

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 9th DAY OF JUNE, 2006

P R E S E N T

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

AND

THE HON'BLE MR. JUSTICE SUBHASH B ADI

Criminal Appeal No. 522 CF 2000 (A)

BETWEEN :

THE STATE OF KARNATAKA

(By SRI P.M. NAWAZ, HCGP)

... APPELLANT

A N D:

- 1 Murtuza,
S/o Mabusab,
28 years, occ: Petty business.
- 2 Munna, w/o Khasimsab,
30 Years, Occ: Household,
3. Fathima, w/o Mabusab, 43 years.
4. Mabusab, s/o Rajasab
(abated vide Court order dt:29.9.2000)

All are r/o Janatha Colony,
Sindhanur. Raichur District.

(By Smt. M. Jyothi Adv. for R 1 3)

..RESPONDENTS

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 373(1) AND (3) OF THE CODE CRIMINE PROCEDURE PRAYING TO SET ASIDE THE JUDGMENT DATED 5.2.2000 PASSED IN SC NO.17/1997 BY THE I ADDL. SESSIONS JUDGE, RAICHUR.

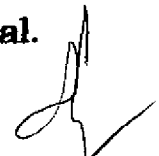
THIS APPEAL COMING ON FOR HEARING, THIS DAY, VEERABHADRAIAH.J., DELIVERED THE FOLLOWING:

JUDGEMENT

The accused persons who are charge-sheeted for the offence punishable under Sections 498(A), 304(B), 306 read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act, came to be acquitted in SC No.17/1997 by the learned I Addl. Sessions Judge, Raichur by judgment dated 5.2.2000.


2. The case of the prosecution is that the complainant's daughter Smt. Chand Bee was given in marriage to A 1 Murtuza and that the marriage took place three months prior to the date of the incident i.e. on 26.8.1995 on which date Smt. Chand Bee set herself on ablaze by pouring kerosene. After coming to know of the incident PW 1, Shamid Sab, lodged a complaint in the police station, Sindhnoor alleging that on account of cruelty and

harassment meted out by the accused on the deceased for dowry demand, she set herself on ablaze and died on account of burn injuries. After securing the accused persons charges were framed against them for the offences punishable under Sections 498(A), 304(B), 306 read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act. The accused pleaded not guilty of the offences. The case was posted for trial by ordering issue of summons. Though 24 persons are cited as charge sheet witnesses the prosecution could be able to examine only six witnesses i.e., PW 1 to 6. Out of them PW 2 and PW 5 are police witnesses whereas PW 3 Kadar Basha, PW 4 Basha Sab and PW 6 Chennabasappa turned hostile. However they were not supported the case of the prosecution. But the learned Sessions Judge by not considering the request of the prosecution for issue of fresh NBW rendered a judgment of acquittal acquitting the accused. It is this judgment of acquittal which is questioned by the State in the present appeal.



3. Sri P.M. Nawaz, learned Government Pleader, submitted that inspite of the submission and request made by the Public Prosecutor the trial Court did not issue fresh NBW to the material witnesses thereby it amounts to miscarriage of justice. Also submitted that in not issuing summons to material witnesses, closing the prosecution is illegal and therefore prays to set aside the judgement of acquittal and to remand the matter for "benefit of trial" by allowing the appeal.

4. Smt. Jyothi, learned counsel for the respondents accused vehemently submitted that it is clear from the order sheet of the trial Court that in spite of several adjournments granted and also issued non bailable warrant which was not executed and it is not the fault of the accused persons. The evidence of the witnesses examined does not throw any light on the case of the prosecution, therefore prayed to dismiss the appeal by confirming the judgment of acquittal.



5. In the light of the submission, the points for consideration are:

- 1) Whether the learned Sessions Judge has justified in acquitting the accused without issuing fresh summons or NBW to the material witnesses;
- 2) What order?

6. It is not in dispute that deceased was given in marriage with accused no.1 Murthuza and that the death has taken place within three months of her marriage. It is the specific case of the prosecution that on account of cruelty and harassment made for demand of dowry; the deceased poured kerosene on herself, which attracts the ingredients of Section 304(B) IPC as well as Sections 3 and 4 of the Dowry Act, the offence alleged is one of heinous, in nature against a woman. As a result of the harassment she was forced to commit suicide by pouring kerosene. It is further seen from the order sheet that the material witnesses have not been examined which reads thus:



**"A 1 to 4 are present
Witnesses not present.**

NBW issued to all the remaining witnesses are returned unexecuted on the ground that the witnesses are out of station.

Addl. P.P.

May be for reissue of process

The charge in this case was that on 19.2.98. Since then trial was fixed for more than 7 times in this case.

The prosecution has produced only six witnesses out of 24 witnesses including official witnesses.

For securing the presence of remaining witnesses this Court has issued summons and also NBW several times, but the police concerned are not able to produce the remaining witnesses in-spite of issue of NBW as a last chance. The police concerned have simply returned the witness warrant on the ground that the witnesses are out of station.

Though this Court have issued NBW to official witnesses including the I.O. even then the same are returned unexecuted.

This shows that the police concerned particularly the PSI Sindhnoor is reluctant in executing witness warrant.

This case is of the year 1997 and has been sufficing old one.



The police concerned have failed to produce the remaining witnesses. Under these circumstances it is not just and proper to reissue the process. Hence the prayer of the Addl. P.P. is rejected.

Prosecution side is taken as closed.

As there are no incriminating circumstances accruing in the evidence of the prosecution on record the statement under Section 313 Cr.P.C., is dispensed with.

Heard arguments.

For judgment call on 5/2.

Sd/-
28/1/77

7. On a perusal of the order sheet, it shows that the learned Sessions Judge ought to have taken coercive steps for securing the witnesses, which has lead to miscarriage of justice. The question as to whether the deceased was subjected to harassment or cruelty can be made known only after the material witnesses are examined i.e., CW 1 Shamid Sab, father of the deceased, CW 2 Smt. Husenamma, w/o Mohammad Sab, CW 3 Khaja Mohinuddin, s/o Mohammad Sab, CW 4 Sakem Sab, s/o

Shameed Sab, the brother of the deceased and son of CW

2.

8. That apart the Medical Officer as well as the Investigating Officer are also not examined. If one more adjournment were to have been granted by issuing NBW to the material witnesses it would have met with justice. But that is not the case on hand. Non examination of material witnesses leads to miscarriage of justice. Therefore, we are of the opinion, the judgment of acquittal is opposed to the principle of natural justice and therefore we remit back the matter to the trial Court to proceed with the matter further as was pending as on 28.1.2001 and to provide reasonable opportunity to the prosecution to secure the material witnesses by issuing NBW and also by taking coercive steps and dispose of the case within a period of three months.



9. It is brought to the notice of the Court that A 4 is reported to be dead and the same is recorded. Therefore the charge against A 4 stands abated.

10. For the foregoing reasons we proceed to pass the following order:

The appeal is allowed.

The judgment of acquittal dated 5.2.2000 passed in SC no.17/1997 by the I Addl. Sessions Judge, Raichur is set aside.

The matter is remitted back to the I Addl. Sessions Judge, Raichur for fresh disposal as observed above by securing A 1 to A 3 and dispose of the matter within three months.

Office is directed to return the record to the trial Court forthwith.

Sd/-
Judge

Sd/-
Judge