
(2013) 12 KAR CK 0081
In the Karnataka High Court
Case No : Criminal Appeal No. 186 of 2008

State of Karnataka

APPELLANT

Vs

K.B. Lakshmana and Venkatesh

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0081

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : M. Narayana Reddy, SPP, for the Appellant; A.R. Srinivas, for the Respondent

Judgement

N. Ananda, J.—The State has filed this appeal against the Judgment of acquittal of respondents 1 and 2 (accused 1 and 2) for offences punishable under Sections 498A and 306 IPC. I have heard learned SPP for the State and Sri. A. Srinivas, learned counsel for accused. Before advertng to appreciation of evidence and the submissions made by the learned counsel for parties, it is necessary to state certain facts which are not in dispute;

The marriage of accused with the deceased was solemnized on 1.5.2005 in front of the parental house of the deceased. It is also not in dispute that at the time of marriage accused No. 1 was not pursuing any gainful avocation. It is also not in dispute that after marriage accused No. 1 stayed with deceased in the house of P.W.-1 (father of the deceased) for 20 days. It is also not in dispute that P.W.-1 took a house on mortgage from P.W.-5 and set up a house for accused No. 1 and his daughter (deceased). It is also not in dispute that accused No. 2 is native of Akkur, Ramanagara taluk and he has an elder brother (accused No. 2).

2. At the outset it is necessary to state that the case of the prosecution that accused No. 2 was frequently visiting accused No. 1 and he was harassing and ill treating the deceased is not substantiated by the evidence. The prosecution has not adduced evidence against accused No. 2 to prove that either he was

subjecting the deceased to cruelty or he had any reasons to subject the deceased to cruelty. It is the case of the prosecution that accused No. 1 was in financial trouble and he was also a troublesome person. In the circumstances it is difficult to accept that accused No. 2 was visiting the house of accused No. 1 to harass the deceased. Therefore, learned trial Judge has rightly acquitted accused No. 2.

3. The evidence of close relatives of deceased would reveal that before the marriage accused had made false representation that he was earning Rs. 8,000 to 10,000/- per month. Later it was found that accused No. 1 was working in a hotel and he had given up that job. At the time marriage accused No. 1 was not pursuing any gainful avocation. Accused No. 1 and deceased stayed in the house of P.W.-1 for 20 days after the marriage. Thereafter P.W.-1 approached P.W.-5 and took one of his houses on mortgage for a sum of Rs. 35,000/- and set up a house with a fond hope that accused and deceased would lead a happy married life. But his expectation did not come true. Accused No. 1 was not pursuing any gainful avocation. He was entirely depending on P.W.-1 even to meet basic necessities of life. Accused was addicted to bad habits and he was a alcoholic. He used to come home in a drunken state and harass the deceased to bring money from her parental home. P.W.-1 had also convened panchayats. However, P.W.-1 did not mend his behaviour. These facts are deposed by the father of deceased. From cross examination of P.W.-1 (father of deceased), we find that evidence of P.W. 1 that accused was not pursuing any gainful avocation and P.W.-1 had taken the house on mortgage and had set up a house to accommodate accused No. 1 and deceased, has not been controverted.

4. P.W.-2 is a neighbour where accused and deceased were living. Accused No. 1 was known to him. P.W.-2 has deposed that accused No. 1 was not pursuing any gainful avocation and he was not taking proper care of deceased. During cross-examination of P.W.-2, nothing is elicited to disbelieve his evidence.

5. P.W.-3 Kumara, was a neighbour of accused. He knew the deceased and her parents. P.W.-3 has deposed that accused after marriage was not pursuing any avocation and he was demanding and harassing the deceased to bring money from her parental house. The parents of deceased had convened panchayats about two to three times to advise accused No. 1. However, the accused did not mend his behaviour. P.W.-4 is the mother of the deceased. P.W. 4 has deposed that before marriage the father of accused No. 1 had told them that he was working in computer. He was earning Rs. 10,000/- per month. Later they found that accused No. 1 was working in a hotel in Mysore. Thereafter he left the job. Accused No. 1 and deceased stayed in their house for about 20 days after marriage. Thereafter, husband of P.W.-4 (P.W.-1) took a house from P.W.-5, on mortgage, for a sum of Rs. 35,000/-. P.W.s 1 and 4 also provided household articles to set up a house for accused and deceased. Accused was not pursuing any gainful avocation. He was not earning for the sustenance of himself and deceased. Whenever deceased used to question accused No. 1 he was scolding

her and demanding her to bring money from her parental house. Accused was also scolding the deceased by saying that she was the source of trouble for him and he was cursing her that it is better if she commits suicide and he was instigating her to commit suicide.

During cross examination of P.W.-4, she has admitted that her husband (P.W.-1) was a vegetable hawker. Prior to the date of incident accused had assaulted deceased and she was treated at ESI hospital. P.W.-4 and her husband had convened panchayats to advise accused. However, accused did not mend his behaviour. P.W.-4 has deposed that her daughter not being able to bear the cruelty meted out to her by the accused committed suicide. The evidence of parents of deceased i.e. P.W. s 1 and 4 is more or less similar. The evidence of P.W.-1 that he had taken house from P.W.-5 finds substantial corroboration from evidence of P.W.-5. P.W.-5 has deposed that he was not aware whether accused was going to any work. Thus we find that parents of the deceased have made the best of their efforts to make accused and deceased to lead happy married life. The accused was not pursuing any gainful avocation and he was fully dependent on his parents-in-law for his sustenance. Whenever the deceased questioned him, accused used to scold the deceased and demand the deceased to bring money from her parental home. In addition to this, the accused was addicted to bad habits like drinking.

6. In a decision reported in State of Karnataka Vs. Veerabhadrapa and another, , a Division Bench of this court has held:

23. Therefore, we hold without any hesitation that the concept of cruelty enshrined in Section 498A IPC has a wider meaning as defined by the Supreme Court and is not confined to only demand of dowry. The word "cruelty" has wider ramifications and depends on facts of each case.

24. The Division Bench of the Bombay High Court in the case of Mithailal and Others v. State of Maharashtra has held that Criminal Law fastens liability on a husband to provide food, clothing, shelter and medical aid. Thus, where a wife is in a helpless state and is unable to help herself, there is a legal duty cast on the husband to take care of his wife and provide cloths, food, shelter and medical aid to her. This is the paramount duty of a husband in a civilized society. If he fails to do so, the husband would be liable for causing cruelty to this wife.

7. The learned trial Judge without appreciation of evidence in proper perspective has held that there are omissions in the evidence given by parents of the deceased. Therefore the prosecution has failed to prove that accused had committed offence u/s 498A and 306 IPC. In order to consider charges of this nature, the evidence of close relatives of deceased would be relevant. These offences are committed within four walls of a matrimonial home. The prosecution cannot be expected to adduce evidence of independent witnesses. The accused has not offered plausible explanation as to why the deceased committed suicide within three months from the date of marriage. Therefore, it can safely be

inferred that accused was not pursuing any gainful avocation and was not providing food and other basic amenities to deceased. Accused was addicted to alcohol. Whenever the deceased questioned accused, he was demanding deceased to bring money from her parental house. The accused was also scolding and beating the deceased. Therefore, it can safely be inferred that accused was subjecting the deceased to cruelty within the meaning of Section 498A of IPC.

8. The next point for consideration is:--

whether accused had abetted or instigated the deceased to commit suicide?

9. The law is fairly well settled whenever an offence u/s 498A IPC is proved, the court cannot jump to a conclusion that prosecution has proved an offence punishable u/s 306 IPC. In order to prove an offence punishable u/s 306 IPC, prosecution has to establish mens rea on the part of accused.

In the case on hand, the evidence adduced by close relatives of deceased, in particular, parents of deceased would reveal that accused was not pursuing any gainful avocation and he was wholly dependent on his parents-in-law for his sustenance. He was not providing basic amenities like food to his wife. He was addicted to alcohol and he was ill treating the deceased. He was also demanding and coercing deceased to bring money from her parental house. However from these facts, it is not possible to infer that accused had mens rea to instigate or abet the deceased to commit suicide. Therefore, prosecution has failed to prove an offence punishable u/s 306 IPC.

10. The learned counsel for the appellant submits that accused-has been in judicial custody since 2.9.2005 till date. Therefore, a lenient view may be taken in the matter of sentence.

11. The learned SPP would submit that deceased committed suicide within three months from the date of marriage. It was only due to the irresponsible and cruel conduct of the accused. Therefore no leniency should be shown to accused.

12. Having regard to the facts and circumstances of the case and bearing in mind the financial position of accused, I deem it fit to impose three years of simple imprisonment for an offence punishable u/s 498A IPC and to pay fine of Rs. 5,000/- in default, to undergo S.I. for one month. Having regard to the financial status of the accused, I am of the opinion that accused cannot be directed to pay compensation to parents of the deceased. Therefore, I pass the following:

ORDER

The appeal is accepted in part. The impugned Judgment is modified. The acquittal of accused No. 2 for offences punishable under Sections 498A and 306 IPC is confirmed, so also acquittal of accused No. 1 for an offence punishable u/s 306 IPC is confirmed. Accused No. 1 is convicted for an offence punishable u/s 498A IPC. Accused No. 1 is sentenced to undergo simple imprisonment for a

period of three years and pay fine of Rs. 10,000/-, in default to undergo simple imprisonment for a period of three months for an offence punishable u/s 498A IPC. The period of detention undergone by accused No. 1 during trial and post-conviction stage is given set-off as provided u/s 428 Cr.P.C.