

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE
2ND COURT, BARUIPUR, SOUTH 24 PARGANAS**

PRESENT : **ANIL KUMAR KUSHWAHA,**
Additional Chief Judicial Magistrate
2nd Court, Baruipur, South 24 Parganas

GR. Case No. 7868 of 22

(arising out of Joynagar PS Case no. 677/22)

CIS No. 7868 of 22

TR. No. 440 of 2023

U/S 498A/34 of IPC

Delivered in open Court on 21.08.2023

State

versus

- 1) Aminuddin Mondal son of Late Haran Mondal
 - 2) Sujauddin Mondal son of Late Haran Mondal
 - 3) Sofiuddin Mondal son of Late Haran Mondal
 4. Amena Mondal wife of Late Haran Mondal
 - 5) Anowara Mondal wife of Sujauddin Mondal
 - 6) Halima Mondal wife of Sofiuddin Mondal
- all of Vill-Padmerhut Gayen Para, PO Dakshin Barasat, PS
Joynagar, South 24 Parganas

.....Accused persons

J U D G M E N T :

1. The de-facto complainant Jahanara Mondal filed a written complaint and accordingly the Joynagar PS Case no. 677/22 dated 17.12.22 was initiated.

2. All the 06 accused persons voluntarily surrendered before the Court of Ld. ACJM, Baruipur and the said Ld. Court enlarged them all on bail.

3. Charge-sheet was submitted against 06 accused persons under section 498A IPC.
4. The case was transferred to this court for trial. When charge was framed the accused persons pleaded 'not guilty' to the offence under section 498A IPC.
5. Prosecution produced witnesses on his behalf to prove his case.
6. When accused persons were confronted with the incriminating evidences u/s 313 Cr.PC they described themselves as innocent and declined to adduced evidence on their behalf.

Accusations and Evidences :

7. The case of the prosecution – The marriage of the complainant was solemnized with accused no.1 as per Muslim Rites and Customs. Since marriage the accused persons tortured upon the complainant physically and mentally for demand of more dowry. Lastly on 17.12.22 at about 6:00 PM the accused persons assaulted the complainant mercilessly and drove her out from her matrimonial house.
8. **Evidences** – I) The complainant Jahanara Mondal adduced herself as PW1 as the first witness of the prosecution and stated that normal marital discord crept in for which she lodged the complaint against her husband and in-laws. She also identified the accused persons. She stated that discord crept in leading to altercation and ultimately she lodged complaint. She further stated that she did not recollect the name of the scribe of the written complaint. She failed to corroborate her written complaint at the time of adducing evidence. She further stated that a family dispute cropped up and she left her matrimonial house on her own accord. She further stated that police never interrogated her about the occurrence. She admitted in her

cross-examination that presently she is residing with her husband and her in-laws in her matrimonial house peacefully.

II) Prosecution produced Rehena Bibi as PW2 who is the mother of the complainant. She also identified the accused persons. She further stated that normal marital dispute crept in her daughter's matrimonial house. She also did not corroborate the written complaint. She further stated that police did not interrogated her. She admitted in her cross-examination that at present her daughter residing with her husband and in-laws in her matrimonial house peacefully. Prosecution did not produce other witness.

9. **Exhibit:** The signature of the complainant on the written complaint is marked as Ext.1.

Points for consideration :

10. *Point no.1* – Whether the accused persons are husband and in-law of the complainant ?

Point no. 2 – Whether the accused persons caused physical and mental torture upon the complainant over further dowry of the complainant ?

Appreciation of evidence :

11. Points no. 1 & 2 are taken up together for the sake of brevity and convenience. It is also well settled that to prove occurrence of an offence the prosecution must prove the basic certainties of an offence i.e. certainty of place of occurrence, time of occurrence and the manner of occurrence. Hence the alleged offence will be looked into in the light of the afore said guidelines.

12. It has already been discussed above that the complainant adduced evidence as the first witness of the prosecution and stated that normal marital discord crept in and she lodged the complaint against her husband and in-law. She identified the accused persons but

she failed to prove the contents of her written complaint on which she put her signature. She stated that discord crept in leading to altercation and at last she lodged complaint. The written complaint is handwritten but the PW1 failed to say the name of the scribe of the complaint. On the other hand PW1 stated that she is residing with her husband and in-laws peacefully. PW1 stated that she left her matrimonial house on her own accord due to matrimonial discord. Hence it appears from the materials evidence that PW1 was never driven out from her matrimonial house rather she left her matrimonial house on her own accord on the basis of a normal discord with the accused persons and on the other hand at present PW1 residing with her husband and in-laws peacefully in her matrimonial house. Accordingly, prosecution failed to prove the written complaint by the defacto complainant/PW1. Prosecution produced mother of the complainant namely Rehena Bibi as PW2 who stated that a normal marital discord crept in her daughter's matrimonial house. She further admitted that her daughter is residing with her husband in her matrimonial house peacefully. Prosecution could not produce other witness on his behalf to prove this case. Accordingly, the witnesses failed to corroborate the written complaint of the prosecution. Hence, the prosecution failed to prove his case. In other words the prosecution has failed to salvage the situation tabling cogent proof to induce the court to ignore the statement of the defacto complainant. If I go by the statement of the defacto complainant nothing but arguments took place in between family members due to discord. In other words the prosecution has failed to salvage the situation tabling cogent proof to induce the court to ignore the statement of the defacto complainant. I must also keep it in my mind that according to the petitioner she narrated the incident in the same fashion while registering the complaint. I have no other option but to hold the complaint was not written in accordance with the narration of the complainant. If I go by the statement of the defacto complainant nothing but arguments took place between the family members due to

discord. Such a discord is quite a common phenomenon and hardly there are any family members who have not experienced it and criminality cannot be attached with it so long a specific allegation of physical and mental torture is made. In the given situation no such allegation has been labelled by the wife when she deposed on behalf of the prosecution. Had the situation been that much intolerable she would not reside and keep relation with her husband and family members and living with them in her matrimonial house. Her narration does not at all match with the grave situation described in the written compliant and the statement recorded under section 161 Cr.PC. The trustworthiness of the final report and supporting evidence touched the nadir and the benefit must go in favour of the accused persons.

Decision with reasons :

13. In view of the deliberation made above I have no hesitation to hold that the prosecution has failed to prove the charges labeled against the accused persons beyond reasonable doubt and the accused persons are entitled to be exonerated of the charges.

14. Hence, it is

ordered

that the 06 accused persons 1) Aminuddin Mondal son of Late Haran Mondal, 2) Sujauddin Mondal son of Late Haran Mondal, 3) Sofiuddin Mondal son of Late Haran Mondal, 4. Amena Mondal wife of Late Haran Mondal, 5) Anowara Mondal wife of Sujauddin Mondal and 6) Halima Mondal wife of Sofiuddin Mondal; all of Vill-Padmerhut Gayen Para, PO Dakshin Barasat, PS Joynagar, South 24 Parganas are hereby acquitted from the charge u/s 498A/34 of IPC as per provision laid down in the section 248(1) CrPC.

15. The accused persons are discharged from their respective bail bonds.

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

17. The defecto complainant cum victim has the right to prefer an appeal under the proviso to Sec. 372 CrPC 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.

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

Note in T.R. BC to comply.

Dictated and corrected by me

Sd/-

A.C.J.M,
2nd Court, Baruipur
South 24 Parganas

Sd/-

A.C.J.M,
2nd Court, Baruipur
South 24 Parganas.
J.O. Code. WB00945