
(2011) 03 GAU CK 0012

Gauhati High Court

Case No: Criminal Revision Petition No. 124 of 2004

Dilip Singh

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: March 1, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 313, 401
- Penal Code, 1860 (IPC) - Section 34, 498A

Citation: (2011) 2 DMC 721 : (2011) 2 GLT 225

Hon'ble Judges: C.R. Sharma, J

Bench: Single Bench

Advocate: M. Singh and G. Sinha, for the Appellant; B.B. Gogoi, Addl.P.P., for the Respondent

Final Decision: Allowed

Judgement

C.R. Sarma, J.

Heard Mr. M. Singh, learned Counsel, appearing for the Petitioner. Also heard Mr. B.B. Gogoi, learned Addl. Public Prosecutor, appearing for the State-Respondent.

2. By this criminal revision, filed u/s 401 Code of Criminal Procedure, me convict-Petitioner has challenged the judgment and order, dated 30.01.2004, passed by the learned Ad-hoc Addl. Sessions Judge, Hojai, in C.A. No. 53(N)2003, thereby upholding the judgment and order, dated 04.11.2003, passed by the learned Judicial Magistrate, 1st Class, Hojai, Sankardevnagar, in GR. Case No. 466/2001, u/s 498A IPC.

By the impugned judgment and order aforesaid, the learned Addl. Sessions Judge, upheld the conviction recorded by the learned trial Judge, u/s 498A IPC and modified the sentence of rigorous imprisonment as rigorous imprisonment for three months, without interfering with the sentence of fine thereof. Being aggrieved by the said judgment and order of conviction and sentence, the Appellant, as Petitioner, has come up with this revision petition.

3. The facts, that is necessary for disposal of this revision petition, may, in brief, be stated as follows:

Smti. Namita Singha was married by the Petitioner, namely, Sri Dilip Singha and after her marriage, the Petitioner and other members of his family used to torture her, demanding dowry. Being unable to bear the said torture, said Smti. Namita Singha left her marital home and took shelter in her parents' house. Subsequently, she delivered a girl child and, thereafter, her husband took her back to her marital home. Again, on 30.06.2001, her husband and other members of her husband's family assaulted her, for which she left her marital home and took shelter in her elder sister's house. Thereafter, she lodged an FIR with the O/C Lanka Police Station. Police registered a case being Lanka P.S. Case No. 75/2001, under Sections 498A/34 IPC and submitted charge sheet against the husband, the mother-in-law and the sister-in-law of the victim woman.

4. The learned Judicial Magistrate framed charges, against all the accused persons aforesaid, u/s 498A IPC. The charge being explained and read over to the accused persons, they pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution examined as many as six witnesses, including the Investigating Officer and the Medical Officer, who examined the victim woman.

At the close of the examination of the prosecution witnesses, the accused persons were examined u/s 313 Code of Criminal Procedure. They denied the allegations, brought against them, and declined to adduce any defence evidence.

6. The learned Magistrate, considering the evidence on record, convicted the present Petitioner u/s 498A IPC and sentenced him to suffer imprisonment as indicated above. The other accused persons were acquitted for want of evidence. Aggrieved by the said conviction and sentence, the present Petitioner, as Appellant has preferred an appeal, being C.A. No. 53(N)2003.

7. The learned Addl. Sessions Judge, considering the evidence on record, while upholding the conviction, modified the sentence, thereby directing the convict-Petitioner to suffer rigorous imprisonment for three months instead of one year. However, the learned Sessions Judge declined to interfere with the sentence of fine. Dissatisfied with the said judgment and order, passed by the learned Addl. Sessions Judge, the Appellant, as Petitioner, has come up with this revision petition, on the ground that the learned Addl. Sessions Judge committed error by upholding the conviction, without sufficient evidence on record.

8. Mr. M. Singh, learned Counsel, appearing for the Petitioner, referring to the provisions of Section 498A IPC, has submitted that, no case u/s 498A IPC has been made out against the present Petitioner and that the learned Judicial Magistrate as well as the learned Addl. Sessions Judge, committed error by recording the conviction u/s 498A IPC,

without any substantial evidence against the Petitioner. The learned Counsel, referring to the FIR and the evidence given by the victim woman, as well as the evidence of the Medical Officer, has submitted that, there is not an iota of evidence regarding demand of dowry and that the nature of the injury alleged to be sustained by the victim woman is not covered by the provision prescribed by Section 498A IPC. On behalf of the Petitioner, it is further submitted, that the impugned judgment and order is liable to be set aside and quashed for want of sufficient, reliable and cogent evidence.

9. Controverting the said argument advanced by the learned Counsel, appearing for the Petitioner, Mr. B.B. Gogoi, learned Addl. Public Prosecutor, supporting the impugned judgment and order, has submitted that, there is sufficient evidence on record to show that the informant was physically assaulted by her husband as well as other inmates her husband's family and that, being unable to bear the torture, she had to leave the marital home.

10. In order to appreciate the argument advanced by the learned Counsel, appearing for both the parties and to examine the correctness of the impugned judgment and order, I feel it appropriate, to briefly, scan the evidence on record.

11. Smti. Namita Sinha i.e. the victim woman, who lodged the FIR, deposing as PW. 1, stated that, her mother-in-law and sister-in-law tortured her, demanding money and that being unable to bear the torture, she had taken shelter in her parent's house. She further stated that, after the birth of a child, her husband took her back to her marital home wherein her husband and the members of her husband's family again used to torture her. She exhibited the FIR lodged by her as Ext. No. 2 and the statement made by her, u/s 164 Code of Criminal Procedure, as Ext. No. 1. In the FIR i.e. Ext. No. 2, which was lodged on 30.06.2001, the informant i.e. PW-1, stated that, she was physically and mentally assaulted by her husband. She also stated that, on 30.06.2001, while she was cooking meal, her husband, the mother-in-law and the sister-in-law had assaulted her with their hands, regarding missing of her bangle, for which she had lodged FIR with the police. In the FIR aforesaid, which was lodged on the day of occurrence itself, no mention regarding dowry demand was made. As revealed from the FIR, the cause of assault, was the missing of her bangle. In her evidence, given as PW. 1, the said informant did not mention any amount or article, which was demanded by her husband and other members of her husband's family.

12. Smti. Pranita Sinha (PW-2) is the sister of the informant and Smti. Pramila Sinha (PW-4) is the mother of the informant. Both the PW-2 and PW-4, stated regarding the assault caused on the informant, but none of them stated anything specifically regarding the demand of dowry. They also did not mention any amount or specific article, which was alleged to be demanded by the husband of the informant

13. Sri Dhiren Singha (PW.3), who is the uncle of the informant, did not see the occurrence himself. He also did not state anything regarding demand of dowry or torture.

14. Dr. Indra Mohan Sarmah, who examined the victim woman, on 30.06.2001 itself, deposed as PW.5. He exhibited the injury report, submitted by him as Ext. No. 3 and his signature thereon as Ext. No. 3/1. He stated that, on examination, he found tenderness and swelling all around the neck and back of the victim woman. He opined that, the injuries were simple in nature and that the same were caused by blunt weapon. In his cross-examination, the said Medical Officer stated that, the injuries, mentioned in Ext No. 3, might be self-inflicted. This evidence, given by PW.5, raises doubt about the allegation of torture. Now, it is doubtful if the injuries, noticed by the Medical Officer, were Caused by the Petitioner.

15. Be that as it may, from the opinion of the Medical Officer, it appears that the injuries sustained by the victim woman were simple in nature.

16. In order to constitute an offence, the ingredients mentioned in Section 498A IPC are required to be established. Section 498A IPC, reads as follows:

498A. Husband or relative of husband of a woman subjecting her to cruelty.■ Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

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; or

(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.

17. As discussed above, there is no substantive, cogent and reliable evidence to believe that there was any demand for property or valuable security. Therefore, the provisions of Section 498A(b) IPC are not applicable in the present case. In view of above, this Court is required to examine, whether physical or mental assault alleged to be sustained by the victim woman, were sufficient to attract the provisions of Section 498A(a) IPC.

18. In order to hold a person guilty of the offence u/s 498A IPC, for committing the acts prescribed by Section 498A(a) IPC, it must be established that the conduct of the accused person was of such a nature that the same was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.

19. In the present case, the victim woman, who brought the allegation of torture against the Petitioner, simply stated that, prior to 30.06.2001, she was assaulted by the Petitioner

and other members of her husband's family. She did not state the nature and gravity of assault or torture sustained by her during earlier occasions. Admittedly, the Medical Officer examined the victim woman on 30.06.2001 i.e. on the date of last occurrence, leading to filing of the FIR. From the medical evidence, it appears that, on 30.06.2001, the informant sustained simple injuries caused by blunt weapon. Therefore, considering the nature of injuries sustained by the informant, it cannot be held that the informant had sustained grave injuries or that there was danger to her life, limb or health. There is no sufficient evidence to found that the conduct of the Petitioner was of such nature, which was likely to drive the informant to commit suicide. That apart, the medical evidence, as indicated above raises doubt as to whether the Petitioner had caused the said injuries.

20. In the light of the above evidence on record and considering the entire aspect of the matter, I have no hesitation in holding that the prosecution failed to establish, beyond all reasonable doubt, that the Petitioner committed the offence u/s 498A IPC. Therefore, the conviction and sentence recorded, u/s 498A IPC, can't be allowed to sustain.

Accordingly, I find sufficient merit in this revision petition, requiring interference with the impugned judgment and order of conviction and sentence, recorded against the Petitioner.

21. In the result, the revision petition is allowed and the impugned judgment and order, dated 30.01.2004 are set aside and quashed. The Petitioner is acquitted. His bail bond shall stand discharged.

Send down the Lower Court Records.