

Ayenessa Bibi Vs. State and ors.

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Court : Kolkata

Decided On : Apr-23-2004

Reported in : 2004(3)CHN323

Judge : Sadhan Kumar Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 498A and 506; ;Code of Criminal Procedure (CrPC) - Section 156(3)

Appeal No. : C.R.R. No. 259 of 2003

Appellant : Ayenessa Bibi

Respondent : State and ors.

Advocate for Def. : Sanat Kumar Dutta, Adv. for the Opposite party Nos. 2 and 3 and ;Kasem Ali Ahmed, Adv.

Advocate for Pet/Ap. : Dipankar Pal and ;Sabana Kazi, Advs.

Disposition : Revision application dismissed

Judgement :

Sadhan Kumar Gupta, J.

1. This revisional application has been filed against the order of acquittal passed by the learned Additional Judicial Magistrate, Hooghly Sadar passed in G.R. Case

No. 1348 of 1991. The case of the petitioner is that she is the legally married wife of one Dilwar Hossain. O.P. No. 3 is the brother-in-law of the petitioner and O.P. No. 2 is her married sister-in-law. The said O.P. No. 2, although is married, she is not living with her husband and stayed at her father's place and occupies a room. After the marriage of the O.P. No. 3, both the O.P. Nos. 2 & 3 started torturing the petitioner and her husband in order to compel them to vacate the room. On 16.03.91, O.P. Nos. 2 & 3 assaulted the petitioner and her husband. At that time the petitioner was pregnant. As a result of the assault, she became sick and when she was taken to the doctor she was informed that her child already died. On 26.06.91, the O.P. No. 2 by entering into the room of the petitioner dragged her outside at the instigation of the O.P. No. 3 and assaulted her by fist and blows as well as by kicks. When her husband came to her rescue he was also beaten. This fact was reported to the Polba Police Station. On 06.08.91 the O.P. Nos. 2 & 3 forcibly drove the petitioner and her husband from the room and threatened that they would kill them if they tried to enter into the said room again. The petitioner filed a petition of complaint before the learned Magistrate who sent the same to the Police Station for investigation under Section 156(3) of the Cr.PC. On the basis of the said complaint, investigation was taken up and after completion of the investigation chargesheet was submitted against the accused persons. During trial charge under Section 498A/323/506 of the Indian Penal Code was framed against the accused persons. Six witnesses were examined on the side of the prosecution. But the learned Magistrate, inspite of the fact that there were materials against the accused persons preferred to disbelieve the prosecution case and acquitted the accused persons. Being aggrieved and dissatisfied with the said order of acquittal, present revisional application has been filed claiming therein that the order as passed by the learned Magistrate is illegal and perverse in nature and he was not at all justified in holding the accused persons not guilty of the charges.

2. I have heard the submissions of the learned Advocate for the petitioner as well as the learned Advocate for the O.Ps. The learned Advocate for the O.P. State of West Bengal practically supported the contention of the petitioner. According to him, the learned Magistrate was not at all justified in acquitting the accused persons although there were sufficient materials against them. Learned Advocate for the petitioner argued that P.W. 1 and the P.W. 2 have clearly corroborated

each other regarding the alleged incident. Their evidence finds support from the evidence of the P.W. 5 i.e. the doctor. As such, the learned Advocate for the petitioner argued that there are sufficient materials to hold the accused persons guilty for the offence under Section 498A/323/506 of the IPC. In support of his contention the learned Advocate for the petitioner cited some decisions in order to show that it is permissible for a revisional Court to interfere into the finding of acquittal as passed by the learned Court below. He has drawn my attention to the decisions reported in 2002 C Cr L.R. (SC) page 643, Jagannath Choudhary v. Ramayan Singh and Anr.; : 1991 CriLJ1713 , Shanti and Anr. v. State of Haryana; 2002 C Cr L.R. (Cal) page 1093, Gita Chakraborty v. Satyajit Banerjee and Ors., I have perused those decisions. There is no dispute that High Court has always the jurisdiction to interfere into the finding of acquittal, as passed by the learned Court below in a particular case. But in order to exercise the said jurisdiction it must be shown that the order of acquittal, as passed by the learned Magistrate, is illegal and perverse in nature and as such it needs intervention by this Court. In order to substantiate its case, I have already pointed out prosecution has examined six witnesses. P.W. 1 is the de facto complainant and P.W. 2 is the husband of the de facto complainant, P.Ws. 3 & 4 are the neighbours. P.W. 5 is the doctor who allegedly examined the petitioner. P.W. 6 is another doctor who was tendered for cross-examination. Admittedly the P.W. 1 & P.W. 2 are the husband and wife. There is no dispute that the husband is the brother of the O.P. Nos. 2 & 3. The petitioner has alleged that the O.P. Nos. 2 & 3 used to torture her and for that they have committed an offence under Section 498A of the IPC. Much has been argued by the learned Advocate for the petitioner that the learned Court below was not justified in holding that in this case the offence under Section 498A IPC is not applicable. But it appears from the trend of the evidence that there is a dispute in between the parties over the family properties. There is no allegation against the husband that he tortured the wife over some dowry demand etc. Practically there is no ingredient of any matrimonial offence in the present case. As such, I find no reason to differ with the learned Magistrate in holding that Section 498A is not applicable so far as the present case is concerned.

3. The learned Advocate for the petitioner argued that there is clear evidence that the O.P. Nos. 2 & 3 actually assaulted the petitioner while she was pregnant. The

petitioner has claimed that as a result of the assault there was abortion and for that reason her child died. Due to all these things learned Advocate for the petitioner argued that there cannot be any doubt that the accused persons are guilty for the commission of the offence under Section 323 IPC. In order to substantiate this claim, he drew my attention to the evidence of the P.W. 1 & P.W. 2. I have already pointed out that the P.W. 1 is the wife of the P.W. 2. So without any hesitation, it must be stated that these two witnesses are very much interested in the result of the case and it will always be risky to place entire reliance on their statements without any appropriate corroboration. That apart, it appears clearly from the evidence on record that the petitioner and the O.P. Nos. 2 & 3 are in trouble over the family properties -for a long time. The P.W. 2 in his first line of cross-examination has admitted by saying that there is a long standing dispute in between him and the O.P. Nos. 2 & 3. From this statement it is clear that there was enmity in between the parties and I cannot rule out the possibility of this P.W. 2 giving false evidence against the O.P. Nos. 2 & 3 in order to secure their conviction. Learned Advocate for the petitioner tried to rely upon the evidence of the P.W. 3 and P.W. 4 who are the neighbours and in this attempt, he was also supported by the learned Advocate for the State. But if we look into the evidence of the P.W. 3 then it will appear that this witness did not support the prosecution case. Although this witness stated that he knew about an incident between the parties and he found the P.W. 1 lying on the ground, still he was hesitant to narrate the actual incident. Prosecution also did not dare to ask any further question to this witness for reasons best known to it. So, in my considered opinion, this witness is of no help for the prosecution. The P.W. 4 in fact has not supported the prosecution case at all and as such he was declared hostile.

4. Learned Advocate for the petitioner heavily relied on the statement of P.W. 5 doctor Runu Bhattacharya. She has stated in her evidence that on 18.03.91 she examined the petitioner in her chamber. At that time the petitioner was pregnant. She has further stated that on 23.03.91 the petitioner came to her with 'incomplete abortion'. She has stated that she admitted the petitioner in the nursing home and after necessary treatment she was discharged. She has further stated that on 07.05.1991 again she examined the petitioner when she complains of pain in the abdomen. In her cross-examination this doctor has stated that she did not record

in the prescription as to the reason for the abortion of the petitioner, So it appears from the evidence of this witness that there is nothing to show that this abortion was caused due to the assault on the petitioner by the accused persons. There is nothing on record to show that the petitioner or her husband stated before the doctor that the accused persons assaulted her and as a result of that the said abortion took place. The evidence of this doctor is of no help at all to the prosecution.

5. Therefore, from the materials on record, it appears that there is no corroborative evidence in order to substantiate the claim of the prosecution. Simply because the P.W. 1 & P.W. 2 have claimed that the accused persons assaulted them, it cannot be said that for that reason the accused persons should be convicted for the offence under Section 323 IPC. I have already pointed out that P.W. 1 & P.W. 2 are the husband and wife and as such they are highly interested in the result of the case. In absence of any corroboration by the neighbouring people as well as by the doctor, I think that it will not be proper to convict the accused persons solely on the basis of the statements of the P.W. 1 & P.W. 2. To my mind, the learned Magistrate was perfectly justified in holding the accused persons not guilty of the offence charged with and consequently he did nothing wrong in acquitting the accused persons. As such, I am of opinion that there is no illegality in the order of acquittal as passed by the learned Magistrate and the said order cannot be said to be perverse in nature under any stretch of imagination and consequently I hold that there is no scope for interference by this Court in respect of the order, so passed by the learned Magistrate.

6. In the result, the revisional application is dismissed. The judgment and order dated 27.08.2002, as passed by the learned Judicial Magistrate, Hooghly Sadar in G.R. Case No. 1348 of 1991 is confirmed.

7. Send a copy of this order along with the Lower Court Record to the Court below at once.

8. Xerox certified copy, if applied for, may be handed over to the party on an urgent basis.

