

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. 79 OF 2003

D.JAYANA

... Appellant(s)

Versus

STATE OF KARNATAKA

... Respondent(s)

J U D G M E N T

Dr.ARIJIT PASAYAT,J.

Challenge in this appeal is the order passed by a Division Bench of the Karnataka High Court upholding the conviction of the appellant for offences punishable under Section 304 B and 498 A of the Indian Penal Code, 1860 (in short 'IPC). Learned 1st Additional Sessions Judge, Chitradurga had imposed life sentence for the first offence but no separate sentence was imposed for the later offences. The appellant A-1 is the husband of Rekhamma (hereinafter referred to as the 'deceased'). The marriage between A-1 and the deceased took place on 27.3.1991. Accused No. 2 Gangama is the mother of A1 and A3 and A4 were the brothers and A5 is the sister of the accused. The trial court held that out of the five accused persons who faced trial for

Section 34 IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act (in short 'DP Act') read with Section 34. Only present appellant was guilty of offences punishable under Sections 304B & 498A IPC. The trial court placed reliance on the prosecution evidence as tendered and held that the accusations were clearly made out so far as the present appellant is concerned. In appeal, the High Court while maintaining the conviction reduced the sentence to seven years and the High Court also imposed sentence of three years in respect of offence punishable under Section 498 A IPC. The sentences were directed to run concurrently.

In support of the appeal learned counsel for the appellant submitted that for substantiating commission of an offence under Section 304B dowry death has not be established. Section 304B was introduced w.e.f. 19.11.1986. Simultaneously Section 113B of the Indian Evidence Act, 1872 (in short the 'Evidence Act') was introduced. Presumption is available to be drawn under Section 113B, if the evidence in that regard is established. It is to be noted that the High Court held that the there was no proof of any demand of dowry to bring in application under the DP Act. The High Court held that the view of the trial court in that regard

-3-

was not correct. Even though there was no challenge by State questioning the acquittal of offence relatable to Sections 3, 4 and 6 of the DP Act, the High Court found that the prosecution has proved the charges imposed against the accused in relation to the said offence. Having done so, the High Court did not impose any sentence in respect of the offence relatable to the DP Act. Learned counsel for

the appellant submitted that the factual scenario goes to show that the offences relating to Section 304B are not established. Learned counsel for the respondent on the other hand submitted that in view of the Explanation (a) and (b) of Section 4908A IPC, cruelty has to be clearly established. The only evidence relating to Section 304B was that of a neighbour who was examined after about two months of the alleged date of occurrence. Though the evidence appears to be sufficient to bring in application of Section 498A, there is definite inadequacy to attract Section 304B IPC. In that view of the matter we set aside the conviction so far it relates to Section 304B IPC and maintain that in relation to Section 498A IPC. It is to be noted that there is sufficient evidence relating to demand of dowry though for the purpose of Section 304B, the evidence is not sufficient. The appeal is allowed to the aforesaid extent. It is stated that the appellant has already

-4-

suffered custody of about three and half years. That being so, the appellant need not surrender to custody. The bail bonds furnished to give effect to the order dated 20.01.2009 shall stand discharged.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
((ASOK KUMAR GANGULY))

New Delhi,

May 06, 2009.

