

(2010) 09 KAR CK 0054
In the Karnataka High Court
Case No : Criminal Appeal No. 663 of 2004

State of Karnataka

APPELLANT

Vs

Lalithamma @ Doddamma, Venkatesh and (SIC)

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

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

Citation : (2010) 09 KAR CK 0054

Hon'ble Judges : K. Sreedhar Rao, J; B.V. Pinto, J

Bench : Division Bench

Advocate : N.S. Sampangi Ramaiah, HCGP, for the Appellant; M.E. Madhu Sudhan, ACC Assts. for R1, Nandish Gowda and R.B. Sadashivappa for R2 and R3, for the Respondent

Judgement

B.V. Pinto, J.—This appeal is filed challenging the order dated 29.9.03 passed by the I Addl. Sessions Judge, Tumkur, in S.C. No. 86/99 acquitting the Respondents for the offence u/s 498A, 306, 304B IPC and Sections 3 and 4 of the Dowry Prohibition Act, for short D.P. Act r/w Section 34 IPC.

2. The Amruthur Police registered a case against the Respondents alleging that Respondent No. 1, being the husband and Respondents 2 and 3 being the mother-in-law and brother-in-law of the deceased Shivamma during her stay with the Respondents at Manavanahalli within the limits of Amruthur police station, subjected the deceased Shivamma to cruelty, after her marriage on 21.6.1998 by demanding her to bring additional dowry in the form of motor cycle from her parents. Thus causing her to commit suicide by jumping into the well thereby they are alleged to have committed an offence u/s 498A r/w Section 34 IPC.

3. It is further charged against the Respondents that between 11.1.99 and 13.1.99 at Manavanahalli in the land of one Bommanna, the said Shivamma committed suicide by jumping into the well and it is alleged that the Respondents

have abetted the commission of the offence of suicide by the deceased Shivamma thereby they are alleged to have committed an offence u/s 306 IPC.

4. It is further charged against the Respondents that the deceased Shivamma has committed suicide being unable to bear torture meted out to her in respect of demand of motor cycle and thereby, they are alleged to have committed an offence u/s 304B r/w 34 IPC.

5. It is also further alleged that the Respondents at the time of marriage of Respondent No. 1 had accepted a sum of Rs. 40,000/- as dowry and six sovereigns gold Mangalya chain tali, muguthi, silver leg chain and clothes for the deceased Shivamma thereby they are alleged to have committed an offence u/s 3 of the D.P. Act.

6. It is further alleged against the Respondents that after the marriage of Respondent No. 1, they demanded additional dowry of motor cycle from the parents of the deceased Shivamma subjected her to cruelty and harassment thereby they are alleged to have committed an offence u/s 4 of the D.P. Act.

7. It is also further alleged against the Respondents that after taking cash of Rs. 40,000/-, golden and silver ornaments for the deceased at the time of marriage, subsequent to her suicide and death, they had not returned the articles to the legal heirs of the deceased, thereby they are alleged to have committed an offence u/s 6 of the D.P. Act.

8. After the Respondents were secured before the court, charges were framed against them whereafter in order to prove its case, the prosecution has examined in all 16 witnesses and got marked Ex.P-1 to P-19 and produced MO-1. The defence of the Respondents is one of total denial.

9. After hearing the prosecution and the defence, the learned Sessions Judge was pleased to record an order of acquittal. The State has come up in appeal against the said order of acquittal.

10. PW-1 Hutchagangaiah, is the father of the deceased Shivamma. He has stated that A1 is his son-in-law, A2 and A3 are his mother and brother respectively. He has stated that 5 years ago, he has performed the marriage of his daughter with A-1 in Hulivahana village in front of his house. At the time of marriage, he has given a sum of Rs. 40,000/- as dowry and also gave one mangalya chain bearing 6 sovereigns worth Rs. 5000/- and after marriage, his daughter Shivamma went to Manavanahalli village. After 2 months thereafter, Respondents started demanding dowry and also a Hero-Honda motor cycle for A-1. They were ill-treating his daughter and therefore, she came to his house. PW-1 promised to give Hero Honda motor cycle after Shivarathri festival and sent the deceased Shivamma back to Manavanahalli village. He also informed A-1 to A-3 that he would give Hero Honda motor cycle after Shivarathri festival. PW-1 further says that on the next day, he came to know that her daughter had fallen into the well. Thereafter he went to the spot and found the dead body of his

daughter and blood was oozing from her mouth and nose. Thereafter, he had given a complaint to the Police,

11. PW-2 Kumarappa is the elder brother of the deceased. He has stated that at the time of marriage, his father had agreed to pay Rs. 40,000/- and six sovereigns of gold and his father has also made expenses for the marriage. He has further stated that after the marriage, the deceased was being harassed for demand of dowry and also for demand of a motor cycle. He has further stated that the Respondents are responsible for the death of his sister.

12. PW-3 Govindappa is the paternal uncle of the deceased Shivamma. He has reiterated the version of PWs.1 and 2 regarding dowry paid to A-1. PW-4 Ramanna is a neighbour of PW-1. He has also supported the case of the prosecution that A-1 was given a sum of Rs. 40,000/- as dowry and also gold ornaments were given in the marriage. He has further stated that Shivamma was telling that the accused were harassing her for bringing a motor cycle. PW-5 Kalyanamma is another neighbour of PW-1. She has stated that the deceased was telling her that she was being ill-treated for the sake of Hero Honda motor cycle. There is no cross-examination to this witness by any of the accused.

13. PW-6 Narasamma is also a neighbour of PW-1. She has stated regarding the demand of Rs. 40,000/- as dowry and gold ornaments given at the time of marriage. She has further stated about the demand of motor cycle by the accused. PW-7 P.R. Basavaraju, Tahsildar had conducted inquest proceedings over the deadbody of Shivamma and recorded the statement of Rangamma, Gangamma, Govindappa and Rangaramu. He has further stated that during the inquest proceedings, he came to know that the husband and in-laws of the deceased were ill-treating the deceased Shivamma and therefore, she has committed suicide.

14. PW-8 Dr. Jayaram has conducted post mortem examination of the deceased. He has stated that the death is due to suicide as a result of drowning. PW-9 Gangaramu is a neighbour of the accused where the deceased had jumped into the well. He is a signatory to inquest mahazar Ex.P-12. PW-10 Thimmappa Shettar has stated that he has advanced a loan of Rs. 30,000/- to PW-1 for the purpose of marriage of the deceased. PW-11 Gangamma is the sister of the deceased. She has also corroborated the evidence of family members, PW-12 Ravi is an acquaintance of both the parties. He has stated that the accused were harassing the deceased in connection with the house hold activity.

15. PW-13 Rangegowda is Scientific Officer who has tested the contents of the stomach of the deceased and stated that there is no poison in the said contents. PW-14 B.A. Mohammad Ameer, PSI has registered the case as per Ex.P-1 in Crime No. 2/99 of Amruthur Police Station for the offences u/s 304B IPC r/w Sections 3 and 4 of the D.P. Act. PW-15 M.K. Channappa is the retired Dy. S.P. who has conducted investigation in this case and has filed charge sheet. PW-16 M Sarala Somaiah is. Police Inspector of Ante Dowry Cell, COD. She has

conducted investigation in this case.

16. It is seen from the Trial Court records that Respondent No. 1. (accused No. 1) has not cross examined all the witnesses from PWs. 1 to 11 who were examined on 2.6.03 and 3.6.03. It is also seen from the order sheet of the Trial Court that all the three accused were defended by three counsel and the learned Sessions Judge has noted that the counsel as well as accused were present on 2.6.03 and 3.6.03. The order sheet further discloses that on 12.6.03 an application u/s 311 of Code of Criminal Procedure was filed by the advocate for the accused and the same was allowed and called on 22.3.03 for cross examination of the witnesses who were already examined. Learned Counsel for A-1 has cross examined only PW-1 whereas PWs.2 to 11 are not cross examined by counsel for A-1. It is observed that on tire respective dates though both the counsel and the accused were present before the court and an opportunity was afforded by the Trial Court to cross examine all the witnesses, whose cross examination went by default earlier, learned advocate as well as the accused has not made use of the said opportunity and the Trial Court's records indicate that the evidence of PW-2 has gone unchallenged due to absence of cross examination by the learned Counsel for A-1.

17. Be that as it may, on a careful perusal of the records of the Trial Court it discloses that the Trial Court has given fair and reasonable Opportunity to A-1 to defend himself but he has not made use of this opportunity and has not chosen to cross examine any witnesses from PWs.2 to 11 and so far as FW-12 is concerned, there is cross examination made to the witness.

18. Heard Sri N.S. Sampangirarmaiah, HCGP for State and Sri M.E. Madhusudan for ACC Associates for R1 and Sri Nandishgowda for Sri R.B. Sasashivappa for R2 and R3.

19. It is submitted by Sri Sampangiramaiah, learned HCGP that the evidence of the prosecution witnesses clearly goes to show that Respondent No. 1 the husband of the deceased was harassing her for bringing motor cycle and immediately on the next day when she was sent to her husband's house, deceased had committed suicide and hence, he submits that soon before her death Shivamma was subjected to cruelty and harassment as a result of which she has committed suicide. The death of deceased Shivamma is within 7 years from the date of her marriage with A-1 and therefore, he submits that the prosecution has succeeded in proving evidence u/s 304B IPC against A-1 and therefore, he is liable to be convicted for the said offence.

20. Learned Counsel for R1 to R-3 have submitted that the Trial Court has appreciated the evidence on record and has come to the conclusion that the prosecution has not proved the case against the Respondents beyond reasonable doubt. Hence, he submits that the order of acquittal passed by the Trial Court does not suffer from any illegality or impropriety and he prayed that the appeal may be dismissed.

21. Having gone through the evidence on record and the submission made by the learned Counsel on either side, we are of the opinion that the evidence adduced by the prosecution in so far as demand of dowry in the form of motor cycle and harassment meted out to the deceased Shivamma has been borne out in the complaint itself.

It is the case of the complainant-PW-I that the deceased had come to his house and informed him that the Respondents are harassing her for the purpose of bringing motor cycle for the use of A-1 and when PW-1 has sent his daughter promising that the motor cycle will be bought and given after Shivarathri festival, the deceased was taken to the house of A-1 by PW-1 personally. However, on the next day of PW-1 reaching the deceased to her husband's house, she had committed suicide. Therefore, we are of the opinion that the deceased was subjected to cruelty for bringing additional dowry in the form of Hero Honda motor cycle and the said cruelty has been meted out to her soon before her death. Under the circumstances, the prosecution has been able to establish the guilt of A-1 the husband of the deceased for the offence u/s 304B IPC and the order of the learned Sessions Judge acquitting the Respondent No. 1 of the offence is not in accordance with law. Hence, we hold that the appeal is entitled to be allowed in part.

22. In the result, the appeal is allowed in part, in so far as Respondent No. 1 is concerned. However, there is no clinching evidence against R2 and R3 and therefore, the order of acquittal passed against them does not warrant interference and appeal against R2 and R3 is dismissed. Accused-1/Respondent No. 1 is convicted u/s 304B IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 10,000/- in default of payment to undergo Simple Imprisonment for six months.

The Trial Court is directed to carry out the sentence imposed as above.