
(2012) 09 JH CK 0133
In the Jharkhand High Court
Case No : Criminal Rev. No. 537 of 2003

Yadav Maji

APPELLANT

Vs

The State of Jharkhand and Putul Rani Maji

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 379, 494, 498A

Citation : (2013) 1 JLJR 588

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Rajeeva Sharma, for the Appellant; Richa Sanchita, Assistant Public Prosecutor For the State, for the Respondent

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard Learned Counsel for the petitioner and Learned Counsel for the State. No one appears for the complainant opposite party No. 2 in spite of the fact that on earlier occasion, due to non-appearance of the complainant opposite party No.2, the case was adjourned for giving a chance to the counsel for the complainant opposite party No. 2. The petitioner is aggrieved by the Judgement dated 31.03.2003 passed by the learned Additional Sessions Judge-IV, Jamtara, in Criminal Appeal No. 34/141 of 2000, whereby the appeal filed by the petitioner against his conviction and sentence for the offence u/ss. 494, 379 and 498A of the Indian Penal Code, by the Judgement dated 18.09.2000 passed by Shri Ajay Kumar Sharma, Judicial Magistrate, 1st Class, Jamtara, in C.R. No. 71 of 1992 / T.R. No. 31 of 2000, has been allowed in part by the learned Appellate Court below. It may be stated that by the Trial Court the petitioner was found guilty for the offences u/ ss. 494, 379 and 498A of the Indian Penal Code and was convicted for the same and upon hearing on the point of sentence the petitioner was sentenced to undergo rigorous imprisonment for two years and six months and fine of Rs.500/- for each of the offences u/ss. 494 and 498-A of the

Indian Penal Code and in default of payment of fine he was to undergo simple imprisonment for two months in addition to the term of sentence awarded. The petitioner was also sentenced to undergo rigorous imprisonment for one year for the offence u/s 379 of the Indian Penal Code and the sentences were directed to run concurrently.

2. Upon appeal, the Appellate Court below has acquitted the petitioner for the charges u/s 379 and 494 of the Indian Penal Code, but maintained the conviction and sentence against the petitioner for the offence u/s 498A of the Indian Penal Code and has allowed the appeal in part.

3. The petitioner, along with other co-accused persons have been made accused in P.C.R. Case No. 71 of 1992, filed by the Putul Rani Maji, the wife of the petitioner Yadav Maji, in the Court of Additional Chief Judicial Magistrate, Jamtara, then in the District of Dumka. It appears that the petitioner was made accused in this case along with his family members and one Maya Maji, who could not be put to trial. The complainant petition available in the Lower Court Record clearly shows that the same was filed with respect to the occurrence which had taken place on 12.03.1992 at Kalyaneswari Temple and subsequently on 27.03.1992 at village- Banbistupur, (P.S. Uttan Dhadhka) to Gorainala More (P.S. Mihijam) on Jamtara-Mihijam Road.

4. It is stated in the complaint petition that the complainant was married to the petitioner according to the Hindu Rites and Customs on 29.4.98 and after the marriage the complainant went to her Sasural, where she was subjected to cruelty and torture for demand of dowry. However, as pointed out above, this complaint does not relate to the period between 29.4.1988 to 11.03.1992, rather it relates to the occurrence on 12.03.1992 and onwards. It is alleged that on 12.03.1992 the accused petitioner with the help of his family members was performing second marriage with accused No. 5 namely, Maya Maji in Kalyaneshwari Temple and the complainant informed her parents and brother. The parents and brother also rushed to the Kalyaneshwari Temple, but it is alleged that the marriage was performed between the petitioner and the said Maya Maji. It is further stated in the complaint petition that after the said marriage the complainant came to her husband's place and her father and brother returned back to their home. It is alleged that she was assaulted on her left cheek and was burnt on her left elbow joint with hot iron (chimta) due to which she sustained wounds and thereafter she was assaulted with fists and slaps due to which she became unconscious. The accused persons took away her ornaments valuing Rs.40,000/- and in the state of senselessness she was boarded on a taxi and thrown near her father's house, near Gorainala More on Jamtara-Mihijam Road. Mainly with these allegations the complaint petition was filed for the offence u/ss. 494, 498A, 109 and 379 of the Indian Penal Code against the petitioner and his family members, who were ultimately put to trial.

5. It appears that in the course of trial the complainant had examined five witnesses including herself, her father and brother and five witnesses were also

examined on behalf of the evidence. The Trial Court on the basis of the evidence on record convicted and sentenced the petitioner as aforementioned. The appeal filed by the petitioner was partly allowed and the conviction and sentence of the petitioner for the offence u/s 379 and 494 of the Indian Penal Code were set aside, whereas the conviction and sentence for the offence u/s 498A of the Indian Penal Code were maintained.

6. From the perusal of the Judgement passed by the Appellate Court below, it is apparent that the Appellate Court below has taken into consideration the material contradictions in the evidence brought on record by the complainant for the offence u/ss. 379 and 494 of the Indian Penal Code. It was held that there were material discrepancies in the evidence (which were discussed in detail in the Judgment by the appellate Court) and neither the offence of the second marriage nor the offence of theft could be proved against the petitioner. So far as the allegation against the petitioner of subjecting the complainant to cruelty and torture is concerned, it is pointed out that the complaint case was filed only with respect to the occurrence of the second marriage which had allegedly taken place on 12.03.1992 and thereafter. It appears from the evidence discussed by the Court below that even on point of the allegation of assault after the second marriage as alleged in the complaint petition, there are material discrepancies in the evidence of the witnesses and even though there is allegation that she was assaulted by hot iron (chimta) and was burnt, but there is no independent eye witness to the assault, no medical report has been proved and nothing was brought on record to substantiate the said allegation against the petitioner and the other co-accused. It also appears that though there is specific allegation that when the complainant became senseless, she was driven out of her matrimonial house on a taxi and was thrown near her father's place, but there is discrepancy in the evidence brought on record by the complainant on this point also, in as much as, PW 1 Chando Manjhi, the witness who claimed to be the eye witness, had stated that she was brought to her father's place on a motorcycle and was thrown in a drain.

7. Taking into consideration the said discrepancies in the evidence on record and also taking into consideration the fact that whatever allegation of assault against the petitioner is there, it is against the alleged second marriage of the petitioner, which has not at all been proved, I am of the considered view that the even allegations u/s 498A of the Indian Penal Code, which have been made for the alleged assaults after the alleged second marriage, also become doubtful and in any event, in my considered view, the petitioner is entitled at least to the benefit of doubt. In view of the aforementioned discussions, the Judgement and Order dated 18.09.2000 passed by Shri Ajay Kumar Sharma, learned Judicial Magistrate, 1st Class, Jamtara in C.R. No. 71 of 1992 / T.R. No. 31 of 2000, as also the Judgement dated 31.3.2003 passed by the learned Additional Sessions Judge-IV, Jamtara, in Criminal Appeal No. 34/141 of 2000, are hereby, set aside and the petitioner is acquitted of the charges, giving him the benefit of doubt. The petitioner is on bail and he is also discharged from the liabilities of his bail

bond. This revision application is accordingly, allowed. Let the Lower Court Records be sent back forthwith.