

SUPREME COURT OF INDIA

Public Prosecutor, High Court of A.P.

Vs.

Mytheswar Gangadhar

(Y Sabharwal and H Sema JJ.)

13.11.2002

ORDER

1. The deceased Shakuntala was married to respondent No. 1 on 22nd April, 1987, respondent No. 2 is sister of respondent No. 1. The deceased Shakuntala, according to the case of the prosecution, committed suicide in view of the demand of dowry by respondents. Respondents were charged for offence under Section 304B of the Indian Penal Code. The assistant sessions judge found them guilty of the charge under Section 304B and sentenced respondents for rigorous imprisonment for 7 years each. In appeal the conviction and sentence of the respondents were set aside by additional sessions judge. The judgment of the acquittal passed by additional sessions judge was challenged by the State before the High Court in criminal appeal No. 1025 of 1993. It was also challenged by the complainant in criminal R.C. No. 540 of 1993. By the impugned judgment the appeal and the revision were dismissed by the High Court. The State is in appeal on grant of leave.

2. The High Court in its brief order principally held that there was no agreement for payment of dowry. It is only harassment to bring more dowry after many years of marriage. The question of fixation of dowry paid or payable either before the marriage, at the time of marriage or, after the marriage did not arise. In this view, the High Court held that Section 304B was not applicable and the respondents were rightly acquitted by the court of sessions.

3. Learned counsel for the appellant relies upon a judgment of this Court in Pawan Kumar and Ors. v. State of Haryana, . This Court on consideration of the provision of Section 304B and the relevant case law has held that Section 304B IPC makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the 1961 Act.

4. In this view, the judgment of the High Court holding that in absence of agreement for demand of dowry Section 304B is not applicable, cannot be sustained. It appears that in view of the High Court's opinion on the absence of such an agreement, it did not as such examine the evidence to adjudicate whether there was demand of dowry or not except making a

passing reference to P.W. 1, P.W. 2 and P.W. 6. In this state of affairs we set aside the impugned judgment of the High Court and remit criminal appeal No. 1025 of 1993 and criminal R.C. No. 540 of 1993 to the High Court for fresh decision in accordance with law. We request the High Court to expeditiously decide these matters. Without expressing any opinion on merits, we allow the appeals on the above terms.