

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRA NO.11 OF 1999

From the judgment of conviction and order of sentence dated 23.12.1998 passed by the learned. Sessions Judge, Khurda at Bhubaneswar in S.T. Case No.84 of 1998.

Dhuleswar @ Dhula Mohapatra *Appellant*

-versus-

State of Orissa *Respondent*

Appeared in this case by Video Conferencing Mode:

For Appellant - Mr.G.K.Mohanty, G.P.Samal,
B.P.Pradhan, S.R. Swain,
D.K.Nanda, P.C.Mohanty and
P.K.Panda

For Respondent - Mr. Soubhagya Ketan Nayak,
Additional Government Advocate

CORAM:
MR. JUSTICE D.DASH

HEARING & JUDGMENT :09.07.2021

D. Dash, J

1. The Appellant, by filing this Appeal, has assailed the judgment of conviction and order of sentence dated 23.12.1998 passed by the learned Sessions Judge, Khurda at Bhubaneswar in S.T. Case No.84 of 1998.

The Appellant having faced the Trial for the offence punishable under section 498-A/302/201 read with section 34 of the Indian Penal Code (in short, 'the IPC') has been convicted for commission of offence under section 498-A of the IPC. Accordingly, he has been sentenced to undergo R.I. for a period of one year.

2. The prosecution case, in short, is that the Appellant had married Annapurna in the year 1981 and it is said that during said marriage, cash, gold ornament, brass and bell metal utensils and other household articles had been given as dowry. It is the further case of the prosecution that six to seven months after the marriage, the accused demanded more dowry and compelled Annapurna to bring one TV from her parents and in order to fulfill that mission, left Annapurna at her father's place. After some time, Annapurna returned to her matrimonial house when she found that all her gold ornaments etc. had been sold by the accused. It is also stated that Annapurna was tortured thereafter being not provided with food. She then returned to her father's house being not able to tolerate the situation any more in the house of the accused.

It is next alleged that this accused, without bringing Annapurna back or making any attempt in that regard, accepted another wife and kept her in his house and through her, he begot two children. For that, Annapurna had initiated a proceeding claiming maintenance. After that, accused Dhuleswar brought Annapurna with her son back, which was objected to by the second wife. On 22.1.1993, parents of Annapurna were informed that their daughter had died. So, they rushed to the house of the accused. The explanation with regard to the death as offered by family members was that having taken tea, Annapurna met her death. The dead body, however, by that time had been cremated. Being suspicious of said death of Annapurna, information was lodged at Balipatna Police Stations. Police having received the information, registered Balipatna P.S. Case No.9 of 1993 and took up investigation., On completion of investigation, this accused with five others, which include the family member of the accused were placed for Trial by submission of charge sheet for commission of offence under section 498-A/302/201 read with section 34 IPC.

3. In the Trial, the prosecution has examined in total five witnesses. From the side of the defence, one witness has also been examined. Besides the above, the prosecution has proved the FIR (Ext.1), seizure list (Ext.2) and forwarding letter (Ext.3)

The Trial Court, on examination of the evidence of the prosecution witnesses and upon their evaluation at its level, has held this accused guilty of commission of offence under section 498-A of the IPC. He has been acquitted of other charges. All other accused person stood acquitted of the charges. Hence, the present Appeal is at the instance of the Appellant.

4. Mr.G.K.Mohanty, learned counsel for the Appellant submits that the appreciation of evidence by the Trial Court in recording the finding of guilt as against this accused for commission of offence under section 498-A IPC is perverse. He submits that the Trial Court ought not to have accepted the omnibus nature of evidence in coming to a conclusion that the accused has subjected his wife Annapurna to cruelty. According to him, the evidence to establish the factum of cruelty said to have been meted out at Annapurna are highly discrepant and that aspect being stated by all the witnesses in a general manner without citing any specific instance, attributing the role of the accused therein; the Trial Court erred in accepting the same to fasten the guilt upon the accused for commission of offence under section 498-A of IPC. He, therefore, urges for setting aside the finding of guilt of the accused as has been recorded by the Trial Court.

It is stated that at the time of Trial, the accused was aged around 41 years and at present, he is around 64 years of age and earning hand to mouth by cultivation. He further submits that the accused has remained in custody in the case from 29.03.1993 to 15.09.1993, which covers nearly

half of the sentence imposed. He, therefore, alternatively submits that in the event this Court does not feel inclined to interfere with the judgment of conviction, it is a fit case to interfere with the order of sentence by reducing the quantum of sentence to the period already undergone by the Appellant.

Mr. S.K.Nayak, learned Additional Government Advocate submits all in favour of the finding recorded by the Trial Court that it is accused who had subjected his wife (deceased) to cruelty. According to him, the evidence of all the witness on the score are wholly consistent and those being clear, cogent and acceptable, the Trial Court has rightly answered the point that this accused-husband had tortured, harassed and subjected his wife Annapurna to cruelty.

5. In the backdrop of the submission, as above, this Court is now called upon to have relook at the evidence on record so as to judge the sustainability of the finding rendered by the Trial Court on the score.

P.W.2 is the grandmother of the deceased. She has stated that since accused assaulted Annapurna, she was compelled to come to their house and at that time, she was carrying five months old child in her womb. It is also stated that during her stay in their house, she gave birth to a son and for ten years, she continued to stay there. She has further stated that the accused kept a mistress during this period. It is also the evidence of P.W.3 who is a co-villager of P.W.1 that after marriage, Annapurna gave birth to her daughter at her place of stay away from the house of the accused and thereafter the accused brought her back to his house where again the disturbances started. The brother of the deceased, who is a Doctor by profession, has come to the witness box as P.W.1. He has narrated in detail with regard to demand of dowry etc. as also the subjection of his sister Annapurna to cruelty by this accused.

Fact remains that shortly after the marriage, Annapurna had to leave her matrimonial home and at that time, she was pregnant. In that situation, it is ordinarily not expected from a married woman to leave the company of her husband unless she was uncared for and ill treated is not offering is any explanation as to Annapurna's leaving her marital home and staying at her father's place at that point of time and there continuing for a long time. The accused appears to have woken up from deep slumber having enjoyed his life with the mistress begetting the children through her only when Annapurna initiated a proceeding claiming maintenance against him as it was not so tolerated by her any more. There is no evidence on record to show that any point of time, the accused had provided maintenance in any form to Annapurna during her long stay away from her matrimonial home.

The evidence on record being taken together with the circumstances, as afore discussed, provide all the reasons and justifications to hold that the finding rendered by the Trial Court that Annapurna had been subjected to cruelty by this Accused, who happens to be her husband, is well in order.

For the aforesaid, this Court is led to affirm the finding of guilt of the accused for commission of offence punishable under section 498-A of the IPC.

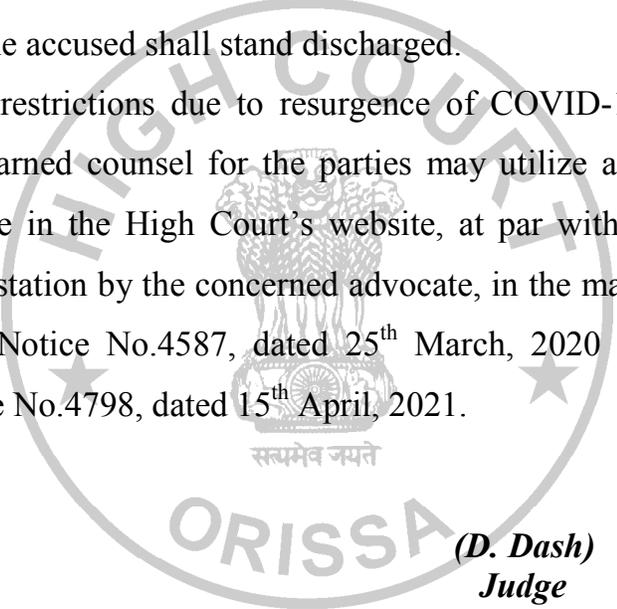
6. Coming to the alternative submission of the learned counsel for the Appellant, it is seen that there has been lapse of about 28 years since the institution of the case and the accused by now is aged about 63 years. Record further reveals that he being arrested in the case on 29.3.1993 was finally released on bail by the order of this Court on 15.09.1993 which nearly covers half of the sentence imposed by the Trial Court. Taking an overall view of the matter, this Court feels inclined to accept the

submission of the learned counsel for the Appellant as to the modification of the sentence as imposed by the Trial Court i.e. by reducing the rigorous imprisonment for a period of one year to the period already undergone as that in the facts and circumstances would meet the ends of justice.

7. In the result, the judgment of conviction recorded against the Appellant for commission of offence punishable under section 498-A IPC being maintained; he is sentenced to the period already undergone.

8. The CRA thus stands allowed in part to the extent as indicated above with the modification of the sentence as aforesaid. The bail bonds executed by the accused shall stand discharged.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.


(D. Dash)
Judge