

(2011) 04 KAR CK 0079
In the Karnataka High Court
Case No : Criminal A. No. 1837 of 2005

Gopi @ Gopalakrishna

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4, 6
Penal Code, 1860 (IPC) — Section 304 (B), 498A

Citation : (2011) CriLJ 4815 : (2012) 1 DMC 393 : (2011) 6 KarLJ 214 : (2011) 3 KCCR 2414

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : H.V. Subramanya, for the Appellant; Vijaykumar Majage, HCGP, for the Respondent

Judgement

B.V. Pinto, J.—This appeal is filed challenging the judgment dated 27.07.2005 passed by the Fast Track Court - II, Bangalore Rural District, Bangalore in S.C. No. 197/2004, convicting the Appellant for the offences under Sections 3, 4 and 6 of Dowry Prohibition Act, and Section 498(A) and 304(B) of I.P.C. and sentencing him to undergo Rigorous Imprisonment for five years and to pay a fine of Rs. 15,000/- for the offence u/s 3 of the Dowry Prohibition Act and sentencing him to six months Rigorous Imprisonment and a fine of Rs. 1,000/- for the offence u/s 4 of Dowry Prohibition Act and further sentencing him to Simple Imprisonment, for six months and to pay a fine of Rs. 5,000/- for the offence u/s 6 of the Dowry Prohibition Act and further sentencing him to undergo Rigorous Imprisonment for seven years for the offence u/s 304(B) of I.P.C. with default clauses. No separate sentence is passed for the offence u/s 498(A) of I.P.C. The convicted accused has filed this appeal.

2. It is the case of the prosecution that on 06.03.2003 the accused has married the deceased Lakshamma and prior to the marriage the accused demanded a sum of Rs. 30,000/- from the parents of the deceased and gold ornaments and a sum of Rs. 5,000/- for the clothes, so also jewels for the girl as dowry thereby he

is alleged to have committed an offence punishable u/s 4 of D.P. Act. It is further alleged that the accused has accepted the aforesaid amount of Rs. 30,000/- and Rs. 5,000/- and the gold ornaments during the marriage and therefore, he is alleged to have committed the offence u/s 3 of D.P. Act Thirdly, it is charged that after 06.03.2003 the accused has not returned the jewel which has been received by him during the marriage and therefore, he is alleged to have committed an offence u/s 6 of Dowry Prohibition Act.

3. It is further charged against the accused that, after the marriage when the accused was living with the deceased wife he has subjected her to cruelty and harassment both mental and physical by not going to work and by being addicted to alcohol and playing single digit lottery as a consequence he pressurised her to bring money from her parents thereby he is alleged to have committed the offence u/s 498(A) of I.P.C. It is further alleged that being unable to tolerate the ill-treatment and harassment meted out. To her, the deceased Lakshmamma has committed suicide on 10.04.2004 in the house of the accused by hanging herself and thereby he is alleged to have committed an offence u/s 304(B) of I.P.C.

4. The prosecution in order to prove the case has examined in all 18 witnesses and has got marked Exs.P1 to P20 and produced MO-1- the plastic rope used for commission of suicide. The defence of the accused is one of total denial. However, the learned Sessions Judge was pleased to hold that the prosecution is successful in bringing home the guilt of the accused and convicted and sentenced him as herein before mentioned.

5. Heard Sri. H.V. Subramanya, learned Counsel for the Appellant, and Sri. Vijayakumar Majage, learned High Court Government Pleader appearing for the State.

6. Learned Counsel for the Appellant submits that in this case, the parents of the deceased have turned hostile to the case of the prosecution in the cross-examination conducted during the trial. He has further submitted that PW-4, PW-8, P Ws 10 to 12 and FW-15 who are the neighbouring persons who had taken part in the marriage negotiations have turned hostile to the case of prosecution and therefore, he submits that virtually there is no evidence to hold that the accused has committed the offence alleged by the prosecution. He submits that the evidence tendered by the prosecution in so far as demand of dowry before the marriage is concerned, is not established beyond reasonable doubt, so also, the acceptance of the same by the accused during the marriage. He submits that the evidence adduced by the prosecution establishes that, immediately after the death of the deceased not only the cash and jewels but also the house site given by the parents of the deceased have been returned to them and therefore, the offence u/s 6 of D.P. Act is not clearly made out and he is entitled for the acquittal for the said offence. He submits that the deceased was suffering from stomach-ache which has been spoken to by the prosecution witnesses and there is possibility that the deceased would have committed suicide being unable to tolerate the stomach ache she was suffering from and he

submits that the order of conviction may be set aside by allowing this appeal.

7. The learned High Court Government Pleader on the other hand, submits that P Ws 1, 2 and 3 have specifically stated regarding the demand of dowry by the accused at the time of marriage which has been further supported by the evidence of P Ws 7 and 15. He further submits that P Ws 1, 2 and 3 have categorically stated regarding the habit of the Appellant like playing single digit lottery and wasting of time and money in the said vice. Further, he submits that the evidence of P Ws 1 to 3 is clear regarding the drinking habit of the accused. He further submits that though P Ws 1 and 2 were won over by the accused and were cross-examined three months after their chief examination before the Court, the contents of Ex.P1 is not at all challenged by the accused and it is only Ex.P10 which is the further statement of PW-2 - father of the deceased, which has been marked by the defence. He submits that Ex.P1 clearly states regarding the demand of dowry, acceptance of dowry, drinking habit and the habit of playing of single digit lottery by the Appellant and therefore, he submits that the accused was harassing and ill-treating the deceased by his willful conduct of the nature mentioned above. He further submits that the post-mortem report and the evidence of PW-14, the Medical Officer clearly proves that the deceased had burnt injuries on her thighs and the accused being the husband has not offered any explanation regarding the presence of such injuries. The harassment given to the deceased has been clearly spoken to by the witnesses more particularly PW-1, the mother of the deceased in her chief examination before the Court though she has given a go-by to her evidence in the cross-examination. Further, the accused has not produced any material to show that the deceased was suffering from stomachache, except the oral evidence of his own sister. Since the deceased and the accused lived together for one year as husband and wife if at all the deceased was suffering from stomach ache he would have consulted the Medical Expert and nothing prevented him from summoning the said Medical Expert before the Court to probabalise his case that the deceased was suffering from stomach ache. He further submits that since the accused was on bail during the trial, there was no restraint for him to probabalise his case by adducing any defence evidence and hence, he submits that the judgment of trial Court does not suffer from any infirmity or illegality and is based on cogent, clear and convincing evidence on record. Hence, he submits that the appeal may be dismissed.

8. The prosecution in this case commenced with the filing of the complaint by father of the deceased before the Doddaballapura Rural Police Station on 11.04.2004. In the said complaint, the father of the deceased has stated that his second daughter from his second wife by name Lakshamma was married to the accused Gopi of Hamam Village about one year prior to the date of complaint. During the marriage, the accused has demanded one gold chain, one gold ring and Rs. 5,000/- cash for clothes and Rs. 30,000/- for a site as dowry and accordingly, he had given the said articles to the accused. He has also given one pair of gold ole and one mate and one pair of bangles and one pair of silver leg

chain and two gold rings at the time of marriage. Six months after the marriage they were living together happily and since there was some dispute the accused took her daughter and stayed separately in the house of one Ramaiah of the same village. Thereafter, the accused was coming to his house mid was taking amounts of Rs. 1,000/-, Rs. 500/-. About fifteen days prior to the date of complaint his daughter had come to his house and told that, the accused is insisting her to go to their house and to get money. He was coming drunk everyday and was assaulting, abusing and was giving physical cruelty to his daughter. The accused was habituated to the playing of single digit lottery and in this connection he had advised the accused and has sent a sum of Rs. 500/- with his daughter. On 10.04.2004 at about 3.30 A.M. in the night, one Muninagappa and Shivakumar from Haraara Village came to the house and told him that Lakslmiamma has committed suicide by hanging inside the house. Immediately he went along with his wife to Ham am Village and at that time his daughter had died and had fallen on the ground and the accused was sitting by the side of dead body. It is stated by the accused that, there was some verbal quarrel between himself and his wife and had slept on the previous night. He observed that, at about 2.30 A.M. the deceased hanged herself. The complainant has observed hanging mark on the neck of his daughter. It is stated by him that since his daughter had not brought, more dowry accused was giving physical and mental cruelty to her and being unable to tolerate the said cruelty his daughter had committed suicide.

9. The Police on receipt of the above complaint, registered the same in Crime No. 63/2004 for the offence u/s 304(B) of I.P.C. and commenced investigation.

10. The Tahsildar of Doddaballapura Taluk conducted the inquest proceedings on the dead body of the deceased and thereafter, the dead body was subjected to post-mortem examination. After completion of investigation, PW-18, the Inspector of Police has filed the Charge Sheet in this case.

11. PW-1 - Muniyamma is the mother of the deceased. She has stated before the Court as per the version contained in the complaint of her husband-Krishnappa before the Police. She has also stated very clearly regarding the demand of dowry, the drinking habit of the accused and the vice of the accused in playing single digit lottery. The accused was squandering the money earned not only by himself but also the earnings of her daughter who was also working. The accused was assaulting her daughter if she was not giving the money to him. This chief examination was recorded on 27.01.2005. The cross-examination, which was held on 11.04.2005 alter about three months from the date of chief examination, indicates that PW-1 has given a complete go-bye to her version as in the chief examination. It is elicited in the cross-examination that her daughter was cordially living with the accused and that she was suffering from stomach pain during menstrual cycles and that they had treated her for the said ailment. It is further elicited in the cross-examination that the accused was informing them that, the deceased was suffering from stomach-ache about two days prior to her

death and that because of the said pain she had committed suicide and has died. Further, it is elicited that, she does not know as to why her daughter committed suicide.

12. PW-2 is the father, his evidence is also similar to that, of PW 1 and is in consonance with the complaint -Ex.P1 given by him before the Police which has been reproduced above. However, when he was cross-examined three months after the chief examination, he has also given a go-bye to his evidence in the chief examination and has supported the accused and has also stated that his daughter was suffering from stomach-ache.

13. PW-3 - Thimmarayappa is a person who had taken part during the talks before the marriage. In the said talks it was settled that the accused shall be given one chain, one ring, Rs. 5,000/- for clothes, one house site worth about Rs. 30,000/- in consideration of marriage. It is also in the evidence of PW-3 that after the marriage PW-2 had told him that accused is addicted to the habit of drinking and playing single digit lottery. He also came to know that the deceased had committed suicide, in the cross-examination, he has stated that he has not seen the dowry given to the accused and that both accused and deceased were living cordially. Since on enquiry it was found that the accused was doing electrical work and was a good boy the marriage was settled with the accused. Whatever is given during the marriage was given only as per the customs of the community. He has never talked to the accused nor he has seen accused drinking nor accused playing single digit lottery but his knowledge about his vice is as per the information given by PW-2, the father of the deceased. PW-4 is the owner of the house where the accused was living with the deceased, she has turned hostile. PW-5 is the Executive Engineer who has drawn the sketch of scene of occurrence. PW-6 is another witness who was present during the marriage talks, though he has stated about accused having demanded a sum of Rs. 40,000/- as dowry on behalf of the accused, in the next sentence he says that he does not know as to what amount, the accused had settled with PW-2 and what amount was given to accused. PW-7 was also present: at the time of talks and there was a demand on behalf of the accused for Rs. 30,000/-towards the cost of site. The said amount was paid as dowry to the accused at the time of marriage. PW-8, PWs 10 to 12 and 15 have turned hostile to the case of the prosecution. PW-9 is the Employer of the deceased who was having a Mineral Waters Unit in which the deceased was working. Even the accused was working in his unit as and when there was a need for his services, PW-13 is the Taluk Executive Magistrate who has conducted the inquest proceedings on the dead body of the deceased. He has stated that except the ligature mark on the neck there were no other injuries on the dead body at the time of conducting inquest proceedings by him. PW-14 - Dr. Naveen Kumar has stated that he has conducted post-mortem examination on the dead body of the deceased and has found that apart from the ligature mark on the neck and on the right leg there was one scratch injury and there were 5 to 6 burn injuries on the thighs of the deceased measuring 4 mm. There was one more injury on the right side of waist, which was measuring 3 mm ? 3

mm. The has opined that the death of the deceased was due to asphyxia as a result, of hanging as mentioned in Ex. ii - Post-mortem examination report. PW-15 is also another witness who has also stated regarding demand of articles by the accused and people from his side. He has also stated in his evidence that accused is addicted to vices of playing single digit lottery and drinking. It is elicited in the cross-examination that after the death of the deceased, the dowry amount and the site has been returned to the parents of the deceased. In the cross-examination, it is elicited that the statement regarding the single digit lottery and drinking habit as spoken to in the chief examination is not informed to the Police nor the Police have recorded the statement from him. PW-I6 is the Deputy Superintendent, of Police who has conducted part of investigation in this case, arrested the accused and handed over the investigation to the COD. PW-17 is the Sub-Inspector of Police in Doddabailapur Police Station and on the basis of the complaint given by PW-2, he has registered the case as per Ex. PI for the offence u/s 304(B) of I.P.C. PW-18 is the Inspector of Police, Anti Dowry Cell, COD, Bangalore who has conducted the investigation and recorded the statement, of relevant witnesses and has finally tiled the charge sheet, in this case.

14. It is from the aforesaid evidence of the witnesses that the learned Sessions Judge has come to the conclusion that the accused is guilty of the offences mentioned above and sentenced him.

15. On a careful re-appreciation of the entire evidence on record, it is seen that P Ws 1, 2 and 3 have stated regarding the demand of dowry, so also P Ws 7 and 11 who have supported the version of P Ws 1 to 3. However, in the cross-examination of P Ws 1 and 2 they have given a clear go-bye to the version regarding demand of dowry and have stated that whatever is given to the accused was given as per customs and not on demand of the accused. P Ws 7 and 15 have stated that the dowry was demanded on behalf of the accused. It is not specifically stated by them that accused himself has demanded the dowry, in the evidence of the witnesses, it is brought, out that alter the death, the entire amount, and the site, gold ornaments belonging to the deceased had been given back to P Ws 1 and 2. Under the circumstances, I am of the opinion that the offence under Sections 3, 4 and 6 of the Dowry Prohibition Act has not been clearly established by the prosecution and therefore, the Appellant is entitled for an order of acquittal on those grounds. So far as the offence u/s 304(B) of I.P.C. is concerned, it has been admitted in the cross-examination of P Ws 1 and 2 that, the deceased was having pain in stomach and hence, due to the said pain she would have committed suicide. The complaint - Ex.P1 contains the fact that when P Ws 1 find 2 went to the house of deceased the dead body of the deceased was lying on the ground and the accused was sitting by the side of the deceased. He had given an explanation stating that there was some verbal altercation regarding money between himself and the deceased and at about 2.30 A.M. the deceased had hanged herself. Nowhere in the complaint there is any averments regarding the commission of suicide by the deceased for demand

of dowry. If at all the accused had any guilty mind he would not have sat by the side of the dead body of his wife but would have ran away. Under the circumstances, I am of the opinion that the prosecution has not been able to successfully prove an offence u/s 304(B) of I.P.C. On the other hand, the very fact that the accused has stated that there was some quarrel between himself and his wife regarding money transaction and, if that, is looked at with the fact that, the deceased was also working and was earning salary and that on the date of her death, it was the probable date on which the salary of the wife would have been brought to the house and the deceased would have committed suicide by thinking about the situation in her life and not necessarily because of demand of dowry. Therefore, I am of the opinion that Section 304(B) of I.P.C. has been misapplied in this case and I am of the opinion that the accused is entitled for the acquittal for the offence u/s 304(B) of I.P.C.

16. In so far as an offence u/s 498(A) of I.P.C. is concerned, P Ws 1 to 3 have categorically stated before the Court that the accused was having habit of playing single digit lottery and also having the habit of intoxicating himself. Not only P Ws 7 and 15 have corroborated this version of P Ws 1 to 3 but medical examination of the deceased by PW-14 - Dr. Naveen Kumar confirms that the dead body had burn injuries on her thighs at 5 to 6 places. It is seen that, the Tahsildar while conducting inquest proceedings has not kept present any female persons to go into the details of the injuries caused on the person of the deceased who is a woman. Therefore, the submission of the learned Counsel for the Appellant that the inquest proceedings did not contain any mention of the injuries whereas PW-14 while conducting the post-mortem examination has observed the said injuries and therefore, something has occurred in between cannot be taken into consideration in the absence of any woman witnesses present at the time of conducting inquest proceedings. Naturally, there would not have been a careful observation of the body of the deceased and therefore, there can be a lapse on the part, of the Taluk Executive Magistrate to observe the injuries on the thighs of the deceased. Whereas PW-14 being a Doctor has thoroughly examined the dead body and has observed the burn injuries on the thighs of the deceased so also one more scratch injury on the left leg and one injury on file right side waist of the deceased. The accused has not given any explanation regarding the said injuries on his wife.

17. It is observed that in this case, the Tahsildar has conducted inquest proceedings on the body of deceased who is a female, no female member of the public or female Police Officer has been kept present while conducting the inquest proceedings. Necessarily, it has resulted in the non-observance of the injuries found on the thighs of the deceased. Though no fault can be imputed on the Taluk Executive Magistrate, it is advised that the Executive Magistrate or the Police official conducting inquest proceedings on the dead body of any woman should keep atleast one woman present and conduct the inquest proceedings thereafter so as to render complete justice to the deceased and also to avoid any discrepancies between the inquest proceedings and post-mortem report.

18. Under the circumstances, the averments in the complaint -- Ex.P1 and the evidence of PWs 1 to 3 is regarding the accused giving physical and mental cruelty to the deceased is corroborated by the medical evidence and therefore, I am of the opinion that, the accused is guilty of wilful conduct as defined u/s 498(A) of I.P.C. which amounts to cruelty. Cruelty is defined as follows :

(a) Cruelty means 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)....

19. I am of the considered opinion that the habit of playing single digit lottery and drinking alcohol by husband and coming home and harassing the wife would naturally become a wilful conduct of the husband by which the wife would think of committing suicide or causing injuries to her limbs. In this case. The evidence of prosecution witnesses clearly establishes that the deceased had sustained injuries on her person, which is unexplained by the accused, and further it. is proved that she has committed suicide. Under the circumstances, the accused is found guilty of the offence u/s 498(A) of I.P.C.

20. Since the accused was convicted for the offence u/s 304(B) of I.P.C. the trial Court had not. sentenced the accused separately for the offence u/s 498(A) of I.P.C. Since I have found that the death of the deceased was not due to the harassment in connection with demand for dowry soon before the death, the accused deserves to be sentenced for the offence u/s 498(A) of I.P.C. committed by him. The learned Counsel for the appellant - accused submits that the accused was in custody for more than seven months 26 days and in view of the fact that the accused has lived with the deceased briefly for a period of one year and that both the site as well as the property received by him has been given back to the parents of the deceased, the interest of justice would be served if the accused is sentenced to pay a fine instead of sending him to jail after 7 years of the commission of the suicide by his wife.

21. On a careful consideration of the above submissions, I am of the opinion that the period of under-trial detention can be treated as sentence for the offence under Sec. 498(A) I.P.C. committed by the accused.

Hence, the following order is made :

ORDER

The appeal filed by the Appellant is hereby partly allowed. The order of conviction for offences under Sections 3, 4 and 6 of Dowry Prohibition Act and for offence u/s 304(B) of I.P.C. is hereby set aside and he is acquitted of the aforesaid offences. The order of conviction for offence u/s 498(A) of I.P.C. is hereby confirmed and he is directed to undergo sentence of imprisonment for the period already undergone by him and to pay a fine of Rs. 10,000/- in default to suffer further simple imprisonment for a period of six months. The entire sum of

Rs. 10,000/- if recovered shall be paid as compensation to PW-2 u/s 357 of Code of Criminal Procedure The Appellant is given two months" time to deposit the above amount. If the tine amount is not deposited within the stipulated time, the Trial Court is directed to execute the sentence as mentioned above.

The learned High Court Government Pleader is advised to transmit the judgment in this case to the Home Department, for implementation of the recommendations made in para 17 above.