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(2013) 07 KAR CK 0287

In the Karnataka High Court

Case No : Criminal R.P. No 265 of 2009

Lakshminarayana, Thimmaiah and Gowramma — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:
Dowry Prohibition Act, 1961 — Section 3, 4, 498A

Citation : (2013) 07 KAR CK 0287

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : A.H. Bhagavan, for the Appellant; G.M. Srinivasa Reddy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—This criminal revision petition is directed against the judgment of conviction and sentence dated 24.11.2007 in C.C. No. 530/2005 and confirmed in Crl.A. No. 89/2007 vide judgment dated 3.3.2009. Petitioner No. 1 is the son of petitioners 2 and 3. The wife of petitioner No. 1 by name Radha lodged a complaint with jurisdictional police on 10.12.2004 alleging that her husband and father-in-law and mother-in-law demanded dowry, assaulted, tortured and caused cruelty. It is also alleged in the complaint that petitioner No. 1 went for second marriage with one Rukmini and thereafter they drove the complainant out of the matrimonial house and assaulted her. The jurisdictional police registered a case against the petitioners for the offences punishable u/s 498A and Sections 3 and 4 of Dowry Prohibition Act. After investigation the police filed the charge sheet. The trial Court framed the charges for the above said offences. The prosecution examined PW.1 to PW.10 and got marked Exs. P1 to P5. Petitioners have not examined any defense witnesses nor produced any documents. The trial Court after hearing arguments framed the following points for its consideration:

i) Whether the prosecution proves beyond all reasonable doubt that on

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31.5.2002 the accused No. 1 after the marriage with CW1 in collusion with accused No. 2 and 3 demanded further dowry of Rs. 10,000/- from CW1 and for the purpose of dowry the accused tortured CW1 both mentally and physically and thereby committed the offences punishable u/s 498(A) IPC?

ii) Whether the prosecution proves beyond all reasonable doubt that on 1012.2004 at 8:30 PM the accused No. 1 to 3 for the purpose of dowry assaulted CW1 by causing injuries to CW1 with their hands and driven her out of her matrimonial home and thereby they have committed an offence punishable u/s 3 and 4 of D.P. Act?

iii) What Order?

2. On appreciation of the oral and documentary evidence the trial Court passed the impugned judgment holding that the prosecution has proved the offence u/s 498A IPC. It is held that the prosecution has failed to prove the offence under Sections 3 and 4 of Dowry Prohibition Act. Consequently, the trial Court sentenced the petitioners to undergo simple imprisonment for six months separately and to pay a fine of Rs. 1000/- each for the offence punishable u/s 498A IPC and in case of default to pay the fine amount, the accused shall undergo simple imprisonment for one month. Aggrieved by this judgment and sentence of trial Court the petitioners filed an appeal in Crl.A.89/2007 before the District and Sessions Judge, Bangalore Rural District. The lower appellate Court vide judgment dated 3.3.2009 dismissed the appeal and confirmed the judgment of the trial Court. Hence this revision petition.

3. Heard arguments on both the side and perused the entire petition papers and records.

4. The finding of the trial Court that the prosecution failed to prove and establish the offence against the petitioners under Sections 3 and 4 of the Dowry Prohibition Act had become final and it is not necessary for this court to go into that area. The concurrent findings of both the courts below is in respect of the offence punishable u/s 498A IPC. A reading of Section 498A IPC specifies ''Cruelty'' means any willful 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. In the instant case in the complaint lodged by PW.2, it is specifically stated that on 10.12.2004, the accused assaulted her by hand. There is no specific allegation against each of the accused. On the other hand, it was a general statement made by PW.2 in her complaint against all the three accused. Further the complainant was subjected to medical examination on 11.12.2004. Ex. P1 is the wound certificate. A perusal of the certificate specifies that PW.2 sustained bite mark over the left wrist and contusion over the left wrist joint. On the face of it the wound certificate is contrary to the allegations made in the complaint, Ex. P2. Both the courts below committed an illegality in not noticing this material inconsistency in the complaint and the wound certificate. The non-consideration of this material on

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record resulted in failure of justice.

In the complaint it is alleged that from the date of marriage till the date of incident on 10.12.2004, petitioners continuously demanded dowry from the complainant. Both the courts below concurrently held that the prosecution failed to prove and establish that petitioners continuously demanded the dowry from the complainant. Therefore, the question of causing cruelty on the ground of dowry demand is to be held against the prosecution. In the complaint it is further alleged that accused 2 and 3 arranged a second marriage of petitioner No. 1 with PW.8 Rukmini. The evidence on record discloses that the alleged second marriage had taken place on 7.11.2004 and on the same day the marriage was broken. PW.2 and PW.3 admit in their evidence that prior to 7.11.2004 petitioner No. 1 was looking after the complainant very well. There is no evidence on record to show that complainant and the second wife of petitioner No. 1 lived together resulting in cruelty to the complainant. On the other hand, from the material on record it is seen that complainant was residing in the house of petitioners even after the date of alleged incident and also on the date of deposing evidence before the trial Court in the year 2006. Again both the courts below committed an illegality in not taking into consideration this evidence on record. Thus the prosecution failed to prove and establish the offence against accused u/s 498A IPC. For the reasons stated above, the following:

ORDER

i) The criminal revision petition is hereby allowed.

ii) The order of conviction and sentence dated 24.11.2007 in CC. No. 530/2005 passed by the Addl. Civil (Jr. Dn) and JMFC, Anekal and confirmed in Crl. A. No. 89/2007 vide judgment dated 3.3.2009 passed by the District and Sessions Judge, Fast Track Court-V, Bangalore Rural District are hereby set-aside.

iii) The petitioners are acquitted and their bail bonds stand cancelled.

iv) Ordered accordingly.

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