

**(2014) 10 KAR CK 0013**  
**In the Karnataka High Court**  
**Case No : Criminal Appeal No. 570 of 2013**

Ashok

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 09-10-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313  
Dowry Prohibition Act, 1961 — Section 3, 4, 5, 6  
Penal Code, 1860 (IPC) — Section 302, 304B, 34, 498A

**Citation :** (2014) 10 KAR CK 0013

**Hon'ble Judges :** Anand Byrareddy, J

**Bench :** Single Bench

**Advocate :** A.H. Bhagavan, Advocate for the Appellant; K.R. Keshavamurthy, State Public Prosecutor, Advocate for the Respondent

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## Judgement

Anand Byrareddy, J.—Heard the learned counsel for the appellants and the learned State Public Prosecutor.

2. The present appeal is filed against conviction of appellant No. 1 who was accused No. 1, for the offence punishable under Sections 304B, 498A Indian Penal Code, 1860 (hereinafter referred to as "IPC" for brevity) and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 (hereinafter referred to as "the DP Act" for brevity) and for the offence punishable under Section 498A IPC and Section 4 of the DP Act, insofar as accused No. 2- appellant No. 2 is concerned. Since accused No. 3 had died during the pendency of this proceedings, the appeal filed against the said accused stands abates. Insofar as accused No. 4 is concerned, she has been convicted for the offence punishable under Section 4 of the DP Act.

The facts of the case as alleged by the prosecution are to the effect that appellant No. 1- Ashoka had wedded Renuka on 19.6.2005 at K.R. Pet and at the time of marriage, a sum of Rs. 60,000/- in cash and 200 grams of gold, which includes a gold finger ring which was given to appellant No. 1 and other ornaments which were given to the complainant-Renuka, was given as dowry.

The complainant had joined appellant No. 1 in her matrimonial home at Soonagahalli. She lived reasonably happily for a period of three months and it was alleged that thereafter she was ill-treated and there were demands for more dowry. It is alleged that appellant No. 2- the mother-in-law of the complainant and accused No. 4, in particular, apart from joining accused No. 1 in demanding more dowry, were also suspecting the futility of the complainant and accusing her of having illicit relationship with several persons. It is further alleged that appellant No. 1 who believed the accusation made by appellants 2 and 4 was assaulting her on that ground and it is claimed that two panchayats were held in this regard. Further when the complainant was pregnant by 3 months, the appellants were not keen on the complainant having a child and she had been taken to a doctor for medical check-up and further alleged that though certain medicines had been prescribed, the appellants had administered drugs other than that was prescribed, in order to ensure that she had abortion and she had in fact aborted.

It is further claimed that she did get a sum of Rs. 50,000/- as additional dowry to enable appellant No. 1 to construct a house over his shop that he had and in spite of it, they were not satisfied and continued to ill-treat her. She has further given the instances and the manner in which she was being ill-treated. As for example, when there was a wedding at Nanjungud in the year 2006 and when she visited one of the relatives of the appellants, she was abused in foul language and she was even physically assaulted by the appellants and also by other namely, brother-in-law of appellant No. 1 for her having visited the relative.

It is further claimed that on 9.12.2006 at 9.15 p.m., when the complainant was cooking, appellant No. 1 is said to have picked up a quarrel with her and poured kerosene on her and set her on fire and she had run out of the house seeking help and it is the neighbours who had shifted her for treatment. The complainant however died 2 days after she was admitted, at the hospital and it is in that background, a case has been registered for the offence punishable under Sections 498A, 304B, 302 read with Section 34 IPC as well as Sections 3, 4 and 6 of the DP Act. After further investigation, a charge sheet was submitted before the Magistrate, Mandya for the alleged offences, who in turn after taking cognizance had registered a criminal case against the accused and had committed the case to the Court of Sessions in terms of Section 209 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C." for brevity). The Sessions Court having registered a case as S.C. 116/2007 against the accused and after charges having been framed against the accused for the offence punishable under afore said provisions, the accused having pleaded not guilty of the offence and having come to be tried, the prosecution had tendered evidence of 36 witnesses and got marked several exhibits and after the statements of the accused were recorded under Section 313 Cr.P.C. and after having heard both sides, the court below had framed the following points for consideration

"1. Whether the prosecution proves that accused No. 1 being the husband of

Renuka having married her on 19.6.2005 and accused 2 to 4 being the relatives of accused No. 1 subjected Renuka to cruelty and ill-treated her physically and mentally in this regard. So, punishable under sec. 498A of the IPC?

2. Whether the prosecution proves that accused No. 1 being the husband of Renuka having married her on 19.6.2005 and accused 2 to 4 being the relatives of accused No. 1, subjected Renuka to cruelty and ill-treated her physically and mentally in this regard and thereafter with a common intention of all the 3 accused, accused No. 1 poured kerosene oil on his wife Renuka and set her fire. As a result of burn injuries sustained by Renuka, she died within two years of her marriage.

So, punishable under sec. 304B r/w sec. 34 of the IPC?

3. Whether the prosecution proves that accused No. 1 being the husband of Renuka having married her on 19.6.2005 and accused 2 to 4 being the relatives of accused- 1, subjected Renuka to cruelty and ill-treated her physically and mentally and demanded her to bring dowry and thereafter accused- 1 along with common intention of other accused on 9.12.2006 at 9.15 p.m., poured kerosene oil on his wife Renuka and set her fire and murdered her. So, punishable under sec. 302 r/w sec. 34 of the IPC?

4. Whether the prosecution proves that accused- 1 being the husband of Renuka having married her on 19.6.2005 and accused- 2 to 4 being the relatives of accused- 1 have taken dowry from the parents of Renuka at the time of marriage negotiation of accused-1 and also taken dowry after marriage. So, punishable under sec. 3 of the D.P. Act r/w sec. 34 of the IPC?

5. Whether the prosecution proves that accused have demanded the parents of the Renuka to give them dowry at the time of marriage negotiations and also after marriage. So, punishable under sec. 4 of the D.P. Act r/w sec. 34 of the IPC?

6. Whether the prosecution proves that accused- 1 being the husband of Renuka and accused 2 to 4 being the relatives of the accused No. 1 have taken dowry at the time of marriage negotiations of accused- 1 and also taken dowry after the marriage but did not transferred the said dowry to Renuka during her lifetime or to her parents after her death. So, punishable under sec. 6 of the D.P. Act r/w sec. 34 of the IPC?

7. What order?"

The Court below has answered points 1, 2, 4, 5 and 6 in the affirmative and point No. 3 in negative and convicted the accused, whereby punishment has been imposed on accused No. 1 for a period of 10 years for the offence punishable under Section- 304B IPC and for a period of 3 years and to pay fine of Rs. 5,000/- for the offence punishable under Section 498A IPC and rigorous imprisonment for a period of 5 years and to pay fine of Rs. 10,000/- for the offence punishable under Section 3 of the DP Act and rigorous imprisonment for a period of 6 months and fine of Rs. 2,000/- for the offence punishable under

Section 4 of the DP Act and rigorous imprisonment for a period of 6 months and fine of Rs. 5,000/- for the offence punishable under Section 6 of the DP Act and the punishments were to run concurrently. Insofar as accused No. 2 is concerned, she was sentenced to rigorous imprisonment for a period of 3 years and pay fine of Rs. 5,000/- for the offence punishable under Section 498A IPC and rigorous imprisonment for a period of 6 months and pay fine of Rs. 2,000/- for the offence punishable under Section 4 of the DP Act. Accused No. 4 has been sentenced to undergo rigorous imprisonment for a period of 6 months and pay fine of Rs. 2,000/- for the offence punishable under Section 4 of the DP Act. It is this which is under challenge in the present appeal.

3. Shri A.H. Bhagawan, the learned counsel appearing for the appellants would take this Court through the record to demonstrate and to contend that the Court having acquitted appellant No. 1 for the offence punishable under Section 302 and also appellants 2 and 3 for the offence punishable under Sections 302 and 304B IPC and under Sections 3 and 6 of the DP Act, was not justified in convicting the appellants for the remaining offences, as the evidence of the prosecution and the contentions were in respect of the above provisions which is wholly inconsistent in the court below and sought to reconcile its findings with the evidence that is tendered in support of the allegations of the aforesaid sections. It is pointed out that the ingredients of Sections 304B and 302 IPC, which are substantive offences run contrary to each other. The ingredients of both sections are different and the prosecution itself being doubtful as to the frame of the charges and the case said to be made out against the accused, it was wholly inconsistent on the part of the court below in having proceeded in the manner in which it has. The accused facing a trial for such offences which are diametrically opposed to each other, is totally prejudicial to the rights of the accused and it has seriously jeopardized their defence.

It is also pointed out that the frame of the prosecution case was contradictory in terms of the evidence of PWs. 1 to 5 which was to the effect that it was appellant No. 1 who had poured kerosene on Renuka and set her on fire, whereas, the evidence tendered by medical officer who had treated the deceased with reference to the accident report at Ex. P20 and the case sheet at Ex. P29, both of which documents indicate that Renuka had committed suicide and these statements were recorded by the medical practitioners at the earliest point of time. It is also pointed out that even in the said statements there is an apparent contradiction whether the deceased said to have been made an allegation against of the accused insofar as Ex. P29 is concerned, it is restricted to accused Nos. 2 and 4 as having instigated her to commit suicide. This again could not be reconciled. The trial court however has chosen in the alternative to rely upon Ex. P29 to arrive at a conclusion that it was appellant No. 1 who was responsible for driving the deceased to commit suicide, while negating the allegations insofar as cruelty meted out to the deceased by all the appellants, as such to be made out.

It is further contended that the only evidence that apparently could support the

case of the prosecution was the evidence of PWs. 1 to 5. The complaint was said to have been recorded to the dictation of the deceased by PW. 1 who was the brother of the deceased and he has lent his own version of the sequence of events and has projected as if the same was narrated and was actually dictated by the deceased and this evidence of such a witness which has been primarily relied upon in arriving at the findings against the accused. Therefore, it is pointed out that the evidence tendered by the prosecution is itself in variance. The reliance being placed on such witness, the evidence of such witnesses did not justify the trial court in arriving at the findings, visiting the appellants with serious punishment, especially, the punishment that is meted out to appellant No. 1, when there is hardly any evidence, even as found by the trial court against appellant No. 1.

It is further contended that the primary material document that is sought to be held against appellants was Ex. P10 which is said to be a diary maintained by the deceased during the period prior to her death. In this regard, the learned counsel has submitted that it was incumbent on the prosecution to first of all establish that the so-called diary maintained by the deceased was in fact a diary written in her hand. This is sought to be established by the prosecution by tendering the evidence of an expert by reference to a report furnished by an expert who is said to have compared Ex. P10 with admitted writings of the deceased. However, the said expert was never offered as a witness to be tested in cross-examination. The learned counsel would submit that the court below has justified such lapse by reference to a decision rendered in the context of an expert who had furnished an information as regards as examination conducted on a chemical and the said expert not having been examined to reiterate his findings as regards the said manner was not fatal to the trial, whereas, it was pointed out that it was necessary for this expert evidence who has not stepped into the witness box to assert that the handwriting of the deceased compared with the handwriting contained in Ex. P10. The court below was not justified in holding that the non-examination of the expert was not fatal to the proceedings, especially, when it resulted the court relying on the said evidence to hold that the accused were guilty and punishing them with the serious punishment as has ultimately resulted.

It is further pointed that many of the other independent witnesses have all turned hostile and the prosecution was left with only evidence of PWs. 1 to 5 which as already stated was in support of the prosecution's case in the alternative which again is not tenable in criminal jurisprudence. It was not possible for the prosecution on the one hand to claim that the deceased had died as a result of murder and also to contend that she was forced to commit suicide at the instigation of the appellants. It is also contended that it is on record that appellant No. 1 and the deceased had set up an independent home and they were residing alone. There was no nexus and possible connection with the other accused in bringing home the contention that it was on account of the constant harassment and cruelty meted by the accused to the deceased. This aspect of the matter is completely overlooked by the Trial Court in holding that there was

constant demand for dowry and it has resulted this and other acts of cruelty and that the deceased had committed suicide. When admittedly, appellant No. 1 had chosen to set up a separate home on the advice of elders and well wishers, on account of differences between appellants 2 to 4 and the deceased, hence, the question of appellants 2 to 4 being in position to constantly demand dowry and cause harassment to the deceased was remote aspect of the matter, is completely over looked and is not taken into account.

4. The learned State Public Prosecutor on the other hand would vehemently oppose the appeal and seek to justify the impugned judgment.

5. On a perusal of the record and on consideration of the several contentions raised, it is seen from the judgment of the court below that in answering, the points framed for its consideration, from Paragraph-9 to Paragraph-49, the court below has paraphrased the evidence that is recorded in its own way and it is from Paragraph-50 onwards that reasons are assigned by the court below in arriving at its findings. Significantly, the several points framed for consideration are all answered together and the particular findings with respect to each of the points, as can be seen, are in favour of the appellants. As for instance, insofar as the presence of accused no. 1, the appellant no. 1 herein and the husband of the deceased, at the time that the deceased suffered burn injuries, is concerned, the trial court has categorically held that the prosecution had failed to prove his presence at the time of the incident. In this regard, the trial court has referred to the various infirmities insofar as the prosecution not having chosen to examine the named persons, who were said to be either present or who had attempted to go to the aid of the deceased when she was suffering burn injuries and has held that the prosecution has failed to prove his presence at the time that she suffered burn injuries, as noticed in paragraph- 63 of the judgment.

Further, insofar as the allegation that it was appellant no. 1, who had poured kerosene on the deceased and set her on fire, is also held against the prosecution, in coming to the conclusion that the deceased had committed suicide and this is on the basis of the statements made by the deceased to the Medical Practitioners, who had treated her. Therefore, the very basis of the case of the prosecution that all the accused had subjected the deceased to cruelty and had instigated her to commit suicide and that there were constant demands for dowry, is diluted, when it is shown that the allegations to that effect and the commission of the murder by accused no. 1 is not established.

The court below has next considered whether the evidence established that the accused had committed offences punishable under Sections 498A and 304B of the IPC, while observing that the deceased had died within one and half years of her marriage in her matrimonial home, on account of the burn injuries, has proceeded to take a strict view of the conduct of the appellants, in addressing the evidence and the court has taken into account the circumstance that the deceased had initially lived along with all the appellants in the same house and it is a few months later, since there were differences between the complainant and

appellants 2 to 4, appellant no. 1 and the complainant had chosen to live in a separate portion of the house independently and thereafter appellant no. 1 had constructed a new house on the shop that was run by accused no. 1 and they lived there for atleast six months prior to her death.

Further, the trial court has taken into account the evidence of PW. 8, Narasimha Murthy in this regard and has nextly referred to the evidence of PW. 1, the brother of the deceased, who has stated that all the complaints carried by his sister were of ill-treatment and the manner in which she was being harassed for not having borne a child to appellant no. 1 even after one year of marriage and of constant demand for dowry. This, the witness has stated, was reported by the deceased constantly not only in person, but also on telephone when she would call on the telephone of her neighbour one Puttaswamachari and that she was constantly keeping him informed of ill-treatment as well as the strong suspicion that they used to carry of the complainant having illicit relationship with others, and in this regard, the appellants had also picked up a quarrel with Puttaswamachari for encouraging the complainant to use the telephone in his house etc. The incidents so narrated by the said witness were spread over several months during the time that she was married to appellant no. 1 and lived along with him. The said witness had also spoken about the diary maintained by the deceased as well as the fact that she had dictated the complaint, which he had written down, though she had suffered burn injuries to the extent of 95% of her body. The trial court has also noticed that the version given by PW. 1 was not consistent with the statements that he had made before PW. 34, the investigating officer, but has formed an opinion that this would not take away the evidence of the said witness, or the other evidence of the prosecution. While also noticing that the evidence of PW. 2, the mother of the deceased, PW. 3, the father of the deceased, PW. 4, the son in law of PW. 2 and PW. 5, the daughter of PW. 2 have all reiterated the very circumstances, as narrated by PW. 1 and has thus come to the conclusion that the cruelty meted out to the deceased was of such a degree that had driven her to commit suicide, but inexplicably, the trial court has held that it was accused no. 1, who has caused the dowry death of his wife by ill-treating and harassing her, whereas the evidence sought to be tendered by the prosecution was largely to the effect that it was accused no. 2, the mother of the appellant no. 1 and accused no. 4 the sister of the appellant no. 1, accused no. 1, who were instrumental in harassing and meting out cruelty to the deceased apart from accused no. 1 himself. And inconsistently, it is also brought on record by the prosecution that in Exhibit P.10, which was a personal diary maintained by the deceased, she has categorically stated that apart from her mother-in-law and sister-in-law namely, accused no. 2, and accused no. 4, accused no. 1, her husband and accused no. 3, her father-in-law were good people at heart and did not cause any hurt or harm to her. Therefore, the finding of the trial court to the effect that accused no. 1 alone had caused dowry death of the deceased is not consistent with the evidence tendered or even the findings of the trial court itself as to the nature of the cruelty and harassment that was

said to have been meted out to the deceased. Hence, the contention of Shri Bhagawan that the trial court had not justified its findings with reference to the evidence on record is, on the face of it, to be accepted. For the evidence being ranged commonly against all the appellants, except probably accused no. 3, who was accused of only once chastising the deceased for having visited her relative's house, there is no other direct allegation against the said accused no. 3. and the trial court however, holding that accused no. 1 is held guilty of causing the dowry death of Renuka, while absolving the other accused of the said allegations, is wholly inexplicable and is not justified. The trial court has thereafter proceeded to hold that insofar as accused nos. 2, 3 and 4 are concerned, they being guilty of making demands for dowry is only on the basis of the evidence of PWs. 1 to 5 who, as already stated, were all supporting the complaint that was said to have been drafted to the dictation of the deceased by PW. 1. And since their evidence was almost parroted, as observed by the trial court itself, the said evidence having been accepted, without reservation, is also not tenable. Further, the court below has restricted its finding to the effect that the accused nos. 2, 3 and 4 would be guilty of offences punishable under Section 4 of the DP Act and not with reference to Sections 3, 5 and 6, which is also not tenable. This finding is again with reference to the evidence of PW. 1, which is reiterated by other witness, as observed by the trial court, and is not corroborated by any independent witness. On the other hand, the independent witnesses fielded have all turned hostile and have not supported the case of the prosecution. In any event, most stringent punishment has been imposed on accused no. 1, when the evidence of the prosecution against the said accused no. 1, does not support the case of the said accused meting out cruelty of such a degree, as would drive the deceased to commit suicide. Hence, the very foundation of the case of the prosecution is taken away and the incidental finding of the other accused harassing the deceased for dowry and therefore having committed the offence punishable under Section 4 of the DP Act falls into insignificance.

It is particularly significant to notice that the ill-treatment alleged insofar as the accused nos. 2, 3 and 4 are concerned, was with reference to the demand for dowry. On the other hand, the court below has held that insofar as the allegations of ill-treatment given to the deceased by accused nos. 3 and 4 are concerned, the prosecution has not established its case as recorded at paragraphs 84 to 86. The court has particularly noticed the contradictory statements recorded by the Medical Officer, as regards the ill-treatment meted out by appellant no. 1 and appellant no. 3, as per the statements recorded as on 10.12.2006 and 11.12.2006, which are totally inconsistent. Therefore, the court below then proceeding to accept one of the statements while negating the other is also not explained. The benefit of doubt therefore would have to be given to the accused in this regard. The fact that the deceased had committed suicide and the further fact that the complainant had claimed that she was also being harassed for not having borne a child to appellant no. 1 even after one year of

marriage would indicate that it was a sensitive issue, which had possibly driven her into depression and can be a reason for having committed suicide, which cannot be ruled out. Therefore, on an overall reading of the evidence and as could be seen from the findings of the court below, the prosecution had not established its case beyond all reasonable doubt. The fact that the accused was not present at the time the incident had occurred and the categorical finding that the deceased had committed suicide and further that she was depressed and was complaining that she was being harassed for not having borne a child, possibly had driven her into deep depression, resulting in her committing suicide. The allegations made in the complaint, which again is not made in the hand of the deceased, but said to have been dictated by her and recorded by PW. 1, being the basis for the case of the prosecution and the same having been negated by the trial court, it was then not possible for the prosecution to change its pack as it were and seek to bring home the charges on a totally different footing, namely that the deceased had committed suicide at the instance of the appellants or at the instance of the mother-in-law and the sister-in-law, when that is not the case of the prosecution in the alternative. Therefore, there is a total inconsistency in the prosecution having sought to present its case or in the trial court arriving at its findings in the light of the divergent findings that are raised and the evidence that is projected in seeking to bring home the charges. Hence, this court has no hesitation in holding that the prosecution has miserably failed to establish its case beyond all reasonable doubt and the trial court has also not addressed the evidence and the circumstance in proper perspective in arriving at its findings or holding that the case has been proved beyond all reasonable doubt.

Consequently, the appeal is allowed. The appellants are acquitted. The bail bonds furnished by the accused shall stand cancelled. The fine amount, if any, paid, shall be refunded to the appellants.

The appeal insofar as appellant no. 3 is concerned, abates, as already stated.

Appellant No. 1, who is in custody at present, shall be set at liberty forthwith.

The operative portion of the judgment to be communicated to the jail authorities forthwith.

A copy of the operative portion of the judgment shall be furnished to the Counsel for the appellants.