

SUPREME COURT OF INDIA

A.K. Devaiah

Vs.

State of Karnataka

Crl.A.No.46 of 2007

(M.Y. Eqbal and Pinaki Chandra Ghose JJ.)

14.10.2014

JUDGMENT

M.Y. EQBAL, J.

1. The instant Criminal Appeal is directed against the judgment and order dated 25-8-2005 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No. 828 of 1999 whereby setting aside the judgment of acquittal passed by the trial court allowed the appeal filed by State and the accused-appellant herein has been convicted for the offences punishable under Sections 3, 4, and 6 of the Dowry Prohibition Act and Sections 498-A and 304-B of the Indian Penal Code (in short, ~IPC™). The XXV Additional City Civil and Sessions Judge, Bangalore had acquitted the accused of the offences punishable under aforesaid sections.

2. The prosecution case in a nutshell is that one Smt. Leelavati was married to the appellant on 16.4.1989 and was living in the house of the appellant at Konanakunte in Bangalore. Besides attending the household chores, she was gainfully employed in a private company. Even according to the Appellant, there used to be wordy altercations between him and the deceased since about the three months before her death (at the age of 28 years). These altercations between him and the deceased, according to the appellant, were regarding there being no indication of her becoming pregnant after the marriage. Further case of the prosecution is that before marriage of the deceased with the appellant, negotiations were held, wherein the appellant had demanded dowry in

the form of cash amounting to Rs 15,000/- as well as gold and silver ornaments. Pursuant to such demand made by the appellant, it is stated that a part of the dowry amount was given to the appellant before marriage and a further amount was given to him at the time of the marriage. All the ornaments demanded by the appellant, except a pair of gold bangles, were given to the appellant. The balance of dowry was agreed or promised to be given after the marriage. The appellant was also in the habit of consuming liquor. After marriage, the deceased had been subjected to mental and physical torture over certain issues including the one for demand of balance of dowry.

3. The deceased had complained to her brother and sister as well as to her brother-in-law about the ill-treatment meted out on her by the appellant and ultimately, the deceased being unable to bear any more torture of the appellant, committed suicide by setting herself on fire in their house at about 5:00 AM on 16-3-1990 i.e., within a year of marriage. Appellant himself informed about the unnatural death of the deceased to the SHO of the jurisdictional Police Station at about 7:10 AM and a case regarding the unnatural death was registered. Further investigation of the matter was done by the Investigating officer (PW 10) and the inquest proceedings were held on the dead body of the deceased by the Taluka Executive Magistrate. In the course of such proceedings, he also recorded the statement of the blood relatives of the deceased. On the basis of the materials disclosed during the inquest proceedings, a suo motu case was registered against the appellant for the aforesaid offences and FIR was lodged. The dead body of the deceased was subjected to postmortem examination by the Doctor (PW6) on 17.3.1990 and it was found that the dead body was partially pugilistic and smelled kerosene. The face, chest and upper limbs of the deceased were blackened and charred. Second and third degree burns were present all over the body, except over both feet. Heat ruptures were present over front of the left thigh and back of right middle, ring and little finger. The deceased had sustained 97% ante-mortem burns and death of the deceased was due to shock as a result of the burns sustained. However, the doctor did not find any symptoms of pregnancy.

4. Appellant was arrested on 18-3-1990 and was subjected to interrogation by the Investigating Officer (PW 10). During the course of interrogation, appellant furnished certain information and pursuant to such information, the appellant along with Investigating officer, PW 4 and other panchas went to a pawn brokerTMs shop, where, he recovered the ornaments of the deceased, which were pledged by the appellant.

5. In order to substantiate the case, the prosecution examined 11 witnesses, whereas in defence, 2 witnesses were examined. The appellant, when examined under section 313 Cr.P.C., has denied all the incriminating circumstances appearing against him in the prosecution evidence. He, however, admitted that he furnished the information about unnatural death of his wife to the police and a case regarding unnatural death of the deceased was registered at the police station. On being questioned about the prosecution evidence adduced in the case, accused-appellant has stated as under:-

We belong to kodava community. In our community there is no custom of giving and taking dowry. In our community half the expenses is borne by the bridegroom and half is borne by the brideTMs side. I have never demanded dowry, I have not harassed my wife for bringing dowry. The witnesses are giving false deposition. Even after 9 months of marriage my wife did not conceive. There was no indication in this regard either and for this reason I requested to consult a doctor and she was offended by this. For this reason alone she might have committed suicide.

6. Considering the material evidence placed on record by the prosecution and after hearing both sides, the trial court acquitted the accused- appellant of the charges against him holding that:-

The evidence adduced by the prosecution merely raised suspicion that something on the part of the accused might have prompted the deceased to commit suicide. However, that evidence is not sufficient to positively say that the alcoholic behavior of the accused, his demand of dowry, his taunts for not conceiving the child has the cumulative effect of the deceased leading her to commit suicide.

7. Dissatisfied and aggrieved by the decision of the trial court, State preferred appeal under Section 378(1) and (3), Cr.P.C before the High Court. After hearing learned counsel appearing on either side, perusing the judgment of the trial court and re-appreciating the evidence on record, High Court, in the impugned judgment, opined that the trial court has approached the entire matter in a spirit of distrust and prosecution and its judgment is based upon conjectures, surmises and suspicions. Setting aside the acquittal judgment passed by the trial court and allowing the appeal of the State, the High Court convicted the appellant for the offences under Sections 3,

4 and 6 of Dowry Prohibition Act and Section 498- A and 304-B, IPC. High Court sentenced the accused-appellant for the offence under Section 304-B, IPC to undergo imprisonment for a period of 7 years and for the offence under Section 3 of Dowry Prohibition Act, High Court also awarded sentence of 5 years and fine of Rs. 15000/- and in default of payment of such fine, to undergo further sentence for a period of 2 years. Appellant was further directed to return the dowry amount of Rs 15000/- as well as the gold ornaments, failing which, an amount equal to value of the gold ornaments and Rs. 15000/- may be recovered as if it were the fine imposed by the Court in accordance with the provisions contained under Sections 421 and 422, Cr.P.C. Hence, present appeal by special leave by the accused.

8. We have heard learned counsel for the appellant as well as for the State of Karnataka and perused the papers placed before us. Learned counsel appearing for the accused-appellant submitted that appellantTMs wife committed suicide in the kitchen in early hours of the day by setting herself on fire after pouring kerosene on herself, and the appellant within a period of two hours reported the incidence of unnatural death to the SHO of the jurisdictional police station. An FIR was registered on the statement given at the time of inquest proceedings by PWs 1 to 3, who are relatives of the deceased. It is contended that the trial court compared the statements of these witnesses at the time of inquest with the deposition given in the Court and held that these witnesses had not mentioned the facts about dowry harassment etc. The evidence would show that the jewellery and cash were given as gifts and to help the appellant to meet the marriage expenses and not as dowry. It is further contended that the High Court has placed reliance on the deposition of these witnesses without comparing their statement given at the time of inquest. The High Court has also not appreciated that there is absolutely no evidence of harassment or cruelty soon before the death. It is submitted on behalf of the appellant that the High Court has drawn the presumption under Section 113-B of the Indian Evidence Act though the ingredients of the offences were not proved and it was not shown by the prosecution that the appellant treated the deceased with such cruelty and subjected her to such harassment to drive her to commit suicide.

9. It has been further submitted on behalf of the appellant that the deceased and the accused both belonged to Kodava community and, as admitted by the prosecution witnesses themselves, there was no such custom of demand and acceptance of dowry in Kodava community. It has been further submitted that PWs 1 to 3 are the close

relatives of the deceased and they are highly interested in the outcome of the prosecution case. Present one is a case where the independent persons, who were present at the time of the marriage negotiations, were not examined and there is no explanation on the side of the prosecution as to why the independent witnesses were not even cited in the chargesheet. Although PW1 had given description of the gold ornaments, but he did not give actual amount alleged to have been demanded by the appellant. Whereas PW2, who was not present at the time of the marriage negotiations, gave the exact figure of amount that was demanded by the appellant.

10. It is also contended on behalf of the appellant that the evidence of the prosecution witnesses themselves would show that the amount that was given to the appellant was towards the expenses for the marriage and that being so, it cannot be termed as dowry. The same is the case with regard to the ornaments that were alleged to have been given by PW-1 at the time of the marriage. Their evidence would show that all these ornaments were given voluntarily as per the custom and that being so, they cannot be termed as dowry. It is further contended that the fact of recovery of ornaments at the instance of the accused has only been deposed by the Investigating Officer PW-10, but his evidence being incomplete, the same is not admissible in law. Further these ornaments were also not got identified through PWs 1 to 3. Even the pawnbroker, with whom the said ornaments were pledged, has not been examined in the case. It is contended on behalf of the appellant that the recovery evidence is wholly inadequate and not satisfactory.

11. Learned counsel for the appellant contended that although the deceased had died hardly within 11 months of her marriage, but there is no evidence on record to show that soon before her death, there was harassment for dowry. The evidence of PWs 1 to 3, if scrutinized carefully, besides being inconsistent and contradictory, would not establish the essential ingredients to constitute an offence under Section 304-B, IPC, that soon before her death the deceased was subjected to cruelty over a demand for dowry. There is no positive evidence on record to show that the accused used to harass the deceased in his house in a drunken state. Learned counsel for the appellant made his best efforts to persuade us to hold that the High Court erred in reversing the judgment and order of acquittal passed by the trial court.

12. Per contra, learned counsel appearing for the respondent-State of Karnataka submitted that prior to the marriage, the appellant had demanded dowry in the form of

cash and ornaments etc. and PWs. 1 to 3 have consistently spoken about the demand and acceptance of dowry and also about the deceased being subjected to mental and physical cruelties by the appellant in their house. After the marriage, the appellant was coercing his wife to bring the balance of dowry and she being unable to bear the torture had committed suicide. The appellant had even pledged the ornaments that were given to the deceased at the time of marriage. It is vehemently contended by the State that PWs. 1 to 3 being the close relatives of the deceased were the most competent and natural witnesses to speak the aforesaid fact and there was no reason to disbelieve them.

13. As noticed above, the High Court while allowing the appeal, set aside the judgment of acquittal passed by the trial court and convicted the appellant for the offences punishable under Sections 498A and 304B, IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. Before coming to the judgment of the High Court, we would like to quote Section 304-B, IPC and Section 113-A and 113-B of the Evidence Act.

304B, IPC: Dowry death.” (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called dowry death, and such husband or relative shall be deemed to have caused her death.

Explanation.”For the purpose of this sub-section, dowry shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. Sections 113A and 113B of the Evidence Act, 1872 read as under:-

113A. Presumption as to abetment of suicide by a married woman” When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had

committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. tc "1[113A. Presumption as to abetment of suicide by a married woman."When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

"Explanation."For the purposes of this section, cruelty shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).] tc "Explanation."For the purposes of this section, cruelty shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

113B. Presumption as to dowry death."When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has 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 had caused the dowry death. tc "2[113B. Presumption as to dowry death."When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has 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 had caused the dowry death." Explanation."For the purposes of this section, dowry death shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).] tc "Explanation."For the purposes of this section, dowry death shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860)."

14. We also take notice of Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. The word ~Dowry™ has been defined in Section 2 of the Act, which means any property or valuable security agreed to be given either directly or indirectly by one

party to a marriage to the other party to the marriage or by the parents of either party to a marriage. However, it does not include "Dower or Mehar"™ in the case of persons to whom Muslim Personal Law applies. Section 3 of the Act is a penal provision which makes giving or taking or abetting the giving or taking of dowry punishable. The demand of dowry directly or indirectly from the parents or other relatives or guardians of bride or bridegroom has also been made punishable under Section 4 of the Act.

15. Section 304B, IPC applies where the death of a woman is caused by any burns, bodily injury or occurs otherwise than under normal circumstances, within seven years of her marriage and the cause of death is because the woman was subjected to cruelty or harassment by her husband or her husband's family or relatives and such harassment should be in relation to a demand of dowry. Section provides the presumption under which husband or relatives had committed the offence of dowry death and render them liable for punishment unless the presumption is rebutted.

16. Interpreting the above provision, this Court in *Bansi Lal vs. State of Haryana*, (2011) 11 SCC 359, observed:-

19. It may be mentioned herein that the legislature in its wisdom has used the word shall thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relating to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by [pic]her husband or any relative of her husband in connection with any demand of dowry.

17. Section 113A of the Evidence Act and Section 107, IPC have also been considered by this Court in the case of *Thanu Ram vs. State of M.P.*, (2010) 10 SCC 353, this

Court held as under:-

25. In our view, the element of instigation as understood within the meaning of Section 107 IPC is duly satisfied in this case in view of the provisions of Section 113-A of the Evidence Act, 1872, which provides for a presumption to be arrived at regarding abetment of suicide by a married woman and certain criteria are also laid down therein. The first criterion is that such suicide must have been committed within 7 years from the date of the victimTMs marriage. Since Hirabai committed suicide in the 4th year of her marriage, such condition is duly satisfied. The second condition is that the husband or such relative of the husband had subjected the victim to cruelty which led to the commission of suicide by the victim. Section 113-A indicates that in such circumstances, the court may presume, having regard to all the circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. [pic]

18. In the case of *Rajesh Bhatnagar vs. State of Uttarakhand*, (2012) 7 SCC 91, this Court held as under:-

15. Before we examine the merit or otherwise of this contention, it will be useful to state the basic ingredients of Section 304-B IPC. The requirement of Section 304-B is that the death of a woman be caused by burns, bodily injury or otherwise than in normal circumstances, within seven years of her marriage. Further, it should be shown that soon before her death, she was subjected to cruelty or harassment by her husband or her husbandTMs family or relatives and thirdly, that such harassment should be in relation to a demand for dowry. Once these three ingredients are satisfied, her death shall be treated as a dowry death and once a dowry death occurs, such husband or relative shall be presumed to have caused her death. Thus, by fiction of law, the husband or relative would be presumed to have committed the offence of dowry death rendering them liable for punishment unless the presumption is rebutted. It is not only a presumption of law in relation to a death but also a deemed liability fastened upon the husband/relative by operation of law.

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34. Furthermore, the entire conduct of the accused is such as to lead to only one plausible conclusion i.e. all the accused together had caused the death of the deceased. The arguments of the defence are strange because if the accused had attempted to save the deceased, then he would have suffered some burn injuries. But as per the above details of injuries, there was not even a single burn injury found on the body of the accused Mukesh. These injuries were such that one could suffer only if he was struggling or fighting with another person, as then alone could he suffer such bruises or minor cuts. [pic]Absence of any cooking material in the kitchen is another very important circumstance which would belie the stand of the accused.

19. Admittedly, the marriage was solemnized on 16.4.1989 and the incident took place on 16.3.1990 i.e. within a period of eleven months only. From the evidence it reveals that the altercation between the appellant and the deceased started three months before the incident when there was no indication of the deceased becoming pregnant after marriage. According to the prosecution, before the marriage of the deceased with the appellant, negotiations were held with regard to the demand of dowry in the form of cash as well as gold and silver ornaments. It further reveals that part of the dowry amount was given to the appellant before marriage and further amount was given at the time of marriage. The prosecution further led evidence that the appellant was in the habit of consuming liquor and further the deceased had been subjected to physical and mental cruelty over certain issues including demand of balance dowry. The deceased being not in a position to bear more torture and cruelty pertaining to demand of dowry committed suicide by setting herself on fire. The sister, brother and sisterTMs husband of the deceased along with other witnesses had been examined as PWs 1, 2 and 3, who have consistently deposed about the demand and acceptance of dowry and also about the deceased being subjected to mental and physical cruelty by the appellant in their house.

20. We have gone through the evidence both oral and documentary brought on record. We have also analysed and scrutinized the evidence and the material available on record. In our considered opinion, the High Court has correctly recorded the finding based on evidence and found the appellant guilty of commission of offence. The judgment of acquittal passed by the trial court is wholly perverse and based on conjecture and surmises.

21. After giving our thoughtful consideration in the matter, we are in full agreement with the findings recorded by the High Court and in our opinion the impugned judgment needs no interference by this Court. The appeal preferred by the accused, therefore, stands dismissed.