

Basappa Vs. IndraGouda and Others

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Court : Karnataka Dharwad

Decided On : Dec-13-2016

Judge : Ravi Malimath & K. Somashekar

Appeal No. : Criminal Appeal No. 2660 of 2012[A]

Appellant : Basappa

Respondent : IndraGouda and Others

Advocate for Def. : Sri. B. Santhosh Malgoudar

Judgement :

(Prayer: This Criminal appeal is filed under section 372 of Code of Criminal Procedure seeking to set aside the Judgment dated 30.04.2011 passed by the fast Track Court-II Koppal in S.C.No.97 of 2010, by allowing the appeal in the interest of justice.

This appeal coming on for final Hearing this Day, j. Ravi Malimath delivered the following.)

1. The case of the prosecution is that the accused No.1 is the husband of the deceased; accused No.2 is the brother-in-law, accused No.3 is the father-in-law and accused No.4 is the mother-in-law of the deceased. Accused No.5 is the maternal uncle of accused No.1 and accused No.6 is the sister-in-law of the deceased. A complaint was lodged by the father of the deceased on 8th July 2010

at about 12.45pm. He has stated that the deceased Smt. Shobha was his second daughter. She was given in marriage to accused No.1 on 8th May 2008. Cash and gold was given at the time of marriage. They have a female child. Thereafter, the husband of the parents started to ill-treat her. They demanded that she bring more dowry and gold. They used to assault her physically and mentally. The same was being narrated by her to her parents. That on 8th July 2010 at about 07.00 p.m, one Shivappa Chungina, who is the brother-in-law of the complainant, telephoned him and told him about the death of his daughter Smt. Shobha at about 10.00 p.m on the previous night. Hence, the complainant, his wife and other family members went to the village. They saw the dead body of their daughter. The body was burnt from stomach to face. She was strangled and murdered after pouring kerosene and lit her on fire. Based on this complaint, a case in Crime No. 40 of 2010 came to be registered for the offences punishable under section 143, 498A,302 read with Section 149 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Investigation was taken up. The charge-sheet was filed against six accused for the offences punishable under sections 143, 498A, 304B read with Section 149 of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act. The case was committed to trial. The accused pleaded not guilty. In order to prove its case, the prosecution examined seventeen witnesses and marked fourteen exhibits along with three material objects. Three documents were marked on behalf of the defence. The accused were acquitted of the offences punishable under section 143, 498A, 304B read with Section 149 of the Indian Penal Code. Aggrieved by the same, the complainant has filed this appeal.

2. Sri.T.M.Nadaf, learned counsel for the complainant, contends that the judgment of the trial court is erroneous. That, it has failed to comply with the mandatory provisions of section 354 of the Code of Criminal Procedure. Therefore, it being a faulty judgment, the same requires to be reserved.

3. On the other hand, Sri. B. Santhosh Malgoudar, learned counsel for the respondents, contends that the finding is recorded by the trial court on all the charges and issues framed. There is only a technical error in not mentioning the relevant provision of law. Therefore, when the accused have been acquitted of the other offences, they are deemed to have been acquitted of the offences for which

there is no finding. Hence, he pleads that the appeal be dismissed.

4. Heard learned Counsels and examined records.

5. We have considered the impugned judgment at length. We are primarily concerned with whether the judgment of the trial court is in conformity with the provisions of section 354 of the Code of Criminal Procedure and not on the merits of the case.

6. The five charges that were leveled against the accused read as under:

(i) That you accused No.1 to 6 on 7-7-2010 at about 10.00 p.m and also prior to that being members of un-lawful assembly have given dowry harassment to the daughter of complainant Shoba and caused her death by setting fire by herself and thereby you have committed an offence punishable under section 142 of I.P.C and within cognizance of this Court.

(ii) That you on 08.05.2008 the marriage of you accused No.1 was performed with shoba who is the daughter of the complainant and at that time you accused being relative to each other have demanded dowry of Rs. 40,000/- and two thola gold out of which the complainant has paid Rs.30,000/- and on thola gold and there was balance of dowry of Rs.10,000/- and one thola gold and by demanding the same you accused have formed an un-lawful assembly and given mental and physical torture to the complainant and subjected her to cruelty and thereby committed an offence punishable under Sec.498(A) R/W Sec.149 of I.P.C and within cognizance of this Court.

(iii) That you on 07.07.2010 at about 10.00 p.m at Kavalur village in the house of you accused No.1 has caused the death of Smt. Shoba who is the daughter of complainant by giving her cruelty and you have caused the death of Smt. Shoba who set fire by pouring carocine oil upon herself and thereby you have committed an offence punishable under Sec. 304(B) R/W 149 of I.P.C and within cognizance of this Court.

(iv) That you on 08.05.2008 got the marriage of you accused No.1 was performed with Smt. Shoba who is the daughter of the complainant and at that time you

accused being the relatives to each other have demanded dowry of Rs.40,000/- and two thola gold out of which the complainant has paid Rs.30,000/- and one thola gold and there was balance of Rs.10,000/- and one thola gold and by demanding the dowry you accused have demanded dowry by giving mental and physical torture to the complainant (sic.) and subjected her to cruelty and thereby committed an offence punishable under section 3 and 4 of the Dowry Prohibition Act R/W.Sec.149 of IPC and within cognizance of this Court.

(v) That you on 07.07.2010 at about 10.00 p.m at Kavalur village in the house of you accused No.1 has committed murder of Smt. Shoba who is the daughter of complainant by giving her cruelty and you have caused the death of Smt. Shoba who set fire by pouring carocine oil upon herself and thereby they have committed an offence punishable under Sec. 302 of I.P.C.R/W 149 of I.P.C and within cognizance of this Court .

7. The trial court framed the following points for determination:-

(1) Whether prosecution proves that accused No.1 to 6 on 07.07.2010 at about 10.00 p.m and also prior to that being members of un-lawful assembly have given dowry harassment to the daughter of complainant Shobha and caused her death by setting fire and thereby they have committed an offence punishable under Sec.142 of I.P.C?

(2) Whether prosecution proves, on 08.05.2008 the marriage of accused No.1 was performed with Shobha who is the daughter of the complainant and at that time the accused being relative have demanded dowry of Rs.40,000/- and two thola gold out of which the complainant has paid Rs.30,000/- and one thola gold and there was balance of dowry of Rs.10,000/- and one thola gold and by demanding the same accused formed an un-lawful assembly and given mental and physical torture to the complainant and subjected her to cruelty and thereby committed an offence punishable under Sec.498(A) R/W Sec.149 of I.P.C?

(3) Whether prosecution proves that on 07.07.2010 at about 10.00 p.m at Kavaloor village in the house of the accused No.1,the accused have caused the death of Smt. Shoba who is the daughter of complainant by giving her cruelty and they

have caused the death of Smt. Shoba by setting fire after pouring kerosene oil upon her and thereby they have committed an offence punishable under Sec. 304(B) R/W 149 of I.P.C?

(4) Whether prosecution proves that on 08.05.2008, the marriage of accused No.1 was performed with Smt. Shoba who is the daughter of the complainant and at that time the accused being the relatives to each other have demanded the dowry of Rs.40,000/- and two thola gold out of which the complainant has paid Rs.30,000/- and one thola gold and there was balance of Rs.10,000/- and one thola gold and by demanding the dowry the accused have given mental and physical torture to the daughter of the complainant and subjected her to cruelty and thereby they have committed an offence punishable under section 3 and 4 of the Dowry Prohibition Act?.

(5) Whether prosecution proves that on 07.07.2010 at about 10.00 p.m at Kavaloor village in the house of the accused No.1, the accused caused the death of Smt. Shoba who is the daughter of complainant by giving her cruelty, by setting fire after pouring kerosene oil upon her and thereby they have committed an offence punishable under Sec. 302 R/W 149 of I.P.C?

(6) What order?

8. Thereafter, the following is the operative portion of the order passed in the impugned judgment:-

The accused No.1 to 6 are acquitted under section 235(1) of Cr.P.C for the offences punishable under Section 143, 304(B), 498(A), 302R/W 149 of I.P.C. The bail bonds of the accused stand cancelled.

M.O-1 to 3 are worthless, ordered to be destroy after expiry of the appeal period .

9. It is herein that the learned counsel for the appellant contends that there is no finding recorded on charge No.4. That in the absence of recording a finding on charge No.4, the entire judgment becomes erroneous.

10. We have considered the said contention. Section 354 of the Code of Criminal Procedure reads as follows:-

354. Language and contents of judgment:- (1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,--

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code(45 of 1860), and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under Section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision .

11. Sub-clause (d) of sub-section (1) would narrate that in a judgment of acquittal, the trial court shall state the offence of which the accused is acquitted and direct that he be set at liberty. In the instant case, there is no acquittal granted to the accused with reference to charge No.4, namely the offences under Sections 3 and 4 of the Dowry Prohibition Act read with Section 149 of the Indian Penal Code.

12. In an identical circumstance, the Honourable Supreme Court, in the case of State of Andhra Pradesh versus Gowthu Ranghunayakulu reported in AIR 1987 SC 40 and Prem Kumar versus State of Punjab reported in AIR 2013 SC 2083, came to the conclusion that in the absence of the following mandatory requirements as laid down in section 354 of the Code of Criminal Procedure, the matter requires to be considered by the trial Court.

13. In the case of State of Uttar Pradesh versus Santosh Kumar, reported in 2009 (9) SCC 626, the Honourable Supreme Court was considering the charges against the accused therein under section 498A of the Indian Penal Code as well as under Sections 3 and 4 of the Dowry Prohibition Act, 1961. It was held therein that the scope and ambit of Sections 3 and 4 of the Dowry Prohibition Act is quite different from the ambit and scope of Section 498A of the Indian Penal Code. Therefore, mere acquittal under Section 498A of the Indian Penal Code cannot lead to any inference of acquittal under section 3 and 4 of the Dowry Prohibition Act. Each one of the charges have to be separately considered based on the evidence and material let-in by the prosecution. The failure to consider the case, therefore, has lead not only to miscarriage of justice but violation of the mandatory provisions of section 354 of the Code of Criminal Procedure.

14. From this background, we have considered the impugned judgment of the trial court. The learned counsel for the respondents would contend that even though there is no specific acquittal of the accused of the offences punishable under Sections 3 and 4 of the Dowry Prohibition Act, the same can be inferred from the contends of the judgment. The accused having been acquitted of the offences

punishable under Section 143, 304B, 498A and 302 read with section 149 of the Indian Penal Code, it has to be a deemed acquittal under Sections 3 and 4 of the Dowry Prohibition Act. In support whereof, he refers to paragraph 27 of the impugned judgment.

15. We have considered the said judgment at length. The said paragraph is with reference to the finding recorded by the trial court while considering the charge under section 304B. In the course of so discussing the said charge, no doubt, there is a reference to the fact that the dowry death is not proved as well as the demand for dowry is not proved. However, we have no hesitation to hold that such is not the manner in which the finding has to be recorded against the accused, when there is a specific charge against him under a particular Section. Merely making a passing reference while dealing with another provision of law is not good enough. There is absolute non-application of mind to the charge framed against the accused under Section 3 and 4 of the Dowry Prohibition Act. A mere passing reference cannot lead to an inference that there is deemed acquittal of the accused. The question of giving a deemed acquittal to the accused would not arise for consideration. The trial Court has to specifically record a finding as to whether the charges as against the accused have been proved or not and whether the accused is held guilty or not guilty of the charges leveled against him. On the failure to record such a finding, we have no hesitation to hold that the impugned judgment is erroneous. It cannot be sustained in the eyes of law. It violates the mandatory provision of section 354 of the Code of Criminal Procedure.

16. Under these circumstances, without going into the merits, we deem it just and appropriate to remand the matter back to the trial judge to re-appreciate the entire evidence on record and thereafter to record its finding.

17. In view of the fact that the accused have been acquitted of some of the charges and that Sections 3 and 4 of the Dowry Prohibition Act are also relatable to the charges that they have been acquitted of, it would not be in the ends of justice to remand the matter only for reconsideration of the charges under Section 3 and 4 of the Dowry Prohibition Act. We deem it just and appropriate that the trial Court records its finding on all the charges leveled against the accused. We

reason the same, in view of the fact that the charges leveled against the accused being relatable to one another, it would be just and appropriate that if the same trial judge records his findings on all the charges.

18. In the result, we pass the following order:-

(i) The appeal is allowed.

(ii) The impugned judgment dated 30th April 2011 passed in Sessions Case No.97 of 2010 by the learned Presiding Officer, Fast Track Court-II, Koppal, is set aside;

(iii) The matter is remanded back to the trial court for fresh consideration in accordance with law;

(iii) The trial Court shall consider the available evidence without recording any further evidence and thereafter, to pass appropriate orders based on the observations made herein above;

(iv) The trial Court to record its findings on all the charges leveled against the accused;

(v) The parties to appear before the trial Court on 11th January 2017.

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