

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr. Rev. No. 110 of 2001

Date of decision:30.6.2008

Ram Singh

Appellant.

Versus

State of H.P.

Respondent.

Coram

The Hon'ble Mr. Justice V.K. Ahuja, J.

Whether approved for reporting¹? No.

For the petitioner: Mr. Vivek Thakur, Advocate.

For the respondent: Mr. J.S.Guleria, Law Officer.

V.K.Ahuja, J (Oral).

This Revision Petition has been filed by the petitioner against the judgment passed by learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr dated 18.8.2001 vide which the sentence imposed by the Court of learned Sub Divisional Judicial Magistrate, Ani dated 30.9.200 as against the petitioner under Section 498-A IPC, was affirmed. The learned Sub Divisional Judicial Magistrate vide his judgment dated 30.9.2000 had held the petitioner guilty under Section 498 IPC and he was sentenced to simple imprisonment for two years and a fine of Rs.1,000/- and in default of payment of fine to undergo further simple imprisonment for a period of two months. The said conviction and sentence imposed by the Sub Divisional Judicial Magistrate was affirmed in appeal by the Sessions Judge on appeal.

Briefly stated, the facts of the case are that on 14.8.1996, a written complaint was filed before the police by Mashu Ram PW-1 that he had married his daughter Meera Devi (now deceased) with the petitioner about three years back at Rampur Bushahr. No child was born out of this wedlock. He further stated that for the last about one month, his daughter was living with him and when he asked her to go to her matrimonial home, she stated that the accused gives her beatings and her father-in-law and mother-in-law subject her to cruelty and says that she is having no child and are also harassing her on account of dowry. She was not willing to go to her matrimonial home.

It was on 7.8.1996, that the petitioner along with his father and one Piare Lal, came to their house and asked him to send Meera Devi to their house. He asked them not to give beatings to his daughter and Piare Lal assured him that his daughter would be kept well and on his assurance, the girl was sent on the next day along with those persons. It was further alleged when they reached near a place Barley Kural the petitioner, his father and Piare Lal had taken liquor and they started giving beatings to his daughter, which information was given to him by one Mast Ram. The complainant alleged that on 11.8.1996, he went to the house of the petitioner to bring back his daughter when the petitioner threatened to give him beatings and there Mani Ram and Dhian Singh took the responsibility that Meera Devi would not be subjected to cruelty and he came back. On 14.8.1996, he learnt about the death of his daughter from Hira Lal and Chhotu Ram and he lodged a report thereafter. He further alleged that his daughter was perfectly well and she was not suffering from any ailment and it was alleged that she had died suddenly.

On this report, a case was registered by the police and after investigation, challan was filed before the trial Court who tried the

petitioner under Section 498 IPC leading to his conviction and sentence as detailed above, which conviction was affirmed in appeal.

I have heard the learned counsel for the parties and have gone through the record.

On a perusal of the record of the case, the important thing which emerges is that the Medical Officer PW-12 Dr. Varinder Kumar had found that there was no external or internal injury on the person of the deceased. No poison was detected in the report of the Forensic Laboratory. He could not give the exact cause of death of the deceased as stated by him and it is clear that the report of the forensic expert was not helpful to him. However, in his cross-examination, he stated that it can be a natural death and the deceased must be suffering from any abdominal disease. Thus, it is clear that there is nothing to establish the deceased died unnatural death and no charge of abatement of suicide was framed against the petitioner who was only tried for the offence under Section 498 IPC.

Coming to the charge in question. A perusal of the charge shows that the petitioner was charged for subjecting the deceased to cruelty during the period from 8.8.1996 to 14.8.1996 at the Village Mashog, which is the place of residence of the petitioner and his family. There is no charge that prior to this period also, the petitioner had been treating his wife to cruelty and therefore, the general allegation alleged in the statement of the complainant in regard to cruelty on account of not giving birth to any child or demand of dowry are not relevant since the prosecution was to required to prove cruelty during the period from 8.8.1996 to 14.8.1996. In regard to this period there are no allegations in the statement of the father of the deceased or any other person that that after she was taken back to her in laws house on 8.8.1996, she

was maltreated there at any time and therefore, is no evidence that after 8.8.1996, she was subjected to cruelty.

The next witness to the occurrence is PW-2 Mast Ram who allegedly informed the father of deceased on the next day that he had witnessed the deceased giving beatings to his daughter. He has specifically stated that Ram Singh and Meera Devi were grappling with one another and Piare Lal and his father were also present there. In his cross-examination, he has stated that no beatings were given in his presence and he had seen the grappling only. His statement only shows that the petitioner and his wife were grappling with one another.

Coming to the testimony of PW-1 Mashu Ram, the father of the deceased, he has stated that he was informed by Mast Ram that the deceased had been given beatings by the petitioner. He stated that he went to the house of the petitioner on the next day and took his daughter to one Sham Lal for treatment and thereafter left his daughter to her residence and came back. He stated that he had no talks with the petitioner. It looks surprising that he had gone there on coming to know that his daughter was given beatings still he kept mum and left his daughter there and did not talk to the petitioner or made any efforts to take his daughter back to his home.

Coming to the testimony of third material witness PW-5 Piare Lal. He had accompanied the petitioner and his father on 7.8.1996 to the house of PW-1 Mashu Ram to bring back the deceased. He has stated that Mashu Ram demanded a sum of Rs.5000/- as khetari which was the money to be paid to the girl or her parents since their marriage was performed against their consent. Thereafter, this amount of Rs.5000/- was paid to the deceased. It is also surprising that PW-1 started accompanying the girl and PW-5 Piare Lal, and on the way dispute took place when

the girl refused to go back. This itself would show that the girl was not willing to go back to her matrimonial home. It was alleged that the petitioner forcibly dragged her and they followed him. It is surprising that PW-5 started accompanying the girl and PW-5 Piare Lal though the petitioner and his father were not present at that time. There is nothing in the statement of this witness to show that any beatings were given by the petitioner and in cross-examination, he has clearly stated that no beatings were given in his presence.

PW-4 brother of the deceased, has also examined and it is surprising that he is not aware that any beatings were given to his sister at her in-laws house and there is nothing in his statement to suggest that his sister was subjected to cruelty there. He only stated that three persons had come to his house to take his sister to her in-laws house.

From the above discussion it is clear only charge was framed in regard to the beatings given to the deceased in between 8.8.1996 to 14.8.1996 but the evidence has been led only for the incident of 8.8.1996 only. The said evidence also does not establish that any beatings were given by the petitioner to the deceased or that he had subjected her to cruelty. The mere fact that the deceased was not willing to go to her in laws house and she was insisting upon the petitioner to accompany him on the next day does not lead to the inference that the petitioner was subjected to cruelty within the meaning of Section 498 IPC. Thus, the above evidence cannot be said to be sufficient to hold the petitioner guilty within the meaning of Section 498 IPC and the conviction and sentence passed by both the Courts below cannot be held to be sustainable in the eyes of law since the evidence was not such upon which the conviction could have been passed.

In view of above discussion, the findings recorded by both the Courts below holding the petitioner guilty of the charge under Section 498-A and conviction and sentence imposed upon him are liable to be set aside which are accordingly set aside. Fine, if realized, shall be refunded to the petitioner. The revision petition stands disposed of accordingly.

30th June, 2008
(sds)

(V.K.Ahuja),J.