

IN THE COURT OF JUDICIAL MAGISTRATE, 1st
COURT,
BASIRHAT, NORTH 24 PARGANAS.

Present : Shri AVISEK MINJ (J.O. Code: -WB01520)
Judicial Magistrate,
1st Court, Basirhat,
North 24 Parganas.

GR Case No 4867/2021
C.N.R: WBNP 11-003336-2022
REGN No.: -2159/22
TR-767/2022

STATE OF WEST BENGAL

Vs.

1. Israil Mondal
2. Hafija Bibi

.....Accused persons.

Allegation Under Section : 498A/34 of I.P.C.

Date of delivery of Judgment : 30th DAY OF JANUARY, 2023

JUDGMENT

Mina Khatun Bibi D/o- Amir Ali Mondal is the *de facto* complainant in this case. On 31-10-2021 she made a complaint to Baduria P.S alleging that she got married with Israil Mondal on 07.11.2018. In her matrimonial house she was tortured both physically and mentally by her husband and in laws for the demand of more dowry. On 30.10.2021 her husband assaulted on her with a view to kill her. She was rescued by the local people. She was also treated at Rudrapur Rural Hospital. Based on the above stated facts case was lodged.

Pursuant to the aforesaid complaint Baduria P.S started Case No. 650 of 2021 dt. 31-10-2021 under Sections 498A/307/406/34 of IPC

and Section 4 of D.P. Act against the accused persons. Formal FIR was lodged by the O/C, Baduria PS on 31-10-2021 and he entrusted A.S.I Ashok Kr. Das of Basirhat P.S to conduct investigation in this case.

On 10-11-2021, out of 02 accused persons, accused namely Hafija Bibi and on 29-11-2021 another accused person namely Israil Monda surrendered before Ld. A.C.J.M. Court at Basirhat and they were enlarged on court bail.

After completion of the investigation charge sheet no. 714 of 2021 Dated: 29-11-2021 was filed by the Investigating Officer u/S 498A/325/34 of Indian Penal Code and Section 4 of D.P. Act. Thereafter, Ld. A.C.J.M., Basirhat took cognizance of this case on 23-12-2021 and served the copies of the FIR and its annexure to the accused persons as appeared under section 207 of Cr.P.C. on 26-04-2022.

On 13-06-2022, this court received the case record on transfer for disposal. On 25-07-2022 the charges were read over u/S 498A/34 of IPC. Charge framed was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried and hence the trial commenced.

To prove the case the prosecution examined witness namely Mina Khatun Bibi, the *de facto* complainant as PW-1.

During the prosecution evidence, the prosecution in support of its case marked the Signature of the PW-1, namely Mina Khatun Bibi, on the written complainant dated 31-10-2021 as Exhibit-1.

After closure of the evidence of prosecution on 22-12-2022, the accused persons were examined as per provision u/S 313 Cr.P.C on

27.01.2023. At the time of such examination all the accused persons denied the material allegation brought against them. Accused persons also denied to adduce any evidence in defence on their behalf. Therefore, the evidence was closed.

Ld. Advocates for both the sides advanced their respective argument on 30.01.2023.

Points for consideration

1. whether the accused persons guilty of offence u/S 498A/34 of Indian Penal Code or not?
2. Has the prosecution been able to prove its case beyond reasonable doubt ?

Decision with reasons

For the sake of convenience and brevity of discussion all the points for consideration are taken up together for determination of the same as all the issues are related to each other.

The burden of proving beyond reasonable doubt lies on the prosecution. In the instant case, the prosecution to prove its case adduced the evidence of PW-1 namely Mina Khatun Bibi, the *de facto* complainant. PW-1 in her examination in chief stated that she cannot state the date of the incident. Due to some family issue she filed the case against the accused persons. Due to misunderstanding with the accused persons she filed the case against them. She submitted that presently she is residing with her husband. Police never interrogated

her relating to the case. She also submitted that she has no objection if the accused persons be acquitted of the case.

Cross Examination of PW-1 was denied by the Ld. Advocate of the accused persons.

The allegation u/S 498A of IPC relating to Husband or relative of husband subjecting her to cruelty has not been proved. The prosecution has not submitted any sufficient evidence. There are ample contradictions in regard to the occurrence of the offence. In this case the Prosecution has not been able to prove the allegations as alleged against the accused persons. The deposition of the complainant as PW-1, who is the principal witness, is a resounding rejection of the factual proposition of the charge against the accused persons. There is contradiction in between the statement of the complainant in the FIR and the deposition made by her as prosecution witness.

It is well-settled that the accused would not be brought to book merely on bald allegations of the complainant. Rather, the same has to be proved beyond reasonable doubt. In the instant case the prosecution case is virtually without sufficient evidence.

In the instant case, this court does not find sufficient satisfactory evidence which supports the story of the prosecution. The accused persons namely Israil Mondal and Hafija Bibi are therefore entitled to benefit of doubt and of acquittal.

Hence, it is

ORDERED

that the accusation u/S 498A/34 of IPC being not proved, the accused

persons namely Israil Mondal and Hafija Bibi are acquitted u/S 248(1) of Cr.P.C. and discharged from their respective bail bonds.

Sureties concerned be released from their liabilities.

This case is thus disposed of.

Let a copy of this be forwarded to Clerk in Charge, Bail Bond Register, for information and necessary action.

Note in register.

Typed by me.

(AVISEK MINJ)
*Judicial Magistrate of the First
Class, 1st Court, Basirhat.*

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