

(2025) 09 GAU CK 0468
In the Gauhati High Court
Case No : Crl.Rev.P. Of 164 Of 2013

Abul Kalam Azad @ Abu Kalam Azad And 2 Ors State Of Assam

Date of Decision : 24-09-2025

Acts Referred:

Constitution Of India, 1950 — Article 136
Code of Criminal Procedure, 1973 — Section 313, 397, 401
Indian Penal Code, 1860 — Section 34, 323, 324, 498(A)
Probation of Offenders Act, 1958 — Section 3, 4

Citation : (2025) 09 GAU CK 0468

Hon'ble Judges : Mridul Kumar Kalita, J

Bench : Single Bench

Advocate : R. De, K. Baishya

Final Decision : Disposed Of

Judgement

Mridul Kumar Kalita, J

1. Heard Mr. R. De, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State.
2. This application under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, 1. Md. Abul Kalam Azad @ Abu Kalam Azad, 2. Md. Wazed Ali and 3. Ms. Urful Begum impugning the judgment and order dated 10.04.2013 passed by the learned Sessions Judge, Mangaldoi, Darrang in C.A. Case No. 2(D-1)/2012 whereby it affirmed the judgment and order dated 17.12.2011 passed by the learned Judicial Magistrate First Class, Mangaldoi, Darrang.
3. By the aforesaid judgment, the Trial Court convicted the petitioners under Section 498 A/34 of IPC and sentenced the petitioner No. 1 to undergo simple imprisonment for six months and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo simple imprisonment for thirty days. The petitioner Nos. 2 and 3 were sentenced to pay a fine of Rs.2000/- each and in default of payment of to undergo simple imprisonment for thirty days.

4. The facts relevant for consideration of instant criminal revision petition, in brief, is that on 09.09.2008, the complainant Sanowara Begum had lodged an FIR before the Officer-in-charge of Sipajhar Police Station, inter alia, alleging that she was married to the petitioner No. 1 about nine months prior to lodging of the FIR. It was in the FIR that about ten to fifteen days after the marriage, the petitioner No. 1 being instigated by petitioner Nos. 2 and 3 started demanding Rs.20,000/- (Rupees Twenty Thousand) from the complainant and asked her to bring the said money from her parents and they started torturing her for demand of the said dowry. It was also alleged that the complainant was physically tortured and on 02.09.2008, the petitioners drove her out of her matrimonial house. After completion of the investigation, charge-sheet was laid against the present petitioners under Sections 498A/323/34 of the Indian Penal Code. The petitioners appeared before the Trial Court to face the trial. The charges under the aforesaid provision of law were framed against them. When the said charges were read over and explained to them, they pleaded not guilty and claimed to be tried. During the trial, the prosecution side examined four witnesses. During their examination under Section 313 of the Code of Criminal Procedure, the petitioners denied the truthfulness of the testimony of the prosecution witnesses and pleaded innocence. However, they declined to adduce any evidence in defence. Ultimately, by the judgment dated 17.12.2011, passed in GR Case No. 904/2008, the Trial Court acquitted the petitioners under Sections 324/34 of the Indian Penal Code. However, they were convicted under Sections 498A/34 of the Indian Penal Code and were sentenced in the manner as already described in the following paragraphs.

5. Being aggrieved by the decision of the Trial Court, the petitioners preferred a criminal appeal which was registered as C.A. Case No. 2(D-1)/2012 before the Court of learned Sessions Judge, Mangaldao, Darrang. However, the learned Sessions Judge, Mangaldao, Darrang by the judgment dated 10.04.2013 had upheld the judgment of the Trial Court and dismissed the appeal. The said judgment has been impugned in the instant criminal petition.

6. The learned counsel for the petitioners has submitted that both the Trial Court as well as the First Appellate Court have erred in convicting them upholding the conviction respectively of the petitioners under Section 498A of BNSS inasmuch as during the trial, even the Investigating Officer was not examined and thereby the petitioners were deprived of putting the contradictions in the testimony of prosecution witnesses before the Investigating Officer. It is also submitted by the learned counsel for the petitioners that both the Trial Court as well as First Appellate Court failed to take into consideration the fact that the FIR was lodged in this case belatedly, which cast doubt on the veracity of the presumption. He also submits that though the petitioners were convicted under Section 498A of BNSS, they were acquitted under Section 323 of the Indian Penal Code which appears to be a contradictory finding.

7. The learned counsel for the petitioners further submits that merely having a

matrimonial dispute between the husband and wife after the marriage may not be a ground for convicting them under Section 498A of IPC in as much as there are materials on record which suggest that the petitioners tried to amicably settle the issue by taking help of the neighbors. However, said fact was not considered by both the Courts. In support of his submission, learned counsel for the petitioners has cited following rulings of the Apex Court:-

(i) State of Maharashtra Vs. Ashok Narayan Dandalwar reported in (2000) 9 SCC 257

(ii) Arvind Singh Vs. State of Bihar reported in (2001) 6 SCC 407

8. On the other hand, the learned Additional Public Prosecutor has submitted that both the Trial Court as well as First Appellate Court have correctly convicted and upheld the conviction respectively of the petitioners under section 498A of the Indian Penal Code. He further submits that the Trial Court reached the finding of guilt of the petitioners on the basis of evidence on record and same may not be re-appreciated in exercise of provisional powers revisional jurisdiction of this Court. He submits that mere delay in lodging of the FIR in itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case nor it could be treated as a fatal to the case of the prosecution. In support of his submission, he has cited the ruling of the Apex Court in the case of "Hariprasad @ Kishan Sahu Vs. State of Chhattisgarh" reported in "2023 INSC 986".

9. He further submits that nothing could be brought out during the cross-examination of prosecution witnesses which would require non-believing the said testimony. He also submits that the fact regarding non-examination of Investigating Officer on itself may not be regarded as fatal. In support of his submission, the learned Additional Public Prosecutor has cited the judgment of this Court in the case of "Sanjit Debbarma @ Khurumpui Vs State of Tripura" reported in "2008 (1) GLT 836".

10. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides.

11. In this case, the alleged offence occurred in the year 2008 and 17 years have passed since then. It also appears that at the time of admission of this criminal revision petition, the Co-ordinate bench of this Court by order dated 15.05.2013 had stayed the execution of the sentence imposed on the petitioners by the impudent judgments. It is a settled proposition of law that while exercising revisional jurisdiction, the High Court should not disturb the concurrent finding of the Trial Court as well as First Appellate Court unless the findings are found to be prima facie perverse. While exercising revisional power, the High Court is primarily exercising its supervisory jurisdiction and it has to be confined to the legality and propriety of the finding as to whether the Court below has kept itself within the bounds of its jurisdiction including the question whether the Court has

failed to exercise jurisdiction vested in it. While exercising such jurisdiction, it would not re-appreciate the evidence to come to a different finding on the question of facts from that of the Court below unless the conclusion arrived at by the Trial Court is found to be perverse.

12. In the instant case, the conclusion arrived at by the Trial Court may not be regarded as perverse as the witnesses examined by the prosecution side had implicated the present petitioners for commission of offence under Section 498A of Indian Penal Code. The Appellate Court has also rightly come to the finding that the conviction of the petitioners under Section 498A of IPC has been made by the Trial Court correctly on the basis of the evidence available on record.

13. Though, for the aforesaid reasons, this Court is reluctant to interfere in the finding of conviction of the present petitioners under Section 498A of the Indian Penal Code. However, as regards the observations made by the Trial Court for not affording the benefit of provision of the Probation of Offenders Act, 1958 to the petitioners, this Court is of a different view. The reasons shown by the Trial Court for not affording the benefit of provisions of Probation of Offenders Act, 1958 to them is that the offences under Section 498A of IPC that it is not only a crime against the person but against the society, therefore, the Court deemed it improper to give the benefit of Section 4 of the Probation of Offenders Act, 1958 to the petitioners. The reasoning does not appear to be sound reasoning as if we go by the said reasoning, then in no case where the conviction is made under Section 498A of IPC, the provisions of Section 4 of the Probation of Offenders Act, 1958 may be invoked which was never the intention of the legislature.

14. In the case of "Ratul Bhuyan Vs. State of Assam" (Judgment dated 13.11.2024 passed in Criminal Revision Petition No. 383/2013), a Co-ordinate Bench of this Court has observed as follows:-

"16. It is by now well settled that Act, 1958 is a milestone in progress of modern liberal trend of reform in the field of Penology. It is the result of recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. It was also held by Hon'ble Apex Court in the case of Ved Prakash Vs. State of Haryana reported in 1981 1 SCC 447, that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Trial court should collect material necessary to award a just punishment in circumstances. It was further held that the social background and the personal factors of the crime doer are very relevant in this regard.

17. In the case of Sita Ram Paswan Vs. State of Bihar reported in AIR 2005 SC 3534, the Hon'ble Apex Court has laid down certain principle for exercise of discretionary power under the Act and the consideration required. The hon'ble Apex Court opined that while exercising the discretionary power under the Act 1958, the court is to consider the circumstances of the case, the nature of offence and the character of the offender. While considering the nature of the

offence, the court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. It was concluded by the hon'ble Apex Court that the benefit available to the accused under section 4 of the Act, 1958 is subject to the Limitation embodied in the provision and the word 'may' clearly indicates that the discretion is vested with the court whether to release the offender in exercise of power under section 3/4 of the Act, 1958, having regard to the nature of the offence, the character of the offender and overall circumstances of the case.

18. It was further held by the hon'ble Apex Court that such power can be exercised by the court even at the appellate or revisional stage or also by Apex Court hearing appeal under Article 136 of the Constitution of India."

15. In the instant case also, no previous conviction of the petitioners have been proved by the prosecution side. There is no material on record to suggest that they have any other criminal antecedents. Moreover, this being a matrimonial dispute, the Court below also ignored the fact that there was an attempt on the part of the neighbors to amicably settle the dispute between the parties. The Trial Court by merely holding that the offence committed by the petitioners are the offence against the society and without considering the characters of the petitioners and their antecedents denied to the petitioners the benefit of the Probation of Offenders Act, 1958 and directed them to undergo imprisonment (six months for the petitioner No. 1 and thirty days for the petitioners No. 2 in default of payment of fine).

16. In case of "Sitaram Paswan Vs. State of Bihar" reported in AIR 2005 SC 3534, the Apex Court has observed that while exercising the discretionary power under the Probation of Offenders Act, 1958, the Courts are also to consider the circumstances of the case apart from nature of the offence and the character of the offender. It has also observed that while considering the offence, the Court must take a realistic view of the gravity of the offence, the impact, which the offence had on the victim.

17. In the instant case, there is no material to show that apart from the present case in which they were convicted, there is no allegation against them regarding their involvement in any other offence of any kind.

18. Considering of the aforesaid facts and circumstances in its entirety, this Court is of the considered opinion that this is a fit case where benefit of the provisions under Section 4 of the Probation of Offenders Act, 1958 should be given to the petitioners.

19. Accordingly, upholding the conviction imposed by the Trial Court as well as upheld by the Appellate Court, this Court modifies the sentence imposed on them to the extent that instead of sentencing the petitioners at once, they are directed to be released on furnishing a bond of Rs.30,000/- (Rupees Thirty Thousand only) each with one surety of like amount subject to the satisfaction of the learned Judicial Magistrate First Class, Darrang, Mangaldoi to appear and receive

sentence when called upon during the period of next one year as the Court may direct and in the meanwhile, they shall keep the peace and be of good behaviour.

20. With the above observations, this criminal revision petition is disposed of.