

S. Anil Kumar @ Anil Kumar Ganna vs State Of Karnataka on 3 July, 2013

Equivalent citations: 2013 AIR SCW 6180, 2013 (7) SCC 219, AIR 2014 SC (CRIMINAL) 219, 2014 (1) AIR KANT HCR 78, (2013) 2 DMC 574, (2013) 5 KANT LJ 245, (2013) 2 MARRILJ 116, (2013) 56 OCR 349, 2013 CRILR(SC MAH GUJ) 748, (2013) 9 SCALE 125, (2014) 1 ALD(CRL) 372, (2013) 128 ALLINDCAS 101 (SC), (2013) 4 MH LJ (CRI) 10, (2013) 3 CRIMES 8, (2013) 3 CRILR(RAJ) 748, 2013 ALLMR(CRI) 2959, (2013) 3 UC 1799, (2013) 3 CHANDCRIC 252, 2013 CRILR(SC&MP) 748, 2013 (3) SCC (CRI) 289

Bench: Sudhansu Jyoti Mukhopadhyaya, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.937 OF 2006

S. ANIL KUMAR @ ANIL KUMAR GANNA

... APPELLANT

VERUS

STATE OF KARNATAKA

... RESPONDENT

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by the appellant against the judgment dated 4th January, 2006 in Criminal Appeal No.1042 of 1999 passed by the learned Single Judge of the High Court of Karnataka at Bangalore, whereby the learned Single Judge reversed the judgment of acquittal dated 2nd August, 1999 passed by the Xth Additional City Sessions Judge at Bangalore in S.C.No.86 /96 and convicted and sentenced the appellant for the offences under Section 304-B and Section 498-A of the IPC.

The Appellate Court imposed sentence of rigorous imprisonment for seven years for the offence punishable under Section 304-B of the IPC and rigorous imprisonment for two years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months for the offence punishable under Section 498-A of the IPC. The Appellate Court further ordered that the sentences shall run concurrently.

2. The case of the prosecution is briefly stated below:

The complainant-Parasmal's sister Meena Kumari was married to accused No.1, Anil Kumar on 13th December, 1990. In relation to the said marriage a demand was made by accused Nos.1 and 3 to 5 for dowry of an amount of Rs.1,50,000/- and gold weighing 800 gms. It was agreed by the bride's party to pay a sum of Rs.50,000/- and 500 gms. of gold as dowry and, accordingly, the marriage was performed. After the marriage, Meena Kumari came to know that her husband Anil Kumar, accused No.1 (appellant herein) had developed illicit intimacy with accused No.2, Sumithra alias Savitri, wife of Kailaschand, (PW-8). After some time, accused Nos.1 and 3 to 5 began to treat Meena Kumari with cruelty since she failed to bring the amount demanded by accused No.1 for expansion of his business. Whenever Meena Kumari came to her brother's house, she complained about ill treatment meted out to her by accused No.1. After some days, the amount demanded by accused No.1 was given, but his demand did not subside. On 20th January, 1992 at about 7.00 a.m., Meena Kumari took milk and went inside her house. After some time, accused No.1, Anil Kumar left the house. Thereafter Meena Kumari came out of the house and requested Smt. Kamalamma, a neighbour to bring a nipple for putting the same to tap. When Kamalamma brought the nipple, she found the door of the house closed. Meena Kumari did not open the door in spite of knocking by Kamalamma. At that time, Sarojamma, (PW-

6) was also present. At about 9.00 a.m. the mother of PW-6, Kailas and Anil Kumar came and knocked the door, but the door was not opened. Despite their efforts, door was not opened and there was no response from inside.

Therefore, Anil Kumar put his hand through the ventilator and unlatched the door and opened it. When they went inside, they found that Meena Kumari had hanged herself from the fan and had committed suicide. The news spread and later, a friend of the accused Sri Shanthilal (PW-9) came and he gave on phone a message to Meena Kumari's elder brother S. Parasmal (PW-1), who was residing in Mysore. Intimation sent to him was that Meena Kumari was seriously ill and they should come immediately. On their way to Bangalore, Parasmal (PW-1), learnt that Meena Kumari had committed suicide. They reached the house of the accused at about 5.00 p.m. and after ascertaining the matter, Parasmal (PW-1) went to the Police Station and informed the Police. The Police came to the house and after inspecting the spot, took the complaint of PW-1. On the basis of the same, he registered a case in Cr.No.33/92 against the accused Nos.1 and 2. Sri. M.V. Chengappa, PSI, Hebbal Police Station (PW-23) started with the investigation and further investigation was taken up by, Praveena, ACP, Yeshwanthpur Sub-Division (PW-

24). The investigation disclosed that accused Nos.3 to 5 were also involved in the matter. Therefore, they were added in the list of the accused. After further investigation by S.V.D. Souza (PW-25), Police Inspector, ADC, COD, Bangalore and his successor, B. Venkataramana, Police Inspector, ADC, COD, Bangalore (PW-26) a chargesheet was placed against the accused for the offences punishable under Section 498-A and 304-B of the IPC and Sections 3,4 and 6 of the Dowry Prohibition Act, 1961.

3. The accused pleaded not guilty of the charges and claimed to be tried. The prosecution examined in all 26 witnesses and closed its case. As per prosecution PWs-1, 10,11,12,13,15 and 18 were examined with regard to the payment of dowry. To substantiate the allegation of the dowry harassment they examined PWs-10,11,12,13,14,16 and 21 and other witnesses who saw the body hanging with fan. PWs-2, 7 and 19 were Panch witnesses. PW- 17, Dr. Thirunavakkarasu was the Professor, Forensic Medicine, who conducted the post-mortem examination. PW-21, was the Taluk Executive Magistrate, who conducted inquest proceedings. PWs.22 to 26 are the Police Officers.

4. The accused in their statements under 313 Cr.P.C. denied the allegations made against them. On behalf of defence one Vimal Kumar (DW-1) was examined to show that there was no demand for dowry and no harassment was made to Meena Kumari. It was suggested on behalf of the defence that Meena Kumari had extra affinity towards PW-10, Ashok Kumar Jain and perhaps on the objection raised by the accused she might have committed suicide.

5. The trial court on appreciation of evidence on record came to hold that the statements of material witnesses, PW-1 and PW-12 and some others are contradictory and there statements are not trustworthy. In view of such finding the trial court acquitted the accused of all the charges levelled against them.

6. One of the reasons shown by the trial court to come to the conclusion that the statements are not trustworthy, was that PW-1, complainant nowhere mentioned in the complaint that demand of Rs.1,50,000/- in cash and 800 gms. of gold as dowry was made as pre-condition to marry Meena Kumari. Such allegations were also not made before the Tahsildar (PW.21), as evident from the observation of the trial court:

“12.....It is an undisputed fact that nowhere in the complaint Ex.P3, it is mentioned that the accused persons demanded Rs.1.5 lacks and 800 grams of gold as dowry as a pre-condition to marry the deceased Meenakumari. In the second para of the complaint, Ex.P.3, it is mentioned that the marriage was done as per their request and that to their satisfaction. At the time of marriage, they gave 500 grams of gold ornaments and Rs.50,000/- cash and household articles, further, nowhere in the complaint Ex.P.3 any mentioned is made with regard to the payment of Rs.10,000/- during 1991 to the first accused and subsequent payment of Rs.25,000/- to the first accused in the house of PW. at Mysore..... Now I will see the cross-examination of PW.21, the Tahsildar. He states that PW.1 has not stated before him that the accused persons demanded 800 grams of gold and Rs.1.50 lacks of as dowry. Likewise, PW.1 has not stated before him that the first accused and his family members participated

in the marriage talks. He admits that PW.10 stated before him vide Ex.D.2. He admits that PW.1 has not stated before him that the third accused sent deceased Meenakumari to bring the balance of Rs.1.00 lack and 300 grams of gold. Likewise PW.1 has not stated before him that he gave Rs.10,000/- to accused Nos.1 and 3 and sent deceased Meenakumari. He also admits that PW.1 has not stated before him that PW.1 went to Devgarh and requested accused No.3 to send Meenakumari with him for which he refused. He also states that PW.1 has not stated before him that he sent his brother Sampathlal to bring Meenakumari and that he brought her to his house at Mysore in June, 1991. Likewise, he has also not stated that the first accused did not take back Meenakumari to his house and therefore she stayed in her house for about 2 ½ months, PW.1 has not stated before PW.21 that Meenakumari was telling before him that she was insulted by her in-laws for having not taken the dowry articles. It is also admitted by PW.21 Tahsildar that PW.1 has not stated before him during November, 1991, accused Nos.1 and 2 and one Sampathlal came to his house and his father PW.22 gave Rs.25,000/- to the first accused. PW.21 also states that PW.1 Parasmal has not specifically stated phone that the second accused was ill- treating her. PW.10 also not stated before PW.21 the Tahsildar on 13.01.1992. He sent Mohanlal to Bangalore to see Meenakumari and that in turn they told him about the harassment given to her by the first accused. PW.21 also states that PW.18 A. Suresh Jain has not stated before him that deceased Meenakumari came to Mysore six months after the marriage and stayed in the house of PW.1 for about 1 ½ months and that she complained of harassment by her in-laws for the same of dowry.

13. From the evidence of PW-21 the Tahsildar it is crystal clear that at no point of time, either PW-1 or as matter of fact, this PW-18 never stated that the accused persons made a demand for Rs.1.5 lakhs and 800 grams of gold as dowry.

Likewise, whatever PW-1 states in the chief examination are all omissions which were not stated before PW-21 the Tahsildar immediately after this incident. Absolutely there is no substance in PWs-1 and 12 telling that they paid Rs.10,000/- at Benali and Rs.25,000/- in the house of PW-1 at Mysore to the first accused”

7. The High Court relied substantially on the submission made by the learned Addl. SPP appearing for the prosecution who stated that there are abundant material placed on the record by the prosecution including depositions of PWs-1,10 to 16 and 21, many of whom spoke about the demand of dowry, payment of dowry and dowry harassment. It was contended that the learned Sessions Judge because of minor discrepancies in the statements of the prosecution witnesses has given the benefit of doubt in acquitting all the accused. The Sessions Judge had not considered the provisions of Sections 113-A and 113-B of the Evidence Act to be drawn against the accused. In view of such argument, the Appellate Court re-appreciated the evidence and observed as follows:

“8.Though it is submitted by the learned Addl.SPP that there is abundant material regarding demand for dowry and payment of dowry for the settlement of marriage, on perusal of the depositions of PWs.1,10,11,12,13,15 and 18, we are unable to agree

with his view. It is an admitted fact that an amount of Rs.50,000/- and gold ornaments weighing about 500 gms were given at the time of marriage. The evidence is not sufficient to raise a presumption that this payment of money as dowry was on demand by the accused nos.1 and 3 to 5. As rightly observed by the learned Sessions Judge, they appear to be customary presents given from the bride's side." Again on re-appreciation of evidence of PWs.1,10,11,12,13,14,15,16 and 21, the Appellate Court while holding that it was unable to find the allegations involve accused Nos.2 to 5 observed as follows:

"9.....It is not the case of the prosecution that from those distant places the accused Nos.3 to 5 tutored accused No.1 to demand dowry or ill-treat Meena Kumari. Therefore, we do not find sufficient ground to interfere in the conclusion of the learned Sessions Judge with regard to the demand for dowry payment of dowry and dowry harassment so far as the allegations relate to accused Nos.3 to 5."

8. So far as accused No.2 is concerned she being a neighbour's wife the trial court held that she cannot be held responsible for any demand of dowry or dowry harassment. The trial court acquitted all the accused No.1 to 5 for offences punishable under Sections 3,4 and 6 of the Dowry Prohibition Act and accused Nos.2 to 5 for an offence punishable under Section 498-A of the IPC with the following observation:

"10.....Of course, a suggestion has been made that as informed by Meena Kumari, there was illicit relationship between the accused nos.1 and 2. But this has not been substantiated by any material. Merely because some witness says that they learned from Meena Kumari that there was illicit relationship between accused Nos.1 and 2 and of that it was the cause for marital discord between accused nos.1 and Meena Kumari, that cannot be accepted. Considering all these materials, we hold that the acquittal of accused nos. 1 to 5 for offences punishable under Sections 3,4 and 6 of the Dowry Prohibition Act and accused nos.2 to 5 for an offences punishable under Sections 498-A of the IPC does not need interference."

9. In spite of such finding referring to the statements made by PWs.1,10 to 16 and 21 the Appellate Court held that accused No.1-appellant herein is liable to be convicted for the offences for dowry harassment and dowry death and made the following observations:

"The learned Sessions Judge lost sight of the presumption that is available in Sections 113-A and 113-B of the Evidence Act and ignoring the evidence of PWs.1, 10 to 16 and 21, held that there was no dowry harassment, so far as the allegation relates to the accused no.1. We find absolutely no reason to discard the evidence of these witnesses so far as the allegations relate to the accused no.1 and consequently he is liable to be convicted for the offences under Sections 498-A, 304-B of the IPC. Since the dowry harassment by the accused nos.2 to 5 has not been proved, the acquittal granted to them does not need any interference."

10. Learned counsel for the appellant submitted that if one view has been taken by the trial court which is not perverse, it was not open to the Appellate Court to substitute such view to re-appreciate the evidence for coming to a different conclusion.

11. Per contra, according to the learned counsel for the State, the High Court was right in reversing the judgment of acquittal passed by the trial court in view of sufficient evidence of PWs.10 to 16 and 21 recorded to show that the appellant has subjected deceased to harassment due to which she was compelled to commit suicide.

12. This Court in the case of Rohtash vs. State of Haryana, (2012) 6 SCC 589, held that only in exceptional cases where there are compelling circumstances and where the judgment in appeal is found to be perverse, the High Court can interfere with the order of acquittal. In the said case the following observation was made by this Court:

“27. The High Court interfered with the order of acquittal recorded by the trial court. The law of interfering with the judgment of acquittal is well settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court’s acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.”

13. We have gone through the evidence of the prosecution witnesses PWs.1, 10 to 16 and 21 relied on by the prosecution. We find that there are contradictory statements which cannot be stated to be a minor contradiction as was suggested by the learned Addl.SSP before the Appellate Court. The improvement in the statements of PW.1 and 12 is clear. The allegation about the demand of dowry of Rs.1,50,000/- and 800 gms. of gold ornaments and harassment and torture made by accused No.1 on deceased was not disclosed and mentioned in the First Information Report or before the Tahsildar(PW.21) who recorded the initial evidence. In Ex.P.2 and complaint Ex.P.3 absolutely there is no evidence to show that Rs.25, 000/- was demanded and Rs.10,000/- was given to accused No.1 either at Benali or at Mysore. Further, payment of Rs.50,000/- and 500 gms. of gold to accused No.1 as dowry was also not established beyond reasonable doubt.

14. Once the prosecution failed to prove the basic ingredients of harassment or demand of dowry and the evidence brought on record were doubted by the trial court, it was not open to the High Court to convict accused No.1 on presumption referring to Section 113-A or 113-B of the Evidence Act. The presumption of innocence of the accused being primary factor, in absence of exceptional compelling circumstances and perversity of the judgment, it was not open to the High Court to interfere with the judgment of the trial court in a routine manner.

15. For the reasons aforesaid, we set aside the impugned judgment dated 4th January, 2006 in Criminal Appeal No.1042 of 1999 passed by the High Court, allow the appeal by restoring the judgment dated 2nd August, 1999 of the trial court. The appellant is on bail, his bail bonds stand

discharged.

.....J. (A.K. PATNAIK)J.
(SUDHANSU JYOTI MUKHOPADHAYA) NEW DELHI, JULY 3, 2013.