

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL
Criminal Jail Appeal No.12 of 2012

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|---------------------------------|--|-----------------|
| Vikaram Singh alias Bache Singh | | |
| S/o Kishan Singh | |Appellant |
| Versus | | |
| State of Uttarakhand | | Respondent |

Mr. Deep Chandra Joshi, Amicus Curiae for the appellant.
Mr. Vipul Painuly, A.G.A. for the State.

Hon'ble Alok Singh, J.

Present appeal is directed against the judgment and order dated 29.11.2011, passed by learned Sessions Judge, Almora, in Session Trial No. 13 of 2011, whereby appellant was held guilty for the offences punishable under Sections 307 and 498-A I.P.C. and was sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 50,000/- and in default of making payment of fine to undergo additional R.I. for a period of one year under Section 307 I.P.C.; to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/- and in default of making payment of fine to undergo additional R.I. for a period of one month under Section 498-A I.P.C with the stipulation that out of total amount of fine of Rs.50,000/-, Rs. 40,000/- shall be paid to the victim as compensation.

Brief facts of the present case, inter alia, are that PW1 Jagat Singh lodged an F.I.R. against the appellant with Police Station Revenue areas Bhatronjkan, District Almora, inter alia, stating therein that his sister, PW3 Nirmala Devi (injured) got married with the

appellant about 25-30 years ago; PW3 Nirmala Devi was having four children out of her wedlock with the appellant; elder daughter had already been married; appellant got married second time with Prabha @ Guddi about 8-9 years before; PW3 Nirmala Devi opposed second marriage with the appellant; however, thereafter, she started living in a separate house for the sake of children and started doing labour work; appellant did not share any financial burden in the marriage of his elder daughter; elder daughter, of the appellant and PW3 Nirmala Devi, was married by the informant PW1 Jagat Singh; after re-marrying with Prabha @ Guddi, appellant started beating PW3 Nirmala Devi and tried to move her out; however, PW3 Nirmala Devi kept on tolerating harassment for the sake of children; on 25.05.2010, informant PW1 Jagat Singh was on duty at Haridwar; PW1 Jagat Singh received call in the evening at about 5:00 P.M. from his niece Janaki; Janaki informed PW1 Jagat Singh that appellant was throwing all the belongings of PW3 Nirmala Devi outside the house and assaulted PW3 Nirmala Devi with Chapar (instrument to cut meat); PW3 Nirmala Devi was laying in injured condition; PW1 Jagat Singh could reach the house of PW3 Nirmala Devi on the next date, i.e. on 26.05.2010 and took PW3 Nirmala Devi to Deghat hospital wherefrom she was referred to Bhikiyasen and she was treated in the hospital.

Having investigated the matter, police submitted chargesheet against the appellant for the offences punishable under Sections 323, 494, 498-A, 307 and 427 I.P.C. However, after the committal of the case to

the Court of Session, learned Sessions Judge was pleased to frame the charges against the appellant for the offences punishable under Sections 307 I.P.C. and 498-A I.P.C. only. Appellant denied the charges and claimed trial.

To prove the prosecution story, informant PW1 Jagat Singh, PW2 Master Pappu (son of Nirmala Devi and appellant), PW3 injured Smt. Nirmala Devi, PW4 Dr. Arindra Malik and PW5 S.I. Ajendra Prasad were examined and statements of the appellant were also recorded under Section 313 Cr.P.C.

Learned Sessions Judge, having perused the entire material made available on the record, was pleased to hold the appellant guilty for the offences punishable under Sections 498-A and 307 I.P.C. and appellant was sentenced as mentioned hereinbefore.

Feeling aggrieved by the said judgment and order, appellant preferred present appeal.

I have heard Mr. Deep Chandra Joshi, learned Amicus Curiae, appearing for the appellant as well as Mr. Vipul Painuly, learned A.G.A. for the State and have carefully perused the record.

Undisputedly, PW1 Jagat Singh informant is not an eyewitness. Whatever, he has stated in the F.I.R., he has stated as per the story narrated to him by his niece Janaki as well as his sister injured PW3 Nirmala Devi. Therefore, about the incident, in question, no reliance can be placed on the statement of PW1 Jagat Singh. However, statement of PW1 Jagat Singh to the effect that appellant entered into the second marriage during the life time of PW3 Nirmala Devi without their being

divorce can be relied upon. The part of the statement of PW1 Jagat Singh to the effect that after entering into the second marriage with Prabha @ Guddi, appellant started harassing PW3 Nirmala Devi, his first wife, can also be relied upon considering the important fact that PW1 Jagat Singh is real brother of PW3 Nirmala Devi.

PW2 Master Pappu (minor son of the appellant and PW3 Nirmala Devi) stated on oath before the Court that on the date of the incident his father (appellant) came on the spot and started beating his mother PW3 Nirmala Devi and started throwing all the household items out of the house. There is no reason to disbelieve the testimony of PW2 Master Pappu.

PW3 injured Nirmala Devi stated on oath that after re-marrying with Prabha @ Guddi, appellant started torturing her; appellant used to beat her; appellant used to pressurize her to leave the house; however, keeping in mind welfare of the children, PW3 Nirmala Devi kept on tolerating all the misbehaviour, torture and cruelty at the hands of the appellant. PW3 injured Nirmala Devi further stated that on 25.05.2010, at about 2-3 p.m., she was present in the courtyard along with his son, meanwhile, appellant came there and started assaulting her with Chapar and started throwing all the household items out from the house. She further stated that next day, PW1 Jagat Singh came and he took her to the hospital at Deghat wherefrom she was referred to Bhikiyasen Government Hospital.

Medico legal report of the injured PW3 Nirmala Devi dated 26.05.2010 prepared by PW4 Dr. Arindra

Malik would reveal that injured sustained following injuries :-

- “1. Lacerated wound of 6 cm. x 3 cm. x bone deep over left skull of forehead.
2. Lacerated wound of 7 cm x 2 cm x bone deep over left skull of forehead. Hard scab /blood clot present.
3. Lacerated wound of 14 cm x 2 cm x bone deep over vertical part of head. Hard scab / clot particular present.
4. Lacerated wound 2 cm x 2 cm x bone deep over lower part of right arm.
5. Lacerated wound of 7 cm x 2 cm x bone deep over right forehead.
6. Lacerated wound of 8 cm. x 2 cm x bone deep over left forearm.
7. Four upper teeth were not there and there was injury on the jaw.
8. There was swelling in both the knee and the foot.”

PW4 Dr. Arindra Malik stated that injuries were possible by blunt object. PW4 Dr. Arindra Malik further stated that although injury No. 6 was serious but was not sufficient to cause death in ordinary course.

There is no whisper in the statement of PW2 Master Pappu and PW3 Nirmala Devi that appellant attacked PW3 Nirmala Devi with intention to kill her. In my considered opinion in the absence of injury which could have caused death and in the absence of intention to kill, offence punishable under Section 307 I.P.C. cannot be said to have been made out.

Section 498-A I.P.C. reads as under :-

“498-A. Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. - For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

To constitute an offence punishable under Section 498-A I.P.C. as per Explanation (a), any willful conduct of the husband or the relative of the husband which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical would amount to cruelty and as per Explanation (b) harassment and cruel treatment to the woman with a view to coercing her or any person related to her to meet any unlawful demand of any property or valuable security would also constitute an offence punishable under Section 498-A I.P.C.

From the statement of PW1 Jagat Singh and PW3 Nirmala Devi, it is well established on the record that appellant entered into second marriage during the life time of PW3 Nirmala Devi his first wife without there being divorce, therefore, this willful conduct itself would amount to mental cruelty to the first wife, i.e. PW3 Nirmala Devi. Moreover, as per the statement of PW1 Jagat Singh, PW2 Master Pappu and PW3 Nirmala Devi, after re-marrying, appellant started beating PW3 Nirmala Devi quite frequently and has assaulted PW3 Nirmala Devi on 25.05.2010 would also constitute cruelty which is punishable under Section 498-A I.P.C. Therefore, offence punishable under Section 498-A I.P.C stands proved against the appellant.

In view of the findings recorded hereinbefore, present appeal is allowed in part. Impugned judgment and order passed by the Sessions Judge, Almora is set aside so far as it relates to finding the appellant guilty for the offence punishable under Section 307 I.P.C. and sentencing him under Section 307 I.P.C.

Appellant stands acquitted for the offence punishable under Section 307 I.P.C.

However, order passed by the learned Sessions Judge finding the appellant guilty for the offence punishable under Section 498-A I.P.C. and sentencing him to undergo R.I. for three years and to pay fine of Rs. 1,000/- and in default of payment of fine to undergo additional imprisonment of one month is hereby upheld.

Learned Amicus Curiae, appearing for the appellant, stated that appellant has already served out three years sentence under Section 498-A I.P.C. If appellant has already served out the sentence of three years as awarded by the learned Trial Court under Section 498-A I.P.C. and as upheld by this Court, he shall be released forthwith, if not wanted in any other case.

Let copy of the judgment alongwith L.C.R. be sent back to the lower court for information and compliance immediately.

(Alok Singh, J.)

Dated 31st August, 2013

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