
(2015) 08 MP CK 0079

Madhya Pradesh High Court

Case No: Criminal Revision No. 562 of 2009

Abhilasha

APPELLANT

Vs

Ashok Dongre

RESPONDENT

Date of Decision: Aug. 5, 2015

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401
- Penal Code, 1860 (IPC) - Section 34, 498A, 498-A

Citation: (2015) 08 MP CK 0079

Hon'ble Judges: C.V. Sirpurkar, J

Bench: Single Bench

Advocate: A.D. Mishra, Counsel, for the Appellant; Pranay Gupta, Counsel, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.V. Sirpurkar, J

This criminal revision is directed against judgment dated 31.12.2008 passed by Judicial Magistrate First Class, Katangi, District Balaghat, in Criminal Case No. 336 of 2008 whereby, accused persons/respondents Basant Kumar Dongre, Ashok Dongre and Savita Dongre were acquitted of the charge under Section 498A read with Section 34 of the I.P.C.

2. The prosecution case before the learned Trial Court was as follows: The revisionist/first informant Abhilasha had married respondent/accused no. 3 Basant Kumar on 17.5.2002 by Hindu rites. At the time of her marriage, her parents and brothers had given her Suzuki Motorcycle, Colour T.V., Fridge, Washing Machine, Almirah, Sofa Set, Dining Table, Diwan, Gold Chain, two Gold Rings and other ornaments and utensils. In addition thereto, she was also given Rs. 8,000/- in cash that was received by the revisionist in gift from her relatives and acquaintances. After marriage, the petitioner stayed with her husband in the

house of his brother in law Ashok and his wife Savita at Balaghat. They used to harass her complaining that they wanted Hero Honda Splendor Motorcycle in dowry, whereas her parents had only given Suzuki Motorcycle. They sometimes demanded Rs. 30,000/- and other times 50,000/- by way of dowry saying that her parents had given no cash. Ashok and his wife Savita also use to say that they had incurred expenditure on the adjudication and marriage of her husband Basant; therefore, they need to be compensated by her parents. Ashok and Savita used to instigate Basant to beat her. As a result, her husband Basant used to beat, threaten her that he would see her after reaching Tendukheda, where he was posted as teacher.

3. It was also case of the prosecution that Basant Kumar took her to Tendukheda on 30.6.2002. However, Ashok and Savita only gave her Fridge, Colour T.V, Washing Machine, and some other articles and retained rest of the item received in the marriage. They asked her to bring remaining items from her parents, as second time. Basant Kumar started to harass her from 2.7.2002. onwards, demanding Hero Honda Splendor Motorcycle. He used beat her and forcibly poured liquor in her mouth and threatened to kill her. She was not given enough food. Basant Kumar used to block the telephone, so that she would not be able to speak to her parents and she was also not allowed to speak to her neighbours. On one day, respondent Basant Kumar warned her that he would sort her out after returning from school. Her neighbours advised her that it was dangerous for her to stay with him; therefore, she took her cloths and with the help of her neighbours fled to her maternal uncles"s place at Seoni; wherefrom, her parents and brothers took her to her maternal home. Subsequently on 19.7.2002, she lodged a written report with Superintendent of Police of Balaghat. On the basis of aforesaid written report, a crime under Section 498-A of the I.P.C. was registered.

4. After trial, learned Trial Court acquitted all three accused persons namely Basant, Ashok and Savita of the charge under Section 498-A read with section 34 of the I.P.C., extending benefit of doubt.

5. Learned Trial Court inter alia recorded following reasons for acquittal

(a) That the first information report lodged on the basis of written report (Ex.-P1) has not been proved by examining Sub-Inspector N.S. Kumar, who had recorded the same;

(b) that Petitioner Abhilasha had admitted in her statement that she had not stated in her written report (Ex.P-1) that accused persons namely Ashok and Savita used to tell her that they had incurred expenditure on her husband"s education; therefore, they should be compensated;

(c) that she also admitted in her statement that she did not write in the report that Ashok and Savita used to demand Rs. 30,000/- or Rs. 50,000/- and used to instigate her husband Basant Kumar for demanding dowry and for beating her; therefore statement of petitioner Abhilasha cannot be relied upon in this regard.

(d) that Puran Lal (PW-2), father of the petitioner has admitted that it was not settled before the marriage as to what items shall be given in dowry;

(e) that he also admitted that none of the accused persons had demanded any dowry in his presence. His knowledge in this regard is based upon information received from petitioner Abhilasha; therefore, the statement of Puran Lal that Suzuki Motorcycle was given to Basant Kumar on demand from him is falsified.

(f) that Rajesh Kumar (PW-3), brother of petitioner Abhilasha has stated that she never had any conversation with Abhilasha regarding harassment for dowry;

(g) that Punaram (PW-5), is said to have gone to Ashok"s house with Kishore, brother of Abhilasha on 10.2.2002. He has stated in the Court that in his presence no physical assault, altercation or abuse took place. He further stated that they had returned without taking Abhilasha with them whereas he had stated to the police that after altercation, they had taken Abhilasha back to her maternal home thus, the statement of witness Punaram can also not be believed;

(h) that on the basis of aforesaid considerations, the statement of petitioner Abhilasha and other prosecution witnesses are not worthy of credit.

6. The impugned judgment of acquittal has been mainly assailed on behalf of the petitioner/first informant Abhilasha on the grounds that though first information report recorded by Sub-Inspector N.S. Kumre has not been proved; yet, the written report (Exhibit P-1) sent by the petitioner Abhilasha to the Superintendent of Police, was duly proved. It is on the basis of this written report that the first information report was recorded. As such, failure to prove the first information report in the case did not have any bearing on the case of the prosecution. It has further been contended that the approach of learned trial Court in appraisal of evidence was not balanced. It accorded undue weightage to minor discrepancies occurring in the statements of prosecution witnesses and did not consider them worthy of credit on flimsy grounds. It has also been argued that learned trial Court failed to take attendant circumstances into consideration and mis-appreciated the evidence, resulting in acquittal of accused persons on unsubstantial grounds; therefore, it has been prayed that the judgment of acquittal be set aside.

7. Learned counsel for the respondent Nos. 1 to 3 on the other hand had supported the impugned judgment.

8. Before advertng to the findings recorded by learned trial Court in the case at hand, it would be apposite to refer to the position of law in this regard. On consideration of the authoritative pronouncement made by the Apex Court in the cases of [D. Stephens Vs. Nosibolla](#), AIR 1951 SC 196 : (1951) CriLJ 510 : (1951) 2 SCR 284 , [Logendra Nath Jha and Others Vs. Shri Polailal Biswas](#), AIR 1951 SC 316 : (1951) 2 SCR 676 , K. Chinaswamy Reddy Vs. State of Andhra Pradesh, (1963) 3 SCR 412, [Mahendra Pratap Singh Vs. Sarju Singh and Another](#), AIR 1968 SC 707 : (1968) CriLJ 665 : (1968) 2 SCR

287 , [Janata Dal Vs. H.S. Chowdhary and Others](#), AIR 1993 SC 892 : AIR 1992 SC 892 : (1993) CriLJ 600 : (1992) 3 Crimes 199 : (1992) 5 JT 213 : (1992) 2 SCALE 338 : (1992) 4 SCC 305 : (1992) 1 SCR 226 Supp , [Satyajit Banerjee and Others Vs. State of West Bengal and Others](#), AIR 2005 SC 4161 : (2005) CriLJ 648 : (2005) 1 DMC 35 : (2004) 9 SCALE 617 : (2005) 1 SCC 115 : (2004) AIRSCW 6646 : (2004) 8 Supreme 285 and [Johar and Others Vs. Mangal Prasad and Another](#), AIR 2008 SC 1165 : (2008) CLT 575 : (2008) CriLJ 1627 : (2008) 2 JT 112 : (2008) 2 SCALE 122 : (2008) 3 SCC 423 : (2008) AIRSCW 1106 : (2009) AIRSCW 1756 : (2008) AIRSCW 2773 : (2008) 1 Supreme 637 following principles with regard to scope and ambit of powers of the High Court while adjudicating a criminal revision preferred by aggrieved person against a judgment of acquittal, may be culled out.

9. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should be exercised by the High Court only in exceptional cases. The High Court while exercising its revisional jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure, exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred but is severally restricted, particularly when it arises from a judgment of acquittal. Nothing in section 401 is deemed to authorize a High Court to convert a finding of acquittal into one of conviction. So the High Court, at best, can set aside the judgment of acquittal and order a retrial. Sub-section (3) of S. 401 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision. The High Court has to be alive to the fact that by ordering a retrial, the dice is heavily loaded against the accused because however much the High Court may caution the Subordinate Court, it is always difficult to re-weigh the evidence ignoring the opinion of the High Court. Thus, it is only in exceptional cases that this power should be exercised.

10. The High Court may exercise powers in exceptional cases:

(1) where the interests of public justice requires interference for the correction of a manifest illegality for the prevention of gross miscarriage of justice;

(2) where there is some glaring defect in the procedure, like want of jurisdiction or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.

(3) to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment

(4) where the Court had shut out some material evidence which was admissible or any relevant evidence has been overlooked or where the Court attempted to take into account evidence which was not admissible, leading to gross and flagrant miscarriage of justice.

11. The High Court may not exercise the power:

(1) where it is required to enter into merits of the matter by analyzing the depositions of witnesses examined on behalf of the prosecution and re-appreciate the whole evidence for substituting one possible view by another;

(2) by merely characterizing the judgment of the trial court as "perverse" and "lacking in perspective, without assigning reasons therefor;

(3) simply because the lower court has taken a wrong view of the law without causing flagrant miscarriage of justice;

(4) where the Court below has misappreciated the evidence on record without making the judgment perverse; or

(5) to upset pure findings of fact based on the trial Court's appreciation of the evidence in the case.

12. The aforesaid list of circumstances where the High Court may or may not exercise revisional jurisdiction at the instance of the aggrieved person in respect of finding of acquittal, is enumerative and not exhaustive.

13. In the instant case, the offences is said to have been committed in the short duration of two months between 17.05.2002 and 19.07.2002. The judgment of acquittal was passed on 31.12.2008. No cruelty of serious nature has been alleged.

14. Applying aforesaid principles to the case at hand, we find that learned counsel for the petitioner has not been able to point out any manifest error of law on the part of learned trial Judge leading to miscarriage of justice. It cannot be said that any relevant evidence has not been considered and irrelevant material has been taken into consideration. Learned trial Court has analyzed the evidence of all prosecution witnesses and has recorded reasons for not placing reliance upon them. In the revisional jurisdiction against acquittal, the High Court is not supposed to enter into the merits of the matter and re-appreciate the whole evidence and substitute one possible view for another. The findings recorded by learned trial Court cannot be said to be perverse. This is not a one of those exceptional cases where interest of public justice requires interference in finding of acquittal for correction of a manifest illegality or for prevention of a gross miscarriage of justice.

15. Even if we assume for the sake of arguments that learned trial Court had mis-appreciated the evidence on record, the High Court in the exercise of revisional

jurisdiction cannot reverse pure findings of fact on which the acquittal was based. The High Court has to be conscious of the fact if finding of acquittal is set aside and retrial is ordered, it would be difficult for the trial Court to re-appreciate the evidence ignoring the opinion of the High Court.

16. In aforesaid view of the matter, no case is made out for interfering with the judgment of acquittal.

17. Consequently, this revision against acquittal filed on behalf of aggrieved person, is dismissed.