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(2011) 02 GAU CK 0009

Gauhati High Court (Agartala Bench)

Case No: Criminal Rev. Petition No. 54 of 2003

Ripu Biswas	APPELLANT
Vs	
Badal Biswas and Others	RESPONDENT

Date of Decision: Feb. 1, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Dowry Prohibition Act, 1961 - Section 2
- Penal Code, 1860 (IPC) - Section 304B, 306, 378(4), 406, 498A

Citation: (2011) 3 GLR 802

Hon'ble Judges: U.B. Saha, J

Bench: Single Bench

Advocate: None appeared, for the Appellant; None appeared, for the Respondent

Final Decision: Dismissed

Judgement

U.B. Saha, J.
In this revision petition, challenge is to the judgment dated 4.8.2003 in case No. CR 161/1998 whereby and whereunder the learned Chief Judicial Magistrate acquitted the Respondent-husband of the Petitioner and other in-laws from the charges levelled against them u/s 498A of the IPC.

2. When the matter is called on, none appears for the parties and even there is no prayer for adjournment also, though it appears from the record that the Petitioner engaged Mr. K. Roy, learned advocate and the accused-Respondents have engaged Mr. N. Majumdar, learned Counsel to represent them. As the instant revision petition is pending since 2003, the matter is taken up for deciding on merit.

3. The ease of the Petitioner, who was the complainant in the trial court, in short is that she was married with accused-Respondent No. 1, Sri Badal Biswas in the month of Magh, 1991 as per Hindu rites and customs in her father''s house at Debipur

(Matai). In her marriage, along with other articles, one TV and a Cash amount of Rs. 25,000 was given, but after marriage, her husband, accused-Respondent No. 1, at the instigation of other accused-Respondents, started torture upon her physically and mentally for bringing more money from her father''s house but as her father was poor, she failed to fulfil the demand of her husband and due to such non-fulfilment of demand, the torture upon her increased day by day. The Petitioner-Plaintiff was performing her duties as a Hindu woman and she became pregnant. In the month of Bhadra, 1993 she was thrown out of the house of her in-laws. After being assaulted, she took shelter in the house of her father and till then she was staying there. Ultimately she gave birth to a son, but the accused Badal Biswas did not take care of her or their son. Not only that, the accused persons also kept her off her stridhan and then she was thrown out. Her father tried to mitigate the matter but he failed. Her father along with other elderly villagers, namely, Swapan Sarkar and others went to the house of accused-persons but in presence of those persons, the Petitioner and her father were assaulted. Again on, 28.9.1998 she went to her in-laws house. But the accused persons told her to go out of their house after using slang language and told that "Our elder daughter-in-law, (Bara Bou) is dead". On receiving this comment, a complaint case was registered at Belonia court and thereafter, the said court issued process and accordingly the accused persons appeared and faced trial.

4. During trial, learned SDJM, Belonia framed charge against the Respondent-accused persons u/s 498A(b) and Section 406 of IPC in which the accused persons pleaded not guilty and claimed to be tried. During trial prosecution examined four witnesses namely, the complainant Ripu Biswas, Sri Dayal Hari Basu, father of the complainant, Abhilash Kar and Narayan Ch. Malla whereas the defence produced only one witness and examined him.

5. The case of the defence is total denial and that after few days of the marriage the complainant was living in a separate mess with her husband Badal Biswas-Respondent No. 1 herein and subsequently left the house and thereafter Badal lost his mental balance and was subsequently shunted out from the complainant''s father''s house. Complainant demanded some paternal properties of the accused Badal Biswas, but as there was no paternal property, the share of Badal Biswas could not be given to the complainant for which the present false case has been instituted.

6. Upon examination of the witnesses produced by the rival parties, the accused person-Respondents herein were examined u/s 313 of the Code of Criminal Procedure to which each of them denied the allegation and adduced evidence to prove their innocence thorough DW1, Sri Jaharlal Datta. Before the learned trial court, points for decision were as follows:

(i) Whether the accused persons tortured and subjected to cruelty the complainant for dowry and thereby committed an offence punishable u/s 498(A), IPC and

(ii) Whether the accused persons being entrusted with the Stridhan of complainant Smt. Ripu Biswas committed criminal breach of trust by not returning Stridhan.

7. Upon considering the arguments of the learned Counsel for the rival parties and on perusal of the evidence on record, learned CJM ultimately decided the case and held that the prosecution failed to prove the charge against the accused person, Sri Nitai Biswas and, hence, he is acquitted from the charge u/s 498A/406, IPC and as before him the case of the defence was that the prosecution totally failed to prove the charge against the accused person specifically on the ground that during trial the behaviour of the accused Badal Biswas also shows that he was mentally ill. Not only that, as per complainants deposition also she was driven out by the accused persons in the year 1993 whereas in her deposition before the court she stated that she was driven out in the year 1995 during her pregnancy and then she save birth to a child. Therefore, the aforesaid contradiction is a vital contradiction to establish the falsity of the prosecution case. Further case of the defence before the learned trial court was that after the marriage complainant-Petitioner and her husband Badal Biswas were living in a separate mess and subsequently after birth of the child she and accused Badal Biswas, who is her husband, came along with all their belongings to the house of her father and the case of the defence is fully corroborated by DW1 namely, Sri Jaharlal Datta.

8. The trial court relied DW1, who is an dependent witness and relying such witness acquitted the accused Respondents on benefit of doubt. In the judgment of the trial court it is also recorded that during the trial accused Badal, husband of the complainant was in judicial custody for a long period and it was noticed that he is a mental patient. Even after offering him bail, nobody took the responsibility of taking him on bail.

9. In Girdhar Shankar Tawade v. State of Maharashtra (2002) 5 SCC 777 the Apex Court while dealing with that case in paragraph 18 of that judgment discussed about Section 498A and held, inter alia, "A faint attempt has been made during the course of submissions that Explanation (a) to the section stands attracted and as such, no fault can be attributed to the judgment. This, in our view, is a wholly fallacious approach to the matter by reason of the specific finding of the trial court and the High Court concurred therewith that the death unfortunately, was an accidental death and not suicide. If suicide is left out, then in that event question of applicability of Explanation (a) would not a rise-neither the second limb to cause injury and danger to life or limb or health would be attracted, in any event the willful act or conduct ought to be the proximate cause in order to being home the charge u/s 498A and not de hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charges u/s 498A. The legislative intent is clear enough to indicate in particular reference to Explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of Explanation (b). The letters by themselves though may depict a

reprehensible against the accused. Acquittal or a charge u/s 306, as notice hereinbefore, though not by itself a ground for acquittal u/s 498A, but some cogent evidence is required to bring home the charge of Section 498A as well, without which the charge cannot be said to be maintained. Presently, we nave no such evidence available on record."

10. In the instant case, it appears from the evidence of PW2, father of the Petitioner that his daughter was driven out form the house of the accused-Respondents, after assaulting her in the year 1995.

11. PW3, nowhere stated specifically when the Petitioner was driven out from the house of the accused-Respondents. He mainly stated that after marriage when the complainant went to the house of her husband and lived there for about two years happily and thereafter there were some problems for the demand of money, etc., but he did not state whether he happened to be an eye witness of the marriage, though contended in his deposition that at the time of marriage, father of the complainant gave gold, furniture, cash money.

12. PW4, who was present at the time of marriage and stated in his deposition that in marriage gold, furniture, case money of Rs. 25,000 and other things were given as dowry and the complainant-Petitioner lived peacefully for about two years with her husband and in-laws and thereafter the accused persons used to torture her for money. When he visited the house of the accused persons in front of him the accused persons assaulted her but who are the accused persons who assaulted her, there is nothing in the evidence.

13. DW1, is an independent witness driver by profession, in whose vehicle the complainant Petitioner and her husband went to Chailtakhala, parental house of the complainant along with their child.

14. As the case of the prosecution is that the accused Respondents physically and mentally tortured the Petitioner, who was the complainant in the trial court, with a demand for dowry and also kept away the Petitioner from her stridhan and ultimately was thrown out, it would be proper on the part of this Court to discuss what is dowry and what is stridhan. ''Dowry'' - means any property or valuable security given or agreed to be given either directly or indirectly - (a) by one party to a marriage to the other party to the marriage; or (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person at or before (or any time after the marriage) (in connection with the marriage of the said parties, but does not include) dower or mahr in the case of persons to whom the Muslim Personal law (Shariat) applies, as would be evident from Section 2 of the Dowry Prohibition Act, 1961. Due to omission of Explanation 1 of Section 2 the definition of dowry have now become wider which includes all sorts of properties, valuable securities, etc., given or agreed to be given directly or indirectly. Question remains even after omission of Explanation 1 to Section 2 of the

said Act, whether any gift or presentation by one party to marriage to other party to the marriage or by the parent to either party to the marriage or by any other person to either party to the marriage or by any other person has come within the purview of dowry if the same is not provided as a price of marriage. According to this Court, the property given by either of the parties in connection with marriage of the parties as a price of marriage only would come within the purview of dowry as there is a difference between dowry, and gift. We have to think seriously whether property given in marriage by either of the parties or their parents, as a consideration for the marriage, is straightaway would be treated as dowry. According to this Court, when property given in a marriage by either of the parties, not as a consideration/price for marriage then that would not come within the purview of dowry, rather it would come within the purview of gift or presentation, more specifically, a property given in a marriage by either of the parties itself cannot be treated as dowry, unless the same is given as a price for marriage.

15. In Satvir Singh and Others Vs. State of Punjab and Another, the hon''ble Apex Court considered the definition of ''dowry'' as defined u/s 2 of the Dowry Prohibition Act, 1961, with reference to the offence u/s 304B of the IPC and held that it should be any property or valuable security given or agreed to be given in connection with the marriage. Customary sift or payment in connection with birth of child or other ceremonies unrelated to the marriage ceremony, held, do not fall within the ambit of "dowry". Relevant paragraph 21 of the said judgment reads as under -

21. Thus, there are three occasions related to dowry. One is before the marriage, second is "at and time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are ''in connection with the marriage of the said parties". This means the giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances or payment of money or giving property as between as spouses. For example, some customary payments, in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence, the dowry mentioned in Section 304B should be any property or valuable security given or agreed to be given in connection with the marriage.

16. Again in K. Prema S. Rao and Another Vs. Yadla Srinivasa Rao and Others, the Apex Court again considered the definition of dowry in para 16 of the said judgment. Meaning of dowry fell for consideration again before the Apex Court in Appasaheb and Anr. v. State of Maharashtra 2007 (1) Crimes 110 wherein their lordships noted, that, "meaning of dowry as defined u/s 2 of the Dowry Prohibition Act, 1961 and held that giving or taking or property or valuable security must have some connection with the marriage or the parties and a correlation between the giving or taking or property or valuable security with the marriage or the parties is essential. A demand for money on account of some financial stringency or for

meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood.

17. When the bride has taken some properties with her not as a consideration of marriage, those being the brides property can be called as stridhan over which the complete right of the bride is there. Therefore, there is a distinction between dowry and stridhan and gift. Therefore, it can be safely said that the property, which is given in marriage without any demand either from the family of the groom or from the bride either to the bride or to the groom, from the family of the bride, that should be treated as stridhan or gift and when there is some demand either from the family of the groom or from the family of the bride as a price of marriage and the same is given to either of them, as a condition precedent for marriage, that will be considered as dowry.

18. In the instant case, there is no evidence that the accused persons at any time put any condition for the articles as allegedly provided by the father of the complainant in her marriage as a price. More so, the revision petition in hand is preferred by the complainant Petitioner against the order of acquittal. By this time, it is settled by the Apex Court that court should be cautious while considering an appeal or a revision against an order of acquittal of an accused and if on scrutiny of the evidence on record two views are possible then the court should accept the one which favours the accused person. In the instant case, the learned trial court, has seen accused Badal Biswas in day-to-day trial and also while in custody and has observed that accused Badal was mentally ill, therefore, the appellate court rightly upheld the views of the trial court, it would not be proper for the revisional court to set at naught the aforesaid views of the court below.

19. In Ram Das Vs. State of Maharashtra, wherein the Apex Court noted that if two inferences are possible, the court should accept the one which favours the accused. In S. Rama Krishna v. S. Rami Reddy (deceased by LRs) and Ors. AIR 2008 SCW 2824, their lordships considered the scope of appeal against acquittal and also reiterated the principle where two inferences are possible what should be the duty of the court while deciding these issues. Their lordships in paragraphs 11 and 12 held as under:

11. The High Court was exercising its jurisdiction under Sub-section (4) of Section 378 of the Code of Criminal Procedure. The appeal preferred by the Respondents was against a judgment of acquittal. The High Court should have, therefore, exercised its jurisdiction keeping in view the limited role it had to play in the matter.

12. The High Court itself had come to the finding that the Respondents were not interested in getting the maker prosecuted. Despite the same, it allowed their appeal, opining that any lis between the parties should be decided on merits rather than on technicalities. On what basis such a statement of law was made is not known. No precedent was cited; no reason has been assigned.

The High Court failed to take into consideration the fact that it was dealing with an order of acquittal and, thus, the principle of law which was required to be applied was that, if two views are possible, a judgment of acquittal should not ordinarily be interfered with.

There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The orders passed by the competent court of law as also the provisions of Code of Criminal Procedure must be construed having regard to the Constitutional scheme and the legal principles in mind.

20. The Apex Court considered the scope of appeal against the order of acquittal in State of Haryana v. Shibu alias Shiv Narain and Ors. AIR 2008 SCW 5400 . Even if this Court consider, due to change of law, that the revision petition filed by the complainant against the order of acquittal can be treated as an appeal and applied the principle in an appeal and consider the scope of appeal against acquittal then also this Court is of the opinion that the judgment of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. It the impugned judgment is clearly unreasonable, irrelevant and convincing materials have been unjustifiably eliminated in process then only the revisional court as well as the appellate court can interfere with the judgment and order of acquittal. See Devatha Venkataswamy @ Rangaiah Vs. Public Prosecutor, High Court of A.P., State of Punjab Vs. Karnail Singh,

21. The judgments of the courts below are not illegal or unjustified as alleged by the Petitioner. For the above discussions and the reasons stated therein, this Court is of considered opinion that no interference with the impugned judgment is called for. Accordingly, the instant revision petition is dismissed being devoid of merit.

22. Registry is directed to send back the Lower Court Records.