

Basavaraj Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-13-2009

Reported in : 2009(6)KarLJ148

Judge : Jawad Rahim, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 306 and 498A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 174

Appeal No. : Criminal Appeal No. 1674 of 2003

Appellant : Basavaraj

Respondent : State of Karnataka

Advocate for Def. : P.H. Gotkhindi, Hight Court Government Pleader

Advocate for Pet/Ap. : Bahubali A. Danawade, Adv.

Disposition : Appeal allowed

Judgement :

Jawad Rahim, J.

1. The convicted accused is in appeal against the judgment in S.C. No. 225 of 1998, dated 4-11-2003 convicting him for offence punishable under Section 498A of the Indian Penal Code, 1860.

2. The contextual facts relevant for consideration are:

Vanishree, a young woman of 22 years, was married to the appellant on 26-11-1997 at Shahapur Maratha Mandal Karyalaya according to Hindu rites and customs of the community to which they belong. During negotiations preceding the marriage, it was agreed that a sum of Rs. 21,000/- will be paid along with other presents as Varopachar. It was recorded in a Yadi-Ex. P. 1. In terms of the said negotiation Rs. 21,000/- was given to the accused along with clothes, utensils, etc. The marriage was performed and the couple entered matrimony with all fond hopes. Life was blissful for a short period.

On 4-6-1998 within 8 months of marriage, Vanishree was found dead in a well. Her body was removed and subjected to post-mortem examination, which revealed death was result of asphyxia as a result of drowning.

The body was subjected to inquest conducted by the Taluka Executive Magistrate. P.W. 7-Nazirahamed Mehaboob Shirahatti. During inquest, the parents of deceased girl as also her brother gave statement suspecting the appellant to be responsible for her death. That was made a part of the inquest and sent to the jurisdictional police under Section 174 of the Criminal Procedure Code, 1973.

The father of girl P.W. 1-Irappa Veerasangappa Dhumale also lodged a report vide Ex. P. 3 alleging that the appellant, his mother and his sister viz., Rajashree were responsible for the death of Vanishree. The report was submitted at Ex. P. 3 by P.W. 1 and it was registered for investigation. During investigation, the statement of Irappa Veerasangappa Dhumale-father of deceased, Vivekanand Veerasangappa Dhumale-uncle of deceased, as also her mother Smt. Suvarna was recorded. Each one of them spoke of demand of additional dowry from the appellant. On that basis charge-sheet was filed, arraigning all the accusee for offences punishable under Sections 498-A and 306 of the IPC read with Section 34 of the IPC.

3. The accused pleaded not guilty and sought to be tried. During trial accused 2-Mallawwa Shanmukhappa Jugali-mother of appellant, died while the appellant and his sister Rajashree continued to face the trial.

4. During trial prosecution examined 12 witnesses, relied on 13 documents and 7 material objects.
5. The accused herein put up defences of denial simplicitor while asserting that no harassment was meted out to Vanishree. The learned Sessions Judge analysing the ocular and documentary evidence accepted the contention of the appellant that he and accused 3 were not responsible and had not abetted suicide committed by Vanishree. Further, accepting evidence of P.W. 1-Irappa, P.W. 2-Vivekanand and P.W. 3-Smt. Suvarna, the learned Judge held that the charge for offence under Section 498-A of the Criminal Procedure Code, 1973 (IPC sic) is proved against the appellant but not against accused 3-Rajashree. In the resultant position, the appellant is convicted while Rajashree (accused 3) is acquitted for offence punishable under Section 498-A of the IPC. Assailing the said judgment he is in this appeal.
6. The learned Counsel for the appellant took me through evidence on record to reiterate that nothing incriminating has been brought out on record by the prosecution against the appellant to establish the charge of cruelty. It was further contended that P.Ws. 1, 2 and 3 have in cross-examination admitted to certain vital aspects which shows the life pattern of the deceased and the appellant. It was contended that the deceased was dejected in life due to certain cosmetic ugly scars on her person and that was the cause for her suicide. He would submit that the prosecution has failed to establish that soon before her death. Vanishree was subjected to harassment. They also failed to establish that any amount was paid to the accused as dowry. He submits that the evidence taken in its totality does not bring to manifestly establish the charge under Section 498-A of the IPC.
7. Per contra, learned High Court Government Pleader supports the impugned judgment relying on the evidence of P.Ws. 1 and 2.
8. Keeping in mind what is urged, I have examined the evidence on record. P.W. 1 undoubtedly is father of the victim girl and P.W. 2 is her uncle. P.W. 4 is her brother. It is noticed from the evidence of P.W. 1, that P.W. 1 except stating that a sum of Rs. 21,000/- in cash and other articles were given at the time of marriage in terms of agreement during negotiations he admits in cross-examination that

accused had not directly raised any demand for dowry or additional dowry. In fact he has in categorical terms, during cross-examination, stated that though his daughter told him that accused is demanding additional dowry, the accused had not specified any amount. Even when he asked accused he did not specify any amount. Secondly, he admits that Rs. 21,000/- was given as Varopachara as evidenced from Ex. P. 1. Apart from the said amount no other amount given to the appellant or to any other member of his family, towards dowry or as additional dowry after the marriage. In examination-in-chief he has only referred to harassment based on the statement of deceased.

9. As against it, the police officers have seized a chit written by Vanishree signed before her death, in which she holds herself alone responsible for her death without indicting anybody else, much less the appellant. Second thing to be noticed is, in the cross-examination of P.W. 1 he admits, before marriage he subjected his daughter to cosmetic surgery by skin transplant and after marriage he had again taken her to Miraj Hospital for cosmetic surgery to transplant skin from left thigh to right thigh to cover ugly white patch. This was done under medical advise and he has spent Rs. 5,000 to Rs. 6,000/-. Such answers reveal that unfortunately the girl had some scar which the parents wanted to conceal by cosmetic surgery prior to marriage and perhaps it manifested after marriage necessitating that she should be again taken to the hospital and incurring of expenditure of Rs. 5,000/- to Rs. 6,000/-. This would show that the parents of the girl were trying to make the life of the girl happy and in this regard from the accused there has been absolutely no ill-treatment. P.W. 1 is silent on this aspect. No where he mentions that accused had in any way harassed the girl on the issue of such scars on her body. Therefore, that is ruled out.

10. The only ground on which he could be held responsible for offence under Section 498-A of the IPC is, physical and mental torture. This needs to be established by acceptable evidence, as every quarrel between the couple cannot be construed as an act, of deliberate cruelty. What constitute cruelty is defined under the provisions of Section 498-A of the IPC, which reads thus:

498-A. Husband or relative of husband of a women 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.

From the extracted portion it is to be noticed that the act of physical or mental harassment should be not only wilful but should be of a nature as to compel the woman to endanger her life or limbs or to commit suicide. Therefore, the alleged harassment must be of higher degree to constitute cruelty and it is only when that is established the charge under Section 498-A of the IPC could be said to have been convincingly proved.

11. In this case, as referred to above, the evidence tendered to P.W. 1 in examination-in-chief itself is vague, without material particulars and. in fact, the witness frankly admits that he is not aware of the alleged harassment personally. Secondly, it is to be noticed that he has described the accused as a very courteous and has also referred to the good treatment he was given during his visits to the house of the accused.

12. P.W. 3-brother of the deceased also speaks to the similar facts which establishes payment of Rs. 21,000/-. But his evidence does not establish that the deceased was subjected to cruelty by the accused of the nature described in the explanation to Section 498-A of the IPC.

13. The fact of her committing suicide is no doubt spoken to but there is no instance referred to as the cause for such suicide. The general statements are made without specific charge. P.W. 2-Vivekanand, uncle of the deceased, tried to speak incriminating acts against the accused; but in cross-examination he demolished all such allegations. Similarly, P.W. 3-Suvarna, mother of deceased, ventured to indict the accused but during cross-examination her allegations have remained unproved. In the resultant position, the main witnesses of the prosecution i.e., P.Ws. 1, 2, 3 and 4 on whose evidence the accused was charged, are of no avail to the prosecution. At the most, it may only create suspicion pointing to the appellant as responsible for discordiality between him and the deceased. But discordiality cannot be proof regarding alleged harassment to compel a woman to commit suicide. For these reasons charge against the appellants cannot be said to have been proved in the manner required under law and hence conviction of the appellant based on such evidence cannot be sustained.

14. In the result the appeal succeeds. The appellant is acquitted of the charges of Section 498-A of the IPC.

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