

Gowramma Vs. State Of Karnataka

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Court : Karnataka

Decided On : Mar-04-2020

Judge : K.Somashekar

Appeal No. : CRL.RP 112/2014

Appellant : Gowramma

Respondent : State Of Karnataka

Judgement :

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1. : R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE4H DAY OF MARCH, 2020 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL REVISION PETITION No.112 /2014 BETWEEN1 Gowramma Aged about 55 years W/o K. H. Javara Shetty 2. K. H. Javara Shetty Aged 16 years S/o Late Honna Shetty 3. J.

Ramesh Aged about 31 years S/o K. H. Javara Shetty All the petitioners are available at No.465, Lakshminarasimha Nilaya Rama Mandira Road, Kodigehalli Bangalore - 560 092. ... Petitioners (By Sri. Raghavendra .K, Advocate) AND1 State of Karnataka By the Station House Officer Hebbal Police Station Bangalore City.

2. Smt. Susheelamma W/o late A.P. Ramaiah Age 68 years R/at No.168, 2nd Cross :

2. :

2. d Main, V.B.H.C Layout Bangalore - 86. (Respondent No.2 is impleaded vide order dated 28.09.2018) ... Respondents (By Sri. Rohit B. J., HCGP for Respondent No.1; Sri Pratheep .K .C, Advocate for Respondent No.2) This Criminal Revision Petition is filed under Section 397 of the Code of Criminal Procedure, praying to, set aside the charge framed against the petitioners for an offence which is made penal under Sec.306 of IPC in S.C.No.285/2006, dated:05.09.2013 pending on the file of the LI-Additional City Civil and Sessions Judge, Bangalore City. This Criminal Revision Petition Coming on for Hearing, this day, the court made the following:

ORDER

This petition is filed challenging the order passed by the trial Court in S.C.No.285/2006 dated 5.9.2013 insofar as it relates to framing of charge against the petitioners for the offence punishable Section 306 of IPC.

2. Heard learned counsel for the petitioner and learned HCGP for Respondent No.1 - State inclusive of counsel for Respondent No.2 :

3. :

3. The factual matrix of the petition is as under: Petitioners are arraigned as Accused No.1 to 3 in S.C.No.285/2006. It is transpired in the complaint that Accused No.3 J-Ramesh said to have married one Smt.Latha, daughter of Smt.Susheelamma, who is the complainant. Accused Nos.1 and 2 are parents of Accused No.1. The marriage took place on 17.11.2005 at Bangalore as per the customs prevailed in their society. Subsequent to marriage deceased - Latha had been to her matrimonial house to lead happy marital life. It is alleged in the complaint that she stayed at the marital home for about a week or so. During her stay in the matrimonial house, it is alleged that accused persons subjected deceased Latha to cruelty and harassment and even at the time of the marriage,

the family members of the deceased had given Rs.30,000/- dowry and gold jewelries. After marriage, the spouses had cordial relationship for some days and thereafter, accused No.3 went to his job at Vishakapatnam. Further, it is alleged that during the stay of the deceased in her in-laws house, after her husband went :

4. : to the job, even for small mistakes of the deceased, Accused Nos.1 and 2 were abusing her stating that she does not know cooking and were not allowing her to call her parents on phone and also threatened to kick her and oust her from their house.

4. On 2.1.2006 when the accused No.3/husband of the deceased returned to his house, he also abused the deceased stating that she is getting the household work done through his parents and assaulted her. His parents told him that if he had married some other girl, he could have got more dowry and under these circumstances, deceased had told her mother and sisters that she is scared as to what would happen. Ultimately on 4.1.2006 at about 11.00 a.m. deceased committed suicide by hanging with means of veil in her matrimonial home due to the abetment extended to her by her husband and in-laws who are the petitioners herein. When she was taken to the hospital, she was declared as dead. Therefore, Smt.Susheelamma, being the mother of deceased lodged a complaint against the accused persons. Based on the complaint, crime came :

5. : to be registered in Crime No.3/2006 and after completion of investigation, charge sheet was laid in S.C.No.285/2006 for the offence punishable under Sections 498(A), 304(B) r/w 34 of IPC besides Sections 3 and 4 of Dowry Prohibition Act against the petitioners. The Court below passed an order directing to frame charges for the aforesaid offences. Aggrieved by the said order, petitioners filed Crl.RP.No.2434/2006 before this Court. This Court vide order 04.11.2010 allowed the revision in part, set-aside the order of the trial Court directing to frame the charge for the offence under Section 304(B) IPC and remitted the matter back to the trial Court to consider the charge for the offence under Section 306 of IPC, if there is any material in that regard.

5. Subsequent to remittal of the case in pursuance to the order passed by this Court, the trial Court vide order dated 05.09.2013 framed charges against the

accused persons for the offence punishable under Sections 498A, 306 r/w 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act. It is this order which is :

6. : challenged under this petition by urging various grounds insofar as it relates to framing of charge against the petitioners under Section 306 of IPC.

6. Learned counsel for the petitioner contends that there is no iota of evidence available on record to constitute offence under Section 306 of IPC. It is contended that the evidence available on record do not even remotely indicate that the petitioners have either directly or indirectly abetted the act of commission of suicide by deceased Latha. It is also contended that there has been a total non-compliance of not only the mandate requirements of law as contemplated under Sections 227 and 228 of the Cr.P.C. but also violation of the order of remand by this Court in the earlier revision petition. Therefore, the order framing charge under Section 306 of IPC is liable to be set-aside.

7. It is further contended that before proceeding to frame the charge under Section 306 of IPC, the trial Court has not adverted to the statements of witnesses recorded by the IO and documents collected by him during the course of investigation. Further, it is :

7. : contended that the trial Court before framing charge under Section 306 of IPC, ought to have passed detailed order which necessitated to frame the above charge against the petitioners. But the trial Court has erred in not doing so. Therefore, the impugned order insofar as framing charge under Section 306 IPC is liable to be set- aside.

8. The second limb of the argument advanced by petitioners counsel is that the trial Court has erroneously framed charge under Section 306 of IPC, even though no ingredients have been constituted. He contends that neither the petitioners instigated the deceased nor engaged in a conspiracy to doing any act or illegal omission in pursuance of conspiracy or intentionally committed illegal omission and thus, does not fall within the purview of the definition of Section 107 read with Section 306 IPC.

9. He further contends that the trial Court after remittal of the case by this Court, instead of advertng to the materials on record in the case in the form of statement of witnesses recorded and the documents :

8. : collected by the IO during the course of investigation of the crime to find out as to whether a charge for an offence under Section 306 of IPC could be framed or not against petitioners, had chosen to frame charge against the petitioners for the offence under Section 306 of IPC. Despite the submissions made by the petitioners, that the materials brought on the record in the case by the IO even if accepted at its face value as true, do not indicate the commission of an offence under Section 306 of IPC. Therefore, the order passed by the trial Court in this regard is erroneous and same needs interference of this court, if not, there shall be greater injustice caused to the petitioners.

10. Learned counsel for the petitioners in support of his arguments, has relied on the following decisions: i) 2019 SCC Online SC44- Rajesh vs. State of Haryana In this judgment, the Honble Apex Court at para- 9 has held that conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of :

9. : occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC ii) (2019) 3 SCC315- M.Arjunan vs. State represented by its Inspector of Police In this judgment, the Honble Apex Court has held that Section 306 - Abetment of suicide - Essential ingredients of offence under Section 306 IPC are abetment and intention of accused to aid or instigate or abet deceased to commit suicide - However, insulting deceased by using abusive language will not, by itself, constitute abetment of suicide - there should be evidence capable of suggesting that accused intended by such :

10. : act(s) to instigate deceased to commit suicide - unless ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 IPC - ingredients of offence against accused from whom deceased had borrowed money, not made out in the present case.

11. Based on the above said reliance, counsel for the petitioners contends that in the instant case there is no iota of evidence and also statements recorded by the IO to constitute offence under Section 306 of IPC. Despite of it, the trial Court has erred in framing charge under the above provision. On all these grounds, he seeks for allowing the petition and to set-aside the order passed by the trial Court in S.C.No.285/2006 insofar as it relates to framing of charge for the offence punishable under Section 306 of IPC.

12. Per contra, learned HCGP contends that, if on the basis of material on record, the Court prima facie forms opinion that accused may have committed offence, it can frame charge, though for conviction guilt of accused beyond reasonable doubt is required to be :

11. : proved. Further, at the time of framing charge, probative value of material on record has to be gone into which proceeds on presumption that material produced by prosecution is true but court is not expected to go deep into the matter. This Court in Cri.P. No.2434/2006 while setting aside the order of trial Court to frame the charge under Section 304-B of IPC, remitted the matter back to consider the charge for the offence under Section 306 of IPC, if there is any material in this regard. Accordingly, the trial Court has gone through the statement of witnesses and so also materials secured by the IO during the course of investigation and found that there are sufficient materials to frame charge under Section 306 of IPC. Even on the part of the prosecution PWs.1 to 6 have been subjected to examine and several documents are also marked to constitute the offence under Section 306 of IPC where deceased - B.R.Latha committed suicide by hanging by means of veil due to the physical and mental harassment of the accused persons. There is no infirmity or illegality committed by the trial Court in :

12. : framing charge under Section 306 of IPC against the accused persons.

13. In support of his argument he relied on a decision of the Honble Supreme Court in State vs. S.Selve and another (2018) 13 SCC455 wherein Sections 227, 228, 238 and 239 of Cr.P.C. - framing of charge - exercise of power by trial Court - scope- discharge of accused - when warranted has been extensively dealt by the Apex Court in para 10 of the said judgment. On all these grounds, he prays for dismissal of the revision petition, as the order passed by the trial Court does not call for interference of this Court.

14. In the context of the contentions as taken by learned counsel for the petitioner and so also, learned HCGP for State, it is not in dispute that the marriage between accused No.3 and deceased Latha took place on 17.11.2005 at Bangalore. The deceased, after marriage, stayed at the marital home only for few days according to the complaint, filed by Smt.Susheelamma, who is none other than the mother of the deceased. :

13. : Further, it is alleged that during her stay in the house of accused, the deceased was subjected to cruelty and harassment. At the time of marriage, the family members of deceased had given Rs.30,000/- dowry and so also, gold ornaments. It is alleged that during the stay of the deceased in her in-laws house, after accused No.3 went to his job at Vishakapatnam, accused Nos.1 and 2 said to be parents of accused No.3 were abusing her stating that she does not know cooking and were not allowing her to call her parents over phone and also threatened to kick her and oust her from their house. When accused No.3 returned to his house on 2.1.2006, he also abused the deceased stating that she is getting the household work done through his parents and beat her. His parents told that if he had married some other girl, he could have got more dowry and under the said circumstances, the deceased had told her mother and sisters that she is scared as to what would going to happen. Ultimately on 4.1.2006 at about 11.00 a.m. the deceased committed suicide by hanging by means of veil. When taken to hospital, she was declared as dead. :

14. : Based on the complaint filed by her mother - Smt.Susheelamma, crime No.3/2006 came to be registered and after investigation, charge sheet was laid for the offences punishable under Sections 498A, 304B r/w Section 34 of IPC in

S.C.No.285/2006. An order came to be passed by the trial Court on 11.10.2006 directing framing of charges against the accused persons for the afore said offences. The legality and correctness of the said order was challenged by the petitioners before this Court in CrI.RP No.2434/2006. This court vide order dated 4.11.2010 partly allowed the petition and set-aside the order directing framing of the charges against the petitioners for the offence under Section 304-B r/w 34 of IPC and remitted the matter back to consider the charge for the offence under Section 306 IPC, if there is any material in that regard.

15. Pursuant to the order passed by this Court, the trial Court framed charges against the petitioners for the offence punishable under Section 498A,306 r/w 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act. Being aggrieved by the order insofar as it relates to :

15. : framing of charge under Section 306 of IPC, the petitioners have filed the present petition.

16. Having gone through the material available on record and having heard the learned counsel on both side, the point that arises for consideration in this petition is whether the trial Court was right in framing charge under Section 306 of IPC against the petitioners.

17. The essential ingredients of the offence under Section 306 of IPC are, the abetment and the intention of the accused to aid or instigate or abet the deceased to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

18. The trial Court subsequent to framing of charges for the aforesaid offences, posted the case for trial. Accordingly, PW.1-Smt.Susheelamma, mother of :

16. : deceased, PW.2-B.R.Shankar, PW.3-B.R.Bharathi, PW.4- Smt.Venkatamma, PW.5 - Smt.Lakshmiddevamma and PW.6-Smt.B.R.Shylaja, are subjected to

examination on the part of the prosecution relating to the statements given by them before the IO during the course of investigation. Exs.P1 to P6 were also got marked. Ex.P1 is the complaint, Ex.P2 to 4 are three photos, Ex.P5 is the marriage invitation and Ex.P6 is the statement of PW.4. This evidence has to be appreciated by the trial Court under Section 3 of the Evidence Act, only after closure of the evidence on the part of the prosecution if any evidence as contemplated under Section 233 of Cr.P.C., on the part of the defence.

19. It is relevant to note that when once the charge has been framed, then it is the domain vested with the trial Court to proceed with trial. At the time of framing charge, the probative value of material on record has to be gone into which proceeds on presumption that material produced by prosecution is true but court is not expected to go deep into matter and hold that the material produced does not warrant :

17. : conviction. The court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be, only with a view to find out if the facts emerging there from taken at the face value discloses the existence of all the ingredients constituting the alleged offence. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with the presumption that materials brought on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging there from taken at their face value disclose existence of the ingredients of the offence.

20. In the instant case, as could be seen from the statements of the prosecution witnesses is that the parents-in-laws of the deceased had complained with accused No.3 the husband of deceased stating that if he had married another girl, he could have had more dowry and when the deceased came to know about this, she was scared. Except this statement in the investigation, no material is placed on record to show :

18. : that there was any demand for dowry. Further, the death of deceased is within a span of seven years from the date of marriage with the accused. This Court had held there was no demand of dowry by the accused and accordingly,

set-aside the charge framed under Section 304-B IPC, but remitted the matter to the trial Court, to consider the charge for the offence under Section 306 of IPC, if there is any material in this regard. Therefore, it is the domain vested with the trial Court that only after closure of evidence on the part of the prosecution, to appreciate the case of prosecution. The trial Court on the basis of material on record, had prima facie formed an opinion that accused persons may have committed offence, hence, it has framed charge for the offence under Section 306 of IPC. But it is the domain vested with the trial Court to record conviction, the guilt of accused is required to be proved beyond reasonable doubt. The trial Court is satisfied that on the basis of evidence produced before it, there is some suspicion then only to frame charge against the accused for the offence under Section 306 IPC. The trial Court has :

19. : framed charge only after going through the statements of the witnesses recorded by the IO and so also, the documents collected by him during the course of the investigation of the case. Whether the accused persons have either directly or indirectly abetted the act of commission of suicide by deceased Latha, has to be adverted by the trial Court only after closure of evidence by the prosecution. I do not find any justifiable ground to interfere with the order passed by the trial Court as there is no infirmity or illegality committed by the trial Court. Therefore, for the aforesaid reasons and findings, I proceed to pass the following:

ORDER

Criminal revision petition filed by petitioners/accused is hereby dismissed. Consequently, the order passed by the trial Court in S.C.No.285/2006 dated 05.09.2013 framing charge against the petitioner for the offence punishable under Section 306 of IPC is hereby confirmed. :

20. : Since the matter pertains to the year 2006, the trial Court is directed to expedite the matter and to dispose of the case within an outer limit of six months, by providing an opportunity to both the side. Further, it is made clear that any observation made in this petition shall not influence the mind of the trial Court and the matter shall be decided on merits. Sd/- JUDGE DKB