

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.586 of 2015

=====

Kalyani Kumari, wife of Binod Kumar, resident of Mohalla-SBI Officers Colony, House No. 99, Digha, District & Town Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Binod Kumar, son of late Dr. Mahavir Prasad, resident of Saraswati Sadan, Vidyapati Nagar, Road No. 20, P.S. Saharsa, District Saharsa.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Prasad

For the Respondent/s : Mr. Dr.M.K.Gautam(App)

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

8 30-03-2018 The petitioner/wife has challenged the judgment dated 05.05.2015 passed by learned Additional District & Sessions Judge-IV, Patna in Cr. Appeal No. 173 of 2012 whereby the judgment and order of conviction and sentence dated 01.10.2012 passed by learned S.D.J.M., Patna in Complaint Case No. 1894(C)/2000 against the O.P. No. 2 under Sections 498A and 494 of the Indian Penal Code has been upturned and the O.P. No. 2 has been acquitted of the charges.

Perused the judgment impugned.

It appears that the marriage of the petitioner with the O.P. No. 2 was solemnized sometimes in the year 1980. The



case of the petitioner/complainant is that she was tortured right from the beginning of the marriage and the torture continued for about twenty years when the complaint was filed in the year 2000. Two children were born out of the wedlock but according to the petitioner/complainant, the relationship between the spouses did not improve.

It was also the case of the petitioner/complainant before the Court below that her mother-in-law had illicit relationship with a person which was being objected by her and, therefore, even the family members of O.P. No. 2 tortured her.

The Trial Court had convicted the O.P. No. 2 on the basis of the evidence given by the parents of the petitioner/complainant as well as her two children viz. Vishal (P.W. 1) and Puja (P.W. 7). Both the children of the petitioner had deposed before the Trial Court that the O.P. No. 2 assaulted and tortured their mother.

However, the Appellate Court did not agree with the finding of the Trial Court. The reasons assigned by the Appellate Court are as hereunder.

"Now the relevant evidences of all the prosecution witnesses and that of defense have been discussed in aforesaid paragraphs. From the perusal of evidence of prosecution witnesses it appears that the complainant Kalyani Devi after marriage was subjected to torture for the demand of motor-cycle



and fridge etc. She was assaulted by her husband in Patna also. Her husband left his motor-cycle at her residence from which a marriage certificate was found which showed that her husband had married another woman. On the other hand defense through the examination of two witnesses has tried to show that the accused never assaulted and tortured the complainant for the demand of dowry. The Complainant after getting job became arrogant and her relationship with the accused/appellant became bad. The appellant thereafter filed a divorce case against her and thereafter she filed this complaint case falsely implicating the appellant and his parents. Now the court has to decide whether the evidence of the prosecution witnesses inspire confidence and their evidence can be relied upon. As discussed above, the witnesses examined in this case are all related to the complainant. They are bound to give evidence in her favour. Her two children have also been examined. Two children all along lived with her and there is every possibility that they would have given tutored evidence. Her father in law would have also given evidence to support of the case of her daughter. Now it is for the court to decide whether the evidence of these witnesses can be relied in the facts and circumstances of the case. Admittedly the complainant was married to the appellant in the year 1980 and after marriage she gave birth to two children. This case was filed by her in the year 2000 i.e. after twenty years of marriage. This appears to be very surprising. It is the case of the complainant that she was assaulted and tortured by the appellant from the very beginning for demand of dowry. In this period of twenty years her father also did not file any information to any authority regarding the



appellant torturing her for the demand of dowry. It is also the case of the prosecution that the complainant got a Govt. Job and even then the accused persons tortured her and used to demand her salary. However it is very surprising that the complainant being Govt. Job even did not inform any authority regarding the appellants subjecting her to torture. The conduct of the father of the complainant and that of complainant in not making any complaint in these twenty years cannot be digested. No prudent mind will believe the version of the complainant that she was tortured continuously for twenty years by appellant and she will not make any complaint to any authority."

The Appellate Court also did not find the case under Section 494 I.P.C as against the O.P. No. 2 to be true. As such, the judgment and order of conviction and sentence dated 01.10.2012 passed by learned S.D.J.M., Patna in Complaint Case No. 1894(C)/2000 was reversed.

From the perusal of the records of this case, it appears that the petitioner/complainant was employed gainfully whereas the O.P. No. 2 is not shown to have been in any permanent employment. In such an event, the raising of allegation of torture is not believable. The petitioner had plenty of time and opportunity to make complaint against such torture.

What appears to be evident from the record is that the relationship between the petitioner and O.P. No. 2 was far from cordial. This, even if accepted to be true, cannot be



a ground for convicting a person for the offence under Section 498A of the Indian Penal Code.

Since the priest of the temple did not identify the appellant or the woman with whom he is alleged to have married again, the Appellate Court disbelieved the allegation of the petitioner having married somebody else during the subsistence of the marriage between the petitioner and the O.P. No. 2.

On the contrary, the statement of the defence witnesses lend credence to the story put forth by O.P. No. 2 in his defence.

For the aforesaid reasons, I do not wish to interfere with the order of learned Additional Sessions Judge-IV, Patna, passed in Cr. Appeal No. 173 of 2012.

The present petition stands dismissed.

(Ashutosh Kumar, J)

Shageer/-

U		T	
---	--	---	--

