

(2014) 11 OHC CK 0012
In the Orissa High Court
Case No : Government Appeal No. 31 of 1998

State of Orissa

APPELLANT

Vs

Sadasiba Majhi

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Evidence Act, 1872 — Section 113(A)
Penal Code, 1860 (IPC) — Section 306 498A 498-A

Citation : (2015) 2 DMC 645

Hon'ble Judges : D. Dash, J

Bench : Single Bench

Advocate : A.K. Mishra, Standing Counsel, Advocate for the Appellant; Sajit Kr. Gupta, Amicus Curiae, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

D. Dash, J.

1. The State has called in question the order of acquittal passed by the learned C.J.M.-cum-Asst. Sessions Judge, Rayagada acquitting the Respondent of the charge under Sections 498-A/306, I.P.C. Prosecution case is that the Respondent & deceased-Sravanti were in love with each other. On 23.6.1995 their marriage was solemnized. It is stated that the Respondent at the time of marriage was an employee of State Government working as an Excise Constable and posted at Kashipur. It is further stated that deceased-Sravanti and the Respondent were staying at Kashipur. It is the case of the prosecution that during their stay at Kashipur the Respondent developed some extramarital relationship with another lady (P.W. 11) to the utter disliking of the deceased. On 17.4.1996 P.W. 10 one of the sisters of P.W. 11 came to Kashipur and went to the house of the Respondent. There she informed the Respondent about her sister Priya's illness and that she was lying on bed with fever, expressing her desire to see the Respondent. It is stated that during noon hour without the knowledge of the

deceased, the; Respondent went to the house of P.W. 11, stayed for sometime there and returned in the afternoon. The deceased having come to know that the Respondent had gone to see that lady-love got terribly annoyed and there was a quarrel between them. In course of that the Respondent is said to have assaulted the deceased and broke her bangles. In the afternoon around 4.30 p.m. the deceased being hyper sentimental, poured kerosene over her body and set herself to fire after closing the door from inside. The villager seeing emission of smoke went to the house of the Respondent & opened the door and brought the deceased out of the house. The information being given at the Police Station, investigation of the case commenced. The deceased sustained eighty percent burn injuries and was removed to the hospital. On that day around 9.40 a.m. she died. On completion of investigation, charge-sheet being submitted placing the Respondent for trial for commission of offence under Sections 498A/306, I.P.C. he faced the trial. He having acquitted & sentenced as above, the State has preferred this appeal.

2. The Respondent during the trial took the plea of absence of their complicity in commission of the said crime and he further stated that the death of Sravanti occurred due to an accidental fire and she did not commit suicide.

3. Prosecution in order to establish the charges against the Respondent examined in total fifteen witnesses when defence has examined one witness. P.Ws. 1 and 2 are two neighbours. P.Ws. 3,6 and 7 are co-villagers. P.W. 4 is the landlord in whose house Respondent and deceased were staying. P.W. 5 is a witness to seizure of stove. The mother of the deceased has come to the dock as P.W. 8 whereas P.W. 9 is the mother of Respondent. That lady with whom the Respondent is said to have developed extramarital relationship has come as P.W. 11 and P.W. 10 is her sister. The doctors are P.Ws. 12 and 13 who had treated and last one who had conducted post-mortem examination. The investigating officers are P.Ws. 14 and 15. One doctor who had treated the deceased at first has been examined as D.W. 1.

4. Learned Counsel for the State submits that the appreciation of evidence laid by the prosecution as done by the Trial Court is not just and proper. According to him, the Trial Court has unnecessarily given importance to some minor discrepancies which have nothing to do with the substratum of the prosecution. According to him, the foundational facts being proved, the Trial Court ought to have drawn the presumption under Section 113(A), of the Evidence Act and accordingly the Court below in the absence of any rebuttal evidence from the side of the Respondent ought to have convicted the Respondent. Therefore, he urged that this is a fit case for interference with the order of acquittal.

5. Learned Counsel for the Respondent submits that the finding rendered by the Trial Court is based on due and proper appreciation of evidence and the Trial Court, according to him, has taken great pain in making detail and elaborate examination of the evidence on record. He further submits that here the materials are not available for drawing the presumption under Section 113(A), of

the Evidence Act. So, according to him, the Trial Court was perfectly justified in recording the order of acquittal.

6. Before going to reappraise the evidence in the light of the contentions as advanced, it is apposite to take note of the settled position of law with regard to the scope and power of this Court for interference with the order of acquittal in seisin of an appeal against the judgment of acquittal.

It has been held in case of *Basappa v. State of Karnataka*, (2014) 57 OCR 1044 that the High Court in an appeal under Section 378, Cr.P.C is entitled to reappraise the evidence and put the conclusions drawn by the trial court to test but the same is permissible only if the Judgment of the Trial Court is perverse. Relying the case of *Gamini Bala Koteswara Rao and Others Vs. State of A.P. thr. Secretary*, , it has been held that the word "perverse" in terms as understood in law has been defined to mean "against weight of evidence". In *K. Prakashan Vs. P.K. Surenderan*, , it has also been held that file Appellate Court should not reverse the acquittal merely because another view is possible on the very same evidence, it cannot be said that prosecution has proved the case beyond reasonable doubt (Ref. *T. Subramanian Vs. State of Tamil Nadu*, . Further, the interference by Appellate Court against an order of acquittal is held to be justified only if the view taken by the Trial Court is one which no reasonable person would in the given circumstances, take (Ref. *Bhim Singh Vs. State of Haryana*, .

7. It is not disputed that the death of the deceased was within a period of one year of marriage and that at the relevant time the deceased was residing with the Respondent at Kashipur as husband and wife and she had married the Respondent for the second time. It may be stated here that the parties are Adivasis. The death is also due to be severe burn injury on the person of the deceased. It is the prosecution case that the deceased having entered inside the room and bolting the door from inside dowsed herself with kerosene and set herself ablaze. The prosecution case is not that it is someone else who set fire to the body of the deceased or some was present there at that time. It is the settled position of law that in order to draw the presumption available under Section 113(A) of the Evidence Act, the prosecution has to establish the foundational facts that the death was due to suicide within a period of seven years of marriage and that she was being treated cruelty or cruelty was being meted out at her-by the Respondent.

8. Now, coming to the evidence of P.W. 1. It is seen that he pushed the door of the house which was shut from inside and saw-the deceased in a burning condition whereafter the Respondent arrived there and assisted them in pouring water for extinguishment of the fire and then went to the hospital carrying the deceased. P.W. 2 like P.W. 1 is also a neighbour. He has categorically stated that, the Respondent and the deceased were living happily. Her evidence is totally silent even about any disturbance in the house. P.W. 3 has expressed his ignorance with regard to the incident. Now, P.W. 4 has also not stated anything in

that light so as to implicate the Respondent. A cumulative reading of the evidence, it is found that the prosecution has not been able to establish beyond reasonable doubt that the cruelty was meted out at the deceased or about any direct or indirect role of the Respondent at the time of the last incident. In this case, the most important witness examined on behalf of the prosecution is P.W. 9 who is none other than the mother of the deceased. She is silent with regard to even any dispute continuing between the Respondent & the deceased. Though, she was not in good terms with the Respondent, she has not stated anything in the direction in implicating the Respondent. Thus the presumption under Section 113A, IPC is not available to be drawn on the basis of above evidence as the same do not go to establish, the foundational facts.

With the above evidence, the Trial Court having found the prosecution to have failed to prove the charges under Sections 498A/306, I.P.C. against the Respondent, this Court finds no other option but to accord the seal of approval to it.

In the result the appeal stands dismissed.