

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1561 of 2006

JUDGMENT:

1. This revision is filed by the petitioner-accused against the Judgment dated 8.9.2006 passed by the IV Additional Sessions Judge (II Fast Track Court), Nalgonda in Crl.A.No.155 of 2004.

2. The case of the prosecution in brief is as follows:

The marriage of P.W.1 with the accused was performed about 11 years prior to the complaint. The accused is working as Armed Reserve Police Constable. At the time of marriage, the parents of P.W.1 gave Rs.20,000/- cash, three tulas of gold, silver ornaments towards dowry and other household articles. After marriage, P.W.1 and the accused led marital life happily. They were blessed with four daughters. As P.W.1 gave birth to female children, the accused started abusing P.W.1 and started demanding more dowry and used to beat her in a drunken condition demanding additional dowry. P.Ws.2 and 3, who are parents of P.W.1, expressed their inability to pay the amount towards dowry to the accused and they approached P.W.4 and L.W.4 for settlement of disputes. They pacified the matter and advised the accused to look after P.W.1 properly. In spite of that, the accused continued harassing P.W.1 mentally and physically for more dowry and ultimately, necked out P.W.1 from his house along with their four daughters. P.W.1 along with her daughters is residing with her parents. On the complaint lodged by P.W.1, a case was registered and investigated into. After completion of the investigation, charge sheet was filed for the offence under Section 498-A IPC.

3. The learned Special Judicial First Class Magistrate (for Prohibition and Excise Offences), Nalgonda, took the case on file as C.C.No.221 of 2002.

4. During the course of trial, P.Ws. 1 to 6 were examined and Exs.P1 and P.W.2 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of both oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 498-A IPC, convicted and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.100/- in default to suffer simple imprisonment for one month. Aggrieved by the same, the petitioner-accused filed appeal in Crl.A.No.155 of 2004 before the IV Additional Sessions Judge (II FTC), Nalgonda. The said appeal was dismissed. Hence, the petitioner filed this revision.

6. Learned Counsel for the petitioner submitted that the evidence of prosecution witnesses before the trial Court is an improvement and their evidence is very vague and that the Courts below failed to appreciate the evidence in a proper perspective.

7. The Additional Public Prosecutor submitted that there are no grounds to interfere with the judgment under revision.

8. In a case of this nature, the evidence of wife plays a very important role. The wife of the petitioner was examined as P.W.1. She deposed in her evidence that after birth of first two female children, the accused started demanding additional dowry as she had given birth to female children and that the accused beat her for bringing additional dowry. She informed about the same to her parents and her parents informed the same to the elders viz., Mahamood and one Ghouse Ali and that the said elders advised the accused to look after her properly. Her parents sent her to the

house of the accused. But the accused again started harassing her for additional dowry, upon which she informed to her parents and her parents gave Rs.10,000/-. Again, she was blessed with two more female children. About three years prior to the complaint, the accused again started harassing her and she came to know that the accused married another woman at Miryalguda and he is having a female child through the second wife. She further deposed that the accused stopped providing the provisions to maintain her children, upon which, she went to Additional Superintendent of Police and informed about the attitude of the accused and that the said Superintendent of Police called the accused and the accused gave a bond that he will give Rs.3,000/- per month to her and that the accused gave maintenance for two months and stopped paying. As such, she went to the police station and lodged a complaint.

9. In the above entire evidence, P.W.1 did not specifically state any date, month or year on which she was subjected to cruelty. P.W.1 stated that the accused stopped paying amount to the provisions to maintain her children and then, she gave the present complaint. The entire reading of the evidence does not disclose any of the ingredients of Section 498-A IPC.

Section 498-A runs as follows:

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 purposes of this Section, 'cruelty' means--

(a) any willful 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."

10. Necessarily, the cruelty should be of such nature, which would drive the woman to commit suicide or cause bodily injury. In this case, even the evidence of P.W.1 goes to show that the accused neglected to maintain P.W.1 and her children. From the material on record and the evidence of P.W.1, it is evident that P.W.1 and the petitioner have been living separately and P.W.1 filed a maintenance case and the petitioner paid the maintenance of Rs.3,000/- per month towards maintenance and as he committed default in payment of maintenance amount, she lodged the complaint. The approach of P.W.1 after default committed by the petitioner with the allegations of this nature is not sustainable. Both the Courts below failed to consider the above aspects.

11. In the above circumstances, this Court is of the view that the conviction and sentence imposed by the Courts below against the petitioner-accused for the offence under Section 498-A are not sustainable and hence, they are set aside.

12. In the result, the conviction and sentence imposed by the Courts below against the petitioner-accused for the offence under Sections 498-A IPC are set aside. Consequently, the petitioner-accused is acquitted for the said charge. The fine amount paid, if any, shall be refunded to the petitioner.

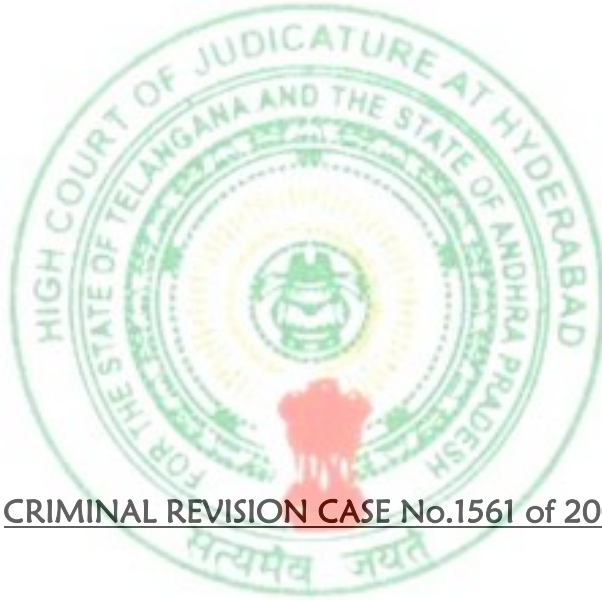
13. Accordingly, the Criminal Revision Case is allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:26th September, 2016

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26.9.2016

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