
(2016) 06 KAR CK 0024
In the Karnataka High Court
Case No : Criminal Appeal No. 3718 of 2010

Gurayya alias Gurumurthy

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4, 6
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2017) 1 AICLR 463 : (2016) CriLJ 3999 : (2016) 4 Crimes 524 :
(2016) 4 KantLJ 239

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Shri Shivasharan Reddy for Shri Ustad Sadat Hussain, Advocates, for the Appellants; Sheshadri Jaishankar, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—;This Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973, praying to set aside the judgment dated 13-10-2010 and order dated 19-10-2010 passed by the II Additional Sessions Judge at Gulbarga in Special Case No. 170/2007, thereby convicting the appellants/accused Nos. 1 and 3 for the offences punishable under Sections 498-A and 304-B read with Section 34 of Indian Penal Code and Sections 3,4 and 6 of Dowry Prohibition Act and the appellant/accused Nos. 1 and 3 are sentenced to undergo an imprisonment for a period of one year and pay a fine of Rs. 5,000/- each. In default, they shall undergo an imprisonment for a further period of six months for the offence punishable under Section 498-A read with Section 34 of Indian Penal Code. Further the appellant/accused Nos. 1 and 3 are sentenced to undergo imprisonment for a period of seven years each for the offence punishable under Section 304-B read with Section 34 of Indian Penal Code. Further the appellant/accused Nos. 1 and 3 are sentenced to undergo imprisonment for a period of five years each and to pay a fine of Rs. 15,000/- each, in default they shall undergo a further imprisonment for a period of one

year for the offence punishable under Section 3 of Dowry Prohibition Act. Further the appellant/accused Nos. 1 and 3 are sentenced to undergo imprisonment for a period of six months each. In default they shall undergo a further imprisonment for a period of two months for the offence punishable under Section 4 of Dowry Prohibition Act. Further the appellant/accused Nos. 1 and 3 are sentenced to undergo imprisonment for a period of six months each and to pay a fine of Rs. 5,000/- each. In default they shall undergo a further imprisonment for a period of three months for the offence punishable under Section 6 of Dowry Prohibition Act.

This appeal coming on for hearing this day, the Court delivered the following:

JUDGMENT

Heard the learned counsel for the appellants and the learned Government Pleader.

2. The appellants were the accused before the Trial Court and seek to challenge their conviction for offences punishable under Sections 498-A, 304-B of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC", for brevity) and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 (hereinafter referred to as "the DP Act", for brevity). The facts are stated to be as follows :

One Renuka, wife of the first appellant was the daughter of one Chennayya. She was said to have been given in marriage to Accused No. 1, the appellant No. 1 herein in the year 1997 and that dowry by way of cash and gold was said to have been provided to the appellant in addition to other movable properties. It is stated that the complainant's daughter lived in her matrimonial home along with her parents-in-law, brother-in-law and sister. It is alleged that Accused Nos. 1 to 3 and 7 were demanding more dowry from the deceased Renuka and were mentally and physically harassing and treating her with cruelty. She had been sent to her parental home for delivery and had begotten a male child. Thereafter, accused No. 1 is refused to have taken her back to her matrimonial home, unless he was provided more dowry and he is alleged to have been paid some amount as dowry apart from gold. It is further alleged that on 20-4-1999, after Renuka had returned to her matrimonial home and when she went into the bathroom to bathe her son, it is claimed that a snake slithered out of the drain in the bathroom and had bitten Renuka on her foot. This was noticed by a girl who went into the bathroom and who had informed others of Renuka having been bitten by a snake and though she was provided medical treatment, it transpires that she died.

The complainant, suspecting foul play however, had lodged a complaint and after further proceedings, the charges were framed against the accused for offences punishable under Section 498-A and Section 304-B of the IPC and Sections 3, 4 and 6 of the DP Act. Subsequently, an additional charge was framed for offences under Section 6 of the DP Act.

During the pendency of the case, accused No. 2 had died and therefore, the case

stood abated against him. The other accused had pleaded not guilty and claimed to be tried. The prosecution thereafter had tendered evidence through P.Ws. 1 to 16 and marked several exhibits, including material objects. On the basis of which, the Court below had framed the following points for consideration :

1. Whether the prosecution proves that accused No. 1 being the husband and accused Nos. 2 and 3 being the parents and accused Nos. 4 to 7 being the relatives of the deceased Renuka have subjected to her cruelty in connection with demand for dowry and thereby committed an offence punishable under Section 498-A of Indian Penal Code?
2. Whether the prosecution proves that Renuka the wife of accused No. 1 had died in a circumstance other than natural circumstances on account of cruelty or harassment meted out to her by the accused soon before her death in connection with the demand for dowry and thereby committed an offence punishable under Section 304-B of Indian Penal Code?
3. Whether the prosecution proves that the accused Nos. 1 to 3 and 7 have demanded and received a sum of Rs. 30,000/- in cash and 5 tolas by gold in kind by way of dowry from the complainant in connection with the marriage of the first accused of the deceased Renuka and thereby committed an offence punishable under Section 3 of Dowry Prohibition Act?
4. Whether the prosecution proves that on and subsequent to 26-5-1997 the accused Nos. 1, 3 and 7 have continued to make demand for dowry, both in case and kind from time to time and received a sum of Rs. 12,000/- in cash and 1 tola of gold and thereby committed an offence punishable under Section 4 of Dowry Prohibition Act?
5. Whether the prosecution proves that the accused having received the dowry both in cash and in kind from the complainant in connection with marriage of the first accused that Renuka failed to return the same to the deceased during her life time within the stipulated period and also fail to return the same to the complainant even after her death and thereby committed an offence punishable under Section 6 of Dowry Prohibition Act?

6. What Order ?

The Court below answered the points in the affirmative and convicted the accused. It is that which is under challenge in the present appeal.

3. The learned counsel for the appellants would point out that the trial Court has glossed over the inordinate delay in lodging the complaint. The incident had taken place at Seetanur village on 20-4-1999 at about 11.00 a.m. in the matrimonial house of the deceased. But, it is only on 26-4-1999 at 2.00 p.m. that the complaint was lodged. The learned counsel would point out that the Court below has accepted the explanation offered that the complainant was kept in the dark of the death of Renuka; that it was only two days prior to the lodging of the complaint that the complainant had received telephonic information that

Renuka was not well and she was admitted to hospital and it is only after further enquiry it was learnt that Renuka was dead and she had been buried and obviously, it was suspected that the accused had murdered her and without informing the complainant and his family of her death, had proceeded to bury her.

In view of this belated complaint, the dead body of Renuka was exhumed on 3-5-1999, that is 14 days after her death and the body was subjected to post-mortem. But no definite information as to the cause of death was given, as the body was said to be in an advanced stage of decomposition and there was no evidence of any poison in the viscera.

However, the Court below has opined that the death of Renuka was not in dispute and even according to the accused, she had died of snake bite and therefore, it was an unnatural death. The Court below has then proceeded to examine whether the prosecution has made out a case for offences punishable under the other provisions cited and has concluded that the charges against the accused are brought home.

The learned counsel for the appellants would also submit that the complaint was apparently an afterthought and was lodged belatedly. There was no incriminating material produced before the Court to demonstrate that the accused had caused her death and though the complainant and his family members had attended the funeral of Renuka and were very much present when she was buried, for only to sustain their belated complaint, they have claimed that they were indeed in the dark of her death, etc. Hence, he would submit that except the self-serving claims of the witnesses who have spoken about the alleged cruelty and the demand for dowry made by the accused, there is no other independent evidence as regards any such cruelty meted out to the deceased Renuka and in the absence of any evidence of the accused having caused the death of Renuka, the Court below was not justified in proceeding on presumptions as to Renuka having been done to death by the accused.

It is also pointed out that significantly, though the prosecution had named several witnesses who belonged to the village as independent witnesses to establish the constant harassment and cruelty meted out to the deceased by the accused, namely CW-20, CW-21, CW-21, CW-31 to CW-35, none of those witnesses had been examined at the trial and therefore, there is no independent evidence of the alleged harassment caused to Renuka preceding her death and the death itself being characterised as an unnatural one and of having been caused by the accused, there is no semblance of any evidence. Further the complainant had falsely state that they were kept in the dark about her death. On the other hand, there is evidence on record that they had indeed attended the funeral of Renuka as stated by CW-21 and CW-31 to CW-35, which is possibly the reason why the prosecution did not choose to examine those witnesses. Hence, he would submit that, apart from the delay in filing the complaint which is fatal to the case in the absence of any cause of death, it cannot be said that the prosecution had brought home the charges against the

accused beyond all reasonable doubts and hence, seeks that the judgment of the Court below be set aside and the accused be acquitted.

4. The learned Government Pleader on the other hand would seek to justify the judgment of the Court below and would contend that the delay in lodging the complaint cannot be construed as delay at all, since it is only by chance that the complainant had learnt about Renuka's death and immediately on learning about her death and having regard to the background that Renuka was being constantly harassed both physically and mentally over a long period of time that the complaint came to be lodged in the sure knowledge that it was the accused who had caused the death of Renuka. The theory of a snake having slithered out of the drain in a bathroom and having bitten Renuka, is a story made out by the accused, which again has not been established by evidence to indicate that there were bite marks on the foot of Renuka or that there was presence of snake venom in the body of Renuka. In the absence of which, the unfortunate circumstance that the body of Renuka had decomposed by the time it was exhumed for further investigation, cannot be cited as absolving the accused of their guilt.

In view of the history of ill-treatment by the accused and the fact that unnatural death of the deceased has occurred within seven years of her marriage, the presumption of death having been caused on account of the cruelty meted out to the deceased, and which was of such a degree as to have caused the death of the deceased, would squarely implicate the accused and the Court below has rightly found that the prosecution had established the charges beyond all reasonable doubt and therefore, seeks dismissal of the appeal.

5. In the above background, the first requirement of establishing that the death of Renuka was a homicidal death, was on the prosecution. Though it is claimed that Renuka had died of a snake bite, it is only on the evidence of PW-7 who was said to be administering native medicine to the villagers who had asserted that he had treated Renuka for a snake bite, but that she had not survived. Whether the snake venom would have been retained in the body of Renuka was also not capable of being established, for the reason that though she had died prematurely and unnaturally on account of snake bite, there was no police report in this regard and no post-mortem had been conducted. It is only on the basis of the complaint that Renuka's body was exhumed fourteen days after her death and the postmortem conducted thereafter, has not yielded any results as to the cause of death and therefore, even if there was a snake bite, this has not been established.

6. In the face of the above circumstances, it would appear that on account of the delay in exhuming the body of Renuka and in the absence of any material proof of foul play and since it may also have been difficult to ascertain whether there was a snake bite, it cannot be said with any certainty that there was ill-treatment or physical hurt caused by the accused to Renuka leading to her death.

7. Faced with such a situation, it would certainly lead to a miscarriage of justice to presume on the basis of the statements made by the several witnesses that Renuka had died at the hands of the accused. The delay in lodging the complaint was certainly fatal to the case, as the prosecution was seriously handicapped in being able to establish that the death of Renuka was homicidal in nature or that it was caused by the accused. The benefit of doubt which clearly exists, ought to be given to the accused and it would be opposed to settled principles of law if the accused are to be convicted on such evidence or rather, lack of it. Therefore, there is no hesitation in holding that the prosecution had failed to prove the homicidal death of Renuka or that the accused were responsible for her death.

8. Consequently, the appeal is allowed. The judgment of the Court below is set aside. The accused are acquitted. The fine amount if any paid shall be refunded to the appellants.