
(2019) 01 OHC CK 0026
In the Orissa High Court
Case No : CRREV No. 663 Of 1999

Raibu Alias Rabindra Mahanta And Another	APPELLANT
Vs	
State Of Orissa And Another	RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 498(A)
Dowry Prohibition Act, 1961 — Section 4

Citation : (2019) 196 AIC 329

Hon'ble Judges : Akshaya Kumar Mishra, J

Bench : Division Bench

Advocate : M. Chand, D.R. Parida, S. Dash

Final Decision : Allowed

Judgement

Akshaya Kumar Mishra, J

1. In this revision, the petitioners have challenged the concurrent verdict passed in CRLA No. 5/93 of 1999/1998 dated 13.10.1999 by the Addl.

Sessions Judge, Rairangpur, Mayurbhanj in dismissing the appeal against the judgment dated 21.11.1998 passed by the learned SDJM, Rairangpur in

G.R. Case No. 531/93 (T.C. 933/93) holding the accused petitions guilty of offence under Section 498(A) and 34 of IPC read with Section 4 of D.P.

Act and sentencing each to undergo R.I. for one year and to pay fine of Rs. 500/- in default to undergo R.I. for one month for offence under Section

498(A)/34 of IPC and R.I. for one year and to pay fine of Rs. 1000/- in default to undergo R.I. for three months for the offence under Section 4 of

D.P. Act.

2. Heard learned counsel for the petitioners and learned Addl. Standing Counsel.

3. Opposite party no. 2-Champabati Mohanta had filed an affidavit in pursuance of the order dated 5.5.2004 stating that she was staying with her husband and both of them was blessed with two female children.

3(a). Learned State counsel was directed to verify the correctness of the affidavit through O.I.C., Bisoi Police Station. In course of hearing, learned

Addl. Standing Counsel, Mr. S. Dash, showing the copy of official information received from O.I.C., Bisoi P.S. submits that Champabati Mohanta-

O.P. No. 2 was living happy conjugal life with the petitioner no. 1 since 1997 and out of their wedlock two daughters and one son blessed with them.

In the meantime, Champabati Mohanta has since been expired on 23.10.2017. All the children are living with their father peacefully and one of their

daughters has already given marriage and two are prosecuting their studies. The same be kept on record.

4. Learned counsel for the petitioner submits that in view of the restoration of peace in the family and for the future of the children, the conviction of

sentence of both the petitioners be set aside. In support of his contention, he has relied upon decision pronounced by the Hon'ble Supreme Court in the

case of Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur v. The State of Gujarat reported in (2017) 9 SCC 641.

4(a). He further submits that the material in convicting the accused persons is so scanty that the learned court should not have convicted the accused persons.

5. Champabati married Rabindra on 25.07.1993 and after some days of marriage, the accused persons demanded cash, T.V., Cycle and for the

inability to give those articles, Champabati returned to her father's house and lodged written F.I.R. which was ultimately ended in filing of charge-sheet.

6. Learned lower court took cognizance and trial was ensured, the plea of defence was denial simplicitor. Prosecution examined nine witnesses.

Defence examined one witness. Basing upon the testimony of the victim, the demand was found to have been proved.

7. On careful perusal of the evidence on record, I find no clinching evidence to hold guilty both the accused persons for the reason that the allegation

of torture was not specific and demand of dowry was not commensurate to the common man life.

7(a). Tested in the above touchstone and keeping the above settlement between the parties, I am satisfied that the accused persons therein who are the petitioners herein in this revision are entitled to be acquitted.

8. Accordingly, the conviction and sentence of petitioners in G.R. Case No. 531/93 (T.C. 933/93) vide judgment dated 21.11.1998 passed by the learned SDJM, Rairangpur which was confirmed by the learned Addl. Sessions Judge, Rairangpur in Criminal Appeal No. 5/93 of 1999/1998 vide judgment dated 13.10.1999 are hereby set aside.

9. In the result, both the accused persons are acquitted there from and they be set at liberty.

10. Accordingly, the CRREV is allowed.