

CASE NO.:
Appeal (crl.) 1285 of 1999

PETITIONER:
K.R.SOORACHARI

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 13/04/2005

BENCH:
B.P.SINGH & S.B.SINHA

JUDGMENT:
J U D G M E N T

This appeal by special leave has been preferred by the appellant against the judgment and order of the High Court of Karnataka at Bangalore dated 16th April, 1999 whereby the appellant has been found guilty of the offences under Section 498A of the Indian Penal Code (I.P.C.) and Sections 3, 4 and 6 of the Dowry Prohibition Act. He has been sentenced to undergo one year rigorous imprisonment on each count and to pay a fine of Rs.10,000/- under the Dowry Prohibition Act. The sentences have been directed to run concurrently.

The brief facts of the case may be noticed :- The appellant along with his wife and son was put up for trial before the Sessions Judge, Chikamagalur. They

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were charged under Sections 302/34, 201, 203, 498A and 304B, I.P.C. as also under Sections 3, 4 and 6 of the Dowry Prohibition Act. The son of the appellant was accused No.1 (hereinafter referred to as A-1) while his wife was accused No.3 (hereinafter referred to as A-3).

The case of the prosecution is that A-1 was married to the deceased on 27.5.1990. On 4.10.1990 her dead body was found near a river. The next morning at about 10.00 A.M. A-1 lodged a report at the police station to the effect that on the earlier night the deceased had gone out of the house to clean utensils but did not return, and since it was raining, the search did not yield any result. In the morning they found her dead body near a river. On the basis of the report lodged by A-1, the police ought to have swung into action, but it appears from the judgments of the Courts below that the police did not act with promptitude as a result of which much of the evidence was lost. However the autopsy on the dead body of the deceased revealed the following injuries :-

"1. Five irregular contusion injuries present on the left shoulder, each measuring 1-1/2 cm x 2 cm.

2. Contusion injury measuring 3" x 2" on the right hypochondric region.

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3. Hematoma measuring 1" x 2" on the right frontal area present.

4. Subdural hematoma measuring 2" x 1" on the right frontal area of brain.

5. Intracerebral hemorrhage on the right frontal lobe.

6. Hemorrhagic area found on the lower part of anterior part of liver."

As noticed earlier, A-1 the son, A-2 appellant and A-3 the wife of the appellant were put up for trial before the Sessions Court. By its

judgment and order dated 14th February, 1995 the Trial Court found A-1 guilty of the offence under Section 498A, I.P.C. but acquitted him of all other charges. The appellant and A-3 were acquitted of all the charges levelled against them. The State of Karnataka preferred Criminal Appeal No.868 of 1995 against the acquittal of the three accused persons of the charges under Sections 302, 201 etc. while A-1 preferred Criminal Appeal No.125 of 1995 against his conviction for the offence under Section 498A IPC. Both the appeals were heard together and were disposed of by a common judgment. Only the appellant (A-2) has impugned the judgment of the High Court convicting him for offences punishable under Section 498A IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act.

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We may notice that the High Court allowed the State's appeal so far the appellant is concerned to the extent that it found him guilty of the offences under Sections 498A IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act. The State's appeal against A-3 was dismissed by the High Court, and the appeal against acquittal of A-1 on other charges was also dismissed. Both A-1 and A-2 preferred a special leave petition before this Court, but the special leave petition in so far as it related to A-1 was dismissed at the admission stage itself.

Shri S.N.Bhat, learned counsel for the appellant submitted that there was no justification for the High Court to set aside the order of acquittal passed in favour of the appellant. He submitted that so far as the offence under Section 498A IPC is concerned, there is no material on record to support the aforesaid charge. The evidence only disclosed that A-1 husband of the deceased entertained a suspicion about her chastity and that was the reason why she was harassed by him. There is no evidence whatsoever to connect the appellant with the offence under Section 498A IPC. He also submitted that so far as the offences under Sections 3, 4 and 6 of the Dowry Prohibition Act are concerned, the High Court was not justified in setting

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aside the finding of fact recorded by the trial court in favour of the appellant. We have, therefore, considered the evidence on record placed before us by counsel for the parties.

So far as charge under Section 498A IPC is concerned, we are inclined to agree with the learned counsel for the appellant that there is really no material to connect the appellant with that offence. In fact the High Court has not even noticed any such evidence which may justify the conviction of the appellant under Section 498A IPC. We are, therefore, of the view that the appellant is entitled to acquittal so far the charge under Section 498A IPC is concerned. This takes us to a consideration of the evidence with regard to the offences under the Dowry Prohibition Act. Four witnesses have deposed in support of the prosecution. Pws 1, 2, 4 and 7 are the four witnesses whose evidence was considered by the Trial Court as also by the High Court. The High Court has come to the conclusion that the evidence of these witnesses conclusively proves the offences under the Dowry Prohibition Act, and the Trial Court really gave no cogent reason for disbelieving these witnesses and acquitting the appellant.

The Trial Court has considered the evidence on this aspect of the matter in paragraph 18 of its judgment. It has

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noticed the evidence of PW-1, the step father of the deceased that there was a demand of Rs.20,000/- and some ornaments from the appellant at the time of marriage negotiations. He expressed his inability to pay such a big sum and therefore, the amount was reduced from Rs.20,000/- to Rs.10,000/-. As regards the ornaments, it was decided that only a kapali ring will be given to A-1 and a mangalsutra shall be given to the bride. In view of the agreement, PW-1 sent the amount to the appellant through his wife PW-2 and his nephew's wife Yashoda PW-7. They paid the amount to the appellant. PW-2, the wife of PW-1 corroborated the testimony of PW-1 and stated that three days after the negotiations she had gone to pay Rs.10,000/- to the appellant along with PW-7 and paid the amount to the appellant. PW-4 has substantially corroborated the

testimony of PW-1 and PW-2. PW-4 is the husband of PW-7. He has however, not stated that his wife PW-7 went with PW-2 to pay the sum of Rs.10,000/- to the appellant. PW-7 Yashoda however, deposed the fact that the demand of Rs.20,000/- by way of dowry was reduced to Rs.10,000/- but she has also not stated anything about her going with PW-2 to pay the amount to the appellant. On the basis of such evidence on record the Trial Court concluded that except the oral testimony of PW-1 and PW-2 there was no other evidence on record to show that three days

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after the marriage negotiations PW-1 had sent Rs.10,000/- through his wife and PW-7 to be paid to the appellant. In view of these circumstances, the Trial Court came to the conclusion that neither there was any demand for dowry nor was any amount paid to the appellant by way of dowry. Thus the prosecution had failed to establish that PW-1 paid to the appellant a sum of Rs.10,000/- by way of dowry.

The High Court found that the reasoning of the Trial Court was unsustainable. We have also considered the evidence on record and we find that four witnesses have consistently deposed about the manner in which the negotiations were held and how the demand of Rs.20,000/- was reduced to Rs.10,000/- and the further fact that the said amount of Rs.10,000/- was paid to the appellant through PW-2 and PW-7. The only deficiency in the evidence which the Trial Court found was that PW-7 did not state in her deposition that she had gone with PW-2 to hand over the amount to the appellant. In view of the other evidence on record this fact by itself did not justify the conclusion that the prosecution had failed to prove its case. The evidence on record is quite consistent and PW-2, in fact, stated that she had gone with PW-7 to pay the amount. It is not the case of the defence that PW-7 denied having gone to the appellant. Much was sought to be made of

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the omission on her part to mention that she had gone with PW-7 to pay the amount to the appellant. The finding recorded by the Trial Court in our view completely ignores the cogent and reliable evidence on record which proves the case of the prosecution that dowry was demanded and paid. Such a finding ignoring relevant evidence can not be sustained even in an appeal against acquittal.

We, therefore, find that the conviction of the appellant under the Dowry Prohibition Act is fully justified. We, therefore, set aside the conviction of the appellant under Section 498A IPC but affirm his conviction and sentence under Sections 3, 4 and 6 of the Dowry Prohibition Act.

The appeal is, accordingly, partly allowed, setting aside the conviction under Section 498A IPC, but upholding the conviction and sentence under Sections 3, 4 and 6 of the Dowry Prohibition Act.

The appellant is on bail. His bail bonds are cancelled. He shall forthwith surrender to his sentence

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failing which the State shall take necessary steps to apprehend him to serve out the remainder of his sentence.