

(2009) 11 DEL CK 0126

In the Delhi High Court

Case No : Criminal Revision Petition 851 of 2002 and Criminal M.A. No. 1087 of 2002

Mussarat Begum

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29, 30, 321, 322, 360
Penal Code, 1860 (IPC) — Section 314, 34, 360, 397, 401
Probation of Offenders Act, 1958 — Section 4

Citation : (2010) 1 Crimes 898

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Non, for the Appellant; Manoj Ohri, APP, for the Respondent

Judgement

Indermeet Kaur, J.—FIR No. 422/87 had been registered at police station Seelampur u/s 498A/406/34 IPC on the complaint of Mussarat Begum against five persons namely her husband Mohd. Yunus, her father-in-law Sultan Ahmed, her mother-in-law Sugra Begum, her other relatives in-law i.e. Shamim Begum and Shabnam Begum.

2. Vide judgment dated 9.11.2001 accused Mohd. Yunus and Sultan Ahmed had been convicted under Sections 498A/406/34 of the IPC; accused Sugra Begum had been convicted u/s 498A of the IPC; accused Shamim Begum and Shabnam Begum had been acquitted. Vide order of sentence dated 21.11.2001 considering their old age and their medical condition Sultan Ahmed and Sugra Begum had been granted the benefit of probation and had been released on probation on their furnishing a personal bond in the sum of Rs. 10,000/- each with one surety of the like amount for a period of one year; they had been directed to pay Rs. 2000/- each as costs of the proceedings. Convict Mohd. Yunus had been sentenced to undergo RI for one year for the offence u/s 498A of the IPC and a fine of Rs. 1000/-, in default of payment of fine RI for two months; for the offence u/s 406 of the IPC he had been sentenced to undergo RI for one year

and fine of Rs. 500/-, in default of payment of fine RI for one month.

3. Present revision petition has been filed under Sections 397/401 of the IPC impugning the said order. It is submitted that the sentence awarded to the three convicts should be enhanced; Sultan Ahmed and Sugra Begum could not have been released on probation; jewellery articles of the complainant also be directed to be returned back to her.

4. Along with the revision petition an application seeking condonation of delay in preferring this revision petition has also been filed. In the body of this application, it is stated that after the impugned judgment had been passed the State was deliberating as to whether an appeal should be filed or not; ultimately on 2.5.2002 it was decided that the State was not interested in preferring an appeal; complainant had also fallen ill for a considerable time which has resulted in a delay of three months in filing the present revision.

5. Respondents had put in appearance but thereafter they chose not to appear.

6. In view of the averments made in the present application, keeping in view the submission that the petitioner is an illiterate and destitute lady and the delay in preferring the appeal was primarily for the reason that the State was yet considering the prospect of preferring an appeal against the impugned judgment; there also being no opposition to this application, in the interest of justice and in the broader interest of fair play, the delay in filing the present petition is condoned.

7. On behalf of the petitioner on 26.10.2009 arguments had been addressed in part. It had been submitted that the Trial Court has no power to order probation; attention had been drawn to Sections 29 & 30 of the Cr.P.C. which deals with the sentences which a magistrate may pass which includes imprisonment in default of fine; it is submitted that there is no provision in the Code by virtue of which the magistrate could have released Sultan Ahmed and Sugra Begum on probation. The prima facie evidence disclosed before the Trial Court, in view of the version of PW-1, was for an offence u/s 314 of the IPC i.e. the death caused by an act done with an intent to cause miscarriage ; in these circumstances, it was incumbent upon the magistrate to have committed the case before the Sessions Judge; procedure of Sections 321 & 322 of the Cr. P.C. has not been adhered to.

8. Counsel for the State while countering the arguments has drawn the attention of the Court to the provisions of Section 465 of the Cr. P.C.; it is submitted that the finding or sentence passed by a Court of competent jurisdiction can be reversed or altered by a Court of appeal only where failure of justice has been occasioned; this is not so in this case. Attention has also been drawn to the powers of this Court to grant probation u/s 360 of the Cr.P.C. as also the provisions of Section 4 of the Probation of Offender Act 1958.

9. Record has been perused.

10. Trial Court has drawn its conclusion primarily on the version of complainant i.e. Mussarat Begum who had been examined as PW-1. PW-1 had been married to Mohd. Yunus on 9.1.1983 as per muslim rites. As per her testimony she had been harassed on account of dowry; her inadequacy in bringing a T.V., fridge and scooter had been the reason for the taunts inflicted upon her. Her husband i.e. Mohd. Yunus and her father-in-law Sultan Ahmed inflicted cruelty upon her, both mental and physical. Sultan Ahmed had also hit on her head. She had given her complaint to the CAW Cell Ex.PW-2/A. It has come in the version of PW-1 that accused Shabnam and Shamim were not related to Mohd. Yunus. They not falling in the category of relatives of the husband of PW-1. Trial Court had acquitted them of the charges leveled against them. Previous statement Ex.PW-2/DA given before the Investigating Officer had been confronted to PW-1 qua the entrustment of dowry articles; on this version accused Sugra Begum was acquitted of the offence punishable u/s 406 of the IPC.

11. Conclusion and findings of the Trial Court are based on clear and cogent evidence. The conviction of the accused is not under challenge. The grievance of the complainant is that this Court has no power to release the in-laws of the victim namely Sultan Ahmed and Sugra Begum on probation. This submission of the complainant is erroneous. Powers of the Court to release a convict on probation is well contained in Section 360 of the Cr. P.C; it categorically recites that when any person not under twenty-one years of the age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less or when any person under twenty-one years of age or any woman is convicted; as is in the instant case benefit of probation may be granted. It is clear that this Court has power to release a convict on probation of good conduct or after a due admonition.

12. Section 4 of the Probation of Offenders Act 1958 also empowers the Court to release certain offenders on probation of good conduct which includes those persons who are found guilty of offences not punishable with death or imprisonment for life. Due regard to the nature of the offence, character of the offender has to be taken into account. This submission of the learned defence counsel has no force.

13. The alternate prayer that Mohd. Yunus should have been convicted for a graver offence i.e. for an offence u/s 314 of the IPC is also without force; this Court cannot convict a person for a graver offence than the offence for which he had faced charge in the Trial Court. u/s 465 of the Cr.P.C. a finding or sentence by a Court of competent jurisdiction shall be reserved, altered by a Court of appeal only when a failure of justice has, in fact, been occasioned. This is not so in this case. Trial Court had with due regard to the antecedents of the convict, the background of the case exercised its discretion and sentenced Mohd. Yunus to undergo RI for a period of one year for the offence u/s 498A of the IPC as also one year for the offence u/s 406 of the IPC besides fine; both the sentences were to run concurrently. The sentence calls for no interference.

14. This Court is not empowered to direct the respondent to pay a sum of Rs. 2 lacs to the complainant in lieu of her Stridhan articles; this is outside the jurisdiction of this Court.

15. Revision petition has no merit; it is dismissed.

16. Trial Court record be returned back.