

(2012) 05 GAU CK 0054

In the Gauhati High Court

Case No : Criminal Revision Petition 536 of 2004

Md.Mahar Ali, Son of Kashan Ali, Village – Bashbari,
P.O.Manikpur, Dist.Bongaigaon

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 28-05-2012

Acts Referred:

Criminal Procedure Code, 1973 — Section 313
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 — Section 498A
Penal Code, 1860 (IPC) — Section 498A

Citation : (2013) 2 GLR 185

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : For the petitioner : Mr. S. C. Biswas, Mr. B. S. Basumatary, Mr. A. K. Hussain, Mr. S. Das, Mr. B. Choudhury, Mr. M. K. Nath, Mrs. R. Begum, Mrs. H. Barua,??For the opposite party : Mr. Z. Kamar, Public Prosecutor, Assam.,
Advocates appearing for Parties

Judgement

1. This Criminal Revision has put to challenge the judgment and order, dated 30.07.3004, passed by the learned Sessions Judge, Bongaigaon, in Criminal Appeal No. 3(1)/2004, dismissing the appeal and upholding thereby the judgment and order, dated 11.02.2004, passed by the SubDivisional Judicial Magistrate, Bijni, in G. R. Case No. 125/2002, convicting the accusedpetitioner, under Section 498A IPC, and sentencing him to suffer rigorous imprisonment for 3(three) months and pay fine of Rs. 500/ and, in default of payment of fine, suffer rigorous imprisonment for another period of one month.

2. The case of the prosecution may, in brief, be described thus: The opposite party herein lodged, on 18.06.2002, a written complaint, in the Court of the learned SubDivisional Judicial Magistrate, Bijni, alleging to the effect, inter alia, thus: On 18.01.2004, she had been married to the accused, Mahar Ali (i.e., the present accusedpetitioner) and both of them started living together as husband

and wife. At the time of their marriage, the accused had received an amount of Rs. 8,000/ and a Hero bicycle from her parents. After a few months of her stay at her matrimonial house, the accused demanded that the complainant shall bring Rs. 20,000/ from her parents' house and, on the failure of the complainant to do so, the accused assaulted the complainant and refused to give her food. A "Bichar" (i.e., sitting of the elders for settlement of dispute) was held on 27.03.2002, wherein the accused sought apology and promised to keep the complainant properly; but, on 01.04.2002, at about 300 p.m., the accused and his relatives assaulted the complainant and ousted her from her matrimonial house. In fact, the accused, thereafter, had served a notice on the complainant and, when the complainant went to the house of the accused, she was not allowed to stay in her matrimonial house unless she (complainant) paid a sum of Rs. 20,000/ as had been demanded by the accusedpetitioner. The complainant, then, lodged a complaint with the SubDivisional Judicial Magistrate, Bijni, and, on forwarding of the said complaint to the police, by the learned SubDivisional Judicial Magistrate, Bijni, for investigation, a case, based on the said complaint, was registered by the police at the Bijni Police Station and, on completion of investigation, police submitted chargesheet, under Section 498A IPC, read with Section 34 IPC, against the accused and some of his relatives.

3. At the trial, however, the accused persons pleaded not guilty to the charges framed against them. The accused were, then, examined under Section 313 CrPC and, in their examinations aforementioned, the accused denied that they had committed the offence alleged to have been committed by them, the case of the defence being that of total denial.

4. In support of their csas, prosecution examined altogether 6(six) witnesses including the Investigating Officer. The learned SubDivisional Judicial Magistrate, while acquitting coaccused, namely, Kasham Ali, Santo Bhani Bibi and Josmat Ali, of the charge framed against them, as mentioned above, found the accusedpetitioner guilty of the offence, which he had been charged with. The learned trial Court convicted the accusedpetitioner accordingly under Section 498A IPC and passed sentence against him as indicated above. Aggrieved by his conviction and the consequential sentence, the accusedpetitioner had preferred an appeal, which gave rise to Criminal Appeal No. 3(1)/2004. As the appeal has been dismissed by the learned appellate Court, the accusedpetitioner is, now, before this Court with the present revision.

5. Heard Mr. S. C. Biswas, learned counsel for the accusedpetitioner, and Mr. Z. Kamar, learned Public Prosecutor, Assam.

6. While considering this revision, it needs to be noted that the evidence of the complainantopposite party, to the extent that the accusedpetitioner had demanded a sum of Rs. 20,000/ from the complainantopposite party and that on her failure to bring the amount from her parental house, she was assaulted and made to starve, has not been shaken by the defence.

7. From the evidence of PW1, what clearly surfaces unscathed is that a demand for Rs. 20,000/ had been made by the accusedpetitioner and when the complainant's parents could not meet the demand of the accused, she (complainant) was tortured and ousted from her matrimonial house. It is also in the evidence on record that PW1 had shown her injuries, which she had sustained as a result of assault on her, to her father and her father took her to doctor for treatment. The fact, that PW1 had sustained injuries and the said injuries were treated by doctor, too, remain unshaken.

8. In a situation, as mentioned above, there is no error, on the part of the learned trial Court, in believing the evidence of PW1. The remaining witnesses have substantially supported the evidence given by PW1 inasmuch as PW2, who is father of the complainant, has fully supported the evidence given by PW1 in the sense that he has deposed, in his examination, that at the time of his daughter's marriage with the accused, he (PW2) had given a sum of Rs. 8,000/ and a Hero bicycle to the accused. PW2 has further deposed that the accused had demanded another sum of Rs. 20,000/ from his daughter and, when his daughter could not take the amount to her matrimonial house, the accused assaulted PW1, whereupon PW1 had to come back to her parental house and, since then, the accusedpetitioner has not even made a query about the well being of PW1. There is nothing on record to show that what PW2 deposed was false. The evidence, given by PW1, is, thus, supported and strengthened by the evidence of PW2, which is, otherwise, also trustworthy and believable.

9. The evidence of PW3, who, though a relative of PW1, is in tune with the evidence of PW1. This witness' evidence shows that the accused had, indeed, demanded Rs. 20,000/ from the father of the complainant.

10. PW4, who has been examined as an independent witness, has deposed to the effect that the father of the accused had told him that the conjugal life of his son (i.e., the accusedpetitioner) was not good, whereupon PW4 requested the accused to come to a compromise, the accused had admitted that he had been torturing the complainant demanding money and, later on, when the complainant failed to make available the demanded amount from her parents' house, she (PW1) was subjected to cruelty and she (PW1) had to, ultimately, take shelter at the house of her parents.

11. Though the witnesses, who had deposed in support of PW1, were crossexamined, nothing material could be elicited from their crossexamination to show that their evidence is untrue or false. This apart, the fact that the witnesses, who have been examined by PW1, were relatives of PW2, cannot be taken as a ground for rejection of their evidence, particularly, when their evidence has been found to be, otherwise also, believable and trustworthy and could not be shaken in crossexamination by the accusedpetitioner.

12. Because of what have been discussed and pointed out above, this Court does not notice that the judgment and order, passed by the learned trial Court, suffers

from any infirmity, legal or factual. The learned trial Court committed no error in accepting the evidence of PW1 and her witnesses and in convicting the accusedpetitioner under Section 498A IPC. The learned appellate Court has, therefore, correctly upheld the judgment and order of the learned trial Court. The conviction of the accusedpetitioner does not, therefore, need any interference.

13. Bearing in mind the fact that there is very limited scope for interference with the conviction of the accusedpetitioner, for, the accusedpetitioner was found guilty after a fullfledged trial and, aggrieved by the finding of guilt reached against him, he preferred an appeal and the learned appellate Court, too, on careful and minute consideration of the evidence on record, has upheld the finding of the learned trial Court and, considering also the fact that the revisional jurisdiction of this Court,, as indicated above, is very limited, I see no reason to take a view different from the view, which the learned trial Court as well as the learned appellate Court have taken with regard to the guilt of the accused. The conviction of the accusedpetitioner cannot, therefore, be interfered with and is, therefore, not interfered with in revision.

14. Coming to the sentence, which was passed by the learned trial Court and has been upheld by the appellate Court, what needs to be borne in mind is that the incident took place as far back as in the year 2002, i.e., about ten years back, and the accusedpetitioner has remained in custody from 19.06.2002 to 05.08.2002, i.e., for a period of about 45 days. Bearing in mind these factors, this Court is of the view that the period of imprisonment, which the accusedpetitioner has already undergone, would serve the ends of justice if the said period is treated as the period of sentence.

15. While, therefore, the conviction of the accusedpetitioner, under Section 498A IPC, is hereby upheld, he is sentenced to imprisonment for the period, which he has already remained in imprisonment. However, as a part of his sentence, the accusedappellant was directed by the learned trial Court to pay a fine of Rs.500/ and, in default of payment of fine, to suffer rigorous imprisonment for a period of 15 days and this part of the sentence has been upheld by the learned appellate Court, and I am not inclined to interfere with this part of the sentence and, accordingly, the accusedpetitioner is hereby directed to pay a sum of Rs. 500/ as fine and, in default of payment of fine, he shall suffer imprisonment for a period of 15 days.

16. With the above observations and directions, this revision shall stand disposed of.

17. Send back the LCR.