

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.1146 of 2007

JUDGMENT:

1 Aggrieved by the judgment dated 30.04.2007 passed in C.C.No.235 of 2004 on the file of the Court of the Judicial Magistrate of I Class, Pithapuram, wherein and whereby the respondent Nos.1 to 5 herein (A.1 to A.5 in the said C.C) were acquitted of the offence punishable under Section 498-A r/w 34 of IPC, the de-facto complainant filed the present appeal.

2 The factual matrix that lead to the filing of the present Criminal Appeal is as follows:

a) On 24.07.2004 P.W.1 K.Siva Naga Lakshmi submitted a complaint to P.W.9 the Sub Inspector of Police, Pithapuram Police Station, who in turn, registered a case in Cr.No.101 of 2004 under Sections 498-A r/w 34 of IPC against the accused and issued Ex.P.6-FIR and investigated into. During the course of investigation it was revealed that A.1 is husband of P.W.1, A.2 and A.3 are parents, A.4 is the brother and A.5 is the grandfather of A.1. Prior to the marriage, P.W.1 fell in love with A.1, and under the guise of love A.1 developed physical contact with P.W.1. The marriage of P.W.1 was performed with A.1 on 07.06.2004 in Shanthi Ashram, Annavaram and immediately after the marriage, P.W.1 joined A.1 to lead marital life. A.1 to A.5 harassed and subjected P.W.1 to cruelty for additional dowry of Rs.1.00 lakh. After completion of investigation P.W.9 laid charge sheet against the accused for the offence punishable under Section 498-A r/w 34 of IPC against A.1 to A.5.

b) The learned Judicial Magistrate of I Class, Pithapuram has taken cognizance of the offences punishable under Section 498-A r/w 34 of IPC and numbered the charge sheet as C.C.No.235 of 2004. The learned Magistrate framed charge against the accused for the offence under Sections 498-A r/w 34 of IPC, read over and explained to them in vernacular language, for which they pleaded not guilty and claimed to be tried.

c) During the course of trial, on behalf of the prosecution P.Ws.1 to 9 were examined and Exs.P.1 to P.6 were marked. After completion of prosecution side evidence, the accused were examined under Section 313 Cr.P.C with reference to the incriminating evidence available on record against them, which they denied. On behalf of the defence no oral evidence was let in but Exs.D.1 and D.7 were marked.

d) Basing on the oral and documentary evidence available on record the trial Court arrived at a conclusion that the prosecution failed to prove the guilt of the accused for the offence punishable under Section 498-A r/w 34 of IPC and acquitted them of the said charge. Feeling aggrieved by the judgment of the trial Court, the de-facto complainant preferred the present appeal.

3 The learned counsel for the appellant attacked the impugned judgment on the following grounds:

i) the accused forced P.W.1 to terminate her pregnancy; that itself is sufficient to convict the accused,

ii) the trial Court failed to appreciate the evidence of P.Ws.1 and 2 in right perspective,

iii) the findings of the trial Court are not based on evidence much less legally admissible evidence; and

iv) the trial Court acquitted the accused on assumptions and presumptions and hence this is a fit case to allow the appeal.

4 Heard the learned Public Prosecutor appearing for the State.

5 Now the points that would emerge for consideration in this appeal are:

(i) Whether the prosecution proved the guilt of the Accused for the offence under Section 498-A r/w 34 of IPC beyond all reasonable doubt? and

(ii) Whether there is any flaw much less legal flaw in the findings recorded by the trial Court, to warrant interference by this Court?

6 Both the points are intertwined; hence, this Court is inclined to answer both the points simultaneously in order to avoid recapitulation of the facts and evidence.

7 A perusal of the record reveals that on 24.07.2004 P.W.1 lodged a complaint Ex.P.1 with P.W.9. The testimony of P.W.9 reveals that basing on Ex.P.1 he registered a case in Cr.No.101 of 2004 and issued Ex.P.6 FIR. In the cross examination of these two witnesses, nothing is elicited to disbelieve their testimony so far as lodging of complaint and registration of the case are concerned. The material placed before the Court clinchingly establishes that P.W.1 is the de-facto complainant, who set the criminal law into motion.

8 As seen from the testimony of P.W.1, she fell in love with A.1. Her testimony further reveals that A.1 enjoyed her sexually nearly ten times. The testimony of PW.1 clearly reveals that her marriage was performed with A.1 in Shanthi Ashram, Annavaram. As per the testimony of P.W.1, immediately after the marriage, she joined A.1 to lead marital life at Veldurthi village. The testimony of P.Ws.6 and 7 also reveals that the marriage of P.W.1 was performed with A.1 in Shanthi Ashram, Annavaram. The material placed before the Court clearly establishes that the marriage of P.W.1 was performed with A.1 at Shanti Ashram, Annavaram.

9 The testimony of P.W.1 reveals that A.1 to A.5 demanded additional dowry of Rs.1.00 lakh from her parents. As per the testimony of P.W.2, A.1 demanded an amount of Rs.1.50 lakh from him. P.W.1 is the victim and P.W.2 is her father. As per the testimony of P.W.3, he came to know that the accused demanded dowry from P.W.1. There is no whisper in the testimony of P.Ws.4 and 5 that the accused demanded dowry from P.W.1 or P.W.2. There is no whisper in the testimony of P.Ws.6 and 7 that the accused demanded dowry from P.W.1 or P.W.2. The testimony of P.Ws.3 to 7 is no way helpful to the case of prosecution to establish that the accused demanded dowry from P.Ws.1 and 2.

10 Even as per the testimony of P.W.1, she lived in Veldurthi village for two days only after marriage. A perusal of Ex.D.1 reveals that A.1 filed O.P.No.41 of 2004 to declare the marriage

between him and P.W.1 as null and void. A perusal of the record clearly reveals that basing on the complaint lodged by A.1, the Station House Officer, Prathipadu Police Station, registered as a case in Cr.No.71 of 2004 against P.W.2 and others. Ex.D.4 is the private complaint filed by A.1 on the file of the Court of the Judicial Magistrate of I Class, Prathipadu. A perusal of Exs.D.5 and D.6 reveals that legal notices were exchanged between P.Ws.1 and 2 and the accused. In the cross examination P.W.1 denied the suggestion that A.1 was kidnapped by P.W.2. As per the testimony of P.W.1, criminal case was registered against P.W.2 and others on the complaint filed by A.1. Even if the testimony of P.W.2 is taken into consideration, A.1 lodged a complaint to the Station House Officer, Prathipadu Police Station alleging that P.W.2 and others have kidnapped him and beat him blue and black. A perusal of the record reveals that A.1 filed O.P.No.41 of 2004 to declare the marriage between him and P.W.1 as null and void. A perusal of Ex.D.7 clearly reveals that P.W.1 received the legal notice in Minerva college hostel. The fact remains that P.W.1 has been continuing her studies even after marriage. Except self serving testimony of P.Ws.1 and 2, there is no other convincing evidence to establish that the accused demanded dowry from P.Ws.1 and 2. In the cross examination P.W.1 categorically admitted that her parents did not attend her marriage. The record clearly reveals that elders from both sides did not attend the marriage of P.W.1 and A.1. In such circumstances, demanding of additional dowry by A.2 to A.5 from P.W.1 is somewhat improbable and unbelievable. The admissions made by P.Ws.1 and 2 in the cross examination

negates the case of the prosecution. Further, this court is not inclined to express any opinion with regard to the validity of the marriage between P.W.1 and A.1 in view of the pendency of O.P.No.41 of 2004.

11 It is a settled principle of law that the prosecution has to establish the guilt of the accused beyond reasonable doubt. The testimony of P.Ws.1 and 2 is not corroborating with each other on all material aspects. The defence counsel elicited number of contradictions in the testimony of P.Ws.1 and 2. Viewed from any angle, it is not safe to place much reliance on the testimony of P.Ws.1 and 2.

12 The testimony of P.W.8 coupled with Ex.P.5 reveals that the pregnancy of P.W.1 was terminated. Absolutely there is no material on record to establish that the accused forced or compelled P.W.1 to get her pregnancy aborted. The material placed before the Court falls short to establish that the pregnancy of P.W.1 was aborted at the instance of A.1. A perusal of the record reveals pendency of civil and criminal cases between the parties. In such circumstances the possibility of exaggerating the things by P.Ws.1 and 2 in order to implicate the accused in this case cannot be ruled out completely.

13 The trial Court considered the material available on record in right perspective and arrived at a conclusion that the prosecution failed to prove the guilt of the accused for the offence punishable under Section 498-A r/w 34 of IPC. The trial Court has assigned reasons much less cogent and valid reasons to its

findings. The findings arrived at by the trial Court are based on evidence more so legally admissible evidence. There is no flaw much less legal flaw in the findings of the trial Court, which warrant interference of this court. I am in complete agreement with the findings recorded by the trial Court in all aspects. I see no merits in this Criminal Appeal and hence the same is liable to be dismissed.

14 In the result, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 14th February, 2018
Kvsn

