

IN THE COURT OF THE SESSIONS JUDGE :::::::::: BONGAIGAON

Criminal Appeal No. 07(1)/2014.

Md. Hatem AliAppellant.

Vs.

Musstt. Sakina Khatun ..Respondent.

***PRESENT : Smt. M. Nandi,
Sessions Judge,
Bongaigaon.***

***ADVOCATES APPEARED : Sri S.K. Sarkar, Advocate
for the appellant.***

*Sri M. Rahman, Advocate
for the State.*

Date of Argument : 05.09.2014.

Date of Judgment : 11.09.2014.

JUDGEMENT AND ORDER

1. This appeal is preferred under Section 29 of the Protection of Women from Domestic Violence Act, 2005 against the Judgment and Order dtd. 02.01.2014 in C.R. Case No. 182/2012 passed by the learned SDJM(M), Bijni.

2. The brief facts of the case is that aggrieved/complainant Musstt. Sakina Khatun is the wife of the respondent/appellant No. 1 Hatem Ali with whom she got married and lived together as husband and wife in the shared household of the respondents. The respondent No. 4 is the first wife of respondent No. 1. Respondent Nos. 2, 3 & 5 are the brothers and sisters of the respondent No. 1. The complainant alleged that soon after her marriage with the respondent No. 1 Hatem Ali, her husband and other

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respondents started to torture her both physically as well as mentally on demand of dowry. On 05.12.2012 they demanded Rs. 25,000/- and she has been tortured by the respondents mercilessly and drove out her from the shared household of the respondents. After that she returned back to the house of her father and her poor father went to the house of the respondent to resolve the matter but the respondents refused to accept her for not fulfilling their demand. The complainant also alleged economic violence like not providing adequate food, clothes, medicines, etc. It is further alleged that the respondents used to insult her for not bringing adequate dowry and also levelled accusation on her character. Under such circumstances, the aggrieved/complainant has filed the instant petition U/S 12 of Protection of Women from Domestic Violence Act, 2005 seeking maintenance order U/S 20, residence order U/S 19, protection order U/S 18, monetary relief such as grant of damage and compensation U/S 22 of the act apart from other reliefs as the Court may deem fit and proper. After completion of the trial, learned SDJM(M), Bijni allowed the monetary relief, maintenance allowance and residence order in favour of the aggrieved/complainant.

3. Being highly aggrieved and dissatisfied with the said Judgment and Order dated 02.01.2014 in C.R. 182/12 passed by learned SDJM(M), Bijni, respondent/appellant No. 1 has preferred this appeal on the following grounds:-

- a) For that the learned Court of SDJM, Bijni has committed an error in passing the order and judgment and order against the appellant.
- b) For that the learned Court of SDJM did not apply his judicious mind while passing the order and judgment and order and came to an erroneous finding.
- c) For that the learned trial Court did not appreciate the evidence on record in its proper perspective and formed an opinion arbitrarily and illegally.
- d) For that the learned trial Court did not appreciate the facts

and circumstances of the case and passed the impugned order and judgment in perfunctory manner.

- e) For that the impugned order and judgment passed by the learned trial Court is one sided, un-judicious, illegal and is based on erroneous findings and is liable to be set aside.

4. I have heard the argument advanced by learned counsel of both sides. I have also perused the judgment and order passed by learned SDJM(M), Bijni and I have also perused the evidence of the witnesses recorded by the learned trial Court.

5. It is an admitted fact that the aggrieved/respondent Sakina Khatun is the second wife of the appellant and they have resided in a shared household alongwith other respondents and Respondent No. 4 in C.R. Case No. 182/2012 is the first wife of the appellant. It is alleged in the complaint petition that the respondent/victim Sakina Khatun was tortured by the appellant and his family members soon after her marriage on demand of dowry articles. They demanded Rs. 25,000/- and drove her out from his house. Subsequently though she visited the house of appellant to lead conjugal life with him, but they refused to take her back to their house without fulfilling the demand of dowry. Though the fact of demand of dowry and physical torture was denied by the appellant but to prove the fact in question, no such witnesses were produced. On the other hand, the father of the complainant, PW 2 and PW 3 Joynuddin, who is the adjacent neighbour of father of Sakina, proved the fact of demand of dowry and physical torture. It is also an admitted fact that after driving her out Sakina took shelter in the house of her father. The appellant admitted the fact while he was cross-examined by the learned counsel that the complainant is his legally married wife but for last one year she was staying in the house of her parents. He did not provide any maintenance to his wife. He also did not take any steps to take back his wife to his house. Though the appellant stated that he sent some persons to bring back his wife to his house but she refused to come back, but the persons who had been sent by him are not examined

in this case to prove the fact in question. Other witnesses examined by the appellant specifically stated that they did not know anything what had happened between the husband and wife. DW 3 also admitted that there was village mel regarding the disputes between the appellant and the respondent. He also stated that the father of the complainant requested him to settle the matter between the appellant and the respondent.

6. From the evidence of the appellant, it reveals that there was dispute between the husband and wife and the complainant was compelled to leave the house of her husband and took shelter in the house of her parents. Regarding torture and demand of money, the complainant also filed another case against her husband in Manikpur P.S. for which the appellant was arrested and remained in jail hazot.

7. Considering the facts and circumstances of the case, I am of the opinion that learned SDJM(M), Bijni has rightly passed the Judgment and Order by holding that inflicting physical torture, compelling a woman to take shelter in parental home leaving the shared household, deprivation of woman from maintenance clearly constitutes domestic violence. The monetary relief and the maintenance allowance and the other directions passed U/S 18 restraining the respondent/appellant from committing domestic violence of any sort in near future and residence order U/S 19 are as per provision of law and justifiable. As such, the Judgment and Order needs no interference.

O R D E R

8. In the result, the appeal is dismissed. The Judgment and Order dated 02.01.2014 passed by learned SDJM(M), Bijni is upheld. There is no order as to cost.

9. Send back the case record with a copy of this Judgment

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and Order to the learned Court below.

Given under hand and the seal of the court on this **11th**
day of **September, 2014**.

Dictated and corrected by me,

*(M. Nandi)
Sessions Judge,
Bongaigaon.*

*(M. Nandi)
Sessions Judge,
Bongaigaon.*

Criminal Appeal 07(1)/2014

11.09.2014

Judgment is delivered.

In the result, the appeal is dismissed.
The Judgment and Order dated 02.01.2014 passed by learned SDJM(M), Bijni is upheld. There is no order as to cost.

Send back the case record with a copy of this Judgment and Order to the learned Court below.

Judgment is prepared in separate sheets and the same is kept with the case record.

As dictated,