

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Revision Case No. 427 of 2007

Judgment:

This Criminal Revision Case is directed against the judgment, dated 23.03.2007, passed in Criminal Appeal No. 15 of 2007 by the learned III Additional Metropolitan Sessions Judge, Hyderabad, whereby and whereunder the learned Judge has confirmed the conviction and sentence imposed against the revision petitioner/accused for the offences punishable under Section 498-A IPC and Sections 4 and 6 of the Dowry Prohibition Act, by the learned XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad, in CC No.428 of 2001, dated 20.12.2006.

The revision petitioner is the sole accused in CC No.428 of 2001 on the file of XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad. The *de facto* complainant-PW.1 is his wife. The case of the prosecution is that the marriage between the revision petitioner/accused and PW.1 was performed on 23.05.1987 and, during their wedlock, PW.2 namely J. Bhaskar was born to them on 06.05.1988. It is alleged that ever since the date of marriage the revision petitioner/accused has been harassing PW.1 demanding additional dowry and having developed illicit intimacy with another woman namely Triveni he used to harass PW.1 and he has not taken care of both PW.1 and his son, due to which PW.1 along with her son-PW.2 had to leave the matrimonial home and came over to her parents house and living with them. It is also the case of the prosecution that several panchayats and mediations were conducted during the period and whenever a panchayat was being conducted the revision petitioner/accused undertook to take care of PW.1 and her son properly, but continued the same harassment and, in that process, on one occasion, even the undertaking given by the revision

petitioner/accused was reduced into writing. It is alleged that when the revision petitioner/accused married another woman namely Triveni and when the harassment became unbearable, PW.1 filed the complaint against the revision petitioner/accused on 12.06.2001.

During the course of investigation, the investigating officer examined the prosecution witnesses and after completion of investigation he filed charge sheet. Cognizance was taken and charges for the offences punishable under Section 498-A IPC and Sections 4 and 6 of the Dowry Prohibition Act were framed against the revision petitioner/accused and he denied the same.

During the course of trial, on behalf of the prosecution, PWs.1 to 5, who are the victim-wife, her son, mother and younger sister and the investigating officer respectively, were examined and Exs.P1 to P5 were marked. On behalf of the accused none were examined and no documents were marked. The accused denied the evidence on record.

The learned Magistrate, on consideration of the entire material on record, found the revision petitioner/accused guilty of the offences under Section 498-A IPC and Sections 4 and 6 of the Dowry Prohibition Act and, accordingly, convicted and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three months for the offence under Section 498-A IPC and further he was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three months for the offence under Section 4 of the Dowry Prohibition Act. The revision petitioner/accused was also sentenced to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three months for the offence under Section 6 of the Dowry Prohibition Act.

Aggrieved by the said conviction and sentence, the revision petitioner/accused filed Criminal Appeal No.15 of 2007 and the

learned Sessions Judge, by impugned judgment, dismissed the said appeal and confirmed the conviction and sentences imposed by the trial Court. Hence, the revision petitioner/accused has filed the present revision case.

Learned counsel for the revision petitioner/accused submitted that, absolutely, there is no evidence of whatsoever nature against the revision petitioner/accused so as to held that the prosecution has proved its case against him beyond all reasonable doubt and, on the other hand, the evidence on record clearly shows that immediately after the marriage the victim-PW.1 went to her parents house and after a gap of more than 11 years she lodged the complaint. He further submitted that absolutely no evidence has been produced on record to show that either the accused had got any illicit intimacy with any other woman or he married another woman as alleged. He further submitted that both the Courts below have erred in relying on the interested and discrepant testimony of PWs.1 to 4 in holding that the accused has committed the alleged offences. He further submitted that even according to the victim-PW.1, several panchayats and mediations were held during a decade, preceding the lodging of complaint, but no single witness was examined to speak about the conducting of any panchayat or mediation nor any document is produced to substantiate the said allegation, therefore, the accused is entitled to acquittal.

On the other hand, learned Additional Public Prosecutor representing the State submitted that the case of the prosecution has been proved by placing the evidence of PWs.1 to 5 and, absolutely, there are no grounds to disbelieve the sworn statements of PW.1 and her son-PW.2 and, therefore, both the Courts below have rightly accepted their testimony and found the accused guilty and the judgments passed by both the Courts below do not suffer from any illegality or irregularity warranting interference of this Court.

Admittedly, the marriage between revision petitioner/accused and the victim-PW.1 was performed as long back as on 23.05.1987

and they were blessed with a son (PW.2) on 06.05.1988. The case of the prosecution is that only for three years they both lived happily and, thereafter, PW.1, unable to bear the harassment in the hands of the revision petitioner/accused, had to come down to her parents house and in spite of several mediations and panchayats the revision petitioner/accused has refused to look after her well and, as a matter of fact, it is in her evidence that the revision petitioner/accused used to give undertakings before the panchayat elders to look after her well, but having taken her to his house, he used to treat her like a maid servant and, hence, she had no option except to file the complaint. One of the grounds on which the revision petitioner/accused subjected PW.1 to harassment is that his alleged extra marital intimacy with another lady.

At the out set, it is stated that the complaint-Ex.P4 was filed on 12.06.2001 and it is according to the prosecution witnesses that ever since the year 1990 the victim-PW.1 had been staying with her father. This is spoken to not only by PW.1 but also by her own son PW.2, who was aged about 18 years at the time when he was giving evidence in the year 2006. The reasons for lodging the complaint more than 10 years after the couple started living separately is said to be that several panchayats and mediations have been taken place, wherein the revision petitioner/accused used to assure proper care of PWs.1 and 2. As noticed supra, absolutely, no oral or documentary evidence has been produced to show that at any point of time any kind of panchayat, mediation or intervention of elders had been taken place and in the said panchayats or mediations the revision petitioner/accused has assured the elders to take proper care of PWs.1 and 2, but having done so and having taken her to the home, he again started treating PW.1 as maid servant.

It is true that in the case of this nature, the delay in lodging the complaint by itself cannot be taken as a detrimental factor for disbelieving the case of the victim, but however, reasonable and

plausible grounds should be shown to accept as to why the complaint was not lodged at the earliest point of time. When the harassment to a wife took place more than a decade back and ever since the year 1990 the wife had been living with her father along with her son, approaching the police with a complaint in the year 2001 cannot be said to be a reasonable ground for the wife to take recourse to the legal remedy available to her.

That apart, the evidence of PWs.1 to 4 is not only interested but is also not convincing. PW.1, the victim-wife deposed that she had lived with the revision petitioner/accused for three years and when he started demanding additional dowry of Rs.50,000/- and unable to bear his harassment she came over to her father's house and it is in her evidence that the revision petitioner/accused used to treat her like a maid servant. She also speaks about the conducting of several panchayats and mediations. There is no evidence on record to show that any such panchayat or mediation was held. She also deposed that the revision petitioner/accused has given an undertaking, but the original of the said undertaking, which is said to have handed over to the police, has not been produced before the Court.

It is further in the evidence of PW.1 that the revision petitioner/accused has married one Triveni, but, absolutely, no evidence is produced. The only document produced is Ex.P1, which is said to be the photograph of the revision petitioner/accused and the alleged woman namely Triveni. The specific objection of the revision petitioner/accused about Ex.P1 is that the said photograph is not an authenticated one and no negative has been filed and it is apparent from the face of the photo that the same has been taken by joining two separate photos. Even Ex.P1-photograph is taken to be true, that by itself do not establish the fact that the revision petitioner/accused and the lady appearing in the photo were married or living together as husband and wife. Except Ex.P1-photo, there is no evidence on record to show that the revision petitioner/accused had been living

with any other woman or married another lady.

With regard to harassment, the case of PW.1 is that the revision petitioner/accused had been demanding Rs.50,000/- as additional dowry. The son of PW.1, who is examined as PW.2 is sufficiently grown up and, according to him, when he was aged about 5 years, himself and his mother PW.1 were driven out by the revision petitioner/accused by demanding additional dowry of Rs.50,000/-. It is in the evidence of PW.2 that his father used to harass his mother to bring an amount of Rs.50,000/- and he used to beat her and that his father was also having illicit intimacy with another lady. When PW.2 left the company of his father, he was aged about 5 years. It is difficult for him to say as to what was the nature of treatment in between his mother and father prior to their parting ways, more particularly, in view of the fact that, by the time when he was only aged about 5 years.

PW.3 is the mother and PW.4 is the younger sister of PW.1. Their evidence is also too general and vague. Except making omnibus allegations that the revision petitioner/accused used to demand Rs.50,000/- and has driven PW.1 out of the house, absolutely, no specific instances are given by them for believing that it is the revision petitioner/accused who used to harass PW.1 for non-fulfillment of the demand of dowry which is being quantified at Rs.50,000/-.

Except the above interested testimony of PWs.1 to 4, no independent evidence has been produced by the prosecution. In the case of this nature, though the evidence of independent witnesses cannot be expected in each and every case, but in a case where specific contention of the victim-wife or her people is that after separation several panchayats and mediations were held, it is incumbent on their part to place evidence on record to show that there was any such mediations or panchayats were held, during the course of which, the husband has admitted his alleged acts of omission or commission or has given an undertaking that he will treat or look after

his wife properly. When that is the oral evidence, the non-examination of any of the independent witnesses, affects the credibility of the case of the prosecution. Therefore, the evidence on record cannot be said to satisfy the test of it being authenticated, reliable and trustworthy.

In the circumstances, the benefit of doubt should invariably go to the revision petitioner/accused. Both the Courts below have not properly appreciated the evidence on record and have erroneously found the revision petitioner/accused guilty of the alleged offences. Hence, the conviction and sentences passed by both the Courts below against the revision petitioner/accused cannot be sustained and the revision petitioner/accused is entitled for acquittal.

In the result, the Criminal Revision Case is allowed setting aside the impugned judgment. Consequently, the conviction and sentences passed against the revision petitioner/accused stands set aside. The fine amount, if any paid by the revision petitioner/accused, shall be returned to him.

As a sequel thereto, the miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

M.S.K. JAISWAL, J.

Date: 23.06.2015

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