd Court, Lalbagh,
Dist- Murshidabad

GR No. 1897 of 2022
TR No. 1279 of 2022
CIS no. 2328 of 2022
(CNR No. WBMD09-004695-2022)

State

Vs.

1. Mosaraf Hossain
2. Alauddin Sk
3. Umesha Bibi

..... Accused persons

Case Under Section 498A/34 of I.P.C.

(Arises out of Bhagwangola P.S Case No-417/2022, dated 18.06.2022)

Date of delivery of the Judgment – 13.06.2024

JUDGMENT

The instant case has its genesis in the written complaint lodged by the de facto complainant Rima Bibi D/O Japan Sk before the Officer in charge, **Bhagwangola** which was subsequently registered as **Bhagwangola P.S Case No-417/2022, dated 18.06.2022** u/s-498A/307 of Indian Penal Code and 3/ 4 of D. P Act.

It was stated by the de facto complainant that she got married with accused Mosarof Hossain more or less 07 years ago according to Muslim rites and customs. After her marriage, her husband and in-laws started inflicting torture upon defacto complainant both physically and mentally on demand of dowry. Defacto could not provide the same. Infliction of

torture became intensified. Lastly the accused persons assaulted her mercilessly and tried to kill her by strangulation. Hearing hue and cry neighbouring persons rushed to the spot and rescued the defacto complainant. Thereafter, the accused persons drove out the defacto complainant from her matrimonial home.

On the basis of allegation made by the de facto complainant, police initiated a case as **Bhagwangola P.S Case No-417/2022, dated 18.06.2022.**

The investigation was initiated accordingly and on 17.08.2022 the charge-sheet no. 405/2022 dated 29.06.2022 was submitted under sections 498A/323 of the Indian Penal Code and 3/ 4 of D. P Act. Cognizance was taken against the accused persons. Considering the materials on record, the charge under Section 498A/34 Indian Penal Code was framed against the charge-sheeted accused persons by this Court. The substance of charge so framed was read over to the accused persons to which they pleaded not guilty of committing the offence and claimed to be tried.

The prosecution produced de facto complainant **Rima Bibi** as PW-1. The prosecution did not adduce any other witness out of 12 charge-sheeted witnesses.

The accused persons were examined under section 313 Cr.P.C. where they again claimed themselves to be not guilty. However, no defence witness was adduced.

Points for Consideration

- a) Whether the prosecution has been able to prove the charge as framed against the accused persons?
- b) Whether the accused persons are liable to be punished under section 498A/34 of I.P.C.?

Decision with Reasons

Now this is to see whether the prosecution has been able to prove the charge as framed against the accused person or not.

P.W.1, the de-facto complainant, **Rima Khatun** deposed that she got married with accused **Mosarof Hossain** more or less 07 years ago according to Muslim Shariyat. She stated that due to some matrimonial dispute over family affairs, she instituted the instant case. She stated that she has been residing at her matrimonial home. During her cross-examination, she could not say the contents of her written complaint.

I.O and other witnesses of this case are not examined.

From the deposition of de facto complainant, it appears that she had initiated the instant case against her husband and in laws due to family dispute. She has not stated anything in her examination-in-chief about any kind of assault by the accused persons upon her. The offence alleged by the de facto complainant is more or less in the nature of personal wrong, rather than a threat to society at large and accordingly, it appears that the complainant has no grievance against the accused persons at present. Considering that the complainant is residing with her husband (accused herein), prosecution closed the evidence as no useful purpose would be served by serving summons upon other witnesses. As such, no other witness has been examined and there is no corroboration of FIR story. It is palpably clear that prosecution has failed to establish the essential ingredients of Section 498A/34 IPC. The case is virtually standing without any sufficient evidence to establish the offence and prosecution has failed to prove the charges against the accused persons. Accordingly, the accused persons are not liable to be punished.

Hence, there is no other option but to acquit the accused persons.

Hence, it is

O r d e r e d

that the accused persons, namely, **Mosaraf Hossain, Alauddin Sk** and **Umesha Bibi** are found not guilty of committing the offence punishable under section 498A/34 of Indian Penal Code and are hereby acquitted of the charges framed against them as per section 248(1) of Cr.P.C.

They are also discharged from the liability of their respective bail-bonds and set at liberty.

The sureties are also discharged.

The victim has right to prefer an appeal against this Judgment and order of acquittal in terms of proviso of section 372 of the Cr. P.C and to avail free legal aid service as per entitlement. Let a copy of this judgment and order be forwarded to the District Magistrate, Murshidabad and the Secretary DLSA, Murshidabad for due intimation of the same to the victim of the case as defined under section 2(wa) of the Cr. P.C in compliance with solemn direction of the Hon'ble High Court, Calcutta passed on 29.03.2022 in Sabitri Bhunya Vs. State of West Bengal and others (CRA 266 of 2020/CRAN 1of 2020) and also for defrayal of the compensation to the victim.

Note in register.

Dictated & corrected by me :

Sd/-
(Nilanjana Ghosh)
A.C.J.M, 2nd Court
Lalbagh.

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A.C.J.M, 2nd Court,
Lalbagh.