
(2014) 11 KAR CK 0058
In the Karnataka High Court
Case No : Criminal Appeal No. 269 of 2010

M. VeerabhiKshavathi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 498A, 506

Citation : (2014) 11 KAR CK 0058

Hon'ble Judges : Anand Byraredddy, J

Bench : Single Bench

Advocate : N. Padmavathi, Advocate for the Appellant; K.R. Keshavamurthy, State Public Prosecutor-1, Advocate for the Respondent

Judgement

Anand Byraredddy, J.—Heard the learned Counsel for the appellants and the learned State Public Prosecutor.

2. The appellants are accused Nos. 1 and 6, who have been convicted for offences punishable under Sections 506 and 498A of the Indian Penal Code, 1860 (Hereinafter referred to as the "IPC, for brevity) and under Section 4 of the Dowry Prohibition Act, 1961 (Hereinafter referred to as the "DP Act", for brevity).

3. The facts, as alleged by the prosecution, are that one Pramila, wife of the first appellant, VeerabhiKshavathi had lodged a complaint before the Anekal Police on 4.3.2005, alleging that she was married to appellant No. 1 on 13.5.2001, at Dharmasthala Manjunatha Swamy Temple and she was residing in her matrimonial home along with her husband and his parents, her sister-in-law, the nephew of her husband and her brother-in-law. It was the allegation that all of them together were harassing her and she was not provided food and was ill-treated continuously and on many occasions, she had to spend nights in the cattle shed and she was brutally beaten up by her husband, who had withdrawn from her society and had indulged in bad habits.

It was her complaint that she was being harassed and ill-treated continuously, in order that she get an additional dowry, though her parents had provided adequate dowry at the time of the marriage. It is her further case that her father on hearing about the continuous and constant cruelty meted out to the complainant, had convened a panchayat and in lieu of providing the sum of Rs. 2,00,000/- which was demanded as additional dowry, he had agreed to provide four power looms at the house of the complainant's husband and it was accordingly claimed that four power looms had been set up by the complainant's father at the house of the first appellant. But even thereafter, the accused had continued to ill-treat her.

It was further alleged that on 15.6.2004 at about 6.30 p.m., when she had come back home with the cattle that she had taken out for grazing, all the accused had conspired in order to kill her and the husband had doused her with Kerosene, her brother-in-law Somashekar had held her, while her sister-in-law's son Manjunath and her sister-in-law Pavathamma and her mother-in-law, Bhadramma had gagged her mouth preventing her from crying out, and Parvathamma handed over a match box to set her ablaze. At which point of time, with a herculean effort, she had freed herself and she started knocking at the door and the neighbourers are said to have come to her rescue and therefore, she had managed to run away and had boarded a bus to go to her maternal home. She had narrated the incident to her father and elders of the village, who in turn, had called the appellants and advised them that she should be looked after well, for otherwise there would be a criminal case. It is further alleged that the father of the complainant had rented a house for the exclusive residence of herself and her husband, at Santhe beedhi in Anekal, but appellant No. 1 had refused to stay at the said house. It is further alleged that she was threatened that she would come to harm if she failed to provide an additional dowry of Rs. 2,00,000/- which they had demanded.

Further, on 3.3.2005, according to the complainant, her husband, the appellant No. 1 herein and his younger brother Somashekar had threatened to set her ablaze. But however, the owner of the house one Shivashankar had intervened and had prevented any mishap. It is stated that on seeing Shivashankar, the appellants had run away and therefore she had been spared.

It is in this background that the complainant had approached the Police and a case was registered in Crime No. 46/2005 and a First Information Report was generated against accused Nos. 1 to 6. After further investigation, the Police had filed a charge sheet. On committal of the case to the Court of Sessions, it is stated that the charges were framed.

The accused having pleaded not guilty to the charges, the prosecution had tendered evidence through PWs. 1 to 10 and had marked several exhibits. Thereafter, the statement of the accused having been recorded under Section 313 of the Code of Criminal Procedure, 1973 and after having heard both sides, the court below had framed the following points for its consideration:

"1. Whether the prosecution proves beyond all reasonable doubt that accused No. 1, 3 to 6 and deceased accused No. 2 have formed an unlawful assembly with a common object of committing the murder of C.W. 1, Smt. Pramila at about 6.30 p.m. on 15.6.2004 in their house at KSRTC Colony, Anekal?

2. Whether the prosecution proves beyond all reasonable doubt that in furtherance of the common object A.1, A.3 to A.6 and deceased A.2 have abused C.W. 1, Smt. Pramila in vulgar language with an intent to insult and thereby to provoke her to commit breach of peace on the aforesaid date, time and place?

3. Whether the prosecution proves beyond all reasonable doubt that accused persons and deceased A.2 have threatened the complainant Smt. Pramila with dire consequences in furtherance of common object of their unlawful assembly on the aforesaid date, time and place and committed the offence of criminal intimidation?

4. Whether the prosecution proves beyond all reasonable doubt that on the aforesaid date, time and place accused persons and deceased A.2 have attempted to commit the murder of C.W. 1, Smt. Pramila in furtherance of their common object of unlawful assembly by pouring kerosene and set her on fire?

5. Whether the prosecution proves beyond all reasonable doubt that accused persons and deceased A.2 subjected the complainant in their house for cruelty from the date of her marriage with A.1 on 13.5.2001 in furtherance of their common object?

6. Whether the prosecution proves beyond all reasonable doubt that accused persons demanded and taken dowry from the parents of C.W. 1 at the time of her marriage with accused o.1?

7. Whether the prosecution proves beyond all reasonable doubt that accused persons and deceased A.2 have demanded and taken additional dowry from the parents of C.W. 1, Pramila?

8. Whether the prosecution proves beyond all reasonable doubt that accused persons failed to return the dowry taken by them within 3 months from the date of receipt?"

The court below had held points 1, 2, 4, 5 6 and 8 in the negative and point No. 3 partly in the affirmative and point No. 7 in the affirmative and acquitted the accused except accused nos. 1 and 6, who are the appellants herein. Accused Nos. 1 and 6 were convicted for the offence punishable under Section 506, IPC and sentenced to undergo rigorous imprisonment for a period of one year. The accused were also convicted for the offence punishable under Section 498A, IPC and sentenced to undergo rigorous imprisonment for a period of one year, and to further undergo rigorous imprisonment for six months for the offence punishable under Section 4 of the DP Act. It is that which is under challenge in the present appeal.

4. The learned Counsel for the appellants would point out that the complaint was hopelessly delayed, in that, the complaint was filed a clear 8 months and 17 days after the alleged incident and there is no explanation forthcoming in the complainant having taken her time in lodging the complaint which is wholly unnatural, and the court below has glossed over the same in acting upon the said complaint and bringing the accused to trial. The same ought to have been rejected at the threshold as the delay was inordinate and unexplained.

It is further pointed out that the primary allegation is that the accused had continuously demanded dowry and had meted out inhuman cruelty. The accusation was common against all the accused. The court below having held that the allegations were not proved against accused Nos. 3, 4 and 5, could not, on the basis of the same evidence, which was common against all the accused, have held that the allegations stood proved only against accused Nos. 1 and 6, the appellants herein. The sequence of events, as alleged by the complainant, would indicate that all steps had been taken to ensure that she did not suffer any kind of hardship, in that, she had called upon her father to intervene and convene panchayats and ultimately to ensure that an independent residence was set up for herself and her husband. This would not be consistent with the allegation that she was treated with inhuman cruelty and there was no concern for her welfare.

The further circumstance that appellant No. 1 was driven to file a petition for restitution of conjugal rights would also indicate that it was the complainant, who was physically mounted and had left the matrimonial home without just cause, seeking to bring a false case against the accused- appellant and his family members, including appellant No. 6, who had no connection with the matrimonial life of the appellant and the complainant except that he was the younger brother of appellant No. 1. The allegation that the appellants, along with other members, namely, the mother and the sister, apart from the nephew of appellant No. 1, had tried to set her ablaze, which was the incident that was complained of almost nine months prior to the complaint and that she was able to escape from their clutches, is incapable of being believed. When there were so many adult members seeking to set her ablaze, it is inconceivable that she was able to break free and run away from a closed room. And that all the neighbours having come to her rescue, none of them have been examined as witnesses in support of the incident. The further claim that the appellant No. 1 and his brother had sought to set the complainant ablaze in the independent house that had been set up for her and her husband and that they had run away on seeking Shivakumar the owner of the house etc., is also not established since he was not examined as a witness.

In this fashion, the learned Counsel for the appellants would submit that the further accusation of demands for dowry is also on the basis of a second hand information as narrated by the witnesses, who are the close relatives of the complainant and whose knowledge of any such demand is only through the

complainant and not from appellant No. 1 or any of his family members. The general complaint therefore was against all the accused and the court below having thought it fit to acquit all the accused except these appellants, smacks of the court proceeding on an arbitrary and whimsical fashion without reference to the evidence on record which did not clearly establish any case against the appellants just as it did not establish any case against other accused. Hence, the learned Counsel seeks that the judgment of the court below be set aside and the appellants be acquitted.

5. While the State Public Prosecutor seeks to justify the judgment of the court below.

6. In the facts and circumstances of the case and from a perusal of the record, the sequence of events as sought to be narrated does not evoke confidence of this court. On the other hand, the inordinately delay of almost 9 months in filing the complaint of an incident itself is not capable of being countenanced. Further, the allegation that the adult members of the family of appellant No. 1 had sought to set the complainant ablaze and she having managed to escape from the clutches is difficult to accept. Therefore, for all the infirmities that are highlighted by the learned counsel for the appellants, the judgment of the court below suffers from several infirmities apart from the fact that the complaint itself could not have been entertained, especially after an unexplained delay of almost nine months, when it is the complainant's own case that on several occasions, she had ensured that there were panchayats and conciliatory meetings held, where the parties were brought together and attempts were made at a harmonious living. If this was the manner in which the complainant was capable of complaining about her state of affairs, it is inexplicable therefore that she has lodged the complaint almost nine months after the alleged incident. This aspect of the matter has been completely glossed over by the courts below. Therefore, the further allegation of demand and acceptance of dowry etc., are equally far-fetched and except the claim that there was constant demand for a sum of Rs. 2,00,000/- by the appellant No. 1 and his family members apart from the looms having been supplied by the father possibly as a means of livelihood to the accused, there is no indication of any independent witness having spoken to any such demand for dowry being provided. Therefore, on an overall appreciation of the facts and circumstances, and the material on record, it cannot be said that the prosecution had established its case against the appellants beyond all reasonable doubt.

Consequently, the appeal is allowed. The judgment of the court below is set aside. The appellants are acquitted. The bail bonds furnished by the appellant stand cancelled.