

(2011) 10 KAR CK 0065
In the Karnataka High Court
Case No : Criminal Appeal No. 385 of 2006

The State of Karnataka

APPELLANT

Vs

Janardhana and Dundamma

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

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

Citation : (2011) 3 DMC 498

Hon'ble Judges : N. Ananda, J;K. Govindarajulu, J

Bench : Division Bench

Advocate : P.M. Nawaz, Additional SPP, for the Appellant; Shankarappa, Advocate for R2 and R3, for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—The State has filed this appeal against the judgment of acquittal of respondents 1 & 2 (hereinafter referred to as "accused 2 & 3") for offences punishable under sections 498A & 304B IPC and also for offences punishable under sections 3 & 4 of the Dowry Prohibition Act.

2. We have heard Sri. P.M. Nawaz, learned Additional State Public Prosecutor for State and Sri. Shankarappa, learned counsel for accused 2 & 3. We have been taken through the evidence and the impugned judgment.

3. Accused 2 & 3 and accused No. 1 were tried for offences punishable under sections 498A & 304B IPC and also" for offences punishable under sections 3 & 4 of the Dowry Prohibition Act. The learned trial Judge convicted accused No. 1 for offences punishable under sections 498A & 304B IPC and also for offences punishable under sections 3 & 4 of the Dowry Prohibition Act. The learned trial Judge acquitted accused 2 & 3. Accused No. 1 had tiled Criminal Appeal No. 1828/2005. This Court by judgment dated 09.09.2008 acquitted accused No. 1 for offences punishable under sections 498A & 304B IPC and also for offences punishable under sections 3 & 4 of the Dowry Prohibition Act. The State having

not challenged the judgment made in Criminal Appeal No. 1828/2005 dated 09.09.2008, the same has attained finality. Therefore, in this appeal, we are concerned with the legality or otherwise of the acquittal of accused 2 & 3 for offences punishable under sections 498A & 304B IPC and also for offences punishable under sections 3 & 4 of the Dowry Prohibition Act.

4. The case of the prosecution in brief is as follows:

Deceased Usharani was the daughter of P.W. 2-M. Lakshman through his first wife namely Bhagyamma. Bhagyamma died after few years. After her death, P.W. 2 "married accused No. 2. Accused No. 2 is the step-mother of deceased. Accused No. 1 is the younger brother of accused No. 2. Accused No. 3 is the mother of accused 1 & 2.

P.W. 2 was working as a driver in BMTC and he took voluntary retirement. Accused No. 2 had step motherly attitude towards the deceased during her childhood. When the deceased attained marriageable age, accused No. 2 was pressurising P.W. 2 to perform marriage of the deceased with accused No. 1. However, P.W. 2 was reluctant. Accused No. 2 threatened P.W. 2 that she would leave his company. Therefore, P.W. 2 performed marriage of deceased with accused No. 1 on 05.04.1997.

5. It is the case of prosecution that before marriage, accused 1 to 3 demanded a motor cycle, a site, gold ornaments as dowry in connection with marriage of accused No. 1 and deceased Usharani. After the marriage, P.W. 2 gave a motorcycle and a site as dowry to accused No. 1. Accused No. 1 and the deceased were living separately. Accused 1 & 3 and the deceased were living together. Accused No. 2 was joining accused Nos. 1 & 3 to harass the deceased and subjecting the deceased to cruelty in relation to demand for additional dowry. On 30.03.2000 at 6 p.m., the deceased committed suicide by consuming poison. P.W. 2 lodged first information and set criminal law into motion. On completion of investigation, chargesheet was filed against accused 1 to 3 for aforesaid offences.

The accused have not disputed nature of death and medical evidence given by P.W. 9-Dr. K.H. Manjunath. The accused have not disputed that the deceased committed suicide by consuming poison.

In view of acquittal of accused No. 1 for offences punishable under sections 498A & 304B IPC and also for offences punishable under sections 3 & 4 of the Dowry Prohibition Act, it is necessary for us to find out if there is evidence to prove that accused 2 & 3 had demanded and accepted dowry in connection with marriage of accused No. 1 with the deceased; whether accused 2 & 3 were subjecting the deceased to cruelty in relation to demand for additional dowry; whether accused 2 & 3 had subjected the deceased to cruelty in relation to dowry demand soon before her death.

6. The evidence relating to marriage talks is given by P.W. 2, P.W. 6 & P.W. 7.

7. P.W. 2 has not deposed that accused 2 & 3 had demanded dowry from P.W. 2 in connection with marriage of accused No. 1 and the deceased. P.W. 2 has deposed, that after marriage, deceased was living in the house of accused 1 & 3; after 5 or 6 months from the date of marriage, accused 1 & 3 were demanding the deceased to get a site, a motorcycle from her parental house.

8. At this juncture, it is necessary to state that accused No. 3 was aged about 60 years at the time of incident. Accused No. 3 was neither in need of a motorcycle nor a site. Therefore, evidence of P.W. 2 that accused No. 3 had joined accused No. 1 to demand dowry looks improbable.

9. We also notice from the evidence of P.W. 2 that he was reluctant to give the deceased in marriage to accused No. 1, who is the brother of accused No. 2. P.W. 2 had seen accused No. 2 giving step motherly treatment to the deceased. P.W. 2 has deposed that he was constrained to give the deceased in marriage to accused No. 1 due to adamant stand taken by accused No. 2. In the circumstances, it looks improbable that accused 2 & 3 demanded dowry and P.W. 2 had agreed to give dowry. It is not the case of prosecution that accused No. 2 was living in the house of accused No. 1 and the deceased. The evidence of P.W. 2 that accused No. 2 was often visiting the house of accused No. 1 and the deceased to ill-treat the deceased looks improbable.

10. P.W. 3-Nanjundaian was the neighbour of P.W. 2. P.W. 3 has deposed: that after deceased attained the marriageable age, accused No. 2 was forcing P.W. 2 to give the deceased in marriage to accused No. 1; P.W. 2 refused; accused No. 2 told P.W. 2 that if the deceased is not given in marriage to accused No. 1, P.W. 2 should give a share of properties to accused No. 2 and she would leave the house of P.W. 2 and go back to her parental house; in the circumstances, P.W. 2 was forced to give the deceased in marriage to accused No. 1. During marriage negotiations, accused 2 & 3 and elder brother of accused No. 2 had participated; there was demand for dowry of Rs. 1,00,000/-, a site, a motorcycle and gold ornaments weighing 140 grams to the bride and gold ornaments weighing 50 grams to the bridegroom. P.W. 3 has not deposed that accused 2 & 3 had demanded dowry. Even otherwise considering circumstances under which P.W. 2 was forced to give the deceased in marriage to accused No. 1 and evidence of P.W. 3 that accused 2 & 3 demanded dowry looks improbable. The evidence of P.W. 3 is not specific as to whom dowry was paid. Therefore, evidence of P.W. 3 is of no avail to the case of prosecution.

11. P.W. 4-Kempanna is the elder brother of P.W. 2. The evidence of P.W. 4 is more or less similar to the evidence of P.W. 2 & P.W. 3. P.W. 4 has given an improvised version that on the date of marriage, a sum of Rs. 50,000/- was given by P.W. 2 to the hands of accused 1 & 3. The dowry was paid in the presence of P.W. 4. P.W. 4 has deposed that P.W. 2 had given dowry of Rs. 50,000/- to accused No. 1 about a week prior to the date of marriage.

12. P.W. 2 has deposed that by partial withdrawal of provident fund amount, he

had purchased a motorcycle and gave the same to accused No. 1. Therefore, the evidence of P.W. 2 to P.W. 4 that accused 2 & 3 had demanded and accepted dowry does not inspire confidence

13. The next point: for determination is:

Whether accused 2 & 3 were subjecting the deceased to cruelty In relation to demand for additional dowry soon before her death?

14. It is in the evidence of P.W. 2 that deceased was staying in the house of accused 1 & 3. It is the evidence of P.W. 2 that accused No. 2 & 3 were subjecting the deceased to cruelty and demanding the deceased to bring additional dowry. P.W. 2 has deposed that his wife (accused No. 2) was visiting the house of deceased and accused No. 1 once in a week or two. Accused No. 2 was also joining accused No. 1 and 3 to ill-treat the deceased. P.W. 2 has admitted that deceased had consumed broken glass pieces about 9 days prior to the date of incident. Ex.D.9 is the copy of statement given by the deceased. In Ex.D.9 dated 21/22.03.2000 the deceased had stated that on 21.03.2000 at 12 in the afternoon she was playing with her child immediately she recalled her mother and she became desperate and consumed glass pieces and immediately she was admitted in Gayathri Hospital at Vijaynagar, Bangalore. This incident had taken place a week prior to the date of incident. In the statement given on 21/22.03.2000 the deceased had not stated that she was subjected to cruelty by accused 2 & 3.

15. The evidence given by P.W. 7-Santhoshkumar Panigrahi, a tenant and a neighbour of P.W. 2 would reveal that deceased had consumed broken glass pieces a week prior to the date of incident. The evidence of P.W. 7 that deceased had committed suicide by consuming poison is hearsay in nature.

16. As already stated, accused No. 2 had step motherly attitude towards the deceased. After marriage, the deceased was living in the house of accused No. 1. In the circumstances, the evidence given by P.W. 2 that his wife (accused No. 2) was visiting the house of accused No. 1 and the deceased now and then to ill-treat the deceased and she was subjecting the deceased to cruelty in connection with demand for additional dowry looks improbable.

17. As regards cruelty attributed to accused No. 3, we do not find any evidence. As already stated accused No. 3 was aged about 60 years. P.W. 2 and neighbours of P.W. 2 have deposed that it was accused No. 1, who was subjecting the deceased to cruelty. In view of acquittal of accused No. 1 in terms of the judgment made in Criminal Appeal No. 1828/2005 on 09.09.2008, we cannot reappraise evidence adduced against accused no. 1.

18. On overall appreciation of evidence, we find that prosecution has failed to prove that accused 2 & 3 had demanded and accepted dowry in connection with marriage of deceased with accused No. 1. The prosecution has failed to prove that accused 2 & 3 were subjecting the deceased to cruelty in relation to

additional downy. The prosecution has failed to prove that the deceased had been subjected to cruelty by accused 2 & 3 in relation to dowry demand soon before her death.

19. This court in Criminal Appeal No. 1828/2005 dated 09.09.2008, while acquitting accused No. 1 has held:

5. The illicit relationship of the deceased with Rudresh even after the marriage came to the notice of the parents of the deceased and as well the accused. It is the case of the defence that the deceased for love failure committed suicide not challenged; in fact it is a part of the prosecution material. The prosecution cannot disown the material in the charge sheet without impeaching the veracity of the P.W. 13 in that regard. The inconsistent version in the charge sheet would belie the prosecution version regarding the cause of suicide. Therefore, it becomes difficult to accept that the deceased committed suicide for the reason of dowry harassment.

8. The defence on the other hand placed material to show that the reason for suicide is love failure with Rudresh and not for dowry harassment. In that view, the order of conviction recorded by the trial court against A. 1 is liable to be set aside. The appeal is allowed. The accused is acquitted.

In Criminal Appeal No. 1828/2005, this court has disbelieved the evidence of prosecution that accused No. 1 had demanded and accepted dowry and he was subjecting the deceased to cruelty in connection with dowry demand and accused No. 1 was subjecting the deceased to cruelty in relation to dowry demand soon before her death. Therefore, we cannot apply a different yardstick to consider the case of accused 2 & 3 as the prosecution has relied on the same evidence to prove guilt of accused 2 and 3.

The learned trial Judge on appreciation of evidence has acquitted accused 2 & 3 of aforesaid offences. There are no reasons to interference with the impugned judgment.

20. Accordingly, we pass the following:

ORDER

21. The appeal is dismissed.