

**Prakash Vs. State**

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**Court :** Chennai

**Decided On :** Jun-27-2013

**Judge :** C.S.Karnan

**Appellant :** Prakash

**Respondent :** State

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

27. / 06 /2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN  
Crl.R.C.No.846 of 2010 1.Prakash 2.Devarajulu 3.Vasantha .. Petitioners Vs. State  
by Inspector of Police, All Women Police Station, Tiruvallur. (Crime No.1 of 2005)  
.. Respondent PRAYER : Criminal Revision is filed under Sections 397 and 401 of  
Cr.P.C., to call for the records of the Judicial Magistrate-II, Tiruvallur, and set-  
aside the judgment passed by the learned Judicial Magistrate-II in C.C.No.340 of  
2005, dated 06.02.2008 which was confirmed by the appellate Court in C.A.No.40  
of 2008 by judgment dated 12.07.2010, on the file of the learned Additional District  
Sessions Judge, Fast Track Court-III, Tiruvallur. For Petitioners :  
Mr.S.Udhayakumar For Respondent : Mr.D.Sivaram Kumar Government Advocate

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ORDER

The short facts of the prosecution case are as follows:- The defacto complainant, viz., Mrs.Sujatha had lodged a complaint before the Inspectress of All Women Wing Police Station, Tiruvallur, stating that the first accused viz., Prakash had married her on 29.08.2003 at Tiruvallur. From the date of marriage her husband had been demanding Sujatha's share property from her father, but the same had been refused by her father. Hence her husband and his parents had begun to torture her. Due to the intolerant conditions, the defacto complainant left the matrimonial home on 13.03.2004, after leaving her ornaments at the matrimonial home. Further, all the accused had threatened the defacto complainant that they would pour kerosene on her and light it. The said complaint was registered as Crime No.1 of 2005, on the file of the respondent herein, for the offence under Section 498(A), 406, 506(2) of I.P.C. and read with Section 4 of Dowry Prohibition Act. The respondent herein had conducted an investigation and filed a charge sheet before the Judicial Magistrate-II, Tiruvallur and the same has been arrayed as C.C.No.340 of 2005.

2. In order to prove the prosecution case, seven witnesses were listed and four documents were marked. viz., F.I.R., marriage invitation, list of ornaments and house hold articles belonging to her and which was left at the matrimonial home and a copy of the complaint. On the side of the accused, four witnesses were examined and no document was marked.

3. On questioning, all the accused had pleaded not guilty and hence the prosecution case had been proceeded with.

4. P.W.1, Sujatha had adduced evidence that she is living at Manavala Nagar in Tiruvallur. She further adduced evidence that she had married the first accused on 29.08.2003 and at the time of marriage, her parents provided 50 sovereigns of gold jewellery and Rs.2,00,000/- as cash, besides giving Rs.20,000/- towards dress materials and 13 sovereigns of gold ornaments to her husband and all household articles. Immediately after the marriage both the spouses had led their marital life at the matrimonial home. During that period, her husband asked her to get her share of the property from her father and threatened that if she did not do so, she could remain in the house of her father and not to come to the matrimonial

home. Further, her husband tortured her in the privacy of their home. P.W.1 further stated that she was forced to leave the matrimonial home and go to her mother's place. On 02.09.2004, she gave birth to a female child. On 14.02.2005, her mother-in-law and her husband came to her mother's house and instructed her to bring her share of the property within one week to the matrimonial home, failing which, she could continue to stay at her mother's place itself and also threatened her that they would take all steps to spoil her reputation. Hence, her father had levelled the said complaint on behalf of her. P.W.1 further stated that her husband and his parents told her that the child was not born through her husband (A-1).

5. P.W.2, Rani had adduced evidence that Sujatha is her eldest daughter and the marriage was solemnized on 29.08.2003 between A-1 and her daughter. The evidence of P.W.2 was in consonance with the evidence of P.W.1.

6. P.W.3, Krishnan had adduced evidence that he is residing at Arakkonam and he knows about Sujatha's family and also knows that the marriage was solemnized between A-1 and Sujatha in the year 2003. P.W.3 further stated in his evidence that on one occasion he had visited Sujatha's matrimonial home and he observed that her mother-in-law was attending to all household work and that Sujatha was not permitted to do any household work. P.W.3 further adduced evidence that he was informed by P.W.1 that her in-laws and her husband had tortured her and asked her to get her share of the property from her father and that even after her father had given his consent to share his property among the three members, all the accused had continuously tortured her to get her share of property. P.W.3 further adduced evidence that P.W.1 had informed him that all the accused had told her that the child was not born through her husband.

7. P.W.4, Munusamy had adduced evidence that he is residing at Redhills and that the father of P.W.1 is his cousin brother and he knows all the accused. On 29.08.2003, the marriage was solemnized between them and at the time of marriage, P.W.1's father gave huge amounts and lot of gold jewellery. He was informed that the first accused had demanded the share of the property of P.W.1. P.W.1's father had also agreed to share the property with the other two children. P.W.1 was tortured by the accused during her pregnancy period too. P.W.4 further

adduced evidence on the same line of P.W.1.

8. P.W.5, one Sekar had also spoken on the same line as per the evidence of P.W.1.

9. P.W.6, Chandiran, father of P.W.1 had adduced evidence that he had provided 50 sovereigns of gold jewellery and Rs.2,00,000/- besides Rs.20,000/- as cash for dress at the time of marriage. Immediately after the marriage, his daughter lived at the matrimonial home. His son-in-law demanded a share of property of his daughter and he had also agreed to share the property. He further stated that his son-in-law tortured his daughter in the privacy of the matrimonial home. He had also spoken on similar lines of P.W.1.

10. P.W.7, Sarala Devi, the Inspectress of Police had adduced evidence that on 15.02.2005, P.W.1 lodged a complaint and she had registered the case in Crime No.1 of 2005, for the offence under Section 498(A), 406, 506(2) of I.P.C. and read with Section 4 of Dowry Prohibition Act. She also recorded statements from four witnesses and the accused were arrested on 16.02.2005 and produced before the Judicial Magistrate. She also filed a charge sheet in this regard.

11. On the side of the accused, it was contended that they had not received any amount from the defacto complainant's father.

12. On recording the evidence of both sides and on perusing the exhibits marked by the prosecution and on hearing the arguments from both side counsels, the learned Magistrate had observed that the second accused had received Rs.2,00,000/- as dowry at the time of marriage. Not being satisfied with the said amount, the accused had tortured P.W.1 for further dowry. Further, the prosecution had proved the case beyond doubt except the offence under Section 506(2) of I.P.C. Hence, all the accused had been acquitted from that offence. However, the learned Magistrate held all the accused guilty of offence under Section 498(A), 406, read with Section 4 of Dowry Prohibition Act. Hence, the learned Magistrate sentenced them to undergo two years rigorous imprisonment and a fine of Rs.1,000/- was imposed on each of the accused; in default they have to undergo a further period of six months simple imprisonment for the offence

under Section 498A of I.P.C. All the accused were also held guilty of offence under Section 406 of IPC and they were sentenced to undergo six months rigorous imprisonment and they were also held guilty of the offence under Section 4 of Dowry Prohibition Act and sentenced to undergo one year rigorous imprisonment and a fine of Rs.1,000/- was imposed on each of them; in default they have to undergo four months simple imprisonment.

13. Against the conviction and sentence passed by the learned Judicial Magistrate-II, Tiruvallur in C.C.No.340 of 2005, dated 06.02.2008, all the accused had filed an appeal in C.A.No.40 of 2005, on the file of Additional District Sessions Judge, Fast Track Court-III, Tiruvallur. The learned judge after hearing the arguments of the learned counsels on both sides and on perusing the trial Court judgment, dismissed the appeal and confirmed the trial Court's conviction and sentence.

14. Against the dismissal of the said appeal, the above revision has been filed.

15. The learned counsel for the revision petitioner has contended that without proper application of mind and appreciation of the facts, a conviction order has been passed, which is an erroneous view of the Courts below. It was contended that the Courts below ought to have seen that having acquitted the petitioners herein for the offence under Section 506(2) of IPC, by disbelieving the evidence of prosecution witnesses, erred in convicting them for the other alleged offences on the same set of allegations as against them. It was contended that the Courts below failed to note that the entire prosecution case only on oral evidence of the family of P.W.1 and no documentary proof nor oral evidence of independent witnesses have been produced and as such that evidence should have been carefully scrutinized before convicting the petitioners herein for the alleged offences. P.W.3, P.W.4, P.W.5 are not eyewitness, but are created witnesses. The date, time and place were not mentioned in the prosecution case regarding torture of P.W.1 and there is no material evidence regarding torture and demand of dowry. Actually, P.W.1's issue regarding grievance about the allegation that her in-laws beside her husband's that the female child was not born through A-1, would come under paternity issue. The further allegation against the accused is that they

had demanded P.W.1 to get her share of the property from her father is also not covered under the demand for dowry. There is absolutely no documentary evidence or eyewitness for torturing of P.W.1 in order to receive dowry, but it is only a hypothetical theory. Therefore, the prosecution case is not sustainable under law. However, A-2 had admitted that he had received a sum of Rs.2,00,000/- from the father of P.W.1 at the time of marriage. The amount transaction took place after due consent of both parties and as such, the amount could not be treated as dowry.

16. The learned counsel further contended that P.W.1 had stated that 13 sovereigns of gold was provided to A-1, but her father and mother had not stated anything regarding 13 sovereigns of gold. A-1 being a dutiful husband and for the welfare of their offspring's has the right to ask P.W.1 to get her share of property. The alleged demand of A-1 regarding share of property is also not proved by the prosecution by way of documentary evidence showing disclosure of the items and locations and value of the properties. Therefore, on the vague statement of P.W.1, the entire prosecution case had been proceeded with and the innocent accused had been punished. The learned counsel further stated that A-2 and A-3 are senior citizens. P.W.3, P.W.4, P.W.5 have stated about the marriage and they have been told by P.W.1 regarding share of property and paternity of the child.

17. The learned counsel for the state vehemently argued that A-2 had openly admitted that he had received a sum of Rs.2,00,000/- from the father of P.W.1 at the time of marriage and that this amount was given as dowry for the marriage of P.W.1. All the accused have no rights to insist and torture P.W.1 to get her share of property from her biological parents. The demand to ask or not to ask her share of the property is purely on the will and pleasure of P.W.1. All the accused have jointly stated that the female child was not born through A-1 which is also causing mental and social torture. All the accused are continuously torturing P.W.1 for demanding of dowry from her parents while she was staying at the matrimonial home. Not being able to tolerate the continued torture of the accused, she left the matrimonial home and has taken shelter with her parents. Being a dutiful wife P.W.1 bore all the insults meted out by the accused at the matrimonial house. The prosecution case has been proceeded with and proved beyond all doubt only after

the Inspectress of Police had collected statements from the independent witnesses, viz., P.W.3, P.W.4 and P.W.5. The learned counsel for the State further argued that P.W.1 had gone to her parents house unable to withstand the continued torture and hence, had left her gold ornaments and house hold articles at the matrimonial home and these items which were left behind had also been listed by her. Hence, the learned counsel entreats the Court to dismiss the above revision and confirm the concurrent findings of the Courts below.

18. On considering the order of the conviction and sentence and perusing the listed documents and on hearing the arguments of the learned counsels on either side and observing that as per the language of Sections 498(A), 406 of I.P.C, it has been stated that:- ".498-A. Husband or relative of husband of a woman subjecting her to cruelty.- 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.

406. Punishment for criminal breach of trust - Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both."

19. This Court's view is that there is no material evidence regarding torture for demanding dowry. Further, the prosecution case has not mentioned the date, time and place regarding the torture and what kind of torture had taken place. The allegation regarding parentage of the child is not covered under the demand for dowry. The independent witnesses P.W.3, P.W.4, P.W.5 have not clearly stated any crystal clear evidence regarding torture for dowry demand.

20. On considering the facts and circumstances of the case and the arguments advanced by the learned counsels on either side and on perusing judgments of the Courts below and this Court's view mentioned above, the prosecution has not proved their case beyond doubt. Hence, this Court finds it necessary to interfere in the conviction and sentence imposed on the accused by the Courts below.

21. In the result, the above revision is allowed. Consequently, the conviction and sentence passed in C.A.No.40 of 2008, on the file of the Additional District Sessions Judge, Fast Track Court-III, Tiruvallur, dated 12.07.2010, confirming the conviction and sentence passed in C.C.No.340 of 2005, on the file of Judicial Magistrate-II, Tiruvallur, dated 06.02.2008 is set-aside and the accused A-1 to A-3 are set at liberty and the fine amount to be refunded to the accused. Accordingly ordered. r n s To 1. The Judicial Magistrate-II, Tiruvallur.

2. The Additional District Sessions Judge Fast Track Court III Tiruvallur

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