

State of Karanataka Vs. Balappa and Another

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Court : Karnataka

Decided On : Oct-23-1993

Reported in : II(1999)DMC559

Judge : B.K. Sangalad and ;Kumar Rajarathnam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304-B and 498-A;

Appeal No. : Crl. Appeal No. 458 of 1994

Appellant : State of Karanataka

Respondent : Balappa and Another

Advocate for Def. : H.V. Subramanya, Adv.

Advocate for Pet/Ap. : Srinivasa Reddy, Govt. Pleader

Judgement :

Kumar Rajaratnam, J.

1. The State being aggrieved by an order of acquittal recorded by the trial Court in S.C. No. 25/1990 in acquitting A-1 and A-2 for offences punishable under Sections 498-A and 304-B read with 34, IPC has presented this criminal appeal.

2. The case of the prosecution was that deceased Amarawwa got married to A-2 Shivanand on 10-5-1987. The marriage took place in the house of A-1 Balappa.

Deceased Amarawwa was sent to the house of A-2 after the marriage ceremony. A-1 is the father of A-2. A-1 the father and A-2 the husband of the deceased were living together.

3. Prior to the marriage there was an engagement agreement dated 28-4-1986. This engagement agreement was referred to as per custom as a settlement deed. The settlement deed is marked as Ex. P-1. According to the settlement deed, it was agreed that a sum of Rs. 2000/-, one tola gold and one wrist watch was given to the husband-A-2. A-1 the father was to give two sarees, one gold borimala sara and one pair of gold ear tops (Bandavali) to the deceased Amarawwa. Presumably both sides exchanged the gifts as mentioned in Ex. P-1. As stated earlier, the marriage of the deceased and A-2 took place on 10-5-1987.

4. Two months after the marriage the deceased Amarawwa came to her parent's house on the occasion of 'Nagapanchami'. At that time, P.W. 1 the brother of the deceased asked the deceased about her welfare. The deceased complained that A-1 had got weighed the gold ring and the accused found out that it was less than one tola. P.W. 1 also stated that the deceased complained to the mother of the deceased P.W. 5 that she was being ill-treated. P.W. 1 stated that he made good the gold ring by giving the accused two grams of gold. The accused, according to the P.W. 1, also complained that the watch that was given to A-2 was not up to his liking. P.W. 1 stated that he got the watch exchanged and gave a H.M.T. watch in return to the watch that was originally given. Sometime later also there was talk that the accused were not treating the deceased properly. Thereafter, P.W. 1 went to the house of the accused at Bannigol to find out as to how the deceased was being treated. The deceased told P.W. 1 that the accused are beating her and that they are not giving her proper food. P.W. 1 advised the accused not to behave in this fashion.

5. After about 2 or 3 months, the deceased became pregnant. The accused sent a message to P.W. 1 and P.W. 5 (the mother of the deceased) to perform the 'kubsa' ceremony. According to the P.W. 1, P.W. 5 and himself went to the house of the accused to perform the 'kubsa' ceremony. P.W. 1 also stated that the accused demanded one tola of gold and new clothes to A-2. However, P.W. 1

declined to oblige the accused. P.W. 1 brought the deceased to his house for delivery. In the house of P.W. 1 the deceased delivered a female child. P.W. 1 sent word to A-1 and A-2 to come and perform the cradle ceremony. The accused and their family members did not attend the cradle ceremony. Five months after the cradle ceremony P.W. 1 sent word to the accused to take his sister deceased Amarawwa to their house. However, A-1 and A-2 did not come and fetch the deceased. After nine months A-1 and A-2 sent word expressing their wish to take Amarawwa back to their house. Amarawwa was sent to the house of A-1. However, neither P.W. 1 nor P.W. 5 accompanied the deceased when she went to the house of A-1. According to P.W. 1 about 15 days after Amarawwa went back to her matrimonial home the accused started troubling her. P.W. 1 offered to get his surrender salary of one month and purchased gold and clothes for A-2.

6. On 15-6-1989 P.W. 1 received a message that Amarawwa committed suicide. When P.W. 1 arrived at Bannigol village, he found that the dead body of Amarawwa was kept on the bank of a stream and was ready for cremation. P.W. 1 also stated that as per the Kuruba community the dead bodies are buried and not cremated.

7. P.W. 1 questioned A-1 and A-2 but they did not give any reply. Not being satisfied with the circumstances under which the deceased died, P.W. 1 threatened the accused stating that he will file a police complaint. In spite of the threat by P.W. 1 the accused cremated the body of Amarawwa.

8. The suicide took place on 15-6-1989. On 16-6-1989 it is stated by P.W. 1 that he went to Mudgal Police Station and told the police regarding the ill-treatment meted out to the deceased. According to P.W. 1 the police did not record the complaint of P.W. 1. Thereafter, P.W. 1 went to Lingasugur and met the DSP and informed him. The DSP directed P.W. 1 to file a written complaint. Accordingly P.W. 1 gave a complaint to DSP as per Ex. P-3. Ex. P-3 was received by P.W. 9 the PSI at Mudgal on 18-6-1989 at 3.30 p.m. A case was registered in Crime No. 36/1989 under Sections 498-A and 304-B, IPC. The case was investigated and charge-sheet was filed by the DSP, Lingasugur (not examined in Court).

9. P.W. 5 is the mother of the deceased. She speaks about the engagement between A-2 and the deceased. She also stated that A-2 demanded dowry of Rs. 2000/- and one tola gold and one wrist watch which was agreed to by the family of the deceased. She also stated that what was agreed to in the settlement was given to A-2. She further stated that after the marriage the deceased lived in the house of the accused. The husband of P.W. 5 brought the deceased to their house on the occasion of 'Nagapanchmi' festival. At that time the deceased complained that the accused were troubling her. The deceased also told P.W. 5 that A-1 and A-2 were beating her. P.W. 5 informed her son P.W. 1 about the conduct of the accused. P.W. 5 also speaks about the fact that Amarawwa became pregnant. She also stated that she went to the house of the accused to perform the 'kubsa' ceremony. She further stated that her husband had promised that he will give one tola gold and clothes to A-2. After promising the same, she brought the daughter Amarawwa for confinement. Information was given to the accused. However, the accused did not visit Amarawwa. The accused also did not attend the cradle ceremony of Amarawwa's child. P.W. 5 also stated that they did not give one tola gold and new clothes to A-2. She also stated that one Basamma took the deceased back to the house of the accused. P.W. 5 also stated in her evidence that when she went to see Amarawwa, Amarawwa had complained that the accused were troubling her. When she returned to her native place she informed P.W. 1 about the harassment meted out to the deceased. Thereafter, on one Thursday at 6 p.m. a person from Bannigol told P.W. 5 that Amarawwa had fallen into a well and she died. Immediately P.W. 5 rushed to Bannigol village. She went and saw the dead body and she started crying. P.W. 5 requested all the assembled persons not to burn the dead body of Amarawwa. However, the accused cremated the deceased.

10. P.W. 2 is the doctor who conducted the post-mortem on the accused. The doctor noticed no external injuries on the dead body. The doctor gave the opinion that the cause of death was due to Asphyxia as a result of drowning. The doctor's report was marked as Ex. P-4.

11. The case as set out by P.W. 1 the brother of the deceased and P.W. 5 the mother of the deceased indicates that the deceased was indeed harassed by the

accused. If the examination-in-chief of P.W. 1 and P.W. 5 are accepted, then a clear case has been made out against the accused for an offence under Section 304-B, IPC.

12. However, on a careful perusal of the cross-examination of P.W. 1 and P.W. 5 we find that there are serious contradictions and embellishments and improvements which go to the root of the matter. From the evidence of P.W. 1 and P.W. 5 we are not able to conclude that there was dowry harassment leading to the death of the deceased.

13. We shall deal with the evidence of P.W. 1. P.W. 1 is a graduate and has been in Government service for ten years. P.W. 1 admitted that in his complaint Ex. P-3 or in his 161, Cr.P.C. statement he had not spoken about the marriage settlement entered into between the accused and the family of the deceased. P.W. 1 admitted in the cross-examination that he had 30 acres dry land and 16 acres of land in Nattur village. Although P.W. 1 objected for the cremation the accused cremated the deceased.

14. Although the occurrence took place according to the charge on 15-6-1989, the complaint by P.W. 1 was given on 18-6-1989 at 10 a.m. (Ex. P-3). P.W. 1 tried to explain this delay in giving the complaint by stating that the DSP was not in the office. P.W. 1 also admitted that he had not stated in the complaint that he had made enquiries from the deceased Amarawwa about the marital life. Even with regard to the watch there is no mention in the complaint. P.W. 1 also admitted that he did not state in his complaint that Amarawwa had told him that A-1 and A-2 were beating the deceased. He also did not state in his complaint that the accused were abusing the deceased and that they were not giving her food. P.W. 1 had not in Ex. P-3 or in his 161 statement stated that he had informed the accused about the delivery of the female child. He also did not state that the accused did not come to their house after delivery. P.W. 1 also stated in his cross-examination that it is the accused who took the deceased to their house. In Ex. P-3 or in the 161 statement P.W. 1 has not stated that accused were troubling the deceased on the ground that the deceased family did not give one tola of gold and new clothes to A-2. It was suggested by the counsel for the accused that P.W. 1 did not go to the

police station either on 16-6-1989 or on 17-6-1989. It was also suggested that the complaint was given as an afterthought.

15. The evidence in the cross-examination of P.W. 1 throws some doubt as to whether there was a demand for dowry and as a result of which the deceased committed suicide. There is vast improvement between the evidence of P.W. 1 in Court and Ex. P-3. We are also not satisfied with the explanation given by P.W. 1 with respect to the delay in giving Ex. P-3. P.W. 1 is a very intelligent person and was aware of the legal position in giving a complaint under Section 304-B and 498-A, IPC. In his deep sense of anguish and frustration it is possible that P.W. 1 thought of settling, scores with the accused on account of the tragedy that had befallen his family. We are also not impressed with the evidence of P.W. 5 in the cross-examination.

16. P.W. 5 has stated in Court that she did not mention anything about the marriage settlement. She also did not tell the police that the accused demanded one tola gold, Rs. 2000/- and one wrist watch. She admitted that she has also not stated before the police that A-2 demanded a dowry of Rs. 2000/- and one tola of gold and a wrist watch. She admitted that a message was sent to the accused about the cradle ceremony. She has stated first time in Court that the accused were informed about the cradle ceremony. She admitted that she has not stated before the police that Amarawwa was weeping when she met her. She has also not stated that the accused were beating and ill-treating Amarawwa. At paragraph-18 of her cross-examination she has stated that it is true that for the first time she was telling before the Court that P.W. 1 had given one tola of gold and a wrist watch to A-2 and she has not told this fact to anybody before. She also admitted in the cross-examination that she is stating for the first time that she suspected that the accused had beaten the deceased and threw her in the well.

17. P.W. 6 is the neighbour of the accused. He was to speak about the ill-treatment of the deceased by the accused. He did not support the prosecution.

18. The Trial Court was also not impressed with the testimony of P.W. 1 and P.W. 5 with regard to the dowry harassment. It is not possible to cull out from the evidence of P.W. 1 the brother of the deceased and P.W. 5 the mother of the

deceased that there was a demand by the accused for dowry and as a result of which the deceased committed suicide. If P.W. 1 and P.W. 5 did not exaggerate their evidence, we would have no hesitation in allowing this appeal under Section 304-B, IPC. In view of the admissions in the cross-examination by P.W. 1 and P.W. 5 it would not be safe to convict the accused for an offence under Section 304-B, IPC in an appeal against acquittal. If really P.W. 1 did not comply with the demand of the accused to give Rs. 2000/- and tola of gold for the cradle ceremony, the accused would not have come all the way to the village of P.W. 1 to take back the deceased. All this indicates that the accused may have been unhappy with the deceased who gave birth to a female child. As per the custom in their community unfortunately the father of the child does not see a female child within nine months of the child's birth on the basis of the star in which the child is born. In fact P.W. 1 has admitted that in Ex. P-3 he had mentioned that A-1 and A-2 had given reasons for not coming to their house as the time of birth, constellation of the girl was not auspicious and the father of the girl will die if he sees the face of the girl within 9 months.

19. It is a matter of regret that this evil superstition still exists in some parts of the State. Unless social conditions change and people are taught to live rationally, these terrible and insensitive conditions will prevail. These evils of superstitions will continue to degrade our lives if women are not given better treatment and respect in society.

20. Returning to the facts of this case, we have to deal with the absurd defence of the accused. The defence of the accused was that the deceased was suffering from stomach ache as a result of which she committed suicide. D.W. 1 was examined to show that he was a Homeopathic doctor and that he had treated the deceased for stomach ache. The evidence of D.W. 1 is not worth the paper on which it is written. D.W. 1 is neither a degree-holder nor a diploma holder in Homeopathy. He has been got up only for the purpose of screening the evidence.

21. We are now left in no doubt that the deceased committed suicide. We, however, on the basis of the cross-examination of P.W. 1 and P.W. 5 and the materials placed before us are not satisfied that a case has been made out for an

offence under Section 304-B, IPC. But certainly the conduct of the accused in not accepting the wife and the new born baby girl for a period of 9 months would clearly indicate that the deceased was subjected to cruelty. The ill-treatment meted out to the deceased would clearly make out a case under Section 498-A, IPC. We feel that the presumption under Section 304-B, IPC has been sufficiently rebutted from the materials in the cross-examination which we have referred to in the earlier part of the judgment.

22. This Court in Criminal Appeal No. 12/1994 dated 26th of October, 1998 had held that even assuming for a moment that there was no clinching evidence with respect to demand for dowry the accused can be convicted if the deceased was subjected to cruelty under Section 498-A though not under Section 304-B, IPC (Sangalad, J.).

23. In this case also the evidence of P.W. 1 and P.W. 5 clearly indicate that cruelty was meted out to the deceased by the accused. Whether such cruelty was because the demand for dowry was not met or because the deceased had given birth to a female child need not be gone into. From the materials culled out from the testimony of P.Ws. 1 and 5 it appears to us that the deceased was driven to committing suicide on account of the cruelty meted out to her.

24. Section 498-A, IPC reads as follows :-

'498-A. Husband or relative 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.

Explanation - For the purpose of this Section, 'cruelty' means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or

valuable security or is on account of failure by her or any person related to her to meet such demand.'

A reading of Section 498-A, IPC indicates that the cruelty need not be in the form of demand for dowry. Sections 498-A and 304-B create distinct offences. However, cruelty is a common element to both. A person charged under Section 304-B can be convicted under Section 498-A without being convicted under Section 304-B, IPC.

25. The Supreme Court (Karnataka High Court) in the case of State of Karnataka v. H. S. Srinivasa, 1996 Cri LJ 3103 defined 'cruelty' as follows :-

'The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. To decide the question of cruelty the relevant factors are the matrimonial relationship between the husband and wife, their cultural and temperamental state of life, state of health and their interaction in daily life.'

26. The Trial Court rightly held relying on a number of Judgments of the High Court and Supreme Court that an offence under Section 304-B, IPC was not made out in the facts and circumstances of the case. The trial Court, however, got carried away by the fact that the complaint Ex. P-3 was given by P.W. 1 after much thought. No doubt there has been some delay in giving the complaint under Section 304-B and 498-A, IPC. The delay in a case of this type will not in any way affect the case of the prosecution. It cannot be forgotten that the deceased committed suicide while living in the house of the accused. It also cannot be forgotten that evidence was sought to be screened by introducing D.W. 1. There is consistent material in the evidence of P.W. 1 and P.W. 5 that the accused were guilty of cruelty in their conduct towards the deceased.

26-A. The trial Court gravely erred by holding that once a case under Section 304-B was not made out an offence under Section 498-A automatically fails.

26-B. The Supreme Court in : 1991 CriLJ1713 and : AIR 1991 SC1142 has pronounced that Sections 498-A and 304-B are distinct offences although they overlap each other. As pronounced by the Supreme Court in the case of Shanti v. State of Haryana, : 1991 CriLJ1713 there should be four essentials to make a reference under Section 304-B.

'(1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;

(2) Such death should have occurred within seven years of her marriage;

(3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(4) Such cruelty or harassment should be for or in connection with demand for dowry.'

If any of these ingredients are not proved to the satisfaction of the Court, then an offence under Section 304-B cannot be made out. That, however, does not exclude a conviction under Section 498-A if the wife is subjected to cruelty. In fact, the Explanation to Section 498-A defines cruelty as follows :-

'Explanation. - For the purpose of this section, 'cruelty' means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.)'

27. In this case the medical evidence does not speak about any injuries on the deceased. Therefore, we are of the opinion that the first ingredient necessary under Section 304-B, IPC is not supported by evidence. On the contrary the deceased is alleged to have committed suicide by jumping into the well.

28. In a similar situation, the Supreme Court acquitted the accused under Section 304-B and convicted the accused under Section 498-A. In : AIR 1991 SC1142 (Akula Ravinder v. State of A.P.) at paragraphs has held as follows (at p. 1143 of AIR) :-

'A perusal of the Section 304B shows that one of the essential ingredients that has to be established is that death was otherwise than in normal circumstances. In this case no doubt, the other circumstance namely that the death occurred within seven years of the marriage and that before her death they have harassed her for demand of dowry are established. Coming to the other ingredient we find that the prosecution has miserably failed to establish that death was otherwise than in normal circumstances. The learned counsel appearing for the State, however, submits that the deceased was young and the death was not due to natural cause nor it was due to an accident and the only inference that can be drawn is that it was otherwise than under normal circumstances. In a case of this nature where the prosecution has failed to establish that it was an unnatural death it cannot be surmised that death must be due to unnatural circumstances. In this context the framing of the charge and the circumstances that are put to accused under Section 313, Cr.P.C. also assume importance. The charge was under Section 302, IPC and the contents of the charge are to the effect that death was only due to asphyxia. In the examination of Section 313 it was not even indicated that the death could be due to poisoning. In any event in view of the facts and circumstances regarding the death, it has become very difficult, rather impossible, to hold that the death was otherwise than the normal circumstances and consequently, we are constrained to hold that this important aspect of Section 304-B is not met out. Consequently the appellants are entitled to acquittal of the said offence.'

The Supreme Court in the said decision, however, set aside the conviction under Section, 304-B and convicted the accused under Section 498-A. In the light of the evidence we propose to do the same.

28-A. We are conscious of the fact that we are dealing with an appeal against acquittal and we are also conscious of the fact as stated by the Supreme Court in

number of pronouncements that if two views are possible then the benefit of doubt must go to the accused. However, if the judgment of the Trial Court on a scrutiny of the evidence is palpably wrong, the High Court is bound to upset the verdict for compelling reasons.

29. A Division Bench of this Court in the case of State of Karnataka v. N. Somashekar reported in ILR 1998 Kant 53 had an occasion to deal with the power of the High Court in an appeal against acquittal. In the said Judgment at paragraph-64 the Court held as follows :-

'64. We are deeply conscious that we are dealing with an appeal against acquittal and that if two views are possible the benefit of doubt must go to the accused. Equally, there is no immunity to an erroneous order on scrutiny. Supreme Court in a number of pronouncements has used expressions, such as 'substantial and compelling reasons' and 'strong reasons' before an appeal against acquittal can be allowed. At this stage, we may refer to the Judgment of the Supreme Court reported in AIR 1998 SC 2154 : (1989 Cri LJ 288) (State of U.P. v. Krishna Gopal), which has dealt with the vexed questions of the power of the Appellate Court in an appeal against acquittal. M. N. Venkatachaliah, J., (as he then was), speaking for the Bench, held at paragraph-13 as follows :-

'13. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to proof is an exercise particular to each case Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and commonsense. It must grow out of the evidence in the case.

The concepts of probability, and the degrees of it; cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and ultimately, on the trained institutions of the judge.'

30. Having regard to the above said principles we have no hesitation to hold that the judgment of the Trial Court is palpably erroneous and contrary to law. The trial Court made the cardinal error of not noticing the distinction between 'cruelty' as defined under Section 498-A and dowry harassment under Section 304-B, IPC. It is possible to have a situation where an accused may not be convicted for an offence under Section 304-B but, however, would be guilty under Section 498-A, IPC as envisaged by the Supreme Court in : AIR 1991 SC1142 .

31. In these circumstances, we have no hesitation in holding that the A-1 and A-2 ought to have been found guilty under Section 498-A read with 34, IPC. The prosecution has proved beyond reasonable doubt that there was cruelty meted out to the deceased by the accused by their conduct just prior to the deceased committing suicide. We accordingly find the accused guilty under Section 498-A read with Section 34, IPC.

32. The accused were heard on the question of sentence. The learned counsel for the accused-respondents submitted that A-1 the father-in-law, of the deceased is aged nearly 75 years, is bed-ridden and is in feeble health and has been in custody during trial for nearly 40 days. We feel that the ends of justice will be met if that period is treated as a period already undergone. We also sentence A-1 to pay to fine of Rs. 5000/- in default to undergo S.I. for three months.

33. We sentence A-2 the husband of the deceased for a period of one year R.I. and also sentence A-2 to pay a fine of Rs. 5000/- in default to undergo S.I. for three months. A-2 shall surrender and serve the remaining portion of the sentence.

34. The fine in each case shall be paid in the Trial Court within three weeks from the date of receipt of this order. On payment of the fine amount the trial Court shall

disburse the entire amount as compensation to P.W. 5 the mother of the deceased.

The appeal preferred by the State is allowed in part.

35. Appeal partly allowed.

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