

(2000) 02 PAT CK 0049

In the Patna High Court

Case No : Criminal Revision No. 110 of 1997

Shashikant Mowar @ Bidur and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 109, 403, 494, 498A

Citation : (2000) 3 PLJR 268

Hon'ble Judges : D.P.S. Choudhary, J

Bench : Single Bench

Advocate : Umakant Shukla, Shakti Suman Kumar and Rajesh Ranjan, for the Appellant; Damodar Pd. Tiwary, for the Respondent

Final Decision : Dismissed

Judgement

D.P.S. Choudhary, J.—This criminal revision application is directed against the judgment and order dated 7.12.1996 passed by 5th Additional Sessions Judge, Purnea confirming the judgment and order dated 22.11.1993 passed by Sub-Divisional Judicial Magistrate, Araria in G.R. Case No. 732/1990 (Trial No. 916/1990) convicting all the Petitioners under Sections 403, 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act and sentenced each of them to undergo R.I. for one year under each count under Sections 403 and 498A of the Indian Penal Code and 9 months u/s 4 of the Dowry Prohibition Act. They have been further directed to pay a fine of Rs. 500/- each and in default of payment of fine two months S.I. sentences were directed to run concurrently.

2. The prosecution case in brief, is that, daughter of Ramanand Choudhary, namely, Poonam Kumari was married to Petitioner No. 1, Shashikant Mowar on 30.6.1982. In the year 1987, when the Duragman of Poonam Kumari took place and she went to her Sasural victim lady's father represented some articles, cash etc., at the time of Duragman to Petitioner No. 1. It is further alleged that

thereafter all the Petitioners started torturing Poonam Kumari for demand of dowry and also threatening for second marriage of her husband if the demand of dowry is not fulfilled. It is further case of the prosecution is that when Poonam Kumari was sent back to her parent on 22.8.1987, and Petitioners refused to bring back her till the demand of dowry is not fulfilled. Since Petitioners failed to bring back Poonam Kumari to her Sasural and also refused to return back her ornaments etc., and Petitioner No. 1 threatened of second marriage as such her father lodged an F.I.R. against the Petitioners and after investigating, charge sheet was submitted and after cognizance trial proceeded in the court below. The Petitioner No. 1 was also charged u/s 494 of the Indian Penal Code and Petitioner Nos. 2 to 5 under Sections 109/494 of the Indian Penal Code but three accused acquitted under these charges. Three accused Petitioners namely, Rama Nand Thakur, Ravi Pandey and Naresh Pandey have also charged under Sections 494/109 of the Indian Penal Code but were found not guilty and acquitted.

3. The case of the Petitioners is that informant wanted to keep Petitioner No. 1 as Gharjamai in his own house for some time. He remained there stay (sic) but he refused to appeals of the informant and Poonam Kumari was not ready to live in her Sasural and hence they have been falsely implicated in this case.

4. In support of its (sic-case?) prosecution examined 8 witnesses including P.W.1 Ramanand Choudhary, P.W.2 Ganesh Thakur, P.W.3, Maheshwar Thakur, P.W.4, Dineshwar Thakur, P.W.5, Pushpalata Choudhary, P.W.6 victim girl Poonam Kumari, P.W.7 Ram Pravesh Singh and Lamboddar Choudhary P.W.8.

5. It was submitted on behalf of the Petitioners that out of the 8 witnesses, P.W.1 is the informant, P.W.5 is his wife, P.W.6 is his daughter and as such they are interested witnesses. P.W.7 is the Investigating Officer, P.W.8 is formal witness and remaining three witnesses are relatives of the victim. Hence no independent witness has corroborated the prosecution case. It was further submitted on behalf of the Petitioners that prosecution has examined three letters of Poonam Kumari and four letters of her husband marked as exhibits 1 to 1/6 and trial court has heavily relied on the contentions of these letters. The appellate court also based his finding on these letters which is not in accordance with law. It was further submitted on behalf of the Petitioners that while recording the statement of the Petitioner No. 1 u/s 313 Code of Criminal Procedure these letters were not shown to him nor any question was asked whether he has written these letters, this was essential because Petitioners had denied about writing of these letters. It was also submitted on behalf of the Petitioners that the lower appellate court has not discussed the evidence of P.Ws., in detailed but only summerised them without going into its merit on such the finding of lower appellate court is not in accordance with law. The lawyer appearing on behalf of the Petitioners submitted that the date of occurrence is in between 30.6.1982 to 13.6.1992 a long period has elapsed and the Petitioners have faced agony of criminal trial. All the Petitioners have remained in jail custody for more than 21 days, as per office notes, there is no specific evidence to constitute an offence under Sections 403

and 498A of the Indian Penal Code against other Petitioners except husband Petitioner No. 1. P.Ws., have made general allegations regarding demand of dowry and torture for non fulfillment of demand of dowry. It is settled law that unless the specific allegation is made against each of the Petitioners they should not be held guilty, for the offence either under Sections 403 and 498A of the Indian Penal Code.

6. Heard the learned A.P.P.

7. Scrutinised the evidence adduced on behalf of the prosecution and find substance in this contentions of the Petitioners that none of the witnesses including the Petitioner or Poonam Kumari have made specific allegations of demand of dowry or torture for dowry, misappropriation of the property entrusted to them by Poonam Kumari as required u/s 403 of the Indian Penal Code. Neither the trial court nor lower appellate court has discussed these evidence of P.Ws., to show that there was specific allegations against these Petitioners as such conviction of the Petitioner Nos. 2 to 5 under Sections 403 and 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act is not maintainable and as such they are acquitted and discharged from liabilities of their bail bonds. However, I find that there is evidence both of the victim girl and her father making specific allegation against the husband P.W.1 for regular demand of dowry and torture of Poonam Kumari for fulfillment of demand of dowry as such conviction of the Petitioner No. 1 under these heads does not require interference as such his conviction u/s 4 of the Dowry Prohibition Act and Sections 403 and 498A of the Indian Penal Code is upheld.

8. I find substance in the contention of the Petitioners that after lapse of so many years for the ends of justice, it will not be desirable to send Petitioner No. 1 (the husband) to jail custody again who has been in custody for about 21 days as such his period of sentence from 9 months and one year under each count is reduced to the period already undergone in custody, however, the fine imposed against him of Rs. 500/- is enhanced to Rs. 5,000/- (Five thousand) and in default of payment of fine 6 months R.I. The fine amount so realised shall be paid to Poonam Kumari, wife of Petitioner No. 1. The trial court will take all steps for the realisation of the fine from the Petitioner No. 1, namely, Shashikant Mowar who is husband of Poonam Kumari and after realisation will send notice to her to appear in the court for the receipt of the amount.

9. With the modification in the judgment and order of the court below, this criminal revision is dismissed.