

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 530 of 2004

Order reserved on 24.10.2018

Order pronounced on 05.12.2018

1. Smt. Kumudani Mishra, W/o Trilochan Mishra, aged about 55 years
2. Smt. Jamuna Mishra W/o Ranjit Mishra, aged about 35 years.
3. Pramod Mishra S/o Trilochan Mishra, aged about 28 years.
4. Anand Mishra S/o Trilochan Mishra, aged about 31 years (Deleted on account of his death on 21.09.2014)
5. Milendra Mishra S/o Trilochan Mishra, aged about 33 years.
6. Smit. Kirti Mishra W/o Milendra Mishra, aged about 27 years.

All R/o Kumhar Para Mahasamund, P.S. & Tahsil Mahasamund, District Mahasamund, CG.

---- Applicants

Versus

The State of Chhattisgarh, through P.S. Mahasamund, District Mahasamund, CG.

---- Respondent

For Applicants : Shri Adil Minhaj, Advocate

For State/ Respondent : Smt.. M. Aasha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

The accused/applicants have preferred this revision petition against the judgment of conviction and order of sentence dated 16.10.2004 passed by Additional Sessions Judge, Mahasamund, (CG) in Criminal Appeal No. 263/2001 affirming the judgment dated 09.11.2001 passed by Chief Judicial Magistrate Mahasamund in Criminal Case No. 639/1999 convicting the accused/applicants under Section 498-A and 323 IPC and sentencing each of them to undergo RI for two years with fine of

Rs. 200/- under Section 498-A and RI for one month under Section 323 IPC.

2. Complainant Surekha (PW-1) and deceased accused Anand Mishra happened to be husband and wife whereas accused/applicants Kumudani Mishra, Jamuna Mishra, Pramod Mishra, Milendra Mishra and Smt. Kirti Mishra are the mother-in-law, elder mother-in-law, brother-in-law and sister-in-law of the complainant respectively. The allegation made against the accused/applicants is that six months after the marriage, they started harassing her mentally and physically asking her to bring colour TV and Hero Honda motorcycle. After becoming pregnant, she went to her maternal home where a female child was born. After delivery, when she was brought to her matrimonial home by her parents, brother and maternal uncle, the accused/applicants subjected them also to beating. On the basis of report lodged by complainant PW-1, the offences under Section 498-A and 323 IPC were registered against the accused/applicants and ultimately the *challan* was filed.

3. On being satisfied with the averments of the parties and evidence on record the trial Court convicted and sentenced the accused/applicants as mentioned above. The findings recorded by the trial Court have been affirmed by the lower appellate Court by the Judgment impugned, and it is that which is under challenge in this revision.

4. Counsel for the applicants submit that the findings recorded by the Court below are contrary to the material available on record and therefore, they are liable to be set aside. He further submits that PW-2, PW-4, PW-7 and PW-8 being the relative of the complainant PW-1 are bound to make allegation against the

accused/applicants and therefore, their version should have been disbelieved by the Courts below. According to him, the complainant had left her matrimonial home in the month of September, 1998 and thereafter lived with her parents till 18.07.1999 and had there been any cruelty by the accused/applicants, a prompt report must have been lodged by her but it has not happened like that and the report was lodged after sufficient long time.

5. State counsel however, supports the findings recorded by both the Courts below and submits that there is enough material to show that the accused/applicants subjected the complainant to cruelty demanding colour TV and motorcycle and they also manhandled her parents and relatives when they had come to drop her at her matrimonial home, their conviction under Sections 498-A and 323 IPC is fully justified.

6. Heard counsel for the parties and perused the material on record.

7. Complainant (PW-1) has stated that for first one month of her stay in her matrimonial home, the accused/applicants treated her well and did not pick-up any quarrel with her for demand of dowry. Since February 1999, according to her, the quarrelsome activities started by the accused/applicants but even then she stayed in her matrimonial home for three fourth months. Her evidence reflects that when she expressed her inability to fulfill their demand, the accused/applicant thrashed her in confinement of four walls of the house. Thereafter, she went to the police station along with her parents and made a written report Ex. P-1. After she made the report, the accused/applicants beat her mother and maternal uncle also. Subsequently, taking a

somersault, the complainant has stated that the report was lodged by her father. First in the examination-in-chief she has stated that the incident of beating was not witnessed by anyone but in the cross examination she has denied the same and stated that her neighbours had seen the accused/applicants beating her. Even in the cross examination, she has reiterated that report Ex. P-1 was made by her father. If the evidence of PW-2 and PW-4 is seen, it is apparent that the report Ex. P-1 was lodged by the complainant herself. This contradiction as to the lodgment of report creates doubt in the mind of this Courts. The other important thing is that had there been any incident of beating to the complainant, at least the neighbours are expected to have seen the same but no independent witness has come forward to make such allegation against the accused/applicants. The evidence of others witnesses also does not give any specific clue as to the demand of dowry and harassment of the complainant at the hand of the accused/applicants. According to the complainant, the cruelty started about a month or two after the marriage but yet she did not take any step for taking the matter to the police rather she spent considerable long time in the house of her parents and one month or so after the delivery of female child the report was lodged. This also shows that it is entirely a cooked up idea to implicate the accused/applicants in the dowry related case of cruelty. The record also shows that once the complainant had jumped into the well and it is for that the accused/applicants sent her to her maternal home to avoid any untoward happening in their house. It was not the consequence of any cruel treatment where they were not interest in keeping her in their house. Thus, the conviction of the accused/applicants under Section 498-A IPC does not appear to be in conformity with

the material available on record and contradiction in the statements of PW-1, PW-3 and PW-4.

8. As regards their conviction under Section 323 IPC, though there is medical evidence indicating certain minor injuries to mother of the complainant namely Heerabai but from the record it is clear that when the parents of the complainant had gone to her matrimonial home for dropping her, there was some scuffle between the members of two families where accused Milendra had also suffered some injuries and lodged the report for that. Thus, there is no evidence to show that the accused/applicants voluntarily caused the hurt to Heerabai. Even the doctor (PW-3) has stated that the injuries opined by him in Ex.P-4 could have been caused by fall. Thus, their conviction under Section 323 IPC is also not sustainable in the eye of law.

9. Even otherwise, joint applications I.A. No. 04/2018 and I.A. No. 05/2018 duly supported by affidavit have been filed under Section 320 (2) and 320 (6) Cr.PC for compounding the case as the parties have decided to amicably compromise the same outside the Court. This also stands as a mitigating circumstance in favour of the accused/applicants.

10. In overall view of the matter, this Court is of the opinion that the judgment impugned cannot be made to stand looking to the evidence already referred to above and therefore, it is liable to be brushed aside. Accordingly, the revision allowed.

Sd/-
(Vimla Singh Kapoor)
Judge