

G.V.Siddaramesh vs State Of Karnataka on 5 February, 2010

Author: H.L. Dattu

Bench: H.L. Dattu, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 160 OF 2006

G.V. Siddaramesh

..... Appellant

Versus

State of Karnataka

.....Respondent

J U D G M E N T

H.L. Dattu, J.

This criminal appeal arises out of common judgment and order passed by the Karnataka High Court in Criminal Appeal No. 1755 of 2003 and Criminal Appeal No. 665 of 2004, whereby and whereunder the court has partly allowed the appeal, and in so far as the appellant is concerned, while maintaining the conviction for offences punishable under Section 4 of Dowry Prohibition Act, 1961 and Sections 498-A and 304-B of the Indian Penal Code, 1860, has modified the sentence for the offence punishable under Section 3 of the Dowry Prohibition Act, 1961 from 5 years and a fine of Rs. 2,50,000/- to 2 years and a fine of Rs. 1,25,000/- and, in default, to undergo simple imprisonment for 6 months.

2) The learned Additional Sessions Judge had sentenced the appellant under the following heads : -

(i) To undergo R.I for 5 years and a fine of Rs.

2,50,000/- and in default, to undergo R.I for two years for the offence punishable under Section 3 of the Dowry Prohibition Act.

(ii) To undergo S.I for two years and to pay a fine of Rs. 10,000, in default, to undergo S.I for one month for an offence punishable under Section 4 of the Dowry Prohibition Act.

(iii) To undergo S.I for 3 years and to pay a fine of Rs.

10,000/-, in default, to undergo S.I for one month for an offence punishable under Section 498-A of the Indian Penal Code.

(iv) To undergo imprisonment for life for an offence punishable under section 304-B of IPC.

3) On appeal, the High Court has allowed the appeal in part and has modified the sentence as stated earlier. The appellant has preferred this appeal against his conviction and sentence of imprisonment for life under Section 304-B of the Indian Penal Code.

4) The facts of the case in brief are, that the complainant K.G Lingappa's daughter Usha (deceased) had been married to Siddaramesh (appellant) on 13.12.1997. The deceased went to her matrimonial home on 15.1.1998. On 17.1.1998, the deceased committed suicide by hanging herself. In order to prove its case, the prosecution has examined as many as twenty eight witnesses. The case of the prosecution in brief is that, at the time when there were talks of the marriage in November 1996, the appellant and his family demanded 20 tolas of gold, Rs. 2 lakhs in cash and a motorcycle as dowry. Ultimately as negotiations progressed, the money was settled at Rs. 1,65,000 in cash, 18 tolas of gold, and a motorcycle. These demands were met with by the complainant and in furtherance the marriage took place on 13.12.1997. The case of the prosecution further is that, the deceased Usha was taken to her matrimonial home on 15.1.1998, despite protests by the family of the complainant that it was pushyamasa which was inauspicious for the bride's entry into her matrimonial home. On 17.1.1998, the elder sister of the deceased, Karibasamma PW-3, went to the matrimonial home of the deceased along with sweets and other eatables. The deceased confided to her elder sister that she was being treated cruelly by the accused. The deceased further confided that there were fresh demands on her to get Rs. 50,000/- more as dowry. On her reluctance, she was being beaten by her husband and the husband was not keen on maintaining a physical relationship with her. Karibasamma later returned home and confided to her father the torture and harassment meted out to her sister (deceased) by the appellant on account of non-fulfilment of dowry demand. The complainant sent his son Karibasappa, the brother of the deceased PW-2 to enquire into the matter. The brother of the deceased also found out from her sister that she was being ill-treated and was unhappy. On the same night, the complainant received the news that her daughter had committed suicide by hanging herself. After reaching the matrimonial home of their daughter and seeing that their daughter had committed suicide, they informed the police. A complaint was lodged by the complainant to the police alleging that it was the dowry harassment on the part of the family of the appellant that led to the suicide of her daughter. A case was registered in Cr. No. 18/1998, against the appellant and his father under Section 498-A and 304 B of the IPC and Sections 3,4 and 6 of the Dowry Prohibition Act. The Learned Chief Judicial Magistrate committed the case to the Court of Sessions, as it involved offences exclusively triable by the Sessions Court. When the matter was pending before the Sessions Judge, the case was transferred to Fast Track Court, Devangere in accordance with a notification issued by the High Court.

5) The case of the appellant is that giving money or taking money is not dowry and further, money demanded after marriage is not dowry. The appellant further submits that the facts of the case do

not disclose commission of an offence punishable under Section 498-A and 304-B of the IPC. The appellant contended that most of the witnesses examined by the prosecution were interested witnesses who were closely related to the deceased. The appellant further contended that the police officer had no power to charge-sheet as per the provisions of Section 7 of the Dowry Prohibition Act. Another important contention of the appellant was that, it was he who first made a complaint to the police about the mishap after he brought his father, and therefore he cannot be guilty of any wrongdoing.

6) The learned Additional Sessions Judge has taken into consideration the testimony of the complainant PW-1 and that of Karibasappa and Karibasamma (PW-2 and PW-3 respectively), the brother and the sister of the deceased. It has also relied upon the testimony of other witnesses to conclude that there was a demand for dowry and there was acceptance of dowry on the part of the appellant and his father. The trial court also took into consideration, the suspicious conduct of the appellant. The appellant had alleged that the deceased had committed suicide because she was in love with another person before marriage and was frustrated when she could not marry him. Again in his statement under Section 313 of Cr.PC, the appellant stated that since coming to her matrimonial home, she compared the house of the appellant to that of a "railway bogie", which, according to her, did not satisfactorily compare to her father's house and her sister's house. The trial court however observed that the appellant produced nothing on record to prove that the deceased had an affair before the marriage with another person. Further the trial court refused to believe the version of the appellant contained in Ex. D-3. The time of writing this letter, which was addressed to the Sub-Inspector of the Devangere Police Station, was shown as 12.30 in the midnight of 17.1.98. However, by his own admission, he had left his shop at 10.30 PM. He had stated that after reaching home, he noticed that his wife has committed suicide by hanging, and thereafter went and informed the sister of the deceased and then went to Kogganooru to inform his father and after his return went to the police station. The trial court has inferred that it was not possible for the appellant to reach the Police Station before 1 AM or 2 AM. Also according to the trial court, the natural reaction of anyone seeing a dead body would be that of shock or disbelief. This according to the trial court was indicative of the suspicious conduct of the appellant who wanted to hush up the matter. Further this document was never called for from the Police Station and only a photocopy of the same was produced. The trial court also relied upon the post mortem report which revealed that death was caused due to asphyxiation due to hanging and there were also some unexplained scratches in the body which, according to the trial court was evidence of the harassment of the deceased by the appellant and, hence, concluded that the cruel treatment and harassment of the deceased by the appellant led her to commit suicide. Section 113B of the Evidence Act raises a presumption against the accused. The onus lies on the accused against whom the presumption lies to discharge it. The appellant has failed to discharge the burden satisfactorily. Based on these findings, the trial court has convicted and sentenced the accused to undergo R.I for 5 years and a fine of Rs. 2,50,000/- and in default, to undergo R.I for two years for the offence punishable under Section 3 of the Dowry Prohibition Act; to undergo S.I for two years and to pay a fine of Rs. 10,000/-, in default, to undergo S.I for one month for an offence punishable under Section 4 of the years and to pay a fine of Rs. 10,000/-, in default, to undergo S.I for one month for an offence punishable under Section 498-A of the Indian Penal Code; to undergo imprisonment for life for an offence punishable under Section 304-B of IPC. The trial court however went on to acquit the accused no.2 (father of the appellant) of

all the charges.

7) The appellant (accused No. 1) preferred appeal before the High Court of Karnataka challenging his conviction and sentence and the State has preferred appeal challenging the acquittal of the appellant for the offence punishable under Section 6 of the Dowry Prohibition Act and accused No. 2 (father of the appellant) for all the offences. As stated earlier, the High Court has partly allowed the appeals.

8) This court while entertaining the special leave petition has issued notice confining to the offence under Section 304-B of IPC. We have heard learned counsel for the parties regarding the same.

9) Section 304-B of the IPC reads:-

(1)Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death. Explanation:-For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2)Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

10) The essential ingredients which need to be proved in order to attract the offence of dowry death is as follows:-

(i) Death is caused in unnatural circumstances.

(ii) Death must have occurred within seven years of the marriage of the deceased.

(iii)It needs to be shown that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

11) Coming to the first ingredient, the post mortem report suggests that the body of the deceased was bearing the mark of hanging and there is the indication of an injury mark 8 inches long around the neck. The cause of death was shock and asphyxia as a result of hanging. There are also unexplained traces of scratches around the neck region. This raises serious doubts about the possibility of strangulation of the deceased, as opined by Dr. T. Parashuramappa PW-24. Therefore, it is beyond doubt that the death was an unnatural death. The second ingredient is also proved as the marriage between the deceased took place on 13.12.1997 and the death of the deceased took place on 17.1.998, which is within the 7 year timeframe.

12) To prove the third ingredient, we need to peruse the testimony of the witnesses. The complainant PW-1 asserts that the appellant and his family demanded 20 tolas of gold, Rs.

2 lakhs in cash and a motorcycle as dowry.

Ultimately as negotiations progressed, the
money was settled at

Rs. 1,65,000 in cash, 18 tolas of gold and a motorcycle. These demands were met by the complainant. Also against the will of the family of the deceased, the deceased was taken to her matrimonial home on 15.1.1998, which coincided with Pushyamasa, which is considered as an inauspicious time by the family of the deceased. There is no reason to disbelieve the statement of the complainant, as the appellant himself in his statement under Section 313 of Cr.PC has stated, that, there were negotiations taking place as to the amount of money and gold, which will change hands during the course of the marriage, but he is unclear as to the place where the negotiations took place. The brother and sister of the deceased also testify this fact. In addition to this, Umapathy, a friend of the family of the deceased PW-10, M.G Shankarappa PW-15, Maheshwaraiah PW-16 also testified that there were indeed serious negotiations which took place as to the amount of dowry prior to the marriage. The prosecution also brought on record the testimony of Narayan PW-6, the goldsmith who testified that 18 tolas of gold were given to him by the complainant to prepare various ornaments like bangles, mangalya chain, ear hangings, nose rings etc for the bride. Some of these ornaments were recovered during the investigation and some were found on the body of the deceased. The prosecution has also established through Karibasappa PW-2 that he was instrumental in arranging a loan of Rs. 50,000/- from his friend Shivakumar who in turn had withdrawn money from Andhra Bank and in this regard, the receipt has also been produced. Umapathy PW-10, Maheshwariah PW-16 and Shivakumar PW-9 have also stated being present at the medical store of the appellant, where the money to the tune of Rs. 1,65,000/- changed hands. Therefore, there is no doubt that there was a demand for dowry prior to the death of the deceased, which was met by the family of the deceased.

13) Karibasamma PW-3, the elder sister of the deceased has also stated in her evidence that when she went to the matrimonial house of the deceased on 17.1.1998, the deceased confided in her that there is further demand of Rs. 50,000/- by way of dowry by the appellant, and on account of the failure to meet the demand, she is being treated with cruelty and is harassed physically and mentally. She has also stated that the deceased also requested her elder sister not to disclose these developments to their father as he had health problems related to high blood pressure. When the brother of the deceased Karibasappa PW-2, went to the house of the deceased, he also came back with the same version. The testimony of these two witnesses is consistent and very clear that the deceased was indeed mentally disturbed, the day she committed suicide by hanging herself. Cruelty can either be mental or physical. It is difficult to straightjacket the term cruelty by means of a definition, because cruelty is a relative term. What constitutes cruelty for one person may not

constitute cruelty for another person. This court in the case of V. Bhagat v. D. Bhagat, (AIR 1994 SC 710), has observed that mental cruelty is such that if the wronged party continues to stay with his/her spouse there is reasonable apprehension of injury to the wronged party. The circumstances surrounding the present case, where there was pressure on the deceased to arrange a further sum of Rs. 50,000/- and the consequent misdemeanor on the part of the appellant no doubt puts serious apprehension on the mind of the deceased, that, if she continues to stay with the appellant, she might be assaulted physically and mentally. It is difficult how different people react to different situations. The threats by the husband of the deceased over the course of two days, when the deceased was in her matrimonial home might have been enough for the deceased who was in a fragile state of mind to reach breaking point and end her life. Therefore all the ingredients of Section 304-B have been satisfied, pointing towards the guilt of the appellant.

14) Section 113-B of the Evidence Act raises a presumption against the accused and reads :-

"When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death.

Explanation - For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)."

15) A reading of Section 113-B of the Evidence Act shows that there must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of a women. It is then up to the appellant to discharge this presumption. The appellant however has not brought on record anything substantial to dispel the theory of the prosecution. In fact, while filing application for grant of bail, the appellant had stated that the deceased was having an affair with another person before her marriage and since she could not marry him, she was in distress and, therefore, committed suicide. However there was no evidence brought on record to prove this theory. Further in his statement under Section 313 of Cr.P.C. he has stated that the deceased was not happy with the house of the appellant and stated that the house of her sister and father were bigger and better. Further his theory of intimating the police and lodging a complaint before the Sub-Inspector of the Police Station at 12.30 AM fails as he had closed his shop at around 10.30 PM. After that by his own admission, he went and informed the sister of the deceased and then went outside the town to bring his father before lodging the complaint. Therefore, it is very much likely that the accused after witnessing the dead body of the deceased tried to hush up the matter and went to the Police Station much later. If this theory is to be true, this brings the suspicious behaviour of the appellant more to light, as the natural reaction to seeing the dead body of a wife who had come to her matrimonial home only 2 days earlier would be that of disbelief or shock. Instead by his own admission, he went and informed the sister of the deceased. The prosecution witnesses have also testified that the appellant came to the paternal house of the deceased and made a statement to the effect that it would be detrimental to both the families if a complaint was to be lodged and to bury the past. The appellant has also not produced anything on

record to dispel the theory of the prosecution that there was a further demand of Rs. 50,000/- on his part. He has also failed to prove that there were demands for dowry immediately before the marriage and there were negotiations which took place involving both the families. All these circumstances point to the fact that the appellant has not rebutted or discharged the presumption. Therefore we have no doubt in holding that the appellant is guilty for the offence punishable under Section 304-B of the IPC, for being responsible for the death of his wife.

16) On the point of sentence, learned counsel for the appellant pointed out that the appellant is in jail for more than six years. The appellant was young at the time of incident and therefore, the sentence awarded by the trial court and confirmed by the High Court may be modified. In so far as sentencing under the section is concerned, a three Judge Bench of this court in the case of Hemchand v. State of Haryana, has observed that "Section 304-B merely raises a presumption of dowry death and lays down that the minimum sentence should be 7 years, but it may extend to imprisonment for life. Therefore, awarding the extreme punishment of imprisonment for life should be used in rare cases and not in every case." Keeping in view the facts and circumstances of the case, this court reduced the sentence from life imprisonment awarded by the High Court to 10 years R.I on the above principle.

17) In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B IPC. However, his sentence of life imprisonment imposed by the courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years rigorous imprisonment would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed. In the result, the appeal is dismissed subject to the above modification of sentence.

.....J. [P. SATHASIVAM]J. [H.L. DATTU] New Delhi,
February 05, 2010.