

State of Karnataka Vs. C. Prakash

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Court : Karnataka

Decided On : Feb-13-1997

Reported in : 1998(1)ALT(Cri)154; 1998CriLJ1673; I(1998)DMC13; 1997(4)KarLJ639

Judge : M.B. Vishwanath and ;M.F. Saldanha, JJ.

Acts : [Dowry Prohibition Act, 1961](#) - Sections 3 and 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 304-B and 498-A

Appeal No. : Crl. A. No. 555/95

Appellant : State of Karnataka

Respondent : C. Prakash

Advocate for Def. : R.B. Deshpande, Adv. and; S.R. Bannurmath, S.P.P.

Advocate for Pet/Ap. : S.R. Bannurmath, Adv.

Judgement :

Saldanha, J.

1. This is one more of the dowry death cases which has come up to this Court, the facts in this case being a little sadder than in some of the other cases. It is alleged that the accused who was a teacher was married to Nagarathnamma on 12-4-

1993. Hardly 3 weeks later, i.e. on 7-5-93 Nagarathnamma, hereinafter referred to as the 'deceased' died under unnatural circumstances in so far as she met with her end due to strangulation. The prosecution alleged that principally because of the unfulfilled dowry demands, the accused/husband had strangled the wife by using a nylon rope and that he thereby caused her death. The version put forward by the defence was that the wife had secured such a rope, that it was fastened to a rather in the roof of the house and that the deceased had committed suicide by hanging herself. The accused contended that he had cut the rope and put the body on the floor. The prosecution had alleged that this was an arranged marriage and that in the course of the negotiations, the accused had made several demands for money, that he had also asked for certain items of jewellery and furthermore that he had insisted on the girl's side paying for the expenses involved in bringing the marriage party by bus. Though the majority of these demands had been fulfilled, it was the prosecution case that the accused was unhappy over the quality of the gold jewellery, that he had made an issue of this and that he was assured that some of the items would be replaced. Apart from this, there were some other monetary demands which were outstanding and the prosecution contends that the accused used to systematically subject the deceased wife to various forms of currently principally in the form of physical assaults and that this was indulged in only to extort the money. The prosecution has produced a letter written by the deceased wife to her brother which is Ex.P. 14 and this letter states that the accused was mercilessly beating the deceased wife. As indicated earlier, the incident took place at the residence of the couple on 7-5-93 and the wife's people were informed about what had happened. Her two brothers, Manjunath who is PW-9 and Narayan who is PW-12 along with the mother went to the house and saw the condition in which the dead body was. They found the nylon rope tied around the neck of the deceased, the rope had been cut and one piece of it was still around the rafter hanging from the roof. Having regard to the facts of the case, the matter came to be reported to the police, the main contention being that the deceased had been done away with pursuant to the dowry demands from the accused and consequently, the police placed the accused under arrest. It is relevant for us to mention that the accused was faced with three sets of charges. The first of them in relation to the items that were demanded and received by him

under the guise of dowry as a result of which, he stood charged with having committed an offence punishable under Ss. 3 & 4 of the Dowry Prohibition Act. The second charge was under section 498-A I.P.C. and related to the act of cruelty and violent assault which the deceased wife was required to deal with. The last and the most serious of the three charges was under section 302, I.P.C. for having committed the murder of Nagarathnamma. The only defence pleaded by the accused was one of total denial. He had contended that the relations between himself and his wife during the short period of 3 weeks since the date of their marriage were quite cordial and that if the wife had decided to commit suicide, that he had done nothing to abet or provoke that incident and that consequently, he has wrongly been framed by the relations and family members of the deceased only because of her death. The learned trial Judge accepted the prosecution evidence and convicted the accused in respect of the main offence under section 306, I.P.C. and not under Section 302, I.P.C. because after an elaborate discussion the Court came to the conclusion that this was a case of suicide and not of homicide. The accused was also convicted under the remaining two heads both under the Dowry Prohibition Act as also under section 498-A, I.P.C. for the high degree of cruelty that he had subjected the wife to. The present appeals, the one filed by the State of Karnataka which assails the fact that the learned trial Judge did not convict the accused under section 302, I.P.C. and the second one which is preferred by the accused challenging the conviction and sentence awarded to him under all the three heads. We have heard the learned S.P.P. on behalf of the State and Sri Deshpande, learned counsel who represents the original accused. The two appeals are disposed of through a common judgment.

2. We need to mention here that there was a considerable debate with regard to the manner in which deceased Nagarathnamma met with her end on 7-5-93. The medical evidence in this case is of some consequence. The learned S.P.P. has, with considerable conviction sought to convince the Court that this is a clear cut case of murder. His first submission was that the fact that the nylon rope was found tied to the rafter and that it had been cut, has absolutely nothing to do with the death because there is unmistakable medical evidence to indicate that the deceased had been strangled by tightening this rope around her neck. The death of Nagarathnamma has been caused due to asphyxia due to strangulation

and the doctor in his evidence has propounded the theory that the deceased was manually strangled. The defence on the other hand in the course of elaborate cross-examination has confronted the doctor with a considerable amount of material gleaned from leading authorities on medical jurisprudence and we may briefly summarise what the heads are. In the first instance, the type of ligature mark that appeared on the neck, the position of the ligature mark and the intensity thereof was referred to by both the learned advocates in support of their different theories, one of homicide and the other suicide. The second head of controversy related to the internal injuries that would be caused such as fractures and other serious damage to the internal bones, cartilages and tissues inside the neck particularly the spine and spinal cord which would be to a considerable extent different in a case of manual strangulation as opposed to what would happen in a case of death by hanging. The third aspect of the matter related to the secondary terms such as the evidence of external injuries on the person of the deceased in the course of violent resistance to the act of forcible strangulation as opposed to the condition in which the body would be found where a suicidal hanging takes place such as the natural repercussion in so far as the bulging of the eyes, protrusion of the tongue and invariable emission of body fluids etc. We are indebted to both the learned advocates who have very competently assisted the Court in relation to this highly specialised field of medical jurisprudence also through a reference to the accepted authorities on the subject. The learned S.P.P. has placed reliance on a very comprehensive summarization of the entire medical position as obtains in relation to this class of cases and which has been set out at page 283 of Dr. K. S. Narayan Reddy's 'The Essentials of Forensic Medicine And Toxicology,' Fifteenth Edition a xerox copy of which is reproduced in this judgment'

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Table. (37) Difference between hanging and strangulation.
-----Trait

Hanging	Strangulation	by
ligature-----		

(1) Ligature mark : It is oblique, does not completely encircle the neck; usually seen completely encircling high up in the neck between the neck below the chin and larynx. The base of the thyroid cartilage is pale, hard and

parchment-like. The base is soft and reddish. (2) Abrasions and About the edges of ligature mark About the edges of the ecchymoses :not common. ligature mark are common. (3) Bruising : Of the neck muscles less common. Of the next muscles more common. (4) Subcutaneous While, hard and glistening under Ecchymosed under tissues :the mark. the mark. (5) Neck : Stretched and elongated. Not stretched or elongated. (6) Hyoid bone : Fracture may occur. Fracture is uncommon. (7) Thyroid Fracture is less common. Fracture is more cartilage :common. (8) Carotid Damage may be seen. Damage is rare. arteries : (9) Larynx and Fracture rare. Fracture may be trachea : found. (10) Face : Usually pale and petechiae Congested, livid and are not common.marked with petechiae. (11) Signs of External signs less marked. External signs well-marked. asphyxia : (12) Tongue : Swelling and protrusion is Swelling and protrusion less marked.is more marked. (13) Saliva : Often runs of mouth. Absnet. (14) Bleeding : From the nose, mouth and From the nose, mouth ears not common.and ears common. (15) Emphysematous Not present on the surface Very common on the of the lungs.surface of the lungs. (16) Involuntary Of faeces and urine less common. Of faeces and urine discharge :more common. (17) Seminal At glans is more common. At glans is less fluid :common.-----

3. Relying on these tests which in fact crystallises the well settled medical position, the learned S.P.P. submitted that the position of the ligature mark which is extremely pronounced and ran around the neck of the deceased with no break as also the fact that the fracture and internal injuries were in the front portion of the neck and that a certain amount of haemorrhage had occurred including the oozing of blood from the ears of the deceased, that there is absolutely no doubt about the fact that this was a case of manual strangulation. As regards the presence of the rope around the rafter is concerned, the learned S.P.P. submitted that this is a familiar flay that is invariably resorted to particularly in cases of murder of the wife whereby the body is thereafter suspended with a rope in order to create an impression that the woman had committed suicide. He relies heavily on one crucial fact namely that the deceased was a relatively well built and well nourished young woman and that having regard to her normal body weight, if she had hanged herself that it would have immediately resulted in a total dislocation of the spinal

column particularly in the neck area and severance of the spinal cord and the absence of this would not only support but establish the hypothesis that it was a case of manual strangulation. The diametrically opposite view that is propounded by Mr. Deshpande on behalf of the defence is that it is always not possible to fathom as to why a person may be driven to suicide and that in every case of suicide it is neither fair nor correct to ipso facto propound the theory that the suicide was triggered off due to ill treatment or abetment or provocation from the husband or some other person. He cites the typical example of a situation where a person may commit suicide purely out of depression and he submits that unless the medical evidence unimpeachably points to a homicide and nothing else, that a Court that would not be justified in recording a conviction under section 302, I.P.C. In support of his contention, he has relied on one important admission that has been elicited by the defence in the course of cross-examination of the doctor. It was subsequently pointed out that he had the benefit of seeing the dead body and he also had the benefit of seeing the accused who was present in the Court. The deceased was relatively bigger and better built than the accused who was considerably thin and puny and the doctor was specifically asked as to whether in his opinion it appeared at all likely that it was possible for the accused to have single handedly overpowered and strangled the deceased wife and the doctor has very clearly opined that in his opinion it was extremely unlikely that the accused would have been in a position to do this. The prosecution has grilled the doctor and has asked him as to whether it would not have been possible to strangle the deceased if she were sleeping or if she were taken by surprise but the doctor has generally stuck to his opinion which is based on the fact that the deceased appeared to be the physically stronger of the two. The absence of struggle and injury marks on the body of the deceased was the principal reason for this view. Apart from this, Mr. Deshpande points out to us on the basis of authorities from medical jurisprudence that this is not a case of execution or judicial hanging where the body weight of the person is scientifically evaluated and where a professional hanging is carried out in so far as the not is strategically positioned in such a way as to cause an immediate snapping of the spinal cord the moment the body weight causes a sudden jerk on the neck area. He has demonstrated that in the majority of suicides where the person does a crude job of

the entire operation, that the death invariably occurs due to asphyxia and not due to rupture of the spinal cord and that this is principally because of the tightening of the rope around the neck shuts out the oxygen supply to the body. In this background, he points out that the secondary signs on the face of the deceased particularly and the fact that internal hemorrhage had been caused due to gasping and struggling which manifested itself from the coozing of blood from the ears would all totally support the theory of hanging. He also contends that the absence of injury marks on the deceased and on the person of the accused and the presence of the rope on the rafter would all establish beyond any doubt that this was not a case where the deceased had been murdered and then strung up with a rope in order to make it appear as though it was a case of suicide. Mr. Deshpande has also contended that the doctor who gives evidence has indicated that he is a senior professional who knows his job as is evidenced from the quality of the answers and that the learned trial Judge was fully justified in having placed total reliance on that evidence. It is his submission that this is a case of suicide simpliciter and that because of the unfortunate incident that his client was unnecessarily framed.

4. We have summarised the two opposing points of view sets of contentions because it makes considerable difference to the out come of these appeals depending on what the conclusion are. We find that the learned trial Judge has accepted the opinion of the doctor without too much of a debate but in our considered opinion even after an examination of all the evidence and the expert opinion that the same conclusion will have to be arrived at. We are however not in agreement with the conviction recorded under section 306, I.P.C. we do not dismiss the appeal filed by the State because it is liable to succeed partially in so far as the conviction would have to be altered to one under Section 304-B, I.P.C. In fact, that was the alternate submission canvassed by the learned S.P.P. who vehemently contended that in situations of the present type where the facts and the law establish a dowry death, that the correct conviction would have to be under Section 304-B, I.P.C. We however uphold the view that the totality of the evidence does conclusively establish that the deceased Nagarathnamma died as a result of hanging from the rafter and not as a result of manual strangulation. It was obviously a case of suicide but a case wherein the suicide was actuated and

virtually triggered off by the conduct of the accused and would therefore qualify for conviction under Section 304-B, I.P.C. The learned S.P.P. has placed considerable reliance on the standard volume on Medical Jurisprudence & Toxicology by H.M.V. Cox, 6th Edition 1996 which is thoroughly revised and upto dated by Dr. Bernard Knight, one of the best known global authorities on the subject in support of the various submissions canvassed by him. We do not need to reproduce in detail the several references particularly to Chapter II which deals with asphyxial deaths, suffocation, hanging and strangulation as it is the very well settled principles that we have applied to the facts of this case while arriving at the aforesaid conclusion.

5. The principal evidence in this case falls under two heads, the first of them being the evidence of PW-4 Suresh and PW-3 Keshava who was the purohit who performed the marriage. PW-4 contends that in the course of the negotiations the accused had demanded Rs. 10,000/-, a whole set of gold ornaments and the one-way expenses for bringing the marriage party. This aspect of the matter is considerable supported by PW-3 Keshava who is the purohit who performed the ceremony and who also deposes to the fact that these were among the main demands of the accused and that they had been substantially met. On the basis of this evidence, the learned S.P.P. submitted that this case would be cleared by Ss. 3 & 4 of the Dowry Prohibition Act 1961 in so far as they were demands made in relation to a marriage, that they were directed against the bride's side and lastly that these demands were conditional on the marriage taking place and had therefore to be met. He therefore supports the conviction of the accused under this head. Mr. Deshpande on the other hand has challenged this conviction. Firstly he submits that under the proviso to Section 4 of the Act there is a total exemption as far as the presents that are given to the bride and he contends that there is no specific evidence that these items had been given as dowry to the accused and that therefore even assuming the evidence indicates that these items had changed hands, that it is still not an actionable offence. The second argument is that the essence of an offence under the Dowry Prohibition Act presupposes that the bridegroom or his party extort either money, jewellery or other forms of property from the bride's side by making specific demands and that these demands are virtually put forward by holding a gun at the head of the other side that unless they

are met, the marriage will not take place. Mr. Deshpande submitted that since these offences are punishable with penal consequences that the prosecution has to establish all these ingredients to the hilt and that some mere passing suggestions would not be sufficient to provide a high degree of proof that a criminal charge requires. On the facts of the present case he submitted that the evidence at the highest indicates that in the course of the negotiations certain items were agreed to and he places very strong reliance on the admission in cross-examination by PW-3 Keshavabhat the purohit who stated that the gold jewellery was given in the form of 'varopachara' which signifies customary presentation or gifts or normal wedding ceremony requirements. He submits that there is absolutely no evidence to support the theory that specific demands were made or that any ultimatums were held out. In this background he submits that the conviction under the provisions of the Dowry Prohibition Act will have to be set aside. We need to point out there that this particular Act was brought on the statute book with the specific intent of stamping out the abnoxious practice of dowry which is rampant at all levels of society and virtually in all communities. The legislative intent was to severely punish all those persons who subscribe to and all those persons who keep alive this anti-social custom. We need to also take cognizance of the fact that there are several very subtle and clever methods of steering clear of technical requirements and that consequently, even in cases where property has undoubtedly passed such as the present one, various pious reasons are set out in defence thereof. Having regard to the fact that the demanding, giving or receiving of dowry are all prohibited under law attempts are invariably made to change the complexion of the transaction and give it a different colour but the Court will have to ultimately get to the real nature of the transaction and the essential substance of what has happened. In the present case there is unimpeachable evidence that it was the accused who asked for the money, jewellery etc. and that this was directly linked to the marriage and furthermore that these items were given pursuant to those demands at the time of the marriage and having regard to these basic factors, we have no hesitation in holding that this was a case in which the dowry was demanded and received. We need to point out that the learned S.P.P. brought to our notice the fact that Section 4 of the Dowry Prohibition Act which exempts gifts specifically requires that they have got to be

set out and listed in the manner as prescribed by the rules if those items are to qualify for exemption. This was not done in the present case and having regard to the nature of the transaction we have no hesitation in upholding the conviction by the learned trial Judge under this head.

6. The second head of charge in respect of which there was a considerable amount of debate relevant to the acts of cruelty that are attributed to the accused/husband and which are punishable under Section 498-A, I.P.C. The learned S.P.P. submitted that apart from the other general evidence, that he places very strong reliance on the letter written by the deceased wife hardly a week prior to the incident. In this letter, Nagarathnamma has stated that she and the accused had made a trip to Dharmastala and that for no reason at all, the accused was 'whipping and beating her like a cow.' The action undoubtedly signifies the fact that she has been subjected to a very high degree of physical violence and that this was her unsophisticated way of describing it. The rest of the letter very clearly indicates her mental condition at that point of time which was about two weeks after the marriage and hardly a week before she died. The letter clearly states that she was not only very unhappy but that she was feeling quite desperate. It also indicates that she had reacted very strongly to the levels of physical assaults that she was being subjected to for no reason. It is also obvious that the deceased was not used to nor did she expect to be subjected to treatment of this type and that the letter was in the form of a desperate appeal to her brother to do something to relieve her from that situation. The learned S.P.P. has relied on the evidence of the two brothers PWs-9 and 12 in support of his contention that there is unmistakable evidence of a very high degree of physical and mental cruelty to which the deceased was subjected prior to the incident and he points out that this is precisely the situation that is referred to in Explanation 1 to Section 498-A wherein the law takes serious note of any physical or mental cruelty that would drive the wife to suicide or grave bodily injury. The learned S.P.P. therefore submitted that the conviction under section 498-A, I.P.C. is fully justified.

7. On the other hand, Mr. Deshpande contended that the letter undoubtedly does make some reference to a physical assault but that there is no inter connection of any type set out in the letter between the acts of cruelty and their being linked for

any demands for dowry or non-fulfillment of dowry amounts. Learned counsel states that unless this nexus is established, that the case could never come under section 498-A, I.P.C. and that at the highest, even if there was evidence of physical assault that it may come under section 323, I.P.C. Also, learned counsel contended that this is not a case in which the evidence establishes that Nagarathnamma was being driven steadily towards either suicide or grave bodily injury. He states that at the highest the letter would indicate that some incidents had taken place between husband and wife and that she accordingly had complained to her brother and nothing more than that. In the context of the present situation, unfortunately we are unable to accept this view because Section 498-A cannot be dispassionately viewed at de hors all that is on record in this case. We have already held that the entire unfortunate and sordid evidence in relation to the dowry stands established and we have on record conclusive evidence from PW-4 Suresh who states that it was because of some of the non-payments that the accused was assaulting the deceased. This appears to be the correct position because Mr. Deshpande has pointed out to us from certain parts of the record, admissions by everyone including the brothers that the relations between the husband and wife were otherwise not only normal but reasonably good. It is therefore very clear to us that it was only this aspect of the matter that was responsible for all that subsequently transpired. We also need to take note of the fact that the manner in which Nagarathnamma has described the assaults on her and the fact that she wrote a letter to her brother and the other general tenor of this document which has hardly been disputed by the defence, clearly establish that the acts of cruelty were grave, that they were persistent and that they had seriously disturbed the wife both physically and mentally and the subsequent events clearly point out to the fact that it was this situation which drove her to suicide. It is in this background that we have no hesitation in confirming the findings recorded by the learned Judge that the accused is liable to be convicted for the offences punishable under section 498-A, I.P.C.

8. The last question that arises is with regard to what would be the correct and appropriate head of conviction despite the fact that the deceased Nagarathnamma was not manually strangled by the accused/husband but that she hanged herself. One needs to virtually travel backwards from the aforesaid findings for

purposes of answering this question and in this regard we take cognizance of the amended provisions of the Evidence Act particularly Section 113-A as also Section 113-B of the Evidence Act. It was for good reasons that the legislature while deciding to take stringent steps against cases of dowry death was conscious of the fact that it would be difficult to establish these offences because of the obvious nature of the facts and therefore, the law provide for certain presumptions to be incorporated particularly in cases where the death has taken place within seven years of the marriage. In this case hardly three weeks had elapsed. In such situations and where there is evidence of disputes and conflicts in relation to dowry and pressure tactics being adopted for purposes of realising the dowry, the law makes special provision for presumptions. Section 113-A of the Evidence Act prescribes that where a married woman has committed suicide within a period of 7 years from the date of her marriage and where there is conclusive evidence of cruelty, that presumption would arise that the party practising the cruelty has abetted the suicide. Similarly, Section 113-B of the Evidence Act provides for a presumption in cases of dowry death where it is shown that soon before the death of the woman, she had been subjected by the accused to cruelty or harassment for, or in connection with any demand for dowry, that the Court shall presume that such person had caused the dowry death. Undoubtedly these are rebuttable presumptions but in the absence of the accused having rebutted these presumptions in the present case, the Court will have to legitimately record the finding that this was a case of dowry death. Having regard to that position, the accused would be liable to be convicted of the offence punishable under section 304-B of the I.P.C. The legislature while enacting S. 304-B, I.P.C. which was specifically geared towards punishing dowry deaths prescribed for relatively rigorous punishments. Learned S.P.P. submitted that these are serious anti-social offences, that the instances which come before the Courts are few and far between and that a very rigorous sentence is called for. Mr. Deshpande on behalf of the accused pointed out that he is a young man and that he was working as a teacher and furthermore in this background, the Court should also take note of one other aspect of the matter namely that the instances of cruelty alleged are not all that gross. The complexion of the offences is undoubtedly obnoxious and very much anti-social but on the other hand the fault really lies with the society for

wrong customs that have perpetrated these events. We have also accepted the position that the degree of cruelty that had been established as against the accused is not of an abnormally high order and that these are extenuating circumstances which need to be considered. In this background, the appellant is convicted under Section 304-B, I.P.C. and sentenced to suffer rigorous imprisonment for seven years.

9. Both the appeals partially succeed. We uphold the convictions and sentences imposed on the appellant under section 498-A as also under the Ss. 3 and 4 of the Dowry Prohibition Act as awarded by the trial Court. We also uphold the acquittal of the accused under Section 306, I.P.C. We set aside the conviction and sentence imposed on him under S. 306, I.P.C. and in its place we direct that the accused stand convicted of the offence punishable under section 304-B, I.P.C. and that he be sentenced to undergo rigorous imprisonment for a period of seven years. It is also directed that the substantive sentences shall run concurrently. The accused is on bail. His bail bond shall stand cancelled after a period of three months from today.

10. Appeals Partly allowed.

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