

Vipin Jaiswal(A-I) vs State Of A.P. Rep.By Pub.Prosecutor on 13 March, 2013

Equivalent citations: AIR 2013 SUPREME COURT 1567, (2013) 82 ALLCRIC 61, 2013 AIR SCW 1746, 2013 CRI. L. J. 2095, AIR 2013 SC (CRIMINAL) 957, 2013 (1) ADR 150, 2013 (2) AIR KANT HCR 339, (2013) 2 RECCRIR 342, (2013) 1 ALD(CRL) 967, (2013) 2 CHANDCRIC 31, (2013) 3 KCCR 164, 2013 CALCRILR 2 505, 2013 CRILR(SC&MP) 382, (2013) 3 CRIMES 229, (2013) 1 DMC 700, (2013) 3 GUJ LR 2510, (2013) 1 HINDULR 598, 2013 CRILR(SC MAH GUJ) 382, (2013) 2 ALLCRILR 501, (2013) 2 CRILR(RAJ) 382, (2013) 2 CURCRIR 45, (2013) 3 SCALE 525, (2013) 2 MH LJ (CRI) 312, (2013) 116 CUT LT 563, (2013) 2 ORISSA LR 130, (2013) 55 OCR 173, 2013 (3) SCC 684, (2013) 125 ALLINDCAS 194 (SC), 2013 (2) SCC (CRI) 15, 2013 (99) ALR SOC 36 (SC)

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Bench: Sudhansu Jyoti Mukhopadhyaya, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 1431 OF 2007

VIPIN JAISWAL(A-I)

Appellant (s)

VERSUS

STATE OF A.P. REP.BY PUB.PROSECUTOR Respondent (s)

JUDGMENT

A.K. PATNAIK, J.

This is an appeal against the judgment dated 11th December, 2006 of the Andhra Pradesh High Court in Criminal Appeal No. 544 of 2003.

2. The facts briefly are that an FIR was lodged by Gynaneshwar Jaiswal on 4.4.1999 at 2.15 p.m. in Mangalhat Police Station, Hyderabad. In the FIR it was stated by the informant that his daughter Meenakshi Jaiswal was married to the appellant on 22.2.1996 and at the time of marriage he gave sufficient gold jewellery, silver items, furniture, electrophonic gadgets etc., worth above Rs.2,50,000/- but ever since her marriage, she was subjected to physical and mental torture by her husband Vipin Jaiswal, her husband's parents Prem Kumar Jaiswal and Yashoda Bai and her husband's sister Supriya and her husband and they all brutally assaulted her on innumerable occasions for not getting sufficient dowry. It was further stated in the FIR that on 2.4.1999 the informant received a call from the appellant and he went to the house of the appellant along with his relatives to find out what had happened as well as to give invitation for a function at his place but they all abused him and the appellant physically assaulted and pushed him out from the house but fearing the safety of his daughter and her welfare, he did not report the matter to the police. It is further stated in the FIR that on 4.4.1999 at about 1.00 p.m. when he came back home, he was informed on telephone by his son that Meenakshi had received severe burn injuries and as a result died in the house of the appellant. The police registered a Criminal Case under Section 304B, IPC and took up investigation and submitted a charge-sheet against the appellant and his other relatives under Sections 304B and 498A, IPC.

3. At the trial, besides other witnesses, the prosecution examined the father of the deceased (informant) as PW 1, the cousin of PW 1 as PW 2 and the mother of the deceased as PW 4. The appellant volunteered to be a witness and got examined himself as DW 1 and took the defence that the deceased had left behind a suicide note written by her one day before her death in which she has stated that she had committed suicide not on account of any harassment by the appellant and her family members but due to the harassment by her own parents. The Trial Court, however, disbelieved the defence and convicted the appellant and his other relatives under Sections 304B and 498A, IPC. The Trial Court in particular held that there was material that two days prior to the death of the deceased, her father (PW1) and his relative (PW2) were called by her and told that she has been harassed by the appellant and her in laws for not being paid the amount demanded by the appellant and when PWs 1 and 2 went to the house of the appellant, they were abused by the appellant and on 4.4.1999, PW 1 and others were informed by one Suresh Kumar, a neighbour of the appellant, about the incident. From the aforesaid and other evidence, the Trial Court came to the

conclusion that the deceased was subjected to torture and harassment by the accused, mainly for the reason that an amount of Rs.50,000/- was not given to the appellant by PW 1. The appellant and other relatives of the appellant carried Criminal Appeal No. 544 of 2003 before the High Court and by the impugned judgment, the High Court acquitted the two other relatives of the appellant (A2 and A3) but maintained the conviction of the appellant under Sections 304B and 498A, IPC.

4. At the hearing before us, learned senior counsel for the appellant submitted that the findings of the Trial Court and of the High Court with regard to the demand of dowry are in relation to the demand of Rs.50,000/-. He submitted that this demand of Rs.50,000/- is not mentioned in the FIR (Ext. P1). He further submitted that in any case, the evidence of PW1 and PW4 is clear that this demand of Rs.50,000/- by the appellant was not a dowry demand but an amount which the appellant wanted from the family of the deceased to purchase a computer and set up his own business. He further submitted that the Trial Court and the High Court ought not to have disbelieved the suicide note (Ext. D19) which was in the handwriting of the deceased as proved by DW1. In this context, he explained that the signature on the suicide note (Ext. D19) purporting to be that of the deceased, tallied with the signature of the deceased in Ext. D1 which was a hall ticket issued by Dr. B.R. Ambedkar Open University for an examination which the deceased took in March, 1998.

5. Learned counsel for the State, on the other hand, submitted that both the Trial Court and the High Court have discussed the evidence of the prosecution witnesses, and in particular, the evidence of PWs 1, 2 and 4 to establish that there was demand of dowry of not only Rs.50,000/- but other items as well. He further submitted that Section 2 of the Dowry Prohibition Act, 1961 defines 'dowry' as any property or valuable security given or agreed to be given either directly or indirectly at or before or any time after the marriage in connection with the marriage of the parties to the marriage. He submitted that the expression "in connection with the marriage of the parties to the marriage" is wide enough to cover the demand of Rs.50,000/- made by the appellant for purchase of a computer. He further submitted that so far as the suicide note (Ext. D19) is concerned, the same cannot be believed to have been written by the deceased who was only a matriculate and the High Court has given good reasons in the impugned judgment why the suicide note cannot be believed to have been written by the deceased. He argued that in any case only on the basis of the evidence given by DW1, the Court cannot hold that the suicide note had been written by the deceased and not by someone else. He submitted that since the prosecution has been able to prove that the deceased had been subjected to not only a demand of dowry but also cruelty soon before her death, the Trial Court and the High Court have rightly held the appellant guilty both under Sections 304B and 498A, IPC.

6. We have perused the evidence of PW 1 and PW 4, the father and mother of the deceased respectively. We find that PW 1 has stated that at the time of marriage, gold, silver articles, ornaments, T.V., fridge and several other household articles worth more than Rs.2,50,000/- were given to the appellant and after the marriage, the deceased joined the appellant in his house at Kagaziguda. He has, thereafter, stated that the appellant used to work in a xerox cum type institute in Nampally and in the sixth month after marriage, the deceased came to their house and told them that the appellant asked her to bring Rs.50,000/- from them as he was intending to purchase a computer and set up his own business. Similarly, PW4 has stated in her evidence that five months

after the marriage, the appellant sent her away to their house and when she questioned her, she told that the appellant was demanding Rs.50,000/- and that the demand for money is to purchase a computer to start his own business. Thus, the evidence of PW1 and PW4 is that the demand of Rs.50,000/- by the appellant was made six months after the marriage and that too for purchasing a computer to start his own business. It is only with regard to this demand of Rs.50,000/- that the Trial Court has recorded a finding of guilt against the appellant for the offence under Section 304B, IPC and it is only in relation to this demand of Rs.50,000/- for purchase of a computer to start a business made by the appellant six months after the marriage that the High Court has also confirmed the findings of the Trial Court with regard to guilt of the appellant under Section 304B, IPC. In our view, both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of Section 2 of the Dowry Prohibition Act, 1961. This Court has held in Appasaheb & Anr. Vs. State of Maharashtra (2007) 9 SCC 721:

“In view of the aforesaid definition of the word "dowry" any property or valuable security should be 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 said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd., AIR (1996) SC 3509 and Chemicals and Fibres of India v. Union of India, AIR (1997) SC 558).”

7. In any case, to hold an accused guilty of both the offences under Sections 304B and 498A, IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we find that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased. On the other hand, DW1 in his evidence has stated that on 4.4.1999, the day when the incident occurred, he went to the nearby temple along with his mother (A2) and his father (A3) went to the bazar to bring ration and his wife (deceased) alone was present at the house and at about 1.00 p.m., they were informed by somebody that some smoke was coming out from their house and their house was burning. Immediately he and his mother rushed to their house and by that time there was a huge gathering at the house and the police was also present. He and his family members were arrested by the police and after one month they were released on bail. What DW1 has further stated is relevant for the purpose of his defence and is quoted hereinbelow:

“While cleaning our house we found a chit on our dressing table. The said chit was written by my wife and it is in her handwriting and it also contains her signature. Ex. D 19 is the said chit. I identified the handwriting of my wife in Ex. D19 because my wife used to write chits for purchasing of monthly provisions as such on tallying the said chit and Ex. D19 I came to know that it was written by my wife only. Immediately I took the Ex. D19 to the P.S. Mangalhat and asked them to receive but they refused to take the same.” From the aforesaid evidence, it is clear that while cleaning the house the appellant came across a chit written in the handwriting of his wife and containing her signature. This chit has been marked as Ext. D19 and the appellant has identified the handwriting and signature of the deceased in Ext. D19 which is written in Hindi. The English translation of Ext.D19 reproduced in the impugned judgment of the High Court is extracted hereinbelow:

“I, Meenakshi W/o Vipin Kumar, do hereby execute and commit to writing this in my sound mind, consciousness and senses and with my free will and violation to the effect that nobody is responsible for my death. My parents family members have harassed much to my husband. I am taking this step as I have fed up with his life. Due to me the quarrels are taking place here, as such I want to end my life and I beg to pardon by all.” It appears from Ext. D19 that the deceased has written the chit according to her free will saying that nobody was responsible for her death and that her parents and family members have harassed her husband and she was taking the step as she was fed up with her life and because of her quarrels were taking place.

8. When the appellant, who is the husband of the deceased, has said in his evidence as DW1 that the aforesaid chit (Ext. D19) has been written by the deceased herself and has been signed by her and it also appears from his evidence quoted above that he was acquainted with her handwriting and signature, the Trial Court and the High Court could have recorded a finding one way or the other by comparing her handwriting and signature with some of her other handwritings and signatures under Section 73 of the Evidence Act. In the alternative, the Trial Court and the High Court could have sought for an expert's opinion under Section 45 of the Evidence Act on whether the handwriting and signature were that of the deceased. But unfortunately, neither the Trial Court nor the High Court have resorted to these provisions of the Evidence Act and instead by their own imaginary reasoning disbelieved the defence of the appellant that Ext.D19 could not have been written by the deceased.

9. In our considered opinion, the evidence of DW1 (the appellant) and Ext.D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry. In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A, IPC.

Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, IPC has been made out by the prosecution.

10. We accordingly allow this appeal, set aside the impugned judgment of the High Court and that of the Trial Court and direct that the bail bond furnished by the appellant shall stand discharged.

.....J. (A.K. PATNAIK)J. (SUDHANSU JYOTI MUKHOPADHAYA)
NEW DELHI, MARCH 13, 2013