

IN THE COURT OF JUDICIAL MAGISTRATE, BARUIPUR

**Present: Ms. Ishita Acharya
J.O. Code- WB01401**

Date of Judgment-26.09.2024

Case no:- G.R. Case No. 644 of 2022

CIS No.:-644 of 2022

CNR NO.:-WBSP0F0021222022

T.R.No.:- 1459/22

State

v.

Dipankar Bhuniya and Debkumar Bhuniya

.....Accused persons

(Arising out of Kultali P.S. Case No. 57/22 dated 28.01.2022

Under Sections 498A of the Indian Penal Code and sections-3/4 D.P.Act)

J U D G M E N T

PROSECUTION'S CASE IN NUTSHELL:

The compendium of the prosecution case is as follows:

Briefly stated, as summed up from the typed written complaint, submitted by one Manoranjan Das, the prosecution story is that, the daughter of the defacto complainant was married to accused person no. 1 about one year ago from the date of the written complaint. After marriage, the the daughter of the defacto complainant was subjected to mental and physical torture at the hands of the accused persons. On 27.01.2022 at about 7PM, the accused persons called defacto complainant and informed that they would not take back his daughter.

On the basis of the typed written complaint which was treated as FIR, the investigation machinery was set into motion, and the Kultali P.S. Case No. 57/22 dated 28.01.2022 Under Sections 498A/406 IPC and sections-3/4 D.P.Act were started against the abovenamed accused persons and ASI Ranjit Kumar Maity was endorsed with the investigation.

INVESTIGATION:

Thereafter, investigation commenced which culminated into submission of chargesheet against the accused persons under Sections 498A IPC and sections-3/4 D.P.Act.

**COGNIZANCE OF OFFENCE, APPEARANCE OF THE ACCUSED
PERSONS AND OFFENCE EXPLANATION:**

Cognizance was taken by the Learned Court of ACJM, Baruipur vide order dated- 23.09.2022 and this case was transferred to this Court for trial and disposal and the same was received by this Court on 23.12.2022. Charge under Sections 498A IPC and sections-3/4 D.P.Act were framed against the accused persons and the substance of accusation was read over to the accused person on 29.04.2023 and for which they pleaded not guilty and claimed to be tried.

TRIAL:

In order to drive home the charges, prosecution produces two witnesses in support of it's case.

PW-1: Manoranjan Das (the defacto complainant as well as CSW-1) The signature of the witness in the written complaint has been marked as Exhibit-P-1/PW-1.

PW-2: Rubi Bhuniya Das (under section-311 of CrPC)

The accused persons have been examined under section 313 of Cr.P.C and they did not adduce any defence witness.

Defence contention was in short, a bare denial of the prosecution case in limini, that they were innocent and had no complicity with the crime and was falsely implicated.

Heard Arguments.

POINTS FOR DETERMINATION:

1. Whether prosecution has been able to prove the case beyond reasonable doubt by producing cogent evidence?
2. Whether the accused persons are liable to be convicted or not?

DETERMINATION WITH REASONS:

Both the points of determination are taken up for brevity of discussion.

Now, entering into the evidence on record from which it appears that at the very outset, Manoranjan Das, i.e. the defacto complainant as well as CSW-1 in the instant case was examined as PW-1 and stated that his daughter at present has filed for divorce against her husband and she is residing with at her parental house. At present he does not have any allegations against the accused persons and moreover, he does not have anything to say regarding the written complaint.

Rubi Bhuniya Das, i.e. the daughter of the defacto complainant was examined as PW-2 and stated that she has filed for divorce against her husband and she is residing with at her parental house. At present she does not have any allegations against the accused persons and moreover, she does not have anything to say against the accused persons.

After scrutinizing the material on record, it appears to this Court that prosecution has failed to prove the accusations against the accused persons. Prosecution has examined two witnesses. After perusal of the deposition of PW-1, it appears to this Court that there is no sufficient ground to prove the allegation against the accused persons. There is no material of incriminating nature on record to ascertain the guilt of the accused persons beyond reasonable doubt.

Moreover, in order to apply the provision of section 498A, it is necessary that the alleged torture upon the victim must be in the pretext of demanding dowry. In the instant case, not a single straw of factum of alleged cruelty and torture by the accused persons upon the PW-1, for demand of dowry, has been explicated by her at the time of oral evidence.

Considering all the aspects and after appreciation of all the materials produced before this Court in the form of oral as well as documentary evidence, this Court has no other alternative but to hold that the evidence of the prosecution suffers from material lacunae insofar as against the accused persons. Under such circumstances, the benefit arising out of that lack of evidence should go in favour of the accused persons. This Court has no alternative but to hold that there is no iota of ingredients to constitute the offences under Section 498A of I.P.C and sections-3/4 D.P.Act and as such the accused persons deserves to be acquitted from this case.

Thus, the abovementioned points under determination are therefore answered in the negative.

Hence, it is,

ORDERED

that **the two accused persons namely *Dipankar Bhuniya and Debkumar Bhuniya* are found not guilty** of the offences punishable under Sections 498A IPC and sections-3/4 D.P.Act and **they are hereby acquitted from the instant case under section- 248(1) of Cr. P.C.**

The accused persons are discharged from their bail bond and set at liberty forthwith.

The judgment is pronounced in the open Court in presence of the accused persons and then under my hand and seal of the Court today. **The victim Rubi Bhuniya Das be informed about her right to prefer an appeal under proviso to section-372 of CrPC and if necessary to avail free legal assistance through the SDLSC, Baruipur to prefer and prosecute such appeal.**

Let a copy of this order be forwarded each to the **Learned Chairman,SDLSC, Baruipur and District Magistrate, South 24 Parganas** for information as per the dictum of the **Hon'ble High Court, Calcutta in the case of *Sabitri Bhunya vs State of West Bengal and others*.**

BC-1 to update the Court diary and cause list and CIS.

Stenographer to upload the judgment and order in the CIS.

BC-II to update the concerned register.

Let the record be sent to the record room after expiry of the appeal period as per the provisions of law.

Typed by me,

Judicial Magistrate, Baruipur

Judicial Magistrate, Baruipur

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(Present-Ms. Ishita Acharya, J.O.Code- WB01401)

Order dated 26.09.2024

Today is fixed for evidence/report.

The ***two accused persons namely Dipankar Bhuniya and Debkumar Bhuniya on C/B*** are present by filling hazira.

Ld. APP in charge is also present.

CSW-1 namely Manoranjan Das and his daughter namely Rubi Bhuniya Das are examined as PW-1 and 2 and discharged. Upon prayer by the LD.APP in charge, the evidence of prosecution is hereby closed.

Now the record is taken up for examination of accused persons under section 313 Cr.P.C. On perusal of the evidence on record, on the basis of evidence of prosecution, the accused persons are examined u/s 313 Cr.P.C. and kept with case record.

Ld. Advocate for the accused persons and accused persons submitted for not adducing the defence witnesses, accordingly the DW is closed.

Now the record is taken up for hearing argument. Heard the Argument. Considered.

Fix after recess for judgment.

D/C by me,

Judicial Magistrate, Baruipur

Judicial Magistrate, Baruipur

Later,

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