

Bali Mohd. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-13-2001

Reported in : RLW2003(1)Raj328; 2002(2)WLN328

Judge : Sunil Kumar Garg, J.

Acts : Indian Penal Code (IPC) - Sections 498A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397

Appeal No. : S.B. Criminal Revision Petition No. 382 of 2001

Appellant : Bali Mohd.

Respondent : State of Rajasthan

Advocate for Pet/Ap. : R.R. Chhapparwal, Public Prosecutor; B.N. Kalla, Adv.

Disposition : Revision dismissed

Judgement :

Garg, J.

1. This revision petition has been filed by the accused petitioner against the judgment and order dated 4.7.2001 passed by the learned Sessions Judge, Hanumangarh in Criminal Appeal No. 66/99 by which he allowed the appeal of the other accused persons, namely, Safi Mohd. And Alladitta, but dismissed the

appeal of the present accused petitioner and upheld the judgment and order dated 11.11.1999 passed by the learned Addl. Chief Judicial Magistrate, Hanumangarh in Cr. Case No. 31/96 so far as they relate to him by which he was convicted for the offence under Section 498A IPC and sentenced to undergo one year RI and to pay a fine of Rs. 1000/-, in default of payment of fine, to further undergo one months R1.

2. The facts giving rise to this revision petition, in short, are as follows:-

On 16.2.1993, PW.1 Rafika (hereinafter referred to as the complainant), wife of the present accused petitioner, lodged a complaint in the Court of Judicial Magistrate, Hanumangarh against the present accused petitioner and four more accused persons stating inter-alia that she was married with the accused petitioner before five years and in that marriage, many articles in dowry were given, but there was a persistent demand from the side of the accused persons for TV and Motor-cycle and since that demand was not fulfilled by her father PW 3 Imamdeen, therefore, accused persons started torturing and beating her and they used to shunt out her from the house and for that, Panchayats were held many times and Mamdeen, Sultan, Asgarali (PW 4), Liyakat Ali, Ramzan, Shah Mohd. and others attended the Panchayats and the accused persons were advised not to do so. It was further stated in the complaint that one months back, accused persons beat her and shunted out her from the house and thereafter, after holding Panchayat, she came back to the house of the accused persons, but on 11.2.1993 in the night at about 8.9.00 PM, accused persons beat her. Thus, accused persons tortured and harassed complainant PW 1 Rafika for not bringing sufficient dowry etc. and therefor, they have committed the offences punishable under Sections 498A and 406 IPC.

On 17.2.1993, the said complaint was sent by the learned Judicial Magistrate, Hanumangarh to SHO, Police Station, Hanumangarh under Section 156(3) Cr. P.C, where a regular FIR was chalked out and investigation was started.

It may be stated here that before lodging the complaint, the complainant PW 1 Rafika was got medically examined by PW 8 Dr. R.K. Gupta and her injury report is Ex.P/9, which shows that she received five injuries.

After usual investigation, the police submitted challan for the offence under Sections 498A and 406 IPC against five accused persons in the Court of Magistrate, Hanumangarh.

The contents of the charges for the offence under Sections 498A and 406 IPC were read over and explained the accused persons on 25.2.1994. The accused persons denied the contents of the charges and claimed trial.

During trial, the prosecution in support of its case examined as many as 8 witnesses and got exhibited some documents. Thereafter, the statements of the accused persons under Section 313 Cr.P.C. were recorded. No evidence was led in defence by the accused persons.

After recording evidence and conclusion of trial, the learned Additional Chief Judicial Magistrate, Hanumangarh vide his judgment and order dated 11.11.1999 acquitted all the accused persons for the offence under Section 406 IPC, but convicted all the five accused persons for the offence under Section 498A IPC, however instead of sentencing accused Fattu and Mst. Karma for the said offence, they were released on probation under the provisions of Probation of Offenders Act, but rest accused persons, namely Bali (present accused petitioner), Safi and Alladitta were sentenced for the said offence to undergo one year R1 and to pay fine of Rs. 1000/- and in default of payment of fine, to further undergo one month R1.

Aggrieved from the said judgment and order dated 11.11.1999 passed by the learned Add. Chief Judicial Magistrate, Hanumangarh, the accused petitioner Bali (husband of the complainant), Safi (Jeth of the complainant) and Alladitta (Mama of complainant's husband) preferred as appeal before the learned Sessions Judge, Hanumangarh, who vide judgment dated 4.7.2001, after analysing the evidence on record elaborately, allowed the appeal of the another accused Safi and Alladitta, but dismissed the appeal of the present accused petitioner BALi and confirmed the judgment and order dated 11.11.99 passed by the learned Addl. Chief Judicial Magistrate, Hanumangarh so far as they relate to him.

Aggrieved from the said judgment dated 4.7.2001 passed by the learned Sessions Judge, Hanumangarh, this revision petition has been filed by the accused petitioner.

3. In this revision petition, the following submissions have been made by the learned counsel for the accused petitioner:-

1. That both the courts below have not appreciated the evidence in right perspective and there is no evidence to hold the present accused petitioner guilty for the offence under Section 498A IPC. Hence, impugned judgment of both the courts below suffer from basic infirmities and they be set aside and the accused petitioner be also acquitted of the offence under Section 498A IPC,

2. That in case the Court comes to the conclusion that the accused petitioner has committed the offence under Section 498A IPC, he may either be released on probation under the provisions of Probation of Offenders Act or lenient view be taken in awarding sentence and his sentence be reduced to the period already undergone by him as he is in jail since 4.7.2001.

4. On the other hand, the learned Public Prosecutor supported the impugned judgments and orders of the courts below.

5. I have heard the learned counsel for the accused petitioner and the learned Public Prosecutor and perused the records of the case.

6. Before proceeding further, it may be stated here that the prosecution has proved the injury report Ex. P/9 6f the complainant PW1 Rafika and for that PW 8 Dr./ R.K. Gupta was produced in the trial Court. PW. 8 Dr. R.K. Gupta was produced in the trial court. PW 8 Dr. R.K. Gupta examined complainant PW 1 Rafika on 11.2,1993 and found five injuries as mentioned in that report.

7. After perusing the impugned judgments and orders of both the courts below and especially the judgment of the learned Sessions Judge, hanumangarh dt. 4.7.2001, it appears that the learned Sessions Judge has examined the evidence led by the prosecution in a very meticulous manner and after analysing the evidence on record elaborately, he came to the conclusion that the injuries to the

complainant PW 1 Rafikawere caused by the present accused petitioner, who is husband of the complainant and furthermore, he also came to the conclusion that so far as the demand of TV and Motor-cycle is concerned, it was also directly made by the present accused petitioner and not by others and thus, he came to the conclusion that prosecution has proved its case beyond all reasonable doubts for the offence Under Section 498A IPC against the present accused petitioner only and that is why, he allowed the appeal of other two accused persons, but dismissed the appeal of the accused petitioner.

8. Thus, so far as the present accused petitioner is concerned, there are concurrent findings of fact recorded by both the courts below that the present accused petitioner subjected the complaint PW 1 Rafika to cruelty and harassment and that cruelty and harassment was with a view to coercing her to meet unlawful demand of TV and Motor-cycle and for not fulfilling that demand, the complainant PW 1 Rafika was also beaten by the accused petitioner.

9. The question that arises for consideration is whether the above concurrent findings of fact recorded by both the courts below can be re-appreciated by this Court while exercising revisional jurisdiction?

10. In State of Karnataka v. Appa Balu Ingale (1), it has been held by the Hon'ble Supreme Court that 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.

11. A Court of revision is not entitled to reassess and reappraise the evidence unless it finds that the judgment to be revised suffers from some illegality or perversity or when there is glaring defect in procedure. The revisional Court cannot weigh the sufficiency of evidence.

12. The High Court while sitting in revisional jurisdiction under Section 397 of the Code of Criminal Procedure shall not and cannot re-appreciate and re-appraise the evidence and the finding of fact recorded by the two courts below can only be interfered with if such findings are perverse or based on no evidence or suffered from any error of law.

13. In *Pathumma v. Muhammad* (2), the Hon'ble Supreme Court has held that where the Magistrate has observed that the husband neglected to maintain his wife and ever tried to take her back, it is a finding of fact and revisional court is not competent to reassess the evidence.

14. Applying the above principles in the present case, the findings of both the courts below that the complainant PW 1 Rafika was subjected to cruelty and harassment for not bringing sufficient dowry by the present accused petitioner are purely findings of fact and thus, this Court in revisional jurisdiction should not reassess the evidence. From this point of view, the findings of fact recorded by both the courts below are to be maintained and no interference with them is called for.

15. In *State of Orissa v. Nakula Sahu* (3), the Hon'ble Supreme Court held that although the revisional power of the High Court is as wide as the power of court of appeal, it is now well settled that normally this jurisdiction of the High Court is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice. In spite of the wide language of Section 397, the High Court is not expected to act under Section 397, the High Court is not expected to act under Section 397 or Section 401 as if it is hearing an appeal.

16. In my considered opinion, in the present case, the findings of facts recorded by both the courts below that complaint PW. 1 Rafika was subjected to cruelty and harassment for not bringing sufficient dowry by the present accused petitioner are based on correct appreciation of evidence and they cannot be regarded as perverse or based on no evidence or suffered from any error of law. It does not appear that there is a glaring defect in the procedure or there is manifest error on point of law which has consequently resulted in flagrant miscarriage of justice. It also does not appear that there exists a manifest illegality in the impugned judgment dated 4.7.2001 passed by the learned Sessions Judge, Hanurnangarh.

17. Thus, in the present case, scrutiny having been made by both the court of Magistrate and the court of session and the same having been based on cogent material and proper appreciation of evidence, it is not permissible to reappraise the same in the revisional jurisdiction.

18. For the reasons stated above, the concurrent findings recorded by both the courts below holding the accused petitioner guilty for the offence under Section 498A 1PC are based on evidence, warranting no interference.

19. So far as the decision relied upon by the learned Counsel for the accused petitioner in *Arvind Singh v. State of Bihar* (4), is concerned, in my considered opinion, the facts of the present case clearly stand distinguished from the facts of that case as in that case there was no sufficient evidence for even the dowry demand far less the evidence of cruelty available on record. Hence, this ruling would not be helpful to the present accused petitioner.

20. Hence, the argument No. 1 of the learned counsel for the accused petitioner stands rejected.

On point of sentence

21. The learned Addl. Chief Judicial Magistrate, Hanurnangarh vide order of sentence dated 11.11.1999 sentenced the accused petitioner for the offence under Section 498A IPC to undergo one year R1 and that order of sentence was upheld by the learned Sessions Judge, Hanumangarh vide judgment and order dated 4.7.2001.

22. It may be stated here that deterrent sentence is called for in cases of dowry deaths and harassment of women by husbands or the relatives of the husbands. Offences against women are increasing and hence sentence must always be deterrent. It must be an eye opener to the offender and he must realise that he cannot get away merely by paying some amount as fine or by remaining in jail for some time:

23. So far as the leniency is concerned, since the accused petitioner is the husband of the complainant PW 1 Rafika and he is the persons responsible for all such cruelty ad harassment committed on the complainant PW1 Rafika, therefore, present accused petitioner is not entitled to any leniency on the ground that he is the husband Had the case of father-in-law or mother-in-law would have been, the question of leniency might have arisen in the mind of Court on the ground of old

age or some other factors. The present accused petitioner not only treated the complainant PW 1 Rafika with cruelty and harassment for not bringing sufficient dowry, but he also beat her and in these circumstances, it is not a case where any leniency can be showered on the accused petitioner. Apart from this, the accused petitioner is in jail since 4.7.2001 and thus, he has remained in jail for about more than two months and in my considered opinion, awarding of sentence for this period for the offence under Section 498A IPC would not meet the ends of justice. Hence, the prayer for reducing the sentence of the accused petitioner to the period already undergone by him cannot be accepted.

24. Thus, looking to the entire facts and circumstances of the case, the sentence of one year R1 awarded to the accused petitioner by both the courts below is just and reasonable and no interference with the order of sentence is called for.

For the reasons stated above, the revision petition filed by the accused petitioner Bali fails and is hereby dismissed, after confirming the impugned judgments and orders of both the courts below.

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