SUPREME COURT OF INDIA

State of Andhra Pradesh

Vs.

M. Madhusudhan Rao

S.L.P.(Criminal) No. 3426 of 2007)

(C.K. Thakker and D. K. Jain JJ.)

24.10.2008

JUDGMENT

D.K. Jain, J.:

1. Leave granted.

2. Being aggrieved by the judgment and final order dated 12th April, 2006 passed by the High 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 acquitting 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) was solemnized on 24th November, 1993. On 22nd May, 1996, the complainant sent a report (Ex.P-1) 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 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 19th 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 19th April, 1996 was lodged on 22nd May, 1996."

4. The complaint was forwarded to the Senior Executive Officer, CID, Hyderabad and consequently on 7th 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 aforestated 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 the name of the complainant--wife (PW-1) on 6th November, 1995 was harassing her to get Rs.50,000/- from her parents for the purchase of lorry. Inter alia, observing that though no specific 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 found accused A-1 guilty of the offence punishable under Section 498-A I.P.C. and accordingly 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. 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 High Court. The High Court, as stated above, on a re-appraisal of the entire evidence, has set aside 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 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 Punjab*[1]*; Shri Gopal & Anr. Vs. Subhash & Ors.*[2]*, State of M.P. Vs. Sanjay Rai*[3]*, Vijaybhai Bhanabhai Patel Vs. Navnitbhai Nathubhai Patel & Ors.*[4] *and State of Goa Vs. Sanjay Thakran & Anr.*[5]

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 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, reappreciate 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 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 the 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 Karnataka*[6].

15. Bearing the aforestated 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.

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

[1]1962 Supp.1 SCR 104 *[2](2004) 13 SCC 174* *[3](2004) 10 SCC 570* *[4](2004) 10 SCC 583*
[5](2007) 3 SCC 755 *[6](2007) 4 SCC 415*