
(2014) 03 OHC CK 0030
In the Orissa High Court
Case No : Govt. Appeal No. 25 of 1996

State of Orissa

APPELLANT

Vs

Pabitra Mohan Barik

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Penal Code, 1860 (IPC) — Section 304B, 323, 494, 498A

Citation : (2014) CriLJ 4316 : (2014) 2 OLR 362 Suppl. : (2014) 2 OLR 362

Hon'ble Judges : D. Dash, J

Bench : Single Bench

Judgement

D. Dash, J.—The State in this appeal has called in question the judgment passed by the learned S.D.J.M., Karanjia in G.R. Case No. 335 of 1994 (T.C. No. 52 of 1995) acquitting in the respondent of the charge under Sections 498-A and 323 of the I.P.C. The fact of the case of the prosecution is that the respondent had married P.W. 3 daughter of Kunu Ghana who used to reside in the same hamlet of the village Kulundi under Jashipur Police Station in the district of Mayurbhanj where the respondent's permanent residence is situated. The marriage had taken place on 5-4-1994 in the Shiva temple situated at Jashipur. It is further stated that after the marriage, the Respondent began to ill-treat his wife and on 30-11-1994 during noon hours, she was assaulted by the Respondent, when she raised cry, inviting the attention of her elder father Ugrasen Ghana. He then arrived and protested to such assault by the Respondent and took Latika to his house. The villagers then wanted to have an amicable settlement of the matter but that failed. So, it was orally reported at the Police Station on 6-12-1994. That is how the case came to be registered and finally on completion of the investigation, the Respondent being placed to be tried in the said offences, the trial commenced and culminated as stated above.

2. The Respondent during the trial took the plea of complete denial and false implication while denying the factum of marriage and the status of this R.W. 3 as his wife.

3. Prosecution in order to bring home, the charge against the Respondent during trial has examined 10 witnesses. The star witness for the prosecution is R.W. 3 who is the informant of the case who claims to have been residing as the Respondent's wife having married him on 5-4-1994. P.Ws. 1 and 5 are the independent witnesses, when P.W. 4 is the father of the informant, R.W. 6 is the Medical Officer who had the occasion to examine R.W. 3, R.W. 7 is the elder father of P.W. 3. The Investigating Officer has been examined as R.W. 10.

From the side of the prosecution, the F.I.R. lodged by the prosecution in the Police Station has been admitted in evidence and has been marked as Ext. 1. Ext. 2 is the injury report of R.W. 3 and Ext. 3 is an Invitation Card.

4. Defence has examined none.

The trial Court upon consideration of the evidence has arrived at conclusion that there was no valid marriage between the Respondent and R.W. 3. With this finding, the Respondent has not been found guilty for commission of offence under Sections 498-A/ 323 of I.P.C. has been acquitted. This judgment is now under challenge in this appeal.

5. Learned counsel for the State submits that the evidence let in by the prosecution, when being appreciated in their proper prospective clearly establish that the Respondent and the R.W. 3 had married and stayed together under one roof in the very hamlet of the village where houses of both the families are situated as husband and wife and they had also been recognized as such in their society and by all concerned. Therefore, according to him, the trial court erred in law by not holding the Respondent guilty of the offence under Section 498-A of I.P.C. on the ground that no valid marriage between them has been proved. It is also his submission that for attraction of the provision of offence under Section 498-A of I.P.C. strict proof of the marriage is not required and it is enough if from the evidence it is found that parties were living together as husband and wife and were recognized as such in the society for sometime. It is further his submission that the decision referred to by the trial Court in case of Smt. Sabitri Patra Vs. State of Orissa and Another, is no more reigning the field in view of the decision of the Apex Court in case of Reema Aggarwal Vs. Anupam and Others, . Therefore, according to him, the trial court erring in law by acquitting the Respondent and thus it stands as fit case for interference with the order of acquittal.

6. Learned Counsel for the Respondent while not disputing the position of the law as expressed in case of Reema Aggarwal Vs. Anupam and Others, has gone one step ahead in submitting that in the instant case, the evidence on record is not even enough to establish those necessary facts and circumstances beyond reasonable doubt to come to a finding that the parties were residing as husband and wife together under one roof for sometime and were recognized as such in the locality. Therefore, according to him although the trial court's finding about non-existence of valid marriage between the parties on the ground of not being

strictly proved is not sustainable, still there cannot be a finding in favour of P.W. 3 is holding her as wife of the Respondent for the purpose of this prosecution even considering the evidence within the parameters laid down in case of Reema Agarwalla (supra). It is his further submission that the case which was decided by the Apex Court was not there before the trial court in the year 1995, when the judgment was delivered and then our own High Court's decision in the case of Smt. Sabitri Patra (supra) was holding the field. So the trial court cannot be said to have committed any mistake in the ultimate. It is his next submission that even accepting for a moment that P.W. 3 is the wife of Respondent, no finding in the present case can be given on the basis of evidence let in by the prosecution that P.W. 3 was subjected to cruelty within meaning of explanation to Section 498-A of I.P.C. Therefore, he contends that the appeal at the instance of the State merits no acceptance and the result of acquittal is not liable to be interfered with within the scope and power of this Court in seisin of this acquittal appeal.

7. Keeping in view the above submission, when the relevant para-7 of the judgment is perused, it is seen that the trial court has gone for discussion with regard to the factum of marriage with reference to the evidence on record and the final conclusion against the marriage has been arrived at taking into consideration, the principle decided in case of Smt. Sabitri Patra (supra). In that case it was held that strict proof of marriage is necessary to be tendered for a prosecution under Section 498-A, IPC to stand as is required in case of a prosecution under Section 494, IPC. The "wife" as indicated in Section 498-A, IPC means a legally wedded wife. Finally by giving purposive interpretation in case of Reema Aggarwal Vs. Anupam and Others, it has been held that the expression "husband" covers a person who enters into marital relationship and 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 Sections 304-B/ 498-A of I.P.C. whatever be the legitimacy of the marriage itself for limited purpose of Sections 498-A and 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 and cohabit with such women in the purported exercise of his role and status as "husband" is no ground to exclude them from purview of Sec. 304-B or Section 498-A of I.P.C. viewed in the context of the very object and aim of the legislations including those provisions.

8. In a recent case of Badshah Vs. Sou. Urmila Badshah Godse and Another, , the matter having come for consideration as to whether a wife of the second marriage during the subsistence of the first marriage of husband would be entitled to be maintained as she is not the legally wedded wife, the Hon"ble Apex Court again going to the purposive construction/interpretation have held that the court must give effect to that construction which will be responsible for smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. Such construction which would reduce the

legislation to futility should be avoided. On the basis of evidence available in that case it was found that the second marriage was solemnized during the subsistence of the first marriage but the said fact of subsistence of first marriage was kept in dark by the husband and a false representation was given that he was the single and competent to enter into the marital tie. Therefore, the Hon''ble Apex Court held that the husband should not be allowed to take advantage of his own wrong and turn around to say that the wife is not entitled to maintenance by filing petition under Section 125 of Cr.P.C. being not the legally wedded wife. The principle laid down in the said decision is that for the purpose of a proceeding under Section 125 of Cr.P.C. in the facts and circumstances as above and in that event, the wife would not be deprived. This view has been taken by giving a purposive interpretation being the need of the day to achieve justice which is the constitutional vision enshrined in the Preamble of the Constitution of India. The Relevant paras of the said decisions are the following:--

"13.1. Firstly, in Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Another, , the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125, Cr.P.C. by interpreting the term "wife" widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125 of Cr.P.C. On the other hand, in the present case, Respondent 1 has been able to prove, by cogent and strong evidence, that the Petitioner and Respondent 1 had been married to each other.

13.2. Secondly as already discussed above, when the marriage between Respondent 1 and the Petitioner was solemnized, the Petitioner had kept Respondent 1 in dark about his first marriage. A false representation was given to Respondent 1 that he was single and was competent to enter into marital tie with Respondent 1. In such circumstances, can the Petitioner be allowed to take advantage of his own wrong and turn around to say that the respondents are not entitled to maintenance by filing the petition under Section 125, Cr.P.C. as Respondent 1 is not "legally wedded wife" of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125, Cr.P.C., Respondent 1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another, and Savitaben Somabhai Bhatiya Vs. State of Gujarat and Others, cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act

and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries a second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

13.3 Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125, Cr.P.C. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections for the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society."

9. So, now in the touchstone of the above principles finally set at rest, the matter in hand is required to be approached shunning the idea in mind that for the purpose of attraction of the provision of the offence under Section 498-A strict proof of marriage between the victim and the accused is necessary as like the offence under Section 494 of IPC and adopting that idea at the first blush, it can be said that the trial Court has erred in law. By repelling the prosecution case on that ground of lack of strict proof of marriage between victim (P.W. 3) and the respondent. Though by then these decisions were not rendered by the Hon''ble Apex Court, the same however is no ground to give the seal of approval to the view taken by the trial Court when its sustainability comes for examination before the superior Court, the principles have been settled in a particular manner to the contrary.

10. This now takes me to have a glance at the evidence.

"From the side of the prosecution, 10 witnesses have been examined, when the defence has examined none. It is the specific case of the prosecution that P.W. 3 married the appellant in a Shiva temple at Jashipur. P.W. 3 has stated that said marriage took place at the instance of police who came into picture because of an earlier incident being reported concerning the fact that P.W. 3 was pulled with evil intention from a place where "Pala" was going on. So there was a meeting in the village and that was in view of the decision of the meeting convened for the purpose. P.W. 3 and Respondent both had then shown affidavits as regards such marriage and then it is further stated by P.W. 3 that marriage was solemnized at village as per caste and custom. The trial court has taken the view that it is not a valid marriage and void one since the parties are coming under the prohibited degree. Next, the trial court has taken strong exception to the evidence about the marriage being performend once in Shiva temple then admitted in affidavits and lastly in the village. Such a view for the purpose of the instant prosecution

on the face of it is unsustainable. The respondent having not earlier challenged the same, cannot wriggle out of it and that would be a grant of allowance the respondent to take advantage of his own wrong which frustrates the objective of the enactment. Adverting to the evidence of P.W. 3, the informant, it is seen that she has clearly stated that marriage had first taken place in the village with the Respondent who is the son of the sister of her father. It has been further elicited from her during cross-examination that she had stayed for a period of six months after the marriage in the house of the Respondent, while finally denying the suggestion that there was no marriage. Father of R.W. 3 has been examined as P.W. 4. He has also narrated the same said fact, that they had married in the temple and both came to Karanjia and had sworn affidavits. He has further stated that they both represented as husband and wife for about six to seven months and thereafter the respondent assaulted R.W. 3 and drove her out of the house and was demanding a motor-cycle and cash.

P.W. 8 as a teacher claims to have been invited to the said marriage and attended the same and he has proved Invitation Card as Ext. 3. R.W. 7 is the uncle of P.W. 3, who has also deposed in the same vein. These, facts are not at all under challenge during cross-examination and no such material is forthcoming to discard all the evidence as blatant lies more so when no such compelling reason surfaces to say that there was any reason to falsely rope in the Respondent in this. So, it is established from the evidence that there was a marriage between the respondent and P.W. 3 in the temple, they had sworn affidavits in that regard, stayed as husband and wife for six to seven months in the village under one roof. Thus the locus standi of this P.W. 3 as wife of the respondent for the purpose of the prosecution under section 498-A, IPC squarely stands. The finding disfavouring marriage rendered by trial court is thus held to be perverse and having resulted miscarriage of justice, is therefore set aside."

11. With this instead of further going to search for the evidence with regard to the cruelty when the sole finding is found vulnerable, as a natural consequence it becomes a fit case for remand to trial court to find out as to whether on the basis of the evidence on record finding can be rendered that the cruelty was meted out at P.W. 3 by the Respondent. However, I am afraid of resorting to that course at this distant point of time looking at the age of the case as that may not be in the interest of justice. Therefore, said exercise to subserve the cause of justice is taken up here. The evidence of P.W. 3 is to the effect that the respondent was assaulting her without giving food and was demanding a motor-cycle, cash of Rs. 20,000/- to be brought from her parents and having not allowed here to make an entry into the house and driving her out of the house, she was injured and medically treated. P.W. 4 who is the father of the victim has stated about the assault and the factum of driving P.W. 3 out of the house and also that he was demanding a motor-cycle and cash in a generalized manner. P.W. 7 states that the respondent was ill-treated, assaulted and driven P.W. 3 out of home. Next it is stated that she came and stayed with her parents.

12. Cruelty has been defined in the explanation to Section 498-A of I.P.C. and those are as tender:--

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Explanation- For the purpose of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

13. As per the allegation first it is required to take a view as to whether the case is within the ambit of explanation of (a) and (b) or not. It does not make each and every harassment cruelty. The harassment has to be defined with objects namely to coerce the women or any person related to her to meet in unlawful demand. So, mere harassment is not cruelty and mere demand of dowry itself is also not cruelty. It's only where the harassment is shown for the purpose of coercing the women to meet the demand i.e., cruelty and this is made punishable under the section. Here the specific case of the prosecution that such cruelty was meted out at P.W. 3 that a view to coerce her to meet the demand. In that connection the evidence is found to be lacking. P.W. 3 never stated to have ventilated the same to her father when all hail from the same village. No evidence is also forthcoming that P.W. 4 had ever asked the Respondent about the same or to have convened any meeting in the village for the purpose which is an usual phenomenon and when it was so done earlier before marriage. There is no evidence that common relatives were told about it. Evidence is of ominous nature. As regards the assault etc., it is not stated by any of the neighbours or other villagers to provide corroboration. When there was a village meeting at the first instance, non-convening, a village meeting after this incident of assault and driving of P.W. 3 out of the house tend to generate genuine doubt in the mind as regards happening of such incident. These types of corroborative evidence which the court certainly look for in the facts and circumstances of the case are wanting here. Therefore, while not agreeing with the view of the trial court that the prosecution in the case is not liable to fail for the reason that valid marriage between P.W. 3 and respondent has not been established and while reversing that finding here, it is held that the prosecution has failed to establish beyond reasonable doubt by leading clear, cogent and acceptable the evidence that the Respondent treated P.W. 3 with cruelty. Thus although for different reason as discussed in foregoing paras, the end result of acquittal is found to be irreversible.

With above discussions, for the reasons aforesaid and the observations, this appeal is not accepted. Accordingly the same stands dismissed.