

Madivallappa V. Marabad & Others

v.

State of Karnataka

(Supreme Court Of India)

HON'BLE MR. JUSTICE A.K. PATNAIK HON'BLE MR. JUSTICE
SUDHANSU JYOTI MUKHOPADHAYA

Criminal Appeal No. 33 Of 2006 | 18-02-2013

1. This is an appeal by way of special leave granted by this Court under Article 136 of the Constitution against the judgment and order dated 18th July, 2005 of the Karnataka High Court passed in Criminal Appeal No. 515 of 1999.

2. The facts very briefly are that within one and half years of the marriage of Parvetavva with the Appellant No. 1, Parvetavva consumed poison and died on 3rd December, 1991. An F.I.R. was lodged by the brother of the deceased Parvetavva and pursuant to the F.I.R., a case was registered by the police and after investigation, charge-sheet was filed against the appellants under Sections 498A and 304B read with Section 34, I.P.C. and Section 4 of the Dowry Prohibition Act, 1961. The Appellants, namely, the husband of the deceased, his mother and sister were tried and at the trial before the Principal Sessions Judge, Belgaum, the elder brother of the deceased was examined as PW-1, the mother of the deceased was examined as PW 4, a friend of brother of the deceased was examined as PW 6 and a witness to an alleged marriage agreement (Ext. P 1) was examined as PW 11.

3. The prosecution case before the Trial Court was that under the alleged marriage agreement, a sum of Rs. 12,000/-, two Tolas of gold, wrist watch and clothes were agreed to be given to the Appellant No. 1 and at the time of marriage, a sum of Rs. 10,000/-, two Tolas of gold, wrist watch and clothes were given but the remaining amount of Rs. 2,000/- was not paid to the appellant and as a consequence, the deceased was ill-treated and assaulted and during the Diwali festival in November, 1991, Parvatevva had come to her parental house and complained to her brother and mother about the aforesaid ill-treatment and assault, but she was persuaded by them to go back to the

matrimonial house, but within one month thereafter, she consumed poison and died.

4. The Trial Court, after considering the evidence of PWs 1, 4, 6 & 11 held that the alleged marriage agreement (Ext.P1) had not been proved to the satisfaction of the Court and, therefore, it could not be said that Rs.2,000/- was due to be paid to the appellants by PW 1. The Trial Court in particular took into consideration the fact that PW-1 owned a motor-cycle and was visiting the house of the appellants and took the view that if it was a matter of merely Rs.2,000/-, PW 1 would have definitely paid the same to the Appellant No. 1 to save the life of the deceased. The Trial Court also held that the evidence of PWs 6 and 11 was not acceptable and did not inspire confidence and that in the absence of any independent witness to support the case of the prosecution, the distorted version appearing in the evidence of the brother of the deceased (PW 1) and his mother (PW 4) could not be accepted. The Trial Court concluded that the prosecution had not placed sufficient, cogent and satisfactory materials to connect the appellants with the alleged offence beyond reasonable doubt and accordingly acquitted the appellants.

5. The State of Karnataka filed Criminal Appeal No. 515 of 1999, and by the impugned judgment, the High Court reversed the finding of acquittal of the Trial Court by reappraisal of evidence of the prosecution witnesses. Aggrieved, the appellants have filed this appeal.

6. Learned Counsel for the appellants submitted that the view taken by the Trial Court is a correct one and in any case it was a view possible on the evidence and it cannot be said to be a perverse view. He submitted that this Court has held in *Rohtash v. State of Haryana*, VII (2012) SLT 1=III (2012) DMC 323 (SC)=IV (2012) DLT (CrI.) 6 (SC)=(2012) 6 SCC 589, that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the High Court could interfere with the order of the acquittal considering the presumption of innocence of the accused and further considering that the trial Court's acquittal bolsters the presumption of innocence.

7. Learned Counsel for the State, on the other hand, submitted that the High Court was right in reversing the judgment of acquittal passed by the Trial Court. According to her, the evidence of PWs 1 and 4 was sufficiently clear that the appellants had subjected the deceased to harassment within one month before her death in connection with their demand for dowry. She submitted that in such cases, evidence is difficult to be found and a provision has, therefore, been made in Section 113B of the Indian Evidence Act that it is for the Court to presume the commission of dowry death of a woman where it is shown that soon before death, such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry. She cited the judgment of this Court in *Trimukh Maroti Kirkan v. State of Maharashtra*, VII (2006) SLT 453=IV (2006) CCR 169 (SC)=II (2006) DMC 757 (SC)=(2006) 10 SCC 681, in which it has been held that if an offence takes place inside the privacy of her house, and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of 'circumstantial evidence' is insisted upon by the Courts.

8. We have perused the judgment of this Court in *Trimukh Maroti Kirkan* (supra) and we find that in that case there was clear evidence which established that the deceased Revatha was being ill-treated on account of non-fulfilment of demand of Rs. 25,000/- which the accused wanted for purchasing a tempo and the deceased Revatha was often beaten and sometimes not given food and after Revatha had been murdered, information was sent to her parents that she had died on account of snake bite but the medical evidence showed that she had died on account of asphyxia due to strangulation and that she had received injuries which were found on her body. In this case, on the other hand, there is no evidence to show that the deceased had died on account of some injuries on her body or strangulation. The case of the prosecution itself is that the deceased had died by consuming poison and committed suicide.

9. Learned Counsel for the State is right that Section 113B of the Evidence Act provides that when the question is whether a person has committed the dowry death of a woman and shown that soon before death, such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry, the Court shall presume that such person has caused the dowry death, but, to draw the presumption under Section 113B of the Evidence

Act, the prosecution has to lead evidence to show that there was a demand for dowry and further that the deceased had been subjected to cruelty or harassment soon before her death by the accused in connection with such demand for dowry. In this case, though an alleged 'marriage agreement' containing a demand of dowry has been produced by the prosecution as Ext. P-1, the Trial Court has found that the marriage agreement has not been proved to the satisfaction of the Court. The Trial Court has not, therefore, believed the story of demand of dowry. The Trial Court has also not believed the evidence of PWs 1 and 4 with regard to harassment of the deceased in the hands of the appellants.

10. We have also gone through the evidence of PWs 1 and 4 and we find that except making bald allegations of 'ill-treatment' and 'assault', there is no evidence adduced by them to prove any particular act of cruelty or harassment to which the deceased was subjected to by the appellants or that any complaint was made to the police about any such assault or harassment before the death of the deceased. We also find that the alleged marriage agreement (Ext. P-1) is a printed document and has not been proved to have been signed by any of the appellants. The Trial Court was, therefore, entitled to take a view that the prosecution story, as advanced through the evidence of PWs 1 and 4, was not established beyond reasonable doubt.

11. We find that in quite similar facts, this Court has found in *Rohtash* (supra) that the deceased Indro committed suicide by taking pills of poison and the Trial Court disbelieved the prosecution case and acquitted the accused in that case from the charges made under Sections 304B and 498A, IPC. The High Court, however, reappreciated the evidence and reversed the acquittal and convicted the accused and this Court observed:

“The High Court interfered with the order of acquittal recorded by the trial Court. The law of interfering with the judgment of acquittal is well-settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the Appellate Court can interfere with the order of the acquittal. The Appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide : *State of Rajasthan v. Talevar & Anr.*,

III (2011) CCR 58 (SC)=V (2011) SLT 127=AIR 2011 SC 2271; and Govindaraju @ Govinda v. State by Srirampuram Police Station & Anr., I (2012) DLT (CrI.) 911 (SC)=II (2012) SLT 565=II (2012) CCR 37 (SC)=(2012) 4 SCC 722.”

12. In this case also, we find that the Trial Court had disbelieved the prosecution case and held that in any case, the prosecution has failed to establish beyond reasonable doubt the ingredients of the offences under Sections 498A and 304B, IPC. In our opinion, the High Court, as the Appellate Court, could not have reversed the findings of the Trial Court and held the appellants guilty of the charges under Sections 498A and 304B, IPC by reappreciating the evidence.

13. We, therefore, set aside the impugned judgment passed by the High Court and allow the appeal by restoring the judgment of the Trial Court. The bail bonds of the appellants shall stand discharged.