

(2009) 03 GAU CK 0025

Gauhati High Court (Agartala Bench)

Case No: None

Manik Kumar Lodh and Another

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision: March 4, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 216, 222, 464
- Penal Code, 1860 (IPC) - Section 302, 306, 323, 498A

Citation: (2009) 4 GLR 772

Hon'ble Judges: T.N.K. Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

T.N.K. Singh, J.

By this appeal the appellants/convicts are assailing the judgment and order dated 4.10.2002 passed by the learned Sessions Judge, West Tripura, Agartala in case No. S.T. 34(WT/A)/2000 convicting the appellants/convicts u/s 323 of IPC and sentencing them to undergo simple imprisonment for one year and to pay a fine of Rs. 500 each, in default to suffer simple imprisonment for another fifteen days even though the charge framed against the appellants/convicts was for the offence punishable u/s 498A of the IPC.

2. Heard Mr. H. Debnath, Learned Counsel for the appellants/convicts and Mr. R.C. Debnath, learned special P.P. for the State-respondent.

3. The inter alia grounds for assailing the impugned judgment and order are (i) that the learned trial court cannot convict the appellants/convicts for the offence punishable u/s 323 of the IPC for which no charge was framed and no opportunity was given to them to defend the charge u/s 323 of the IPC and (ii) that the offence u/s 323 of the IPC cannot be treated as minor offence in relation to an offence u/s 498A of the IPC within the meaning of Section 222 of the Cr.PC inasmuch as the two

offences are of distinct and different categories.

4. u/s 216 of the Cr.PC, the court may alter or add to any charge at any time before the judgment is pronounced. Requirement for altering the charge u/s 216 of the Cr.PC is that the charge so altered or added shall be read and explained to the accused and the proceeding immediately with the trial, if alteration is made, in the opinion of the court that such alteration or addition shall prejudice the accused in his defence or the prosecutor in the conduct of the case the court may, either direct a new trial or adjourn the trial for such period as may be necessary.

5. In the present case, on perusal of the lower court record, it appears that the learned trial court did not make an endeavour to read and explain the altered charge to the accused. Over and above, there was no order for altering the charge originally framed u/s 498A to Section 323 of the IPC. Therefore, it is the considered view of this Court that the requirement contemplated for altering the charge u/s 216 of the Cr.PC had not been fulfilled in the present case.

6. u/s 222 of the Cr.PC, when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such confirmation is proved but the remaining particulars are not proved, he may be convicted of the minor offence, though he is not charged with it. Here in this case, the offence u/s 323 and the offence u/s 498A of the IPC are of the distinct categories inasmuch as for the offence u/s 323 of the IPC, the fact for causing voluntarily hurt is required to be proved, but in the case of the offence u/s 498A of the IPC, the fact required to be proved is that the victim woman was subjected to cruelty of the nature mentioned in Section 498A of the IPC.

7. Mr. H. Debnath, Learned Counsel appearing for the petitioner in order to add his submission that the offence punishable u/s 323 of the IPC cannot be said to be a minor offence in relation to an offence u/s 498A of the IPC within the meaning of Section 222 of the Cr.PC, he referred to the decision of the Apex Court in [Sangaraboina Sreenu Vs. State of Andhra Pradesh](#), wherein the Apex Court held that the offence u/s 306 of the IPC cannot be said to be an minor offence in relation to an offence u/s 302 of the IPC within the meaning of Section 222 of the Cr.PC for the two offences are of distinct and different categories. Para 2 of the Judgment in Sangaraboina Sreenu (supra) reads as follows:

2. This appeal must succeed for the simple reason that having acquitted the appellant of the charge u/s 302, IPC which was the only charge framed against him the High Court could not have convicted him of the offence u/s 306, IPC. It is true that Section 222, Cr.PC entitles a court to convict a person of an offence which is minor in comparison to the one for which he is tried but Section 306, IPC cannot be said to be a minor offence in relation to an offence u/s 302, IPC within the meaning of Section 222, Cr.PC for the two offences are of distinct and different categories. While the basic constituent of an offence u/s 302, IPC is homicidal death those of

Section 306, IPC are suicidal death and abutment thereof.

8. In the instant case also as discussed above, the offence u/s 323 and the offence u/s 498A of the IPC are of distinct and different categories. Accordingly, this Court is of the considered view that the appellants/convicts cannot be convicted for the offence u/s 323 of the IPC.

9. Mr. R.C. Debnath, learned special P.P. contends that as provided in Section 464 of the Cr.PC, the omission to frame, or absence of, or error in, charge will not have any effect in convicting the accused for the charge which was omitted at the time of framing charge unless in the opinion of the court a failure of justice has in fact been occasioned to the accused for such omission of the charge. In the present case, it appears that it is not the question of omission or error in framing the charge inasmuch as the learned Trial court in a clear and unequivocal term held that the prosecution could prove only for the lesser offence u/s 323 of the IPC against the appellants/convicts.

10. For the reasons discussed above and keeping in view of the decision of the Apex Court in Sangaraboina Sreenu (supra), this Court is of the considered view that the interference to the impugned judgment and sentence dated 4.10.2002 is called for. Accordingly, the impugned judgment and sentence dated 4.10.2002 passed by the learned Sessions Judge, West Tripura, Agartala in case No. S.T. 34(WT/A)/2000 is set aside. The bail bond and surety bond of the appellants are hereby discharged.

11. The appeal is accordingly allowed.