

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL.REV.P. 809/2016

Reserved on : 26.09.2019

Date of Decision : 22.10.2019

IN THE MATTER OF:

MAHENDER

..... Petitioner

Through: Mr. Ashok Kr. Arya, Advocate

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through: Dr. M.P. Singh, APP for State with

SI Amar Singh, P.S. R.K. Puram

Mr. Abdul, Advocate for Respondent No. 2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. By way of the present petition, the petitioner has assailed judgment dated 28.11.2016 passed by the Additional Sessions Judge, Special Judge (PC Act), CBI-05, Patiala House Courts, New Delhi in CA No.8748 of 2016 whereby the judgment of acquittal of the petitioner was set aside and the petitioner was convicted and sentenced to RI for six months along with a fine of Rs.10,000/-, which was directed to be paid as compensation to respondent No.2, in default whereof to undergo SI for 15 days.

2. Earlier, the trial court vide judgment dated 14.07.2016 had acquitted the petitioner and the other accused under Section 498A/34 IPC. The petitioner was also acquitted for offence under Section 406 IPC.

3. Briefly, the facts as noted by the trial court are as under:-

“1. It is the case of the prosecution that complainant Poonam gave one complaint at CAW Cell, Nanakpura, in which she stated that she was the wife of accused Mahender Kumar. She stated that she got legally married to accused Mahender Kumar on 20.07.1997. During marriage, her widowed mother had given dowry as per her capacity. One scooter and one color TV was demanded, but the same was not given to the accused persons. After marriage, for some time, the behaviour of the accused persons was fine. After about 5-6 months of marriage, accused persons started taunting her and troubling her by saying that the mother of the complainant could not give the scooter and the color TV as promised. They started beating her also. Her in-laws, her husband and her brother-in-law would tell her to get the scooter and color TV whenever she used to go to her mother's house. When she would tell her mother and brothers the same, they would tell her that once their work was all right, they would arrange for the scooter and color TV. When she went back to her matrimonial home, they would ask her about the scooter and color TV. When she stated her inability to get the same, they fought with her. Slowly time passed. She was not sent to her mother's house nor was she allowed to talk to her family. On 16.08.1998, she gave birth to a daughter but her mother and brothers were not informed. If someone was informed, it was her aunt (Bua). Her aunt told her mother and her mother came to meet her but she was not allowed to meet her. She was taunted for giving birth to a girl child and thereafter she was troubled further. Accused Mahender's uncle (mama) used to say that he knew people in the police and that accused persons should get the complainant to sign blank papers. All accused persons got blank papers signed from her by force. Accused persons did not allow her to go out of the house and they would keep her locked in the house. Sometimes they would not give her food for almost four days. She would not tell anyone anything out of fear as accused persons used to threaten her that they would get her brothers falsely implicated in other cases. They would also say that if her brother would come to meet her, they would beat him. This behaviour of the accused persons

continued for almost a year. When she was about to deliver again, they did not provide any medical treatment despite the complainant telling them that she was unwell. At that time, all accused persons were present in the house alongwith one Vijay Kumar and all of them said that there was no need to take her anywhere and they could let her die. They called one nurse from Timarpur Centre and she delivered a baby boy on 10.12.1999. Thereafter, accused persons started behaving with her somewhat properly but they again asked her to get one color TV and scooter. Her mother and brothers again told her that they did not have the capacity to buy the same. After this, accused persons started hitting her and torturing her more and would keep her locked in the house. Other accused persons used to instigate her husband to hit her. Sometimes, she filed complaints also. On 18.01.2000, she was beaten by her husband to such and extent that she started bleeding from her head. Her neighbours called her mother but accused persons did not let her meet her brothers. They started harassing her more. They further told her not to keep any relations with her parents and brothers. She was further threatened that if she kept any relations with her parental family, she could leave and the parties should get divorced. On 17.08.2002, when her family came to meet her for the festival of Rakshabandhan, accused persons told her that if she meet them she could leave forever. They told her uncle that if they wanted to take the complainant, then they should give it in writing that the girl was going on her own free will. They had also previously taken in writing that complainant did not want her dowry articles. They told her that they would not let her take the children. She also wrote that she was not taking anything with her. When she left with her uncle, accused persons made her brother and mother also sign certain documents. She prayed that both her children and her dowry articles should be given to her. On 20.05.1999, one compromise had been entered into between the parties in which her husband had said that he would not trouble her.”

4. During the investigation, the petitioner handed over the *stridhan* articles to the complainant and against the remaining articles, an FD in the sum of Rs.20,000/- was given. The trial court framed charge under

Section 498-A/34 IPC against all the accused persons and a separate charge, under Section 406 was also framed against the petitioner. All the accused persons pleaded not guilty and claimed trial.

5. I have heard learned counsel for the petitioner as well as learned APP for the State and have also gone through the case records.

6. During the trial, the prosecution examined total of 8 witnesses to prove its case. The complainant/respondent No.2 (PW-3) deposed that her marriage with the petitioner was solemnized on 20.05.1997. She deposed that after four months of her marriage, her husband and in-laws started harassing her and beating her and raised the demand of one color TV and a two-wheeler scooter. Though her parents had given one black & white TV, however, her in-laws continued to taunt her for not bringing the demanded items.

7. After some time, she alongwith the petitioner started living separately in a rented house but the petitioner continued to harass her. On 16.08.1998, she gave birth to a girl whereafter she was brought back to the matrimonial home and again demand for the scooter and colour TV was made. She deposed that she was not allowed to meet or speak to her parents. On 10.12.1999, she gave birth to a boy. The accused persons at the time of *Chhochhak* ceremony again raised the demand of scooter and colour TV which could not be met by her family. On 18.01.2000, the petitioner beat her mercilessly and she suffered injuries on her head, however, she was not taken to any hospital. Again, on the occasion of *rakshabandhan*, her family members came to the matrimonial home requesting her in-laws to send her alongwith them but she was not

allowed to go. In fact, the petitioner and his family took her signatures along with the signatures of her brother and uncle on a paper.

8. During her cross-examination, she denied the suggestion that there was discord between her and the petitioner as she used to leave the matrimonial house for meeting her parents without informing the petitioner. She denied the suggestion that she left the matrimonial home and took away the entire money and jewellery with her. She admitted that the two children were residing with the petitioner. She also admitted that she had filed a case for custody of the children, but the same was handed over to the petitioner. She denied the suggestion that the case was decided against her as the children refused to stay with her as they were scared of her.

9. The witness was recalled under Section 311 CrPC where she stated that she made a complaint to CAW Cell on 19.08.2002 and the complaint was exhibited as Ex. PW1/A.

10. The prosecution also examined Angoori Devi (mother), Shanti (sister-in-law), Amar Singh (brother) and Ghanshyam Singh Sagar (uncle) as PW-4, PW-5, PW-6 and PW-7 respectively in support of the case. Their testimonies were cumulative to the testimony of PW-3.

11. During his examination under Section 313 CrPC, the petitioner denied the prosecution evidence against him and stated that the complainant did not wish to reside with him at his house and often used to leave the matrimonial home, leaving behind the children. When she was told to reside with the husband, her paternal family members asked her to create ruckus in the matrimonial home.

12. The petitioner also examined three defence witnesses, who were residing in the neighbourhood. Smt. Kamla (DW-1) deposed that she was residing in the neighbourhood. She stated that the petitioner had small children and the complainant used to lock the children in a room for two days and used to go away for the whole day by locking the children in the room. She also stated that the complainant did not cook food for the children because of which, quarrel used to take place between her and the petitioner. During the cross examination, she stated that the petitioner along with family was residing as neighbour for the last 20-25 years. She stated that she herself had witnessed the quarrel on her visits to the house of the petitioner. She, in fact, tried to make the complainant understand to mend her ways. She denied the suggestion that she had not visited the house of the petitioner or witnessed the quarrels between the parties.

13. Mahesh Kumar (DW-2), a neighbour, deposed that for about 4 months after their marriage, the petitioner and the complainant lived happily whereafter, they shifted to another place and later shifted back to their house in the neighbourhood. He stated that the quarrel used to take place between the petitioner and the complainant as she was not providing milk to her children. During his cross examination, he stated that though he had not seen anything personally but the neighbours had told him that the complainant was not feeding her children.

14. Smt. Premwati (DW-3) a neighbour, deposed that the quarrel used to take place between the petitioner and the complainant over the issue of taking care of the children. She stated that the complainant used to leave the children in her *Jhuggi* unattended without informing anyone. She stated that there was no other reason for dispute between the petitioner

and the complainant. In her cross examination, she stated that her *Jhuggi* was situated at a distance of 2-3 *Jhuggies* from the *Jhuggi* of the petitioner. She further stated that she never heard any complaint from the petitioner or his family members demanding any dowry from the complainant. She stated that the complainant never spoke or told her about her problem in the matrimonial life.

15. The petitioner also examined himself as a defence witness No.4. He deposed that the complainant was not interested in making food for the family and used to demand for separate residence for which reason, he took a room on rent in Ram Nagar, Shahdara where they lived for about a year. As there was no one to take care of the complainant at that place, he came back to stay with his family. He stated that the quarrel used to take place as the complainant was not taking the proper care of the children. The complainant would leave the children alone in the *Jhuggi*. He further stated that on 16.05.1999, the complainant left the *Jhuggi* after taking jewellery and Rs.10,000/- cash. The keys of the Almira was also with her. He went to the complainant's home to bring her back, however, her mother refused to send her. He came back and made a complaint in P.S. Timarpur, which was exhibited as Ex. DW4/A. He requested his neighbours to persuade the complainant to come back, after which she returned, but her behaviour did not change. On 17.08.2002, the complainant left the matrimonial home and filed a false complaint. During his cross-examination, he denied that either he or any of his family members subjected the complainant to cruelty in connection with the demand of dowry.

16. Although the petitioner was charged both under Section 498A and Section 406 IPC however, the trial court acquitted the petitioner on both the counts. Even the appellate court upheld the acquittal of the petitioner under Section 406 IPC. The appellate court while upholding the acquittal under Section 406 IPC noted that there was no specific demand allegation to whom the dowry articles were entrusted.

17. During the cross-examination of Ghanshyam Singh Sagar (PW-7), uncle of the complainant, he was confronted with the documents dated 17.08.2002, on which the witness identified the signatures and the same was exhibited as Ex.PW7/D2. It was a letter written by the complainant to the SHO wherein it was stated that on asking of her mother, she was going with her brother to her parents' house. In the said letter, it was also mentioned that the case filed in the Women Cell, Nanakpura has been settled. It was also mentioned that she was going with her brother willingly.

18. The trial court noted that there were material inconsistencies in the testimony of various prosecution witnesses about the time when the dowry was demanded by the accused persons. Whereas PW-3 stated that after 2-3 days of the marriage, a demand for a scooter was made. Her mother (PW-6) deposed that the demand was made after one and a half months of marriage.

19. In her complaint, the complainant stated that for about 5-6 months everything was fine and thereafter she was taunted for not bringing dowry by her husband and her in-laws. In her deposition, it has come on record that after about 4 months of living with her parents-in-law, the complainant had shifted out and started residing at a separate place along

with her husband which means that during her stay with her in-laws, no demand for dowry was made.

20. Further, it has come in the testimony of the complainant that the petitioner used to go out for work whole day and her sister-in-law used to come and meet her. In the same breath, she stated that she used to be kept under lock and key. Per Contra, the stand of the petitioner supported by the testimony of defence witnesses, who were neighbors, was that the complainant used to go to her matrimonial home instead of taking care of her minor children. There was no restriction on the freedom of her movements. As noted, she rather went to her parental house at will and rather at the cost of her minor children. Also, the statement of the complainant that blank documents were got signed from her is unbelievable as the said document being a letter was signed when her parental family had come to take her. The complainant filed no complaint with respect to above at any point of time. The letter dated 17.08.2002, exhibited as Ex.PW7/D2, contains not only the signatures of the complainant but also of her other family members.

21. The evidence has also come on record, in the form of the testimony of the defence witnesses, which show that the complainant was not taking care of the minor children which led to quarrels between her and the petitioner.

22. The evidence of defence witnesses if creditworthy can be believed. The Supreme Court in State of Haryana Vs. Ram Singh reported as (2002) 2 SCC 426, it has been held as under:-

“19... Incidentally, be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one

- the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution. Rejection of the defence case on the basis of the evidence tendered by the defence witness has been effected rather casually by the High Court ...”

23. Similarly, in State of U.P. Vs. Babu Ram reported as (2000) 4 SCC 515, it was held as under:-

“23. Depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.”

24. As already stated above, there are material inconsistencies in the testimony of prosecution witnesses with respect to the details as to when the alleged dowry demand was made. The allegations of the prosecution witnesses are lacking in details with respect to date and time of the incident.

25. In Vipin Jaiswal Vs. State of Andhra Pradesh reported as (2013) 3 SCC 684, it was held as under:-

“11. In any case, to hold an accused guilty of both the offences under Sections 304B and 498A, IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we find that they have made general allegations of harassment by the appellant towards the

deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased....

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16. ... In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A, IPC.....”

26. In the opinion of this court, the prosecution has failed to establish its case beyond the shadow of reasonable doubt that the complainant was meted with cruelty and harassment by the petitioner on account of allegations of dowry demand. Resultantly, the conviction of the petitioner recorded in the impugned judgment of the appellate court is set aside and the judgment of acquittal passed by the trial court is restored. The petitioner is acquitted of charge under Section 498A. His bail bonds are cancelled.

27. LCR along with copy of this order be sent to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 22nd, 2019

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