Smt. Basanti Devi and ors. Vs. State of Bihar and anr.

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SooperKanoon Citation : sooperkanoon.com/134102

Court : Patna

Decided On : Jan-10-2001

Judge : Prabhat Kumr Sinha, J.

Acts : Dowry Prohibition Act, 1961 - Sections 3 and 4; Indian Penal Code (IPC), 1860 - Sections 34, 304B and 498A; Constitution of India - Article 254

Appeal No. : Crl. R. No. 630 of 1998

Appellant : Smt. Basanti Devi and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : Ashwini Kumar Sinha, APP, Arun Kumar Arun and Vibhuti Ranjan Sonvadra, Advs.

Advocate for Pet/Ap. : Ram Candra Jhar, Sr. Adv. and Abdul Kalam, Adv.

Judgement :

Prabhat Kumr Sinha, J.

1. This application is directed against the judgment dated 14-7-1989 recorded by the 2nd Additional Sessions Judge, Nawadah in Cr. Appeal No. 3 of 1998 whereunder the learned appellate Court, had confirmed the judgment of conviction and sentence against three petitioners in Complaint Case No. 501 of 1993 except, that the conviction under Section 4 of the Dowry Prohibition Act, 1961 ('D.P. Act',

in short) was maintained only in connection with petitioner Hira Lal Gupta. All the accused were convicted by the learned lower Court under Section 498A of the Indian Penal Code ('the Code', in short) as well under Section 4 of the D.P. Act sentencing them to undergo simple imprisonment for three years and six months, respectively which were also ordered to run concurrently.

2. The case of the complainant, in short, may be referred to as under complaint petition in which it was alleged that the complainant Anita Devi was married to Ratnesh Kumar Gupta, son of petitioners Hira Lal Gupta and Smt. Basanti Devi and brother of petitioner Mithlesh Kumar Gupta. It was alleged that on the date of marriage Hira Lal Gupta had demanded Rs. 50,000/- which was undertaken to be paid later. When in 1992 the fater of the complainant expressed inability to pay the amount, the complainant thereafter used to be tortured by the accused persons including her husband who, incidentally, did not face the trial as having absconded. She was kept without food and water and was also assaulted at which she returned back to her father. However, in Sept. 1992 her husband gave assurance to keep her properly and took her back to his house, but she was again tortured by the accused. The accused again gave assurance to the father of the complainant to keep her properly and the complainant was again allowed to go with them but. the same story continued and even her ornaments and clothes were snatched. She was assaulted and threatened to be killed in Sept. 1993 in default of bringing money at which she managed to escape from their house. Thereafter, a Panchayati was held but to no avail nor her ornaments were returned but, on the other hand, the parents of her husband threatened to remarry their son.

3. It will appear that after enquriy the accused persons were summoned and the trial was held against the petitioners who were convicted as aforesaid.

4. It will appear that the learned lower Court as well as the learned trial Court both have discussed the evidence on record in detail. However, in so far as the evidence was concerned, the learned Counsel for the petitioners attempted to show that the decision was against the flow of evidence and certain clinching evidence against the accused were not properly evaluated. For example, the learned Counsel pointed out Exts. A and A/1 written by the complainant to her

husband in which, learned Counsel pointed out, she had adopted quite offensive language against her husband also doubting his mental capacity and also demanding from her husband to give here the truck which the husband had at the time of marriage as well the earning from that truck for the three years thereafter. In reply to that the learned Counsel for the Opposite Party No. 2, the complainant, has pointed out that a number of documents placed on the record proved torture such as Exts. 2 and. 2/1 which were letters (including inland letter) written by the complainant on earlier dates in which she had claimed that her in laws were demanding Rs. 50,000/- and were assaulting her, and also described the manner of assault, as well Ext. 3, an undertaking given by the husband, dated 23-9-1992 to take full care of his wife and also to take upon himself all the responsibilities for her safety. Evidence as has come has been discussed in detail by the learned Lower Courts. The learned Lower Courts have given their reasons for accepting the evidence of the complainant and I do not find any such flaw in the evaluation of the evidence by the learned Lower Courts which may require interference by this Court on that account in this application for revision. No procedural mistake has either been pointed out.

5. However, learned Counsel for the petitioners has assailed the conviction on legal grounds also. Learned Counsel submitted that the learned appellate Court did not find the case to have been proved under Section 4 of the D.P. Act against the petitioner Smt. Basanti Devi and Mithilesh Kumar Gupta but held only petitioner Hira Lal Gupta to be guilty of that offence.

6. For this learned Counsel has placed reliance on a decision of the Apex Court in the case of Rajesh Kumar Kejariwal v. State of Bihar (1997) 10 SCC 524. In the aforesaid decision their lordships had taken note of amendment by Bihar Act IV of 1976 by which a proviso had been added under which it was necessary, that previous sanctioned of the State Government or of such officer as the State Government may, by general order or special order, specify in that behalf, should be obtained before initiating any prosecution under Section 4 of the D.P. Act. That amendment was given effect to form 20-1-1976. It was held that prosecution under Section 4 of the D.P. Act without sanction was not permissible and, therefore, the cognizance of offence under Section 4 of the D.P. Act was quashed.

7. In this regard a decision of a Division Bench of this Court in the case of Deo Narayan Lal Das v. The State of Bihar, (1992) 2 Pat LJR 560 may be seen wherein also this question had come up for a decision. In this decision amendment brought under Section 4 of the D.P. Act by the parliament under Act 63 of 1984 was also taken note of in which the provision for sanction of the State Government or an Officer authorised by it for prosecution under Section 4 of the D.P. Act was done away with. In that decision, taking also in view of the provision under Article 254 of the Constitution of India it was held that the amendment in Section 4 of the D.P. Act, which is a Central Act, by Parliament would prevail upon the amendment brough by Bihar Act 4 of 1976. It was, therefore, held that sanction for prosecution was no longer necessary. In the decision in the case of Rajesh Kumar Kejariwal (1997 (10) SCC 524) (supra) the subsequent amendment brought in the Act by the Parliament was not considered. Therefore, this question is squarely covered by a Division Bench of this Court in the case of Deo Narayan Lali Das, (1992 (2) Pat LJR 560) (supra). In view of this it may not be said that the conviction of the petitioner Hira Lal Gupta under Section 4 of the D.P. Act was bad in law for want of sanction.

8. The next argument is also related to the first argument, which is that once conviction for offence under the D.P. Act falls through, the accused cannot be convicted for offence under Section 498A of the Indian Penal Code as cruelty has been defined under the explanation of Section 498A of the Code to be such harassment which 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. Arugment of the learned Counsel was that where reason of perpetuating cruelty on the appellant was non fulfilment of the demand of money and if specific offence under D.P. Act for making such a demand falls through, a necessary ingredient for proving offence under Section 498A of the Code must be held to be absent hence, the conviction for such an offence must also be held to be not maintainable. For this learned Counsel has placed reliance on a decision of the Apex Court in the case of Sakhi Mandalain v. State of Bihar (1999) 8 JT (SC) 351. That was a case in which the appellant, sister-in-law of the deceased was convicted under Sections 304B/34 and 498A of the Code as also under Sections 3 and 4 of the D.P. Act. On

appeal the High Court had acquitted the appellant of the charges under Section 304B read with Section 34 of the Code, giving her benefit of doubt but conviction under Sections 3 and 4 of the D.P. Act was maintained. In that case it was the demand of dowry, coupled with harassment, which constituted the basis of the prosecution case. It was held by their Lordships of Supreme Court that once the main part of the charge under Section 304B of the Code was not found to be established, it was not possible to record conviction under Sections 3 and 4 of the D.P. Act.

9. Learned Counsel has submitted that if the accused is not convicted for offence under the D.P. Act then, by the same reasoning, charge under Section 498A also must fail.

10. However, I do not think that this case will help the petitioners. In the aforesaid case the charge under Section 304B of the Code was found not to have been proved by the High Court. For success of prosecution case under Section 304B of the Code one of the ingredients that must be proved by the prosecution is that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry. It is only after this has been proved then a death of the woman caused under unnatural circumstances, within 7 years of her marriage would be deemed to be a dowry death and such husband or relative would be deemed to have caused that death. Therefore, if the charge under Section 304B of the Code, had failed, and since the prosecution case was based on the allegation of demand of dowry coupled with harassment, it was held by their lordships that the charges for offence under D.P. Act must also fail.

11. There is not always such direct nexus between an offence under Section 498A of the Code and Section 4 of the D.P. Act. Section 498A is reproduced 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.

12. For the purposes 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.

13. Learned Counsel based his argument on explanation (b), aforesaid though, however, cruelty also means as explained under Explanation (a) aforesaid. Therefore, even if the accused are acquitted, as two of the petitioners have been, of the charge under Section 4 of the D.P. Act any act which is covered by Explanation (a) aforesaid would also include cruelty.

14. Learned trial Court has discussed the evidence in this regard that was brought on the record and such finding of fact was not disturbed by the learned Appellate Court. There is evidence in that regard, of Anita Devi in her evidence as well in the documents such as Exts. 2 and 2/1. When both courts have given concurrent findings on fact and it has not been pointed out that the evidence was misconstrued by the lower Courts, this Court in this revision application will not be inclined to disturb that concurrent finding on facts. Explanation (a) aforesaid refers to any wilful conduct of the accused which is of such a nature as is likely to drive the woman to commit sucide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman which would also amount to cruetly. The complainant in her evidence has claimed [physical assault and torture upon her by the accused persons which has also been Claimed in Exts. 2 and 2/1. Under such circumstances it was brought on the record that the petitioners had acted in a manner Jas was likely to cause danger to life, limb or health, including mental, to the complainant.

15. Therefore, this Court is not inclined to disturb the finding of the learned lower Courts on this account, and, therefore, to interfere in the conviction of the

petitioners under Section 498A of the Code.

16. In the last learned Counsel has also argued that the sentence awarded to the appellants was harsh, not commensurate with the offence that might have been proved, keeping in view of the facts and circumstances of the case. In this regard learned Counsel has drawn my attention, as already stated, towards Exts. A and A/1. Learned Counsel has also drawn my attention towards Ext. D which was minutes of a 'caste Panchayati' held to resolve the differences between two sides in which it was also recorded that the complainant was discourteous and had also snatched the document signed by the 'Panchas' and had torn that. Pointing out these and other documents learned Counsel submitted that the people of society had many a times tried for approachment between the two sides but they failed. Hence, the complainant for her ordial should also be considered to be responsible, even to some extent.

17. In this regard the other argument that was placed by the learned Counsel was that this case was instituted in the year 1983 and the appellants have faced the proceedings for almost six years after their appearance which should also be considered for taking a lenient view in the matter of sentence.

18. It has come on the record that the husband did not face the trial as he had absconded but these appellants had faced the trial.

19. Though if the complainant has been (proved to be recalcitrant to some extent that would not absolve the accuseds of the charge under Section 498A of the Code, but that could be considered so far award of sentence is concerned. From the judgment it does not appear that such evidence on the record was considered at the time of awarding that sentence wherein the appellants have been awarded the maximum punishment provided under Section 498A of the Code.

20. In view of the all aforesaid circumstances, in my opinion, the sentence of six months of the rigorous imprisonment to the petitioners under Section 498A of the Code j would serve the ends of justice, while maintaining sentence under Section 4 of the D.P. Act as against petitioner Hira Lal Gupta in! whose case both the sentences are ordered to run concurrently.

21. In the result, the sentences of the appellants under Section 498A of the Code is reduced to six months of rigorous imprisonment. With the aforesaid modification in the sentence, this revision application is dismissed.