

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.761 of 2016

Arising Out of PS. Case No.-1797 Year-2008 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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1. Sk. Ayaz and S/o SK. Abdul Hai,
 2. SK. Abdul Hai, s/o Late SK. Abdul Rafi.
 3. Bibi Mustkima Khatoon W/o SK. Abdul Hai, All r/o Vill. Sekhi Chakia, P.S-
Chakia, Dist- East Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sabnam Praveen, daughter of Maqbul Ahmad, resident of Pedari Rampur
Korar, P.S.- Kesariya, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Krishna Kant Singh
For the Respondent/s	:	Mr.Sri S. Ehteshamuddin
For O.P. No. 2	:	Mr. Anisur Rahman
		Mr. Akram Naiyar

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
C.AV. JUDGMENT

Date : -09-2019

1. This revision application has been preferred against the judgment dated 06.08.2015 passed in Criminal Appeal No. 59/82 of 2014/2015 by learned 12th Additional Sessions Judge, Motihari, whereby and whereunder, the judgment and order of sentence dated 27.05.2014 passed in Tr. No. 4678/14 arising out of Complaint Case No. 1797/08 by the learned Judicial Magistrate -1st Class, by which, the petitioner were convicted for the offence under Section 498A of the Indian Penal Code and were sentenced to undergo rigorous imprisonment of 3



years alongwith fine of Rs. 2,000/- and in in default of payment of fine to undergo simple imprisonment of one month has been upheld with some modification in order of sentence with respect to appellant nos. 2 and 3.

2. Facts giving rise to the present revision application in short is that the marriage of complainant Shabnam Praween was solemnized with the petitioner no. 1 on 04.05.2006 according to Muslim rights and customs and after her marriage, she went to her in-laws house at Shekhi Chakia. On 13.05.2006, father of complainant gave the jewellery as demanded by her in laws. Thereafter, accused persons along with complainant went to Kolkata, where the accused persons started beating and torturing her and demanded Rs. Five Lakhs from her father. On 19.09.2007, the complainant was beaten black and blue by the accused persons and she was confined in a room and her neighbour informed her father about the incident, thereafter, her father along with other relatives reached there and with the help of local police, she was rescued and was admitted to the hospital, where she got medically treated. Thereafter, on 10.08.2008, complainant came with her father at her father's house. It is also the case of complainant that on 05.08.2008, accused persons came to her father's house for "Rukshadi" and



the complainant was allowed to go along with petitioner no. 1 but she was left at Muzaffarpur Railway Station, thereafter, the complainant returned to her father's house along with her son.

3. After enquiry under Section 202 of the Code of Criminal Procedure, processes were issued against the petitioners and on their appearance, trial commenced.

4. During trial, four witnesses were examined on behalf of the complainant. They are: PW1 – Maqbool Ahmad, father of complainant, PW2 - Abdul Mannan Saifi, PW3 – Sk. Tuzar Rahman and PW4- Shabnam Praween the complainant herself. Apart from that signature of complainant on complaint was proved as Ext. 1.

5. On behalf of the defence also, three witnesses were examined. They are; DW1 – Tanvir Alam, DW2 – Ram Shrestha Thakur and DW3 – Md. Taiyab. Apart from that following documents have also been brought on record by the defence side i.e. (i) Ext. 'A' - Certified copy of statement of Md. Firdous in Misc. Case No. 12/12 (ii) Ext. 'B' - Certified copy of deposition of witness Abdul Mannan Saifi in M-244/08 and (iii) Ext. 'C' - Photocopy of certified copy of Title Suit No. 23/08 (with objection).

6. Defence of the accused persons/ petitioners is of



innocence and false implication.

7. Learned Magistrate, after conclusion of trial, convicted the petitioners under Section 498A of the Indian Penal Code and sentenced them in the manner aforesaid.

8. Being aggrieved, the petitioners preferred Criminal Appeal No. 59/82 of 2014/2015 before the Sessions Judge, Motihari, which ultimately travelled to the file of 12th Additional Sessions Judge, East Champaran, Motihari, who after hearing the parties, passed the judgment on 06.08.2018, affirming the judgment of conviction under Section 498A of the Indian Penal Code against the petitioners and also affirmed the sentence of rigorous imprisonment of 03 years and fine of Rs. 2,000/-, so far petitioner no. 1, is concerned. However, he has directed for release of petitioner nos. 2 and 3 on probation on execution of bonds under Section 4 of Probation of Offenders Act, 1958 for a period of two years to keep peace and be of good behaviour and dismissed the Criminal Appeal filed by the petitioners.

9. Aggrieved, the petitioners have preferred the present revision application. The grounds for assailing the judgment of Trial Court as well as appellate court is that both the courts below have failed to appreciate that the prosecution has failed to prove the prosecution case in the manner brought in complaint



petition as the station diary entry at Kolkata or the medical report were not brought on record rather another story was brought on record that she was asked to work in porn film and collect money so that the accused persons might purchase a new flat at Kolkata but there is no such story in the complaint petition and as such, the above story is an afterthought and the same cannot be accepted as for the first time it has come during during trial and that too there is no corroboration to eabove evidence. Further, the learned Trial Court has also come to a finding that the defence evidence as well as the documents produced by the defence has created a reasonable doubt about the commission of offence, which will appear from para 12 of the judgment, however, in spite of that learned Trial Court has convicted the petitioners. Learned counsel for the petitioners have also cited decision of Division Bench of this Court passed in the case of Jagdev Yadav & Ors. vs. the State of Bihar, reported in 2007(2) PLJR 666 and the decisions of Hon'ble Apex Court reported in 2017 (1) PLJR SC 129 and in the case of Umakant and Anr. 2014(3) PLJR (SC) 483, in order to show that in a criminal case, the burden to prove the offence is always upon the prosecution party.

10. Further submission is that the appellate court has only



considered and appreciated the evidence adduced on behalf of complainant and, thereafter, has come to a conclusion that the judgment of conviction passed by learned Judicial Magistrate is correct and passed on the basis of materials available on record. There is no consideration of evidence adduced on behalf of defence and on that score also, the judgment of Appellate Court is bad and not sustainable in the eye of law.

11. On the other hand, learned counsel appearing on behalf of opposite party no. 2 has supported the judgment passed by the learned Trial Court as well as by the Appellate Court and submitted that the materials available on record, clearly disclosed that a demand of Rs. 5 lacs was made by the petitioners and on non fulfilment of the said demand, the complainant was subjected to cruelty and torture and when he returned to her father's house, the petitioners came for Roksadi but again left her at Muzaffarpur Railway Station and fled away. as such, the conviction of the petitioners under Section 498(A) of the Indian Penal Code, is just and proper. It has also been contended that there is concurrent finding of fact by the learned Trial Court as well as by the learned Appellate Court and this Court cannot go for reappreciation of evidence. In support of his contention, learned counsel for opposite party no. 2 has referred



a decision of Hon'ble Apex Court reported in **AIR 1975 (SC) 1960** in the case of **Duli Chand vs Delhi Administration** as well as on the decision reported in **1993(1) Cr. Law Journal. 1029 (SC) State of Karnataka vs. Balu Ingale and Others.**

12. Having heard both sides, from perusal of the records, as discussed above, it appears that the complainant has come with a case that she was tortured and assaulted by the petitioners at Kolkata and was confined in a room, which was informed to her father PW1, who came there along with relatives and rescued her with the help of local police and also lodged a Sanha as well as got her treated there and thereafter, she came with her father to her father's house. PW4 (complainant) has also stated so in her evidence. However, evidence PW1, (father of complainant) does not disclose the above prosecution story. It further appears that neither any document showing local station diary entry made in the local police at Kolkata as it is the prosecution story that local police was informed nor the medical prescription of complainant (PW4) has been brought on record in support of her contention of treatment nor any witness of Kolkata was examined. So far other witnesses i.e. PW2 and PW3 are concerned, they appear to be hearsay witness. The defence has also adduced some oral as well as documentary evidence on



record. Learned Trial Court while appreciating the evidence has come to a finding that “ from perusal of the deposition of the defence witnesses and exhibits of defence, it creates reasonable doubt about commission of offence but try to explain the same, stating that doubt would be called reasonable if they are free from a zest for abstract speculation and must be actual and substantial doubt. Learned Trial Court held that on perusal of the case record, it is evident that the complainant has come out successful in proving its case in the manners as alleged by it and involvement of the accused person in the alleged occurrence to hold him guilty beyond all shadows of reasonable doubts under Section 498A of the Indian Penal Code”.

13. However, it appears that the learned Trial Court has not considered that no local witness of Kolkata have been examined nor any station diary entry has been brought on record and even no prescription of doctor has been brought on record, though it is the case of prosecution that she has received treatment at the local hospital at Kolkata. So far her evidence that she was forced to work in a porn film is concerned, the same is beyond her case in the complaint petition but there appears no discussion by the trial court on those points. It is settled law that burden of proof is on prosecution to prove its case in the manenr



of occurrence as per prosecution case.

14. So far the Appellate Court judgment is concerned, it is well settled law that Appellate Court being the first Appellate Court not only has to confirm or set aside the judgment on the basis of finding arrived at by the Trial Court but also has to re-appreciate the evidence available on record in order to come to the conclusion as to whether finding arrived at by the Trial Court is correct or not. Provision of appeal has been provided by the law maker so that a person may get a chance to prove his innocence. However, what transpired from the judgment of Appellate Court that it has simply narrated the evidence of witnesses of prosecution and defence and after discussing the argument of the appellants as well as State come to a finding in para -16, which reads as follows:-

“16 From perusal of the evidence examined on behalf of the prosecution and also on behalf of the defence as discussed above, it is, however, proved by the witnesses that the complainant's marriage was solemnized with Sk. Ayaz on 04.05.2006 in accordance with Muslim law. After marriage accused persons started beating and torturing the complainant and they started demanding Rs. 5 lacs from her father and also started harassing the complainant with a view to



coercing her father for giving 5 lacs. The complainant was beaten black and blue by the accused persons. The neighbour has informed about the same to her father and on information her father and relative reached at Kolkata and with the help of local police complainant was freed and admitted to the hospital. On 10.08.2008 complainant came with her father at her father's home and on 25.08.2008 accused persons came for Rukhsadi at her father's home but they left her at Muzaffarpur Railway Station and complainant returned back to her father's home. The learned Judicial Magistrate after discussing the evidence of complainant has found the appellants/accused guilty for the offence u/s 498A I.P.C. I am of the opinion that the judgment of conviction passed by the learned Judicial Magistrate is correct and passed on the evidence and material available on record. Therefore, the judgment of conviction of learned Judicial Magistrate is confirmed".

15. From perusal of the finding arrived at by the learned Appellate Court, it clearly appears that there is no discussion on the evidence adduced on behalf of defence especially the documents produced by the defence and the learned Appellate Court has also not considered that no document has been



brought on record to show that Kolkata police was informed, even no medical report showing injuries on the person of the complainant was produced in support of manner of occurrence that the complainant was beaten at Kolkata and with the help of local police, she was rescued by her father and then was admitted to hospital for her treatment and as noticed above, defence evidence has not been discussed and even no witness of Kolkata has been examined, which clearly implies that the Appellate Court has not applied his independent mind and has recorded such finding in a very casual manner, confirming the judgment of conviction passed by the learned Trial Court without properly appreciating the evidence adduced on behalf of both the parties available on record as well as the above discrepancies in the complaint petition. No doubt, there are other evidence available on record in support of the complainant's case and they ought to have been discussed in order to confirm the conviction of petitioners or set aside the same. However, at the same time, this court refrain itself from making any comment as to whether the discrepancies discussed above are sufficient enough to belie the prosecution story or the evidence available on record are sufficient to convict the petitioners. Rather it is the duty of the the learned Appellate



Court to consider the evidence of both the parties, scrutinize the same, consider the discrepancies / inconsistencies as pointed out by the petitioner in his judgment. This court also, at the same time, is aware of the settled law that Revisional Court ought not enter into re-appreciation of fact, where there is concurrent finding of fact, unless it is perverse and against the materials available on the record.

16. In view of the discussions made above, the judgment of the Appellate Court cannot sustain, as such, the same is set aside. The matter is remitted back to the learned Appellate Court to dispose of the appeal after providing opportunity to both the parties and also after analyzing the evidence available on record, dispose of the appeal by fresh judgment.

17. Accordingly, with the above observation and direction, this revision application is allowed to the above extent.

18. Let L.C.R. of both Trial Court and Appellate Court be sent back to the Appellate Court at once.

(Vinod Kumar Sinha, J)

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CAV DATE	
Uploading Date	
Transmission Date	

