

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 47 of 2004

Judgment reserved on: 09.11.2016

Judgment delivered on: 02 .12.2016

- 1) Bhagirathi @ Munnudau Patel, Aged 23 years, S/o. Ganesh Ram Patel
- 2) Bihari Lal Patel, Aged about 32 years, S/o. Ganesh Ram Patel
- 3) Ganesh Ram, Aged about 60 years, S/o. Raghuvar Patel
- 4) Padmavati W/o. Bihari Lal Patel,
All resident of village Parsadih, P.S. Baramkela, Tahsil
Sarangarh, District Raigarh (C.G.)

---- Applicants

Versus

State of Chhattisgarh through the District Magistrate Raigarh (C.G.)

---- Respondent

For Applicants	:-	Smt. Indira Tripathi, Advocate
For Respondent	:-	Shri Sanjeev Pandey, G.A.

Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

1. This revision is directed against the judgment dated 22.01.2004 passed by 4th Additional Sessions Judge (FTC) Raigarh, in Criminal Appeal No. 42/2003, affirming the judgment of conviction and order of sentence dated 10.03.2003 passed by the Judicial Magistrate First Class, Sarangarh, in Criminal Case No. 155/2002, whereby and whereunder learned Judicial Magistrate First Class after holding the applicants guilty for harassing the complainant Ramoola Patel (PW-1) and causing mental cruelty by demanding dowry, convicted under Sections 3/4 of Dowry Prohibition Act and 498-A of Indian Penal Code and sentenced

each of them to undergo simple imprisonment for 6 months and to pay a fine of Rs. 1,000/- with a direction to run the sentences concurrently.

2. Being aggrieved by both the judgments, the applicants have filed the present Criminal revision.
3. Applicant No.1 is husband of the complainant, Applicant No. 2 is brother-in-law, Applicant No. 3 is father-in-law and Applicant No. 4 is sister-in-law of Ramoola Patel (PW-1).
4. The brief facts of the case are that marriage of the complainant Ramoola Patel (PW-1) was solemnized with Bhagirath-applicant No.1 on 24.09.1999. After the marriage, complainant was residing along with the applicants in her matrimonial house. Thereafter, applicants began to harass her and demanded a sum of Rs. 31,000/-, 60 tola silver and 4 tola gold ornaments. Ganesh, father-in-law of the complainant left her at her parental house and then she narrated the entire facts to her parents. Thereafter, she was sent to her matrimonial house after due advice, but the applicants again started harassing and treating the complainant with cruelty by demanding dowry. In this connection, on 09.09.2000 a Gram Panchayat meeting was convened by the complainant and her father to get the matter resolved. However, the applicants refused to accept the conditional decision of the Panchayat and continued to harass and humiliate the complainant (PW-1) for demand of dowry. Only after that, the complainant lodged a written report against the applicants in Police Station - Baramkela vide Ex.P.-1 and on the basis of that, First Information Report was registered vide Ex.P-2 against the applicants under sections 498A of IPC and 3/4 of Dowry Prohibition Act.
5. After completion of the investigation, charge sheet was filed against the applicants in the Court of Judicial Magistrate First Class, Sarangarh,

who conducted the trial and convicted the applicants under Sections 3/4 of Dowry Prohibition Act and 498-A of Indian Penal Code and sentenced each of them to undergo simple imprisonment for 6 months and to pay a fine of Rs. 1,000/-.

6. Aggrieved by the judgment of conviction and order of sentence passed by the Judicial Magistrate First Class Sarangarh, the applicants filed an appeal before the court of 4th Additional Sessions Judge (FTC) Raigarh which was also dismissed by the learned 4th Additional Sessions Judge (FTC) Raigarh.
7. Smt. Indira Tripathi, learned counsel for the applicants submits that the Trial Court has erred in convicting the applicants as there is no legal and admissible evidence against the applicants. She further submits that there are material omissions and contradictions in the evidence of Ramoola (PW-1), Purno (PW-2) and Shyamlal (PW-4), therefore, the conviction of the applicants cannot be sustained in the eye of law. She further argued that there was a direction to applicant- 1 to pay Rs.1,50,000/- to the complainant in case of divorce settlement arrived at in the Panchayat, but applicant- 1 did not pay the amount and only for the said reason, the complainant lodged a false FIR against the applicant No. 1 and other family members. She further submits that the conviction of the applicants suffers from legality, therefore, the findings recorded by both the Courts are not sustainable and the applicants deserve to be acquitted of the charges levelled against them, as the prosecution has utterly failed to establish the ingredients of Sections 498A of IPC and 3/ 4 of Dowry Prohibition Act.
8. In support of her argument, learned counsel for the applicants has placed reliance upon **Bhaskar Lal Sharma and Another Vs. Monica**

(2009) 10 SCC 604 and prays that the applicants may be acquitted of the charges levelled against them.

9. On the other hand Mr. Sanjeev Pandey, Govt. Advocate appearing on behalf of the State supported the impugned judgment passed by the learned trial Court as well as the Appellate Court and submits that there is no illegality or infirmity in the impugned order and the revision may be dismissed.
10. I have heard learned counsel for the parties and perused the impugned judgment as also the record of the Courts below.
11. The question for consideration before this Court is - "Whether the findings of the Trial Court as well as the Appellate Court suffer from any illegality, perversity or they are valid and correct?".
12. The prosecution, in support of its case, has examined Ramoola (PW-1) Purno (PW-2), Parmanant Nayak (PW-3), Shyamlal (PW-4), R. K. Kesharwani, Assistant Sub-Inspector (PW-5), Dehari Prasad (PW-6), Chamar Singh (PW-7), Bhojram Patel (PW-8), Vishweswar (PW-9), Manohar Patel (PW-10).
13. The applicants have been convicted under section 498A of IPC. In this regard, before appreciation of the evidence of the parties, the legal proposition is required to be considered. Section 498-A of the IPC, reads as under:-

"(I) Parliament by the Act 46 of 1983 with a view to combat the menace of dowry deaths and harassment of woman at the hands of her husband or his relative introduced section 498-A in IPC. Section 498-A reads under:-

498-A. Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

(II) The "Explanation" appended to Section 498-A thereto defines cruelty to mean:-

(I) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life limb or health(whether mental or physical) of the woman; or

(ii) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

(iii) Thus, the essential ingredients of Section 498-A are:-

1. A woman must be married.
2. She must be subjected to cruelty.
3. Cruelty must be of the nature of:

(i) any willful conduct as was likely to drive such woman:

a. to commit suicide.

b. cause grave injury or danger to her life, limb, either mental or physical.

(ii) harassment of such woman.

(iii) with a view to coerce her to meet unlawful demand for property or valuable security,

(2) or an account of failure of such woman or by any of her relation to meet the unlawful demand.

(iii) woman was subjected to such cruelty by:

(1) husband of that woman, or

(2) any relative of the husband.

For constitution of an offense under section 498-A IPC, therefore, the ingredients thereof must be held to be existing."

14. On going through the evidence of complainant-PW-1 Ramoola in light of the above proposition, the reason of her dissatisfaction with Applicant No. 1 and her in-laws, according to her, is that she was treated with cruelty because of bringing less dowry, her husband stating himself to be impotent used to stay away from her and was having illicit relationship with his *Bhabhi*, Applicant No. 4.

15. Learned counsel for the applicants has argued that the complainant was not interested in residing her in-laws house. She further argued that the complainant in her entire married life, has stayed in her matrimonial house only for a period of two months. She further argued that the financial condition of the complainant's matrimonial house was not good and all the family members were working in the fields, therefore, she wanted to avoid working in the fields and every often she used to make excuses to go to her maternal house. The said conduct was objected by the Applicants which was disliked by the complainant. For this reasons also she made the false report of demand of dowry against the applicants.
16. So far as the FIR is concerned, Ramoola Patel (PW-1) in her evidence has deposed that her father Shyamlal Patel (PW-4) had lodged the FIR in Sarangarh whereas Shyamlal Patel (PW-4) in his evidence at para-6 has stated that he had not made the report in police Station, rather her daughter (complainant) had made the report in Sarangarh. Virtually by whom the FIR has been lodged is not clear and contradictory statements were made by the father and complainant regarding lodging FIR.
17. The FIR (Ex.P.-1) in which the signature of complainant Ramoola Patel (PW-1) was there, it is clearly stated that the family members of applicant No.1 demanded of Rs. 31,000/-, 60 tola silver ornament and 4½ tola gold ornaments from her and they used to abuse her in filthy language and also used to assault her for not fulfilling the demand of dowry. She made allegation in her written report that her husband saying himself to be impotent before her, was having illicit relationship with applicant No.4 whereas in the FIR, she had not stated anything regarding the illicit relationship. On the contrary, the allegation of the

complainant regarding his husband being impotent and having illicit relationship with his Bhabhi-Applicant No. 4 is itself a form of cruelty towards the husband. Both the allegations cannot be true at the same time.

18. Ramoola Patel (PW-1) has deposed in para-8 of her evidence that the written report Ex.P-1 was prepared by her father Shyamlal (PW-4) from Sarangarh. She further deposed in her evidence that the applicant No. 1 had not paid the fine amount which was imposed by the Panchayat, therefore, she lodged the report against them in the Police Station. She further deposed that the said report was prepared and signed by her and a copy of the same was given to the Police. Ramoola Patel (PW-1) has made the various allegation that her husband injured her with a broken bottle, she was burnt with an aflame wood and was also given poison in her food. However, she has not clarified anything as to on which date and where all these incidents took place. She has also not given any reason as to why she did not make any complaint in this regard to her parents or to the Panchayat.
19. Head of the Panchayat of the community, Parmanand (PW-3) has stated in his evidence at para- 6 that the member of the Panchayat imposed the conditional penalty of Rs.1,50,000/- upon applicant No1. He further stated that if the applicant accepted the decision of Panchayat, then no further report would be lodged against the applicants. This witness further stated that whatever statement is made in connection with demand of dowry that has been stated to him by the complainant and her father Shyamlal. This witness clearly states that the Panchayat has no authority to grant divorce to the parties or to impose fine on the applicants.

20. Purno (PW-2) the mother of the complainant has deposed at para- 8 that the conditional fine amount of Rs. 1,50,000/- was agreed to be paid within two months to complainant (PW-1) whereas the amount was not paid by Applicant No.1, then the report was made. The member of the Panchayat stated that if applicants accepted the decision of the Panchayat, then the FIR would not have been made against them.
21. Shyamlal (PW-4) the father of the complainant has deposed at para- 8 of his evidence the report was prepared by her daughter complainant (PW-1) from Sarangarh. He further deposed in his evidence that when the fine amount of Rs. 1,50,000/- was not paid within two months to complainant (PW-1) then the report was made against the applicants. He further deposed that if the amount was paid then the FIR would not have been made against them.
22. Shyamlal (PW-4) has supported the statement of (PW-2) Purno. Both of them have stated in the same fashion.
23. On perusal of the aforestated evidence, it is clear that the Panchayat instead of resolving the dispute has imposed a fine of Rs. 1,80,000/- on the Applicants. It is accepted by Parmanand Nayak (PW-3), the head of the Panchayat of the community that they have no authority to impose fine or to grant divorce to any couple. Copy of decision has not been submitted to the Court. Whereas in the evidence of Shyamlal (PW-4), Dehri Prasad (PW-5), Chamar Singh (PW-7) and Bhojram Patel (PW-8), it is clearly stated by these witnesses that the Panchayat meeting was convened regarding divorce between the complainant and Applicant No.1 and also regarding conditional fine imposed upon him of Rs. 1,50,000/-.
24. But from the evidence, it is revealed that the Panchyat of their community decided the divorce between the complainant and applicant

No.1. The applicant No.1 agreed to pay Rs.1,50,000/- within two months but he failed to deposit the amount. But in this regard no documents has been produced before the Court by the complainant. Further the complainant made the allegation of illicit relationship between the husband and the applicant No.4, though she has stated that her husband was impotent. But the complainant has not stated anything about illicit relationship in the FIR. The complainant has stated that her husband assaulted and injured her by breaking glass bottle and burned her leg with a burning wood but in the FIR she has not stated anything and also not enclosed any medical evidence in support of her statement.

25. Parmanand Nayak (PW-3) has deposed in his evidence that in the Panchayat meeting of their community, the applicants have said that the complainant was not doing the household work properly in her matrimonial house and she frequently wanted to go to her maternal house. It is also clear from the evidence of Paranamand Nayak (PW-3) that the complainant was not interested to stay in her matrimonial house.
26. It is not clear from the evidence that who lodged the FIR against the applicants in police Station, whether it is Ramoola Patel (PW-1) or her father Shyamlal (PW-4). In the FIR, the allegations against the applicants are regarding cruelty and demand of dowry.
27. On perusal and appreciation of entire evidence available on record, specially the FIR and on the basis of aforesaid discussion and the case laws cited above and further considering the fact that the entire prosecution case appears to be doubtful and it cannot come under the purview of section 498-A IPC. This Court is of the opinion that the

applicants cannot be convicted on the basis of above evidence available on record and the revision petition deserves to be allowed.

28. Accordingly, the criminal revision is allowed. Conviction of the applicants under section 498-A IPC and section 3/4 of Dowry Prohibition Act and the sentence imposed on the applicants is set aside.
29. The applicants are reported to be on bail. Their bail bonds are not discharged at this stage and shall remain operative for a period of six months from today in terms of Section 437-A of Cr.P.C.

Sd/-
(Anil Kumar Shukla)
Judge