

(2014) 02 PAT CK 0030
In the Patna High Court
Case No : Crl. Appeal (S.J.) No. 85 of 1998

Braj Mohan Prasad Sinha

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 493, 494, 495, 496

Citation : (2014) 3 DMC 159

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : Nilima Sinha, Rajiv Ranjan and Meenu, Advocates, Suraj Narain Prasad Sinha, Chittranjan Sinha, Sr. Advocates and Niraj Kumar Sinha, Advocate for the Appellant; Bipin Kumar, APP, Advocate for the Respondent

Judgement

Akhilesh Chandra, J.—Heard the parties. The solitary appellant has preferred this Appeal against his conviction for the offences under Section 493 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and pay a fine of Rs. 10,000, in default, three months rigorous imprisonment, for the offences under Section 494 of the Indian Penal Code sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs. 5,000, in default, one month rigorous imprisonment, under Section 495 of the Indian Penal Code sentenced to undergo rigorous imprisonment for five years and a fine of Rs. 3,000, in default, 15 days rigorous imprisonment and under Section 496 of the Indian Penal Code sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs. 2,000, in default, 15 days rigorous imprisonment. He was also sentenced to undergo rigorous imprisonment for one year under Section 496 of the Indian Penal Code. However, the sentences are to run concurrently as awarded by the 1st Additional Sessions Judge, Patna on 26th February, 1998 in Sessions Trial No. 202 of 1986 arising out of Complaint Case No. 107(C) of 1985 by same judgment the co-accused were also convicted and sentenced giving rise to another Crl. Mis. Appeal No. 108 of 1998 but due to their death the said Appeal already stand abated vide order dated 12th August, 2013. It was also

directed by the Trial Court that the amount of fine which is in total Rs. 20,000, if realized, would be paid to the complainant.

2. After having heard learned Counsel for the appellant at length for two to three consecutive dates and arriving at definite conclusion upholding the conviction but for hearing on the point of sentence the matter was adjourned for a month vide order dated 23rd September, 2013 on the prayer of learned Counsel for the appellant taking into consideration the mitigating circumstances in this case and also being inspired by decision of Apex Court in the case of *Narotam Singh Vs. State of Punjab and Another*, wherein in para 4, the Apex Court has held that:

"4. Even so, what should be the sentence in the present case? The appellant is a businessman and one consequence of his two years imprisonment is that he wrecks his business which, whatever else happens, will land his family, including one or both the wives, in financial misfortune. Secondly punitive incarceration may not restore the harmony between the complainant and the appellant; if at all it may estrange them into worse hostility and never restore them back to consortium. Thirdly, the reality of the situation is that the man has "married" a second woman. The complainant derives poor comfort if left in the cold after a draconian sentence inflicted upon her husband. True, the penal law registers the public denunciation of the community on criminal misconduct and the wife, certainly, will derive some satisfaction if the husband who betrays the conjugal fidelity and ill-treats one for whom he is obliged to be kindly is punished. She has to live, which means financial resources. She has to have a future which certainly cannot rest with a betrayer. Taking the totality of these circumstances into consideration, we felt that the best course would be to have the offence compounded for which the parties were readily willing, appreciating the pragmatism of life."

3. The matter continued pending at same stage and to further facilitate and develop the harmony between the parties, several adjournments were given during which supplementary affidavits, counter-affidavits and rejoinder to the affidavits, etc. have also been filed and ultimately when nothing amicable could come, by way of last indulgence, on 17th February, 2014 of this month matter was adjourned for few days. And today again supplementary affidavit has been filed on behalf of the appellant indicating therein that the offers made by him to pay a sum of Rs. (12 lacs + 3 lacs) 15 lakh is also not acceptable to the complainant who is none else than admittedly second wife of the appellant and mother of a female child. It is emerged from the different pleadings and submissions of the Bar that she (the daughter) has already been married and leading happy life with her husband and she is also in job. On the other hand, appellant's first wife with whom he was married prior to his marriage with the complainant and earlier marriage is also registered one is a simple house wife and mother of two female children born out of the wedlock. Eldest one is married and leading happy life with her husband but youngest one is yet to be married.

4. Having regard to the facts and circumstances, which has now become

uncontroverted there appears no need to further state the minute details of prosecution case except that the complainant has come with a case that she was kept in dark about earlier marriage of her husband the appellant till she anyhow arrived at the work place of the appellant with her child and could know about the wrong done with her. She has further stated retention of ornaments, etc. by the accused persons including the appellant who at the initial stage even during hearing in the appeal has tried his level best to question even his new undisputed and registered first marriage. It is also undisputed that at the relevant time appellant was working as a Junior Engineer and now leading a retired life as Executive Engineer for last about 3 years.

5. It is contended by learned Counsel for the appellant that in late 70's or early 80's, it was not possible for him to meet the pressure put upon by her parents to have marriage with a girl of their choice and he could not dare to disclose his inter-caste marriage already performed and now he has to rip the consequences.

6. During trial in order to substantiate the charges the prosecution has produced the following documentary evidence:

"Ext. 1 Letter.

Ext. 2 Marriage certificate.

Ext. 3 Bank receipt with pen of Braj Mohan Singh.

Ext. 4 Inland letter.

Ext. 5 Address of Mangala.

Ext. 4/1 to 4/4 Letters.

Ext. 6 Envelop.

Ext. 4/5 to 4/8 Letters.

Ext. 7 Redirected on Ext.:. 4/7.

Ext. 8 Complaint petition.

Ext. 9 Loan application of Brajesh Mohan Pd.

Ext. 10 True copy of Bank ledger of GL Act.

Ext. 11 Endorsement on carbon copy of Gandhi Maidan Police.

Ext. 12 Copy of marriage notice.

Ext. 13 Copy of forwarding letter.

Ext. 14 to 14/A declaration.

Ext. 15 Order-sheet dated 16.5.1989.

Ext. 16 Endorsement in marriage register on page-22.

Ext. 17 to 17/1 Two seizure list.

Ext. 11/A Endorsement on fardbeyan.

Ext. 4/9 letter dated 2.12.1985 of DO.

Ext. 18 Bail petition dated 1.11.1985 of BP No. 770/85:

Ext. 19 Vakalatnama.

Ext. 15/1 Order-sheet dated 1.11.1985, 2.11.1985 and 15.11.1985 of BP No. 770/85.

Ext. 20 Opinion of signature entrust police laboratory, CID Bihar (three sheets).

Ext. 21 Report of finger print."

Besides producing 16 (sixteen) witnesses the Trial Court on consideration convicted and sentenced the appellants in the manner aforesaid.

7. Learned Counsel for the complainant are in agreement not to file any pleading against the supplementary affidavit filed today. Rather it is contended that whatever order on the point of sentence is given it is acceptable to them. It is further contended by learned Counsel for the appellant placing reliance upon the decision of the Apex Case rendered in the case of Anandrao Tulsiram Bhawar and Another Vs. The State of Maharashtra, and in the case of Ashwin Nanabhai Vyas Vs. The State of Maharashtra, , that the appellant has not only paid the consolidated fine of Rs. 20,000 but also suffered detention for about 10 months besides mental agony, financial loss for last about 28 years and if he is to serve remaining sentences anyone may be benefited but in the event sentence is reduced as undergone if the complainant is compensated in terms of money so that she may now lead peaceful life and ends of justice may be served.

8. Having regard to the facts and circumstances stated above and being inspired from the decisions of the Apex Court referred above under the mitigating circumstances emerging out in this case, it seems desirable though subject to deposit in Court below through cash or payment through demand draft of Rs. 15,000,00 (Rs. fifteen lacs) within a period of three months sentences awarded to the appellant shall be reduced as undergone without any interference in the amount of fine already deposited. On such deposit of the said amount it shall go to the complainant on the duly verified undertaking supported with affidavit to get the entire amount deposited in any nationalized bank/post-office/insurance company/in a monthly income/pension scheme nominating her only daughter none else for the purpose and met immediate requirement, condition of making the entire amount deposited in the above scheme may be realized to the extent of Rs. 1,00,000 (one lac) only so that she may also be able to open if not opened any saving bank account in the same convenient institution so that the monthly interest may be automatically deposited therein and in both such accounts the solitary nominee shall be her only daughter.

9. With the above conditional modification in the sentence as awarded by the Trial Court, the Appeal is hereby dismissed. Let the order be communicated to the Court below concerned through FAX at the cost of appellant for needful.