

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

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

GR- 2631/2022
CIS- 2631/2022

(Arising out of Baruipur P.S. Case. No. 714/22 dated 24.04.2022)

State

--VS--

1. Kalyanshish Bera
2. Debashis Bera

----Accused Person

Under Section 498A/406/34 of I.P.C.

Judgment Dated : 26.04.2023

JUDGEMENT

The fact of the case in brief is that the defacto-complainant namely Moumita Giri stated that she got married to Kalyanshish Bera on 22.04.2016, according to Hindu rites and customs. At the time of marriage, complainant's father gave valuable articles as per the demand of the accused husband and his family members. During her conjugal life the accused persons started torturing her both physically and mentally. The accused persons were of cruel in nature. The complainant was assaulted by the accused husband on the instigation of the other accused. After 1 year of her marriage she went to her father's house for jamai shashti and since then she is staying there. The complainant also complained before the Mahila Commission. Many dates were fixed for compromise but the accused did not appear. The accused also did not return her stridhan. She also filed one complaint before Bankshall Court. The complainant also received maintenance order of Rs.9,000/- per month in her favour but the accused did not pay the same. The complainant then approached the accused to return her stridhan and file mutual divorce but the accused did not agree. The complainant is still living in destitute condition.

Contd....P/2

Hence the de-facto complainant filed the instant written Complaint and a specific case was instituted against the accused person. After completion of the investigation the accused person were charge-sheeted u/s- 498A/406/34 of I.P.C and cognizance was taken 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 against accused persons u/s- 498A/406/34 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 three witnesses i.e the defacto complainant, Moumita Giri as P.W.1, Sandip Kr. Giri as P.W.2 and Lakshmi Rani Giri as P.W.3.

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, Moumita Giri, being the de-facto complainant of this case identified the accused and proved her signature on the written Complaint and the same is marked as **Exhibit 1**. She deposed that she filed this case out of misunderstanding arising out of her matrimonial dispute.

Contd....P/3

During cross-examination she admitted that she does not remember the contents of her complaint. She further admitted that she has filed for mutual divorce and the same is pending before Ld. FTC Court, Baruipur. She further admitted that she has no allegation against the accused persons and she filed this case out of misunderstanding.

P.W-2, Sandip Kr. Giri stated that de-facto complainant of this case is his daughter. He further deposed that his daughter filed this case out of misunderstanding arising out of her matrimonial dispute.

During cross-examination he admitted that her daughter is now staying at his house. He also admitted that her daughter filed out of misunderstanding and that he has no allegation against the accused persons. He further admitted that his daughter has filed for mutual divorce.

P.W-3, Lakshmi Rani Giri stated that de-facto complainant of this case is her daughter. She further deposed that her daughter filed this case out of misunderstanding arising out of her matrimonial dispute.

During cross-examination she admitted that her daughter is now staying at her house. She also admitted that her daughter filed out of misunderstanding and that she has no allegation against the accused persons. She further admitted that her daughter has filed for mutual divorce.

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 admitted that she filed this case out of misunderstanding arising out of her matrimonial dispute. She further admitted that she has no allegation against the accused persons. She also admitted that she is staying at her father's house and she has filed for mutual divorce. P.W.2 and P.W.3 also admitted that they do not have any allegation against the accused persons and that their daughter filed this case out of misunderstanding.

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.

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Therefore in my considered view the prosecution has failed to prove the instant case beyond all shadows of reasonable doubt.

Thus the case fails.

Hence, it is

ORDERED

that the accused persons namely **1. Kalyanshish Bera and 2. Debashis Bera** are found not guilty of any offence punishable u/s **498A/406/34** of I.P.C. and accordingly they are 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.

(Smt. RUBY SINGH)

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

GR 2631/2022
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Order dated : 26.04.2023

Today is fixed for evidence.

The accused persons (2) are present before this court.

Ld. APP is also present.

3 witness are present and is examined and cross-examined in full as P.W.1, P.W.2 and P.W.3 and discharged.

None of the witnesses has deposed anything incriminating against the accused persons.

Ld. APP also submits to close the evidence.

Hence, evidence is closed.

Later,

The (2) accused are 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 persons namely **1. Kalyanshish Bera and 2. Debashis Bera** are found not guilty of any offence punishable u/s **498A/406/34** of I.P.C. and accordingly they are 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)

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Baruipur, S. 24 Pgs.

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