

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 191 of 2014

Ramesh Sharma, Son of Shankar Sharma, resident of village
+ P.O. Deogharbad, P.S. Sarath, District Deoghar.

... .. **Petitioner**

Versus

The State of Jharkhand. **Opp. Party**

With

Cr. Revision No. 248 of 2014

1. Shobha Devi, wife of Baleshwar Sharma,
2. Baleshwar Sharma, son of Late Shankar Sharma,
All are residents of village + P.O.- Deoghorbad, P.S.-Sarath,
District- Deoghar. **Petitioners**

Versus

The State of Jharkhand **Opp. Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through Video Conferencing

08/08.07.2020

1. Heard Mr. Lakhan Chandra Roy, learned counsel appearing on behalf of the petitioners in both the cases.
2. Heard Mr. Sanjay Kumar Srivastava, learned counsel appearing on behalf of the opposite party-State in Cri. Revision No. 191 of 2014.
3. Heard Ms. Vandana Bharti, learned counsel appearing on behalf of the opposite party-State in Cri. Revision No. 248 of 2014.
4. These two criminal revision applications have been filed for setting-aside the judgment/order dated 29.01.2014 passed by the learned Ist Additional Sessions Judge, Deoghar in Criminal Appeal No. 21 of 2008, whereby the judgment and order dated 09.04.2008 passed by the learned Judicial Magistrate-Ist Class, Madhupur at Deoghar in G.R. Case No.

128/2007 (T.R. Case No. 1332 of 2008) convicting the petitioners under Section 498-A of Indian Penal Code and Section 4 of Dowry Prohibition Act with some modification of sentence. The learned trial court had convicted the petitioners to undergo rigorous imprisonment for a period of two years and a fine of Rs. 500/- each, in default where of to undergo rigorous imprisonment for a period of seven days for the offence under Section 498-A of IPC and to undergo rigorous imprisonment for a period of one year and a fine of Rs. 500/- each, in default where of to undergo rigorous imprisonment for a period of seven days for the offence under Section 4 of Dowry Prohibition Act. All the sentences were directed to run concurrently. The learned lower appellate court upheld the conviction of the petitioners under Section 498-A of IPC and under Section 4 of Dowry Prohibition Act and modified the sentence only to the extent that the accused persons to undergo simple imprisonment, in default of fine in lieu of rigorous imprisonment.

Arguments of the petitioners in both the cases

5. The learned counsel for the petitioners while advancing his arguments has submitted that the informant of the case and the petitioner in criminal revision No. 191/2014 were wife and husband respectively and there has been dissolution of marriage through mutual consent of these persons under Section 13 (B) of Hindu Marriage Act, 1955 vide judgment dated 10th October, 2012 passed in Matrimonial Suit No. 63 of 2012 by the court of learned Principal District & Sessions Judge-cum-Principal Judge, Family Court at Deoghar and after dissolution of marriage both the parties are living at peace with their respective families.

6. The learned counsel further submits that so far as the petitioner in Cri. Revision No. 191/2014 is concerned, he has

already remained in judicial custody for a period of about 14 months and considering the fact that he has substantially served his sentence and that the petitioner has already separated from the informant, some lenient view may be taken and the sentence of the petitioner be modified and limited to the period already undergone by the petitioner in judicial custody.

7. The learned counsel further refers to Cri. Revision No. 248 of 2014 and submits that there are two petitioners in this case who are the sister-in-law (gotini) and brother-in-law (bhaisur) of the informant. He submits that there are general and omnibus allegation against all the accused and in the First Information Report, the general allegation was made not only against the husband and these two petitioners, but also against the father-in-law and mother-in-law, but ultimately only the husband and these two petitioners have been convicted by the learned court below. He also submits that the learned courts below have not properly appreciated the evidences on record and have wrongly convicted the petitioners. He submits that out of seven witnesses who were examined before the learned trial court, two of them were declared hostile. He also submits that there are no independent witnesses to the incident and accordingly, the conviction of the petitioners cannot be sustained in the eyes of law.

Arguments of the opposite party-State in both the cases

8. Learned counsels appearing on behalf of the opposite party-State, on the other hand, have opposed the prayer and have submitted that both the learned courts below have convicted the petitioners and have returned concurrent finding of facts after independently appreciating the evidences on record and there is no scope for this Court to enter into re-appreciation of evidence and come to a contrary finding. They

also submit that the learned counsel appearing on behalf of the petitioners has not pointed out any material to indicate any perversity in the impugned judgments. They have also submitted that P.W.-1 is the eye-witness to the occurrence and is the immediate neighbour and she is also cousin sister or cousin gotini of the complainant and cousin bhabhi of the accused Ramesh (husband of the informant) and she has fully supported the prosecution case and has corroborated the story of the informant without any contradiction. They have also submitted that considering the nature of allegation which has been leveled against these petitioners, no sympathetic view is called for under the facts and circumstances of these cases.

9. So far as the dissolution of marriage is concerned, it is submitted that merely because marriage has been dissolved with mutual consent, the same does not amount to any compromise and otherwise the offences involved in these cases are not compoundable. They submit that divorce by mutual consent has no bearing in these cases.

Findings of this Court

10. After hearing the learned counsel for the parties, this Court finds that as per prosecution case, the informant was married to Ramesh Sharma in the year 2006 and after some time of marriage her husband, father-in-law, mother-in-law, Gotini and Bhaisur started demanding motorcycle, golden chain, Palang (Bed) and on the date of Makar Sankranti in the year 2007, the aforesaid persons poured kerosene oil on her body and also tried to set fire, but as the informant started crying, they assaulted the informant and consequently nearby persons came to the place of occurrence and ultimately she was driven out of her matrimonial house. Thereafter, the informant went to her father's house in another village and gave information to the officer in charge of Jasidih Police Station on 15.01.2007 who

advised her to go to Sarath Police Station. It is further the case of the prosecution that the complainant went to Sarath Police Station, but the officer-in-charge did not register her case. Then, the father of the informant started negotiation of the matter with the accused persons, but he failed and lastly a written complaint was sent to the Superintendent of Police, Deoghar. It was alleged that the accused persons came to the father's house of the informant everyday and gave threats to them. Ultimately, the First Information Report was registered which was numbered as O/C Sarath P.S. Case No. 31 of 2007 dated 14.03.2007 against these petitioners for alleged offence punishable under Section 498-A of Indian Penal Code and under Section 3/4 of Dowry Prohibition Act.

11. This Court finds that altogether six prosecution witnesses were examined before the learned trial court and two of them i.e. P.Ws. 3 and 4 were declared hostile. P.W.-6 was the Investigating Officer of the case, P.W.-5 is the informant herself and the remaining two witnesses i.e. P.Ws.-1 and 2 are the relatives. This Court finds that one of the witnesses i.e. P.W.-1 is the cousin sister of informant and cousin bhabhi of the accused Ramesh Sharma (husband of the informant) who is also the immediate neighbour and she has fully supported the prosecution case. The victim lady i.e. the wife and the informant of the case have fully supported the prosecution case and they were thoroughly cross-examined before the learned trial court. The defence had taken a plea that P.W.-1 though a relative and also a neighbour was a highly interested witness as there were some land dispute. However, this plea was rejected on the ground that she herself has stated that her family had dealings with the accused. This Court finds that the learned courts below have carefully scrutinized the evidences of P.W.-1 as well as P.W.-5 (informant) and P.W.-6 (investigating officer)

and convicted the petitioners mainly on the strength of evidence of the victim-informant as well as P.W.-1. The learned lower appellate court appreciated the evidences and sustained the conviction and has considered the judgment passed by the Hon'ble Supreme Court reported in *AIR 2012 (SC) 1357* on the point that testimony of single witness is sufficient to convict the accused. The learned lower appellate court has clearly recorded its finding in Para-11 and 12 of the judgment, which reads as under: -

"11. P.W.-1 is her cousin sister or cousin Gotini and cousin Bhabhi of the accused Ramesh she supported (in para 1) her marriage held with the accused Ramesh according to Hindu Rites and Custom and she is living just adjacent of her, corroborated the story of informant without any contradiction and the argument of the defence that they have joint land and there is dispute regarding land between the husband of P.W. 1 so in the revenge she deposed against them is not believable because P.W. 1 cousin Gotini clearly deposed in cross para 5 that "Mera Ramesh ke Pita ke Sath Khana Pina Chalta Hai". It shows there is no enmity. So there is no chance of enmity between them. If any enmity between them the accused persons have not produced oral or documentary evidence in support of his defence, but not produced. Therefore, she is trustworthy and reliable witness as decided in 2011 (30) JLJR (S C) 1 Mohaad Mian Vs. State of U.P. so called independent witness tend to say far away and are not willing to come forth as they often face grave consequence, to fall back on testimonies of witnesses, who are friends or family members of the victim, it is further also decided in 2013 (1) JLJR SC 353 and in JLJR 2011 (30 S.C. 124 Iqbal Musa Paten Vs. State of Gujrat that justice cannot made on plea that it is better to left a hundred guilty escape then punish as innocent because prosecution is required to establish its case beyond reasonable doubt. It does not meant that the decree of proof must be beyond a shadow of doubt and the testimony of single witness is sufficient to convict the accused as decided in A.I.R. 2012 May (SC) 1357 A.

On the point of dowry demand it appears from the evidence of P.W. 5 para 2 it is appeared from the evidence that the accused persons demanded motorcycle, golden chain and palang (Bed) lastly on the Makarsankranti on 2007 and drove out from her

matrimonial home. This fact also supported by P.W. 1 eye witness and cousin Bhabhi of the accused in para 2 who has good relation with the accused (in para 5) and also supported by father P.W. 2 in para 2 and cross para 10 and I.O. P.W. 6 also supported this fact that all witnesses fully supported the case of the informant. It is clear that the accused persons demanded dowry from the informant."

12. The learned counsel for the petitioners has neither pointed out any material relied upon by the learned court below which is not based on record nor has pointed out any material evidence which has been ignored by the learned courts below. So far as the arguments of the learned counsel for the petitioners that although general allegation was made not only against the husband and other two petitioners, but also against the father-in-law and mother-in-law, but ultimately only the husband and other two petitioners have been convicted by the learned court below is concerned, this Court finds from the records of the case that the FIR was registered only against the present petitioners and the charge-sheet was also filed only against the present petitioners and accordingly the father-in-law as well as the mother-in-law were never the accused in the case. It is not a case that on the same set of evidences and on similar allegations the father-in-law and the mother-in-law have been acquitted and the petitioners have been convicted. Accordingly, the argument that the father-in-law and the mother-in-law having been left out has no bearing in the case and the same cannot be a ground to interfere with the concurrent finding of facts against the three accused in revisional jurisdiction. There is no scope of re-appreciating the evidences in revisional jurisdiction in absence of any perversity.

13. Considering the concurrent finding of facts which have been arrived after carefully scrutinizing the evidences on record by the learned trial court as well as by the learned lower

appellate court, this Court does not find any illegality or perversity in the impugned judgments calling for any interference in revisional jurisdiction of this Court.

14. This Court further finds that although the husband and wife involved in these cases have separated themselves by mutual consent and a decree for dissolution of marriage under Hindu Marriage Act has been passed in the year 2012, but the offences involved in these cases are non-compoundable. Otherwise also the terms of settlement as such mentioned in the order of dissolution of marriage through mutual consent does not indicate that the informant of the case had no surviving grievance. Considering the findings particularly the manner the offence has been conducted, this Court is of the considered view that the petitioners do not deserve any modification of sentence. Accordingly, the present petitions are hereby dismissed.

15. Interim order, if any, stands vacated.

16. The bail bonds furnished by the petitioners is hereby cancelled.

17. Pending interlocutory applications, if any, are also dismissed as not pressed.

18. Let the lower court records be immediately sent back to the learned court below.

19. Let a copy of this order be communicated to the learned court below through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)