

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P No.07/2017

1. Sri Biplab Das,
Son of late Harendra Das.

2. Smt. Swapna Das,
Daughter of late Harendra Das.

3. Smt. Namita Das,
Wife of late harendra Das.
All of Kacharghat, Kailashahar, P.O & P.S-
Kailashahar, District-Unakoti, Tripura.

..... **Petitioner(s).**

Versus

THE STATE OF TRIPURA

Represented by PP, High Court of Tripura, Agartala.

..... **Respondent(s).**

BEFORE

THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Petitioner(s) : Mr. A. Acharjee, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P. P.

Date of hearing : 19th March, 2021.

Date of Judgment & Order : **30th June, 2021.**

Whether fit for reporting : NO.

JUDGMENT AND ORDER

[1] This criminal revision petition has been filed against the judgment dated 12.1.2017 passed by the Sessions Judge, Unakoti Judicial District, Kailashahar in Criminal Appeal No. 13(4) of 2014 affirming the judgment and order of conviction and sentence dated 27.09.2014 passed by the Chief Judicial Magistrate, Unakoti Judicial District, Kialashahar in case No. GR 151 of 2005 convicting the petitioners under Section 498A IPC and sentencing each of them to rigorous

imprisonment for a period of two years and fine of Rs.10,000/- each with default stipulation. It was ordered that, the fine money on realisation be paid to the victim.

[2] On the factual score, it appears that complainant Smt. Kalpana Das was married to accused Biplab Das on 07.11.2004. Their marriage was solemnized in a temple at Pabiacherra in Kailashahar in presence of a host of invitees including their relatives. After marriage the complainant accompanied her husband to her matrimonial home where they led their conjugal life. About two months after marriage her mother-in-law, Namita Das and sister-in-law, Smt. Swapna Das (both of whom are convicts) started abusing her for dowry. Her husband Biplab Das also joined them who demanded a cash sum of Rs.1,00,000/- (rupees one lakh) as dowry and started committing physical and mental torture on the complainant to fulfill such demand. Eventually on 30.04.2005 she was driven out of her matrimonial home. She was then sheltered by her parents. Before lodging the FIR at the police station, she met the elder brother of her husband for a settlement which yielded no result. Thereafter she lodged the FIR against her husband, mother-in-law and sister-in-law with the officer-in-charge of Kailashahar police station on 30.05.2005 alleging, inter alia, that they tortured her for dowry after her marriage and since her poor parents failed to meet the dowry demand she was driven out of her matrimonial home at about 6.30 'o' clock in the evening on 30.04.2005.

[3] Based on her FIR, Kailashahar P.S case No.76 of 2005 under Section 498A read with Section 34 IPC was registered against the
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petitioners and the case was endorsed to Md. Ruhul Alam, Sub-Inspector of police for investigation and report.

[4] In the course of investigation, said Investigating Officer visited the matrimonial home of the complainant where she was allegedly assaulted by her in laws and prepared hand sketch map indicating the material locations of the house in a separate index. Accused husband of the complainant surrendered in Court and the other two accused petitioners namely, Smt. Namita Das, mother of the accused husband and Smt. Swapna Das, his sister were arrested by police. Police statement of the material witnesses including the relatives of the complainant and her neighbours were recorded under Section 161 Cr. P.C. Having found sufficient evidence in support of the allegations, the investigating officer (PW-11) filed Challan No.87 of 2005 dated 28.06.2005 against all the three petitioners for trial of the case against them on the charge of offence punishable under Section 498A read with Section 34 IPC.

[5] The Chief Judicial Magistrate, Kailashahar received the charge sheet and vide his order dated 14.09.2005 and took cognizance of offence punishable under Section 498A read with Section 34 IPC against the petitioners and made over the case to the Judicial Magistrate, First Class at Kailashahar where the trial commenced with the framing of charge on 31.10.2005. The following charge was framed against the petitioners:

"That, you accused Biplab Das, being the husband of Smti Kalpana Das and you accused Smti Swapna Das and Smti Namita Das, being relatives of accused Biplab Das in your house Kacharghat, Kailashahar on several dates and time subjected Smti Kalpana Ds to cruelty by your wilful conducts which were of such nature as were

likely to cause grave injury of danger of life, limb and health or Smti Kalpana Das and all of you also mentally and physically harass Smti Kalpana Das with a view to coheres her or any person related to her to meet an unlawful demand for Rs.1,000.00 (rupees one lakh) and on account of her failure to fulfil our aforesaid illegal demand, on 30.04.05 at about 6.30 p.m all of you tortured Smti Kalpana Das physically and drove her out from your house and thereby all of you have committed an offence punishable under section 498(A) IPC and within my cognizance."

All the three petitioners pleaded not guilty to the charge and desired to stand the trial.

[6] In the course of trial, 11(eleven) witnesses including the complainant and the Investigating Officer were examined on behalf of the prosecution and four documents were exhibited in order to establish the charge against the petitioners. Among the witnesses examined by prosecution PW-1, Smt. Kalpana Das is the complainant, P.W-2, Smt. Malina Das is a neighbour of the complainant, PW-3, Sri Nikul Ch. Das is the father of the complainant, PW-4, Mridul Das @ Nikhil Das is her neighbour, PW-5, Pradip Das is also a neighbour of the complainant, PW-6, Bhuddha Deb Datta is another neighbour of her, PW-7, Manindra Ch. Debnath and PW-8, Arun Das are also the neighbours of the complainant. Similarly, PW-9 Amulya Bhusan Gope and PW-10, Malay Chakraborty were neighbours of the complainant who attended her marriage ceremony.

[7] After the recording of the statement of the prosecution witnesses was over, all accused petitioners were separately examined in terms of Section 313 Cr. P.C. In his reply, accused husband of the petitioner stated that the charge was foisted on him. He denied his

marriage with the complainant. His mother Smt. Namita Das and sister, Swapna Das also stated in their replies that they were falsely implicated in the case, all of them desired to adduce defence witness. The evidence of Md. Abdul Ali, an advocate's clerk was adduced on behalf of the accused petitioners as DW-1 who was also cross examined by the prosecution side.

[8] On appreciation of evidence, the trial Court delivered a judgment in the case on 22.04.2206 acquitting the accused petitioners of the charge of Section 498A IPC observing as under:

"9. In view of the aforesaid discussions I find no scope to believe the evidence adduced from the side of the prosecution at the time of trial regarding proof of marriage whereas, the victim lady herself mentioned different dates of marriage during the course of investigation and trial and made her own case doubtful.

Accordingly, I am of the opinion that the prosecution side has failed to prove the marriage in between the victim lady Smti. Kalpana Das and accused Biplab Das beyond any shadow of doubt and as such point No.1 is decided in negative.

10. In respect of point No.2, I like to say that it will be wastage of time to discuss the evidence in record regarding mental and physical torture upon the informant by the accused persons on the demand of money since, the marriage in between informant Smti. Kalpana Das and accused Biplab Das has not been proved beyond any shadow of doubt.

11. In fine, accused persons namely Biplab Das, Smti. Namita Das and Smti Swapna Das are here by acquitted from the charge on the principles of benefit of doubt and they are set at liberty.

The surety of accused persons are also discharged from the liabilities of their bail bonds.

The case is disposed of on contest."

[9] The said judgment of the trial Court was challenged by the complainant in Criminal Revision No.11(2) of 2006 in the Court of the Additional Sessions Judge. The learned Additional Sessions Judge, CrI. Rev. P No.07/2017.

Unakoti, vide his judgment and order dated 15.03.2007 allowed the criminal revision petition filed by the complainant setting aside the judgment and order of acquittal dated 22.04.2006 passed by the learned Trial Court directing the trial Court to deliver a fresh judgment on the basis of the evidence and materials available on record after giving opportunity to the counsel of the parties to advance fresh arguments in the case. Observation of the Additional Sessions Judge in the said judgment is as under:

"14. Under the aforesaid discussion I am of the opinion that the findings of the learned Trial Court in regards to the date of marriage is not correct and without proper appreciation of evidence. So, learned Trial Court has failed to come to a correct and lawful decision in the case and the case is not decided on merits. Hence, the order of acquittal passed by learned Trial Court by judgment dated 22.04.2006 is liable to be set aside. Accordingly, I hereby set aside the said order of acquittal passed by learned Judicial Magistrate, 1st Class, Kailashahar, North Tripura.

15. In result, the Revision petition is allowed on contest and learned Trial court is hereby directed to hear fresh argument from both sides and decide the case on the basis of the evidence and materials on record adduced by both sides in course of trial before the learned Trial Court and considering the merits of the case to deliver a fresh judgment.

16. Direct the Ops. Serial No.2 to 4 to surrender before the Court of Learned Judicial Magistrate, 1st Class, Kailashahar, North Tripura on 26.3.2007."

[10] Said judgment dated 15.03.2007 of the Additional Sessions Judge was challenged by the accused petitioners in the High Court in Criminal Revision P. No.42/2007. This High Court vide judgment dated 05.02.2014 dismissed the said criminal revision petition observing as under:

"09. Before parting, it is directed that the trial court should allow the submissions to be made within the evidence as already recorded and no parties including

the prosecution would be allowed to place new evidence. The accused persons shall appear before the trial court on 05.03.2014 when the trial court shall fix a date for fresh hearing.

Send down the LCRs forthwith."

[11] Eventually, the Chief Judicial Magistrate, Kailashahar had withdrawn the file to his Court. After hearing fresh arguments on 24.07.2014, the learned Chief Judicial Magistrate vide his judgment dated 27.09.2014 convicted the petitioners for having committed offence punishable under Section 498A IPC and sentenced them as aforesaid observing as under:

*"18. ***** What transpires from the conspectus reading of above judgments is that in a case under Section 498A,IPC the Court should look for independent corroboration from other sources rather than relying on statements emanating from the wife, her parents and relatives alone. In this case the evidence of PW.2 who was a tenant of the accused persons also confirmed that the informant (PW.1) was physically tortured to fulfill an unlawful demand of dowry amounting to Rs.1 Lac. Learned defence counsel has tried to discredit the evidential value of PW.2 by showing that the husband of PW.2 had a dispute with the accused persons and thus, has a motive to depose falsely. He has for this purpose, pressed into service Exbt.B series. Exbt.B series revealed that the husband of PW.2 Tarani Das was made a second party in a proceeding under Section 107,Cr.P.C. where the first party is Smt.Swapna Das, one of the accused persons. The genesis of the said proceeding was non-payment of rent. It is interesting to note that this proceeding was launched after 30.04.2005 , the day on which the informant was last tortured and thrown out of her matrimonial home by the accused persons. It appears that the accused persons had sensed that PW.2 and her husband were sympathetic towards the informant and were the most convincing as well as natural witnesses. Thus, the proceeding under Section 107,Cr.P.C. it appears was a ploy to malign the witnesses and cast a doubt on their credibility. A dispute regarding payment of rent should have ideally gone to the rent control Court and not to the SDM under 107,Cr.P.C. Exbt B series confirms the fact that PW2 was indeed the tenant of the accused persons and had first hand experience of the issues. Merely because there was a proceeding under Section 107,Cr.P.C. between the husband of PW.2 and one of the accused, I do not find it reason enough for PW.2 to depose falsely. PW.2 is further corroborated to some extent by PW.7 who is a neighbour of the accused persons. He had*

deposed that PW.1 Kalpana had on 01.05.2005 in the morning informed him that on 30.04.2005 i.e. on the previous day she was tortured and thrown out of her home. His evidence becomes relevant as part of 'res-gestae'. To this we have the evidence of the informant (PW.1), her father (PW.3) and her brother-in-law (PW.4). In a case of such nature more evidence cannot be forthcoming. With the deteriorating standard of moral in the society witnesses are loathe to depose in Court about anything not concerning them. The neighbours of the accused persons have no incentives to depose against them rather, they run the risk of damaging the peace of the neighborhood by doing so. The Court also cannot take any unrealistic and unpragmatic view oblivious of the practical ground reality.

19. As regards the delay in lodging FIR and its fatalities it is necessary to borne in mind that the FIR is not a substantive piece of evidence and can be used to corroborate or contradict its maker only and no other witness. It is not a sine-qua-non for investigation to start and investigation can start without it. Delay always give rise to embellishment, afterthought and fabrication but delay if explained properly can be accepted. Normal human nature in the context of Indian rural condition has to kept in mind in judging the effect of delay. It appears from the evidence of PW.7 that he tried to negotiate a settlement. PW.3, father of the informant also stated the same. It is, therefore, natural that the FIR was delayed. But the said delay is sufficiently explained. In a matrimonial dispute the case cannot be thrown out merely because of delay in lodging of the FIR if otherwise proved. As regards the FIR not being proved it appears that the scribe was examined as PW.11 and he is not an eye witness and as the defence had sufficient scope to cross-examine him, non proving of the FIR is not fatal as same is not substantial piece of evidence and no prejudice was caused.

20. From the above discussions, I have no hesitation to hold that the accused persons namely, Biplab Das, Swapna Das and Namita Das being the husband and in-laws of the Smt. Kalpana Das subjected her to physical and mental torture with a view to extract dowry worth Rs.1 Lac. They are, therefore, found guilty as charged under Section 498A, IPC.

21. Hence, the accused persons namely, Biplab Das, Swapna Das and Namita Das are hereby convicted under Section 498A of IPC."

[12] As noted above, the judgment of conviction and sentence of the petitioners has been upheld by the Sessions Judge, Unakoti Judicial District, Kailashahar by the impugned judgment dated 12.01.2017

directing the petitioner to surrender before the trial Court to serve out the sentence. Hence, this criminal revision petition has been filed by the petitioners.

[13] The petitioners have challenged the impugned judgment mainly on the following grounds:

(i) No evidence has been led by the prosecution to prove a valid marriage between the complainant and accused petitioner Biplab Das. Proof of marriage is a *sine qua non* to establish the charge of matrimonial cruelty under Section 498A IPC and in absence of such proof accused petitioner Biplab Das and his accused mother and sister cannot held guilty for the charge of offence punishable under Section 498A IPC.

(ii) Neither the trial Court nor the appellate Court had considered the inconsistencies appearing in the statements of the prosecution witnesses and committed an error in holding the petitioners guilty of the charge despite such infirmities in prosecution evidence.

(iii) The trial Court erroneously held petitioners guilty on the omnibus statement of some of the witnesses with regard to demand of dowry without any reliable proof and, as such, judgments of the trial Court as well as that of the appellate Court are liable to be set aside.

(iv) The trial Court did not consider the statement of the priest that all marriages performed in the temple are necessarily recorded in a book maintained in the temple and such book could not be produced by the prosecution to prove the fact that said marriage between the complainant and petitioner Biplab Das was actually performed.

[14] In the course of his arguments, Mr. Arjun Acharjee, learned advocate appearing for the petitioners contended that charge under Section 498A can be attributed only in the event of proof of cruelty by the husband or the relatives of the husband of the woman. Since the marriage between the complainant and accused Biplab Das is not proved, none of the petitioners can be roped with a charge of Section 498A IPC. In support of his contention, Mr. Acharjee, learned counsel refers to paragraphs 2 and 3 of the judgment of the Supreme Court in **Girdhar Shankar Tawade Vrs. State of Maharashtra**: reported in (2002) 5 SCC 177 wherein the Apex Court while discussing the basic purport of Section 498A IPC observed as follows:

"2. Before, however, advertng to the factual score, it is to be noticed at this juncture that Section 498-A has been engrafted on to the statute book by way of a separate Chapter in terms of the provisions of Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983). The above amendment stands incorporated by reason of present trend in the society and to meet the requirement of the society, the legislature thought it fit to incorporate a new Chapter being Chapter XXA in the statute book consisting of Section 498 A in the Indian Penal Code. For convenience sake, Section 498 A is set out herein below:-

" 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 purpose of this section, "cruelty" means-

(a) any willful 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.

3. The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A"

[15] According to Mr. Acharjee, learned counsel charge of Section 498A IPC has not been proved against the petitioners. Therefore, the impugned judgment should be set aside.

[16] Mr. S. Debnath, learned Additional Public Prosecutor on the other hand supported the impugned judgment and contended that the appellate Court by a detailed judgment affirmed the judgment of conviction and order of sentence passed by the trial Court after re-evaluation of the entire evidence. According to Mr. S. Debnath, learned Additional P. P, there is no infirmity in the impugned judgment to call for

interference in this criminal revision petition. Learned counsel, therefore, urges the Court to maintain the conviction and sentence of the petitioners by upholding the impugned judgment.

[17] In the course of their arguments, learned counsel had taken this Court to the evidence of complainant PW-1 who stated at the trial that she was given in marriage to the accused petitioner on 07.11.2004 in a temple at Pabiacherra in Kumarghat. After marriage she accompanied her husband to his place where he lived with her husband and led a conjugal life. Two months after their marriage her mother-in-law, Smt. Namita Das and sister-in-law, Smt. Swapna Das along with her husband started committing torture on her for fulfilment of his demand of a cash sum of Rs.1,00,000/-. Smt. Malina Das (PW-2) and her husband, Tarani Das who were tenants in the house of the accused petitioners witnessed the incidents of physical assault on her. It was also stated by the PW that she conveyed the demand of her accused husband and in-laws to her father and requested him for fulfilment of their demand. But her father expressed his inability to meet such dowry demand of her husband and in-laws. As a result of her failure to fulfil the demand, her husband and in-laws drove her out of their home on 30.04.2005 after committing physical assault on her. Initially, she met her elder brother-in-law, Mridul Das @ Nikhil Das and requested him to intervene and settle the matter. Efforts of settlement did not work. After about a month from the date of incident, she lodged FIR against her husband and in-laws at Kailashahar police station on 30.05.2005.

[18] She was put to incisive cross examination by the counsel of the accused petitioners. In her cross, she admitted that after lodging the FIR at the police station, she filed another complaint in Court against her husband and in-laws on the same set of allegations. Her said complaint was forwarded to the police station from the Court of Chief Judicial Magistrate, Kailshahar in terms of Section 156(3) Cr. P.C for investigation and report. Since the FIR was already lodged, her said complaint was returned to Court from police station with a report that she already lodged an FIR on the basis of which a case was already registered. According to the PW, solemnisation of her marriage in a temple at Pabiacherra on 07.11.2004 was witnessed by Pradip Das (PW-5) and Bhuddha Deb Datta (PW-6) who were his close relatives. In cross-examination, she also stated that her accused husband lived at five minutes walking distance from her home before their marriage. It was also stated by her that she had lot of relatives at Kacharghat in Kailashahar. Her accused husband, according to her, was the son of a colleague of her father who hailed from Bishalgarh in Sipahijala district. Suggestion was put to her that she was not married to the accused and that her parents and relatives forcibly sent her to the house of the accused to live with him as his wife. The PW denied the said suggestion. She also denied that she filed a false case against the accused petitioners since they belonged to a different political party.

[19] PW-2, Smt. Malina Das, who was a tenant in the house of the accused petitioners stated in her examination in chief that marriage between the complainant and accused petitioner Biplab Das took place at

Pabiachera, Kumarghat. She came to know about the solemnisation of marriage from the complainant and her accused husband Biplab Das. The PW further stated that she also noticed them living together as husband and wife in the house of accused petitioner Biplab Das where she was physically tortured by the accused petitioner for fulfilment of their demand for a cash sum of Rs.1,00,000/-. According to the PW, six months after marriage they drove her out of her matrimonial home after committing physical assault on her.

In her cross examination, the PW stated that she could not remember the date on which the complainant was driven out of her matrimonial home. She also stated that she was married to a person whose first wife was alive. She admitted that she had a dispute with accused petitioners who were her landlord. Such dispute arose out of payment of rent and she lodged a complaint in the office of SDM, Kailashahar against them in that connection. She denied the suggestion which was put to her by the counsel of the accused that no marriage between the complainant and accused petitioner Biplab Das took place and the complainant was not tortured by the accused petitioners for fulfilment of their demand of dowry.

[20] PW-3, Nikul Ch. Das, father of the victim also stated in the examination in Chief that his daughter had affairs with accused Biplab Das which matured into their marriage and their marriage was solemnised in a temple at Kumarghat. After marriage she was tortured by the accused petitioners for dowry and driven out of her matrimonial home.

In his cross examination he denied the suggestion that his daughter was never married to accused Biplab Das and the story of his torture for dowry was untrue.

[21] PW-4, Mridul Das @ Nikhil Das stated in his examination in chief that as a neighbour of accused petitioner Biplab Das, he had seen the accused and his complainant wife living together as husband and wife in their house after solemnisation of their marriage in a temple at Pabiacherra on 07.11.2004. According to the PW the complainant was driven out of her matrimonial home for her failure to fulfil the dowry demand to Rs.1,00,000/- of her husband and in laws. The complainant requested the PW to inform her father about the incident. The PW immediately informed her father. Thereafter her parents and relatives came and rescued her.

In his cross examination, the PW admitted that accused Biplab Das was his relative. He denied the suggestion that complainant was not married to accused Biplab Das and she was not tortured by her husband and in-laws for fulfilment of their demand of dowry.

[22] PW-5, Pradip Das also supported the marriage between the complainant and accused petitioner Biplab Das and stated that their marriage was solemnised in a temple at Pabiacherra followed by boubhat ceremony. He did not say anything about the demand of dowry of the petitioners and the alleged torture on the complainant by the petitioners for dowry.

In cross-examination, he denied the suggestion of the accused that no marriage was solemnised between the complainant and accused Biplab Das and he did not attend the Boubhat ceremony organised by the accused petitioners.

[23] PW-6, Buddha Deb Datta also stated that he along with PW-5 attended the marriage ceremony of accused Biplab Das and the complainant in a temple at Pabiacherra. The PW also attended a function which was organised by the accused petitioners in their house to celebrate the marriage.

In his cross examination he denied the suggestion of the accused petitioners that no marriage was solemnised between the complaint and the accused Biblab Das.

[24] Pw-7, Manindra Ch. Debnath also stated in his examination in chief that the marriage between the complainant and accused Biplab Das was solemnised in a temple at Pabiacherra which was followed by Boubhat ceremony in the house of the accused petitioners. According to the PW, he attended the boubhat ceremony. Later, he heard from the complainant that she was driven out by her accused husband and in-laws of her matrimonial home. The PW tried to settle the matter amicably but his efforts of settlement did not work.

In his cross-examination, the PW also denied the suggestion that no marriage took place between accused Biplab Das and the complainant and accused Biplab Das did not have any kind of relationship with the complainant at any point of time.

[25] PW-8, Sri Arun Das stated that he attended a party organised by the accused petitioners in their house after the marriage between accused Biplab Das and complainant Smt. Kalpana Das.

In his cross examination, he denied the suggestion that he never attended any party organised by the accused petitioners following the marriage between accused petitioner Biplab Das and the complainant.

[26] PW-9, Amulya Bhusan Gope also attended the boubhat ceremony in the house of the accused petitioners following the marriage between accused Biplab Das and complainant Kalpana Das

In his cross examination he denied that he had never attended such boubhat ceremony.

[27] PW-10, Malay Chakraborty, who was a priest in the temple at Pabiacherra stated that marriage between complainant Kalpana Das and accused Biplab Das was solemnised in the temple on 07.11.2004.

In his cross examination, he denied the suggestion of the accused that he did not act as a priest of the said marriage.

[28] PW-11 is the Investigating Officer of this case who stated in his examination in chief that he carried out the investigation of the case according to law and during investigation he was able to collect sufficient evidence in support of the charge under Section 498A IPC. As a result, he charge sheeted the accused petitioners for the said offence.

In his cross examination, he denied the suggestion of the accused that there was no proof of marriage between accused Biplab Das

and the complainant. He also denied the suggestion that PW-10, Malay Chakraborty did not act as the priest in the said marriage.

[29] Apart from cross examining the prosecution witnesses with a view to demolish the prosecution case, the accused also adduced the evidence of one, Abdul Ali as DW-1 to project his defence case. According to the DW, he was an advocate's clerk at Kailashahar. The complainant met him on 27.05.2005 at the district bar association hall and requested him to write a complaint on her behalf. Accordingly, the DW wrote the complaint and read it over to the complainant. The complainant signed the complaint after admitting its correctness. On identification by the DW, the said complaint was taken into evidence and marked as Exbt.A on the side of the accused.

In his cross examination, the DW denied the suggestion of the complainant that the contents of the complaint were never read over and explained to the complainant.

[30] It would emerge from the evidence of prosecution witnesses that most of the prosecution witnesses are the neighbours of the accused petitioners who are consistent on the point of solemnisation of marriage between accused Biplab Das and complainant Kalpana Das. PW-10, Malay Chakraborty, Priest of the said marriage also came forward and stated that said marriage between accused Biplab Das and complaint Smt. Kalpana Das had taken place in a temple at Pabiacherra. PW-5, Pradip Das, neighbour of the accused petitioners also attended the said marriage. He stated that all rituals including "Sapta padi" were followed in

the said marriage. Evidence of these witnesses with regard to solemnisation of marriage between accused Biplab Das and complainant Kalpana Das could not be impeached to any extent by their cross examination. The witnesses who attended the boubhat ceremony following the said marriage also testified in Court and supported the fact that the marriage was followed by boubhat ceremony. The neighbours of the accused petitioners also deposed in the trial Court and stated that they had seen the complainant and accused Biplab Das living together in the house of the accused petitioners as husband and wife. Said evidence of the PWs could not also be impeached. Therefore, there is no reason to disbelieve the fact that complainant Kalpana Das was married to accused Biplab Das and both of them lived together as husband and wife over a period of time. With regard to the charge of offence under Section 498 A IPC against the accused petitioners, the prosecution witnesses seem to have made an omnibus statement before the trial Court that the complainant was tortured for dowry by the accused petitioners and she was driven out of her matrimonial home for her failure to fulfil such demand. Not a single instance of torture has been referred to by any of the witnesses.

[31] As noted, counsel appearing for the accused petitioners relied on the decision of the Apex Court in ***Girdhar Shankar Tawade*** (supra) in which the Apex Court held that in absence of evidence regarding grave injury or danger to life limb or health of the woman as contemplated under Clause-(a) of the explanation or coercive harassment by the husband or his relatives to meet their unlawful demand of dowry as

contemplated under Clause-(b) to the explanation under Section 498A IPC, the offence under Section 498A cannot be made out. Same view was reiterated by the Apex Court in **Sakharam and another Vrs. State of Maharashtra:** reported in **(2003) 12 SCC 368** wherein the Apex Court succinctly held that omnibus statement regarding demand of money would not *ipso facto* make out a case under Section 498A IPC. There is no doubt that the cruelty as contemplated under Section 498A IPC is of a serious nature. Therefore, to bring home the charge under Section 498A IPC, the essential ingredients of the offence in terms of Section 498A IPC have to be proved.

[32] Revisional jurisdiction of this Court against the concurrent findings is limited, save and except, examining the legality and propriety and correctness of such findings. It would appear from the record that the Courts below heavily relied on the omnibus statements of the witnesses with regard to the demand of dowry and found the petitioner guilty even though not a single instance of torture or harassment to the informant was brought to the Court. As stated above, in absence of convincing evidence of torture and harassment within the meaning of cruelty defined under Section 498A IPC, a mere assertion that the petitioners demanded dowry and harassed the informant for fulfilment of his demand would not constitute the offence under Section 498A IPC.

[33] In the given context, even though the informant and her neighbours stated that husband of the informant tortured her for dowry, no reliable evidence was led by the prosecution to prove the degree or intensity of such cruelty meted out to the informant.

[34] In view of what is stated above, it would be unsafe to convict the petitioners under Section 498A IPC on the basis of the evidence available on record. Accordingly, the petition is allowed and the conviction and sentence awarded to the petitioners by the impugned judgment under Section 498A IPC is set aside.

[35] In terms of the above, the criminal revision petition stands disposed of. Pending application(s), if any, shall also stand disposed of.

Send down the L.C record.

JUDGE

