
(2014) 02 TP CK 0070
In the Tripura High Court
Case No : Criminal Rev. P. 76 of 2005
Sri Nantu Saha VsThe State of Tripura

Date of Decision : 21-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 498(A)

Citation : (2014) 02 TP CK 0070

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : D.C. Roy, Amicus Curiae, for the Appellant; A. Ghosh, PP, for the Respondent

Final Decision : Disposed Off

Judgement

Deepak Gupta, C.J.—This Revision petition by the accused is directed against the judgment dated 19.04.2005 passed by the learned Sessions Judge, South Tripura, Udaipur in Criminal Appeal No. 4(1) of 2005 whereby he dismissed the appeal of the present petitioner and upheld the judgment dated 11.01.2005 passed by the learned Chief Judicial Magistrate, South Tripura, Udaipur, convicting the accused of having committed an offence punishable u/s 498(A) of IPC and directed him to undergo simple imprisonment of two years for the said offence. There is no dispute that PW 1 Ratna Saha was married to the petitioner herein. It is also not disputed that out of this marriage one son was born. According to the complainant wife, PW 1, at the time of her marriage her father gave dowry in the form of one necklace of gold, a bangle, ring and earrings etc. but there is no allegation that any dowry was demanded by the accused. She only states that her father gave some ornaments, furniture etc. According to her for some time after her marriage she led a happy married life but one day her husband got the ornaments weighed and then the trouble started. Her allegation was that her husband found that the ornaments were not of the same weight which was disclosed at the time of marriage and, therefore, he demanded Rs. 10,000/- to meet the short fall. The mother in law who was also an accused before the learned trial court but was acquitted is alleged to have encouraged

and abetted her son in these demands. The wife claimed that she was physically tortured a number of times and she went to the house of her father on more than one occasion and finally came back. On some occasions she came back and lived with her husband and then the male child was born. She also states that her husband provided her with a separate hut within the same area so that she could live separately from her mother in law. She also alleges that her husband used to beat her physically many times and this matter was brought to the notice of the villagers and a baithakh (meeting) was held to settle the matter between the parties and at this baithakh a written memorandum was drawn. She also stated that she was also beaten up in the year 1999 and that on 04.11.2003 she was again beaten up by both the accused and they had tried to strangulate her. She was confronted with her complaint in which there was no mention of any dowry or ornaments being given at the time of marriage. There was also no mention that in this FIR that her husband had taken the gold jewellery for weighing before a jeweler. She also stated that she used to be beaten by her husband and by her mother in law.

2. PW 2 Shibu Lal Saha is the uncle of the victim Ratna Saha. According to him the couple led a happily married life for about six months and, thereafter, the husband Nantu Saha started creating problems by demanding Rs. 10,000/- from his father in law. According to him the husband also asked for another Rs. 10,000/- but the father refused on the ground that cash amount of Rs. 20,000/- was paid at the time of the marriage. This statement of the witness is totally false because even PW 1 has not talked about the payment of any cash amount at the time of the marriage. This witness also states that at the baithakh which was held some writing was drawn up and he is a witness to the seizure list whereby such writing was taken into possession by the Investigating Officer. However this writing has never been produced in the court and only the seizure list has been filed in the court. Therefore, no benefit of the writing can be taken and in fact adverse inference will have to be drawn against the prosecution that the writing would not have supported the prosecution.

3. As far as PW 3, Ranjit Majumder is concerned, most of his statement is in the nature of hearsay. His only direct evidence is that he was present in two meetings which were held and in one meeting one written document was drawn up. The Investigating Officer has also seized the said document but the said document had not been proved.

4. PW 4, Smt. Shefali Saha is the mother of the complainant. She also does not talk about any cash being given at the time of the wedding. She however talks of some gold jewellery, wearing apparels, utensils, furniture etc. being given but she also does not state that there was any demand of dowry by the husband or his family members. There are many contradictions between her statement and the statement of her daughter. This witness states that on one occasion she had given one bangle and one ring made of gold to the accused on his demand. However, the daughter has not stated so and according to the daughter the

jewellery was given only at the time of wedding. Surprisingly according to the wife and the mother, the incident about the first demand took place in the year 1999 but the wife left the house in the year 2003 i.e. four years later and there is no cogent proof of what happened on the night of 4th November, 2003. More than four years had elapsed and it means that the husband and wife were living happily for this period.

5. As far as PW 5, Smt. Swapna Saha is concerned, his statement does not help the prosecution at all because his statement is in the nature of hearsay. The statement of PW 6, Sri Bibhash Saha cannot be relied upon because in his cross examination he admits that there was a criminal case registered against him at the instance of the brother of the accused and he had to obtain bail in that case. PW 7 Subal Chandra Das also reached after the occurrence had taken place and he states that on enquiry from the people gathered there he came to know that the accused had assaulted his wife physically. He is also not an eye witness to the occurrence. PW 8, Sri Krishna Mohan Saha states that he saw the accused Nantu Saha dragging his wife with a cloth which was wrapped around her neck. Thereafter the local people gathered and police also came. The statement of this witness has not been recorded by the police and, therefore, the same cannot also be relied upon. PW 9, Subal Chandra Das is totally a chance witness. He is the resident of some other village but according to him he had gone to the house of Jogesh Malakar where he saw the incident in question. If this witness could be examined why was Jogesh Malakar not examined. He was the neighbour and it was his evidence which was more relevant. This witness has been confronted with his statement u/s 161 Cr.P.C. and it is clear that there are many improvements and embellishments in his statement in the court.

6. In my view the prosecution had miserably failed to prove that there was any demand of dowry Even if it is believed that the demand of Rs. 10,000/- was there, that was in the year 1999. The occurrence took place in the year 2003 and no demand is relatable to the period from 1999 to 2003. To amount to cruelty u/s 498(A) IPC the willful conduct should be of such a nature as to drive the woman to commit suicide or to cause grave injury or danger of life and limb of health. In this case none of the ingredients have been proved.

7. Therefore, I have no hesitation in setting aside the judgment of both the courts below. Accordingly, the Revision petition is allowed. The judgments of both the courts below are set aside and the accused is acquitted. The court places on record its appreciation for the valuable assistance rendered by Mr. DC Roy as amicus curiae. Criminal Revision petition is disposed of.

Send down the LCRs forthwith.