

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 923 OF 2006

TINKARI ROY

VS

STATE OF WEST BENGAL

For the Petitioner : **Mr. Kallol Mondal, Adv.**

Mr. KrishanRay, Adv

Mr. Souvik Das, Adv.

Mr. Amitava Banerjee, Adv.

Mr. Akbar Laskar, Adv.

For the Opposite

Party : **Mr. Tapas Ghosh, Adv.**

Mr. Tanmay Chowdhury, Adv.

For the State : **Mr. Debasish Roy, Ld. PP**

Ms. Faria Hossain, Adv.

Last heard on : **08.08.2025**

Judgement on : **26.08.2025**

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application is filed challenging the judgment and order of conviction dated 31st January, 2006 passed by the Learned Additional Sessions Judge, at Arambagh in criminal appeal No. 2 of 2004 arising out of judgement and order dated 12.10.2004 passed by Learned Sub Divisional

Judicial Magistrate presently Additional Chief Judicial Magistrate at Arambagh, Hooghly in G.R. case No. 113 of 1996 whereby an order of conviction has been passed under Section 498-A of the Indian Penal Code thereby sentencing the petitioner to suffer Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs. 2000/- each in default to suffer simple imprisonment for a period of 1 month.

Facts of the case

2. A petition of complaint was filed by the De-facto complainant before the Court of Learned Sub Divisional Judicial Magistrate, Arambagh on 6.3. 1996 against 6 accused persons alleging inter alia that the father of the de-facto complainant gave Rs. 35,000/- to the present petitioner at the time of marriage and after few years she was subjected to physical and mental torture in various ways. The present petitioner along with other in-laws demanded further sum Rs. 50,000/- for re-construction of one storied building from the present petitioner and on their inability to pay provoked the de-facto complainant to commit suicide. It was further alleged that on 31st May, 1995 the present petitioner assaulted the de-facto complainant with fists and blows and threw her out from the house of de-facto complainant with two minor children. Furthermore on previous two occasions the husband gave assurances of taking all responsibility to protect her from any torture or harassment either by him or by the mother in-law and the sister of the husband by way of affidavit but she was again assaulted and driven away on 31.5.1996. On the basis of such complaint Arambagh P.S. case started

pursuant to the direction by the learned Magistrate under Section 498-A//323/326/307/506 of IPC .

3. The Learned Sub Divisional Judicial Magistrate (as it was then) Arambagh, Hooghly passed the order of conviction against the petitioner for guilty of offence punishable under Section 498-A and other accused persons were acquitted . Being aggrieved thereby an appeal was filed under Section 374 (3) of the Code Of Criminal Procedure before the Court of Learned District and Sessions Judge at Hooghly which was registered as criminal appeal no 2 of 2004. After hearing both the Learned Advocates the Learned Court passed an order of acquittal in favour of Kumari Gouri Roy but affirmed the order of conviction so far the present petitioner is concerned.

Hence this revisional application has been filed before this Court

Submissions

4. The Learned Advocate representing the petitioner submitted that the appeal was filed on the ground inter alia that the Learned Judge failed to assess the evidence of the prosecution witnesses specially P.W. 3, P.W. 5 and P.W. 6. None of those witnesses could give the names of accused persons or the role attributed by them. Furthermore, the Court did not consider that no description of assault or the date on which such assault was inflicted upon the de-facto complainant. That apart the marriage took place in the year 1990 and they were blessed with two daughters from such wedlock and the complaint was lodged under Section 156(3) Cr.Pc. in the year 1996.

5. The Learned Advocate in course of argument draws the attention of the Court to the Judgement passed by the Learned Court where the Learned Court did not consider the evidence adduced by P.W. 7 Dr. Gurudas Banerjee (P.W. 7) on 3.9.93 for the injury on her nose and ears as the certificate was issued in the year 1996 and also he was not examined by the I.O. but relied upon exhibit 5 which was issued by the Dr. G.C Modak without considering that the doctor did not treat the patient at the hospital though he was attached with the hospital.

6. It is further argued that the husband of the de-facto complainant that is the present petitioner had to execute the bond which was marked Exhibit 1 of Rs. 10,000/- on 2.8.93 with the undertaking that he will not abuse or torture her wife and will live with her wife Shyamoli and two daughters. He will further see that her mother and sister did not torture in any way, and that also on 29.8.94 where he made the undertaking that due to quarrel by his mother and sister he took all responsibility of his wife and to save her from trouble he will reside in separated tenanted house and will bear all responsibility of his wife and earlier incident will not be repeated in future as he was under threat. Accordingly during cross-examination P.W. 2 was put such suggestion to which she denied that they kidnapped the petitioner and forced to sign him on stamp paper as they imposed condition that their sister will stay with husband if he agrees to reside in separate house. Accordingly the Learned Advocate tried to impress the Court that it was the quarrel between the mother and sister of the present petitioner with his wife that is the de-facto complainant and in order to mitigate the dispute the present petitioner agreed

to reside separately and such undertaking was given by him under threat and he had to write the confession sitting in his house in presence of the father of the de-facto complainant.

7. The Learned Senior Advocate Mr. Tapas Ghosh representing the opposite party No 2 the defacto complainant on the other hand raised strong objection and it is submitted that the opposite party wife was subjected to severe cruelty inflicted upon her by her husband and in laws on demand of dowry on repeated occasions which were evident from evidence of the doctors which were exhibited being proved. Not only that the petitioner suffered severe injuries on account of such assault and lost her hearing capacity. It was further evident from the undertakings given on two occasions by the petitioner/husband which unequivocally established the case of the de-facto complainant. The learned court after assessing the evidence and considering the undertakings affirmed the order of conviction passed by the learned trial court against the petitioner /husband. This Opposite Party being aggrieved by the order of acquittal passed by the Learned Appellate court had preferred the Criminal Revision being no. 949 of 2006. Accordingly prayed for dismissal of this criminal Revisional application.

8. The Learned Public Prosecutor on the other hand mostly raised objection regarding the scope of the revisional court regarding appreciation of evidences since both the Learned trial court as well as appellate court has passed the order of conviction. It is further argued that in order to bring home the charges the prosecution adduced evidence ,proved the documents on the basis of

which the order of conviction has been passed by the Trial Court duly affirmed by the Learned Appellate Court .

Analysis

9. In the instant case the Learned Trial Court passed the order of conviction against the present appellant the husband as well as Kumari Gouri Roy the sister of the husband which was admitted by the Learned Appellate Court but set aside the order of conviction with the observation that the prosecution failed to prove any case against Gouri Roy beyond the shadow of all reasonable doubts and was acquitted giving benefit of doubt. Further observed there are no clear and specific evidence against the other accused persons to establish the case of cruelty against the de-facto complainant . On careful scrutiny of the entire evidence led before the Court the Learned Appellate Court passed the order of conviction on the basis of the undertaking given by the husband/appellant which manifest the previous incident of torture upon the de-facto complainant and also relied upon the certificate issued by Dr. Modak.

10. The allegation of the de-facto complainant as can be found from the petition of complaint that on 31.5.1995 when she fell down being assaulted by the appellant and his family members, none of them gave any medical assistance and provided any glass of water to her and she was lying as unconscious, when her brother arrived coincidentally and arranged for her treatment and later took her to her parental house. The de-facto complainant herself while narrating her case in the written complaint did not utter about any other specific date when she was inflicted with torture however a continuous

demand of 50,000/- for construction of residential house of first floor by the husband and in failing to pay such amount the torture was inflicted. In cross-examination her version was that she is ready to live with her husband and mother-in-law in separate house but not ready to live with other accused persons. From this nature of evidence coupled with the provision undertaking it can be assumed that despite having grievances and allegation against her husband and mother-in-law, she was willing to live with them but only on assurance to be given to her by the petitioner. It is a fact that she never informed the police about any torture inflicted upon her when the local Police Station was in a close vicinity neither she could say the date as and when the accused demanded the dowry of Rs. 50,000/- but this deficiency are over powered by the undertakings given by the petitioner. Dr. Gurudas Banerjee who adduced evidence as P.W.7 is a Homeopath Doctor having his chamber at a distance of 2/3 minutes walking distance who said that he examined Shyamali Roy on 3.3.93 and found bleeding injury on her nose and on her both ears as Some person told him that she was assaulted by her husband, mother-in-law and husband's sister. This part of evidence expressly manifest that the defendant/complainant herself did not utter a single word of torture against her husband or mother-in-law. . More so, the medical certificate was issued by this doctor on 1st April, 1996 when he examined the patient in the year 1993, and he stated the fact from his memory. Hence this evidence loses its credential. However the undertakings given by the appellant on two occasions certainly substantiate that previously incident of torture took place for which marital discord arose but the matter was settled with the assurances

given by the husband and also by executing bond. The evidence adduced by the said doctor may not be admissible in evidence or may not be relied upon since he stated the incident from his memory only. The other Doctor P.W. 10 Dr. G.C. Modak of Arambagh Hospital issued a prescription noting the ailments marked with exhibit 5 and it disclosed that she complained of bleeding from private part due to assault by kicks by her husband two days back and pain over her abdomen and weakness. This witness advised for necessary hospitalization if required and after examination he came to a conclusion that bleeding was from uterus and such bleeding may be caused by a strike or on account of any disease. But the Doctor did not find that Shyamoli Roy was suffering from any type of ailments. According to the learned advocate representing the petitioner the de-facto complainant did not disclose the name of the assailant before the Doctor. This court is unable to accept the contention of the learned advocate that the evidence of this doctor also cannot be considered to be an trustworthy in absence of any injury report or medical paper issued by him in the capacity of a Doctor attached with the Arambagh S.D. Hospital.

11. On perusal of exhibit 5 issued by Dr. Gokul Chandra Modak P.W. 10 it is seen that the prescription is dated 31.5.1996 with history of assault by husband two days back .The main discrepancy detected in his evidence and the version of the de-facto complainant is she stated the date of assault on 31/5/1996 and went before the doctor on that day but the version of doctor is the injury about two days old which means the incident took place on 29.05.1996. Fact remains the two undertakings given by the husband on

24.9.1993 and on 29.8.1994 well established the case of the de-facto complainant that the dispute persisted in the family between the de-facto complainant and the in-laws and it reached to that extent that the husband had to give undertakings possibly for saving him from criminal accusations. The defence failed to substantiate that such undertakings were given under threat.

12. The other witnesses who supported the prosecution case were from the locality of the paternal house of the de-facto complainant and therefore is of not much relevance.

13. In this Case the brother of the complainant deposed as P.W 2 and said that when he reached there he found his sister lying in the verandah near the door when she was subjected to be assaulted by accused persons and then he said that he saw accused person to assault his sister with fist and blows by husband of her sister on abdomen and bleeding injuries and this evidence was not impeached in his cross examination .He further said that the present petitioner was suspended after this case was filed. So the brother is the eye witness to the incident.

14. Therefore admittedly some minor contradiction are found from the version of the de-facto complainant and other witnesses and the glaring one is the last date of torture but if the entire facts and circumstances are assessed there is no room for doubt that the de-facto complainant was subjected to torture on repeated occasions but each time with the assurance given by the husband she stayed back with her children for leading a happy conjugal life. The minor contradictions cannot take away the impeccable evidences adduced by the

victim and corroborated by the doctor and the brother and most importantly the admitted documents of undertakings by the husband .

15. The other point raised by the learned advocate that the manner of putting question to the accused person was faulty and the opportunity was not given to the petitioner to deal with the exhibited document. In this regard relied upon the decision of the ***Hon'ble Supreme Court in Naresh Kumar vs State of Delhi***¹ where it was observed that “*Needless to say, a fatal non-compliance in the matter of questioning under clause (b) of subsection (1) of section 313crpc resulted material prejudice to any convict in a criminal case, the trial concerned, qua that convict should stand vitiated*”. This point however was never raised before the Learned Appeal Court and has taken for the first time .However on going through the questions put to the accused it is apparent that that individual questions were not put to him and also no incriminating materials were placed before him when the certificate of the doctors were marked with exhibit. In the above decision the Hon'ble Supreme Court discussed the object of Section 313 Cr.Pc which embodies one salutary principles of natural justice that is audi alteram partem that is to provide opportunity to the accused to explain the incriminating circumstances. It was held after taking note of the several decisions on that score that non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial qua the accused concerned and to vitiate the trial it is to be established that it resulted in material prejudice to the accused.

¹ 2024 SCC Online SC 1641

16. In this case the certificate issued by Dr. Gurudas Banerjee was not considered by both the learned Trial Court as well as Appellate Court and this Court also do not find any reason to accept that. Further the prescription of Dr. Modak was exhibited without any objection by the Learned Defence counsel and more so the order of conviction was passed by both the learned court mostly on the basis of the undertakings given by the husband/petitioner herein .That apart specific question was put to him by the learned court if he would like to say anything and further if he intend to adduce any evidence to which his reply was negative. Therefore question of his being prejudice does not arise.

Conclusion

17. In the aforesaid circumstances this court finds no merit in this case and the judgement and order of conviction is hereby affirmed.

18. At this stage the court cannot be oblivious of the fact that the incident occurred in the year 1996 and this revisional application is pending since 2006 that is almost 19 years and the order of conviction was for a period of 2 years . In section 4 of the Probation of Offenders Act 1958 is applicable where a person is found guilty of an offence where punishment is neither life sentence nor death . Therefore it is a fit case where the provision of Probation of Offenders Act is applicable and the petitioner should be released on execution of bond.

19. In view of the above so far the order of conviction is concerned it is maintained but modified to the extent that instead of sending him to correctional home he is given the benefit of Section 4 of the probation of

offenders Act 1958 and he is directed to file two securities each to the tune of Rs 5000/- along with his personal Bond before the District Probationer Officer concerned with an undertaking to effect that he shall maintain peace and good behaviour during the period of two years from today . The said bonds are to be filed by the petitioner within a period of two months from the date of this judgement and in default he shall be taken into custody and shall have to undergo sentence awarded to him.

- 20.** Let a copy of the order be sent to the Learned Trial court for compliance.
- 21.** The T.C.R be sent back to the concerned Court.
- 22.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)