

HONOURABLE Dr. JUSTICE B.SI VA SANKARA RAO

CRIMINAL REVISION CASE No.247 of 2013

ORDER :

This Criminal Petition is filed by the petitioner/accused No.1 under Sections 397 & 401 of Criminal Procedure Code (for short 'Cr.P.C') against the judgment passed on 31.01.2013 in CrI.A. No.89 of 2011 on the file of III Additional District & Sessions Judge, Kakinada, East Godavari District, confirming the conviction order passed on 17.02.2011 in C.C. No.408 of 2004 by the learned Special Judicial First Class Magistrate for Prohibition & Excise, Kakinada, East Godavari District.

2) The revision petitioner is accused No.1 in C.C. No.408 of 2004 supra, registered for the offences punishable under Section 498-A IPC on the report of his wife—PW.1 by name P.V.V.S Vani against seven accused of whom, his mother—Pullela Subhadra (accused No2.) died pending the case. On 15.07.2010, the said case was abated against accused No.2, therefrom the trial Court acquitted other accused and convicted the petitioner/A.1 from the evidence of prosecution witnesses—PWs.1 to 11 and from Exs.P1 to P8 and he did not adduce any evidence. However, they got elicited Ex.D1 which is contradiction in the statement of PW.1 under Section 161 Cr.P.C.

3) The findings of the trial Court in the conviction judgment of revision petitioner—A1 dated 17.02.2011 in C.C. No.408 of 2004 were that the marriage between the couple was admittedly performed on 19.06.1991 at Kakinada under Hindu Law and according to her he was harassing her by suspecting fidelity attributing illicit intimacy with others and also his mother instigated him to abuse and beat PW.1 and as he was addicted to vices, forcibly took away gold ornaments and spent away the money for his vices by pledging them. A1 abused her in filthy language, beat her and harassed

her demanding additional dowry by suspecting her fidelity. She informed the same to her parents by way of letters on several occasions. In spite of several requests made by the parents of PW.1, all the accused did not change their attitude when PW.1 expressed her inability to get the additional dowry from her parents, A1 beat her severely while residing at Rajahmundry and on some occasions the children of PW.1 i.e., PWs.4 and 8 rescued her from the hands of A.1 while he was beating her. When the parents of PW.1 held mediations through PWs.7 and 9, the accused strongly refused their mediations and driven out PW.1 along with two children with the support of A2 to A7 on 30.08.2002. When she failed to fulfill the demands, having no other go, filed a private complaint before the Court and the same was referred to police, Indrapalem under Section 156 (3) Cr.P.C for investigation and report. The Indrapalem police registered a case in Crime No.150 of 2012 under Section 498-A IPC r/w Section 34 IPC and Section 156 (3) Cr.P.C on 11.11.2002. After supply of copies to the accused, framed charges and on framing of charges, trial commenced and after examination of accused under Section 313 Cr.P.C and after hearing arguments, A1 was found guilty for the offences supra. PWs.2 and 3 are parents of A.1. PW.4 is daughter and PW.8 is son of PW.1. PWs.5 and 6 are neighbours of PWs.2 and 3. PW.7 is friend of PW.3. PW.9 is son-in-law of PWs.2 and 3. PW.10 is the Investigating Officer, who registered, investigated the crime and filed charge sheet as referred supra. The marriage of the couple was performed on 19.06.1991 at Geetha Mandiram in Kakinada and in their wedlock they blessed with daughter and son i.e., PWs.4 and 8. The evidence of A.1 shows that he is innocent and is falsely implicated and he never suspected her fidelity nor demanded for additional dowry.

4) The evidence of PW.1 shows that after their marriage, she joined with A.1 for marital life at Hyderabad for a period of one year and she was blessed with a male child at Hyderabad. From the beginning of marriage, A.1 used to suspect her character and used to abuse and beat her. Thereafter, A.1 was transferred to Tirupathi, where they lived for about 7 ½ years and where they were blessed with female child. According to her, he was allegedly beating her in the presence of children and at the intervention of children, rescued her. She did not mention the period and specific instances either in FIR or in her statement during investigation.

5) What she stated is that after transferring to Hyderabad from Tirupathi he again applied for transfer to Rajahmundry as he would get support from his kith and kin at Rajahmundry to send her away from matrimonial house. A.3 and A.7 used to visit their house at Rajahmundry and interfering with their marital life. When they left the house, he used to beat her with broom stick and on two or three occasions on the ground that she did not bring additional dowry and at the intervention of children, rescued her. So far as the allegations against A.3 and A.7 are concerned, the trial Court rightly not believed among Exs.P1 to P8. Ex.P8 is FIR outcome of private complaint under Ex.P1 dated 02.09.2002, as referred supra. The marriage was performed in the year 1991, the report, which was more than 11 years after the marriage, was relied upon Exs.P2 to P7 letters written by her to her father. The cause in the private complaint that on 02.09.2002, according to her, three days after she was driven out by A1 on 30.08.2002 along with two children from the matrimonial house while staying at Rajahmundry which made her to reach her parents house at Kakinada with two children and her father went to the house of A.1 and expressed his inability to fulfill the said demand and requested them to treat her properly

but there was no change in the attitude which made her to give a complaint. The core of the issue is driving out and demanding her for additional dowry. The private complaint dated 03.09.2002. Ex.P6 and P7 are the two letters dated 30.08.2002 and 28.08.2002. Leave about Exs.P2 to P5, which letters are written by PW.1 to PW.2 in September, 2001 to November, 2002 to say he was ill-treating her and there is no basis much less with the aid and support.

6) In this regard, PW.2 stated that A.1 was suspecting her fidelity from the beginning and ill treating her concerned, on one occasion, he went to Tirupati and stayed in the house of A.1, there he fell down PW.1 on the ground and kept his leg on the neck of PW.1 and pressed her neck with his leg and beat her. Then he intervened and requested him not to beat PW.1 at that time, PWs.4 to 8 were also present and requested not to beat PW.1 but did not heed their words and pushed them aside. No doubt, from the evidence of PW.1 in this regard and such details are not specific apart from that even if the evidence is to consider, the period of 7 ½ years of stay at Tirupathi, in what month or year much less on what date the alleged occurrence has taken place and, if at all, why the private complaint not given despite after their stay, they again transferred to Hyderabad, and again to Rajahmundry and why they kept quiet. PW.2 further stated that after transfer to Rajahmundry, he was ill treating PW.1 for additional dowry. What she claims that her father took PWs.7 and 9 with him to the house of A.1 and expressed his inability to meet the additional demand of dowry but he did not oblige, even then they did not give any report. For that Ex.P2 to 7 speak generally against all and nothing specified against A1 alone much less by specific instances. The evidence of PW.3 is totally hearsay.

7) Coming to the evidence of PWs.4 and 8, daughter and son of the couple, they deposed that A.1 used to beat PW.1 and they were requested him not to beat but they did not mention any specific instances. PWs.5 and 6 are the so-called neighbours, their evidence is totally hear-say and they did not specify any specific instances what they witnessed, if any. PW.7 deposed that in 2002, he accompanied PW.2 and his family members to the house of A.1 and advised to live happily with PW.1 and his children but A.1 was not convinced. The evidence of PW.9 is totally hearsay.

8) For all these instances, if at all, they did not give any police report, there is no explanation even but for directly filed a private complaint. PW.1 deposed in her cross examination that they never gave police report either at Rajahumundry or Indrapalem much less about any harassment or so-called necked out with children from the house by A.1 and PW.2 in his cross examination deposed that there is no specific reason even for not reporting to any police before filing the so-called private complaint. PWs.1 and 11 deposed that there was no report received from PW.1 or anybody against A.1. This vital aspect is totally ignored by the trial Court and lower appellate Court as discussed supra, for PWs.2 and 3 to say at Tirupati in their presence A.1 beat her and they did not state any specific instances of date or month and time even to give any credence to them. Even on the other hand, the defence of prosecution witnesses shows A.1 necked out PW.1 along with two children from matrimonial house.

9) On 30.08.2002, PW.2 went to his house to convince A.1 and he did not heed the words including elders among PWs.2 to 9, if at all, there was any ill-treatment specifically taken place, at least there can be some evidence even from neighbours. Once there are no specific allegations, even the general averments by PW.1 against A.1, cannot be given credence

much less to say any ill treatment or demand for additional dowry for the first time after alleged necked out on the other pretext that earlier he suspected her fidelity. Even coming to that, Ex.D1 is the crucial contradiction from her evidence with reference to the statement before the Investigating Officer that also confronted to PW.10 insisting A.1 while they were residing at Rajahmundry on one occasion again by suspecting illicit relationship with headmaster of the school where the two children were studying, he ill treated. Whereas she deposed that the incident covered by Ex.D.1 was during their stay at Tirupati not at Rajahmundry. From the evidence, there are three versions, PWs.4 and 8 did not even depose anything in this regard at Tirupati or Rajahmundry, if at all, to corroborate the evidence of PW.1, being the two children and the couple while residing together, if so happened that was also ignored by the Court below. It is hardly believable that he started harassing after transfer to Rajahmundry by demanding Rs.50,000/- as additional dowry and on that pretext he necked her out. Even the so-called letters Exs.P2 to P7 not even show from where these letters were posted and reached and even disputed the handwritings were not sent for comparison.

10) The trial Court even referred the expression of the Apex Court in *Preeti Gupta vs State of Jharkhand*¹, wherein it was specifically observed that though for more than 7 years stay, there was no alleged specific instances of time, date, month and year are mentioned to give any credence.

11) Even the other expression of the Apex Court in *Salamat Ali vs State of Bihar*² it was alleged vague allegations and without specific instances much less with date and time cannot be relied to prove guilt for

¹ 2010 CrI.L.J 4303

² AIR 1995 SC 1863

the offence under Section 498-A IPC and as to the cause of death intentionally by the deceased as if outcome of cruelty, thereby the trial Court's conviction judgment confirmed by the lower appellate Court is unsustainable and also from the fact that the entire evidence of prosecution witnesses, material contradictions, omissions and also from the improvements in the evidence to the statement that cannot be given credence that also held by the Apex Court in *Bhushan Kumar vs State of Punjab*³.

12) Having regard to the above, the Criminal Revision Case is allowed and all the proceedings relating to C.C. No.408 of 2004 on the file of Special Judicial First Class Magistrate for Prohibition & Excise, Kakinada, East Godavari District against petitioner/ A.1 are set-aside and the petitioner/ A.1 is acquitted and the bail bonds of the petitioner/ A.1, if any, are cancelled.

13) Miscellaneous petitions, if any pending in this Criminal Revision Case shall stand closed.

Dt.26.04.2017
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Dr. B. SIVA SANKARA RAO, J

³ 2011 (4) Criminal Court case 226 (SC)

HONOURABLE Dr. JUSTICE B.SI VA SANKARA RAO

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Date:26.04.2017

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