

(2010) 06 KAR CK 0067
In the Karnataka High Court
Case No : Criminal Appeal No. 798 of 2003

K.M. Shivayogi Marulaiah, Sastry Marulaiah and Onkaramma **APPELLANT**
Vs
State of Karnataka **RESPONDENT**

Date of Decision : 14-06-2010

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4, 6
Penal Code, 1860 (IPC) — Section 304 B, 306, 498A

Citation : (2010) 06 KAR CK 0067

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : A.H. Bhagawan, A.N. Radha Krishna and Mahesh R. Uppin, for the Appellant; Satish R. Girji, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—This appeal is by accused Nos. 1 to 3 against the judgment dated 23.4.2003 in S.C. No. 71/1999 on the file of the Principal District and Sessions Judge, Chikmagalur.

2. The Police Inspector, Anti-Dowry Cell, COD, Bangalore, charge-sheeted accused for the offences punishable under Sections 498-A, 304-B and 306 r/w Section 34 IPC and further r/w Sections 3, 4 and 6 of Dowry Prohibition Act

3. The case of the prosecution is that accused No. 1 married deceased Mallamma @ Shankuntala daughter of PW1 on 3.10.1997 Accused Nos. 2 and 3 are the parents of the accused No. 1. Accused Nos. 4 and 5 are the sons of Accused Nos. 2 and 3. At the time of marriage talks accused demanded dowry of Rs. 45,000/- and gold articles and other valuables and accused No. 1 demanded Bajaj M 80 Scooter. PW1 gave Rs. 45,000/- in three instalments i.e., Rs. 1,000/-, Rs. 22,000/- and Rs. 22,000/- to accused No. 2. Accused No. 1 collected Rs. 22,000/- to purchase the Bajaj M80 Scooter. After the marriage, the deceased lived happily for about three months in her husband's house. She came to her parents' house on 6.12.1998 and from then onwards she lived with her parents

till she died.

4. On 17.12.1998 PW1 father of the deceased had gone to jatra to a nearby village, he received information that his daughter has committed suicide at about 5.30 p.m. on 17.12.1998. PW1 rushed to the village and on 18. 12.1998 at about 1.00 a.m. he filed complaint alleging that the deceased committed suicide on account of harassment and demand of additional dowry by the accused. PW13- Mohammed Saifulla, the Tahsildar, Kadur, went to the spot and conducted inquest and a spot, mahazar was drawn and a case was registered in Crime No. 79/1998. Body was sent to the Hospital. PW12-Dr. Umesh, the Medical Officer at Kunkanadu P.H.C. performed autopsy and submitted a report as per Ex PI 1 PWs.15, 15 and 17 conducted the investigation in part. PW17 filed the charge-sheet.

5. In support of its case, prosecution examined PW1 to PW13 and marked Exs.P1 to P27 and produced MOs.1 to 28. Amongst PWs 1 to 7, PW1- C. Marukradhya is the father of the deceased, PW2 - Jayamma is a neighbour of PW1, PW3 - Marulappa is a person from the village of PW1, PW4 -Gangadharaiah is the son-in-law of PW1, PW5 ? Malligamma is another resident of the same village. PW6 - Nagarathns is the eldest daughter of PW1. PWs.1 to 6 are material witnesses examined by prosecution to prove the alleged offences. PWs. 1, 2, 4 and 6 speak of demand and acceptance of the dowry. PW4 speaks about the demand of dowry by accused No. 2. Insofar as PW7 - Manjanna is concerned he has been examined to show that he purchased the Bajaj M 80 Scooter from accused No. 1

6. Trial Court relying on the basis of the evidence of PWs.1 to 6 held that the prosecution has proved the charge beyond reasonable doubt and convicted accused Nos. 1 to 3 for offences punishable under Sections 304-B, 306, 498-A of IPC and Sections 3, 4 and 6 of D.P. Act and acquitted accused Nos. 4 and 5. Accused Nos. 1 to 3 were sentenced for offences punishable u/s 304-B of IPC for a period of 7 years, for offences punishable u/s 306 of IPC sentenced for five years, and for offences punishable u/s 498-A of IPC for one year each and fine of Rs. 1,000/- each, for offences punishable u/s 3 of DP Act each of the accused were sentenced to undergo S.I. for 3 years and to pay a fine of Rs. 15,000/- each and for the offences punishable u/s 4 of DP Act S.I. for 6 months and fine of Rs. 2,000/- each and for offences punishable u/s 6 of DP Act to pay fine of Rs. 2,000/- each.

7. Being aggrieved by the judgment of conviction, accused Nos. 1 to 3 have preferred this appeal. It is stated that accused No. 2 died during the pendency of this appeal and his legal representatives have been brought on record to prosecute the appeal.

8. Sri A.H. Bhagawan, learned Counsel representing the appellant submitted that, according to the evidence of PW1 the deceased had come to the house of PW1 on 6.12.1998. Though she had come earlier on several occasions, only on the last occasion i.e. 6.12.1998 she informed PW1 of the harassment by the

accused in connection with additional dowry of Rs. 50,000/- and on 17.12.1998, he had gone along with PW6 to the house of PW4 for a village jatra, where he received the information of the death of his daughter.

9. To prove the charge of demand and acceptance of dowry, the prosecution has relied on the evidence of PWs.1, 2, 4 and 6. Except PW4 the statement of all other witnesses is omnibus in nature. There is no specific statement as regards the demand and acceptance of dowry. PW4 has stated that accused No. 2 demanded dowry of Rs. 80,000/-. PW4 being son-in-law of PW1 and apart from being interested witness, his evidence is not is not corroborating with the evidence of other witnesses. PWs.1, 2 and 6, all speak of demand of dowry of Rs. 45,000/-. PW4 speaks of admission of Rs. 80,000/-, since there is material contradiction, his evidence is not credible and acceptable, he relied on the evidence of PWs.1 and 2, who speaks of acceptance of dowry. Even according to PWs.1 and 2 the dowry is accepted by accused No. 2 i.e., Rs. 1,000/- at the time of marriage talk and Rs. 22,000/- each in two instalments. PWs.4 and 6 though speak of the demand, but their evidence is not specific they do not speak as to who demanded. PW5 who is stated to be independent witness and a resident of the village of PW1, her evidence is a hear say evidence she states that there was a demand of Rs. 50,000/- and some silver articles. In the cross-examination, she states that the demand was from the husband's people. Her evidence does not prove the demand and acceptance. Very vague and general statement is made. No specific allegation She does not specifically mention as to who demanded the dowry except stating that husband's people, it does not include even husband also.

10. Insofar as the harassment, PW5 states that harassment was caused by all the accused, it is an omnibus statement and there is no specific allegation against the accused. PW4 is none other than the sister of the deceased she does not have the personal knowledge nor she has witnessed any of the incidences of harassment. PW5 also does not state anything except saying that the husband's people. PW2 though has turned hostile, but he is material witness as he has spoken about the demand and acceptance of the dowry and he is very close person to PW1, but in Ms evidence in the examination-in-chief he has categorically stated that the deceased was not harassed and she never complained of the harassment. Though PWs.1 to 6 have been examined to say that there was harassment, but none of the witnesses speak as to when such incidents took place, except the omnibus statement.

11. In the cross-examination, PW1 admits that, his daughter used to say that there was no harmony between her and her husband and not complained about any other harassment except the demand of additional dowry Learned Counsel further submitted that the disharmony in the relationship leading to death by suicide, does not attract either provisions of Sections 304-B and 306 of IPC. It may be the reasons, but it will not be an harassment.

12. PW1 further in the cross-examination admit that he cannot actually say

which is the exact reason for his daughter committing suicide. Referring to this evidence he further submitted that PWs.1, 4 and 6 are related to the deceased, they are interested witnesses though PW2 is independent witness, has supported the case of the prosecution. The evidence of PW3 though is a hearsay evidence, she also does not state, which of the accused caused harassment to the deceased. Though independent witnesses have been examined, particularly the neighbours, but they have not supported the prosecution

13. The Trial Court on the basis of the omnibus statement of PWs.1 to 6 has erroneously convicted the accused for all the offences. He also pointed out that if the accused is to be convicted for the offence punishable u/s 304-B i.e., the death of a woman caused by the appellant due to harassment other than normal circumstances within 7 years of her marriage and it is shown that she has been subjected to cruelty by her husband or his parents or in connection with the demand for dowry, such death would be called as dowry death. He submitted that if the accused is punishable for the offence u/s 304-B of IPC there cannot be conviction u/s 306 of IPC for the same crime. However, the trial Court has erroneously convicted the accused for offences under both the Sections. The only evidence of PW4 shows that accused No. 2 had demanded the dowry, since accused No. 2 is dead the appeal against him is abated. Insofar as accused Nos. 1 and 3 are concerned there is no specific evidence hence conviction of these accused for the offences is not sustainable in law.

14. Even on re-appreciation of the entire evidence, the material witnesses PWs-1 to 6 more particularly PW-6, they do not clinchingly prove either the harassment or demand or acceptance of dowry against the accused Nos. 1 and 3. Only PW-4 has stated that, accused No. 2 demanded dowry. However, his version does not corroborate with the evidence of PWs-1 and 6, who are the father and sister of the deceased. As regards to the harassment, the prosecution has relied on the evidence of PWs-1 to 6. The statement of PW-6 is totally omnibus in nature, it does not specify as to who harassed, in turn, it only suggests that the accused harassed the deceased. PW-5 alleged to be an independent witness, in the cross-examination has stated that the husband's people harassed the deceased. PW-2 though has turned hostile, but in the examination-in-chief itself has stated that, the deceased had never complained of harassment. No doubt, PW-2 has turned hostile, however, being independent witness, to some extent he has stated in favour of the prosecution. His statement in the examination-in-chief having supported the case of the prosecution except the case of harassment could be looked into. If this evidence is considered with the evidence of other witnesses, the harassment alleged has not been satisfactorily established by the prosecution.

15. The evidence of the witnesses, who were immediate neighbour of the deceased at the place have not supported the case of the prosecution. Their evidence is material evidence for the Prosecution. PW4, PW-4 PW-6 are none other than the father, brother-in-law (sister's husband) and sister of the deceased, their evidence has to be considered carefully. None of these witnesses

are specific, no earlier instance of harassment or dowry demand is stated. The prosecution case itself shows that deceased was living with her father from 6.12.1998, and the deceased committed suicide on 17.12.1998 that after 11 days, there is no evidence that during this period there was any negotiation, in turn incident has taken place when PW-1 had gone to the village of PW-4 for village fair.

16. In the fight of the evidence adduced by the prosecution, it is difficult to believe the prosecution case. The prosecution case is not supported by any clinching and convincing evidence.

17. Trial court on the basis of the evidence of PWs-1 to 6 without considering the other material has held that the prosecution has satisfactorily proved the alleged offence against these accused. In my opinion, trial court has committed an error in not properly analysing the evidence of PW 1 to PW-6 when the evidence of PW-1 to PW-6 is not sufficient, and create doubt as to the prosecution case. Relying on the evidence of PW-1 to PW-6 to convict the accused was not justified. In these circumstances, I find that the judgment of the trial court requires to be interfered.

18. Accordingly, the appeal is allowed. The impugned judgment dated 23.4.2003 in Sessions Case No. 71/1999 on the file of Prl. District & Sessions Judge, Chikmagalur is set aside. The bail bond stands discharged.