
(2014) 08 OHC CK 0049
In the Orissa High Court
Case No : Criminal Appeal No. 391 of 1992

Sipra Banarjee

APPELLANT

Vs

Roshanlal Sharma

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 304B, 34, 494, 498A

Citation : (2014) 118 CLT 900 : (2014) 2 OLR 691 Suppl. : (2014) 2 OLR 691

Hon'ble Judges : D. Dash, J

Bench : Single Bench

Judgement

D. Dash, J.—The complainant has called in question the order of acquittal passed by Learned J.M.F.C., Bhawanipatna in I.C.C. No. 51 of 1989 acquitting the Respondents of the charge under Section 498-A/ 34 I.P.C. & under Section 494/ 109 of I.P.C. Facts necessary for disposal of this appeal run as under:-

The case of the Appellant as laid in the complaint is that she had developed intimacy with Respondent, Roshanlal & that ultimately resulted in their marriage on 11.05.1976 as per Hindu custom & rites. Her father gave sufficient presentations such as gold ornaments, utensils, steel materials & furniture etc at the time of marriage. The marriage was attended by reputed persons of the locality. After the marriage, the Appellant & Respondent Roshanlal led happy conjugal life as husband & wife by staying in joint family of Respondent, Roshanlal. Appellant later had to quit the job as a teacher on account of pressure from the side of the Respondent. It is alleged that in the year 1979, the Respondents demanded the Appellant to bring money from her father & being pressurized the Appellant brought eight tolas of ornaments which were pledged by Respondents & the money was appropriated by them. Being persuaded by the Appellant, her ornaments were released & returned to the father of the complainant. So, the Respondents started ill treating the Appellant & again they mounted pressure upon her in the year 1981 to bring a sum of Rs. 3,000 when she managed to bring Rs. 3,000. As there was repeated request from the side of

the Appellant to refund the money to her father, the ill treatment then started & the Appellant was assaulted. Specifically, it has been stated that on 31.03.1985 Respondent Ved Prakash severely assaulted the Appellant in presence of Respondent Roshanlal. For all these at one point of time, the Appellant was on the verge of committing suicide by jumping before a running train, when she was rescued by one Darshan Singh. Still thereafter, the Appellant stayed with the Respondents in their house, but the ill treatment continued as before. So, finally she took her shelter in the house of one Dr. Subarna Kar at Cuttack where she took up training in wool knitting for three months. After the stated period, Dr. Kar requested the Respondent Roshanlal & others to take her back & accordingly she was brought back. But the ill treatment, assault & insult did not end there. It rose to such an intolerable stage that she had to leave the matrimonial home finally on 25.02.1987. In order to somehow maintain herself, she then opened a knitting centre at Bhawanipatna. The Respondent, Roshanlal started to come & stay there: It is then alleged that the Respondent, Roshanlal misbehaved & ill treated, the Appellant several time & made all sorts of plans & all possible efforts to see that the centre gets closed down. It is stated that the Respondent, Roshanlal caused damage to the machinery in the training centre for which she had to bring it the same notice of the police several time, approach the Collector, Kalahandi with her grievance. However, situation did not improve & Respondent, Roshanlal continued with such activity. On 21.11.1988, the Respondent, Roshanlal took her to their house at Langigarh Road where she stayed for about one month. There again the ill treatment persisted & the Appellant returned to Bhawanipatna. The Appellant & Respondent Roshanlal last resided together as husband & wife on 28.08.1989. Thereafter Respondent, Roshanlal took steps for his second marriage when the Appellant had also made all attempts to prevent it. On 21.10.1989 the Appellant came to know about the marriage of Respondent Roshanlal with another lady of Raipur. The Appellant proceeded to Raipur & ascertained it correctness on 27.09.1989. She had written a letter to Respondent, Roshanlal requesting him not to go for the second marriage. It is alleged that Respondent, Karamchand & the brother of that lady of Raipur met the expenses at Pandri Gurudwar towards the said marriage. The complaint petition with aforesaid statements being filed, the Learned S.D.J.M., Bhawanipatna after recording the initial statement of the Appellant, took cognizance of the offences as stated above & thus Respondents faced the trial.

2. The Respondents took the defence of denial.

3. In the trial nine witnesses were examined by the Appellant, when the defence examined none. Besides the oral evidence let in by the Appellant a series of documents have been proved such as Invitation Card for the marriage, negative & positive photographs, certified copy of the voter list, copy of the F.I.R. lodged on 25.05.1989. The Trial Court formulated three points for determination & those are:-

(i) regarding the second marriage of Respondent, Roshanlal as stated in the

complaint petition;

(ii) the role of Respondent, Karamchand, Satya Devi & Ved Prakash in the said marriage between the Respondent, Roshanlal & Jasvir & the lady of Raipur &

(iii) as, regards the cruelty being meted out by all the Respondents upon the Appellant.

With the above points for determination, the Trial Court proceeded to evaluate the evidence let in by the Appellant. As it appears after long discussion of the evidence, all those have been answered in the negative & against the case of the Appellant. Hence, the appeal.

4. Learned Counsel for the Appellant (complaint) submits that in this case the Court below erred in law in holding that there has not been establishment of the factum of marriage between the Appellant & Respondent, Roshanlal. In this connection, he has taken this Court through evidence of the Appellant (P.W. 2) & also other witnesses. It is next contended that even if a marriage is stated to have not been strictly proved, the charge under Section 498-A I.P.C. on the face of the evidence on record cannot automatically fail as the evidence here is overwhelming to show that the Appellant & the Respondent Roshanlal were staying together as husband & wife most of the time in the house of Respondent, Roshanlal & at the Bhawanipatna & they have been accepted as such in their society. He further contends that the evidence of P.W. 2 & other witnesses ought to have been accepted to hold that the Respondent had treated the Appellant with cruelty both mental & physical.

Next he contends that the evidence of P.W. 2 & others are quite satisfactory on this score of second marriage of Respondent, Roshanlal with that lady of Raipur & that having been made during the subsistence of the marriage between the Appellant & Respondent Roshanlal, the liability of Respondent, Roshanlal & also others who had abetted the same ought to have been found out by the Court below. According to him, the appreciation of evidence as done by the Trial Court while answering points formulated for determination has not been done in a proper manner & the finding ultimately arrived at is thus perverse & can not stand in the eye of law. So, he urges that to prevent miscarriage of justice, the order of acquittal is required to be set at naught in this appeal.

Learned Counsel for the Respondents on the other hand supports the finding of the Trial Court. According to him the Court below has made a thorough analysis of the evidence & on their proper evaluation, the answers have been found out. It is also his submissions that the evidence on record do neither establish the marriage nor go to show that they were living together as husband & wife with due acceptance of their said relationship by the society. As regards the cruelty, it is his submission that the evidence is wholly insufficient on this score & about the second marriage of Roshanlal as alleged in the complaint petition, there is also no reliable evidence. Thus he contends that the appeal bears no merit & as such is liable to be dismissed.

5. The settled position of law regarding the powers to be exercised by High Court in an appeal against the order of acquittal is that while High Court has full powers to appreciate the evidence upon which an order of acquittal is based & to act on its own thereof, it will not do so lightly & will be slow to reverse an acquittal, except for strong & compelling reasons when it differs from that of the Trial Court.

The paramount consideration in the matter is to avoid miscarriage of justice. Of course where two views are possible & the Trial Court has taken a reasonable view & acquitted the accused, the High Court in appeal cannot interfere with such finding but when there is perverse finding based on erroneous appreciation of evidence & a serious miscarriage of justice has been caused, the High Court has ample power to reverse that finding.

6. In order to appreciate the rival contention, this Court is now called upon to have on critical look at the evidence of the witnesses examined on behalf of the Appellant in the back drop of the afore stated settled law. Before taking up that exercise, it may be stated here that the Trial Court appears to have proceeded on an erroneous view point of law. A careful reading of the Judgment also goes to show that the Trial Court has gone to appreciate evidence without deciding first as to in which direction it would proceed & thus has travelled without a map & ascertainment of route instead like a wary traveller.

It has been by now the settled law that the expression "husband" covers a person who enters into marital relationship & under the colour of such proclaimed or feigned status of husband subjects the women concerned to cruelty or coerce her in any manner or for any of the purpose enumerated in the relevant provision under Section 304-B/ 498-A of I.P.C. whatever be the legitimacy of the marriage itself for limited purpose of Section 498-A & 304-B of I.P.C. it has been categorically held that in the absence of definition of "husband" to specifically include such persons who contract marriage ostensibly & cohabit with such women in the purported exercise of his role & status as "husband", is no ground to exclude them from purview of) Section 304-B or Section 498-A of I.P.C., viewed in the context of the very object & aim of the legislations including those provisions.

The Appellant in the case has examined nine witnesses, P.W. 1 is a witness examined in support of the factum of marriage. His evidence is that since 1976, he knew them to have married & he was invited to the marriage function. It is also his submission that after his marriage he has visited several time to the house of the Respondent where he had seen the Appellant. There surfaces nothing in the evidence of this witness that he had any are to grind against the Respondents. P.W. 2 is the Appellant herself. She has also deposed to have married Respondent, Roshanlal in 1976 as the outcome of their prior relationship. It is also her evidence that after the marriage, they stayed together & had even gone to the native state of the Respondent-Roshanlal She has stated that they were living as husband & wife & were recognized & accepted as such by

the society & their relations & it was not that they were leading life as such secretly & rather to the knowledge of me around & were roaming from place to place etc. The evidence of P.W. 3, Bishnu Prasad Satpathy is also in the same vain, where he has stated to have attended the marriage as a member of the barat party that had gone from the bride-grooms side. He has stated about performance of marriage is as per Hindu rites & custom. They have stated that the father of the Appellant had performed the kanyadan ceremony. He has also stated to have seen the Appellant & Respondent-Roshanlal residing together as husband & wife; both to have gone to West Bengal, the native state of Appellant. Evidence of P.W. 4 is also in that light & so also that of P.W. 5 who claim to have attended the marriage which was performed as Hindu rites & custom & have further stated about their stay as such. The Sarpanch of the village of Langigarh Gram Panchayat being examined as P.W. 6 has also stated to have solemnized of the said marriage. Therefore, for the present purpose, the Appellant has proved her status as the wife of Respondent, Roshanlal & the complaint at her behest is competent.

7. Now coming to the evidence with regard to the cruelty, it is the case of the Appellant that in the year 1979, the demand for bringing some money was raised & thereafter the ill-treatment began which recurred again in the year 1981. In the year 1985, 1987 & 1989, further cruelty was meted out at her.

P.W. 2 in her evidence has stated to have lived with Respondent-Roshanlal peacefully as husband & wife for about four years & in the year 1980 or 1981, Respondent-Roshanlal directed to bring a sum of Rs. 10,000 from her father. She has further stated that she was directed to bring money from her father in 1979 not in 1980-81. Thus changing her earlier version. In a general manner, she has stated that mother; father & younger brother of Respondent, Roshanlal & also Roshanlal mentally tortured her & assaulted her several time. Such evidence do not appear to be sufficient on the factum of cruelty particularly in the absence of evidence as regards instances of exerting of cruelty of definite type or nature.

Specifically, it is stated that on 31.03.1985, Respondent Ved Prakash assaulted her by a brush meant for polishing shoes which does not receive any such corroboration & that too it is not stated as to what was the immediate reason or cause. This is all her evidence with regard to the cruelty. There remains no such corroborative evidence either direct or indirect on the above score. Moreover, when it is stated that such cruelty was being meted out at her on account of demand, there is no proof of said demand. The Trial Court of course on this score as is seen has made a vivid discussion of evidence & upon critical examination of the same has found it to be insufficient to conclude with regard to establishment of charges. On reappraisal of evidence as above, this Court find no justification to hold the impugned finding of failure of charge under Section 498-A I.P.C. being not established by clear, cogent & acceptable evidence as the outcome of improper appreciation of evidence. Thus, the order of acquittal is not found to be a flawed one.

Resultantly, the Criminal Appeal stands dismissed.