

G.R. Case No.496 of 2019
(CNR-WBBK0A-000756-2022)

(1)

(J.O.C-WB01015)

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
KHATRA, BANKURA

Present: Smt. Parna Bhattacharya,
Additional Chief Judicial Magistrate,
Khatra, Bankura

Case No- G.R. 496/2019
T.R. No- 1661T/2022

[Reg. No.550/2022]

State of West Bengal

vs.

1. Santanu Pal @ Paul, 2. Gorachand Pal @ Paul and 3. Lalita Pal @ Paul all of village Ghola, P.S.-Taldangra, Dist-BankuraAccused Persons

U/s. 498A/323/406/506/34 of I.P.C. Read With Section 4 of Dowry
Prohibition Act,1961

Judgment Delivered On 22th Day of December, 2023

J U D G M E N T

This is a case U/s. 498A/323/406/506/34 of I.P.C. Read With Section 4 of Dowry Prohibition Act,1961.

The factual matrix of the prosecution case is that the defacto complainant Smt. Priyanka Pal W/o of Santanu Pal of P.S.- Taldangra, Dist.- Bankura has lodged one written complaint before P.S. Taldangra to the effect that her marriage was solemnized with accused No.1, Santanu Pal as per Hindu rites and customs. At the time of marriage, she was presented with 10 bhories of gold ornaments, furnitures worth of Rs.20,000/-, cooking utensils worth of Rs.15,000/- along with a cash of Rs.80,000/- and other household articles. After marriage, she went to her matrimonial home. But since inception of her marriage, she was subjected to both physical and mental torture for further

demand of dowry and it manifolded after birth of her daughter in the said wedlock, in year 2010. The de-facto complainant being demure in nature with stood all the tortures with great fortitude considering future prospects of her daughter. All the endeavours for amicable settlement did not yield any positive result. Finding no other alternative, she was compelled to take shelter at her matrimonial home. Subsequently, she has initiated this case.

On the basis of the said written complaint being Taldangra P.S. case No.128/2019 dated 23.09.2019 was started against the aforesaid accused persons U/s. 498A/323/406/506/34 of I.P.C. Read With Section 3/ 4 of Dowry Prohibition Act,1961.

The case was entrusted to S.I Saiful Sk. of Taldangra P.S for investigation. During investigation the I.O visited the P.O., prepared rough sketch-map along with index of the P.O. and examined the available witnesses and recorded their statements U/S. 161 Cr.P.C. The accused persons are surrendered before the Court wherefrom they were enlarged on bail.

After completion of investigation, I/O submitted charge sheet against the accused persons, being Taldangra P.S. Charge Sheet No.122/19 dtd. 31.10.2019 U/s. 498A/323/406/506/34 of I.P.C. and read with Section 3/ 4 of D.P. Act against the accused persons as a prima facie case was well established against them.

This Court took cognizance of the offences on the police report and transferred the case to its personal file for disposal.

After receiving the record in its personal file, this Court allowed the accused persons to remain on bail as earlier.

Thereafter, upon hearing both sides, charge was framed against the accused persons on 08.12.2022, U/s. 498A/323/406/506/34 of I.P.C. read with Section 4 of D.P. Act and the contents of the charge is read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

Thus, commenced the trial and the case was posted for evidence. The prosecution in support of its case has examined two witnesses:-

P.W.-01 – Priyanka Pal (Defacto Complainant).

P.W-02-Juthika Shit (mother of the de-facto complainant)

This apart the written complaint be marked as Exhibit-P-1/P.W-1.

After closure of the evidence for prosecution, the accused persons were examined U/s. 313 Cr.P.C on 22.12.2023 where they pleaded their innocence and declined to adduce any evidence in their support.

The defence case as it reveals from the trend of cross-examination of the P.Ws as well as the examination of the accused persons U/S. 313 Cr.P.C is that of absolute denial of the prosecution allegation and also of their complete innocence.

POINTS FOR DETERMINATION :-

1. Whether the prosecution has been able to prove its case against the accused persons beyond all reasonable doubts or not ?
2. Whether the accused persons are guilty of offences U/s. 498A/323/406/506/34 of I.P.C. read with Section 4 of D.P. Act or not ?

DECISION WITH REASONS :-

All the above points are taken up together for discussion for the sake of convenience, brevity and their inter-relation.

Now let us find out how far the prosecution has been able to prove its case against the accused persons beyond all reasonable doubts.

The de-facto complainant, Smt. Priyanka Pal in course of her testimony has not thrown any light about the incident by categorically stating that due to misunderstanding, she has initiated this case and that she harbours no grudge against the accused persons. The P.W-2, Juthika Shit has also maintained her stark silence on dock and stated that the matter in controversy has been settled amicably.

This is a case U/s. 498A/323/406/506/34 of I.P.C. read with Section 4 of D.P. Act. The burden is on the Prosecution to establish that the D/C i.e. the victim wife was subjected to physical and mental torture and was assaulted by the accused persons, who are her in-laws. To establish the charge U/s. 498A/406/506/34 of I.P.C read with Section 4 of D.P. Act there is necessity of

proving the willful conduct of the victim's her in-laws and the nature of such conduct is such that it may drive the victim to commit suicide or may cause grave physical or mental injury to her person or may cause danger to her life, limb or health and also harassment of the victim with a view to coerce her or her relative to meet demand of dowry in any form. But it must be borne in mind that not every petty quarrel will constitute cruelty in terms of this Section as held by **Hon'ble Apex Court in Paban Kumar Vs. State, 1998 SCC(Cri) 740.**

But it must be borne in mind that not every petty quarrel between spouses will constitute cruelty in terms of this Section. It is also need to be proved that there was a demand of dowry and the accused persons had accepted such dowry and the essential ingredients of offence U/S.406 of I.P.C. is that there must be an entrustment, there must be misappropriation of conversion to one's own use or use in violation of a legal direction. The accused was entrusted with the property or domain over it and he dishonestly misappropriated or converted to his own use such property or disposed of that property as held by the **Hon'ble Apex Court in Ram Narayan Vs. C.B.I. and reported in (2003) 3SCC 641.**

The prosecution has also failed to establish the basic ingredients of voluntary hurt as defined U/S-319 of I.P.C.

The essential ingredients of offence U/S.506 of I.P.C. includes the accused threatened someone with injury to his person, reputation or property.

2. The accused did so with intent to cause alarm to the victim,

3. The accused did so to cause the victim to perform any act which he was not legally bound to do.

Considering the evidence of prosecution and the facts and circumstances of the case, I have no hesitation to hold that the Prosecution has failed to prove the case, as the essential ingredient of the offence of cruelty which amongst to any lawful conduct as was likely to drive the D/C to commit suicide or to cause grave injury or danger to her life or health, whether mental or physical or to harm to such woman with the view to coercing her to meet unlawful demand or the accused being husband and in-laws of the de-facto complainant have caused

voluntary hurt or criminal intimidation to the victim by threatening her to cause injury to her person, thereby causing alarm to her, as the de-facto complainant has not shed any light about the incident. Accordingly, the accused persons are entitled to get an order of acquittal, under such facts and circumstances to meet the best interest of justice.

Hence, it is,

ORDERED

that the accused persons, namely, 1. Santanu Pal @ Paul, 2. Gorachand Pal @ Paul and 3. Lalita Pal @ Paul are found not guilty of the offences U/s. 498A/323/406/506/34 of I.P.C. read with Section 4 of Dowry Prohibition Act and are accordingly, acquitted from these offences as well as this case U/s. 248(1) Cr.P.C. They be set at liberty at once.

The sureties are discharged from the respective bail bonds.

Seized alamats, if any, be disposed off according to law after expiry of the period of appeal.

The victim has the 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 and let a copy of this order be forwarded to District Magistrate and Chairman SDLISA in terms of the decision of Hon'ble High Court at Calcutta dated 29.03.2022 in Sabitri Bhunya vs. State of West Bengal and others (CRA 266 OF 2020/ CRAN 1 of 2020).

This Judgment and order is pronounce in open court on this 22nd Day of December, 2023.

Dictated & Corrected by

Sd/-
(SMT. P. BHATTACHARYA)
A.C.J.M., Khatra

Sd/-
(SMT. PARNA BHATTACHARYA)
Additional Chief Judicial Magistrate,
Khatra, Bankura