
(2017) 05 SHI CK 0116
In the High Court Of Himachal Pradesh
Case No : 125 of 2008

Purshotam and another

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 23-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#), [Section 313](#) - Calling for records to exercise powers of revision - High Courts powers of revision - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 34](#), [Section 498A](#), [Section 323](#), [Section 506](#), [Section 504](#) - Acts done by several persons in furtherance of common intention - Husband or relative of husband of a woman subjecting her to cruelty - Punishment for voluntarily causing hurt - Punishment for criminal ,intimidation - Intentional insult with intent to provoke breach of the peace

Citation : (2017) 05 SHI CK 0116

Hon'ble Judges : Tarlok Singh Chauhan

Bench : Single Bench

Advocate : Paresh Sharma, Meenakshi Sharma, Neeraj K.Sharma

Final Decision : Allowed

Judgement

1. This revision petition under Sections 397/401 of the Code of Criminal Procedure (for short "Code") is directed against the judgment passed by the learned Sessions Judge, Hamirpur, on 04.07.2008, whereby he convicted and sentenced each accused persons for rigorous imprisonment for two months and to pay fine of `500/- for the offence punishable under Section 323 of IPC and in default to undergo simple imprisonment for 15 days, under Section 498-A of IPC the accused persons to undergo rigorous imprisonment for one year and to pay fine of `5000/- and in default to undergo simple imprisonment for 3 months and under Section 504 of IPC the accused persons to undergo rigorous imprisonment for three months and to pay fine of `1000/- and in default to undergo simple

imprisonment for 15 days and set aside the judgment dated 31.07.2007 passed by the learned Judicial Magistrate 1st Class, Barsar, District Hamirpur, H.P. All the sentences were directed to run concurrently.

2. The prosecution story, in brief, is that on 4th November, 2005, the complainant Smt. Ram Piari (PW-2) visited the Police Station, Barsar at

3. 05 p.m. and lodged FIR Ex.PW2/A, wherein it was reported that her marriage with accused Purshotam was solemnized in the year 1984 and out of the said wedlock a daughter was born. Since, she could not bear a son, therefore, the accused persons not only taunted her but also gave her beatings. Her father had died and her mother had been residing with her maternal grandmother before death. It was further reported that her maternal grandmother Smt. Kaushalya Devi had sold her property for `85,000/- to one Amar Singh and on learning the same, the accused persons started asking her to bring this money and on this pretext she was also administered beatings 2-3 times. The complainant informed her uncle Manju Ram of Village Satrukha and maternal uncle Amar Singh. She also made complaint to the local Ward Panch Smt. Vidya Devi and earlier to Pradhan Gurbax, who asked her husband to behave properly, but he did not mend his ways. Earlier, on 2nd November, 2005, at about 7.00 a.m., when the complainant was cooking meals in the kitchen, her husband Purshotam came there and asked her why she was not chopping the potatoes for preparing the meal, upon which she told that the potatoes had been kept for the purpose of seeds. On this, her husband caught hold of her left arm and twisted it and then he also assaulted her with the scissors causing pain and suffering to the complainant. He also gave fist blow on the right arm which led to contusions. The complainant was rescued by her daughter, though Purshotam kept on abusing and threatening her.

3. The Investigating Officer PW-10 ASI Karam Singh investigated the matter. He prepared the site plan Ex.PW10/A and also took into possession scissors Ex.P-1 from the complainant vide memo Ex.PW1/B. The complainant was medically examined by PW-1 doctor Mohan K.S.Thakur vide MLC Ex.PW1/A. The Investigating Officer also collected the so called complaints Ex.PW2/C, Mark XY as well as letter Ex. PW2/D and Rapat Roznamcha Mark XZ.

4. On completion of the investigation, the final report was presented against the accused persons for having committed the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, which led to the framing of charge to which the accused persons pleaded not guilty and claimed trial.

5. The prosecution examined as many as 10 witnesses and thereafter the accused persons were examined under Section 313 of the Code wherein they denied the allegations against them, however, they did not lead any evidence in defence.

6. The learned trial Court after evaluating the evidence acquitted the accused persons, however, on appeal being carried before the learned Sessions Judge,

they came to be convicted in the manner already set out above, constraining them to file the instant revision petition.

7. It is vehemently argued by Shri Paresh Sharma, learned counsel for the petitioners that the findings recorded by the learned Sessions Judge are totally perverse and, therefore, deserve to be set aside, whereas, the learned Deputy Advocate General would support the judgment. I have heard the learned counsel for the parties and gone through the records of the case.

8. At the outset, it may be observed that the learned Sessions Judge while convicting the petitioners has primarily relied upon the selective portions of the examination-in-chief without virtually discussing the cross-examinations. This, indeed, is not a correct way of evaluating the evidence which as per settled law has to be read as a whole.

9. Adverting to the facts, it would be noticed that complainant Ram Piari appeared as PW-2 and stated that on 25.10.1984, she had got married with the accused Purshotam and one daughter (PW-4) was born out of this wedlock. She stated that her mother-in-law and sister-in-law used to falsely make allegations of theft against her. She further deposed that her husband had once taken her to Ludhiana where she stayed for 4-5 months and during that period her husband did not give her beatings. She further deposed that because she had delivered a female child, all the accused persons had started giving her beatings and were coercing her to bring money of her share from parents. At one occasion, she was forced to climb a bamboo tree by her sister-in-law and while doing so, she had suffered a fracture of the arm. She further deposed that she had reported the torture to her relatives, but the accused did not mend their ways. Thereafter, she lodged a report with the police as she was badly beaten up in October, 2005 by her husband. The police had called her husband, who had promised to treat the complainant properly in future. On 2nd November, 2005, she was again administered beatings by her husband and was not permitted to take meals. On 03.11.2005, while she was stitching clothes, her husband Purshotam gave her beatings with scissors, whereas, her mother-in-law kept on instigating her husband. Ultimately, she was constrained to lodge the FIR Ex.PW2/A. She identified the scissors Ex.P-1 in the Court. It was stated that even after the registration of the case, Bimla Devi gave her beatings and tore her clothes. On January 7, her husband again gave her beatings constraining her to file complaint Ex.PW2/C and the letter Ex.PW2/D.

10. From the examination-in-chief, it would be noticed that the complainant has not supported her case and has infact deviated from her initial case because in the FIR Ex.PW2/A, it has been specifically alleged that on 02.11.2005 at about 7.00 a.m., while the complainant was cooking food, the accused gave scissors blow and also gave beatings, whereas, the complainant in her statement before the Court has categorically deposed that on 02.11.2005 at about 8.30 p.m. in the evening her husband came to the house and gave her beatings by means of kick and fist blows and did not allow her to cook food. She has specifically stated

that it was on 3rd November that she was given blows with scissors while she was doing the tailoring work.

11. This is not the sole contradiction in the statement of the complainant. She has further exaggerated her version by deposing that the accused had made false allegations of theft against her and thereafter her statement was deferred on the ground that she was possessing some documents. She was again examined and she produced one application Ex.PW2/C, photocopy of the complaint Mark X and Mark Y, copy of the letter Ex.PW2/D and Mark XZ.

12. However, in the cross-examination, she categorically and unequivocally stated that she wanted to live with her husband. Thus, what really appears from the entirety of the statement of PW-2 is that there has been no demand of dowry and even the allegations of beatings appear to be false or else why does the complainant still want to reside with her husband Purshotam. That apart, it would be noticed that it has specially come in the testimonies of some of the witnesses that the complainant and her husband would frequently quarrel and many a time, it was the complainant, who would give beatings to her husband Purshotam.

13. PW-3 Vidya Devi is the former Ward Panch of Gram Panchayat, Galore and deposed that whenever quarrel took place, Ram Piari would earlier come to her followed by Purshotam, who would complain that it was the complainant Ram Piari, who had given him beatings. However, in her cross-examination, she has categorically stated that she did not know as to whether any quarrel had infact taken place between the parties and she had also admitted that Ram Piari had given scissors blow to Purshotam. She further admitted that no written complaint has been received in the Panchayat.

14. PW-4 Rishu Kumari is the daughter of the complainant and has deposed that from the last about one year, her father used to torture her mother regularly and asked to leave the matrimonial home and reside where the property had been sold by the mother and grandmother of the complainant. It would be noticed that like PW-2 even this witness too has exaggerated her version by deposing that the accused used to give beatings to her mother by means of "lathi", scissors and screw-driver. In her crossexamination, she introduced a new story by stating that she had disclosed to the police that the accused used to give beatings to her mother on the occasions of festivals like "Raksha Bandhan", Dussehra" and "Diwali" which is contrary to the prosecution case.

15. PW-5 Gurbax Singh, Pradhan, Gram Panchayat, Galore, has stated that he remained Pradhan from 2000 to 2006 and was telephonically informed that a quarrel had taken place between Ram Piari and her husband and he had gone there to reconcile the matter. In crossexamination, he admitted that during his tenure as Pradhan, he had not received any written complaint from either side. This witness has further not deposed that the accused have ever demanded dowry from the complainant or subjected her to cruelty.

16. PW-6 Brahmi Devi had deposed that after the marriage the complainant and accused Purshotam used to reside peacefully, but after birth of the daughter, they began to quarrel. She further deposed that accused Purshotam used to give beatings to her. However, in the crossexamination, she categorically admitted that no quarrel took place between the complainant and her husband in her presence.

17. PW-7 Dharam Singh is one in whose presence the police is alleged to have taken into possession the scissors vide memo Ex.PW1/B. However, in the cross-examination, this witness categorically stated that no scissors were taken into possession by the police in his presence from Ram Piari.

18. PW-8 Shri Manju Ram had deposed that Ram Piari is the daughter of her sister-in-law, whose relationship with her husband initially remained peaceful, but after sometime they started quarrelling and accused used to give beatings to the complainant. However, in his crossexamination, this witness categorically admitted that such beatings were never administered in his presence. Moreover, this witness has nowhere stated that the accused had ever demanded dowry from the complainant.

19. PW-9 Amar Singh has deposed that complainant Ram Piari is his niece, who in August had telephonically informed that the accused was giving beatings to her. On hearing, he alongwith Manju Ram and Brahmi Devi went to the house of Ram Piari and reconciled the matter. In his crossexamination, the witness candidly admitted that whatever he deposed was on the basis of hearsay.

20. PW-10 ASI Karam Singh has investigated the case formally and took into possession scissors Ex.P-1 and prepared site plan Ex.PW10/A. In cross-examination, this witness denied that he had not visited the spot. This entirely is the evidence led by the prosecution.

21. Thus, from perusal of the entire evidence on record, it can safely be concluded that there is no evidence of any torture to the complainant at the hands of the accused persons. It is further not proved on record that the accused persons ever demanded any dowry from the complainant and as regards alleged beatings, the same have also not been established on record.

22. As observed earlier, the learned Sessions Judge for some strange reasons mainly relied upon the examination-in-chief of the witnesses, more particularly, the statements of PW-2 and PW-4 to hold the accused persons guilty of the offences without going into the major contradictions in their statements. He did not even take pains to go through the cross-examinations.

23. It is more than settled that while considering a statement a Court cannot dissect the statement into different sentences and then pick up or accept only the inculpatory part while rejecting the exculpatory part as inherently incredible. The statement must be read as a whole.

24. In view of the aforesaid discussion, I find merit in this revision and the same

is accordingly allowed. The judgment passed by the learned Sessions Judge, Hamirpur, on 04.07.2008 is set aside and the petitioners are acquitted of all the offences. Bail bonds furnished by the petitioners are discharged.