

(1994) 03 OHC CK 0007
In the Orissa High Court
Case No : Criminal Revision No. 211 of 1992

Smt. Sabitri Patra

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 30-03-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Penal Code, 1860 (IPC) — Section 498A

Citation : (1994) 1 OLR 543

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Tapan Mohanty, for the Appellant; Additional Government Advocate (for opp. party No. 1) and B. Misra, (for opp. party No. 2), for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mohanty, J.—This revision by the informant lady directed against a judgment of acquittal recorded by Sub-Divisional Judicial Magistrate, Karanjia in a police case under Sec 498-A of the Indian Penal Code.

2. Prosecution case in brief was that accused Sirish Chandra married the petitioner in the temple of Lord Shiva and thereafter they lived as husband and wife for about one year and four months in the house of the former. While they were so living, the accused demanded dowry of Rs. 5,000/- for continuance of marital status of the petitioner. She failed to bring the amount from her father and thus could not fulfil the demand of accused and therefore the accused and his parents harassed and threatened to kill her if she did not go back to her father's house. Because of such harassment and threatening, she went and lived in her father's house and reported at the police station where he promised to keep her. But the accused and his parents did not allow her to return to her husband's house and were threatening to kill her.

3. The accused took the plea of denial as to factum of marriage, demand of dowry and cruelty.

4. As many as 11 witnesses were examined on behalf of the prosecution including the informant (PW 1). Prosecution relied on the testimony of PWs 3 and 6, the brother and father of the petitioner and PWs 4, 5, 7 and 9 the co. villagers in proof of marriage and leading of married life. On the point of demand of dowry and torture, prosecution relied on the testimony of PWs 1, 3, 5 and 6.

5. The learned trying Magistrate came to find that accused has not married the petitioner and the prosecution has failed to prove either demand of dowry or cruelty,

6. In order to succeed in the case, the prosecution has to prove the marriage between the petitioner and the accused and cruelty as defined in Section 498A by the accused to the petitioner.

7. Learned counsel for the petitioner attacked both the findings of fact by the trying Magistrate as unjust and perverse and contended that they are outcome of misappreciation of evidence resulting in miscarriage of justice,

8. Now the evidence adduced by the prosecution in proof of marriage may be briefly stated. PW 1, the informant has claimed that her marriage with the accused was held in the temple of Lord Shiva at village Hatidandi and after marriage she stayed in her matrimonial house for one year and four months. She has not spelt out as to the manner and ceremony which was observed thereat. She admits in her cross-examination that no priest was present and there was no witness to it.

PW 3, brother of the petitioner, simply stated that the petitioner stayed in the house of the accused as his wife for one and half years and a daughter was born to them. PW 4 has stated that accused is the husband of the petitioner and after marriage the petitioner lived in the house of the accused. PW 5 has stated that accused is the husband of the petitioner. According to him, both of them following love affair eloped and after seven or eight days -returned and stayed in the house of the accused as husband and wife and the petitioner gave birth to a daughter PW 6, the father of the petitioner has similarly stated that the accused eloped with the informant from his house, returned after 8 days and lived in the house of the accused where a daughter was born to them PW 9 has stated that petitioner is the wife of the accused, PW 10 has stated that petitioner and accused remained as husband and wife.

9. PWs 3, 4, 5, 9 and 10 admit in cross-examination that they have not seen the marriage between the parties. PW 6 has admitted that no formal marriage was solemnised after his daughter and accused returned to his village.

10. On the above evidence, the learned trying Magistrate has answered the point relating to marriage against the petitioner. Now the question arises, whether on the aforesaid evidence, the finding on the point of marriage can be said to be unjust or perverse. In my view the aforesaid evidence cannot satisfactorily establish the factum of marriage. At best, it establishes that for a year or so the

parties lived as husband and wife and a she child was born out of them. The fact of a man and a woman living as husband and wife for any length of time and even birth of any child out of their loins does not in law give them the status of husband and wife. It was argued that strict proof of marriage is not necessary in a case u/s 498A IPC. In support of the argument, the decisions of this Court in Saudamini Dei Vs. Bhagirathi Raj, , Shantimanl Dei Vs. Lingaraj Moharana and Others, , Chakradhar Pradhan Vs. Asali Dei and Another, and Anupama Pradhan Vs. Sultan Pradhan, were pressed into service. In Saudamini Dei it is stated that where the man and woman lived together as husband and wife, were treated as such by the community and the man treated the woman as his wife, for the limited purpose of Section 125, it may be inferred that there was marriage and in such summary proceeding it is not necessary to go into intricacies of law in Shantimani Dei, while dealing with a case u/s 494 IPC, is, stated that the considerations in a case or suit for maintenance are quite different from a case u/s 494 IPC. In Chakradhar Pradhan, considering the facts that the girl fell in love with the man and taking advantage of the same, the latter made her pregnant, in a Panchayati held thereafter the man agreed to marry the woman whereafter both proceeded to a temple and married each other by exchange of garlands and the marriage was consummated by the husband and the wife remaining together in the house in the night, it was held that the marriage between both of them had been well established for the purpose of the proceeding u/s 125 Cr PC. In Anupama Pradhan, which is also a case u/s 125 of the Code, the Law laid down in Saudamini Dei has been applied.

11. A proceeding u/s 125 of the Code of Criminal Procedure being of summary nature strict proof of marriage is not necessary. but this principle of law cannot be extended to a criminal trial u/s 498A IPC.

12. More statement on oath of the petitioner that she married the accused in Shiva Temple and even exchange of garlands by petitioner and accused in the temple with the intention of the parties getting married, cannot establish marriage, since marriage in such manner is not prescribed in law and prosecution has not come out with a case that such marriage was the established custom in the caste of the parties to which they belong. The mere fact that the petitioner and the accused lived as husband and wife does not at any rate normally give them the status of husband and wife, even if they had held themselves out before society as husband and wife and the society treated them as such. Applying this position of law to the facts of the case, it cannot be said that the finding of the trial Court on the point of marriage is either unjust or unreasonable or perverse and as such, it is one of the exceptional cases in which interference in revision by this Court is permissible in law. Consequently, the finding of fact on the point of marriage cannot be disturbed in this proceeding. Since one of the main ingredients of the offence has not been established, the accused has been rightly acquitted by the learned trying Magistrate.

In the result, the revision fails being devoid of any merit and the same is

therefore dismissed.