

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(Circuit Bench at Jalpaiguri)**

PRESENT: THE HON'BLE JUSTICE SUGATO MAJUMDAR

CRA 16 of 2019

Ranjan Das

Vs.

The State of West Bengal & Anr.

For the Appellant : Mr. Hillol Saha Podder

For the State : Mr. Aditi Shankar Chakraborty
Mr. Saurav Ganguly

Hearing concluded on : 18.08.2023

Judgment on : 22.08.2023

Sugato Majumdar, J:-

The instant appeal is preferred against the impugned judgment of conviction and order of sentence dated 31/07/2019 passed by the Additional Sessions Judge, Tufangunj, Cooch Behar in Sessions Case No. 15 of 2017, corresponding to Sessions Trial No.11 (5) of 2017 whereby the Appellant was convicted under Section 498A of the Indian Penal Code and sentenced to suffer simple imprisonment for six months as well as fine of Rs.10,000/- in default to suffer simple imprisonment of one month. The Appellant was also convicted under Section 323 of the Indian Penal Code and was directed to pay fine of Rs.1000/- in default to suffer simple imprisonment for one month.

Wife of the Appellant being the de-facto complainant lodged complaint in Boxirhat Police Station on 31/05/2016 alleging demand of dowry, torture and attempt to murder against her husband, the present Appellant and the mother-in-law. The written complaint was received and registered as Boxirhat P.S. Case No. 125/2016 under Sections 498A/307 of the Indian Penal Code. Investigation was initiated after completion of which charge sheet was filed under Sections 498A/307 of the Indian Penal Code. The case was triable by the Court of Sessions. After commitment charges were framed under Sections 498A/323/324/307/34. Charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Hence the trial began.

In course of the trial prosecution examined seventeen witnesses and produced various documents which were marked and exhibited. No defense witness was produced.

Defense of the accused persons were false implication and innocence, as appears from the trend of cross-examination and examination under Section 313 of the Code of Criminal Procedure.

The Trial Court convicted and sentenced the Appellant as aforesaid and acquitted the mother-in-law.

On being aggrieved and dissatisfied the instant appeal is preferred.

Mr. Saha Poddar, the Learned Counsel for the Appellant argued that the Trial Court failed to appreciate that no material evidence is there to invite convictions under Sections 498A/323 of the Indian Penal Code. In fact, the prosecution failed to establish any of the charges levelled against the Appellant.

There was failure to appreciate evidence and failure to apply the correct principle of law by the Trial Court, according to him. Mr. Saha Poddar prayed for acquittal of the Appellant.

The Learned Counsel appearing for the State argued, on the contrary, that the impugned judgment of conviction and order of sentence was correctly passed on proper application of law and perfect appreciation of evidence. The Learned Counsel for the State relied upon the decision of the Supreme Court of India in **State of Andhra Pradesh Vs. M. Madhusudhan Rao [(2008) 15 SCC 582]** to fortify his argument.

I have heard rival submissions.

Section 498-A reads as follows:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, ‘cruelty’ means—

(a) any wilful conduct which is of such a 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) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing 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 de-facto complainant stated in evidence that she was assaulted and tortured on demand of Rs. 50,000/-; she was beaten on chick by the Appellant; from time to time she was tortured; she was about to be killed on a railway bridge by the Appellant only rescued by two persons. There is no specific instance of any torture, assault or harassment. There is no mention of any point or period of time of such torture or harassment. P.W.8, the elder brother of the de-facto complainant stated in his evidence that the Appellant used to assault the de-facto complainant on consuming liquor. He did not mention that there was any demand of money on the part of the Appellant. Although the de-facto complainant stated that she was about to be killed, two eye witnesses who rescued her namely P.W.4 and P.W.9 did not corroborate the statement of the de-facto complainant that she was about to be killed. The Appellant was not at that spot, according to them. The de-facto complainant was medically examined twice. Both the medical report shows simple injuries like bite marks. Cruelty contemplated in Section 498A of the Indian Penal Code is different from day to day bickering between the husband and wife. Sweeping and general allegations cannot be relied upon to conclude that offence under Section 498A of the Indian Penal Code has been perpetrated. The Trial Court committed error in coming to conclusion that the Appellant is guilty of offence under Section 498A of the Indian Penal Code. There are latches on the part of the Trial Court in appreciation of evidence. Therefore, conviction under Section 498A of the Indian

Penal Code is liable to be quashed. However, conviction and sentence under Section 323 of the Indian Penal Code stands upheld, in view of oral and corroborating documentary evidence.

In nutshell, the instant appeal is partly allowed.

Conviction under section 498A stands quashed. Conviction and sentence under Section 323 of the Indian Penal Code stands upheld. The Appellant shall pay fine within fifteen days from today.

The instant appeal along with pending application, if any, is disposed of.

Lower Court record along with a copy of this judgment be sent back to the trial court.

(Sugato Majumdar, J.)