

GAHC010006492012



2024:GAU-AS:12144

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

Case No. : Crl.Rev.P./323/2012

MD MOHIRUDDIN
S/O MD DANEJ ALI VILL- JANATA, P.S. BAGHBAR, DIST. BARPETA, ASSAM,

VERSUS

MUSSTT. SAJEDA KHATUN,
D/O SABED ALI VILL- NARARBHITA PART-II P.S. ABHAYAPURI, DIST.
BONGAIGAON, ASSAM, PIN- 783384.

Advocate for the Petitioner : MR.R ALI, MR.H A AHMED,MR.G U AHMED,MD.M Z SHAH

Advocate for the Respondent : MD.B HUSSAIN, MR.P B MAZUMDER,,

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

02-12-2024

1. Heard Mr. R. Ali, learned counsel for the petitioner. None appears for the respondent.

2. The present application is filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973, assailing the judgment and order dated 11.01.2010 passed by the learned Sub-Divisional Judicial Magistrate (SDJM, in short) (M), North Salmara, Abhayapuri in Case No. CR 524/2006 as well as the judgment and order dated 07.04.2012 passed by the learned Additional Sessions Judge (FTC), Bongaigaon in Criminal Appeal No. 2(1)/2010.

3. The sole respondent, i.e., the wife of the petitioner preferred a complaint before the learned SDJM (M), North Salmara, Abhayapuri, which was registered as Case No. CR 524/2006 inter alia alleging that the accused husband/petitioner started torturing her and demanded money from her and also beaten her and that her husband with the advice of other accused demanded Rs. 5,000/- from her and asked her to bring money from her brother's house. Consequently, she was driven out of her matrimonial home and accordingly, she took shelter at her brother's house along with her infant daughter.

4. Relying on the testimonies of PW-1, PW-2, PW-3 and PW-4, the learned Trial Court concluded that there was a demand of Rs. 5,000/- by the accused husband/petitioner from the respondent wife as a dowry and accordingly, he was convicted under Section 498A IPC and was sentenced to undergo rigorous imprisonment of 10 (ten) months and to pay a fine of Rs. 2,000/- and in default of payment of fine, to undergo simple imprisonment for 3 (three) months. Such decision was assailed in an appeal by the appellant/petitioner herein, which was registered as Criminal Appeal No. 2(1)/2010.

5. The learned Appellate Court after re-appreciation of the evidence, came to a conclusion that the first part of the definition of 'cruelty' that is any willful conduct of the husband which is of such a nature as is likely to drive the woman to commit suicide or to grave injury or danger to life etc. were not present. However, though there is no evidence regarding any physical injuries to the person of the victim, as the respondent wife was staying at her brother's house, it was presumed that she was meted with cruelty inasmuch as it is the finding of the learned Appellate Court that no one can believe that a married woman without any reason used to live in her parents' house leaving the

company of her married husband. This Court is of the view that the learned Appellate Court though was correct in concluding no availability of material to establish cruelty, however, the learned Court below had ignored the settled propositions of law that it is the prosecution who is to establish its case beyond reasonable doubt and a person cannot be convicted only on presumption. This Court is also of the view that except the evidence of PW-1, which suggests that there is a demand of money from the respondent wife, there is no material available on record even to remotely suggest that the victim was subjected to cruelty or harassment by the husband/petitioner or his relatives.

6. Therefore, this Court of the view that the decision of the learned Trial Court is vitiated by perversity and that though the learned Appellate Court took note of want of evidence in this regard, however, upheld the conviction on the presumption that a married woman does not leave her husband without there being any cruelty. Accordingly, the judgment of the Appellate Court is also against the settled propositions of law and therefore, vitiated by patent defect and ignorance of law.

7. In view of the aforesaid, the present revision petition is allowed by setting aside the judgment and order dated 11.01.2010 passed by the learned Sub-Divisional Judicial Magistrate (SDJM, in short) (M), North Salmara, Abhayapuri in Case No. CR 524/2006 and also the judgment and order dated 07.04.2012 passed by the learned Additional Sessions Judge, (FTC), Bongaigaon in Criminal Appeal No. 2(1)/2010. The petitioner is acquitted. Bail bond stands released.

8. LCR be returned back.

JUDGE

Comparing Assistant