

In the Court of Additional Chief Judicial Magistrate, Tehatta
Present: Gourab Sen (J.O Code 01090)
A.C.J.M
Tehatta, Nadia.

GR Case No-86/2023
T.R.No.87/2023

State

Vs.

- 1. Selim Sk @ Selim Shaikh,**
- 2. Churabuddin Sk @ Surabaddin Shaikh,**
- 3. Mamoni Bibi @ Mamina Sekh,**
- 4. Noornahar Bibi @ Munnahar Mallik.....Accused Persons.**

Offence: Under Section: 498(A) IPC

Charge: Not Guilty.

Finding : Not Guilty.

Sentence or Order : Accused persons are
acquitted u/s 248(1) of Criminal Procedure Code.

Judgement delivered on- 01st day of February, 2024

JUDGEMENT

- 1.** The defacto complainant Ajmina Sk lodged FIR before Tehatta P.S., and alleging that her marriage was solemnized with accused Selim Sk according to Islamic Religion. After marriage, she went to her

matrimonial house and started residing there with the accused persons. Out of their wedlock one female child was born. The defacto complainant further alleged that during her stay at her matrimonial house the accused persons started to torture upon the complainant physically and mentally for the demand of more additional dowry. When the defacto complainant failed to fulfill their demand the accused persons tortured her both mentally and physically. Lastly, on 01-09-2022 a.m the accused persons assaulted her and tried to kill her by throating her neck. On hearing her screaming para people came to the spot and rescued her and thereafter she was driven along with her minor child out of her matrimonial house. On the basis of the written complaint lodged by the defacto complainant Tehatta Police Station initiated a specific case bearing no.749/2022 dated 01.09.2022 U/S 498A/325/307/34 of IPC.

2. On appearance of the accused persons, copies of relevant prosecution records were furnished to them in compliance of the provision u/s 207 of Criminal Procedure Code.

3. The substance of the accusation u/s 498A of IPC were read over and explained in Bengali to the accused persons on 24.01.2024 to which the accused persons pleaded not guilty and claimed to be tried.

4. The Prosecution in order to prove its case against the accused persons examined the defacto complainant Ajmina Sk as P.W.1.

5. Following documents was exhibited on behalf of the Prosecution.

Signature of defacto complainant on the written complainant was marked – as the Exhibit-1.

6. The evidence of prosecution was closed on 24.01.2024. After closer of the prosecution evidence, all the accused persons were questioned u/s 313 of Cr.P.C. They denied all the incriminating

particulars in evidence against them. No defence witness was adduced inspite of opportunities provided for.

7. **Points for determination:**

Heard the argument address by Ld. A.P.P. and the defence counsel.

Ld. A.P.P. submits that prosecution has proved its case beyond all reasonable doubts for which the accused persons should be convicted. On the other hand Ld. Defence Counsel submits that prosecution has measurably failed to prove its case and the accused persons are entitled to be acquitted.

Whereas the case of the prosecution, defence taken by the accused and evidence led in this case, the points arise for consideration are as follows :

1. Whether the defacto complainant was married with accused Selim Sk and after marriage, the accused tortured the defacto complainant in her matrimonial house for the demand of additional dowry ?
2. Whether the prosecution has been able to prove the charge levelled against the accused persons beyond reasonable doubt by adducing valid and cogent evidence?
3. Whether the accused persons are liable to be convicted for the alleged offence?

8. **DECISION WITH REASONS:**

Both the points are taken up together for consideration.

In criminal case burden is always upon the Prosecution to prove or to establish the case against the accused persons beyond reasonable doubt by adducing valid and cogent evidence and if the Prosecution fails to do so then, accused persons cannot be held guilty in the alleged offence. Benefit of doubt always goes in favour of the accused persons.

It would be pertinent to discuss here the essential ingredients of the provisions of Section 498A of IPC which are as follows :

- (1) A woman must be married.
- (2) She must be subjected to cruelty;
- (3) Cruelty must be of the nature
 - (I) any willful conduct as was likely to drive such woman;
 - (a) to commit suicide;
 - (b) cause grave injury or danger to her life, limb, either mental or physical;
 - (ii) harassment of such woman,
 - (1) with a view to coerce her to meet unlawful demand for property or valuable security; (2) or on account of failure of such woman or by any of her relation to meet the unlawful demand.
 - (iii) woman was subjected to such cruelty by : (1) husband of that woman, or (2) any relative of the husband.

So far as the offence under section 498A of the Indian Penal Code is concerned it is not every kind of cruelty which constitutes an offence under this section. Explanation given below under section 498A of the Indian Penal Code provides that cruelty, for the purpose of this section

means any wilful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) or harassment of the woman whether such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The explanation given below under section 498A of the Indian Penal Code does not warrant the view that simple desertion of wife by the husband amounts to cruelty.

In *Smt. Raj Rani Vs. State (Delhi Administration)* reported in AIR 2000 S.C.3559 the Hon'ble Court held that while considering the case of cruelty in the context to the provisions of Section 498A of IPC, the court must examine that allegations / acquisitions must be of a very grave nature and should be proved beyond reasonable doubt.

In *Girdhar Sankar Tawade Vs. State of Maharashtra* reported in AIR 2002 S.C. 2078 the Hon'ble Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498A of IPC and there should be a case of continuous state of affairs of torture by one to another.

Cruelty for the purpose of Section 498A of IPC is to be established in the context of Section 498A of IPC as it may be different from other statutory provisions. It is to be determined considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously / persistently or at least in close proximity of time of lodging the complaint. Petty quarrels can not be turned as "cruelty" to attract the provisions of Section 498A of IPC.

Keeping in mind the aforesaid position of law we shall examine the evidence adduced by the witness and also the materials on record and see in view of the nature of offence alleged to have been committed by the accused whether prosecution has proved its case beyond all reasonable doubt.

The Prosecution in order to prove its case against the accused persons examined defacto complainant namely Ajmina Sk deposed that she was married with Selim Sk 76 years back according to Islamic Religion and after marriage she went to her matrimonial house and started residing there with her husband and inlaws. After marriage, some minor family dispute arose between them. So, she had lodged a complaint at the police station.

Ld. Defence counsel cross examined the witness but nothing came out incriminating against the accused persons.

On analyzing entire evidence, a doubt is created regarding actual happening of the incident as claimed by the defacto complainant. The general principal of criminal jurisprudence is that the prosecution has to prove its case beyond all reasonable doubt and the benefit of every reasonable doubt should go to the accused.

9. On the basis of evidence in record the guilt of the accused persons are not proved beyond all reasonable doubt and the accused persons are entitled to get the benefit of doubt. Hence, the prosecution has failed to prove the points and points no.1, 2 and 3 are decided against the prosecution.

10. Hence, it is,

ORDERED,

that the accused persons namely **Selim Sk @ Selim Shaikh, Churabuddin Sk @ Surabaddin Shaikh, Mamoni Bibi @ Mamina**

Sekh and Noornahar Bibi @ Munnahar Mallik are found not guilty of offence under section 498A of I.P.C and they are acquitted under section 248(1) Cr.P.C and set at liberty. The bail bonds are cancelled and sureties are discharged from their respective liabilities.

Note in register.

Dictated & Corrected by me

Sd/- G. Sen

Addl. Chief Judicial Magistrate
Tehatta, Nadia.

Sd/- G. Sen

Addl. Chief Judicial Magistrate,
Tehatta, Nadia.