

(2020) 11 JH CK 0057
In the Jharkhand High Court
Case No : Criminal Revision No. 824 Of 2014

Jagat Bhandari @ Jagat Chandra Bhandari	APPELLANT
Vs	
State Of Jharkhand	RESPONDENT

Date of Decision : 12-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120(B), 420, 498(A)
Dowry Prohibition Act, 1961 — Section 3, 4
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2020) 11 JH CK 0057

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Zaid Ahmad, Lily Sahay

Final Decision : Disposed Of

Judgement

1. Heard Mr. Zaid Ahmad, the learned counsel appearing on behalf of the petitioner.
2. Heard Ms. Lily Sahay, learned A.P.P. appearing on behalf of the Opposite Party-State.
3. This criminal revision petition has been filed by the petitioner against the Judgment dated 10.07.2014 passed by the learned Sessions Judge, Dhanbad in Criminal Appeal No.242/2011 whereby and whereunder the conviction of the petitioner under Section 498(A) of Indian Penal Code (hereinafter referred to as 'IPC') was upheld and the sentence of the petitioner was reduced to rigorous imprisonment for one year and he was directed to pay fine of Rs.3,000/-, failing which the petitioner was directed to undergo simple imprisonment for fifteen days.
4. The criminal appeal was preferred by the petitioner against the Judgment of conviction and the order of sentence dated 26.09.2011 passed by the learned Judicial Magistrate, 1st Class, Dhanbad in C.P. Case No. 40 of 2011 / T.R.

No.1225 of 2011 whereby and whereunder the petitioner was held guilty and was convicted for the offence under Section 498(A) of IPC and was sentenced to undergo Rigorous Imprisonment for 02 (two) Years and fine of Rs.3,000/- under Section 498(A) of Indian Penal Code and in case of default to deposit the fine amount, the petitioner was directed to undergo further imprisonment for 03 months.

Arguments on behalf of the petitioner

5. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is the father-in-law of the Complainant and no case under Section 498(A) of IPC is made out against the petitioner. He further submitted that the conviction of the petitioner passed by the learned courts below is perverse and accordingly, the present criminal revision petition is fit to be allowed. On the point of sentence, he submitted that on the date of conviction in the Year 2011, the petitioner was 65 Years of age and accordingly, at present, he is aged about 74 Years and he has already remained in custody for the period from 04.02.2002 to 22.02.2002. He submitted that the petitioner has faced the rigours of the trial for a long period and this criminal revision has remained pending before this Court since 2014 and as such, a sympathetic view may be taken and the period of sentence of the petitioner may be modified. He further submitted that the petitioner is ready to bear any further fine amount as may be imposed by this Court while modifying the sentence.

Arguments on behalf of the Opposite Party-State

6. Learned counsel for the Opposite Party-State opposed the prayer and submitted that there are direct allegations against the petitioner and it has come in evidence that the petitioner kicked the Complainant which resulted in her miscarriage and the learned courts below have given consistent findings. She further submitted that the scope of interference in revisional jurisdiction is very limited and considering the facts and circumstances of the case, no interference is called for. She further submitted that the age of the petitioner has already been considered and the learned appellate court taking a sympathetic view has already reduced the sentence from two years to one year and as such, no further sympathetic view is required to be taken.

Findings of this Court

7. After hearing the learned counsel for the parties and perusal of the records of the case, this Court finds that the prosecution case is based on a Complaint Petition being C.P. Case No. 40 of 2011 presented on 11.01.2001 by the Complainant namely, Deepika @ Sumitra Bhandari against the petitioner and three others alleging inter-alia that the Complainant was married with Dipak Bhandari (since deceased) on 30.04.1999 and at the time of marriage, her father had given Rs.90,000/- cash and ornaments of 14 tola gold and 45 tola silver, one Bajaj Brevo Scooter and furniture, etc. to the accused persons. She went to her matrimonial house where she came to know that her husband is still

unemployed, although it was represented that her husband is running a stationery shop business at Nirsa, but she found that her husband was totally dependent upon his father (petitioner). She further alleged that she entrusted all her gold and silver ornaments and other articles to the accused persons. She further alleged that the accused persons showed dissatisfaction over the dowry and her husband used to assault her and demanded Rs.1,50,000/-, one Hero Honda motorcycle and colour T.V. She was not provided with food and clothes and on 05.04.2000, she was brutally assaulted which resulted to miscarriage. On 10.11.2000, the parents of the Complainant came to her matrimonial house and took her back with them.

8. On 14.11.2005, the charges under Sections Section 498(A), 420, 120(B) of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act were framed against all the accused persons which were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

9. This Court finds that in course of trial, the prosecution examined altogether 03 witnesses. CW-1 (Ram Prasad Bhandari) is maternal uncle (Mama) of the Complainant, CW-2 (Madan Chandra Pramanik) is the father of the Complainant and CW-3 is the Complainant herself. The Complainant has proved her five letters as Exhibits-1 to 1/4. The defence examined one witness as DW-1 (Ram Kishore Thakur) and also exhibited Letter of All India Barber Union dated 25.02.2001, C.C. of F.I.R. of Baliapur P.S. Case No.52 of 2001 (G.R. No.2420/2002) and certified copy of Charge-sheet in the aforesaid case.

10. This Court further finds that the husband of the Complainant namely, Dipak Bhandari died during trial and the proceeding against him was dropped vide order dated 22.09.2001.

11. On 05.12.2008, the statements of the accused persons were recorded under Section 313 of Cr.P.C. wherein the accused persons including the petitioner completely denied the case of the Complainant.

12. This Court finds that the learned trial court, after considering the materials on record acquitted all the accused persons including the petitioner for alleged offence under section 420/120 B IPC and also under sections 3 and 4 of Dowry Prohibition Act and convicted the petitioner only under section 498(A) of IPC after considering the evidences, both oral and documentary. The learned trial court recorded its finding in Para-12 of the judgment by holding that there is specific allegation in the complaint petition that the petitioner kicked the Complainant knowing very well that she was pregnant and as a result, the Complainant suffered miscarriage and this finding was based on the evidence of C.W-1,2 and 3. It has also been recorded that the complainant, C.W-3 did not specifically mention the name of the petitioner (father -in -law) but the other two witnesses including the father of the complainant had specifically taken the name of the petitioner. The learned court below recorded that the Complainant has been able to establish the allegation of torture and hence charge under Section

498(A) of Indian Penal Code was proved against her father-in-law (petitioner) inter alia considering the letters exhibit 1 to 1/3 and other evidences . The learned trial court convicted the petitioner for rigorous imprisonment for 2 years and fine of Rs. 3000/-for offence under section 498(A) of Indian Penal Code.

13. This Court finds that the learned appellate court also considered the evidence of the prosecution as well as the evidence of the defence. It was the case of the defence that the F.I.R. and Charge-sheet of Baliapur P.S. Case No.52 of 2001 shows that the Complainant, her father and mother are accused of committing murder of the husband of the Complainant which is alleged to have taken place on 31.08.2001 when the husband of the Complainant had gone to bring the Complainant to her matrimonial house. The appellate court summarized its findings in Para-13 of its Judgment that the Complainant was tortured by the petitioner, father -in -law who used to catch her by hair and assault her to enforce the demand of Rs.1,50,000/- made by him. The learned appellate court also found that the petitioner was guilty of offence under section 498(A) of Indian Penal Code and relied upon the letters written by the complainant to her father and upheld the trial court judgment of conviction. However, the learned appellate court reduced the sentence of the petitioner from two years to one year considering his age at 68 years on the date of pronouncement of appellate court judgement and also the fact that the petitioner had also lost his son.

14. This Court finds that both the learned courts below have carefully scrutinized the evidences of the prosecution witnesses as well as defence evidences and have recorded concurrent findings of torture of the complainant for dowry and the petitioner has rightly been convicted for offence under section 498(A) of Indian Penal Code. This court further finds that the learned counsel for the petitioner has not been able to point out any perversity in the impugned judgement calling for any interference in revisional jurisdiction of this court.

15. On the point of sentence, this Court finds that the petitioner is the father-in-law of the Complainant and has admittedly lost his son (husband of the complainant) and at present, he is aged about 74 Years. He has remained in custody for the period from 04.02.2002 to 22.02.2002 and has faced the rigours of the criminal case for a long period. Considering the aforesaid facts and circumstances of the case, this Court is of the considered view that the ends of justice would be served, if the sentence of the petitioner is modified to some extent. Accordingly, the sentence of the petitioner is reduced to Rigorous Imprisonment for six months only and the fine amount is enhanced to Rs.15,000/- for committing the offence under Section 498(A) of Indian Penal Code. The fine amount should be deposited by the petitioner before the learned trial court within a period of three months from the date of receipt of a copy of this judgment. The learned trial court is directed to remit the fine amount to the Complainant of the case upon due identification. If the fine amount is not deposited as above, the petitioner would serve the remaining sentence imposed by the learned appellate court. Accordingly, the conviction of the petitioner is

upheld and the sentence is modified as indicated above.

16. Accordingly, this criminal revision petition is hereby disposed of with the aforesaid modification of the sentence.

17. Interim order, if any, stands vacated.

18. The bail bonds furnished by the petitioner are hereby cancelled.

19. Pending interlocutory application, if any, is also dismissed as not pressed.

20. Let the Lower Court Records be immediately sent back to the court concerned.

21. Let a copy of this order be communicated to the learned court below through "FAX/Email".