

**IN THE COURT OF THE I ADDITIONAL JUDICIAL MAGISTRATE OF
FIRST CLASS :: TADEPALLIGUEDEM.**

PRESENT: Sri K.VASUDEVARA RAO,
I ADDITIONAL JUDICIAL MAGISTRATE OF FIRST CLASS
TADEPALLIGUEDEM.

Wednesday, this the 6th day of March, 2019

CALENDER CASE No. 103/2017

Between:

The State represented by the Sub-Inspector of Police, Uppal Police station,
Cyberabad, Hyderabad.

--Complainant

And

Pathakota Venkata Mohan Rao

--- Accused

This case is coming on 01-03-2019 for final hearing before me in the presence of the **Smt. P.Hema Latha**, Assistant Public Prosecutor for prosecution and **Sri S.Vijya Krishna**, Counsel for accused; the matter having stood for consideration till this day, this Court delivered the following:

J U D G M E N T

1. The Sub-Inspector of Police, Uppal P.S filed charge sheet against sole accused for the offence under section 498-A of Indian Penal Code (hereinafter referred to as I.P.C.) in Cr.No.225/2015 of Uppal Police Station.

2. Case of the prosecution in brief is: the marriage of PW1-P.Madhuri was performed with accused on 14-11-2013 at Lalpeta, Guntur District as per Hindu Religious and Caste Custom and at the time of marriage her parents gave Rs.7 lakhs cash and other articles worth of Rs.50,000/- was given as dowry and thereafter both of them lived happily for a period of one month and later accused started harassing her physically and mentally and addicted to bad vices like drinking alcohol and abused her in filthy language and also suspected her character and during their wedlock PW1 blessed with girl child and accused denied paternity of child and on 02-03-2015 at 5.30 p.m. on the report given by PW1, PW6-Y.Narasimha Reddy, Inspector of Police, Uppal P.S. registered case in Cr.No.222/2015 under

section 498-A IPC and handed over the same to PW5-M.Lingaiah, S.I. of police for investigation. During the course of investigation, PW5 on 14-03-2015 served section 41(A) Cr.P.C notice and after completion of investigation, he filed charge sheet against accused.

3. At first cognizance was taken by III Metropolitan Magistrate, Cyberabad, L.B. Nagar, Rangareddy District at Hyderabad against sole accused under section 498-A IPC and numbered as C.C.No.400/2015 and after appearance of accused, copies were furnished to him under Section 207 Criminal Procedure Code (hereinafter referred as Cr.P.C) and accused was examined U/Sec.239 Cr.P.C., for the substance of accusation made in the charge sheet for which accused denied as false. Charge under Section 498 IPC is framed against accused, read over and explained to him in Telugu, for which accused pleaded not guilty and claimed to be tried.

4. As per orders of the Hon'ble High Court in Transfer petition No.19/2016, case was transferred from III Metropolitan Magistrate, Cyberabad, L.B. Nagar, Rangareddy District at Hyderabad to Judicial Magistrate of I Class, Tadepalligudem and it was renumbered as C.C.No.103/2017.

5. In the course of trial prosecution examined P.W.1 to PW6 and got marked Exs.P1 and P2. Accused got marked Ex.D1 during cross-examination of PW1. The learned Assistant Public Prosecutor (hereinafter referred to as APP) given up the evidence of LW3-Pothu Parvathi.

6. After closing the prosecution evidence, accused was examined under Section 313 Cr.P.C., by granting an opportunity to offer his explanation on the incriminating material evidence available against him, for which the accused denied as false and reported no defence evidence on his behalf.

7. Heard learned A.P.P and learned defence counsel. Perused record and memorandum of arguments filed by learned defence counsel.

8. Now the point for consideration is:

Whether the prosecution was able to bring home the guilt of accused for the charge under Section 498-A IPC beyond all reasonable doubt?

POINT:

9. Learned APP argued that oral evidence of PWs.1 to 6 coupled with Ex.P1 and P2 categorically established the case of prosecution and prayed the court to convict the accused according to law.

10. Learned counsel for defence argued that PW2 admitted that he has no personal knowledge about alleged harassment by accused to PW1, he did not went to Hyderabad, PW1 did not informed him by phone at any time, PW4 admitted that one Venkatesh is his reliever and he do not know PW3-J.Veeraiah and he is not his reliever, evidence of PW3 and 4 are inconsistent with one another with regard to security office and direction of apartment of PW1 and they admitted several omissions and hence their evidence is not useful. It was further argued that PW1 failed to state that PWs.3 and 4 witnessed their quarrel and she informed them about her dispute with accused. It was further argued that admission of PW1 of Ex.D1 that prior to alleged report she gave a report against accused and both of them agreed to live together and Ex.D1 disclose that they are only petty disputes among them. It was further argued that PW1 failed to depose specific date when the alleged harassment was made by accused and her evidence is bald allegations in order to harass accused and hence, he prayed the court to acquit the accused.

11. To prove the case against accused, prosecution relied on oral evidence of PWs.1 to 6 coupled with Ex.P1 and P2.

12. PW1-P.Madhuri, victim and defacto complainant deposed about her marriage with accused, giving dowry and she lived with accused at Hyderabad happily for a period of one month and later accused started

harassing her and demanded additional dowry, gold ornaments and suspected her character and she presented Ex.P1 report. PW1 corroborated the case of prosecution. PW2-P.Durga Prasad, father of PW1 corroborated the evidence of PW1.

13. PW3-J.Veeraiah and PW4-S.Narasiah, security guards deposed about they witnessed quarrel between PW1 and accused and supported the case of prosecution. PW6-Y.Narasiham Reddy, Assistant Commissioner of Police, the then Inspector of Police deposed about receiving Ex.P1 report from PW1, registering case and hand over the same to PW5. PW5-M.Lingaiah, S.I. of Police deposed about receiving Ex.P2-FIR, investigation and filing charge sheet against accused.

14. Before considering the facts of the case, it is useful to look into section 498-A IPC which reads as follows:

Section 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 to meet such demand.

15. As per evidence of PW1 her marriage with accused was taken place on 14-11-2013. She admitted in Ex.P1, she mentioned the year of marriage with accused as 2014. She deposed that she studied B-Tech and

Ex.P1 is prepared at Uppal Police Station. Being a B-Tech graduate, PW1 failed to state the correct year of her marriage in Ex.P1. It raises suspicion on the case of prosecution.

16. As per the evidence of PW1, after her marriage she stayed at Gunturu for one week and later shifted to Hyderabad. Whereas she admitted one week after her marriage they went to Calcutta and resided there for one year and in the year 2014 accused was transferred to Hyderabad. PW2 being father of PW1 in the chief examination deposed on the same lines of PW1 and he also admitted that after some time of her marriage, PW1 joined accused at Calcutta and accused transferred to Hyderabad in the year 2014. He specifically admitted that PW1 joined at Hyderabad when her grand daughter is three months old in the year 2014. As per the evidence of PW1 her marriage was performed on 14-11-2013, upon considering the admission of PW1, both of them lived together at Calcutta and in the year 2014 accused was transferred to Hyderabad upon considering the admission of PW2 that at 3rd month of his granddaughter PW1 joined accused. Evidence of PW1 and PW2 is silent with regard to place of delivery of daughter of PW1 and at the time of her pregnancy whether she was either at Calcutta or Hyderabad or Tadepalligudem. Evidence of PW1 is also silent when accused started harassing her. At one point of time, she deposed that she lived happily with accused for one month and later harassment was started by the accused. If really accused harassed PW1 one month after her marriage, it is not possible to believe how PW1 conceived and delivered a female baby when accused harassing her. The said fact is not properly explained by the prosecution. Hence, a strong suspicion rises on the oral testimony of PW1 and PW2.

17. PW1 admitted that she placed dispute before elders and names of elders were mentioned in Ex.P1 report, and she further admitted elders settled dispute on two accusations at Uppal, she gave police report previously also on 12-12-2014 and elders settled their dispute under Ex.D1 'ఒప్పంద పత్రం'. She also admitted that accused came to Tadepalligudem to take

her back within three months after settlement i.e. in the month of February, 2015. Upon considering the admission of PW1, it can be safely held that till February, 2015 PW1 is at her parents' house. Hence, the evidence of PW1 that accused harassed her one month after her marriage cannot be believed. On perusing Ex.D1 'ఒప్పంద పత్రం', which is admitted by PW1, it disclose that there are petty disputes between PW1 and accused and PW1 presented a report against accused at Tadepalligudem. Ex.D1 is also enclosed with a report presented by PW1 to the police in which there are several allegations made against accused with regard to taking dowry, demand of additional dowry and harassment and PW1 driven away her from matrimonial home. Since PW1 herself admitted that contents of Ex.D1 'ఒప్పంద పత్రం' and she was at her parents' house till February, 2015, her oral testimony that accused harassed her physically and mentally do not arise. Her evidence is silent with regard to specific date, month and year and when she was suffered physical and mental harassment in the hands of accused. If really accused harassed PW1 physically and mentally, it is not possible to believe both of them lived together till February, 2015. Hence, oral testimony of PW1 cannot be believed as cogent and trustworthy.

18. Evidence of PW1 is silent whether she lived at Hyderabad. She also failed to state about her neighbours and her apartment watchmen witnessed alleged harassment by accused with her. PW2 admitted that he do not have personal knowledge about marital life of PW1 with accused. He also admitted that he never went to Hyderabad and staying with PW1 and accused. He testified that he came to know about life of PW1 through her by phone. He admitted that he did not stated to the police that PW1 informed him the said fact. Upon considering the said admission of PW2, it can be safely believed that PW2 do not have any personal knowledge about alleged harassment of accused to PW1. Hence, his evidence is not useful to prove the case against accused.

19. PW3-J.Veeraiah also deposed that their security office situate opposite to flat of PW1 and accused. Whereas PW4-S.Narasiah another security guard deposed that he do not know to which direction the apartment of PW1 and accused is situate. He admitted that the security guard room situate in the cellar and during his tenure as security guard there is no such person by name Veeraiah in their apartment and he along with Venkatesh attended duty in the cellar. Whereas PW3 deposed that one Narasiah is his reliever. PW4 admitted that he did not stated to the police his name as M.Narasiah, S/o. Yadaian. PW4 deposed his name as Subburu Narasiaha. On the memo filed by learned APP, PW4 was examined though his surname was different from surname mentioned in 161 Cr.P.C. statement. If PW3 and PW4 worked together at Sri Srinivas Apartments, Uppal as security guards, they should have known to each other. Upon considering the evidence of PW4 his reliever is Venkataiah but not PW3. Inconsistency between the evidence of PW3 and PW4 raises a strong suspicion on the case of prosecution.

20. PW3 admitted that on the date he gave evidence, both PW1 and PW2 also came to the court and they met him just before entering into the court. He also admitted, he did not stated to the police that accused used to consume alcohol daily and picked up quarrel with PW1. He also admitted that he do not know whether the dispute between accused and PW1 was placed before their apartment committee. Upon considering the said admissions, a strong suspicion raises with regard to trustworthiness of oral evidence of PW3. PW4 admitted that he personally do not know the disputes between PW1 and accused and that he came to know accused beat PW1 by consuming alcohol through PW1 herself. Hence, his evidence shall be considered as hearsay evidence. PW5 admitted that PW1 did not stated the date, month and year when she was assaulted by accused. He also admitted that he did not examined neighbor flat owners, President and Secretary of their apartment. He further admitted that in Part-II C.D. the date of

recording statements of PWs.1 and 2 and LW3-P.Parvathi is noted as 02-02-2015 and PW3 and PW4 as 03-02-2015. I have perused the statements, the month was over written as "02". PW6 deposed that he received Ex.P1 report on 02-03-2015 from PW1 and he registered Ex.P2-FIR. Though, he deposed that due to typing mistake the date of receiving Ex.P1 was noted as 02-02-2015, admission of PW5 that in Part -II CD the date of examination of witnesses noted as 02-02-2015 raises a strong suspicion with regard to receiving Ex.P1 report and investigation by police. Prosecution failed to give proper explanation for the said corrections in Ex.P2 and Part-II C.D. Hence, a strong suspicion raises in the mind of this court.

21. Learned APP has relied a decision held in **Rupam Pralhad Bhartiya, appellant Vs. The State of Maharashtra and another, reported in 2011 Cri.J 3540 (Bombay)**, wherein the Hon'ble High Court of Bombay held that when the character of wife is suspected, it shall be considered as mental harassment. In the said case, it was alleged that PW1/victim had illicit intimacy with PW2 her brother-in-law. In the case on hand, it is the allegation of PW1 that accused suspected her character denying paternity of his daughter. If really evidence of PW1 is truthful, how accused and PW1 have entered in Ex.D1 'బప్పుంద పత్రం' where accused agreed to receive PW1 at 3rd month of his daughter. This raises a suspicion on the oral testimony of PW1. Except bald and omnibus allegations by PW1, prosecution failed to adduce any specific allegation that accused harassed PW1 physically and mentally. Hence, oral testimony of PW1 cannot be believed and the decision relied by learned APP is not useful.

22. PW1 failed to state date, month and year when she was beaten by accused and whether she sustained any injury on her body and whether she was admitted in the hospital for treatment. In the absence of specific oral evidence with regard to physical harassment by accused, oral testimony of PW1 cannot be believed as cogent and trustworthy. It is pertinent to

observe that as per explanation (a) of section 498-A IPC, the cruelty must be such extent which drive the woman to commit suicide.

23. Though, PW1 deposed that her parents gave Rs.7 lakhs as dowry and presented Rs.50,000/- as sare to her in-laws, she admitted that she do not know the terms of her marriage. PW2 deposed that Rs.7 lakhs was given towards pasumpu kunkuma. His evidence is silent to whom Rs.7 lakhs was given and when it was given. Since PW1 and PW2 evidence is inconsistent with regard to alleged giving of dowry and as no charge is framed against accused under section 3 and 4 of Dowry Prohibition Act, oral evidence of PW1 and PW2 is not useful to prove the case against accused.

24. In view of aforementioned discussion, this court finds that prosecution failed to establish offence under section 498-A IPC against sole accused beyond all reasonable doubt. Accordingly, point is answered against prosecution.

25. **IN THE RESULT**, sole accused is found not guilty for the charge under section 498-A IPC and he is acquitted under section 248(1) Cr.P.C. The Bail bonds of accused shall be in force for a period of six months as per Section 437(A) Cr.P.C.

Dictated to the Stenographer.III, transcribed by him, corrected by me directly on computer system and pronounced by me in open Court, this the 6th day of March, 2019.

Sd/- K.Vasudeva Rao,
I ADDL. JUDICIAL MAGISTRATE OF I CLASS,
TADEPALLIGUDEM.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PROSECUTION:

FOR DEFENCE:

PW1 : P.Madhuri
PW2 : Pothu Durga Prasad Rao
PW3 : Jajula Veeraiah
PW4 : Subburu Narasaiah
PW5 : M.Lingaiah, S.I. of Police
PW6 : Y.Narasimha Reddy, Inspector of Police.

-NONE-

EXHIBITS MARKED

FOR PROSECUTION:

Ex.P1/02-03-2015 : Written report given by PW1 to the police,
Ex.P2/02-03-2015 : F.I.R.

FOR DEFENCE:

Ex.D1/21-12-2014 : Certified copy of oppanda patram

Sd/- K.Vasudeva Rao,
I AJFCM, TPG.

CALENDAR & JUDGMENT
IN THE COURT OF THE I ADDITIONAL JUDICIAL MAGISTRATE OF
FIRST CLASS :: TADEPALLIGUDEM.

CALENDER CASE No. 103/2017

1. Date of offence	:	Prior to 02-03-2015
2. Date of complaint or report	:	02-03-2015
3. Date of apprehension of A1	:	On 14-03-2015 Section 41A(1) Cr.P.C. Notice served
4. Date of release on bail of A1	:	--
5. Date of commencement of trial	:	23-01-2018
6. Date of close of trial	:	01-03-2019
7. Date of sentence or Order	:	06-03-2019
8. Explanation of delay if any	:	Due to non-production of witnesses by the prosecution

COMPLAINANT:

State: Represented by the Sub-Inspector of Police, Uppal Police Station, Chberabad, Rangareddy District, Hyderabad.

ACCUSED:

Pathakota Venkata Mohan Rao, S/o. Sambasiva Rao, Age 26 years, Assistant Manager in Genpact, R/o. H.No.2-20, Flat No. A-15, West Srinivasa Heights, Adarshnagar, Uppal.

Cr.No.	:	Cr.No. 222/2015, Uppal P.s.
Section of Law	:	Under Section 498-A IPC and Section 4 of D.P. Act
Plea of the A1	:	Pleaded not guilty
Finding of Court	:	Found not guilty

Sentence/Order:

IN THE RESULT, sole accused is found not guilty for the charge under section 498-A IPC and he is acquitted under section 248(1) Cr.P.C. The Bail bonds of accused shall be in force for a period of six months as per Section 437(A) Cr.P.C.

Seal

Sd/- K.Vasudeva Rao,
I ADDL. JUDICIAL MAGISTRATE OF I CLASS,
TADEPALLIGUDEM.

Copy submitted to the Hon'ble I Addl. District & Sessions Judge,
West Godavari District.