

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

Criminal Revision Case No.1786 of 2007

ORDER:-

The revision is directed against the Judgment in Criminal Appeal No.71 of 2007 on the file of the I-Additional Sessions Judge, Adilabad, dated 07-12-2007, confirming the conviction of the petitioner/accused for the offence under Section 498-A IPC., and sentence of simple imprisonment of two years and fine of Rs.5,000/- imposed by the learned Judicial Magistrate of First Class, Utnoor, in C.C.No.8 of 2006, dated 22-06-2007.

2. The petitioner/accused is the husband of the *de facto* complainant, who is examined as PW.1. Both are the Government employees and they had two sons. Their marriage was performed in May, 1990 and both of them belong to the community of Scheduled Tribes. It is alleged that few days after the marriage, the petitioner/accused started harassing the wife on the ground of inadequate dowry. It is also alleged that the petitioner/husband used to take away the salary of the wife. Several times, panchayats were held and on one occasion, a written undertaking was also given by the husband to treat the wife properly, which is marked as Ex.P.2. After adverting to the several instances of harassment, the specific allegation of the wife is that on 07-11-2005, the husband came to the house and demanded that a sum of Rs.3 lacs be given to him by selling away the land that fell to her share from her father. There was a dispute between them and the husband beat the wife and applied some powder on hands and when neighbours came, the accused went away from there. With these allegations, the complaint was filed on 08-11-2005 at about 02.30 in the afternoon and on its basis, case was registered in Cr.No.63 of 2005 of Indervelly P.S. After completing the investigation, charge-sheet was filed on the file of the Judicial Magistrate of First Class, Utnoor, where it was registered as C.C.No.8 of 2006. The mandatory provisions of Cr.P.C. were complied with.

Charges were framed, to which the accused denied. In order to prove its case, the prosecution examined PWs.1 to 7 and produced Exs.P.1 to P.3. The accused was examined under Section 313 Cr.P.C. He denied the evidence on record. No defence was produced. After hearing the argument of both sides and perusing the oral and documentary evidence on record, by Judgment, dated 22-06-2007, the learned Magistrate found the petitioner/accused guilty of the charge under Section 498-A of I.P.C., and accordingly convicted and sentenced him as stated supra. The said Judgment was challenged in appeal and the same was confirmed by the learned I-Additional Sessions Judge, Adilabad. Hence, the revision.

3. The contention of the petitioner/accused is that the evidence on record do not establish the ingredients of Section 498-A I.P.C., that the evidence of PW.1/the victim wife is not consistent and it is not corroborated by independent evidence, that the neighbours have admittedly came to the spot after the incident took place and hence they cannot be said to be the eye-witnesses, that what all PWs.3, 4 and 5 deposed is only on the basis of what was informed to them by the victim-PW.1 and their evidence being hearsay evidence, cannot be relied upon. It is further contended that there is a substantial delay in lodging the F.I.R., even though the jurisdictional Police Station is just about a Kilometre away from the house where the incident took place. The document Ex.P.2 said to have been executed by the petitioner/accused giving an undertaking to treat the wife-PW.1 properly is not established since none of the witnesses connected therewith are examined. Learned Counsel further submits that both the Courts below have erred in basing the conviction on the basis of such evidence which is not sustainable and therefore the same be set aside acquitting the accused.

4. On the other hand, learned Public Prosecutor submits that the evidence of PWs.1 to 5 is convincing, cogent and consistent and it is amply proved that on the date of the incident i.e., 07-11-2005, the

petitioner/accused has assaulted the wife-PW.1 demanding that certain amount be given to him by selling the land and therefore both the Courts below have found the petitioner/accused guilty and the Judgments are based on appreciation of evidence in proper perspective and they do not warrant any interference.

5. The wife who is examined as PW.1 narrated the details of the way the petitioner/accused/husband had been subjecting her to cruelty. Both of them are holding responsible positions and they had grown-up sons who even in the year 2006 were studying 6th class and 7th class by staying in a residential school. The petitioner/husband is working as a Government teacher whereas the wife had been working as a Supervisor in ICDS, Boath Project. They were married in May, 1990. It is the specific case of the wife that after six months of the marriage, the husband started ill-treating the wife by raising some demand or the other. It is also on record that several times, the demands of the husband were met and as a matter of fact, by the time of the marriage, the petitioner was not employed and that the father of PW.1 helped him in getting the Government job. It is also on record that on one occasion, a two wheeler was also given by the father of PW.1. It is also on record that the father of PW.1 had certain landed properties and three daughters and the property was distributed amongst the three daughters. Consequently, some share of land fell to the share of the wife-PW.1. The father of PW.1 died in the year 2001. During the matrimonial life of PW.1 and the accused, which stood over for a period of 15 years, they lived in different places depending on the places of posting. It is also on record that after about ten years of the marriage, when the treatment of the husband was unbearable, the caste panchayats were held and in the year 2000 or 2001, a bond was executed and again in September, 2003, another bond was executed by the husband undertaking that he will treat his wife properly. It is in the evidence of the wife that six months after the marriage, the accused started harassing her physically and mentally stating that her father did

not give him anything at the time of the marriage. She also speaks about the execution of the undertakings by the husband, firstly in the year 2000 or 2001, and again on 30-09-2003. It is her case that the accused did not change his behaviour and on 20-01-2005, the accused quarrelled with the wife and took away the mangal sutra. The accused also demanded to bring Rs.3,00,000/- by selling the land or some money from her elder sister. Ultimately, on 07-11-2005 it is in the evidence of PW.1 that the accused came to the house at about 05.00 p.m. and quarrelled with her and demanded her to give money lest she will be killed. On the same day at about 08.00 p.m., the accused again came to the house of PW.1 and beat her and applied some powder to her left hand and when she raised hue and cry, neighbours gathered there and seeing them, the accused fled away. She also speaks of an instance of the year 1991 when the accused poured boiled oil on her right hand when they were living at Tosham village. PW.1 has been elaborately cross-examined and she stood to her aspersions made in the chief-examination. It is suggested to her that the undertaking Ex.P.2 is a fabricated document and she denied the suggestion that the accused never subjected her to harassment. Upon carefully perusing the testimony of PW.1, no doubt can be raised that what she is speaking is a truthful narration of a wife who was subjected to instances of cruel treatment spread over for a period of more than 5 years and the last incident took place on 07-11-2005 culminating in the wife filing the criminal complaint which led to the present prosecution.

6. Cruel treatment to a wife will be subjected within the house and seldom we come across direct eye-witness account of the incident. In the instant case, however, there are three independent eye-witnesses to the incident which took place on 07-11-2005. They are examined as PWs.3, 4 and 5. Even according to PW.1, after the accused beat her and applied some powder on her hand, she raised hue and cry, hearing which the neighbours came there and on seeing

them, the accused fled away. When the neighbours asked her as to what happened, she told them as to what the accused did. Those three independent neighbours have consistently spoken about the fact that when they came to the house of PW.1, she told them that the accused beat her and applied some powder demanding money. The consistent evidence of PWs.3, 4 and 5 substantially corroborates the claim of PW.1 insofar as the incident of 07-11-2005 is concerned.

7. Learned Counsel appearing for the petitioner-accused submits that the evidence of PWs.3, 4 and 5 is hearsay evidence and the same cannot be relied upon and in support of this contention, he relied upon the decisions reported in **DESHETTI RAJESHAM v. STATE OF A.P.**^[1]; **K.AMARNATH V. STATE OF A.P.**^[2]; **P.GANGADHAR v. STATE OF A.P.**^[3]; and **KALYAN KUMAR GOGOI v. ASHUTOSH AGNIHOTRI AND ANOTHER**^[4].

8. There is no quarrel with the proposition that the evidence of a witness based on what was told to him or her cannot be taken as an eye-witness account but the facts and circumstances of each case differ. The accused and PW.1 were husband and wife. They had every right of privacy. When some quarrel or incident takes place within the house, neighbours do not venture there unless they are alerted by certain unusual developments. On noticing such events, when the neighbours assembled there and when the victim of an offence states them as to what happened compelling her to shout for help, that part of the testimony of the neighbours cannot be said to be hearsay evidence so as to disbelieve the same. It is not as though that PW.1 told them about the incident of 07-11-2005 long afterwards. Immediately when the accused was beating her, she raised cries and neighbours came there. Even though they have not seen the actual assault, but their evidence that they have seen the accused and PW.1 in the house and on seeing them, the accused fled from there and when PW.1 told them as to what happened, the evidence needs to be

accepted unless other circumstances are shown to disbelieve the neighbouring residents.

9. The evidence of the three neighbours examined as PWs.3, 4 and 5 is cogent, convincing and reliable. It inspires the confidence of the Court and it is to the effect that on 07-11-2005, the accused beat the wife PW.1 with a demand of certain amount which was being demanded by the husband and there is nothing on record to disbelieve the statement of the neighbouring residents. Both the Courts below have therefore properly appreciated the evidence and found the petitioner/accused guilty of having committed the offence of cruelty punishable under Section 498-A of I.P.C.

10. The further case of the prosecution is that in the month of September, 2003, a caste panchayat was convened on an application made by the wife/PW.1 and the proceedings thereof have been filed and marked as Ex.P.2. It is a document said to have been executed by the husband which is addressed to the District Adivasi Purohit Pradhana Sangham. It is written therein that he is assuring the elders of the community that there will be no threat to the wife-PW.1 from his side and that he will protect her and take care of her properly. It is further recited therein that if there any hardship to PW.1, he is responsible for it. It is also written in Ex.P.2 that if PW.1 faces any trouble or difficulty, or any injustice is done to her at the hands of the accused/husband, the caste elders are authorized to impose any punishment, which he is prepared to accept. This document is of September, 2003. It is signed by the accused and on a bare perusal of the signature of the accused on Ex.P.2 with that of his admitted signature in the records of the case, there is absolutely no doubt that it is the document signed by the accused.

11. Learned Counsel appearing for the petitioner/accused submits that the document is not proved in accordance with law and therefore the same cannot be looked into. In support of this contention, he relied upon the decisions reported in **NAGAREDDY RAJAGOPALA**

AREDDY v. ORIENTAL FIRE AND GENERAL INSURANCE CO.LTD.^[5]; BOLUMAN DHARMDAS v. VENKATACHALAPATHI RAO^[6]; and BONAM VENUGOPAL RAO AND OTHERS v. TAVVALA VEERABHADRA RAO AND OTHERS^[7].

12. Except for suggesting that Ex.P.2 is not executed by the accused, absolutely no evidence is placed on record even by way of suggestions to the prosecution witnesses that Ex.P.2 is a forged or fabricated document. Ex.P.2 is the document which is only intended to corroborate the claim of the prosecution witnesses that the husband had been treating the wife cruelly and nothing more than that. Such a document need not be proved as any other document and if it is found that Ex.P.2 contained the signature of the accused that can be looked into as a piece of evidence to support the oral evidence on record. It is that that the entire case is based on Ex.P.2. Therefore, I do not find any substance in the contention of the learned Counsel appearing for the petitioner that since Ex.P.2 has not been proved in accordance with law, the same cannot be looked into.

13. Learned Counsel appearing for the petitioner/accused submits that there is no *mens rea* on the part of the accused and the alleged cruelty cannot be said to be in connection with the demand of dowry and therefore the accused cannot be said to have committed the offence.

14. As has been discussed by both the Courts below, the husband has subjected the wife to cruel treatment, not only demanding dowry, but it is the case of the prosecution witnesses that the husband wanted the wife to sell certain property of hers and give him Rs.3 lacs and when that was not being done, he is said to have beat the wife and treated her cruelly. As observed by the Courts below, Section 498-A I.P.C., is in two parts and even if there is no demand for dowry, the husband can be brought within the contours of Section 498-A I.P.C., if it is shown that he has been subjecting his wife to ill-treatment or cruel

treatment.

15. Careful perusal of the oral evidence of PWs.1 to 5 coupled with Exs.P.1 and P.2, leaves no room for doubt that the petitioner/husband has subjected the wife to cruelty and thereby attracting the consequences of Section 498-A I.P.C. Both the Courts below have properly appreciated all the facts and circumstances of the case in proper perspective and the Judgments are based on the legally admissible evidence. The Judgments do not suffer from any irregularity or illegality warranting any interference by this Court.

16. In the result, the Criminal Revision Case is dismissed subject to modification that the imprisonment of rigorous imprisonment of two years is reduced to six months rigorous imprisonment. The sentence of fine is sustained.

Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand dismissed.

M.S.K.Jaiswal, J

June, 2015

smr

[\[1\]](#) 2008 (1) ALT (Criminal)148 A.P.

[\[2\]](#) 2008 (1) ALT (Criminal) 244 A.P.

[\[3\]](#) 2006 (1) ALD (Criminal) 498 A.P.

[\[4\]](#) AIR 2011 S.C., 760

[\[5\]](#) 2009 (5) ALD 131 (H.C.)

[\[6\]](#) 1959 (An.W.R.) 23

[\[7\]](#) 1989 (1) ALT, 91