

(2012) 09 JH CK 0044

In the Jharkhand High Court

Case No : Criminal Revision No. 75 of 2000 (R)

Mewa Sao, Bishuni Devi and Umesh Sao

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Penal Code, 1860 (IPC) — Section 498A

Citation : (2013) 1 JLJR 350

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Pradeep Kr. Prasad, for the Appellant; Vijay Kumar Gupta , Assistant Public Prosecutor For the State, for the Respondent

Judgement

H.C. Mishra

1. Heard learned counsel for the petitioners and learned counsel for the State. Petitioners are aggrieved by the Judgment dated 17.1.2000, passed

by the learned 2nd Additional Sessions Judge, Hazaribag, in Cr. Appeal No. 77 of 1992, whereby, the appeal filed against the Judgment of

conviction and Order of sentence dated 27.7.1992, passed by Sri Chandrama Singh, learned Judicial Magistrate. 1st Class, Hazaribag in G.R.

No. 1340 of 1989/T.R. No. 596 of 1992, was dismissed by the learned Appellate Court below.

2. It may be stated that the Trial Court had found the petitioners guilty for the offence u/s 498A of the IPC and upon hearing on the point of

sentence, petitioner Bishuni Devi, being a lady, was given the benefit of the Probation of Offenders Act and was directed to enter into the

Probation Bond of Rs. 4,000/- with two sureties of the like amount each for

keeping peace and maintaining good behavior for a period of one year, whereas the petitioners Mewa Sao and Umesh Sao were sentenced to undergo R.I. for two years each for the offence u/s 498A of the IPC.

3. The petitioner Mewa Sao is the father-in-law of the complainant, who is the victim lady, petitioner Bishuni Devi is the mother-in-law of the

victim and Umesh Sao is the brother-in-law of the victim. The complaint was filed by the victim Urmila Devi before the Chief Judicial Magistrate,

Hazaribagh, which was registered as Complaint Case No. 240 of 1988. It is alleged in the complaint petition that the petitioner was married to one

Binod Sao in the year 1982 and she was living at her in-laws place. Her husband died on 6.5.1984 and thereafter the in-laws started subjecting

her to cruelty and torture and treated her with such cruelty that she was even driven to commit suicide. It is alleged that accused persons took her

utensils and ornaments valued at Rs. 6,000/- and drove her out from the matrimonial home on 6.4.1988. The case was sent for institution of the

police case, on the basis of which Sadar P.S. Case No. 223 of 1989, corresponding to G.R. No. 1340 of 1989 was instituted and the

investigation was taken up. After investigation, the police submitted the charge-sheet against the petitioners and accordingly, cognizance was taken

and the petitioners were ultimately put to trial for the offence u/s 498A of the IPC In course of trial, five witnesses were examined by the

prosecution and on the basis of the evidence on record, the petitioners were found guilty for the offence u/s 498A of the IPC. convicted and

sentenced for the same as aforementioned. Their conviction and sentence were also upheld by learned Appellate Court below.

4. Learned counsel for the petitioners has submitted that the impugned Judgments passed by the Courts below cannot be sustained in the eyes of

law, in as much as, the I.O. and the Doctor have not been examined in this case and accordingly, the prosecution has failed to prove the case

against the petitioners beyond all reasonable doubts. It has also been submitted that the petitioner Umesh Sao who is the brother-in-law of the

victim, was only a child at the time of her marriage. Learned counsel has drawn the attention of this Court towards the cross-examination of the

complainant informant, who was examined in the Court below as PW-4 and she has admitted that at the time of the death of her husband, the

petitioner Umesh Sao was only a child and he used to play in her lap. Learned counsel accordingly, submitted that this admission of the victim

clearly shows that the petitioner Umesh Sao has been falsely implicated in this case. It is submitted that in the complaint petition there is no specific

allegation against him. Learned counsel accordingly, submitted that the impugned order cannot be sustained in the eyes of law.

5. Learned counsel for the State on the other hand, submitted that there is no illegality in the impugned Judgments passed by the Courts below and

the petitioners have been rightly convicted and sentenced by the Courts below.

6. Having heard learned counsels for both the sides and upon going through the impugned Judgments, I find that the points taken by the petitioners

have been elaborately discussed by the learned Appellate Court below. Learned Appellate Court below on the basis of the evidence brought on

record has found that the witnesses examined by the prosecution in the Court below have fully supported the case against the petitioners. It also

finds mentioned in the impugned Judgment passed by the learned Appellate Court below that the appellant had failed to draw the attention of the

Court towards any prejudice that might have been caused the defence due to non-examination of the I.O. Learned Appellate Court below has also

taken into consideration that the witnesses are the close relatives and has found that the close relatives, in such, cases are the natural witnesses.

7. However, upon going through the record. I find that so far as petitioner Umesh Sao is concerned, it is admitted by the complainant informant

herself in her cross examination that he was only a child at the time of the death of her husband and he used to play in her lap. According to the

complainant, her husband died on 6.5.1984 and she was driven out from her matrimonial home on 6.4.1988. As such, it cannot be said that the

petitioner Umesh Sao was in such a position to have subjected the complainant informant to cruelty and torture in any manner and to have

compelled her to leave the matrimonial home Even if the witnesses have supported the case against the petitioner Umesh Sao also. I am of the

considered view that the petitioner Umesh Sao is entitled at least of the benefit of doubt.

8. So far as petitioners Mewa Sao and Bishuni Devi are concerned, I find that the witnesses have supported the case and no prejudice could be

pointed out by the defence in the Appellate Court below due to non-examination of the I.O., or the Doctor. I do not find any illegality and/or

irregularity in the impugned Judgments passed by the Courts below worth interference in the revisional jurisdiction, so far as the conviction of the

petitioners Mewa Sao and Bishuni Devi are concerned. However, it appears from the Judgment of the Trial Court below that the petitioner Bishuni

Devi, who is mother-in-law of the victim, was given the benefit of Probation of Offenders Act and she was asked to enter into a probation bond of

Rs. 4,000/-along with two sureties of the like amount for keeping peace and maintaining good behaviour for a period of one year. I do not find any

reason as to why the same benefit should not be given to the petitioner Mewa Sao also, who is the father-in-law of the victim.

9. In view of the aforementioned discussions, the Judgment of Conviction and Sentence passed against the petitioner Umesh Sao by both the

Courts below are hereby set-aside. Petitioner Umesh Sao is given the benefit of doubt and he is acquitted of the charge. This petitioner is on bail

and he is discharged from the liabilities of his bail bond.

10. So far as the petitioner Mewa Sao is concerned the Judgment of conviction passed against him by the Courts below is maintained. However,

the sentence passed against him, is hereby, set-aside and the petitioner Mewa Sao is given She benefit of Section 360 of the Cr. P.C., and he is

also directed to enter into the Probation Bond of Rs. 4,000/- along with two sureties of the like amount each for keeping peace and maintaining

good behaviour for the period of one year and to appear in the Court below, if called in the meantime for receiving the sentence. This revision is

accordingly, allowed so far as it relates to petitioner Umesh Sao. So far as it relates to the petitioner Mewa Sao, the same is dismissed with

modification in his sentence. He is directed to appeal in the Court below within a period of two months from today, for entering into the probation

bond, where after he shall be discharged from the liabilities of his bail bond. If he fails to appear in the Court below within the given time, his bail

bond shall be cancelled and the Court below shall issue process compelling his production in the COURT for entering into the bond. As regards

the petitioner Bishuni Devi, this revision stands dismissed. Let the Lower Court Records be sent back forthwith.