
(1994) 03 SC CK 0070
In the Supreme Court Of India
Case No : SLP (Cr) No. 1097 Of 1993

Vijayabai and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-03-1994

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4

Citation : (1995) 2 SCC 717 Supp

Hon'ble Judges : K. Jayachandra Reddy, J;A. S. Anand, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. SPECIAL leave granted.
2. HEARD learned counsel for the parties.
3. The matter arises under the Dowry Prohibition Act, 1961. The second appellant and the third appellant are the parents of the first appellant Madhusadan. The prosecution case is that Aruna the bride to be in the case was residing in her own house with her brother in the city of Nagpur. She had no parents. Therefore, the brother and the sister were staying in their own house. Sharad Pathak (Public Witness 2 the uncle of the deceased was at the relevant time serving in the central Public Works Department and he was residing in the locality called Chatrapatinagar, Nagpur. Aruna was a Commerce Graduate. Since her parents died, Public Witness 2 was taking the responsibility of arranging for an alliance. A-1 and his parents were also staying in Surendranagar, Nagpur. While so, according to the prosecution, on 6/4/1986 a negotiation took place for settling the marriage of Aruna with A-1 and in that connection all the three accused went to see Aruna. It is alleged that though they approved the girl, certain talks took place regarding the expenses and gifts etc. It is also alleged that A-1 proposed to open two joint fixed deposit accounts of Rs. 10,000.00 in each bank in his name and in the name of Aruna deceased. There were also

some proposals about the other items that have to be taken care of at the time of the marriage. Thus the marriage negotiations were finalised between A-1 and Aruna. In pursuance of that settlement, a betrothal ceremony was also performed at the house of Public Witness 2 on 11/4/1986. Photographs of the said ceremony were also taken. On that very day, A-1 supplied a form with signature to be submitted to the Registrar under the Special Marriage Act and some gold was also purchased. On 13/4/1986, Aruna and her brother were invited to the house of Madhusadan for meal and on that day, he gave a form for keeping the amount in fixed deposit. On 18/4/1986, a joint account was opened in the name of A-1 and Aruna in the State Bank of India branch Surendranagar, Nagpur and the marriage was fixed on 2/6/1986. The remaining amount of Rs. 10,000.00 was to be kept in fixed deposit in Canara Bank. A form was to be submitted before the registration of the marriage. As misfortune would have it, the things did not go on smoothly and A-1 did not supply the birth certificate though the marriage date was fixed for 2/6/1986. Then, according to the prosecution, though the marriage was proposed to be a registered marriage, there was no activity on the part of the accused and, therefore, Public Witness 2 became suspicious and he and Manohar went to the house of accused on 28/4/1986. At that time, the parents of A-1 were also present there. During the course of the talks, accused 2 and 3 remarked that the girl is mannerless and, therefore, they did not approve the said girl and that marriage should be treated as cancelled. Public Witness 2 and his relatives went to Bhankak at the quarter of accused 1 and it is alleged that A-1 told them that he was defamed in the community alleging that he has taken Rs. 50,000.00 as dowry and A-1 further said that unless Rs. 50,000.00 is paid to him, he would not marry Aruna. Consequently, Public Witness 2 and others who accompanied him returned back to Nagpur and Public Witness 2 (Sharad Pathak) informed his niece deceased Aruna about the demand of the accused. She was shocked to hear the cancellation of the marriage and unfortunately, committed suicide by burning herself pouring kerosene. A report was given to the police and a case was registered under Section 306 Indian Penal Code. Trial commenced and sometime later during the course of the trial, a charge under Dowry Prohibition Act was also framed. The accused pleaded not guilty of the charge. The trial court acquitted all the accused holding that the prosecution case regarding the payment of Rs. 50,000.00 is doubtful and, at any rate, the same is not proved beyond all reasonable doubt and consequently, no offence under Section 4 of the Dowry Prohibition Act was made out. So far as Section 306 Indian Penal Code is concerned, the trial court held that the accused would not be held liable for any such abetment of suicide.

4. AGGRIEVED by the said order of acquittal, the State preferred an appeal to the High court and a division bench of the High court, while confirming the acquittal under Section 306 Indian Penal Code, interfered and convicted the three appellants under Section 4 of the Dowry Prohibition Act and sentenced each of them to undergo six months' imprisonment and to pay a fine of Rs.

2,000.00 each, in default to further undergo RI for two months. Hence, the present appeal.

5. LEARNED counsel for the appellants submits, firstly, that there is no evidence worth mentioning about the alleged demand of Rs. 50,000.00 by A-1 and that no case is made out against A-2 and A-3 and secondly, that the High court has convicted with reference to the receipt of Rs. 10,000.00 which was being kept in fixed deposit and not with reference to payment of Rs. 50,000.00 and, therefore, the conviction under Section 4 of the Dowry Prohibition Act is illegal and there is no charge framed found under Section 3 of the Act. In other words, his submission is that demand of dowry as contemplated under Section 4 of the Act has not been proved.

6. The Dowry Prohibition Act, 1961 was enacted in 1961 and object of the Act is to prohibit the evil practice of giving and taking of dowry. Section 2 defines dowry as:

"IN this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly

(A) by one party to a marriage to the other party to the marriage; or

(B) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person...."

7. SECTION 3 provides penalty for giving or taking dowry. Section 4 provides penalty for demanding dowry and lays down

"IF any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees."

and with a proviso which lays down

"THAT the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

8. AS mentioned above, the trial court, after appreciation of the evidence has given a finding that the prosecution has not proved beyond all reasonable doubt that there was a demand for Rs. 50,000.00. Learned counsel submits that there was no agreement to give Rs. 50,000.00 and, therefore, it cannot be said that there was a demand of dowry inasmuch as the ingredients of definition of dowry are not made out. We think for the purpose of this case, it may not be necessary to go into this legal question for the reason that, admittedly, Rs. 10,000.00 was given to A-1 and the same was deposited in a fixed deposit in joint account of himself and Aruna the deceased.

9. LEARNED counsel, however, submits that since the amount was to be kept in a fixed joint account, it cannot be said that either there was a receipt of dowry or demand of dowry. Whether there was a demand of dowry or not, it is a matter to be inferred from the facts and circumstances of each case. It is beyond one's comprehension when A-1 pleads that when he received Rs. 10,000.00 to be kept in the joint account it does not partake the character of dowry. We fail to see as to in what other capacity he could have received this amount of Rs. 10,000.00. The amount is intrinsically connected with the marriage proposals and betrothal ceremony and it is only in connection with the said marriage that Rs. 10,000.00 were given to him. The fact that he may not be able to withdraw the same immediately is of no consequence. This amount of Rs. 10,000.00 under the circumstances, must have been given to him only either because there was express demand or an implied demand. This is a reasonable inference in the facts and circumstances of the case and, therefore, the absence of charge under Section 3 of Dowry Prohibition Act does not make any difference since an offence under Section 4 of the Act *ibid* is clearly made out against A-1. So far as A-2 and A-3 are concerned, there was no material whatsoever to show that they made any demand or in any manner, received any amount or any property which come within the meaning of dowry. The only allegation is that they were present at the time of betrothal ceremony in connection with marriage proposal. In a criminal case the guilt of each individual is to be proved by the prosecution and to bring home the guilt of the accused beyond all reasonable doubt. So far as A-2 and A-3 are concerned, we do not think the prosecution has established their guilt. In the result, the convictions and sentences awarded against A-2 and A-3 are set aside and their appeal arising out of Special Leave Petition (Cri.) No. 1097 of 1993 is allowed and the fine, if paid already, shall be refunded.

10. The appeal arising out of Special Leave Petition (Cri.) No. 1196 of 1993 filed by Madhusadan A-1 is dismissed and the sentence of imprisonment and fine are confirmed. A-1 Madhusadan shall, however, file a discharge certificate in favour of legal heirs of the deceased Aruna in respect of Rs. 10,000.00 deposited in the State Bank of India, if he has not done so, he shall do so within one month. The appellant Madhusadan is given one month's time to surrender and serve out the sentence.