

IN THE COURT OF JUDICIAL MAGISTRATE,
BARUIPUR, SOUTH 24 PARGANAS.

PRESENT : Smt. Ruby Singh
Judicial Magistrate 1st Class
JO- WB01354

GR - 2629/2022
CIS - 2629/2022

(Arising out of Sonarpur P.S. Case. No. 440/22 dated 25.04.2022)

State

--VS--

1. Rajib Kundu

----Accused Person

Under Section 498A/323 of I.P.C.

Judgment Dated : 20.05.2023

JUDGEMENT

The fact of the case in brief is that the defacto-complainant namely Indrani Mukherjee wife of Rajib Kundu stated that on 24.02.22 at 01:00 p.m her husband beat her over the issue of various family matters. She also stated in her complaint that her husband had illicit relation with a neighbour namely Suchismita Mukherjee, after knowing their relationship when she raised objection then her husband decided to divorce her and also threatened to sell their flat and ruin her financially. She informed the matter to her in-laws as well as husband of Suchismita Mukherjee but all of them ignored the matter. On 24.02.22 she went to M.R Bangur hospital and examined her injury in medico legal department.

Hence the de-facto complainant filed the instant Complaint and a specific case was instituted against the accused person. After completion of the investigation the accused person was charge-sheeted u/s- 498A/323 I.P.C and cognizance was taken

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against accused person by Ld. A.C.J.M, Baruipur and copy was supplied and the instant case was transferred to my file for trial and disposal in accordance with law.

On starting of trial, charge was framed u/s- 498A/323 of IPC and the same was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried in the open court.

In this case prosecution has produced and examined only two witnesses i.e the defacto complainant Indrani Mukherjee as P.W.1, and Sutapa Roychowdhury as P.W.2.

Thereafter evidence from the side of prosecution has been closed on prayer of Ld. A.P.P and accused person was examined u/s 313 of Cr.P.C. He has declined to adduce any evidence. Argument has been heard from both sides in full.

From cross-examination of Prosecution Witness and examination of accused person u/s 313 of Cr.P.C, it appears that he has not made out any defence case apart from claiming innocence only.

Points For Consideration

1. Whether accused person has committed the offences charged against him?
2. Whether prosecution has successfully proved the case against the accused beyond reasonable doubt?

DECISION WITH REASONS

All the points are taken up together for sake of brevity and convenience of discussion.

P.W-1, Indrani Mukherjee, being the de-facto complainant of this case identified the accused as her husband. The complaint was written by her own handwriting and she proved her signature on the Complaint and the same is marked as **Exhibit 1**. She deposed that she filed this case out of her matrimonial dispute.

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During cross-examination she admitted that she does not remember the contents of her complaint. She also admitted that she has no allegation against the accused and out of misunderstanding she filed this case. She further admitted that she is staying with the accused at her matrimonial house happily and in peace. She also stated that out of wedlock they have one daughter namely Niharika Kundu.

P.W-2, Sutapa Roychowdhury stated that de-facto complainant of this case is her sister. She also identified the accused as her sister's husband. Se also stated that her sister filed this case out of her matrimonial dispute.

During cross-examination she admitted that she has no allegation against the accused person and out of misunderstanding her sister filed this case. She also admitted that her sister is staying with the accused at her matrimonial house.

Now while appreciating the evidence as a whole, I find that the P.W.1 defacto complainant has not corroborated the story of prosecution. She deposed that she filed this case out of misunderstanding arising out of matrimonial dispute. She further admitted that she does not remember the contents of her FIR. She also admitted that she is living with the accused in her matrimonial house happily and in peace. She also admitted that she has no allegation against the accused.

PW2 also stated that she does not have any allegation against the accused persons.

No other witness has turned up before the court to support the prosecution case.

It is well settled principle of law that initially burden of proof lies upon the prosecution in order to prove its case and, if there is any doubt the accused person will get the benefit of that doubt. From the evidence on record it is clear that the prosecution has not been able to prove the alleged incidence. The allegation made in the complaint does not prove the case of the prosecution and it requires proof by cogent evidence. Therefore in my considered view the prosecution has failed to prove the instant case beyond all shadows of reasonable doubt.

Thus the case fails.

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Hence, it is

ORDERED

that the accused person namely **1. Rajib Kundu** is found not guilty of any offence punishable u/s. **498A/323** of I.P.C. and accordingly he is acquitted under provision of section 248(1) of Cr.P.C.

The accused person be set at liberty and sureties be discharged from the bail bonds.

No order is passed u/s. 452 of Cr.P.C. as because nothing was seized by the I.O. during the course of investigation and there is no such claim from either sides.

The defacto complainant/victim has the right to prefer an appeal under the proviso to sec 372 of Cr.P.C. and if necessary, to avail free legal assistance through the legal services authorities concerned to prefer and prosecute such appeal against the judgement of acquittal of the accused persons.

Let a copy of this judgement be sent to the DLSA, South 24 Parganas and District Magistrate, south 24 Parganas.

Typed and printed by me

(Smt. RUBY SINGH)

Judicial Magistrate 1st Class
Baruipur, S. 24 Pgs.

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Judicial Magistrate 1st Class
Baruipur, S. 24 Pgs.

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Order dated : 20.05.2023

Today the date is fixed for examination of accused person u/s.313 Cr.P.C.

The accused person on C.B is present before this court.

Ld. Advocate for the accused person is also present.

Ld. A.P.P is also present before this court.

Accused person is examined u/s. 313 Cr.P.C in full & discharged.

Ld. Defence Advocate and the accused submits of not adducing any D.W.

Accordingly the record is now taken up for hearing argument.

Heard the argument on behalf of both sides in full.

Later :

Judgement is now ready.

It is typed and printed in separate sheets and kept with the C.R.

It is pronounced in open court in presence of the accused, Ld. Defence counsel and Ld. Prosecution.

Hence it is,

ORDERED

that the accused person namely **1. Rajib Kundu** is found not guilty of any offence punishable u/s. **498A/323** of I.P.C. and accordingly he is acquitted under provision of section 248(1) of Cr.P.C.

The concerned sureties are discharged from their liabilities.

Inform the concerned sureties.

The accused persons be released from their respective bail bonds.

Note in the relevant registers.

Typed and printed by me

(Smt. RUBY SINGH)

Judicial Magistrate 1st Class
Baruipur, S. 24 Pgs.

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Baruipur, S. 24 Pgs.