

[2013] 2 S.C.R. 357

MODINSAB KASIMSAB KANCHAGAR

v.

STATE OF KARNATAKA & ANR.
(Criminal Appeal No. 512 of 2007)

MARCH 11, 2013.

[A.K. PATNAIK AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]

Penal Code, 1860:

ss. 304-B and 498-A – Demand from husband through wife (deceased) for repayment of society loan – Held: The demand was not in connection with dowry, therefore, provisions of s.304-B were not attracted and appellant-husband acquitted of the charge – But, there is clear evidence establishing that deceased was subjected to harassment by her husband on account of her failure to meet the said unlawful demand – Therefore, conviction u/s 498-A is maintained – Appellant sentenced for the period already undergone, which is approximately 2 years.

Dowry Prohibition Act, 1961:

ss. 3, 4 and 6 read with s.5 (1), proviso – Accused-husband found guilty of demanding and receiving cash and gold – Conviction and six month sentence under each of the three counts awarded by High Court, not interfered with.

The appellant and his mother were prosecuted for committing offences punishable u/ss 498-A and 304-B read with s.34 IPC as well as u/ss 3, 4 and 6 of Dowry Prohibition Act, 1961. The prosecution case was that at the time of marriage of the appellant with the deceased, the accused demanded and were given Rs.1000/- cash and one tola of gold. Subsequently, the appellant harassed the deceased for more dowry of Rs.10,000/- Rs.2000/- were paid and the family showed its inability to

A meet the balance demand of Rs.8000/-. When the deceased came to her mother, she once again asked for the balance amount of Rs.8000/- and within 15 days thereafter she committed suicide. The trial court acquitted both the accused, but the High Court convicted the
 B appellant of the offences charged.

Allowing the appeal in part, the Court

C HELD: 1.1. The High Court has recorded its findings to hold the appellant guilty of the charges on the basis of evidence of PWs. 2,3,4,5,7 and 12. What appears to have been lost sight of by the High Court is that the demand of Rs.10,000/- was not towards dowry but for payment of a society loan. From the evidence of PW-3, the uncle of the deceased, it is clear that at the time of marriage, there was no such demand and the amount of
 D Rs.10,000/- demanded by the appellant through the deceased was for repayment of a society loan of the appellant and it had no connection with the marriage of the appellant and the deceased. Therefore, even if, there was demand of Rs.10,000/- by the appellant, it was not a
 E demand in connection with the dowry and the offence u/s 304B was not attracted. [para 5, 6 and 7] [362-F-G; 363-F; 364-H; 365-F]

F *Appasaheb and Another v. State of Maharashtra* 2007 (1) SCR 164 = (2007) 9 SCC 721 – relied on.

G 1.2. However, the appellant was liable for the offence u/s 498A IPC. The demand of Rs. 10,000/- towards the society loan made by the appellant may not be a demand in connection with dowry but is certainly an unlawful demand for a property or valuable security and there is clear evidence of the prosecution to show that the deceased was subjected to harassment by the appellant on account of her failure to meet the aforesaid demand of Rs. 10,000/-. [para 8] [365-G; 366-A-B]

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1.3. On a reading of the evidence of the prosecution witnesses and in particular, P.Ws. 2, 3, 4, 5, 7, 10 and 12, it is evident that a sum of Rs. 1000/- in cash and one tola of gold in addition to other articles were given to the appellant at the time of marriage. Therefore, the said cash and articles have been given towards dowry. The High Court has found that the appellant was guilty of the offences u/ss 3, 4 and 6 of the Dowry Prohibition Act, 1961, but has not considered the offences to be grave and has imposed punishments for only six months for each of the offences in accordance with the proviso to sub-s. (1) of s.5 of the Dowry Prohibition Act. [para 10] [366-E-F; 367-B-C]

1.4. In the result, the conviction and sentence of the appellant u/s 304B IPC are set aside, but the conviction u/s 498A IPC and under the Dowry Prohibition Act, 1961 is maintained. The appellant is sentenced for the offence punishable u/s 498A IPC to the period already undergone, which is approximately two years. The sentence of six months' imprisonment awarded to the appellant under the Dowry Prohibition Act for each of the offences under the said Act is also maintained. [para 11] [367-D-F]

Case Law Reference:

2007 (1) SCR 164 relied on para 3

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 512 of 2007.**

From the Judgment & Order dated 11.09.2006 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 805 of 2000.

**Anirudh Sanganeria, B. Subrahmanya Prasad,
Raghuvendra Kumar, V.K. Kunduru for the Appellant.**

**Vishruti Vijay, Neha Singh, Anitha Shenoy for the
Respondents.**

A The Judgment of the Court was delivered by

A.K. PATNAIK J. 1. This is an appeal against the judgment dated 11th September, 2006 of the Karnataka High Court in Criminal Appeal No. 805 of 2006.

B 2. The facts very briefly are:

2.1. The appellant was married to Rajbee on 21st April, 1997. She committed suicide on 29th March, 1998. A case was registered and investigated by the Police Inspector [Anti-Dowry Cell] and charge sheet was filed against the appellant and the mother of the appellant for offences under Sections 498A and 304B read with Section 34 IPC as well as Sections 3, 4 and 6 of the Dowry Prohibition Act read with Section 34 of IPC.

D 2.2. The prosecution case was that at the time of marriage of the appellant with Rajbee(the deceased), Rs. 1,000/- cash and one tola of gold was given to the appellant and thereafter the appellant harassed the deceased further for more dowry of Rs. 10,000/- and the deceased informed about this harassment to her mother. Thereafter, the mother of the deceased was able to give Rs. 2000/- towards the demand but was unable to pay the balance amount of Rs. 8000/-. The deceased came along with the appellant to her mother's place and when the appellant was told that her family does not have any capacity to meet the balance demand of Rs. 8000/-, the deceased went back to her matrimonial house weeping and saying that her life would not be safe. She came back again to her mother's place during the Holi festival and complained of harassment and once again asked for the balance amount of Rs.8000/-, but the same was not paid to her by her mother and within fifteen days of this incident, the deceased committed suicide.

H 2.3. At the trial, mother of the deceased was examined as P.W. 2 and two of her uncles were examined as P.W. 3 and P.W. 4 and besides them four other witnesses were examined

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as P.Ws. 5, 7, 10 and 12, who all deposed about the demand of Rs. 1,000/- cash and one tola of gold as well as demand of Rs. 10,000/- and about the fact that Rs. 1,000/- cash and one tola of gold were actually given to the appellant at the time of marriage and also about the fact that out of the demand of Rs. 10,000/- made after the marriage, Rs. 2,000/- was paid but the balance of Rs. 8,000/- could not be paid because of which the deceased was harassed and she committed suicide. Nonetheless, the trial court acquitted the appellant of the charges by its judgment dated 2nd December, 1999.

2.4. Aggrieved, the State of Karnataka filed Criminal Appeal No. 805 of 2000 before the High Court and by the impugned judgment, the High Court reversed the order of the trial court only qua the appellant-husband and convicted the appellant for the offences punishable under Section 498A, 304B and Sections 3, 4 and 6 of the Dowry Prohibition Act and sentenced the appellant to undergo simple imprisonment for a period of seven years for the offence under Section 304B and in view of the sentence awarded under Section 304B, the High Court did not award any separate sentence for the offence under Section 498A. In respect of the offences under Sections 3, 4 and 6 of the Dowry Prohibition Act, the High Court sentenced the appellant to undergo simple imprisonment for a period of six months for each of the three offences.

3. Learned counsel for the appellant submitted that there was no demand for dowry by the appellant. He submitted that '1000/- and one tola of gold was given by P.W.2, the mother of the deceased to the appellant as "Varopachara" as has been found by the trial court on the basis of the evidence of P.W. 3, the uncle of the deceased. Regarding the demand of Rs. 10,000/-, he submitted that the evidence of P.W.3, the uncle of the deceased, is clear that after six months of marriage, the deceased demanded Rs. 10,000/- from P.W. 2, her mother, stating that there was a society loan of the appellant. He submitted that the demand of Rs. 10,000/- was, therefore, not

A towards dowry but was for repayment of a society loan. He cited
 a decision of this Court in *Appasaheb and Another v. State of
 Maharashtra* (2007) 9 SCC 721 in which it has been held that
 some money for meeting domestic expenses and for
 purchasing manures cannot be treated as dowry and, therefore,
 B the provisions of Section 304B IPC which applies to only the
 demand made in connection with dowry could not be attracted.
 He finally submitted that although all the prosecution witnesses
 have stated that there was harassment to the deceased in
 connection with the demand of '10,000/-, no specific acts of
 C harassment or cruelty have been proved against the appellant
 by the prosecution.

4. Learned counsel for the State, on the other hand,
 supported the impugned judgment of the High Court and
 submitted that there was clear evidence led by the prosecution
 D through P.Ws. 2, 3,4, 5, 7, 10 and 12 that there was demand
 of dowry of Rs. 1,000/- and one tola of gold at the time of
 marriage and further there was a demand of dowry of Rs.
 10,000/- after the marriage by the appellant and that the
 appellant harassed the deceased on account of which the
 E deceased had no option but to commit suicide. Learned
 counsel for the State vehemently submitted that this is definitely
 not a case in which this Court should interfere with the
 impugned judgment of the High Court.

F 5. We have examined the impugned judgment of the High
 Court and we find that the High Court has in para 10 of its
 judgment impugned herein recorded its findings to hold the
 appellant guilty of the charges on the basis of evidence of
 P.W.s. 2,3,4,5,7 and 12. Para 10 of the judgment is extracted
 G hereunder:-

*"It is the specific case of the prosecution that at the time
 of marriage of the deceased with A1 Rs. 1,000/- cash was
 paid along with 1 tola of gold, watch, etc. and the accused
 continued to demand further dowry of Rs. 10,000/- from
 H the deceased. The evidence in this regard is spoken to*

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by Pws. 2, 3,4,5,7 and 12. PW Hussainbi is the mother of the deceased and she has stated in her evidence that at the time of marriage, 1 tola of gold and Rs. 1,000/- cash was paid to the accused. She also stated that for six months following the marriage, her daughter and A1 – husband got on well, but later on, her daughter was forced to bring Rs. 10,000/- cash and in that connection, Rs. 2,000/- was paid by one Abdul Sab the younger brother of PW 2's husband and she further states that her daughter came for Ramzan festival and told about the harassment given to her and she was sent back by stating that there was no money to be paid and again her daughter came along with A-1 after some days and at that time A-1 demanded a sum of Rs. 8,000/- and when PW2 expressed her inability to pay the said, the deceased went back weeping and saying her life may not be safe and once again came for holi festival and asked for money and was again sent back without money and after 15 days Rajbi committed suicide in the house of her husband. PW2 has clearly stated in her evidence that her daughter committed suicide because of the harassment given by the accused."

6. What appears to have been lost sight of by the High Court is that the demand of Rs. 10,000/- was not towards dowry but for payment of a society loan. The evidence of P.W. 2 on which the High Court has heavily relied upon in the impugned judgment for convicting the appellant is clear that when the deceased came to her house on the occasion of Holi festival and she demanded money, she told her to ask from her uncle. Thus, the uncle of the deceased was the person who knew exactly what were the demands upon the deceased in connection with her marriage. The uncle of the deceased Ismailsab has been examined as P.W. 3 and his evidence is to the following effect:-

"I know accused, Daughter of my elder brother has given in marriage to A-1. P.W. 2 is the wife of my elder brother.

A I was present along with my brothers & parents at
Banaginhall where marriage talks of Rajbee were held.
One Ameerbee was the mediator. One tola gold Rs.
1,000/- were demanded for A-1 apart from some
B ornaments to Rajbee. Half tola boramala sara, 3 anas
ear rings, 3 anas bugudi were put to Rajbee at the time
of her marriage. 2½ or 3 months after marriage talks
marriage was held between Rajbee & A-1 & as agreed
valuable ornaments, cash, utensils, bed etc. were given.
Dresses & watch were also given. After marriage Rajbee
C went to live with A-1. They were happy six months after
thereafterwards Rajbee demanded Rs. 10,000/- stating
there was society loan of A-1. We expressed our inability.
However we consoled Rajbee that availability of amount
will be seen. Again Rajbee had coem to our house on
D some occasion. At that time my brother had given Rs.
2,000/- to Rajbee, stating not to disclose it to A-1
otherwise he would demand more. Again he came to our
village at Holi festival and demanded remaining amount
and stated she was harassed by the accused. Inability was
E expressed about fulfilling that demand. Rajbee went back
to her husband's house weeping. On 29.3.1998 at about
5.30 p.m., received some message that there was heart
to Rajbee. I alone went to their house. When all other
F came to Kanaginhall it was 10:00 p.m. Many persons had
gathered there. That body was about to be removed to
hospital. There was some mark on the neck of Rajbee.
It was told Rajbee died due to stomach pain. But she had
no such pain, at any time. Rajbee committed suicide due
to the harassment by the accused. I have given
statement before the COI & Gadag Police & also
G Tahsildar Marriage card & photo are marked at Ex. P.5
&6."

From the aforesaid evidence, it is clear that at the time of
marriage there was no demand of Rs. 10,000/- towards society
H loan, and only Rs. 1,000/- in cash, one tola of gold and other

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articles were demanded and were agreed and given to the appellant. It further appears from the evidence of PW 3 that after the marriage, the appellant and the deceased were happy for six months and thereafter the deceased demanded Rs. 10,000/- stating that there was a society loan of A1 (appellant) and the family expressed their inability and consoled the deceased that the availability of the amount will be seen later and again when the deceased came to her house, Rs. 2000/- was paid to her but the balance was not paid and she committed suicide due to harassment by the appellant.

7. Thus the demand of Rs. 10,000/- was not a dowry demand but was in connection with a society loan of Rs. 10,000/- of the appellant. This Court in *Appasaheb's* case (supra) has referred to the provisions of Section 304B IPC and in particular explanation appended to sub-Section (1) thereof which says that the word "dowry" under Section 304B will have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 and has held that the word "dowry" in Section 304B of the IPC would, therefore, mean 'any property or valuable security given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the parties'. In this case, the amount of Rs. 10,000/- was demanded by the appellant through the deceased was for repayment of a society loan of the appellant and it had no connection with the marriage of the appellant and the deceased. Hence, even if, there was demand of Rs. 10,000/- by the appellant, it was not a demand in connection with the dowry and the offence under section 304B was not attracted.

8. We are, however, of the view that the appellant was liable for the offence under Section 498A IPC. Section 498A read with Explanation (b) thereto provides that if a husband of a woman subjects the woman to harassment with a view to coerce her or any person related to her to meet any unlawful demand for property or valuable security he shall be liable with punishment for a term which may extend to three years and shall

- A also be liable to fine. The demand of Rs. 10,000/- towards the society loan made by the appellant, thus, may not be a demand in connection with dowry but is certainly an unlawful demand for a property or valuable security and there is clear evidence of the prosecution to show that the deceased was subjected to harassment by the appellant on account of her failure to meet the aforesaid demand of Rs. 10,000/-.

9. Regarding the offences under the Dowry prohibition Act, 1961, Section 2 of the Act defines 'dowry' to mean -

- C "any property or valuable security given and agreed to be given either directly or indirectly -

(a) by one party to the marriage to the other party to the marriage; or

- D (b) by the parents of either party to a marriage or by another person, to either party to a marriage or by another person to either party to the marriage or to any other person on or before any time of the marriage.

- E 10. On a reading of the evidence of the prosecution witnesses and in particular, P.Ws. 2, 3, 4, 5, 7, 10 and 12, we find that a sum of Rs. 1000/- in cash and one tola of gold in addition to other articles were given to the appellant at the time of marriage. Hence, the aforesaid cash and articles have been given towards dowry. Sub-section (1) of Section 3 of the Dowry Prohibition Act provides that if any person, after the commencement of the Act, gives or takes or a bets the giving or taking of dowry, he shall be punishable for the term mentioned therein. Sub-section (2) of Section 3, however, states that nothing in Sub-section (1) of Section 3 - (a) in relation to presents which are given at the time of marriage to the bride; and (b) presents which are given at the time of marriage to the bride groom. The proviso under Clauses (a) and (b) of Sub-section (2), however, states that such presents must be entered in a list maintained in accordance with the

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rules made under this Act. Hence the Section clearly intends to exempt presents which are given at the time of marriage to the bride or the bride groom from the prohibition against dowry under the Act. Perhaps for this reason, the trial Court has taken a view that if anything was given to the appellant in the form of "Varopachara" such payment may not attract the provisions of the Dowry Prohibition Act. The High Court, however, has found that the appellant was guilty of the offences under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961, but has not considered the offences to be grave and has imposed punishments for only six months for each of the offences in accordance with the proviso to Section 5(1) of the Dowry Prohibition Act. Considering the lenient view taken by the High Court of the offences under the Dowry Prohibition Act, 1961, we are not inclined to interfere with the findings of the High Court in respect of the offences under the said Act.

11. In the result, we set aside the conviction of the appellant under Section 304B IPC and the sentence thereunder but maintain the conviction of the appellant under Section 498A IPC and under the Dowry Prohibition Act, 1961. We maintain the sentence of six months' imprisonment awarded to the appellant under the Dowry Prohibition Act for each of the offences under the said Act and award sentence of approximately two years which the appellant is stated to have already undergone for the offence under Sections 498A IPC and further direct that the sentences under Section 498A IPC as well as the offences under the Dowry Prohibition Act, 1961 will run concurrently.

12. The appeal is allowed to the aforesaid extent. The bail bonds stand discharged.

R.P. Appeal allowed.