

Lawrence Vs. State of Kerala

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Court : Kerala

Decided On : Jun-21-2002

Reported in : 2002CriLJ3458

Judge : M.K. Hariharan Nair, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 498A; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 397, 401, 401(3), 482 and 483

Appeal No. : CRRP No. 527 of 1994

Appellant : Lawrence

Respondent : State of Kerala

Advocate for Def. : P.P. and; P.P. Aloysius Thomas, Adv.

Advocate for Pet/Ap. : S.P. Chaly, Adv.

Disposition : Revision allowed

Judgement :

ORDER

M.K. Hariharan Nair, J.

1. Petitioner is the first accused in C.C. No. 6/91 of the Judicial First Class Magistrate Court 1, Kochi. The second accused therein was his mother. After trial

the Court found that they were liable to be convicted for the offence under Section 498A read with Section 34 of the Indian Penal Code. The present petitioner was sentenced to under R.I. for six months for the said offence and to pay fine of Rs. 2,000/-. The second accused, however, was released on bond for Rs. 2,000/-. The aforesaid judgment was confirmed by the Third Additional Sessions Court, Ernakulam in Crl. A. 465/93. It is aggrieved by these concurrent findings that the petitioner has approached this Court.

2. The learned Counsel for the petitioner submitted that the conviction in question has resulted in miscarriage of justice and that the courts below have not appreciated the facts correctly, that actually the evidence adduced was not in conformity with the grievance projected in the complaint and also that the ingredients of the offence under Section 498(A) have not established in so far as the sufferings alleged in the matrimonial home are not only not established but also not shown as connected with any demand for dowry.

3. Learned Government Pleader who was heard submitted that the concurrent findings of the two courts below could not be lightly interfered with as the revisional jurisdiction of this Court is different from that of appellate jurisdiction. In that regard reliance was also placed on the decision in State of Karnataka v. Appa Balu Ingale AIR 1993 SC 1126 : 1993 Cri LJ 1029.

4. In view of the contention as above I shall first refer to the extent of jurisdiction of this Court in such a matter where the challenge is with regard to the concurrent findings of guilty entered against the petitioner. In para 2 of the said judgment of the Apex Court it was held as follows:

Ordinarily it is not open for the High Court to interfere with the concurrent findings of the courts below specially by reappreciating the evidence in its revisional jurisdiction. The High Court disbelieved evidence of all the four witnesses who deposed to the actual incident as happened before their eyes.

5. The powers of interference in the matter of concurrent findings of guilty are different from the power of interference with regard to the concurrent finding of not guilty. This is so because Section 401(3) of the Cr.P.C. which defines the limits of

the High Court's powers of revision specifically states that nothing in the section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. Subject to this and the other limitations contained in Sub-clause 2 to 5 of Section 401, this Court is to exercise its discretion and exercise any of the powers conferred on a Court of appeal as well.

6. Of course the observation contained in the judgment quoted above has to be strictly followed, but it has to be understood in the context in which it was made. The charge against the accused therein was that they restrained the complainant by show of force from taking water from a newly dug borewell on the ground that they were untouchables. The High Court had reversed the concurrent findings of the two Courts below and, rejected the evidence of eye witness and found that the charge against the accused had not been proved beyond doubt. The Apex Court held that there was no want of conformity in the evidence of the prosecution witnesses and that the High Court lost sight of the fact that according to the evidence social disability of the Harijan community was enforced on a threat at gun point. It was in these circumstances that the Apex Court found the interference of the High Court in favour of the Accused unjust: and unjustified. Further it is clear from the later decision in Krishna v. Krishnaveni AIR 1997 SC 987, that notwithstanding the inhibitions in Section 397, and 401 of the Cr.P.C. the High Court has to exercise continuous supervisory jurisdiction under Section 483 and it is of paramount importance to examine the correctness, illegality or propriety of the findings, sentence or order re-cprded or passed as also regularity of the proceedings of the inferior criminal courts and that the powers have to be exercised to avoid abuse of process of the inferior court's and to prevent miscarriage of justice. It has also inherent power under Section 482. It was held that High Court's powers, thus, is very wide though it must exercise such powers sparingly and cautiously.

7. I shall now approach the facts and evidence in the case bearing in mind the above legal principles. In the complaint filed before the Judicial First Class Magistrate Court, Kochi on 2-4-1990 the following were the specific allegations of the 1st respondent.

(1) On the date of engagement for marriage on the request of the two accused in the case gold ornaments of 8.5 sovereigns and Rs. 3,000/- in each were given to the present petitioner and it was actually received by his father on his behalf. (2) After the marriage there were repeated demand for more dowry and ornaments and for the purpose the complainant was subjected to physical and mental cruelty. (3) The present petitioner had illicit relationship with a woman from Kannamali and when the petitioner was questioned about the same the wife was assaulted. (4) On 21-2-1990 at about 10 a.m. the petitioner assaulted the complainant and forcibly took away a gold bangle of 1.5 sovereigns and two gold rings. (5) The complainant was deprived of food for 4 days on getting information of which the complainant's father went over to the husband's house and took her away to her house on 25-2-1990. It was also averred that the cruel acts of the husband were all for more dowry and ornaments.

8. A perusal of the evidence of the complainant as PW 1 shows that her evidence was not exactly in tune with the allegations in the complaint. She admitted that the ornaments mentioned in the complaint were worn by her even after the marriage. That shows that the version that the ornaments were given to the husband, actually, only meant that she was continuing to wear those ornaments even after the marriage. As to what happened to those ornaments she stated in cross examination that the bangle of 1.5 sovereigns and two rings were actually given over by her to her husband subsequently. She herself removed them from her body and handed them over to the husband. It shows that the version in the complaint that the husband forcefully snatched away the ornaments was exaggerated.

9. The parties lived together for about 9 months after the marriage. Her grievance spoken in the box were mainly against the mother-in-law and those were not acts alleged in the complaint. She stated that on 21st Feb. the petitioner and his mother both assaulted her and that her father came and put her in a hospital at Guntur. There is no medical evidence produced in support of that assertion. The complaint also is silent about such an allegation. As to the delay in filing the complaint on 2-4-1990 about the incident of 21-2-1990 she stated that she was in the hospital but to that effect there is no specific averment in the complaint let alone, medical

evidence. In cross-examination she stated that there was no sexual contact between the spouses at any time during the said 9 months and that the allegation in the complaint about the affair with another woman was something that came to her notice from her mother-in-law.

10. In continued cross-examination she stated that she has not only no hatred against the petitioner but also love towards him and that her demand was that he should live with her in her house. She was afraid that even if a new house was built for them the mother in law might disturb their harmonious life even there. She also stated that it was Dr. Claramma who treated her and that bills were in her possession to prove the said treatment. However, these are not produced. With regard to the correctness of her being looked up in a room she stated that none of her neighbours were aware of it. When it was suggested that she was making false accusation against her husband, the answer was that the accused had filed a civil suit against her. What is evident from the deposition as above is that the petitioner has come to Court irritated by the fact that a civil suit was filed against her by the petitioner and that her evidence in the box cannot be accepted at its face value being unsupported by pleadings and due to inconsistencies and exaggeration.

11. As far as PW 2 is concerned his evidence is only that there were bickering in the married life of the complainant, that she had come away from the matrimonial home to her own house some times for some days and was put back in the house of the husband thereafter. PW 2 is a person who is living 4 km away from the house of the accused and it was not likely that he would have any direct information about the affairs in the house of the petitioner. He also admitted that he was not remembering the date on which the parties were found quarrelling in the house of the petitioner.

12. What remains is only the evidence of PW 3 who is the father of the complainant. He stated that after three months of the marriage the accused inflicted injury on the complainant pursuant to which she was hospitalised. He also stated that she was examined in the hospital by Dr. Vakkachan. This is different from the version of PW 1 who was referring to one Dr. Claramma. He has also not

produced any bill or other records relating to the alleged treatment. Yet another averment of this witness was that there were 4 occasions when there arose serious differences of opinion between the spouses.

13. What is evident from the depositions of PWs 1 to 3 is that the complainant did not have a happy married life in the matrimonial home possibly because of the interference of the mother-in-law. She has still love towards the husband and is prepared to live with him provided he goes over to her house for that purpose. The case, in the circumstances, can be seen as an off shoot of the civil case allegedly filed against the complainant.

14. The question to be gone into further is whether the oral evidence unsupported by any records as above is sufficient proof for establishing the offence under Section 498(A) of the I.P.C. which reads as follows:

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 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.

It is clear from the above that in order to constitute cruelty, the wilful conduct of the husband should be of such a nature that it is likely to drive the woman to commit suicide or to cause grave injury or danger to her life. There is no case that the complainant attempted to commit suicide or that there was any grave injury caused posing danger to her life. Under explanation (b) harassment, so as to

amount to cruelty, has to be with a view to coerce the wife or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure to meet such demands. Reading the evidence of PWs 1 to 3 together what is evident is that the allegation that there was demand for more dowry is not supported by any reliable evidence. As already mentioned, as far as the version of assault and hospitalisation are concerned, they are unsupported by medical evidence. What is clear from the version of PWs 1 and 3 is that the main cause of difference of opinion between the parties is the animosity of the mother in law and that even now she is prepared to live with the husband provided the husband goes over to her house. I am not satisfied therefore that the prosecution has succeeded in improving the ingredients of Section 498(A). Cruelty, as defined in Section 498(A), remains unestablished though the fact that there is difference of opinion between the spouses resulting in their separate life stand established. The possibility of the complaint arising from the filing of civil suit by the husband cannot be ruled out and in these circumstances I am of the view that the petitioner is entitled to get the benefit of doubt with regard to the offence alleged against him. In the result I find the accused not guilty of the offence under Section 498 of I.P.C. The revision is accordingly allowed and the petitioner is acquitted of the offence under Section 498(A) of the I.P.C.

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