

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29TH DAY OF JULY 2010

P R E S E N T

THE HON'BLE MR.JUSTICE K.SREEDHAR RAO

A N D

THE HON'BLE MR.JUSTICE JAWAD RAHIM

CRL. APPEAL NO. 672/2004

C/W CRL.A 1625/2003

IN CRL.A NO.672/2004

BETWEEN:

STATE OF KARNATAKA
REPRESENTED BY
MICOLAYOUT POLICE

... APPELLANT

(BY SRI BHAVANI SINGH, SPP)

AND:

1. KHALEEMA,
W/O ASLAM PASHA,
AGED ABOUT 40 YEARS
2. ASLAM PASHA,
S/O SYED YAKOOBA SAB,
AGED ABOUT 38 YEARS,
3. BABAJAN,
S/O ASLAM PASHA,
AGED ABOUT 20 YEARS

ALLTHE ACCUSED ARE RESIDENTS



OF 1ST CROSS RAOD, 2ND MAIN ROAD,
HOLEGURAPPANAPALYA,
BANGALORE CITY

... RESPONDENTS
(BY SRI S.A.KHADRI,ADV.)

THIS APPEAL IS FILED UNDER SECTION 378(1) & (3)
OF CR.P.C PRAYING TO GRANT LEAVE TO FILE AN APPEAL
AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL
DATED 10-10-2003 PASSED BY THE XXV ADDL. CITY S.J.,
BANGALORE, IN S.C.NO.331/01 THEREBY ACQUITTING THE
RESPONDENTS - ACCUSED FOR THE OFFENCES
PUNISHABLE U/Ss 498A & 302 R/W SEC.34 OF IPC AND
SEC 3 AND 4 OF D.P.ACT.

IN CRL.A NO.1625/2003

BETWEEN:

1. ASLAM PASHA,
S/O SYED YAKHUB SAB,
AGED ABOUT 50 YEARS,
2. BABAJAN,
S/O ASLAM PASHA,
AGED ABOUT 22 YEARS

BOTH ARE R/A 2ND MAIN, 1ST CROSS,
OLD GURAPPANAPALYA, BANGALORE

... APPELLANTS
(BY SRI S.A.KHADRI, ADV.)



AND:

THE STATE OF KARNATAKA
BY MICOLAYOUT POLICE
B.T.M LAYOUT,
BANGALORE - 560 011

... RESPONDENT

(BY SRI BHAVANI SINGH, SPP)

THIS APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C BY THE ADVOCATE FOR THE APPELLANTS AGAINST THE JUDGMENT DATED 10-10-2003 PASSED BY THE XXV ADDL. CITY S.J., BANGALORE IN S.C.NO.331/2001, CONVICTING THE APPELLANTS-ACCUSED NO.2 FOR THE OFFENCE P/U/S 4 OF THE D.P. ACT AND ACCUSED NO.3 FOR THE OFFENCE P/U/S 3 OF THE D.P. ACT AND U/S 498-A OF IPC & SENTENCING A-2 TO UNDERGO S.I. FOR ONE YEAR AND TO PAY FINE OF RS.2000/- I.D., TO UNDERGO S.I. FOR 2 MONTHS FOR THE OFFENCE P/U/S 4 OF THE D.P. ACT AND SENTENCING A-3 TO UNDERGO S.I. FOR 5 YEARS AND TO PAY FINE OF RS.15,000/- I.D., TO UNDERGO S.I. FOR ONE YEAR FOR THE OFFENCE P/U/S 3 OF THE D.P. ACT AND FURTHER SENTENCING A-3 TO UNDERGO S.I. FOR 2 YEARS AND TO PAY A FINE OF RS.1000/- I.D., TO UNDERGO S.I FOR ONE MONTH FOR THE OFFENCE P/U/S 498-A OF IPC. IT IS ORDERED THAT BOTH THE SUBSTANTIVE SENTENCES SHALL RUN CONCURRENTLY, ETC.,

THESE APPEALS COMING ON FOR FINAL HEARING THIS DAY, **JAWAD RAHIM J**, DELIVERED THE FOLLOWING:



J U D G M E N T

These two appeals are directed against the Judgment dated 10-10-2003 in S.C. No.331/2001 on the file of the XXV Addl. Session Judge, Bangalore City.

2. CrI.A No.672/04 is by the State, questioning the acquittal of the accused No.1 for the offence punishable under Section 302 IPC and also acquittal of the accused No.2 and 3 for the offence punishable under Section 498-A IPC. The accused No.2 and 3 are also in appeal against their conviction for the offence punishable under Section 3 and 4 of the Dowry Prohibition Act.


3. Necessarily both the appeals are clubbed and we have heard the learned SPP Mr. Bhavani Singh for State and learned counsel Sri Khadri for accused.

4. Certain facts needing reference as manifest from the records are:

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a) Javeeda was married to the accused No.3 - Babajan according to Islamic rites after meeting demand of dowry in cash of Rs.60,000/- and jewelry valued at Rs.40,000/-. After marriage Javeeda entered matrimony in the house occupied by the accused in Vijayapura, Devanahalli Taluk, Bangalore Rural District. Accused No.3 - Babajan is driver of autorickshaw and eaks his livelihood, while his father accused No.2 - Aslam Pasha and other family members are engaged in sericulture for their survival.

b) Javeeda suffered burn injuries at around 2-30 PM on 04-03-2001 and she was rushed to Victoria Hospital for treatment. Dr S.Mathivannan - PW19 admitted the patient and recorded the nature of injuries suffered by her and sent a memo to the jurisdictional Police Officer. In response to the said memo sent by PW19, the Police Officer of MICO Layout Police Station rushed to the ward where Javeeda was admitted for treatment and obtained opinion of the doctor and recorded her statement between 4-15PM and 5-00PM on the same day vide exhibit P.5



c) In her statement Javeeda revealed facts relating to her personal life after marriage, about dowry demanded and given and how she was harassed by all the three accused in relation to demand of dowry. She also revealed that on 03-03-2001 accused No.3 had brought her from her parents' house on the pretext of participating in the Id-ul-zoha festival. She has child aged six months. At around 2-30PM her father-in-law, who is accused No.1, her husband and mother-in-law, questioned her as to why she has returned without bringing dowry demanded. So saying it is alleged, accused No.1 (mother-in-law)-Khaleema poured kerosene on her and set fire, consequent to which she suffered burn injuries while her husband and father-in-law were out side the place of occurrence. In this regard the Medical Officer, who has attended upon her has recorded history as given by the patient vide Ex.P7. The statement recorded by police officer is subsequent to the first statement given by the victim to doctor but reveal similar facts.

d) On that basis FIR was registered for the offence punishable under Section 498-A, 307 IPC and Section 3 and

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4 of the Dowry Prohibition Act. Javeeda during treatment could not recoup and succumbed to the same on 12-03-2001, consequent to which FIR was converted for the offence punishable under Section 302 IPC, retaining other two charges. During further investigation Investigating Officer has visited place of occurrence, examined the situs, seized the kerosene can and other articles used for setting fire to the victim. He also questioned the PW1 and some of the witnesses living in the neighbourhood who spoke what they saw at relevant time when the incident occurred. Charge sheet was filed consequent to which all the accused were arraigned for the said offences and put to trial.

e) During trial prosecution has examined in all 21 witnesses and placed reliance on 15 documents and two material objects. The accused on their part denied the allegations against them as also charge and to prove their defence of innocence, paraded two witnesses namely, Rihanabanu and Basha Sab.

f) The learned trial Judge considering the evidence on record disbelieved the dying declaration given by the



deceased vide Ex.P5 and accepted the testimony of the witnesses, who had turned hostile and recorded acquittal in favour of accused No.1-Khaleema for the offence punishable under Section 302 IPC. Similarly, he acquitted accused No.2 and 3 for the offence punishable under Section 498-A but found them guilty of charge for the offence punishable under Section 3 and 4 of the D.P. Act.

g) The State has thus questioned the acquittal of the accused No.1 for principle charge under Section 302 IPC as also accused No.2 and 3. Accused No.2 and 3 have questioned their conviction for the offence punishable under Section 3 and 4 of D.P. Act.

5. The learned Government Pleader Mr. Bhavani Singh has taken us through the evidence on record in supplementation to his contention that the acquittal of accused No.1 is most unjust and untenable.


6. Per contra, in negation of what is urged by Mr. Bhavani Singh, learned counsel Mr. Khadri, for accused seriously questioned the authenticity of the dying



declaration Exhibit P5. He placed reliance on the evidence of PW1 to set up alibi in respect of accused No.1. He would also contend that the parents of the deceased who have spoken to about deceased having given elaborate statement when they visited her house. The same has now been used as dying declaration. Supporting the reasons assigned by the learned Sessions Judge, he seeks dismissal of the State appeal and also seeks acquittal of accused No.2 and 3 for the offences punishable under Sections 3 and 4 of D.P. Act, on the ground that there is no material with regard to demand of dowry and dowry having been paid.


7. We have bestowed our serious concern to the grounds urged and have examined the evidence in supplementation thereto.

8. We are dealing with a case relating to crime in matrimony. Undoubtedly, the incident has occurred in the close corners of the house where deceased, her husband and in-laws lived. The time of occurrence is at around 2-30PM as per the evidence given by PW1-Sharada on whose evidence accused have placed reliance. She claims to be



present in the house of the victim and also claims to have seen the victim running out of the house with burn injuries. It is material to note that she tends to testify that accused No.1-Khaleema was carrying child of the deceased and was in her company. After seeing victim coming out of the house she rescued her.

9. It is material to note that she has shown total adverse animus to the prosecution case, has not been treated hostile. We have therefore, examined the statement recorded by the Investigating Officer under Section 161 Cr.P.C. and we are satisfied she has stated that accused No.2 and 3 were out of the house while accused No.1 was at the place of occurrence, whereas in the evidence before the court she has stated different version. The learned Prosecutor who conducted the trial has not sought permission to treat her hostile or to cross-examine her with reference to the statement given by her during investigation. This aspect was not noticed by the learned Sessions Judge while examining her.




10. We shall make reference to it again in the subsequent paragraphs, but at this stage it is necessary to examine what PW1 has said in her evidence. She, in unequivocal terms, stated that when she was sitting in front of her house, the deceased ran out of her house with burn injuries. Thereafter victim was rushed to hospital. PW19- Dr.Manivannan, who has examined the victim immediately after the incident at hospital, in clear terms, has recorded the history given by the victim. The history is that her mother-in-law (accused no.1) poured kerosene on her and lit fire to her. This is the first record of the incident by the medical officer as to what the victim stated before him and thus requires to be given due credence. We find no reason to disbelieve this piece of evidence.

11. Besides PW19 has been examined by the prosecution as its witness and from the said evidence it is proved that the victim was set fire by the accused No.1. There is an entry in the MLC register also to this effect. These aspects clearly establish the history given by the

victim is she was set afire by her mother-in-law, who is accused No.1.

12. The second aspect is about the statement given by victim which is now used as dying declaration. PW19 attested the statement given by the deceased in which there is direct attribution of setting fire to her by her mother-in-law (accused no.1). We have examined the details in the history given by the victim. When the case rests on the statement given by the victim regarding cause for her death, it is admissible under Section 32 of the Evidence Act and undoubtedly if it is found to be the statement given by the victim it would be important material regarding the cause of her death.

13. However, to ensure as to whether the statement is given really by the deceased, we have examined the evidence of Medical Officers as also Investigating Officer, who has recorded the statement. Two things are manifest very clearly. First is the victim suffered injuries at 2-30PM and the statement has been recorded between 3-00PM and 3-45PM on the same day without loss of time. Further, the



details of her marriage, particulars of her parents, birth of child, circumstances in which she returned to her parents' house are personal it could be only within the knowledge of the victim.


17. The evidence of PW19 was mainly considered by the learned trial Judge to disbelieve the dying declaration. The reasons assigned by the learned trial Judge are totally erroneous and contrary to the evidence on record. Besides, we do not find any reason to disbelieve the version of PW1 that victim had given statement, which he has attested. Likewise, we do not find any circumstances to disbelieve the statement of Police Officer who recorded the same. The contention of the learned counsel for accused that the statement is not in the question and answer form and therefore, it suffers from procedural irregularity, are not sustainable and liable to be discounted.

18. In the case of this nature whether the victim has suffered such a serious injury, what she revealed to the Medical Officer is relevant. It is on record. The statement is recorded with the permission of the doctor by the police

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officer. Thus non-summoning of Executive Magistrate to record statement was not necessary so long it is shown that statement is given by the victim deceased herself.

19. We are therefore, satisfied that the statement given by the victim revealing cause of death and as she has in unequivocal terms named accused No.1 directly inculcates the accused No.1 as the author of injuries sustained by her and further it is the cause for her death. The second aspect learned counsel urged is that the victim had suffered 80% burn injuries and at that stage she could not have given the statement, which is later treated as dying declaration. This contention also needs to be discounted, because the evidence of PW19 is very clear that the victim was in a good frame of mind when she has given statement and recorded by the Police Officer. Doctor has also certified her fitness to give statement. Therefore, the statement of doctor that victim had given statement cannot be disbelieved merely because she has sustained 80% injuries. Besides victim had survived for more than 8 days.



20. In the circumstance, we find justification to accept dying declaration as authentic statement of the victim, in the absence to other material to contrary. When accused were questioned under Section 313 Cr.P.C. statement accused have failed to give any explanation as to under what circumstances the victim has suffered injuries. Therefore, we accept the statement given by the victim as dying declaration relating to cause of death and we are satisfied that establishes her homicidal death. Therefore, the finding recorded by the learned trial Judge unjustifiably rejecting dying declaration is totally unsustainable and hence we reverse the said finding. Besides the very fact that in dying declaration she has excluded her husband and father-in-law shows honesty of the victim in giving statement and a true version.

21. Now, we come to the charge under Section 498-A IPC. The dying declaration of the deceased apart from revealing the cause of her death discloses that the accused No.1 to 3 had from the time of marriage harassed her for bringing additional dowry. Ill-treatment meted out



to her as spoken to by her reveals that the accused tortured her and sent her to her parents house to bring additional dowry. All the accused have also physically and mentally harassed her regarding dowry. The fact that consequent to such demand accused No.1 indulged in barbaric act and he was joined by accused No.2 and 3 establishes charge. Therefore, accepting the statement given by the deceased in her dying declaration about overt acts of all the three accused we feel that there is sufficient material to convict them for the offence punishable under Section 498-A IPC. Therefore, we convict accused No.1 to 3 for the offence punishable under Section 498-A IPC.

22. Besides, in view of the direct evidence relating to demand of dowry and parting of the money by the victim, there is sufficient material to convict the accused No.1 for the offence punishable under Section 3 and 4 of the D.P. Act. The grounds urged by the accused No.2 and 3 to seek acquittal for the offence punishable under Section 3 and 4 of the D.P. Act, is certainly unacceptable and we do not find any material or circumstances accrues to their benefit to



grant acquittal. Consequently, accused No.1 is convicted for the offence punishable under Section 302 and 498-A of IPC and Sections 3 and 4 of the D.P. Act and we confirm the conviction recorded by the trial Court against accused No.2 and 3 for the said offence.

23. In the result, we convict accused No.1 for the offence punishable under Section 498-A and 302 IPC and we also convict her for the offence punishable under Section 3 and 4 of the D.P. Act. The punishment for the offence punishable under Section 302 IPC is capital punishment or imprisonment for life. Considering the circumstances in which the incident occurred and also the fact that Javeeda died within 1 ½ year of marriage and the victim had six months child and other attending circumstances we impose punishment of imprisonment of life upon accused No.1.

24. As regards offence under Section 498-A IPC, we sentence accused No.1 to 3 to undergo imprisonment for a period of two years. The order regarding sentence passed by the learned trial Judge shows accused No.2 having been convicted for Section 4 D.P. Act are sentenced of simple



imprisonment for a period of one year and to pay a fine of Rs.2,000/-. Accused No.3 having been found guilty for the offence punishable under Section 498-A IPC and Section 3 of the D.P. Act and has been sentenced to undergo simple imprisonment for a period of five years and to pay fine of Rs.15,000/- for the offence punishable under Section 3 of the D.P. Act and further sentenced to two years with Rs.1,000/- fine for the offence punishable under Section 498-A IPC with default clause. The said sentence passed by the learned trial Judge is very liberal.

25. In the result, having found accused 1 to 3 guilty of the offence punishable under Section 3 and 4 of D.P. Act we sentence each of them to simple imprisonment for a period of five years and to pay fine of Rs.15,000/-, which is statutory minimum and for the offence punishable under Section 4 of the D.P. Act, we sentence each of them to undergo simple imprisonment for a period of six months.

26. Accused No.1 to 3 are directed to surrender before the trial Court to undergo sentence. They shall pay fine failing which they shall undergo default sentence of



simple imprisonment for a period of six months on each count. The sentence imposed upon the accused shall run concurrently and the period of imprisonment already undergone by them shall be set off as permissible under Section 428 Cr.P.C.

27. In the result, Criminal Appeal No.672/2004 filed by the State shall succeed in terms stated above and Criminal Appeal No.1625/2003 filed by the accused is hereby rejected. Copies of the order to be furnished to the convicted accused through their learned counsel who has represented them in these appeals.

Sd/-
JUDGE

Sd/-
JUDGE

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