

Neutral Citation No. - 2023:AHC:201828 Court No. 83

Reserved on 9.5.2023

Delivered on 13.10.2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 4024 of 2015

Ravindra Srivastava

...Revisionist

v/s

State of U.P. and Another

...Opposite Parties

JUDGMENT

HON'BLE SANJAY KUMAR PACHORI, J.

1. Heard Sri Ashok Trivedi, learned counsel for the revisionist, Sri Umesh Kumar Dubey, learned counsel for the opposite party no. 2 and Sri Abhishek Singh, brief holder for the State and perused the material on record.

2. The Present Criminal Revision has been preferred to set-aside the judgment and order dated 06.10.2015 passed by Additional Sessions Judge Court No. 8, Kanpur Nagar in Criminal Appeal No. 180 of 2013, by which the appellate Court affirmed the judgment and order dated 30.07.2013 passed by the Metropolitan Magistrate, Court No. 4, Kanpur Nagar in Case No. 123 of 2012, arising out of Case Crime No. 29 of 2000, whereby the revisionist has been convicted under Section 498-A of the Indian Penal Code (hereinafter referred as "I.P.C.") and Section 4 of Dowry Prohibition Act (hereinafter referred as "D.P." Act) and sentenced him under Section 498-A of I.P.C., to undergo one year imprisonment with fine of Rs. 500/-; under Section 4 of D.P. Act, to undergo six months imprisonment with fine of Rs. 500/-; in default of payment of fine, seven days additional imprisonment. All the sentences shall run concurrently.

3. Brief facts of the case are that the first information report dated 23.05.2000 was lodged against the revisionist stating that the marriage of the first informant was solemnized with the present revisionist on

30.06.1998 according to Hindu Rites and Rituals. After some time of the marriage, the behaviour of the revisionist towards first informant became unruly and harsh, the revisionist told her on the very first day of his marriage that what your father had given to me in dowry. The revisionist demanded Rs. 2 lacs more cash as additional dowry, but she refused to give it to the revisionist due to economic condition of her father. After that the revisionist used to harass and torture her regularly and kept her hungry and used to lock in the room. On 12.07.1998, the parents and relatives of the first informant came to her matrimonial house and told the revisionist about their economic situation and tried to convince the revisionist, but the revisionist did not worth. On 19.07.1998, the revisionist left the first informant at Vijay Nagar intersection (Chauraha) and told her to return after taking Rs. 2 lacs from her father, otherwise he will burn her. The first informant somehow reached her parental house and narrates the whole incident to her family members. Parents and relatives of the first informant further tried to convince the revisionist, but he was not ready to keep the first informant with him without receiving Rs. 2 lacs.

4. In order to prove the prosecution case, prosecution has examined as many as five witnesses; PW-1 Durgesh Srivastava (victim), PW-2 Rakesh Srivastava (brother of the victim), PW-3 Kanhaiya Lal Vishwakarma, PW-4 Constable Anju Shukla and PW-5 Sub-Inspector Uma Devi.

5. After examining the prosecution witnesses, statement of the revisionist was recorded under Section 313 of Cr.P.C. wherein he denied the prosecution case and stated that he has been implicated in a false case. On behalf of the revisionist some documentary evidence had been filed and DW-1 Pankaj Kulshreshtra and DW-2 Virendra Kumar Dwivedi have been examined.

6. The appellate court observed that under Section 8-A of D.P. Act, there is a burden of proof on accused person with regard to the fact that he did not demand any dowry and the accused is unable to rebut

this presumption that he did not attempt to live with his wife. The appellate Court further observed that the accused left his wife within 18 days of marriage which is alone circumstance proved the prosecution case with regard to offence punishable under Section 498-A of I.P.C. The offence under Section 498-A of I.P.C. is continuing nature and the cognizance is not time barred.

7. The trial court observed that the defence had not asked any question upon material fact which had been recorded as prosecution evidence. The delay in lodging the F.I.R. has been explained. The evidence of PW-1 and PW-2 is duly corroborated by the prosecution case by the evidence of PW-3 Kanhaiya Lal Vishwakarma, who is an independent witness. The trial court after appreciating the evidence convicted and sentenced the revisionist under Section 498-A of I.P.C. and Section 4 of D.P. Act, and acquitted under Sections 323, 506 of I.P.C. and Section 3 of D.P. Act.

8. Learned counsel for the revisionist vehemently argued before the trial court that the first information report was lodged after 1 year and 9 months of the incident. There is no explanation with regard to delay in lodging the F.I.R. The first informant had resided only 15 days in her matrimonial house. There is material contradiction between the statement of PW-1 and PW-2 with regard to complaint of demand of dowry and leaving PW-1 from her matrimonial house. The prosecution has failed to prove its case beyond reasonable doubt against the revisionist. The decree of divorce has been passed on 08.08.2016 which was filed by the first informant (PW-1). The revisionist re-married with another woman and there is no chance of reunion.

9. **Per contra**, learned A.G.A. as well as learned counsel for opposite party no. 2 have supported the judgment and order passed by the appellate court as well as the trial court and vehemently opposed the prayer and submits that there is no illegality in the impugned judgment and order.

10. I have heard the submissions made by learned counsel for the

revisionist, learned counsel for the opposite party no. 2 and learned A.G.A. for the State and perused the material on record.

11. Before appreciating the evidence and submissions of the revisionists, it would be appropriate to discuss the scope of invoking the jurisdiction of the High Court in criminal revision against the conviction.

12. The Supreme Court in **Raj Kumar v. State of Himachal Pradesh, (2008) 11 SCC 76**, observed as under:

"9. In Duli Chand v. Delhi Admn, (1975) 4 SCC 649 the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held in a case involving vehicular accident as follows: (AIR p. 1960)

The question whether the accused was guilty of negligence in driving the bus and the death of the deceased was caused due to his negligent driving is a question of fact which depends for its determination on an appreciation of the evidence. Where the Magistrate, and the Additional Sessions Judge arrived, on an assessment of the evidence at a concurrent finding of fact that the death of the deceased was caused by negligent driving of the bus by the accused and the High Court even though justified in refusing to re-appreciate the evidence reviewed the same in order to satisfy itself that there was evidence in support of the finding and that the finding was not perverse, came to the conclusion that the evidence established the death of the deceased was caused by the negligent driving of the bus by the accused, the Supreme Court on an appeal under Article 136 refused to interfere.

10. In State of Orissa v. Nakula Sahu, (1979) 1 SCC 328, it was held that the High Court should not have interfered with the concurrent findings recorded by the trial court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the trial court or the Sessions Judge.

11. In State of Kerala v. Puttumana Illah Jathavedan Namboodiri, (1999) 2 SCC 452, it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power

cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

13. In **State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand & Others, (2004) 7 SCC 659**, the Apex Court has been observed that:

"22. The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court." It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."

14. In **Krishnan & Another v. Krishnaveni & Another, (1997) 4 SCC 241**, the Supreme Court observed as under:

"1. Exercises of the revisional power by the high court under Section 397 read with Section 401 is to call for the records of any inferior Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders. The Court of Sessions and the Magistrates are inferior criminal courts to the High Court and

Courts of judicial Magistrate are inferior criminal courts to the sessions judge. Ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e. to examine the correctness, legality or propriety of any finding sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional. power of the high Court merely conserves the power of the high Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinates courts do not exceed the jurisdiction or abuse the power vested in them under the code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice."

15. It is well settled principle of law that the inherent as well as revisional jurisdiction should be exercised cautiously. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. (**Vide: Amit Kappor v. Ramesh Chander (2012) 9 SCC 460**).

16. It is also well settled principle of law that the findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible evidence. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (**Vide: Rajinder Kumar Kindra v. Delhi Administration AIR 1984 SC 1805; H.B. Gandhi & Ors. v. Gopi Nath & Sons 1992 supp. (2) SCC 312; Triveni Rubber & Plastics v. Collector of Central Excise, Cochin AIR 1994 SC 1341; Gaya Din (D) thr. Lrs. & Ors. v. Hanuman Prasad (D) thr. Lrs. & Ors. AIR 2001 SC 386; Aruvelu & Anr. (Supra); and Gamini Bala Koteswara Rao & Ors. v. State of Andhra Pradesh thr. Secretary (2009) 10 SCC 636**).

17. Before appreciating the submissions of both the parties, I have gone through the evidence of the prosecution with the help of the learned counsel for the revisionist.

18. PW-1 Durgesh Srivastava (victim), stated in her examination-in-chief that her marriage was solemnized with the revisionist on 30.06.1998 and she reached her matrimonial house on 01.07.1998 and on the first day of her arrival in her matrimonial house, the revisionist and his family members demanded Rs. 2 lacs more cash as additional dowry and made other allegations and also made a complaint with regard to less dowry and they have committed *marpeet* with her as well as kept her hungry and locked in a room. On 12.7.1998, the parents and brother and friends' of her father Kanhaiya Lal, Dinesh Pal came to her matrimonial house and she told about the demand of additional dowry to them. On 08.07.1998, her younger brother had also come to her matrimonial house and, she also told him about the additional demand of dowry of Rs. 2 lacs. On 11.07.1998, the revisionist took her from parental house to matrimonial house and there is no effect of counselling by her family members. On 19.07.1998, the revisionist left her at Vijay Nagar, Kanpur Nagar and threatened her to return after taking Rs. 2 lacs from her father as additional dowry, otherwise she will face dire consequences. Victim and her family members attempted to settle the dispute but there is no effect. From 19.7.1998 to 20.2.1999 she was treated at Asha Nursing Home.

18. PW-1 in her cross-examination stated that she was a graduate and after marriage she has also done LLB. She stayed in her matrimonial house for 8 days since 11.07.1998 to 19.07.1998. Except her mother-in-law, no other family members were residing in the house. The witness denied about written compromise dated 29.12.1999 by which all the utensils and articles were returned to the victim. She also denied her signature on the compromise.

PW-1 further stated that she has no knowledge about the first information report of case crime no. 229 of 2000, which was

registered by the revisionist against her brother for offence of theft of motorcycle which was given to the revisionist in his marriage with the victim. The defence put forth the following suggestion: it is wrong to say that she wanted to live with the revisionist in her parental house.

After analysing the evidence of PW-1, it is noteworthy that the victim had resided only 15 days in her matrimonial house, i.e., on 01.07.1998 to 08.07.1998 and further on 11.07.1998 to 19.07.1998. The victim had denied the fact of written compromise which had been taken place between the parties in the year of 2000 and also denied the fact that the revisionist had lodged an F.I.R. against her brothers for the offence of theft of motorcycle.

19. PW-2 Rakesh Srivastava, (brother of the victim) stated in his examination-in-chief that the marriage of his sister was solemnized on 30.06.1998 and his father spent Rs. 2,25,000/- in the marriage ceremony of his sister. His sister had gone to her matrimonial house on 01.07.1998 and on 08.07.1998, his younger brother brought his sister to the parental house. At that time his sister told him that the revisionist demanded Rs. 2 lacs and for non-fulfilment of the demand committed *marpeet* with his sister and locked her in the room. On 11.07.1998, the revisionist came to the parental house of the victim and family members of the victim tried to convince him. On 11.07.1998, the victim again had gone to her matrimonial house. On 12.7.1998, parents and two other persons had also gone to matrimonial house of the victim and she again told them about the torture and cruelty with regard to additional demand of dowry and the revisionist threatened her with dire consequences, if his demand will not be fulfilled. On 19.7.1998, the revisionist left his sister near Vijay Nagar Crossing. He brought his sister for treatment and again they tried to convince the revisionist.

20. PW-2 in his cross-examination stated that he went to the house of her sister after 7 days of the marriage and he is not able to remember the date on which he had gone to his sister's house for the second time. The revisionist has lodged an F.I.R. under Section 394 of

I.P.C. as Case Crime No. 229 of 2000, in which final report was submitted. He had no knowledge about the whereabouts of the motorcycle no. UP-78-U-6967. It is wrong to say that Kanhaiya Lal Verma and he himself brought the utensils, which were given in the marriage from the matrimonial house of his sister on 29.12.1999.

It is noteworthy that PW-2 admitted the fact of lodging an F.I.R. under Section 394 of I.P.C. on 11.01.2000 against him and his brother, but PW-2 denied the compromise dated 29.12.1999.

21. PW-3 Kanhaiya Lal in his examination-in-chief stated that he is neighbour of the victim, the victim returned to her parental home a week after the marriage, then he went to her parental house to meet her, she told him about the additional demand of dowry of Rs. 2 lacs and cruelty and torture and she went to her matrimonial house after 3 or 4 days of his visit to victim's house. On the second day of her return, Gurcharan Lal, his wife and his son Rakesh and Dinesh Pal had gone to matrimonial house of the victim for counselling the revisionist, but the revisionist did not pay any heed.

22. PW-3 stated in his cross-examination that when he reached at the matrimonial house of the victim, he stayed there only for one and half hours and he did not talk to anybody, he had no knowledge about lodging of the F.I.R. against brothers of the victim and denied the signature over the written compromise. It is noteworthy that PW-3 also denied the fact of written compromise between the parties.

23. Learned counsel for the revisionist emphasis on lodging of the F.I.R. which was lodged after one year and nine months of the incident, as a counter blast case of F.I.R regarding the theft of motorcycle lodged by the revisionist and the prosecution has not given any plausible explanation of such delay.

24. It is settled principle of law that the delay in lodging of the F.I.R. by itself cannot be a ground for disbelieving and discarding the entire prosecution. The delay in lodging the F.I.R. would put on its guard to search if any explanation has been offered for the delay, and if offered,

whether it is satisfactory. In **State of H.P v. Gian Chand, (2001) 6 SCC 71**, the Apex Court has been observed as under:

"12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case..."

25. In **Ravinder Kumar and Another vs State Of Punjab, (2001) 7 SCC 690** the Apex Court has been observed as under:

"14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident."

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. [Vide Zahoor vs. State of UP (1991 Suppl.(1) SCC 372; Tara Singh vs. State of Punjab (1991 Suppl. (1) SCC 536); Jamna vs. State of U.P.(1994 (1) SCC 185). In Tara Singh (Supra) the Court made the following observations:

"4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report."

26. It is well settled law that the burden of the rebuttal of presumption lies when the prosecution proved the case against the revisionist.

27. After having gone through the evidence of PW-1, PW-2 and PW-3, the following facts clearly emerged:

(1) The first information report was lodged after one year and nine months of the incident.

(2) The victim had resided firstly for 7 days and secondly for 8 days in her matrimonial house.

(3) It is admitted fact that the revisionist had lodged the first information report against the brothers of the victim with regard to offence of theft of motorcycle, which had been given to him in his marriage.

(4) The defence categorically took defence about the compromise. The present first information report was lodged after 4 months and 12 days of the incident after lodging the F.I.R. by the revisionist against the brothers of the victim.

(5) It is noteworthy that the revisionist committed *marpeet* with the victim, and her family members brought her to the hospital for treatment, but the prosecution had not produced any medical examination report.

(6) The prosecution explained the delay stating that the victim and her family members have hope to reconcile the revisionist with regard to additional demand of dowry, but this explanation is not satisfactory because the relation of the victim and the revisionist strained in

January 2000, when the revisionist had lodged an F.I.R. against the brothers of the victim.

(7) There is material contradiction in the evidence of PW-2, firstly, he stated that on 18.07.1998 his younger brother brought his sister from her matrimonial house, whereas in his cross-examination he stated that he had gone to his sister's matrimonial house after 7 days of adieu of her sister marriage (vidaye).

28. In view of the above foregoing discussion, I am not satisfied with the reasoning and conclusion of the Appellate Court as well as the trial Court in the impugned judgment and order. The trial court as well as the Appellate Court ignored the material contradictions and delay in lodging the F.I.R. after one year and nine months as a counter blast case without any satisfactory explanation. The findings recorded by the trial court as well as the Appellate Court are perverse, therefore, the judgment and order dated 30.07.2013 passed by the Metropolitan Magistrate Court No. 4, Kanpur Nagar and 06.10.2015 passed by the Additional Sessions Judge Court No. 8, Kanpur Nagar are not sustainable. Hence, the judgment and order are liable to be set-aside and the present criminal revision is liable to be allowed.

29. Accordingly, the present criminal revision, is **allowed**.

30. The revisionist **Ravindra Srivastava**, is acquitted from the charges of offence punishable under Sections 498-A of I.P.C. and Section 4 of D.P. Act.

31. The trial court record be returned forthwith together with a certified copy of this judgment for compliance. The office is further directed to enter the judgment in compliance register maintained for the purpose of the Court.

(Sanjay Kumar Pachori, J.)

Dated: 13.10.2023

Ishan