Andhra High Court
Bomma Ilaiah vs The State Of A.P. Rep. By Public ... on 9 January, 2003
Equivalent citations: 2003 (1) ALD Cri 965, 2003 (2) ALT Cri 340, 2003 CriLJ 2439, II (2003) DMC 461
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Bench: K Bhanu
JUDGMENT K.C. Bhanu, J.

1. The revision is directed against the judgment in Crl. A. No. 123/1996, dated 10.8.2000, on the file of the learned Sessions Judge, Medak at Sangareddy, whereunder while the order of conviction and sentence passed by the learned Judicial I Class Magistrate, Gajwel in C.C. No. 4/1993, dated 5.12.1996, against A2 and A3 under Section 498-A of the Indian Penal Code was set aside, the order of sentence passed by the trial Court against A1 to undergo simple imprisonment for one year and to pay a fine of Rs. 500/-, in default to suffer simple imprisonment for one month for the offence under Section 498-A I.P.C. was confirmed and the order of sentence passed by the trial Court against A1 to undergo simple imprisonment for 2 years and to pay a fine of Rs. 500/-, in default to suffer simple imprisonment for one month under Section 325 I.P.C., was modified and A1 was sentenced to suffer simple imprisonment for one year and to pay a fine of Rs. 5,000/-, in default to suffer simple imprisonment for six months for the charge under Section 325 I.P.C.

2. The brief facts that are necessary for the disposal of the present revision case are that Bomma Kanakamma (P.W.1) was married to A1 in the month of February 1992, that at the time of the marriage, the parents of P.W.1 gave one cycle, one wrist watch and some household articles to A1, that two months after the marriage A1 started harassing his wife with a view to get rid of her and to marry another girl, that on coming to know about the same, in the month of April 1992, the parents of P.W.1 took her to Guntupally and stayed there for about 20 days and later on the advice of elders P.W. 1 returned to the house of her husband, that on 13.8.1992, A1 forced his wife to have sexual intercourse with him, relieved her clothes, inserted his fingers and a stick in her vagina, and caused severe pains and bleeding and she became unconscious, that for about four days thereafter she was not allowed to come out of the house, that the parents of P.W.1 and other relatives held a Panchayat, that then she was shifted to a private hospital at Gajwel where she was referred to Gandhi Hospital, Secunderabad, that she underwent treatment till 23.11.1992, and that thereafter she gave a report to police and the police registered the case and investigated into. On behalf of the Prosecution, P.Ws. 1 to 10 were examined and Exs.P1 to P6, besides M.Os. 1 to 5, were marked. The trial Court after considering the evidence on record came to the conclusion that the Prosecution proved its case beyond all reasonable doubt for the charge under Section 498-A I.P.C. against A1 to A3, and accordingly sentenced them to suffer simple imprisonment for one year each and to pay a fine of Rs. 500/- each, in default to suffer simple imprisonment for one month each. The trial Court further convicted and sentenced A1 under Section 325 I.P.C. to undergo simple imprisonment for two years and to pay a fine of Rs. 500/-, in default to suffer simple imprisonment for one month. Accused No. 4 in the case was acquitted by the trial Court for the offence under Section 498-A I.P.C. In the appeal preferred by A1 to A3, the learned Sessions Judge acquitted A2 and A3 for the charge under Section 498-A I.P.C., but confirmed the sentence under Section 498-A I.P.C., imposed against A1 and modified the sentence under Section 325 I.P.C. to simple imprisonment for one year and to pay a

fine of Rs. 5,000/-, in default to suffer simple imprisonment for six months. The substantive sentences imposed on A1 were directed to run concurrently. Aggrieved by the said judgment, A1 preferred the present revision petition, questioning the legality and correctness thereof.

3. Learned counsel for the petitioner contended that the necessary ingredients for the offence under Section 498-A I.P.C. were not made out against the revision petitioner, that there was delay in reporting the matter to the police, that it was not a case of demand for additional dowry, that P.W.8 was not the medical officer who treated P.W.1 and failure to examine the Doctor who treated P.W.1 was fatal to the case of the Prosecution, and that the stick alleged to have been inserted into the vagina of P.W.1 was not seized. Therefore, he prays to set aside the order of conviction and sentence recorded against the petitioner.

4. On the other hand, the learned Additional Public Prosecutor contended that the evidence of P.W.1 is very clear that she was being harassed by A1 and her version with regard to the harassment was consistent through out, that there is absolutely no reason for P.W. 1 to speak false against her husband on this aspect, that P.W.8 was the Doctor who treated P.W.1 and was a competent person to depose about the nature of the injuries and their severity, and that the non-seizure of the stick does not in any way affect the case of the Prosecution. Hence, he prays to dismiss the revision petition.

5. There is no dispute that the revision petitioner is the husband of P.W.1. Their marriage took place in the month of February 1992. For about three months after the marriage, they led marital life happily. Thereafter, A1 started harassing his wife at the instance of A3. Therefore, P.W.1 came to her parents' house and stayed for about eight days. Later, the mother of A1 went to the house of the parents of P.W.1 and assured them that they would not cause harassment to P.W.1 and would look after her well. On that assurance, P.W.1 went back to the house of her husband. On 13.8.1992 A1 forced his wife for intercourse, relieved her of her clothes, inserted his fingers in her vagina and also a stick causing severe bleeding injuries. She was not allowed to move out of the house till a Panchayat was held on 17.8.1992. After the Panchayat only, P.W.1 was taken to the hospital for treatment.

6. The first charge against the accused was under Section 498-A I.P.C. Under clause (a) of Explanation to Section 498-A I.P.C., cruelty, for the purpose of that Section, means any willful conduct of the husband or the relative of the husband of a woman 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).

7. Therefore, in order to constitute cruelty under clause (a), it is not enough that the conduct of the accused is willful and is offensively unjust to a woman, but it is further necessary that the degree of intensity of such unjust conduct on the part of the accused is such as is likely to drive the woman to commit suicide or such conduct is likely to cause grave injury or danger to her life or limb, or to her mental or physical health.

8. Under clause (b) of Explanation to Section 498-A I.P.C., cruelty means the 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.

9. Now I will examine whether the evidence on record satisfies the ingredients of either clause (a) or clause (b) of Explanation to Section 498-A I.P.C.

10. So far as clause (a) is concerned, the evidence of P.Ws. 1 to 3 is relevant. They simply stated that at the instance of A3, A1 used to beat P.W.1. This statement is only omnibus in nature. P.W.1 did not state as to the reasons for A1 beating her or causing harassment to her. P.W.2 stated that he was informed by P.W.1 that A1 to A3 used to abuse her on the ground that she was not doing household work properly. He did not say that the accused demanded any dowry. P.W.1 did not say that she informed her father that she was abused by A1 to A3 on the ground that she was not doing the work properly. The evidence of P.Ws. 2 to 3 does not disclose any cruel treatment or harassment by the accused to P.W.1. On the other hand, their evidence is contrary to the evidence of P.W.1.

11. P.W.4 is the daughter of younger sister of P.W.1. She stated that A1 beat P.W.1 and in that connection a Panchayat was held. But P.Ws. 1 to 3 did not state that a Panchayat was held in connection with the ill-treatment or harassment by the accused. So, the evidence of P.W. 4 does not in any way help the case of the Prosecution. P.W.6 stated that he came to know that P.W. 1 was being harassed by A1. It is only hear-say evidence.

12. Thus, the evidence on record does not disclose that there was cruelty on the part of the accused which was of such a nature as was likely to drive P.W.1 to commit suicide or cause grave injury or danger to her life or limb, or mental or physical health.

13. In so far as clause (b) is concerned, the evidence of P.Ws. 1 to 3 does not disclose that P.W. 1 was harassed by A1 with regard to any demand for additional dowry. On the other hand, the evidence on record discloses that there was no demand of dowry by A1 or his parents. Perhaps that was the reason why the lower Court gave a finding that there was no demand for dowry by the accused.

14. The above discussion clearly shows that either clause (a) or clause (b) of the Explanation to Section 498-A does not attract in this case.

15. Coming to the charge under Section 325 I.P.C. is concerned, it was the case of the Prosecution that on 13.8.1992, A1 inserted his fingers and a stick in the vagina of P.W.1 as a result of which she sustained heavy bleeding injury. P.W.8 is the Doctor who examined P.W.1 on 20.8.1992. He found motions coming through the vagina of P.W.1 and faecal matter (motions) present in the vagina and therefore he referred P.W. 1 to a Lady Medical Officer. He issued Ex.P3-medical certificate. He opined that the injuries were grievous in nature and might have been caused by a sharp weapon like a stick being pushed through vagina down to rectum causing the injuries. The evidence of P.W.8 and the recitals in Ex.P6 would clearly go to show that P.W.1 sustained grievous injuries. For the injury to her vagina, P.W.1 took treatment for about four months at Gandhi Hospital, Secunderabad. So,

the medical evidence establishes that the vagina of P.W.1 was damaged. The ocular testimony of P.W.1 is completely in corroboration with the medical evidence. There is absolutely no reason for P.W.1 to foist a false case against her husband on this aspect.

16. The incident in question took place on 13.8.1992. The police recorded the statement of P.W.1 on 22.8.1992 and thereafter the case was registered. Though there was delay in giving the F.I.R. to police, the Prosecution had explained the delay. According to P.W.1, some time after the incident, she regained consciousness, but she was not allowed to go out of the house till 18.8.1992. When the parents of P.W. 1 came to know about the incident, they went to the house of the accused, but they were not allowed to see P.W. 1. Then a Panchayat was held on 17.8.1992. Thereafter, on the next date of morning, P.W. 1 was taken to a hospital at Gajwel. On the advice of the Doctor at Gajwel, P.W. 1 was taken to Gandhi Hospital, Secunderabad. After admission of P.W.1 in the hospital, P.W.9 recorded her statement on 22.8.1992 and registered the case. P.W.10 took up further investigation. There was no possibility for P.W.1 to rush to the police station after sustaining grievous injury to her vagina, as she was not allowed to go out of the house. Ultimately after persuasion by the Panchayat, P.W. 1 was taken to the hospital and in the hospital her statement was recorded by the police. There is absolutely no unexplained delay in giving the F.I.R. to the police after the incident. The delay in lodging the F.I.R. was properly explained and the explanation is quite convincing. When the fact that P.W. 1 sustained severe injury to her vagina is established, the delay, if any, cannot affect the main substratum of the Prosecution case.

17. The non-seizure of the stick alleged to have been inserted in the vagina of P.W.1 must be a mistake or an error committed by the police at the time of the investigation. Some technical error committed by the Investigating Officer during the course of investigation does not in any way affect the case of the Prosecution, if otherwise the evidence of P.W. 1 is found to be trustworthy and reliable. The evidence of P.W.1 is convincing and trustworthy and there are absolutely no reasons for her to implicate the accused who is no other than her husband.

18. Dr. Indumathi, who treated P.W.1 and gave opinion, was admittedly not examined. But, it is the evidence of P.W.8 that he was the person who examined P.W.1 in the first instance and referred her for expert treatment to Dr. Indumathi. P.W.8 issued Ex.P3-medical certificate. The Prosecution ought to have examined Dr. Indumathi, but the non-examination of Dr. Indumathi would not affect the case of the Prosecution, especially in view of the fact that the Doctor who treated who treated P.W.1 at the earlier point of time was examined and a would certificate was issued by him. The evidence of P.W.8 is practically unchallenged with regard to the nature and cause of the injuries sustained by P.W.1.

19. Considering the above aspects, the lower Court, after proper appreciation of the evidence on record, convicted the accused. There are absolutely no grounds to interfere with the order of conviction and sentence under Section 325 I.P.C.

20. In the result, the conviction and sentence imposed against the petitioner under Section 498-A I.P.C. are set aside, but the conviction and sentence imposed by the appellate Court under Section 325 I.P.C. are confirmed. The revision case is accordingly disposed of.