



GAHC010092012009

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Rev.P./270/2009

SAIFUL ISLAM
S/O MD ABDUL JABBAR, R/O TUKTUKI P.S. DHING, DIST. NAGAON,
ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MRSR PHUKAN

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 13-10-2023

1. None appears for the petitioner on call. None did represent the petitioner when the matter was called on 19.09.2023
2. The Hon'ble Apex court in the case of ***Taj Mohammad Vs. State of Uttar Pradesh and others*** arising out of ***SLP (CrI) 5298/2023*** while relying on the earlier decisions of the Hon'ble Apex Court in the case of ***Madan Lal Kapoor v. Rajiv Thapar*** reported in ***2007 7 SCC 625*** and ***Bani Singh v. State of U.P*** reported in ***1996 4 SCC 720*** under its order

dated 01.08.2023 provided that even in absence of a party or his council a revision petition can be considered on merit in accordance with law. Accordingly this criminal revision petition is taken up for disposal today, though none appears for the petitioner today also when the matter was called for hearing.

3. Heard Ms. S H Bora learned Addl. PP, Assam and also perused the LCR including the deposition of the witnesses.

4. The present Criminal revision petition is filed under sections 397/401 of the Code of Criminal Procedure, 1973 assailing firstly a judgment dated 30.08.2007 passed by the learned Additional Chief Judicial Magistrate, Nagaon in GR Case No.1313/2004 under section 498A/34 IPC, whereby the petitioner was convicted to undergo rigorous imprisonment for 3 years each and to pay fine of Rs.5000/- in default simple imprisonment for 6 months under sections 498(A)/34 IPC.

5. The aforesaid judgment was assailed in an appeal and the learned Additional Sessions Judge Nagaon in CrI.A 31(N)/2007 modified the judgment and order of the trial court reducing the sentence of the petitioner to simple imprisonment for one year and to pay a fine of Rs.1,000/- in default to simple imprisonment for 1 month for offence under section 498(A) IPC.

6. The prosecution was launched on the basis of an FIR lodged by the wife of the petitioner inter alia alleging that after their marriage as per Islamic Rites, the accused started torturing the informant victim by demanding dowry and on such demand, the father of the victim wife has given an amount of Rs. 10,000/- as dowry to the accused petitioner. It was further alleged that another amount of Rs.10,000/- was demanded and it was asked that otherwise she will have to admit that she had an affair with

the neighbouring boy. As the informant refused to admit such allegation, on 22.05.2004, the accused severely beaten her up and drove her out of their house.

7. On receipt of the said FIR, police registered a case under section 498(A) IPC. Accordingly, investigation was started and thereafter charge sheet was filed under section 498(A)/34 IPC against the accused petitioner. Charge was framed to which the accused pleaded not guilty and claimed to be tried. To bring home the charges the prosecution examined as many as 5 witnesses.

8. Normally the revisional power of this court against the order of conviction by both the trial court and appellate court are exercised when such findings are perverse and to set right a patent defect or any error of jurisdiction or law or the perversity. When factual appreciation is involved, then it must be exercised in class of cases resulting in a perverse finding. The court can also exercise such power in case of a glaring defect in the procedural defect or there being a manifest error on a point of law resulting in flagrant miscarriage of justice. It is also settled law that ordinarily it is not open for a revisional court to re-appreciate the evidence in its revisional jurisdiction and where two views are reasonably possible.

9. Since it is a case of conviction let this court go into the prosecution evidence on the basis of which the conviction and sentence was imposed by the trial court and affirmed by the learned Appellate court.

10. The PW-1 Anjuara Begum who is the informant (victim) in this case, has in her evidence specifically stated that her husband along with other family members demanded Rs.10,000 and she brought such amount from her father and paid the same to her husband. Thereafter again an amount of Rs.10,000/- was demanded from her mother but she could not

arrange it. She further alleged that she was beaten up by the accused and other family members. In her cross examination she reaffirmed the payment of Rs.10,000 as dowry and she also reaffirmed that how the amount of Rs.10,000/- was collected from her family members.

11. PW-2 Makbul Hussain who is the elder brother of the victim in his examination-in-chief has testified that after six months of his sister's marriage, the demand of dowry started and an amount of Rs.10,000/- was paid to the accused. He further deposed that after payment of such amount, a further demand was made which they failed to honour. He also testified that his sister was beaten up and she was dropped at their place. During cross examination he reaffirmed that he has paid Rs.10,000 to the accused. He also deposed regarding demand of dowry of Rs.10,000/- and subsequently paid another amount of Rs.3000 to the accused appellant on demand as dowry. During cross examination he specifically testified that the accused demanded Rs.10,000/- from him. He further reaffirmed that thereafter another amount of Rs.3000 was demanded by the accused. He also reaffirmed in his cross examination that the victim was beaten by the accused and she was brought at their place. He further deposed that the said amount was paid from the compensation he received in a motor vehicle claim case by his son.

12. PW-3 is the mother of the victim who in her evidence deposed that the accused used to demand money from them after the marriage but they being poor people were not in a position to meet with the demand of the accused. One of the son of the PW-3 died in an accident and they received Rs.1,40,000/- as compensation for the death of the son and from that compensation amount they paid an amount of Rs.10,000/- to the accused and further an amount of Rs.3,000/- was paid by selling their cows. It was further deposed by the PW-3 that the petitioner assaulted the



victim and dropped her in front of the gate of their house. In her cross examination she denied the suggestion put by the defence.

13. The PW-4's evidence is not at all relevant as she deposed that she was not aware of the incident.

14. PW-5 is the IO who initially started the investigation however, subsequently he was transferred. During his cross examination he deposed that he visited the place of occurrence and he was confronted with the statement of the victim that she has not deposed falsely during her statement under section 161 Cr.P.C regarding the demand of Rs.2000.

15. The accused was examined under section 313 Cr.P.C and the incriminating materials were confronted to him which he denied. On the basis of aforesaid evidence, the learned trial court concluded that a case under section 498 A was established and accordingly, sentence was passed as discussed hereinabove. The learned appellate court on perusal of the materials available on record and on re-appreciation of evidence did not find any infirmity or illegality in the judgment and accordingly upheld the judgment after re-appreciating the evidence.

16. Considering the materials available on record, this court is of the considered opinion that the demand of dowry has been established beyond reasonable doubt but through the testimonies of the victim, brother and her father, their testimony remained firm during trial inasmuch as during cross examination they have reaffirmed their statements made in the examination in chief. Therefore, the demand of dowry and the payment thereof has been established by the prosecution beyond reasonable doubt.

17. This court after going through the evidence is of the view that both the courts below have rightly passed the impugned judgments and orders. From the evidence of PW-1 victim, PW-2 and PW-3, it is established



beyond reasonable doubt that there was an unlawful demand of Rs.20,000/- and such demand was made. From the said PWs it was established that they could not meet the demand of Rs.20,000/- though they satisfied half of such demand of the accused i.e., Rs.10,000/-. The evidence of PW-1 remained unshaken that for non-fulfilling of demand by the accused she was beaten up/harassed. Therefore, the harassment/cruelty with a view for non fulfilling of demand of Rs.10,000/- were established beyond reasonable doubt. That being the position, this court do not find any perversity in passing the impugned order inasmuch as, no glaring defect or illegality not to say patent illegality is found.

18. Considering the above settled proposition of law and the facts of the present case, this court as discussed hereinabove, finds no merit in the present revision petition and accordingly the same stands dismissed.

19. The LCR be sent back to the learned trial court below and the learned trial court on receipt of such record shall do the needful.

JUDGE

Comparing Assistant