

Simtaz Khan Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jul-11-2017

Appellant : Simtaz Khan

Respondent : State of Jharkhand

Judgement :

Criminal Revision No. 139 of 2011 (Against the judgment dated 07.07.2010 passed by learned Additional Sessions Judge, Fast Tract Court, Koderma in Cr. Appeal No.36 of 2008 affirming the judgment of conviction and order of sentence dated 01.07.2008 passed by SubDivisional Judicial Magistrate, Koderma in connection with Jai Nagar P.S. Case No.27 of 2002 G.R. Case No.143 of 2002) Simtaz Khan, son of Imtiyaz Khan, Resident of Kaithadih, P.O. & P.S. Jai Nagar, DistrictKoderma. Petitioner Versus 1. The State of Jharkhand 2. Shama Khatoon, daughter of Md. Iliyas, Resident of VillageKathadih, P.O. & P.S. Jainagar, DistrictKoderma Opp. Parties For the Petitioner : Mr. Anil Kumar Sinha, Adv. For the State : Mr. Nehru Mahto, A.P.P. For the Opp. Party No.2: Mr. Ram Lakhan Yadav, Adv. PRESENT HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY C.A.V. ON 09/06/2017 PRONOUNCED ON 11/07/2017 A.K. Choudhary, J.

This revision application is directed against the judgment dated 07.07.2010 passed by Additional Sessions Judge, Fast Track Court, Koderma in Cr. Appeal No.36 of 2008 affirming the judgment of conviction and order of sentence dated 11.06.2008 passed by Sub Divisional Judicial Magistrate, Koderma in G.R. Case

No.143 of 2002 Trial No.143 of 2008, whereby and whereunder the petitioner on being found guilty for the offence punishable under Section 498A I.P.C. was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1000/-. The petitioner has also been found guilty for the offence punishable under Section 4 of Dowry Prohibition Act, 1961 and sentenced to undergo rigorous imprisonment for six months. 2. The case of the prosecution is that the informant married the petitioner as per the Muslim Rights and Rituals about four years prior to the occurrence. Sometime after her marriage, she was assaulted in connection with the demand of a T.V. and a motorcycle. Her father paid certain amount to pacify the matter. On 05.03.2002, at about 2 p.m. the petitioner took the informant near the well while assaulting her and attempted to throw her inside the well. On hue and cry being raised by the informant, she was saved. On the basis of written report submitted by the informant Jai Nagar P.S. Case No.27 of 2002 was registered for the offence punishable under section 498A/341/342/323 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act, 1961.

3. On submission of chargesheet, the petitioner along with her family members were put on trial. They pleaded not guilty and claimed to be tried. 4. In course of trial, the prosecution in order to bring home the charges examined six witnesses. P.W.1 Rahis Khan, P.W.2 Niyamat Khan, P.W.4 Hasina Khatoon, P.W.5 Moin Khan, P.W.6 Md. Faruque have interalia stated about the marriage, demand of dowry and the assault by the petitioner. P.W.3 Shama Khatoon is the informant. She has corroborated the averments made in her written report in para10 of her crossexamination. She has stated that the petitioner divorced her prior to occurrence. In his defence, the petitioner has examined Md. Nain Khan as D.W.1.

5. The learned Magistrate after the trial convicted the petitioner only for the offences punishable under Section 498A I.P.C. and Section 4 of Dowry Prohibition Act, 1961 but acquitted all the coaccused persons of this revision petitioner.

6. The said judgment of conviction and order of sentence was challenged before the appellate court and appellate court affirmed the judgment of conviction and order of sentence passed by the trial court. 7. At the time of hearing, it was submitted on behalf of the petitioner that as admitted by the informant victim in her

crossexamination, since no valid marriage was subsisting between the petitionerconvict and the informantvictim, at the time of occurrence, hence the petitioner was not the husband of the informant at the time of occurrence so no offence punishable under Section 498A I.P.C. is made out. Further it was submitted that the materials available in the record is insufficient to bring home the charges for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961. Hence, it is submitted that the judgment of conviction and order of sentence be set aside.

8. Learned Additional Public Prosecutor on the other hand defended the impugned judgment passed by the trial court as well as the appellate court and submitted that there is no illegality or impropriety in the finding of conviction recorded by the trial court or the appellate court hence, this revision application being without any merit be dismissed.

9. So far as the contention of the petitioner that no valid marriage was subsisting at the time of commission of alleged occurrence is concerned, the same was raised by the petitioner both in the trial court as well as in the appellate court.

10. The trial court in para8 of the judgment did not accept the said contention of the petitioner by observing that though the witness has stated that her husband divorced her, yet, the offence of torture in connection of demand of dowry being a continuing offence will not come to an end by the divorce. 11. The appellate court in para11 of the impugned judgment dealt with this contention of the petitioner by discussing that the mother of the victim and the witness Niyamat Khan have stated that the petitioner has not divorced the victim. Further, it was observed by the appellate court that the demand of dowry made by the petitioner after one month of the marriage was a continuing one. 12. Now the point of law to be decided is whether a former/divorcee husband can be held liable for the offence punishable under Section 498 A of the Indian Penal Code. To seek answer to the above question, it will be relevant to quote Section 498A of Indian Penal Code, 1860 (I.P.C.) which reads as under: 498A. 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 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. (Emphasis given by me) 13. Section 198A Code of Criminal Procedure, 1973 (Cr.P.C.) is also relevant in this context which reads as under : 198A. Prosecution of offences under section 498A of the Indian Penal Code No Court shall take cognizance of an offence punishable under section 498A of the Indian Penal Code (45 of 1860) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption. (Emphasis given by me) 14. Section 498A I.P.C. envisages that if a person being the husband or the relative of the husband' of a women subjects her to cruelty, he can be held guilty for the offence under the said section. 'Being the husband' obviously means that the accused is the husband at the time of occurrence. So in order to bring home the charge for the offence punishable under Section 498A I.P.C., the prosecution has to prove subsistence of a valid marriage at the time of commission of the offence. If at the time of commission of offence, a valid marriage subsists but subsequently, before institution of the case, marriage dissolves still the offence punishable under Section 498A would be made out as because Section 498A also envisages that 'the person aggrieved by the offence' is 'women' but not 'wife'. From this it is evident that the law requires that, to set the law in motion for an offence punishable under Section 498A I.P.C., it is not a sinequanon that the victim has to be the wife. Again this interpretation also finds force from the recital of Section 198A of the Code of Criminal Procedure where also the victim is referred to as 'the person aggrieved by the offence' and not the 'wife'. So Section 198A Cr.P.C. also provides that a divorced wife can also proceed against her former husband for the offence committed by him during subsistence of the marriage between them.

Thus, conjoint reading of the Section 498A I.P.C. and Section 198A Cr.P.C. reveals that the legislature was clear in its mind that an accused should not be allowed to escape from the liability under Section 498A I.P.C. by divorcing his wife, after committing the offence during the period when a valid marriage was subsisting between the victim and the accused.

15. In view of the above interpretation as discussed, now coming to the question Whether the former husband can be held liable for the offence punishable under Section 498A I.P.C. for the alleged act of cruelty committed by him on his divorced wife, after the divorce? is concerned, simple reading of Section 498A I.P.C. indicates that the former husband cannot be held guilty for such offence because Section 498A I.P.C. requires that to bring home the charge for the said offence, it has to be established that the act of cruelty is done by the accused in his marital status as the husband. Obviously, after divorce, the male person to a marriage ceases to be the husband, hence an act of subjecting the victim exwife to cruelty by the offender exhusband after the divorce will not constitute the offence punishable under Section 498A I.P.C.

16. In forming such an opinion, I am persuaded by the order dated 12.01.2005 passed by the Kerela High Court in Crl. MC Case No.8601 of 2002 (reported in 2005 SCC Online Ker 19 : (2005) 3 KLT 468).

17. Now coming to the facts of the case, the victim who is main witness of the prosecution, herself in para10 has categorically stated that she was divorced by her husband prior to the occurrence. There is no material in the record to disbelieve her said testimony. Hence, the trial court rightly believed her testimony. But in view of the interpretation of Section 498A I.P.C. made in the foregoing paragraphs, the reasoning given by the trial court to convict the petitioner on the ground that the offence punishable under Section 498A is a continuing offence is not sustainable. In this backdrop, I have no hesitation in holding that as no valid marriage was subsisting between the victim and the petitioner of this revision application at the time of the commission of the offence, hence, the conviction of the petitioner for the offence punishable under Section 498A I.P.C. is indefensible, hence the same is set aside.

18. Now coming to the second offence punishable under Section 4 of Dowry Prohibition Act, 1961 is concerned, the same reads as under : 4. Penalty for demanding dowry If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

19. In the course of trial, the witnesses of prosecution have categorically stated about the dowry demand of one T.V. and motorcycle. P.W.s1 to 4 have categorically deposed about the said dowry demand. The same has not been demolished in any manner and both the trial court and the appellate court have held that the prosecution has succeeded in establishing the charge punishable under Section 4 of Dowry Prohibition Act, 1961.

20. I am conscious of the restrictions for interference by the revisional court with the concurrent finding of facts by the trial court and the appellate court, as it is settled principle of law as has been held by the Hon'ble Supreme Court in the case of State Vs. Uppa Balu(1993) Cr.L.J.129 SC. that Ordinarily it is not open for a Court to interfere with the concurrent finding of the court below specially by reappreciating the evidence in its revisional jurisdiction. 21. Having gone through the records and keeping in view the principle of scope of interference in revision by high Court in case of concurrent finding of conviction by the trial and appellate court, I do not find any illegality or impropriety with the said finding of the trial court or by the appellate court. Hence, the said conviction of the revision petitioner for the offence punishable under Section 4 of Dowry Prohibition Act, 1961 does not warrant any interference of this Court in exercise of its revisional jurisdiction, but so far as the sentence for the said offence punishable under Section 4 of the Dowry Prohibition Act, 1961 is concerned, the trial court has sentenced the petitioner to undergo rigorous imprisonment for 6 months which has been affirmed by the appellate court. Perusal of the record reveals that the revision petitioner has been in custody for more than 5 months from 06.03.2002 to 10.06.2002 and from

04.02.2011 to 27.04.2011, (when he was granted bail by this Court in this revision). The occurrence took place more than a decade and half back in the year 2002. Since already there has been a talak, there is no chance of the petitioner committing similar crime again. This is a case where if the sentence is maintained the petitioner has to undergo imprisonment for only a few more days. The accused has suffered a lot of agony of protracted litigation. These facts and circumstances of this case as mentioned above constitute adequate and special reason to impose a sentence of imprisonment for a term of a few days less than six months. Thus, this is a fit case where the sentence for the offence punishable under Section 4 of Dowry Prohibition Act, 1961 be reduced to the period of sentence already undergone by the revision petitioner as mentioned above.

22. Hence the conviction of the revision petitioner Simtaz Khan made by the judgment dated 07.07.2010 by the appellate court affirming the judgment of conviction and order of sentence dated 11.06.2008 passed by the trial court, so far as it relates to the conviction of the revision petitioner for the offence punishable under Section 498A is set aside while the conviction of revision petitioner for the offence punishable under Section 4 of Dowry Prohibition Act, 1961 is maintained but the sentence is modified to the period in custody already undergone by the revision petitioner. In view of the modification of sentence as indicated above, the petitioner is discharged from the liability of his bail bonds, this revision is disposed of accordingly. (Anil Kumar Choudhary, J.) High Court of Jharkhand, Ranchi The 11 day of July, 2017 NAFR/Gunjan

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