

(2001) 04 PAT CK 0075

In the Patna High Court

Case No : Criminal Revision No. 116 of 1999

Jamaluddin Khan, Md. Sarsar Ahmad @ Sarsar Khan and
Jubeda Khatoon

APPELLANT

Vs

The State of Bihar and Most. Sedika Khatoon

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2001) 3 PLJR 338

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Advocate : D.K. Sinha and Anil Kumar Singh No. 1, for the Appellant; R.D. Kumar Sinha, for State, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sinha, J.—This revision application has been directed against the order dated 8th December, 1998 passed by 10th Additional Sessions Judge, Sasaram in Criminal Appeal No. 164 of 1996, whereby he dismissed the appeal preferred by the Petitioners who were convicted in G.R. Case No. 3209 of 1987 u/s 498A of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for three years each and were also sentenced to pay fine of Rs. 500/- each or, in default, to undergo simple imprisonment for a period of three months.

2. The relevant facts concerning the revision application are that the complainant filed a complaint in the court of Judl. Magistrate, Sasaram, against the Petitioners alleging therein that her daughter Rashida Khatoon was married to Md. Sarsar Ahmad (Petitioner No. 2) on 26.3.86 and after marriage the Petitioner No. 2 gave a list of articles to the complainant as dowry and gave threats that if the articles as per the list are not given to him, the consequences will be worse. The

Petitioner No. 2 used to write threatening letters to his mother-in-law for the fulfilment of the demand of dowry made by him. Ultimately, the demand was not fulfilled. The complainant sent her son to bring her daughter from her in-laws place and when her daughter came home she narrated that she used to be assaulted and tortured in various ways for fulfilment of the demand of dowry. The complainant having failed in her attempt to bring normalcy, filed a complaint case in the court which was referred to the police for investigation and the police submitted chargesheet under sections 3 and 4 of the Dowry Prohibition Act as also u/s 498A of the Indian Penal Code. The learned trial court framed charge against the Petitioners under the aforesaid counts but the trial court acquitted the Petitioners of the charges under sections 3 and 4 of the Dowry Prohibition Act on technical ground because no sanction for prosecution was proved by the prosecution. Nevertheless, the Petitioners were convicted u/s 498A of the Indian Penal Code and were sentenced in the manner as stated above.

3. The learned Counsel appearing for the Petitioners submitted at the very outset that there is defect in framing the charge, inasmuch, as the name of Sadika Khatoon has been mentioned in place of Rashida Khatoon. So, the entire trial has vitiated. The submission has got no force in it. Even if by mistake the name of Sadika Khatoon has been mentioned in the charge in place of Rashida Khatoon, the Petitioners did not raise any objection at any point of time during the trial regarding the aforesaid defect in the charge. In course of hearing of appeal also it was not pointed out that the charge framed against the Petitioners suffers with defect as aforesaid. The defence also did not file any petition to the effect that there is defect in framing the charge and as such they were entitled to discharge. The fact remains that the prosecution led consistent evidence regarding the alleged torture upon Rashida Khatoon (P.W. 2) and the defence was very much aware of it, inasmuch, as the defence cross-examined the witnesses at length and also gave suggestion to the witness that no torture was meted out to Rashida Khatoon (P.W. 2). Therefore, from the evidence and cross-examination of the witnesses it is amply clear that the defence was fully aware of the prosecution case regarding the alleged torture meted out to Rashida Khatoon (P.W. 2). As such the defence was not prejudiced in any way on account of the aforesaid mistake in mentioning the name of Sadika Khatoon in place of Rashida Khatoon, I am, therefore, of the view that the mistake/irregularity in framing charge can not vitiate the trial as submitted by the Petitioners.

4. The learned Counsel for the Petitioners then submitted that the alleged torture/assault etc. took place at Sayaldih which is in the district of Hazaribagh but the complaint was filed at Sasaram and Sasaram court had no jurisdiction to entertain the case. I am of the view that this submission has also got no force in it because of the fact that the part of the offence took place in the district of Hazaribagh and the offence continued till Rashida Khatoon went to her mother's place situated in the jurisdiction of Rohtas district. In the case of this nature, I am of the view that the courts of both the places will have jurisdiction to try the case.

5. The third submission raised by the learned Counsel for the Petitioners was that the charge u/s 3/4 of the Dowry Prohibition Act failed, hence the conviction of the Petitioners u/s 498A of the Indian Penal Code is illegal. This submission also has no force because the charge u/s 3/4 of the Dowry Prohibition Act failed on technical ground since; the prosecution failed to prove the sanction for prosecution. So far the charge u/s 498A of the Indian Penal Code is concerned, the prosecution led sufficient evidence to establish that charge. Therefore, it can not be said that simply because the charge u/s 3/4 of the Dowry Prohibition Act failed on technical ground, the Petitioners could not be convicted u/s 498A of the Indian Penal Code for which materials were available on record.

6. So far the merit of the case is concerned, both the courts below have given their concurrent findings by giving solid and cogent reasons for arriving at the conclusion that the Petitioners were liable for committing the offence u/s 498A of the Indian Penal Code. I have perused the judgments of the courts below and do not find any infirmity much less any illegality to differ with their conclusion. As such, the order of conviction upheld by the appellate court does not require any interference by this Court, so far the merits of the case is concerned and the same is affirmed.

7. On the point of sentence, it was submitted that the Petitioners should have been given the benefit of Section 360 of the Code of Criminal Procedure which was denied to them by the trial court. It was, therefore, submitted that the Petitioners may be released by giving the benefit of Section 360 of the Code of Criminal Procedure. I find that the trial court has given reasons for giving substantive punishment to the Petitioners. Accordingly, the Petitioners were awarded sentence as indicated above. The appellate court also upheld the sentence recorded by the trial court.

8. On perusal of the materials on record, I find that the case of Petitioner nos. 1 and 3 is distinguishable from the case of Petitioner NO. 2 because the victim lady Rashida Khatoon (P.W. 2) has admitted in her evidence that she was assaulted by her husband and Dever. She also admitted that father-in-law and mother-in-law only used to taunt her for bringing articles. In other words, the father-in-law and mother-in-law had not taken part in assault or torture of the victim lady (P.W. 2). As such, I am of the view that Petitioners nos. 1 and 3 deserve lenient punishment in comparison to Petitioner NO. 2 who is the husband and there is consistent evidence against him that he not only demanded dowry rather he used to assault and torture Rashida Khatoon for the fulfilment of demands. The alleged occurrence is of the year 1987 and the period of 14 years have already elapsed since then. The Petitioner nos. 1 and 3 have remained in custody for about 18 days before filing the instant revision application. In such view of the matter, I feel that it will meet the ends of the justice if their substantive sentence of three years" rigorous imprisonment is reduced to the period already undergone by them in custody but the sentence of fine imposed on them will remain unaltered. So far the Petitioner No. 2 Md. safsar Ahmad @ Sarsar Khan is

concerned, he is the husband and the main accused in the case. Therefore, he does not deserve any lenient view and, as such, the sentence awarded to Petitioner No. 2 by the trial court is upheld. The bail bonds of Petitioner No. 2 is hereby cancelled and he is directed to surrender before the trial court to serve out the sentence.

9. In the result, therefore, this revision application is dismissed as devoid of any merit with modification in the sentence as indicated above.