

State of Karnataka Vs. Basavaraju

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Court : Karnataka

Decided On : Nov-29-1989

Reported in : II(1990)DMC238; ILR1990KAR774; 1990(3)KarLJ491

Judge : Hiremath and Ramachandriah, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 320

Appeal No. : Crl. Appeal No. 713 of 1989

Appellant : State of Karnataka

Respondent : Basavaraju

Advocate for Pet/Ap. : B.R. Nanjundaiah, Addl. SPP

Disposition : Appeal rejected

Judgement :

Hiremath, J

1. Heard.

2. The three accused who are respondents in this appeal were charge sheeted before the Court of Chief Judicial Magistrate, Bangalore District, for an offence under Section 498-A IPC alleging that they were demanding dowry of Rs. 10,000/- from her even three years after marriage as also a Television set. They even

threatened that on her failure of over A-1 would take another wife in marriage. Cruelty was alleged against them for this reason. Before the trial Court a compromise petition came to be filed contending that A-1 respondent-1 and his wife Shantha kumari CW-1 were co-habiting cordially for about six months before the impugned order came to be passed on 24-5-1989. The prosecution opposed according permission for compounding as the offence is a non-compoundable one. The trial Court at the outset observed that strictly speaking it does not amount to demanding dowry in as much as it was being made nearly three years after marriage and after a child was born to them. Therefore on merits it remained to be considered if it really amounted to a demand of dowry. It appears it is a joint family in which the 1st accused and his parents as well as CW-1 Shantha kumari were living under one roof. In the course of its order the trial Court observed thus:

'If permission sought for to compound was not granted, the child would almost be rendered orphan and there would be a destruction of the married life. Without co-habiting amicably, they could not prolong wall in the eyes of the Society. It may be that at one point of time, accused out of agreed had committed some indiscreet act and when he repends, it would not be desirable to reject their prayer to live together amicably as husband and wife. Therefore, considering these peculiar circumstances and in the interest of maintenance of cordial relationship between husband and wife the trial Court thought it a fit case to accord permission to compound.'

Though the prosecution objected to it the trial Court found that it was eminently a fit case in which permission should be granted.

3. The learned Additional State Public Prosecutor has referred us to the decision of the Supreme Court In the case of MAHESH CHAND v. STATE OF RAJASTHAN, : 1988 CriLJ121 also referred to by the trial Court in Its Judgment. At paras-2 and 3 of the Decision, the Supreme Court observed as follows:

2. The accused were acquitted by the trial Court, but they were convicted by the High Court for the offence under Section 307 IPC. This offence is not compoundable under law. The parties, however, want to treat it special case, in view of the peculiar circumstances of the case. It is said and indeed not disputed

that one of the accused is a lawyer practising in the lower Court. There was a counter case arising out of the same transaction. It is said that this case has already been compromised. The decision of this Court in *Suresh Babu v. State of Andhra Pradesh*, (1987) 2 JT 361, has been also referred to in support of the plea for permission to compound the offence.

3. We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and the circumstances under which the offence was committed, it may be proper that the trial Court shall permit them to compound the offence.'

4. It may be added at once that unless there are peculiar circumstances and a case can be said to be a special one, permission to compound any non-compoundable offence should not be granted as a matter of course. It all depends on the circumstances under which the compromise petition comes to be filed. The trial Court kept in its view the welfare of the parties in the matrimonial case of this nature and did not want the feelings between the parties be strained for the rest of their life. Keeping this larger Interest of the couple and its impact on the Society, the trial Court relied on the above Decision and accorded permission. In our view the trial Court did not commit any error in according permission and as a result of compromise acquitting the accused.

5. It was urged for the State that normally when compromise is entered into in cases involving non-compoundable offences, the complainant and other witnesses may not support the case and thus the case may as well end in acquittal thus serving the purpose behind such compromise. We are afraid such a procedure should not and cannot be taken judicial notice of to give encouragement for perjury even where the witnesses including the complainant speak honestly over the incidents which are subject matter of charge. We do not find any ground to grant leave to appeal against acquittal.

Hence leave refused and appeal rejected.