

GAHC010004182010



2024:GAU-AS:12579

**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Crl.Rev.P./57/2010**

MD AJJAHAN ALI  
S/O LT. AJGAR ALI, R/O NAMKAMAKHAYA TIMANABSTI, UNDER  
KALIABAR POLICE STATION, IN THE DIST. OF NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM

**Advocate for the Petitioner : MS.B GOGOI, MR.A BARUA,MR.S SAIKIA,MRU S BORGOHAIN ,MR.R SEKHAR**

**Advocate for the Respondent : ,,,PP, ASSAM,**

**BEFORE  
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

**Date : 09-12-2024**

1. Heard Mr. R Sekhar, learned counsel for the petitioner. Also heard Mr. D Das, learned Addl. PP, Assam.
2. The present application under section 401 Cr.P.C read with

section 397 Cr.P.C, 1973 is filed assailing judgment and order dated 24.06.2009, passed by the learned JMFC in GR Case No.423/2007, whereby the petitioner was convicted under section 498(A) IPC and was sentenced to undergo RI for one year and to pay a fine of Rs.3,000/- in default to payment of fine to suffer another period of simple imprisonment for six months.

3. The further challenge is the judgment and order dated 17.11.2009, passed by the learned Addl. Sessions Judge, FTC Nagaon in Crl.A 17(N)/2009, whereby the conviction and sentence dated 24.06.2009 was upheld, however, the sentence was reduced to five months of RI and the fine was enhanced to an amount of Rs.2,000/-.
4. The prosecution case in a nutshell is that the victim had been married to the accused petitioner for 18 years as per Islamic rights and out of their wedlock two daughters and one son were born to them. It was alleged that since last one year from the date of lodging of the FIR, i.e., 04.11.2007 the accused had been demanding an amount of Rs.20,000/-and often tortured the informant due to failure on her part to fulfill his demand by bringing the same from her parents house and for this reason on several occasion, she was sent back to her parents house. It was further alleged that though at the intervention of the victims father and some well wishers of her family, the informant returned back on several occasion to her

husband's house yet her husband, the accused repeatedly tortured her and also announced that he would marry somebody else.

5. A complaint case was registered before the jurisdictional judicial magistrate which was sent to the jurisdictional police station which was registered as Kaliabor PS Case No.77/07. During the course of investigation, the statement of the victim under section 164 Cr.P.C was registered and subsequently after completion of the investigation, the investigating authority filed charge sheet under section 494/498A IPC corresponding to GR Case No.423/2007.
6. Subsequently charges under section 498A was framed against the petitioner to which the petitioner pleaded not guilty and accordingly trial commenced.
7. During the course of trial as many as 6 witnesses were examined by the prosecution to prove the guilt of the accused petitioner. The statement of the accused was recorded under section 313 Cr.P.C, however, the accused did not plead any defence witness.
8. After completion of the trial, the learned trial court convicted the accused petitioner under section 498A and as recorded hereinabove.
9. Being aggrieved an appeal was preferred which was registered as Crl.A 17(N)/2009 and same was also dismissed with certain

modification in the sentence as recorded hereinabove.

10. Mr. Sekhar, learned counsel for the petitioner referring to the judgment of the learned trial court as well as referring to the evidence of PW-1, the victim wife, PW-2 and other PW's, who are independent witnesses and relatives of the victim submits that the necessary factum of cruelty as well as demand of dowry has not been proved and admittedly the marriage was subsisting marriage of 18 years and the FIR was lodged at a very belated stage even after the alleged date of the incident. Therefore, the judgments are vitiated by perversity and this is a fit case where this court should exercise its revisional power to cure a patent defect.
11. Per contra, Mr. D Das learned Addl. PP submits that both the courts have concurrently found the petitioner guilty of committing the offences on the basis of the material evidence produced by the prosecution on record and the prosecution has been able to prove the case beyond reasonable doubt.
12. In view of such concurrent findings of fact, this court may not interfere with such well reasoned judgment in exercise of its revisional power.
13. I have given anxious considerations to the arguments advanced by the learned counsel for the parties.
14. As the learned counsel for the petitioner has assailed the judgments primarily on the issue of perversity, this court has

perused the evidences adduced by the prosecution and also perused the judgments passed by the learned courts below.

15. In the case in hand, the victim's statement under section 164 Cr.P.C was exhibited through the victim and was marked as Exhibit-4. In her statement under section 164 Cr.P.C., the victim reiterated her stand that marriage has been subsisting for 18 years, however, since last six months her husband expressed his willingness to marry another lady and started to ignore the victim and used to beat her.
16. During her evidence as PW-1 she stated as regards demand of dowry of Rs.20,000/- and here also she testified that her husband wanted to marry one Rehena Khatun who was previously married to another man and after her divorce, she is maintaining a relation with the husband of the victim. When she went to complain as regards her husband and Rehena to the father of the Rehena namely, one Subham Ali, however, the said Subham Ali threatened her and accordingly, she lodged the FIR.
17. During her cross examination she deposed that money was demanded two three months back and she lodged the complaint after a month from the date of the incident. She denied the suggestion as regards demand of dowry of Rs.20,000/. The other witnesses have affirmed as regards the subsequent marriage between the accused and the informant since last 18 years. They also deposed that quarrel used to

happen between husband and wife and they had expressed that they are not aware of demand of any money. During her cross examination she reaffirmed that though she cannot state the date, however, she deposed that on the said date at around 11.00 PM, she was beaten up by the accused.

18. The daughter of the accused and the informant was examined as PW-3 and she affirmed a relation between her accused father and one Rahena and that there were quarrel between husband and wife for visit of the accused to the place of said Rahena and according to her, the FIR was lodged on the date when the accused married the said Rahena.
19. PW-4 is the sister in law of the accused person. She specifically deposed that the accused used to beat the victim and she used to stay in their place out of fear for such beating and she deposed that she witnessed such cruelty by the husband upon the wife. She further deposed that once the victim was beaten and she went to her parental home and then the accused brought the other lady Rahena to their residence.
20. PW-5 also deposed that he has not seen any attack by the accused, however, he heard it from others so his evidence was not so relevant.
21. From the materials as recorded hereinabove, the learned trial court had concluded that the husband petitioner treated the victim wife with cruelty compelling her to leave her matrimonial home and that there was demand of dowry of

Rs.20,000/- . Such factual conclusion of the learned Appellate court was affirmed by the learned Appellate court after meticulous re-appreciation of evidence.

22. To convict a person under section 498A Cr.P.C., the prosecution is to prove that married women has been subjected to cruelty or harassment by her husband or relatives which can be physical mental or emotional.
23. In the case in hand, the PW-1's evidence that she was beaten up and there was a demand of Rs.20,000/- remained unshaken. The reason of such physical torture is also established to be for the extra marital affair of the accused petitioner. The marriage between the accused and the informant has also not been disputed. Infact during the cross examination, the victim reaffirmed the period when the demand of Rs.20,000 was made. Through the evidence of PW-4, the cruelty was further established and it was also established that for the torture meted to her she had to take shelter in her parental home and such torture was frequent. The prosecution squarely established beyond reasonable doubt that the victim was subjected to cruelty both physical and mental simultaneously.
24. Thus, appreciating the aforesaid evidence, the learned courts below had concurrently convicted the petitioner under section 498A Cr.P.C. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can be exercised where the

decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner, more particularly against concurrent findings fact.

25. The Hon'ble Apex Court in ***Chandra Babu vs State*** reported in ***2015 (8) SCC 774*** held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding.
26. In the case in hand as recorded hereinabove, this court has not find anything as regards any patent defect or jurisdiction or law.
27. In the considered opinion of this court and as recorded hereinabove, the learned court below had duly appreciated the evidence on record and conclusions arrived at are on the basis of such appreciation of evidence.
28. This court has also not found anything to suggest that the conclusions so arrived are based on no evidence or that materials evidence has been ignored.
29. In view of the aforesaid and in the considered opinion of this court, this is not a fit case for exercise of its revisional

jurisdiction to interfere with such concurrent finding of fact.

30. At this stage Mr. Sekhar learned counsel for the petitioner submits that the sentence should be modified and the period already undergone by the petitioner in custody should be treated as the period of conviction.
31. This court has considered the aforesaid aspect of the matter and is of the opinion that the petitioner has in the meantime suffered by facing trial, then appeal and at this revisional stage inasmuch as the incident took place on 2007 and this court is deciding this matter at this stage.
32. Taking into consideration the totality of circumstances, coupled with the fact that underlying incident occurred in 2007, the revision petition is allowed in part and the Impugned sentence is modified to the extent that the petitioner's sentence is reduced to the period already undergone i.e., 91 days.
33. LCR be returned back.
34. The fine be deposited before the learned trial court by the petitioner within a period of two months from the date of receipt of a certified copy of this order and same be furnished to the victim through the learned CJM, Nagaon.

JUDGE

Comparing Assistant