(2003) 02 AP CK 0003

Andhra Pradesh High Court

Case No: Criminal Revision Case No. 264 of 2001 and Cri. Revision Petition No. 264 of 2001

Md. Abdul Azeez — APPELLANT

Vs

The State of A.P. — RESPONDENT

Date of Decision: Feb. 27, 2003

Acts Referred:

- Evidence Act, 1872 - Section 145, 33
- Penal Code, 1860 (IPC) - Section 498, 498A

Citation: (2003) 1 ALD(Cri) 970 : (2003) 2 ALT(Cri) 84 : (2003) CriLJ 4410 : (2003) 2 DMC 605

Hon'ble Judges: Dubagunta Subrahmanyam, J

Bench: Single Bench

Advocate: R. Dayanand Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Dubagunta Subrahmanyam, J.
This revision is filed against the judgment dated 8-3-2001 in Criminal Appeal No. 179 of 1997 on the file of VI Additional Metropolitan Sessions Judge, Secunderabad, confirming the conviction u/s 498-A, I.P.C., and modifying the sentence of imprisonment in C. C. No. 455 of 1995 on the file of XXII Metropolitan Magistrate, Hyderabad by her judgment dated 22-4-1997. The first accused filed this revision.

2. Necessary facts for the disposal of this revision petition are as follows:

P.W. 1 is the father of P.W. 2. He is a retired senior Government official. He performed the marriage of his daughter P.W. 2 with first accused on 30-12-1988. After marriage, P.W. 2 joined her husband at his residence and lived there for a short period only. For the purpose of disposal of this revision, the version of the prosecution regarding giving dowry, etc., at the time of marriage of P.W. 2 need not

be mentioned. It is the version of the prosecution that on demand by the members of the family of the first accused, a sum of Rs. 5,000=00 was given by her parents on 11-4-1989. It is also the case of the prosecution that on 10-5-1989 A-1 and other members of his family beat P.W. 2 and necked her out of their house directing her to bring a sum of Rs. 25,000=00 from her parents for the purpose of making additional construction on the first floor of the house of the accused. According to the prosecution, P.W. 2 reached her parents house, her father P.W. 1 was not present at the house at that time, with her mother she went to the Police Station she was sent by police to Osmania General Hospital accompanied by two lady constables and she was examined by Medical Officer P.W. 3 and she issued the wound certificate Ex. P-15 regarding the injuries found on the person of P.W. 2. It is also the further case of the prosecution that after P.W. 1 reached his house, he learnt that his wife and P.W. 2 went to the Police Station, he went to the Police Station and learnt that she was sent to the hospital. It is also the further case of the prosecution that on 14-5-1989 A-1''s father, namely, A-2 entered into compromise and promised to take P.W. 2 to their residence and treat her properly and he also gave a letter Ex. P-4 to the police about his undertaking. According to the prosecution as P.W. 2 was pregnant at that time, A-2 asked P.W. 1 to keep P.W. 2 for sometime at his residence and promised to take her back after sometime and, thereafter they did not take back P.W. 2 to their residence. It is also the version of the prosecution that on 2-10-1989 A-1 and A-2 jointly gave another undertaking Ex. P-7 to the police assuring that they will take back P.W. 2 and treat her properly. P.W. 2 delivered a baby and subsequently that baby became sick and P.W. 1 went to the house of the accused and informed them about the sickness of the baby. P.W. 1 was beaten by the members of accused family and he gave a report to the police about the injuries sustained by him. In this revision we are not concerned with this incident. P.W. 1 gave a complaint Ex. P-10 on 9-9-1990 to the police requesting them to take action against the accused for the offences u/s 498-A, I.P.C., and Sections 3 and 6 of Dowry Prohibition Act. The police registered F.I.R., investigated into the matter and filed a charge-sheet against the accused. The learned Magistrate framed a charge u/s 498-A, I.P.C., read with Section 4 of Dowry Prohibition Act and another charge u/s 6 of Dowry Prohibition Act against A-1 and A-2. Both the accused pleaded not guilty to the charges framed against them. The prosecution examined P.Ws. 1 to 4 and marked Exs. P-1 to P-16 on their behalf. The accused did not examine any defence witness. One document was marked on their behalf as Ex. D-1. P.W. 2 filed a petition u/s 125, Cr. P. C., in M. C. No. 19 of 1991 against her husband--A-1 seeking maintenance. She gave evidence in that proceedings as P.W. 1. Ex. D-1 is the certified copy of her deposition in M. C. No. 19 of 1991. On a consideration of entire evidence available on record, the learned Magistrate acquitted A-2 of all the charges framed against him. She acquitted A-1 of the charge u/s 4 of Dowry Prohibition Act. She found A-1 guilty, convicted him of the offences punishable u/s 498-A, I.P.C., and Section 6 of Dowry Prohibition Act and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500=00 for the offence u/s

498-A, I.P.C. She sentenced A-1 to undergo rigorous imprisonment for six months and to pay a fine of Rs. 5,000=00 for the offence u/s 6 of Dowry Prohibition Act. Aggrieved thereby, first accused preferred an appeal in Criminal Appeal No. 1 79 of 1997 on the file of VI Additional Sessions Judge, Secunderabad. By judgment dated 2-9-1998 the Additional Sessions Judge allowed the appeal and acquitted first accused of all the charges framed against him. Aggrieved thereby, P.W. 1 in the case preferred a revision in Criminal R. C. No. 1148 of 1998 before this Court. A learned Single Judge of this Court by order dated 2-12-1999 held that the finding of the Appellate Court that no case is made out u/s 6 of Dowry Prohibition Act is correct. As far as the finding u/s 498-A, I.P.C., the learned Single Judge noticed that the Medical Officer noticed injuries on P.W. 2 on 10-5-1990, the said evidence is quite convincing, the Appellate Judge did not give much importance ''; to that aspect, that the Appellate Court took into consideration the statement of P.W. 2 in M. C. No. 19 of 1991 and that should not be taken into consideration in view of the positive evidence in the criminal case. He observed that these aspects are to be gone into by the Appellate Court and remanded the matter to the Appellate Court to take into consideration those aspects and pass appropriate judgment on merits. Thereafter the matter came up for fresh disposal before the Appellate Court. In view of the observations of the learned Single Judge in the criminal revision, the Appellate Court did not consider the charge u/s 6 of Dowry Prohibition Act. It considered the evidence regarding the charge u/s 498-A, I.P.C., alone. The learned Appellate Judge held that the charge u/s 498-A, I.P.C., is proved and confirmed the conviction of the first accused for the said offence. She modified the sefnence of imprisonment as six months rigorous imprisonment and fine of Rs. 500=00 for the offence u/s 498-A, I.P.C. Aggrieved by this judgment dated 8-3-2001, the first accused preferred the present revision.

3. The learned counsel for the accused raised two contentions. There was a compromise and, therefore, on the basis of the incident that occurred on 10-5-1989, the accused cannot be convicted for the offence punishable u/s 498-A, I.P.C. The deposition of P.W. 2 in maintenance proceedings Ex. D-1 clearly shows that P.W. 2 at that stage did not depose about accused demanding Rs. 25,000=00 for making additional constructions in their house and she had given a clean chit and good conduct certificate for her husband -- A-1 and, therefore, on the basis of her evidence, no conviction can be given in the present case. On a deep consideration of the above two contentions, I find no substance in any of those contentions.

4. P.W. 2 deposed that on 10-5-1989 she was beaten and she was necked out of the house of her husband to pressurise her to bring Rs. 25,000=00 from her parents. As already noticed the evidence of the Medical Officer P.W. 3 and the wound certificate Ex. P-15 indicate that she sustained injuries on 10-5-1989. Medical testimony corroborates the version of P.W. 2 regarding the incident which happened on 10-5-1989. There are no reasons to disbelieve the evidence of P.W. 2 regarding the said incident and demand to bring Rs. 25,000=00 from her parents. The so-called

compromise evidenced by Exs. P-4 and P-7 do not wipe out the offence committed by the accused on 10-5-1989. On the other hand. Exs. P-4 and P-7 strengthen the version of the prosecution about cruelty meted out to P.W. 2 on 10-5-1989. In fact, Exs. P-4 and P-7, in my considered opinion, do not evidence any terms of compromise. P.W. 2 is not a signatory to those letters. If there are no two parties to any deed, the said document cannot be termed as a compromise document. Ex. P-4 and Ex. P-7 are undertakings given by A-1 and A-2 voluntarily to police officials. A-1 and his father A-2 gave those letters Exs. P-4 and P-7 to the police only with a view to avoid the prosecution on the basis of the incident that took place on 10-5-1989. The undertaking given by A-1 and A-2 in Exs. P-4 and P-7 was not at (sic) discharged by A-1 and A-2. They undertook to take back P.W. 2 to their house and look after her well. There is no dispute that in pursuance of letters Exs. P-4 and P-7, accused did not take P.W. 2 to their house. After 10-5-1989, P.W. 2 never joined A-1 and lived with him at his residence. Therefore, this Court cannot hold that in view of Exs. P-4 and P-7 letters, the accused cannot be prosecuted.

5. Ex. D-1 is an inadmissible document in evidence. It is a certified copy of deposition given by P.W. 2 in an earlier proceedings. Section 33, Evidence Act, deals with relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts stated therein. Certain conditions are laid down in the said provision to render the testimony of a witness given in a former proceeding admissible in evidence. One of the important conditions is that the witness concerned is dead or cannot be found or is incapable of giving evidence or is kept out of the way by the adverse party or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. In the present case, Ex. D-1 is certified copy of the testimony given by P.W. 2 in a former proceeding. She is alive. She gave evidence in the present proceedings. Therefore, Section 33, Evidence Act, cannot be invoked for admitting Ex. D-1 as evidence in the present proceedings.

6. Another relevant provision is Section 145. Evidence Act. This provision enables any party to cross-examine any witness as to previous statements made by him in writing or reduced into writing and relevant to matters in question. The said provision further lays down clearly that if it is intended to contradict a witness by previous statement in writing, his attention must before the writing can be used in evidence, be called to those parts of it which are to be used for the purpose of contradicting him. In the present case, the relevant portion of evidence of P.W. 2 reads as follows:

"It is true that I filed M. C. 19/91 on the file of XXI Metropolitan Magistrate, Hyderabad. I have given evidence in that M. C. and examined as P.W. 1. The C. of my evidence in the M.C. 19/91 is Ex. D-1."

Except marking the certified copy of the former deposition of P.W. 2 as Ex. D-1, no other questions were put to P.W. 2 in her cross-examination to elicit any

contradiction or omission from her. It is a well known principle of law that unless the particular matter or point in the previous statement is placed before the witness sought to be contradicted for explanation, the previous statement cannot be used in evidence. The witness should be questioned about each separate fact point by point and passage by passage. Where depositions of witnesses in a former trial are used to contradict the witnesses but without giving them an opportunity to tender their explanation or to clear the particular points of ambiguity or dispute, the procedure is contrary to general principles and to the specific provisions of Section 145, Evidence Act. Inasmuch as no specific contradiction or omission is drawn to the notice of P.W. 2 and answer is elicited from her, Ex. D-1 serves no purpose and it renders no help to the accused. It cannot be looked into by the Court to find out whether there are any contradictions or omissions between her evidence in M. C. proceedings and her evidence given in the present criminal case. In this regard, there is one important aspect to be mentioned of. M. C. proceedings are intended to obtain maintenance by P.W. 2 from her husband-A-1. Demand of Rs. 25,000=00 to meet the expenses for alleged construction of additional accommodation to the residence of the accused is not a relevant matter which falls for consideration in maintenance proceedings. As far as maintenance proceedings are concerned, any evidence regarding that aspect would be irrelevant. Therefore, unless in that former deposition P.W. 2 had admitted that the accused did not demand Rs. 25,000=00, her evidence ''Ex.'' D-1 would not be relevant for the purpose of disposal of the criminal case. In my considered opinion, the learned Magistrate ought not to have admitted entire deposition Ex. D-1 as a documentary piece of evidence in the criminal case.

7. The learned counsel for the accused relied upon a judgment of Apex Court reported in Bharat Singh and Another Vs. Bhagirathi, and contended that Ex. D-1 is an admission and therefore, it is admissible in evidence. As already pointed out, no admission in Ex. D-1 regarding any matter relevant to the present criminal case is brought to the notice of P.W. 2 during her cross-examination. He also contended that if a witness makes different statements in two different circumstances, neither of the statements can be relied upon. There is no dispute regarding that proposition. However, in the present criminal case, the accused did not prove that P.W. 2 made two different statements in regard to any particular aspect. For all the reasons stated above, I do not find any grounds to interfere with the conviction and sentence imposed on the present petitioner.

8. In the result, the revision is dismissed. The conviction and sentence imposed on the petitioner are confirmed.