

SUPREME COURT OF INDIA

S. Mahaboob Basha

Vs.

The State of Karnataka

CrI.A.No.2115 of 2014

(T.S.Thakur and R. Banumathi JJ.)

23.09.2014

JUDGMENT

R. BANUMATHI, J.

1. Leave granted.

2. This appeal arises out of the Order of the Karnataka High Court in CrI. R.P. No. 2148 of 2010 dated 29.10.2013, confirming the conviction of the Appellant under Section 498A Indian Penal Code and reducing the sentence of imprisonment of one year to six months and enhancing the fine amount from Rs. 3000/- to Rs. 10,000/- and in default, to undergo simple imprisonment for two months.

3. Brief facts of the case are that, the Appellant-first accused is the husband of PW-1, Smt. Noorunnisa and their marriage was solemnized on 06.02.1994 and the couple has two daughters and one son. Sometime after the marriage, accused No. 1 started physically torturing PW-1, and subjected her to cruelty by assaulting her and demanded/dowry of Rs. 50,000/- or a house from her parents. On 25.05.2001, at about 9.30 p.m., when PW-1 was in the house situated at Gandhi Nagar, Bellary, the Appellant abused PW-1 and her father PW-2 in filthy language and Appellant pushed PW-2 and voluntarily caused simple hurt to him. Father of the Appellant-accused No. 2 is alleged to have committed criminal intimidation by threatening PW-2 with dire consequences. At the time of marriage of Appellant and PW-1, the Appellant and Accused No. 2- father of the Appellant are said to have accepted dowry of Rs. 50,000/-, gold, silver, clothes etc. and further alleged to have harassed PW-1 demanding more dowry from her parents. On the complaint

lodged by PW-1, case was registered against the Appellant and his father under Sections 498A, 323, 504, 506 Indian Penal Code read with Section 34 Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act. On completion of the investigation, charge-sheet was filed against the Appellant and his father.

4. In order to prove the case of the prosecution, the prosecution has examined 17 witnesses - PW-1 to PW-17 and marked documents Exts. P1 to P11. The accused were questioned under Section 313 Code of Criminal Procedure about the incriminating evidence and they denied all of them. Upon consideration of the evidence, the trial court convicted the Appellant and his father for various offences and imposed imprisonment/fine as under:

Accused	Conviction	Sentence/Fine imposed
Appellant/A1 & 2 nd Accused	Sec. 498A IPC	One Year SI (each) & Rs.3,000/- Fine (each)
Appellant/A1 & 2 nd Accused	Sec. 323 and 504 IPC	Rs.500/- & Rs.500/- (each)
Appellant/A1 & 2 nd Accused	Sec. 506 IPC	Six months SI (each) & Rs.500/- (each)
Appellant/A1 & 2 nd Accused	Sec. 3 and Sec.4 of Dowry Prohibition Act	Six months SI (each)

Total fine amount of Rs. 9,000/- was ordered to be paid as compensation to the complainant.

5. Being aggrieved, the Appellant and his father S. Vali Sab preferred appeal before the Additional District and Sessions Court, Bellary (Fast Track Court-I). The appellate court set aside the conviction of Appellant's father S. Vali Sab and acquitted him of all the charges. The conviction of the Appellant-accused No. 1 for the offences punishable under Sections 498A, 323, 504, 506 Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act and sentence of imprisonment and fine imposed on him was confirmed. Being aggrieved, the Appellant preferred criminal revision before the High Court. The High Court confirmed the conviction

of the Appellant under Section 498A Indian Penal Code and reduced the sentence of imprisonment of one year to six months and enhanced the fine to Rs. 10,000/-. The High Court acquitted the Appellant of the charges under Sections 3 and 4 of the Dowry Prohibition Act.

6. Learned Counsel for the Appellant submitted that the Appellant and the complainant led peaceful and harmonious life and the couple are having two daughters and one son and the charges of ill-treatment to the complainant-wife are false and concocted, such allegations being made only out of anger and frustration, as the Appellant had married second time in the year 2001 and was living with his second wife. It was further submitted that the trial court convicted the Appellant only on the basis of the evidence of PW-1(wife), PW-2 (younger brother), PW-4 (mother of PW-1) and other interested witnesses and their evidence do not inspire confidence of the court and the learned courts below ought not to have based the conviction on such interested testimony.

7. Learned Counsel for the Respondent-State submitted that the courts below recorded concurrent findings as to the guilt of the Appellant and the same do not suffer from any infirmity warranting interference by this Court.

8. PW-1-complainant/victim and PW-2- brother of the complainant, PW-4-Mother of PW-1 have categorically spoken about the demand of dowry and harassment meted out to the complainant. Evidence of PW-1, PW-2 and PW-4 clearly establish that the Appellant-first accused harassed the complainant (PW-1), causing mental agony to her. Evidence adduced by the prosecution clearly proves that PW-1 was subjected to cruelty by her husband and also harassment to meet the unlawful demand of dowry and the essential ingredients of Section 498A Indian Penal Code are established.

9. It is brought on evidence that the Appellant-first accused married second time and has begotten three children through his second wife and on account of his second marriage, differences arose between the spouses and the Appellant-first accused ill-treated PW-1. In cases of cruelty meted out to the wife to bring home the guilt of the accused, it is not essential to examine independent witnesses. As pointed out by the High Court, the offence of ill-treatment, cruelty to the wife are committed in closed-door, where we can hardly expect any witness, much less

independent witness. While deciding whether a woman was ill-treated by her husband or his relatives, various factors and circumstances are to be considered by the courts. The demand of dowry, physical or mental, cruelty shown towards wife, conduct of the husband and also the conduct of the relatives, conduct complained of are all relevant. Prosecution has adduced cogent evidence to prove that after his second marriage the Appellant was ill-treating PW-1. PW-1 had no reason to prosecute her husband-appellant after ten years of marriage. As pointed out by the learned courts below, PW-1 was subjected to thorough cross-examination and despite the same, nothing was elicited from her to discredit her testimony.

10. Interference by the Supreme Court with concurrent findings of fact by the courts below is not warranted, except where there is some serious infirmity in the appreciation of evidence and the findings are perverse. We see no infirmity in the concurrent findings of the learned courts below convicting the Appellant under Section 498A Indian Penal Code. Insofar as conviction of the Appellant under Sections 323 and 504 Indian Penal Code is concerned, only fine was imposed on him. Insofar as the conviction under Section 506 Indian Penal Code, the Appellant was sentenced to undergo SI for six months by the trial court and the same was confirmed by the appellate court. The judgment of the High Court is silent about the conviction of the Appellant under Section 506 Indian Penal Code as confirmed by the appellate court and the sentence imposed on him for the said offence.

11. Coming to the quantum of sentence imposed on the Appellant, the question of awarding sentence is a matter of discretion of the court and is to be exercised on consideration of facts and circumstances of each case. The conviction under Section 498A Indian Penal Code where wife is subjected to cruelty, sentence imposed on the husband and in-laws should be commensurate with the charges and court should impose punishment befitting the offence. In *Narsingh Prasad Singh v. Raj Kumar @ Pappu and Ors.* MANU/SC/0232/2001 : (2001) 4 SCC 522, this Court emphasized that in case of conviction under Section 498A, it is the duty of the court to pass appropriate order of sentence.

12. The accused-appellant had remarried and has three children through his second wife, who are to be educated. The Appellant through his first wife has two daughters and one son and one daughter is said to be pursuing engineering course.

The Appellant has to take care of his aged parents. The Appellant has undergone sentence of imprisonment for about one month and the Appellant is presently on bail. Considering the totality of the facts and circumstances of the case, the sentence of imprisonment imposed on the Appellant for conviction under Section 498A Indian Penal Code is reduced to the period already undergone by him and a fine of Rs. 2,00,000/- (Rupees two lakh only) is imposed, in default of payment of fine, the Appellant is to undergo imprisonment for five months. Insofar as the conviction of the Appellant under Section 506 Indian Penal Code, he was sentenced to undergo SI for six months and it is reduced to the period already undergone and the same is ordered to run concurrently. The fine amount of Rs. 2,00,000/- is payable in two instalments. Rs. 1,00,000/- is payable within four months from today and remaining Rs. 1,00,000/- within six months thereafter. In default of payment of any one instalment of the amount, the Appellant is to undergo the imprisonment as aforesaid. The fine amount of Rs. 2,00,000/- shall be paid to PW-1, Noorunnisa as compensation under Section 357 Code of Criminal Procedure We direct the trial court/Principal Judicial Magistrate First Class, Bellary to issue notice to PW-1 Noorunissa, as and when the instalments are deposited and disburse the amount to PW-1 Noorunissa.

13. The sentence of imprisonment imposed on the Appellant is modified and the appeal is allowed accordingly.