

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1697 OF 2008
(Arising out of S.L.P. (Criminal) No. 3426 of 2007)

STATE OF ANDHRA PRADESH

--

APPELLANT (S)

VERSUS

M. MADHUSUDHAN RAO

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RESPONDENT (S)

JUDGMENT

D.K. JAIN, J.:

Leave granted.

2. Being aggrieved by the judgment and final order dated 12 April, 2006 passed by the Highth Court of Judicature, Andhra Pradesh at Hyderabad, setting aside the conviction of the respondent-accused A-1 in Sessions Case No.129 of 1998 from the charge of offence

punishable under Section 498-A of the Indian Penal Code, 1860 (for short 'I.P.C.') and acquitt¹ing

him, the State of Andhra Pradesh has preferred this appeal.

3. Brief facts, necessary for the disposal of the appeal, are as follows:

Marriage between the de facto complainant (PW-1) and the respondent (A-1) wasth solemnized on 24 November, 1993. On 22 May, 1996, the complainant sent a report (Ex.P-1)nd

to the Additional D.G.P., CID, Hyderabad, inter alia, alleging that at the time of her marriage with

A-1, on the insistence of A-1 and his mother (A-2), her father gave her one house, Rs.60,000/- in

cash, six tolas of gold and household articles worth Rs.50,000/-. Still after the marriage, her

husband, working as Reserve Sub-Inspector (RSP) at Security Printing Press, was pressurising

her to bring Rs.50,000/- more; he used to beat her up, scold, shout and threaten to kill her and

on certain occasions he had also pressed her neck saying that he would kill her. It was also

alleged that her mother-in-law (A-2), her husband's brother Prabhakar and his wife (A-4), and

the second sister-in-law of her husband (A-3) and her husband's last brother also used to help

her husband in beating and harassing her. It was further alleged that one Mrs. Jalaja, working

as Telephone Operator in the Reserve Bank of India, also used to threaten her by saying that

her husband (A-1) had married her and he did not like to stay with her. Branding her husband to

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be a gambler, drunkard and moving around with anti social elements, it was also alleged that

about six months back her husband and his family members had made the first attempt to

eliminate her by forcibly pouring poison into her throat and when her condition became serious,

they informed her parents that she had taken poison. However, then she had not made any

complaint to the police against her husband. But again on 19 April, 1996 at 11.00 a.m., her

husband (A-1), his mother (A-2), his second brother's wife (A-3) and her husband's third

brother's wife (A-4) forced her to consume poison and as a result thereof she was admitted in

the nursing home at about 2.30 p.m. in an unconscious state.

When she was in a semi

conscious state, the police took her statement but she did not know what statement the police had recorded. Her husband informed her parents about the incident only in the evening though she was admitted in the hospital at 2.30 p.m.; her parents came later and although they had lodged a complaint with the police but no action was taken against any person. After being discharged from the hospital on 22nd April, 1996, she went to stay with her parents and since

then she is staying with them but neither her husband nor his family members have come to see her. As noted supra, the complaint regarding the incident on 19 April, 1996 was lodged on 22th May, 1996.

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4. The complaint was forwarded to the Senior Executive Officer, CID, Hyderabad and consequently on 7 August, 1996 a case was registered against accused A-1 to A-4 as also against the said Mrs. Jalaja under Sections 498-A, 420, 494, 307 I.P.C. After investigation, chargesheet was laid against accused A-1 to A-4 for offences punishable under Sections 498-A and 307 read with Section 34 I.P.C.

5. During the course of trial, the prosecution examined nine witnesses. No evidence was produced in defence. The learned Trial Court, on appreciation of evidence, and relying on the evidence of the father of the complainant (PW-3), nephew of PW-3 (PW-4), a store clerk/colleague of PW-3 (PW-5), Security Inspector/colleague of PW-3 (PW-6), and a neighbour of PW-1 and PW-3 (PW-7), came to the conclusion that all the aforesaid items had been given as consideration for the marriage on demand of the accused though in the disguise of being gifts to the bridegroom. The Trial Court also inferred that accused A-1, who had purchased a lorry in

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the name of the complainant--wife (PW-1) on 6 November, 1995 was harassing her to get
Rs.50,000/- from her parents for the purchase of lorry. Inter alia, observing that though no s
pecific
instances of harassment had come on record but the long course of conduct of accused A-1
showed that the allegations of harassment were not totally baseless, the trial judge finally f
ound
accused A-1 guilty of the offence punishable under Section 498-A I.P.C. and accordingly

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sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.8000/- with
default stipulation. Out of the fine amount, a sum of Rs.6000/- was ordered to be paid to PW-1
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However, he did not find accused A-1 guilty under Section 307 I.P.C. and accordingly acquitted
him of the said charge. Accused A-2 to A-4 were not found guilty of both the charges framed
against them and were acquitted accordingly.

6. Aggrieved, the respondent (A-1) challenged his conviction by preferring appeal before the Hi
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Court. The High Court, as stated above, on a re-appraisal of the entire evidence, has set asid
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the conviction. Against this judgment, the State of Andhra Pradesh is in appeal before us.

7. We have heard learned counsel for the parties.

8. Mrs. June Chaudhary, learned senior counsel appearing on behalf of the State vehemently
submitted that the High Court has taken an unreasonable view in acquitting the respondent,
overlooking his conduct before and after the marriage. It was submitted that the evidence
produced by the prosecution clearly proves that even before the marriage, the respondent (A-1)
was insisting on transfer of the house in his name; even on the date of marriage demand for
money was made and though the lorry was purchased in the name of the complainant, it was

not by way of any love and affection but to extract more money from her parents. Learned

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counsel, thus, argued that in the light of these surrounding circumstances, a clear case for conviction under Section 498-A I.P.C. had been made out against the respondent.

9.Mr. R. Venkatramani, learned senior counsel appearing on behalf of the respondent, while supporting the view taken by the High Court, submitted that the High Court having re-

appreciated and carefully analyzed the entire evidence before reaching the conclusion that no case for conviction of the respondent had been made out, this Court should be loathe to exercise its jurisdiction under Article 136 of the Constitution. It was argued that apart from the

fact that in the light of the evidence on record no illegality can be attributed to the conclusion

recorded by the High Court, even otherwise, it is well settled principle of law that where on an

appraisal of the evidence, adduced in the case, the court below has taken a plausible view, the

appellate court should not interfere, particularly with an order of acquittal, even if different view

can possibly be taken. In support of the proposition, reliance was placed on the decisions of this

Court in Harbans Singh & Anr. Vs. State of Punjab¹; Shri Gopal & Anr. Vs. Subhash & Ors.², State of M.P.

Vs. Sanjay Rai³, Vijaybhai Bhanabhai Patel Vs. Navnitbhai Nathubhai Patel & Ors.⁴ and State of Goa Vs.

Sanjay Thakran & Anr.⁵

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[1962] Supp 1 SCR 104

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(2004) 13 SCC 174

- 3 (2004) 10 SCC 570
- 4 (2004) 10 SCC 583
- 5 (2007) 3 SCC 755

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10. In order to appreciate the rival stands, it would be useful to notice the statutory provisions.

Section 498-A I.P.C. makes "cruelty" by husband or his relative a punishable offence. The word "cruelty" is defined in the Explanation appended to the said Section. Section 498-A I.P.C. with

Explanation reads thus:

"498A. 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 purpose of this section, "cruelty" means--

- (a) Any wilful 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 meet such demand."

11. Thus, providing a new dimension to the concept of "cruelty", clause (a) of Explanation to Section 498-A I.P.C. postulates that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute "cruelty". Such wilful conduct, which is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman

would also amount to "cruelty". Clause (b) of the Explanation provides that harassment of the

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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, would also constitute "cruelty" for the purpose of Section 498-A I.P.C. It is plain that as per clause (b) of the Explanation, which, according to learned counsel for the State, is attracted in the instant case, every harassment does not amount to "cruelty" within the meaning of Section 498-A I.P.C. The definition stipulates

that the harassment has to be with a definite object of coercing the woman or any person related

to her to meet an unlawful demand. In other words, for the purpose of Section 498-A I.P.C.

harassment simpliciter is not "cruelty" and it is only when harassment is committed for the purpose of coercing a woman or any other person related to her to meet an unlawful demand for property etc., that it amounts to "cruelty" punishable under Section 498-A I.P.C.

12. Having noticed the basic ingredients which are required to be proved in order to bring home an offence under Section 498-A I.P.C., at this juncture, we may also briefly note the general principles to be kept in view by the appellate court while dealing with an appeal against acquittal.

13. There is no embargo on the appellate court to review, reappraise or reconsider the evidence upon which the order of acquittal is founded. Yet, generally, the order of acquittal is

not interfered with because the presumption of innocence, which is otherwise available to an

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accused under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a court of law, gets further reinforced and

strengthened by his acquittal. It is also trite that if two views are possible on the evidence adduced in the case and the one favourable to the accused has been taken by the trial court, it

should not be disturbed. Nevertheless, where the approach of the lower court in considering the

evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the

court below is such which could not have been possibly arrived at by any court acting

reasonably and judiciously and is, therefore, liable to be characterised as perverse, then, to

prevent miscarriage of justice, the appellate court is obliged to interfere.

14. All these principles have been succinctly culled out by one of us (C.K. Thakker, J.) in

Chandrappa & Ors. Vs. State of Karnataka⁶.

15. Bearing the aforesaid broad principles in mind and having bestowed our anxious

consideration to the facts at hand, in our judgment, the High Court has not committed any error

in dealing with the evidence, which could be said to be patently illegal or that the conclusion

reached at by it is wholly untenable, warranting our interference.

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(2007) 4 SCC 415

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16. Though it is true the Trial Court has observed that there is some evidence on record to show

that there was a demand for dowry even at the time of marriage but it is clear that the foundation

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for action against the respondent was laid when the complaint was lodged by the wife on 22

May, 1996 and the prosecution machinery was set into motion. Again it is true that in the

complaint there is a reference to the past conduct of the respondent and his family members but

from the tenor of the complaint, it is clear that the allegation of harassment including the alleged

poisoning incident is linked solely with her failure to get an additional amount of Rs.50,000/- from

her parents for the purchase of lorry. Furthermore, though the Trial Court records that in the evidence there are no specific instances of harassment, yet it has proceeded to presume that l ong

course of conduct of the respondent is indicative of the fact that the allegation of harassment is

not totally baseless. Even the deposit of initial amount of Rs.1,50,000/- by the respondent for the

purchase of lorry in the name of the complainant has been doubted by the Trial Court. It is

pertinent to note that in so far as the allegation of poisoning by the accused to kill the

complainant is concerned, the Trial Court has found the evidence of PW-3--the father of the

complainant (PW-1) to PW-7 to be unreliable and has rejected the version of the prosecution to

that extent. Adversely commenting on the conduct of PW-3, the Trial Court has also observed

that none of the accused attempted to escape after the incident which corroborates the anxiety

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of accused A-1 to A-4 about the life of the complainant. Rejecting the prosecution version based

on the complaint, accused A-2 to A-4 were acquitted by the Trial Court. In the light of these

circumstances, the learned Judge of the High Court entertained grave doubts about the

correctness of the prosecution story.

17. Analysing and re-appreciating the entire evidence threadbare, in particular the testimony of

the complainant (PW-1) and her father (PW-3), the learned Judge has observed that though as

per her complaint (Ex.P-1), the respondent had been pressurising her to bring Rs.50,000/- as

additional dowry for purchase of lorry but her version was not supported even by her father (PW-

3). The learned Judge, on an analysis of the entire evidence, reached the conclusion that there

is no direct evidence, other than the self-serving testimony of PW-1 regarding alleged beatings

or scolding; if really the version of PW-1 that all the accused attempted to kill her by forcibly

pouring poison in her mouth, not once but twice, she would not have kept quiet without reporting

the matter to the police; even after the second incident she kept quiet for a period of one month;

the contents of the complaint clearly showed that PW-1 (the complainant) wanted to see that the

respondent loses his job in the police department and that merely because PW-1 attempted to

commit suicide, it cannot be presumed that only on account of harassment or cruelty meted out

to her that she made an attempt to commit suicide. Taking all these circumstances into

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consideration, the learned Judge held that it was not safe to rely on the evidence of PW-1, more

so, when her relations with the husband were very much strained and, therefore, the Trial Court

ought to have given benefit of doubt to the respondent also while acquitting accused A-2 to A-4.

18. Having gone through the depositions of PW-1 and PW-3, to which our attention was invited

by learned counsel for the State, we are convinced that in the light of the overall evidence,

analysed by the High Court, the order of acquittal of the respondent is well merited and does not

call for interference, particularly when the First Information Report was lodged by the

complainant more than one month after the alleged incident of forcible poisoning. Time and

again, the object and importance of prompt lodging of the First Information Report has been

highlighted. Delay in lodging the First Information Report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is

essential that the delay in lodging the report should be satisfactorily explained.

19. In the present case, as noted supra, First Information Report in regard to the alleged occurrence on 19th April, 1996 was lodged on 22nd May, 1996. Admittedly after her discharge

12 from the hospital on 22nd April, 1996, the complainant went to her parents' house and resided

there. In her testimony, the complainant has deposed that since no one from the family of the accused came to enquire about her welfare, she decided to lodge the First Information Report.

No explanation worth the name for delay in filing the complaint with the police has come on record. We are of the opinion that this circumstance raises considerable doubt regarding the genuineness of the complaint and the veracity of the evidence of the complainant (PW-1) and her father (PW-3), rendering it unsafe to base the conviction of the respondent upon it.

Resultantly, when the substratum of the evidence given by the complainant (PW-1) is found to be unreliable, the prosecution case has to be rejected in its entirety.

20. For the foregoing reasons, we are of the opinion that the judgment of the High Court, acquitting the respondent, does not suffer from any infirmity, warranting our interference. The

appeal is devoid of any merit and is dismissed accordingly.

...J.

(C.K. THAKKER)

..J.

(D.K. JAIN)

NEW DELHI,

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OCTOBER 24, 2008.

ITEM NO. 1-D (For COURT No. 6 SECTION II
Judgment)

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.1697 OF 2008 @ SLP(CRL.) NO. 3426 OF 2007

State of A.P.

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Appellant(s)

Versus

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M Madhusudhan Rao

Respondent(s)

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DATE : 24/10/2008 This matter was called on for
pronouncement of judgment today.

For Appellant(s) Mrs. Bharathi Reddy, Adv.

For Respondent(s) Mr. Anil Kumar Tandale, Adv.

Hon'ble Mr. Justice D.K. Jain pronounced the judgment of the Bench
comprising Hon'ble Mr. Justice C.K. Thakker and His Lordship.

Leave granted.

The appeal is dismissed.

[Charanjeet Kaur]
Court Master

[Vinod Kulvi]
Court Master

[Signed reportable judgment is placed on the file]

