SAVARALA SAI SREE

v.

GURRAMKONDA VASUDEVARAO & ORS.

(Criminal Appeal No. 5 of 2014)

JANUARY 2, 2014

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Dowry Prohibition Act, 1961:

s.3 – Conviction – Sentence of imprisonment for 3 months and fine of Rs.3000/- imposed by trial court – Reduced by High Court to period already undergone (4 days) – Held: Imposition of sentence is in the realm of discretion of the court and unless the sentence is found to be grossly inadequate, the appellate court would not be justified in interfering with the discretionary order of sentence – In the instant case, the minimum sentence fixed by legislature is five years, however, the court in an appropriate case after recording the reason may award the sentence lesser than five years, but fine shall not be less than Rs.15,000/- or the amount of the value of such dowry, whichever is more – Without recording any reason whatsoever it was not permissible for trial court to award sentence less than five years – Awarding of punishment of 3 months by trial court was hopelessly disproportionate particularly in view of the fact that no mitigating circumstance has been pointed out by trial court – High Court failed in its duty to take up the matter in its revisional power u/s 401 r/w s.386(e) of the Code of Criminal Procedure, 1973 and enhance the punishment commensurate to the offence committed by the accused – High Court grossly erred in reducing the sentence to four days – Sentence is set aside and the matter remanded back to the High Court to determine the quantum of punishment – Code of Criminal Code, 1973 – s.401 r/w s.386 (e) – Sentence/Sentencing.

A *State of U.P. v. Shri Kishan* **AIR 2005 SC 1250; *Chinnadurai v. State of Tamil Nadu,* AIR 1996 SC 546; *Sadhupati Nageswara Rao v. State of Andhra Pradesh,* 2012 (6) SCR 1143 = AIR 2012 SC 3242; *Ajahar Ali v. State of West Bengal* (2013) 10 SCC 31; *State of Rajasthan v. Vinod*
B *Kumar* 2012 (6) SCR 1 = AIR 2012 SC 2301 – relied on.**

Ram Sanjiwan Singh & Ors. v. State of Bihar **AIR 1996 SC 3265 – referred to.**

Case Law Reference:

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AIR 2005 SC 1250	**relied on**	**para 10**
AIR 1996 SC 546	**relied on**	**para 10**
2012 (6) SCR 1143	**relied on**	**para 10**
D **(2013) 10 SCC 31**	**relied on**	**para 10**
2012 (6) SCR 1	**relied on**	**para 11**
AIR 1996 SC 3265	**referred to**	**para 12**

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 5 of 2014.

From the Judgment & Order dated 21.02.2011 of the High Court of A.P. at Hyderabad in CRLRC No. 386 of 2011.

F V. Sridhar Reddy, V.N. Raghupathy for the Appellant.

A.T.M. Rangaramanujam, M.A. Chinnasamy, K. Krishna Kumar, A. Senthil Kumar, D. Mahesh Babu, Mayur Shah, Amjid Maqbool, Amit K. Nain for the Respondents.

G The following Order of the Court was delivered

O R D E R

1. Leave granted.

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2. The facts and the circumstances involved in the case has shocked the conscience of the Court and we take a serious note that neither the trial court nor the High Court proceeded in accordance with law rather acted on their own whims and fancies as if the courts are not bound to follow the law made by the competent legislature.

The trial Court convicted the respondents under Section 498-A of the Indian Penal Code, 1860 (for short "IPC) and awarded the sentence of three (3) years and imposed a fine of Rs.2000/- (Rupees two thousand only) and in case of non payment of fine, a further sentence to undergo simple imprisonment for a period of three (3) months. They were also convicted under Sections 3 and 4 of the Dowry Prohibition Act, 1961 (for short 'Act, 1961') and imposed a sentence for a period of 3 months each and to pay a fine of Rs.3000/-(Rupees three thousand only) each and in default of payment, they were sentenced to undergo simple imprisonment for a period of one month of each of the offence

3. Aggrieved, the respondents filed appeal before the Sessions Court. The first appellate court dealt with the case. Relevant part of the order runs as under:

> "20. On recording findings in the aforesaid points this court finds there was no legally acceptable evidence for convicting A1 for the offence U/s 498-A IPC and A3 to A5 for the offence U/s. 4 of Dowry Prohibition Act. So, appellants 3 to 5 are entitled for acquittal. Appellants 1 and 2 are liable for punishment only U/s.3 of Dowry Prohibition Act for having accepted three Demand Drafts and not explaining the same though burden is on them as per Sec.8-A.
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> 21. In the result, the appeal is partly allowed. 1st Appellant is acquitted of the charge U/s.498-A IPC, but his conviction for the U/s.3 of Dowry Prohibition Act is confirmed including the sentence. The conviction of 2nd appellant U/s.3 of

A Dowry Prohibition Act is confirmed including the sentence. The appeal is allowed with regard to the appellants 3 to 5 and sentence imposed on them is set aside. The fine amount paid by them shall be refunded after appeal time. The fine amount paid by 1st Appellant for the offence U/
B s.498-A IPC shall be refunded to him after appeal time."

4. Thus, conviction and sentence of Respondent Nos.1 and 2 under Section 3 of the Act 1961 was maintained, however, they were acquitted for the offence under Section 498A of the IPC and Section 4 of the Act 1961.
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5. In the Revision, the High Court has dealt with the case in a very cryptic manner as the learned counsel appearing for the respondents did not argue the case on merit rather pleaded for mercy and requested to reduce the sentence taking a lenient
D view. The High Court reduced the sentence to 4 days, as the said sentence had already been served/undergone by them.

6. Hence this appeal by the complainant-appellant Sarvarala Sai Sree.

E 7. We have heard learned counsel for the parties and perused the record. So far as the conviction of the respondent under Section 3 of the Act, 1961 is concerned, there is no reason for us to interfere with the same. Thus, the question remains restricted only to the quantum of punishment. Section
F 3 of the Act, 1961 reads as under:

> **"3. Penalty for giving or taking dowry – (1)** If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be
G punishable with imprisonment for a term which **shall not be less than five years and with the fine** which **shall not be less than fifteen thousand rupees** or the amount of the value of such dowry, whichever is more.
>
> Provided that the Court, **for adequate and special**
H **reasons** to be recorded in the judgment, impose a

sentence of imprisonment for a term of less than five years." A

(Emphasis added)

8. In the instant case, the minimum sentence fixed by the legislature is five years, however, the court in an appropriate case after recording the reason may award the sentence lesser B than five years, but the fine shall not be less than Rs.15,000/- or the amount of the value of such dowry, whichever is more.

9. In view of the above, we are not able to understand as under what circumstances without recording any reason C whatsoever it was permissible for the trial Court to award the sentence less than five (5) years. Awarding of punishment of 3 months by the trial Court was hopelessly disproportionate particularly in view of the fact that no mitigating circumstance has been pointed out by the trial court. The High Court failed in D its duty to take up the matter in its revisional power under Section 401 r/w Section 386(e) of the Code of Criminal Procedure, 1973 and enhance the punishment commensurate to the offence committed by them. We are appalled that the High Court reduced the sentence to four days.

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10. In *State of U.P. v. Shri Kishan,* AIR 2005 SC 1250, this Court has emphasised that just and proper sentence should be imposed. The Court held:

> *"..... Any liberal attitude by imposing meager sentences* F *or* ***taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive*** *in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the* G *sentencing system.*
>
> *The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also*

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A *against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime*
B *warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'."*

(Emphasis added)

(See also: *Chinnadurai v. State of Tamil Nadu,* AIR 1996
C SC 546; *Sadhupati Nageswara Rao v. State of Andhra Pradesh,* AIR 2012 SC 3242; and *Ajahar Ali v. State of West Bengal,* (2013) 10 SCC 31).

11. In *State of Rajasthan v. Vinod Kumar,* AIR 2012 SC
D 2301, this Court while dealing with the issue of minimum sentence provided under the statute held:

"19. Awarding punishment lesser than the minimum prescribed under Section 376, IPC, is an exception to the general rule. Exception clause is to be invoked only
E *in exceptional circumstances where the conditions incorporated in the exception clause itself exist. It is a settled legal proposition that exception clause is always required to be strictly interpreted even if there is a hardship to any individual. Exception is provided with the*
F *object of taking it out of the scope of the basic law and what is included in it and what legislature desired to be excluded. The natural presumption in law is that but for the proviso, the enacting part of the Section would have included the subject-matter of the proviso, the enacting*
G *part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from*
H *the general enactment and provide for them separately.*

Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable.(Vide: S. Sundaram Pillai, etc. v. V.R. Pattabiraman, AIR 1985 SC 582; Union of India and Ors. v. M/s. Wood Papers Ltd. and Anr., AIR 1991 SC 2049; Grasim Industries Ltd. and Anr. v. State of Madhya Pradesh and Anr., AIR 2000 SC 66; Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr., AIR 2003 SC 3502; Project Officer, ITDP and Ors. v. P.D. Chacko, AIR 2010 SC 2626; and Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors., (2011) 1 SCC 236).

20. Thus, the law on the issue can be summarised to the effect that punishment should always be proportionate/ commensurate to the gravity of offence.... The court has to decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of the accused .....and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case. The power under the proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation...

The court while exercising the discretion in the exception clause has to record "exceptional reasons" for resorting to the proviso. Recording of such reasons is sine qua non for granting the extraordinary relief. What is adequate and special would depend upon several factors and no straight jacket formula can be laid down."

12. Undoubtedly, imposition of sentence is in the realm of discretion of the court and unless the sentence is found to be

A grossly inadequate, the appellate court would not be justified in interfering with the discretionary order of sentence. This view stands fortified by the judgment of this Court in *Ram Sanjiwan Singh & Ors. v. State of Bihar,* AIR 1996 SC 3265.

B 13. In view of the above, the orders impugned are not sustainable in the eyes of law. Thus, we allow the appeal, set aside the sentence and remand the matter back to the High Court to determine the quantum of punishment. However, to cut short, we issue notice to the respondents for enhancement of punishment to which they can file the reply within a period of 8 C weeks from today before the High Court and the High Court is requested to pass an appropriate order of punishment considering the law referred to hereinabove. As the matter is old, we request the High Court to decide the case in regard to quantum of punishment within a period of 3 months after the D reply is filed by the respondents.

With these observations, the appeal stands disposed of.

R.P. Appeal disposed of.