

CASE NO.:
Appeal (crl.) 145 of 2002

PETITIONER:
Shivanand Mallappa Koti

RESPONDENT:
The State of Karnataka

DATE OF JUDGMENT: 05/06/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT

1. In the present appeal, challenge is to a judgment rendered by a Division Bench of the Karnataka High Court holding the appellant guilty of offences punishable under Section 498-A of the Indian Penal Code, 1860 (in short the 'IPC'). The appellant faced trial along with two others, i.e. his mother and brother for offences punishable under Sections 302, 498-A IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 (in short the 'D.P. Act'). The trial Court had acquitted the present appellant and his brother of the charges under Section 302 IPC. Latter is described as A-3 while former is referred to as A-2. Mother of the accused (hereinafter referred to as A-1) was separately convicted under Section 302 IPC. The State had also filed an appeal questioning the acquittal, as noted above.

2. Background facts in a nutshell are as follows:

The appellant was married to one Shobha (hereinafter referred to as the deceased). She was the daughter of PW-1, a School Teacher. PW-2 was her mother, PW-17 her brother and PW-15 her younger sister. PW-6 is the wife of PW-17. According to the prosecution, PW-1 received information that she caught fire and was at the hospital. On his asking as to how she received the injuries, she said that while she was cooking, A-1 came behind her and lit fire to her saree. The allegation was that for not fulfilling the demand of dowry, she was killed by her mother-in-law and other accused persons. To substantiate the plea of demand of dowry, three letters were exhibited, which are Ex.P-2, Ex.P-3 and Ex.P-4. The occurrence took place on 25.9.1993. As noted above, the prosecution version rests primarily on the statement purported to have been made by the deceased before her death to her father in the presence of other relatives. The Trial Court placed reliance on the evidence of PW-1 and the letters and accordingly directed conviction and imposed sentence, as aforesaid. It, however, acquitted A-2 and A-3 of some charges.

3. Three appeals were filed before the High Court, two by the accused persons and one by the State, as noted above.

4. The High Court found that the evidence was insufficient to substantiate the allegations levelled against A-1. It also noted that there was no evidence to show any demand of

dowry. Therefore, it directed acquittal of A-1 so far as charges relating to Section 302 IPC and Sections 3, 4 and 6 of the D.P. Act are concerned, but placing reliance on the letters, Ex.P2 to P-4, held the appellant guilty of offences punishable under Section 498-A IPC. Interestingly, the conviction of A-1 and A-2 under Section 498-A was held to be not sustainable by the High Court.

5. In support of the appeal, learned counsel for the appellant submitted that ingredients of Section 498-A IPC are not established. In any event, after having directed acquittal from the charges relatable to Sections 3, 4 and 6 of the D. P. Act, on the self same evidence, the High Court should not have held the appellant guilty under Section 498-A IPC. The letters on which the Trial Court and the High Court placed reliance do not, in any event, show demand of dowry or any valuable.

6. In response, learned counsel for the respondent- State submitted that in the last letter of July, 1990, Ex.P-4 there was a clear reference of the intention of appellant for contacting a second marriage because the deceased had not brought enough dowry. With reference to the evidence of PW-1 and other relatives, it was submitted that A-1 was making a grievance that she could have got more dowry as her son, meaning thereby, the appellant was in government service.

7. Undisputedly, the High Court has held so far as A-1 and A-2 are concerned, that the accusations relatable to Sections 3, 4 and 6 of the D.P Act have not been established as no demand of dowry has been proved. Section 498-A, IPC reads as follows:

"Husband or relative of husband of a woman subjecting her to cruelty \027 whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation \027 For the purpose of this Section, Section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

8. Section 498-A does not specifically speak of a dowry demand. It speaks of unlawful demand for property and valuable articles.

9. Section 498-A IPC was enacted by the Criminal Law

(Second Amendment) 1983 with effect from 25.12.1983. The word "cruelty" has been explained in Section 498-A; so also harassment. "Cruelty" under the Explanation deals with two types of circumstances. Clause (a) refers to wilful conduct leading to suicide or grave injury or danger to life, limb or health which can be either mental or physical of the woman. Clause (b) relates to harassment with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable or is on account of failure to meet such demand.

10. There is no evidence on record on this aspect of any such demand. Even in the letters, on which prosecution placed heavy reliance, there is no reference to any demand of dowry or for that matter of any nature. In fact in Ex. P-2, the deceased had written to her mother that she had promised to pay for some articles which the mother-in-law i.e. A-1 had purchased. She had stated that she was embarrassed that her parents were not paying the money, though A-1 had never asked for it. This was not a case of any demand for property or valuable security. On the contrary, the deceased had objected to her parents not paying for something which the A-1 had spent the money. To similar effect was letter Ex.P-3. It is evident from the evidence on record that half of the marriage expenses were borne by the accused-appellant and his family. Even Ext. P-4 on which learned counsel for the State placed strong reliance does not speak of any demand. It only speaks of a apprehension of a second marriage. Though, he submitted that the demand of dowry is in the background and has to be inferred, the plea is clearly unacceptable in the absence of any material to substantiate that plea. This letter was also written three years prior to the occurrence.

11. Above being the position, the inevitable conclusion is that the prosecution has failed to establish its accusations so far as Section 498-A IPC is concerned to hold the accused-appellant guilty. The conviction is, accordingly, set aside. The appeal is allowed. The bail bonds executed for release of the appellant on bail shall stand discharged.