

IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE,
BHUBANESWAR

PRESENT:

*Sri D.R. Sahoo, L.L.M.,
S.D.J.M., Bhubaneswar.*

C.T. Case No. 3763/2013

Trial No- 475/2014

Date of argument: 15.07.2014

Date of Judgment: 19.07.2014

STATE Prosecution

Versus

Sania Mallick, aged about 36 years, S/o. Late Ribi Mallick
A/Po- Jnaaplli, PS. Bhanja Nagar, Dist- Ganjam, At/Pr- Plot No.448,
Sikharchandi, Nagar, P.S. Chandrasekharapur, Bhubaneswar,
Dist- Khurda.

.....Accused.

Offence under Sections 498(A)/ 323/506 of I.P.C

Counsel for the Prosecution: APP, Bhubaneswar.

Counsel for the defence: Sri U. K. Bhagat (SDC)

J U D G M E N T

The accused stands charged for alleged commission of offences punishable U/s 498-(A)/323/506 of I.P.C

2. The case of the prosecution in brief is that

The informant is the wife of the accused Sania Mallick and their marriage took place on 19.12.2000. The allegation of the informant is that her husband is subjecting her to mental and physical harassment by demanding dowry on each date by taking liquor and her husband is also assaulting her and to her daughter. Due to such assaulting the informant has sustained injury on her chest and the accused has also sold out all the house hold articles in her absence. The accused is also

threatening the informant in presence of the public to take the informant's life. In such facts and circumstances, the informant has lodged FIR at Police Station. After due investigation, the I.O. has submitted charge sheet U/s. 498(A)/323/506 of IPC and subsequently charges were framed against the accused to which he plead not guilty and claimed for trial. Hence this trial.

3. The plea of the defence is one of complete denial and false implication.

4. The points for determination in this case are as follows:-

i) *Whether after marriage the accused subjected his wife to cruelty and thereby committed offence punishable U/s. 498-(A) of IPC?*

ii) *Whether the accused voluntarily caused hurt to the informant without any provocation and thereby committed offence punishable U/s. 323 of IPC?*

iv) *Whether the accused criminally intimidated the informant to take away her life with an intention to cause alarm to her and thereby committed an offence punishable U/s. 506 of IPC?*

5. In order to establish the case of the prosecution has examined as many as five witnesses out whom P.W. 1 is Ambika Mallick is the informant, P.W. 2 Silu Mallick is the, daughter of the informant, P.W.3. Mahalaxmi Reddy is one of the neighbourer of the informant , P.W.4 Ramesh Naik is the brother of the informant and P.W. 5 Renubala Tripathy is the Investigation Officer. In defence, the accused has examined himself U/s. 315 of the Cr.P.C. as D.W. 1. Prosecution has exhibitted FIR of the informant as Ext.1 and the signature of the informant as Ext. 1/1. Defence has not exhibitted any document in support of the accused.

6. While considering the evidence on record in connection to the alleged occurrence, it is ascertained that the informant Ambika Mallick has deposed before the Court that she had got married to Sania Mallick on 19.12.2000 and Sania Mallick is taking liquor and assaulting her and

subjecting her to mental and physical harassment. Her husband is assaulting her when she failed to satisfy the demand of money and he has also threatened her to take away her life. The daughter of the informant, Silu Mallick has also supported the version of the informant and deposed before the Court that the accused used to assault her mother by taking liquor and most of the time he is causing disturbances in their family by making quarrel with her mother and the accused used to assault her mother. The neighbour of the informant, P.W.3 has deposed before the Court that both the informant and the accused are wife and husband who are residing in their basti and most of the time Sania Mallick comes to his house with drunken state and assaults his wife by abusing vulgar languages. Although they have told the accused several times not to do that, the accused did not listen for which the informant has lodged F.I.R.. P.W.4, the brother of the informant has also supported the version of the informant and stated before the Court that the accused has subjected the informant to mental and physical harassment. The Investigating Officer has also deposed regarding occurrence and she has submitted charge sheet U/s. . 498(A)/323/506 of IPC against the accused. The Defence has cross-examined the prosecution witnesses vividly but nothing has been elicited from the prosecution witnesses to disbelieve the prosecution case. Most importantly, the accused in his examination U/s. 313 of the Cr.P.C. has admitted that he takes liquor but did not admit the allegation regarding harassment made by him to his wife and he has also deposed before this Court that he has never assaulted his wife in any manner and this case has been foisted against him.

7. The entire facts and circumstances clearly shows that the accused is in habit of taking liquor & this fact has been admitted by the accused in examination U/s. 313 of the Cr.P.C. It is the consistent case of the prosecution that after taking liquor the accused assaults his wife and daughter and both the informant and his daughter have stated such facts before this Court. Generally children do not lie against their father, but in this instant case, the daughter of the informant and the accused i.e. P.W.2 Silu Mallick has categorically stated before this Court that his father assaults her mother after

taking liquor and makes quarrel and causes disturbances in their family. The neighbour, P.W.3 has also stated such facts and the Investigating Officer has submitted charge sheet U/s. . 498(A)/323/506 of IPC against the accused. There is no reason before this Court to disbelieve the prosecution case in the above discussed facts and circumstance. The informant has also deposed that due to such assault, she has also sustained injury on her chest and she is very much afraid on the threaten to her life by her husband. In such facts and circumstance, it is hold that prosecution has established its case U/s. 498(A)/323/506 of IPC against the accused beyond all reasonable doubt. As such the accused is found guilty U/s. 498(A)/323/506 of IPC and he is convicted there under. Taking consideration of the gravity of the offence & its social implication, this Court does not feel it proper to extend any of the beneficial provision of The Probation Of Offenders Act, 1958 or the provision of Sec. 360 of the Cr.P.C. to the convict.

S.D.J.M., Bhubaneswar.

Hearing on Question of sentence

Heard on question of sentence from learned APP and from learned SDC appointed for the convict. Learned APP vehemently argued that the convict has subject her wife to mental and physical harassment and such kind of overt act should be dealt with iron hands and no lenience should be taken while imposing sentence to the convict in order to maintain peace and tranquility in the society with a view to protect the women from the clutches of diswayed husband.

On the other hand, learned SDC for the convict submitted that the convict is a daily labourer and in order to get rid of the mental pressure and unbearable financial stress, he was taking liquor and there was no intention to

harass his wife and children in any manner and for that reason a lenient view may be taken to give scope to bring back the convict to the main stream of life.

Having regard to the submission made by learned APP and learned SDC, this Court, taking consideration of the alleged facts and circumstances of this case, is of the opinion that the convict has crossed all limits by going to the extent of causing injury to his wife by assaulting her mercilessly with influenced by liquor. The facts and circumstances further shows that the convict is a habitual drunkner and by influence of liquor he has ruined his family life to such an extent that his minor daughter has come to the Court and has deposed against him. His wife and daughter are not feeling safe with him and they are feeling embarrassing to live with the convict in their family due to his overt act, drunkardness and unsocial behaviour.

So, in the considered opinion of this Court a lenient approach towards sentencing of the convict will cause miscarriage of justice. Hence the convict is sentenced to undergo Rigorous Imprisonment for two years and to pay fine of Rs.1, 000/- in default to undergo Rigorous Imprisonment for two months for committing offence U/s. 498-A of IPC and to undergo Rigorous Imprisonment for period of six months for committing offence U/s. 323 of IPC and to undergo Rigorous Imprisonment for a period of one year for coming offence U/s. 506 of IPC. All the sentences shall run concurrently, the period of the UTP already undergone by the convict shall be set off.

Typed to my dictation, corrected by me and pronounced the judgment in the open Court today given under my hand and seal this the 19th day of July, 2014.

S.D.J.M., Bhubaneswar.

List of witnesses examined on behalf of the prosecution:

- P.W.1: Ambika Mallick
- P.W.2: Silu Mallick.
- P.W.3: P. Mahalaxmi Reddy.

P.W.4: Ramesh Naik.

P.W.5: Renubala Tripathy.

List of witnesses examined on behalf of the defence:

D.W.1: Sania Mallick.

List of Exts. marked on behalf of the prosecution:

Ext.1: F.I.R.

Ext.2: Signature of the P.W.1 on it.

List of Exts. marked on behalf of the defence:

N IL

S.D.J.M., Bhubaneswar.