

Dilip Sarma Vs. State of Assam

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Court : Guwahati

Decided On : Feb-03-2005

Judge : H.N. Sarma, J.

Acts : Indian Penal Code (IPC) - Sections 34, 498(A) and 506; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 164, 313, 386 and 387

Appeal No. : Criminal Revision No. 89 of 1998

Appellant : Dilip Sarma

Respondent : State of Assam

Advocate for Def. : K. Munir, Adv.

Advocate for Pet/Ap. : B. Kalita, B.C. Das and C. Das, Adv.

Disposition : Petition allowed

Prior history : H.N. Sarma, J. 1. The challenge made in this Criminal Revision is the judgment and order dated 12.3.1998 passed by the learned Sessions Judge, Kamrup, Guwahati in Criminal Appeal No. 36/97 upholding the order of conviction and sentence dated 30.9.1997 passed by the learned Additional Chief Judicial Magistrate, Kamrup, Guwahati in Case No. GR 3504/94 under Section 498(A) of IPC and sentenced him to undergo simple imprisonment for two months with a fine of Rs. 3000 in default simple imprisonment

Judgement :

H.N. Sarma, J.

1. The challenge made in this Criminal Revision is the judgment and order dated 12.3.1998 passed by the learned Sessions Judge, Kamrup, Guwahati in Criminal Appeal No. 36/97 upholding the order of conviction and sentence dated 30.9.1997 passed by the learned Additional Chief Judicial Magistrate, Kamrup, Guwahati in Case No. GR 3504/94 under Section 498(A) of IPC and sentenced him to undergo simple imprisonment for two months with a fine of Rs. 3000 in default simple imprisonment for another period of 2 months.

2. I have heard Mr. B Kalita, learned senior counsel for the petitioner and also Mr. K Munir, learned Public Prosecutor for the State.

3. The prosecution case, inter alia, is that on 7.10.1994, an FIR was lodged by PW 1 before the Officer in-charge of All Women Police Station, Panbazar, Guwahati alleging, inter alia, that the accused-petitioner Dilip Sarma married her according to Hindu rites and customs on 20.2.1994 and started ill-treating her both physically and mentally demanding dowry since after the marriage. She tolerated all the tortures silently. The accused did not allow her to use her gold ornaments and kept the key of the godrej almirah where she kept the ornaments with him. On 6.10.1994 at about 6/7 p.m., while the accused assaulted her by giving blows, she reported the occurrence to her father. On receipt of the information, her father came and tried for reconciliation, but the accused and his parents drove her out from their house. She left her matrimonial house along with her father and since then she is living with her father. Her in-laws, though knew about the torture, she always remained silent. The accused Muhinath Sarma, her father-in-law and Pradip Sarma, her brother-in-law also rushed to her with the intention to assault her. On receipt of the FIR, police registered a case under Section 498(A) of IPC against the accused persons. After completion of the investigation and after recording the statements of the informant under Section 164 Cr.P.C. by Magistrate, the police submitted charge sheet against the accused persons under Section 498A of IPC. In GR Case No. 3504/94 the informant/victim was also

examined by the doctor on the next day of the incident.

The process having been issued by the learned trial Court, the accused persons appeared and during the progress of the case, a charge under Section 498(A) of IPC was framed against the present petitioner Dilip Sarma and charge under Section 506/34 IPC was framed against Muhinath Sarma and Pradip Sarma, the father in-law and brother in-law of the informant respectively. The accused persons pleaded not guilty and claimed to be tried. During the course of trial, the prosecution examined as many as 9 witnesses including the doctor and investigating officer. The statement of the petitioner was also recorded under Section 313 Cr.P.C. However, the defence adduced one witness in support of their case.

The learned trial Court after completion of the trial and on appreciation of the evidence and also the materials available on record convicted the present petitioner under Section 498(A) of IPC and sentenced him to undergo imprisonment as stated above. However, finding no material against the other two accused persons, namely, Muhinath Sarma and Pradip Sarma, they were acquitted by the learned trial Court vide judgment and order dated 30.9.97 passed in GR Case No. 3504/94. Against the aforesaid conviction and sentence the present petitioner has filed an appeal under Section 386 Cr.P.C. before the learned Sessions Judge, Kamrup which was registered and numbered as Criminal Appeal No. 36/97. The learned Sessions Judge vide judgment and order dated 12.3.1998 dismissed the appeal and maintained the conviction and sentence imposed by the trial Court on the petitioner. Against the said order the present revision petition is filed.

4. Mr. Kalita, learned senior counsel appearing for the petitioner has submitted that the conviction and sentence of the accused-petitioner under Section 498(A) of IPC is illegal, unjust and improper inasmuch there is no corroboration of the statement of PW 1. He has further submitted that in the FIR there was no mention about the demand of dowry and if such a demand is not established. Section 498(A) of IPC cannot be attracted. It has further been submitted that the prosecution has totally failed to prove the case against the petitioner for supporting

the conviction and sentence and accordingly prayed for allowing the appeal. It has also been pointed out by Mr. Kalita, learned senior counsel that the learned Sessions Judge while disposing of the appeal did not discuss the evidence and materials available on record at all.

5. On the other hand, Mr. Munir, learned Public Prosecutor has submitted that the prosecution has been able to prove the case beyond the reasonable doubt and all the ingredients of Section 498(A) of IPC having been proved, there is no escape of the petitioner from the conviction and sentence. It is further submitted by Mr. Munir, learned Public Prosecutor that in such cases corroboration is not essential and only on the basis of the statement of the victim woman, a conviction can be sustained ; supporting so, Mr. Munir, learned Public Prosecutor has prayed for dismissal of the appeal.

6. Mr. Kalita, learned senior counsel has led me to the impugned judgment and order passed by the learned appellate Court and other materials on record.

7. I have carefully considered the rival submissions made by the learned counsel for the parties and the materials available on record. On scrutiny of the judgment of the learned appellate Court, it is found that the said judgment is a cryptic one and there is no discussion about the statements of the witnesses examined on behalf of the prosecution. In fact, after recording the respective submissions of the learned counsel for the parties, learned appellate Court came to an abrupt finding to the effect that from perusal of the materials on record, the learned appellate Court found that as many as 9 prosecution witnesses in support of the case and the witnesses have supported the case levelled by the complainant against the accused. There is no whisper at all of the statements made by the prosecution witnesses before the trial Court not to speak of appreciation thereof. The appellate Court being the last Court of facts is duty bound to consider in details and/or deals with to some extent the evidence and materials on record. Section 386 Cr.P.C read with Section 387 Cr.P.C. imposes a duty and cast an obligation upon the appellate Court to give his reasoning in the judgment while disposing an appeal. But in the instant case, the learned appellate Court has failed to do so and disposed of the appeal without disclosing his mind regarding the

veracity/probabilities/trust-worthiness and other factors of the prosecution witnesses in the light of the statements made by the appellant.

8. For the aforesaid lacuna left by the learned appellate Court this Court is not in a position to understand the mind as to what was the reason for accepting the conviction and sentence imposed by the learned trial Court upon the petitioner. As a revisional Court the High Court is not entitled to appreciate and/or re-appreciate the evidence on record. The High Court is only entitled under its revisional jurisdiction to have a cursory view upon the evidence on record in order to appreciate the legality/propriety or otherwise of the impugned order. In the instant case, the learned appellate Court has totally failed to exercise the jurisdiction vested on him by law in failing to discuss about the evidence and materials on record and accordingly, this Court is not in a position to come to a definite finding on merit on the basis of the appellate judgment.

9. In view of the aforesaid discussions, the impugned judgment and order passed by the learned appellate Court in Criminal Appeal No. 36/ 97 is not sustainable and is liable to be set aside. Accordingly the aforesaid judgment and order passed by the learned appellate Court is set aside and the case is remanded back to the learned appellate Court for disposal of the same in accordance with law. Since the case is an old one, it is expected that the learned appellate Court will dispose of the appeal as expeditiously as possible preferably within a period of two months from today from the date of receipt of the record. The petitioner will continue to remain in the bail as directed by this Court on 27.3.1998 till disposal of the appeal. The petitioner will appear before the learned Sessions Judge, Kamrup, Guwahati on 24.2.2005 for obtaining further instruction from the learned appellate Court regarding the hearing of the appeal.

10. Revision petition is allowed to the extent as indicated above.

11. Send down the LCR immediately by a Special Messenger.

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