

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29TH DAY OF MAY 2006

PRESENT

THE HON' BLE MR. JUSTICE N.S.VEERABHADRAIAH

AND

THE HON' BLE MR. JUSTICE SUBHASH B.ADI

CRIMINAL APPEAL NO. 456/2000

C/W CEL.A.NO. 455/2000

BETWEEN:

The State by Manvi
Police Station.

.. APPELLANT

(common in both appeals)

(By Sri.P.M.Nawaz, HCGP)

AND:

1. Paramesh
S/o late Eranna

2. Eranna,
W/o late Eranna

Both are majors, R/o Fakirawadi
Manvi, Dist.Raichur.

.. RESPONDENTS
In Crl.A.456/2000

Padma
D/o late Earanna
Major, R/o Manvi
Raichur District.

.. RESPONDENT
In Crl.A.455/2000

(By Sri.C.H.Jadhav &
Sri.P.Vijayaraju, Advs.)

Crl.A.No.456/2000 is filed under Section 378(1)
& (3) of Cr.P.C. praying to grant leave to file an

appeal against the judgment dt.31.12.1999 passed by the Pri.S.J., Raichur in S.C.No.1/97 acquitting the respondents for the offences u/ss.498A, 302, 304B, 120B of IPC r/w Sec.3,4 and 6 of D.P.Act.

Crl.A.No.455/2000 is filed under Section 378(1) & (3) of Cr.P.C. praying to grant leave to file an appeal against the judgment dt.31.12.1999 passed by the Pri.S.J., Raichur in S.C.No.55/97 acquitting the respondent for the offences u/ss.498A, 304B, of IPC r/w Sec.3,4 and 6 of D.P.Act.

These Criminals Appeals coming on for hearing this day, VEERABHADRAIAH J., delivered the following:

J U D G M E N T

These two appeals are by the State assailing the common judgment in S.C.Nos.1/1997 and 55/1997 on the file of the Principal Sessions Judge, Raichur dated 31.12.1999, acquitting the accused Nos.1, 3 and 4 for the offences under Sections 498A and 304B of the Indian Penal Code read with Sections 3, 4 and 6 of the Dowry Prohibition Act.

2. The daughter of PWs-1 and 2, Smt.Sujatha was given in marriage to accused No.1 - Parameshi. The marriage took place on 29.4.1994 and at the time of the marriage, an amount of Rs.11,000/- and other valuables like gold and other articles were given to the accused on their demand. One week after the

marriage, accused No.1 - Parameshi secured a job as a Conductor in K.S.R.T.C. After the marriage, all the accused started harassing the deceased Sujatha on the ground that they would have fetched more dowry, if the marriage were to have been postponed by a week. The parents of the deceased PW-1 - Yashodamma and PW-2 - Narasimha Murthy received information that their daughter sustaining burns and she being admitted to Bhandari hospital at Raichur. They proceeded to Hospital and made enquiry with the victim, she revealed that accused No.2 poured kerosene and lit fire. The Sub-Inspector of Police - S.M.Olekar, PW-9 on being received the information about Sujatha being admitted to Bhandari hospital, Raichur due to burns, proceeded to the hospital and recorded the statement of PW-1 - Yashodamma as per Ex.P1 and registered a case in Crime No.94/1996 for the offence under Section 498-A of I.P.C. and prepared the F.I.R. as per Ex.P6, proceeds to the spot, secured the panch witnesses and prepared the spot panchanama as per Ex.P7 by seizing M.O.1 - Stove and M.O.2 - Hanchu. The Investigation Officer sent a requisition to PW-10 Siddappa, Tahsildar,

Raichur with a request to record the statement of the victim. The Tahsildar PW-10 - Siddappa arrives to the hospital and in the presence of PW-6 - Dr. Inderchand, recorded her statement as per Ex.P9. On receiving the information of death, the Sub-Inspector of Police proceeded to hospital, prepares the inquest panchanama on the dead body as per Ex.P8 on 30.5.1996. The dead body was sent for postmortem examination. PW-7 - Dr.V.S.Sanikoppa, Medical Officer conducted postmortem examination on the dead body of Sujatha as per P.M. report Ex.P5. The apprehended accused A-1 - Parameshi and A-3 - Earamma were produced before the Jurisdictional Magistrate on 6.6.1996. The investigation was took over by the Deputy Superintendent of Police - PW-8 Sri.K.B.Mulla and part of the investigation was done, the case papers were handed over to PW-11 Smt.Sarala Somaiah, C.O.D. Inspector for further investigation. PW-11 - Smt.Sarala Somaiah recorded the statement of the witnesses, secured the P.M. report and F.S.L. report. After completion of the investigation, filed charge sheet against accused Nos.1 to 4 by mentioning A-2 is dead and the case is



registered in S.C.No.1/1997. After filing of the charge sheet, A-4 - Padma absconded. Therefore, the case as against A-4 came to be split up. Subsequently, accused No.4 - Padma was secured and separate charge sheet was filed, which came to be registered as S.C.No.55/1997. Both the cases were clubbed and tried together by the learned Sessions Judge, Raichur.

3. The learned Sessions Judge secured the presence of the accused persons, framed separate charges for the offences under Sections 498-A and 304-B of the I.P.C. and for the offences under Sections 3, 4 and 6 of Dowry Prohibition Act. The accused pleaded not guilty and claimed to be tried. The prosecution in all examined PWs-1 to 13, marked Exs.P1 to P12 and produced M.Os.1 and 2. The statement of the accused was recorded under Section 313 of Cr.P.C. The defence is one of total denial. The accused did not choose to lead any defence evidence. The learned Sessions Judge, for the reasons recorded in his judgment, held that the deceased met with homicidal death as a result of

pouring kerosene and lighting fire. Further held that the dying declaration is proved and in view of the fact that the main culprit A-2 (who poured kerosene and lit fire) died in the same incident, the charges were stand abated as against him and acquitted the remaining accused persons. It is this common judgment of acquittal of accused Nos.1, 3 and 4 arising out of S.C.Nos.1/1997 and 55/1997, which is questioned in these two appeals.

4. Learned Government Pleader Sri.P.M.Nawaz vehemently submitted that when the learned Sessions Judge having found that the dying declaration is proved beyond reasonable doubt, has erred in not convicting accused Nos.1, 3 and 4. Further submitted that the evidence of PW-1 - Yashodamma and PW-2 - Narasimha Murthy clearly establishes the fact that at the time of the marriage of their daughter Sujatha, they gave gold ornaments and also dowry of Rs.10,000/-. The said amount of Rs.10,000/- was paid as the accused demanded. Therefore, the charges for the offences under Sections 3, 4 and 6 of Dowry Prohibition Act are proved. Further

submitted that it has clearly come in the evidence of PWs-1 and 2 and also clear from the dying declaration that these accused persons, who were subjecting the deceased to cruelty and harassment on the ground that she did not bring sufficient dowry. All these facts conclusively establish that accused Nos.1, 3 and 4 are guilty of the offences. Therefore, prayed to set aside the judgment of acquittal of accused Nos.1, 3 and 4 and to convict them for the offences charged.


5. Sri.C.H.Jadhav, learned Counsel appearing for the respondents - accused submitted that though the victim was admitted to hospital on 7.5.1996, PW-1 and PW-2 having visited their daughter at Bhandari hospital and even after coming to know about the incident that the burns were due to stove burst, they were silent for a period of nearly 15 days and the complaint came to be filed only on 24.5.1996. The conduct of PWs-1 and 2 are suspicious in nature. The complaint does not tally with the alleged dying declaration of the deceased Sujatha. Therefore, there is inconsistency in the testimony of the

prosecution witnesses. He also submitted that there is no evidence to show that accused Nos.1, 3 and 4 have at any time subjected the deceased Sujatha to cruelty or harassment. Further submitted that the evidence of PW-4 - Rukmini and PW-5 - Ratnamma, the neighbours have not supported the case of the prosecution insofar as the cruelty and harassment is concerned. When the prosecution has failed to prove the ingredients of Section 498-A or the ingredients of Section 304B of I.P.C. much less the ingredients for the offences under Sections 3, 4 and 6 of Dowry Prohibition Act, the question of convicting any of the accused does not arise. Therefore, prayed to dismiss both the appeals.

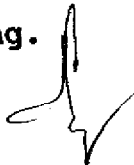
6. In the light of the submissions, the point for consideration that arises:

"Whether the learned Sessions Judge, Raichur is justified in acquitting the accused for the offences charged? If not, liable to be interfered with?"

7. It is an admitted fact that the deceased Sujatha was given in marriage to Parameshi - A-1. According to the evidence of PW-1 - Yashodamma, the



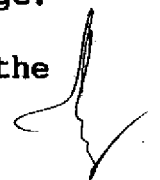
marriage took place during April 1994 at Manvi. At that time, A-1 was unemployed. After about a week of the marriage, A-1 secured a job as Conductor in K.S.R.T.C. It is thereafter the accused persons started ill-treatment. It is also in her evidence that just 25 days prior to the incident, the deceased was staying at Yemmiganoor and it is A-2 - Earanna, who came to Manvi and took her by telling that she has to attend Choudamma Jatra. It is later on she came to know about the incident in question. It is also in her evidence that the deceased informed her that all the four accused persons have ill-treated her and further informed that A-1 assaulted, and that while she was sleeping in the house, A-2 and A-3 poured kerosene and lit fire. It is thereafter she lodged a complaint as per Ex.P1. In the cross-examination, she has clearly admitted that she lodged the complaint after about 16 days, after admitting Sujatha to Bhandari hospital. She denied the suggestion that the deceased died on account of the stove bursting.



8. Coming to the evidence of PW-2, it shows that the relationship between the accused and the deceased was not good and were ill-treating his daughter for the sake of money. The ill-treatment was started by the accused within one week after the marriage. According to his evidence, it is accused Nos.2 to 4, who were ill-treating and that the accused were demanding Almirah, gold and Mixie and that he supplied all those articles. When he questioned A-1 and A-2 as to why they are ill-treating his daughter, A-1 told him that his daughter Sujatha has to adjust to the house, further stated, after the incident, he came to Bhandari hospital, Raichur, to see Sujatha as she had suffered with burn injuries.

9. Now coming to the evidence of PW-3 - Banavasi Dodda Siddappa, it shows that the dowry amount of Rs.11,500/- was given to the accused.

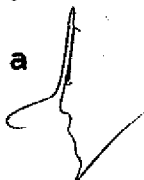
10. On a careful scrutiny of the testimony of PW-1 - Yashodamma and PW-2 - Narasimha Murthy, it is clear that they does not speak anything about giving any jewels or dowry at the time of the marriage. When PWs-1 and 2 have not spoken about paying of the



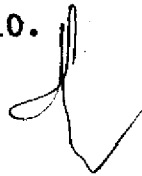
amount of Rs.11,500/-, the testimony of PW-3 - B.D.Siddappa cannot be believed to the fact of paying any amount as dowry to the accused persons. Even otherwise, if any jewels were to have been given or provided with any cloths, it is customary and it cannot be considered as a demand of dowry. Therefore, we are of the clear opinion that absolutely there is no evidence so as to attract Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961.

11. In order to attract Section 498-A of IPC and to base a conviction, there must be a clear evidence that the deceased was subjected to torture for obtaining any financial benefit from her parental house. The evidence must be such, which should be clear, cogent, ^{by and in - 2}impeachable and acceptable in nature. ^{1/2}Though the evidence of PWs-1 and 2 is short of so far as subjecting the deceased to cruelty and torture, the trial court relied on the dying declaration Ex.P9.


12. It is in the evidence of PW-10 - Siddappa, the Tahsildar, that on 23.5.1996, he received a



letter from the Deputy Commissioner, Raichur for recording the dying declaration of Lakshmi Sujatha, who was admitted in Bhandari hospital, Raichur. He proceeded to hospital at about 7.15 p.m. in the evening, noticed Sujatha was an in-patient in hospital. He approached the duty doctor and ascertained the condition of the victim and thereafter, he recorded the dying declaration in the form of question and answer. It is also in his evidence that the victim answered in Telugu, but he recorded it in Kannada, as he was knowing Telugu and attested his signature and the Medical Officer has also attested and certified that she was in a fit condition to give declaration. He recorded the dying declaration as per Ex.P9. It is also in his evidence that on the death of Sujatha, he was requested to conduct an inquest panchanama on the deceased. Accordingly, he prepared the inquest panchanama as per Ex.P10. In the cross-examination, no much importance has been elicited so as to discredit the testimony of PW-10.



13. We have carefully examined the dying declaration recorded by the Taluka Magistrate, which is also attested by PW-6 - Dr. Inderchand, who was General Surgeon at Bhandari hospital. Ex.P9, the dying declaration made by the deceased before the Taluka Magistrate shows that on the date of the incident at about 8 p.m., she was taking rest, as she was tired. Then she noticed that her father-in-law - A-2 was pouring kerosene on her, then she caught hold of his legs tightly, then A-2 lit the match stick. On account of it, she caught in fire. A-2 also suffered with burns. The neighbours came and lit off the fire. Her statement shows that her mother-in-law, A-3 - Earamma and A-4 - Padma, the sister of her husband used to abuse her and that had become a routine course and that they were also demanding for dowry. It has also come in her statement that her parents paid an amount of Rs.8,000/- and half thola of gold and also stated that when kerosene was poured and lit fire, her mother-in-law was in the house whereas, her husband was not in the house as he had been to duty.

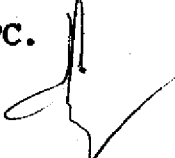


The statement made by the deceased Sujatha clearly establishes the fact that it is A-2, who poured kerosene and lit the fire. But merely because of the reason that mother-in-law (A-3) was in the house, it cannot be taken that she had also taken active part in supporting the act of A-2. It is also clear from Ex.P9 that A-4 was not found to be in the house, so also her husband A-1. It is on account of the said fact, the learned Sessions Judge has held that it is A-2, who is responsible, but the charges stand abated against him as he died even prior to the death of the deceased Sujatha and filing of the charge sheet. We have carefully examined the dying declaration recorded, it establishes the fact, that at the time of the incident, she was pregnant of five months and it is A-3 - Eramma, who was subjecting her to harassment by not providing food. It is no doubt true that PW-4 - Rukmini and PW-5 - Ratnamma have not supported the case of the prosecution insofar as the harassment is concerned. But when we have accepted the dying declaration made by the victim as proved, that itself is sufficient to act and to hold that accused No.3 - Eramma was subjecting the deceased to

cruelty and harassment, for which she is liable to be convicted.

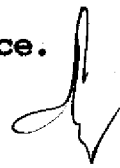
14. Insofar as the ingredients of Section 304-B is concerned, we do not find any clinching material so as to connect A-1, A-3 or A-4. In the dying declaration, the deceased herself has clearly stated that her husband was not in the house and has not mentioned anything about A-4 - Padma, as to her presence on that day. In that view of the matter, we have to confirm the acquittal of accused Nos.1, 3 and 4 for the offences under Section 304-B of I.P.C.

15. The evidence on record is only as against A-3 - Earamma, that too, for the offence under Section 498-A, as she was subjecting the deceased to harassment by not providing food and thereby A-3 - Earamma is found guilty for the offence under Section 498-A of IPC and we confirm the acquittal of A-3 for the remaining offences and also we confirm the acquittal of A-1 and A-4 for the offences charged. Accordingly, A-3 is convicted for the offence under Section 498-A of IPC.



16. We have heard the learned Counsel Sri.C.H.Jadhav regarding the sentence to be imposed. Learned Counsel submitted that accused No.3 was arrested on 6.6.1996. Though the order of bail was granted on 26.9.1996, she was released from the custody only on 30.11.1996, thereby she was in custody for a period of 5 months 24 days. He also submitted that accused No.3 is a lady aged about 68 years whereas, the case is of the year 1996. Therefore, he prayed to take a lenient view. Learned Government Pleader submitted to impose the maximum punishment for the offence under Section 498A of the I.P.C.

17. As seen from the testimony of the prosecution witnesses and also taking note of the dying declaration made by the deceased Sujatha and further considering the age factor of the accused No.3 and also taking into consideration the principles laid down in decision reported in 2002 AIR SCW 3795 in the case of MOHD.HOSHAN AND ANOTHER -vs- STATE OF ANDHRA PRADESH, liberal view to be taken in imposing the sentence.



For the foregoing reasons, Criminal Appeal No.455/2000 is dismissed, whereas Criminal Appeal No.456/2000 is partly allowed, sentencing accused No.3 - Earamma to undergo imprisonment for the period already in custody during pre-trial stage. Further, to pay a fine of Rs.3,000/-, in default of payment of fine, to undergo S.I. for a period of 2 (two) months.

Sd/-
Judge

Sd/-
Judge

KNM/-