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**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 30TH DAY OF AUGUST 2011

BEFORE

THE HON'BLE MR.JUSTICE B.V.PINTO

CRIMINAL APPEAL No.552/2006

BETWEEN:

Smt. Shanta, W/o. Bahu Malaganvi,
Age: 56 years, Occ.: Household work,
R/o. Annapur village, Taluk: Athani,
District: Belgaum.

...Appellant

(By Shri Ravi B. Naik, Senior Advocate and
Shri J. Basavaraj, Advocate)

AND:

The State of Karnataka,
Represented by its
State Public Prosecutor,
High court of Karnataka,
Bangalore – 560 001.

...Respondent

(By Shri Anand Kumar Navalgimath, H.C.G.P.)

This criminal appeal is filed under Section 374 of the Code of Criminal Procedure by the Advocate for the appellant against the judgment dated 14.02.2006 passed by the Presiding Officer, Fast Track Court – I, (District and Sessions Judge) Chikodi, Belgaum District in Sessions Case No.184/2004, convicting the appellant – accused for the offence punishable under Section 4 of Dowry Prohibition Act and Sections 498(A) and 304(B)

[Signature]

of the Indian Penal Code sentenced the accused to undergo rigorous imprisonment for seven years.

This criminal appeal coming on for hearing this day, the Court delivered the following: -

JUDGMENT

This appeal is filed challenging the judgment dated 15.02.2006 passed by the Fast Track Court – I, Chikodi, in Sessions Case No.184/2004 convicting the appellant for the offences under Sections 498(A) and 304(B) of the Indian Penal Code and Section 4 of the Dowry Prohibition Act and sentencing her to undergo rigorous imprisonment for seven years.


2. It is the case of the prosecution that the deceased Sangeeta was married with the son of the appellant by name Gajanan on 07.04.2003 at Ainapur and at the time of marriage, the appellant received ½ thola gold ring, one watch and Rs.1,500/- for clothes from the parents of deceased Sangeeta, thereby she is alleged to have committed an offence under Section 3 of the Dowry Prohibition Act.



3. It is further alleged that being the mother-in-law of Sangeeta, the appellant had subjected Sangeeta to harassment and ill treatment by demanding Rs.2,000/- dowry from the parents of Sangeeta and thereafter, she has received a sum of Rs.15,000/- from the parents of Sangeeta and after the death of the deceased, the said property has not been handed over to the legal heirs of the deceased Sangeeta, thereby the appellant is alleged to have committed the offences under Sections 4 and 6 of the Dowry Prohibition Act.

4. It is further alleged that the deceased Sangeeta was subjected to ill treatment by the appellant after her marriage with the son of the appellant by name Gajanan, which has caused her to commit suicide or to cause grave injury or danger to her life, thereby the appellant is alleged to have committed an offence under Section 498(A) of the Indian Penal Code.


5. It is further alleged that on 14.09.2003 at about 05:00 p.m., the deceased Sangeeta committed suicide



by pouring kerosene on her body and thereafter setting fire on her body and she died in the Sangli Hospital, thereby, it is alleged that the appellant has abetted the commission of suicide by the deceased, thereby she is alleged to have committed an offence under Section 306 of the Indian Penal Code.

6. It is further alleged that after marriage of the deceased Sangeeta with the son of the appellant, the deceased was subjected to ill treatment and harassment for bringing additional dowry soon before her death and thereafter, on 14.09.2003, the deceased died due to the said cruelty committed by the appellant. Hence, the appellant is alleged to have committed an offence of dowry death punishable under Section 304-B of the Indian Penal Code.

7. The prosecution in order to prove the case has examined in all 22 witnesses, P.Ws.1 to 22, got marked Exs.P-1 to P-22 and produced M.Os.1 to 3. The defence of the accused was one of the total denial. However by



the impugned judgment, the learned Sessions Judge pleased to convict the appellant as aforesaid and sentenced him. The convicted appellant has filed this appeal.

8. Heard Shri T.Basavanagoud, the learned counsel appearing for the appellant-accused and Shri Anand Kumar Navalgimath, the learned High Court Government Pleader appearing for the respondent - State.

9. The learned counsel for the appellant submits that apart from the evidence of P.Ws.1 and 2, there are no other witnesses supporting the case of the prosecution. He submits that the learned Sessions Judge has relied on the statement said to have been recorded by the Doctor - P.W.10 in the Sangli Hospital. He submits that having regard to the percentage of burn injuries sustained by the deceased Sangeeta, she could not have given statement of the nature and type of Ex.P-17 and therefore, he submits that the learned Sessions

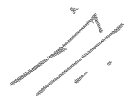


Judge has based his judgment on the other evidence on record. He submits that the evidence of P.Ws.1 and 2, the parents of the deceased clearly indicates that the deceased was suffering from some type of mental illness and that she was not given any ill treatment by the appellant. From the evidence of the witnesses that the deceased had the habit of walking away in the night and going out of the house during night hours and that also she was not having control over the dress worn by her it indicates that the deceased was not mentally sound. P.Ws.1 and 2 being the parents of the deceased, the evidence tendered by them clearly indicates that the deceased had no control over her senses and that the conviction based on the evidence of P.Ws.1 and 2 and the statement of the deceased cannot be sustained. It is further submitted by him that it is the case of the prosecution that the accused demanded a sum of Rs.2,000/- for the purpose of repairing the house. It is submitted that relying on the decision of the Supreme Court reported in **2007 AIR SCW 456** (*Appasaheb &*



Another v. State of Maharashtra), the said demand, even if admitted would not amount to demand of dowry, so as to attract the provisions of Section 304(B) of the Indian Penal Code. Under the circumstances, he submits that the evidence does not lead to the conviction and hence, he prays that the appellant may be acquitted by allowing the appeal. He further submits that the deceased was in the house of her parents at the time of commission of suicide and two months prior to the date of commission of suicide and therefore, the word 'soon before the death' also is not attracted in this case.

10. The learned High Court Government Pleader on the other hand submits that the deceased Sangeeta has been tested by PW10 – Dr.Prashant and it is stated in the statement of the deceased, which qualifies to be a dying declaration that the appellant was pestering her to bring a sum of Rs.2,000/- from her parents house and therefore, this indicates that there was cruelty exercised on the deceased for bringing dowry amount



soon before her death and hence the offence under Section 304B IPC is clearly made out. Hence, he submits that the appeal may be dismissed.

11. The prosecution in this case commenced with the registration of the statement of the deceased Sangeeta, recorded in the Sangli Hospital and was forwarded to Kagwad Police Station by the Vishram Bhag, Police Station Sangli on 16.09.2003. The Kagwad Police Station registered the said statement of the deceased Sangeeta in Crime No.75/2003 on 16.09.2003 for the offences punishable under Sections 498(A) and 306 of the Indian Penal Code. In the statement recorded by the doctor at the Sangli Hospital, it is stated by the deceased that she is residing along with her husband and mother-in-law since five months from the date of marriage. She has studied up to 9th standard and her native place is Modagi village and her father's name is Shri Shankar Kallappa Balikai. About two months prior to the said complaint, she had gone to her parents house. Her husband is working in the field.



Since she was not well, she had gone to her parent's house. It is stated in the complaint that after her husband goes out of the house, the appellant Shantabhai was demanding from her a sum of Rs.2,000/- for the purpose of setting the house and was asking her to bring it from her parent's house and in this connection, she was assaulting her. On 04.09.2003 at about 5:00 p.m., when she was in her parent's house, she was disgusted because of the ill treatment by her mother-in-law. Hence, she took the kerosene oil from the can, put the kerosene on herself and then she herself has lighted the match and set herself on fire. Her saree was burnt and she also sustained injuries. At that time, she started crying and her mother came near her and put a chadder on her and extinguished the fire. Thereafter, she was removed to Sangli Government Hospital in a jeep and she is now taking treatment in the hospital. She has stated that she is in full sense and she is able to reply to the doctor who is present before her. She has stated that she is giving a



complaint against her mother-in-law Shantabai. The said statement recorded from the deceased Sangeeta is taken down in Marathi language and a copy thereto is produced by the prosecution along with the charge sheet. It is further seen that the deceased died in the hospital on the same night at about 12:30 a.m. on 05.09.2003 as per the intimation sent by the hospital.

12. After completion of investigation, the Kagwad Police filed the charge sheet for the offences mentioned above.

13. P.W.1 - Shankar Kallappa Balikai is the father of the deceased. He has reiterated the version contained in the complaint regarding the demand of Rs.2,000/- by the accused and the fact that his deceased daughter was coming to their house for taking treatment. It is also mentioned that at an earlier occasion, the deceased was sent to their house, but after keeping for four days, the deceased was taken back to the house of the appellant and they had



requested the accused to treat the deceased cordially. Thereafter, the deceased and his wife were in hospital for about 15 days. Later, again when her daughter was sent to the house of the accused, it was disclosed that her daughter had become mentally ill (mad). Again the deceased was taken to Miraj Hospital for treatment. After discharge from the hospital, the deceased was in their house and on the date of incident at about 05:00 p.m., on hearing the screaming sound of her daughter, she went near the house and found that her daughter had poured kerosene on herself and has set fire on herself. In the cross-examination, it is elicited that the Ghatage hospital in Miraj is a mental hospital and that 1½ months after the marriage, the deceased was being treated in the said mental hospital. It is further elicited in the cross-examination that the deceased-daughter was coming to the house once in four days, since her mind was not alright and was again going back to her husband's house. It is suggested to P.W.1 that due to the mental illness of the deceased, she has committed



suicide and not because of the alleged cruelty meted out by the accused.

14. PW2 - Laxmibai is the mother of the deceased. She has stated that accused was giving ill-treatment to her daughter and that being unable to tolerate the ill treatment, her daughter had come back to the house and has committed suicide by pouring kerosene on herself. In the cross-examination, she has admitted that the deceased was treated in the Ghatage Hospital, which is a mental hospital. She has further admitted that the deceased was kept in the hospital for 15 days and thereafter, there was continuation of the treatment for the mental ailment. The doctor had informed them that the mind of the deceased is spoiled and thereafter, they were told to take care of her. It is further elicited in the cross-examination of P.W.2 that her daughter was getting up in the nights and was moving around outside and also she was taking up articles from the house and was throwing. Hence, she was being brought back to the house on all such



occasions. It is suggested to P.W.2 that the deceased had committed suicide due to her mental ailment and not because of any harassment or ill treatment by the accused. P.Ws.3, 4, 5, 6, 7, 8, 9, 14 and 15 have turned hostile to the case of the prosecution, their evidence is of no use. However, the learned Session Judge has referred to the evidence of the hostile witnesses for the purpose of conviction.

15. P.W.10 – Dr. Prashant has stated that he is working as a Medical Officer in the Government Hospital, Sangli. On 14.09.2003 at about 07:00 p.m., the deceased was brought with burn injuries. The deceased had sustained 99% of burn injuries on her body. However, he has stated that the deceased was in a position to talk. One Police Constable came and questioned him as to whether the deceased is in a position to give statement for which he has given an endorsement in the positive. Thereafter, the statement of the deceased was recorded. Ex.P-10 is the endorsement given by him. He has also identified the



Left Thumb Impression of the deceased. Ex.P-10 is found in Ex.P-17, which is the statement of the deceased recorded in Marathi language. It is suggested to P.W.10 that a patient sustaining 99% burn injuries would not be in a position to give any statement. But the said suggestion has been denied by P.W.10 stating that it all depends on the capacity of individual and no hard and fast rule can be laid down in respect of the said statement. P.W.11 – Dattatray Nana Mane is the Deputy Tahasildar, Miraj. He has conducted the inquest proceedings on the dead body of the deceased. P.W.12 – A.R.Bhosale is the Assistant Sub-Inspector, of Vishrambhag Police Station, Sangali. He has taken charge of the dead body after post-mortem and handed over the same to the relatives of the deceased. P.W.13 – Anand Rama Satyamurthy is a Police Constable who has assisted in the process of investigation. PW16 – Maruti Krishna Shindhe is the Assistant Sub-Inspector of Sangli Police Station. He has recorded the dying declaration of accused as per Ex.P-17. He has identified



his signature as Ex.P-17a and the Left Thumb Impression of the deceased in the said Ex.P-17. It is suggested to him that a false statement is prepared by him at the request of the family members of the deceased. P.W.17 and P.W.18 are the Police officials who have taken part in the investigation. P.W.19 is the Deputy Superintendent of Police who has received the post-mortem report and submitted the charge sheet in this case. P.W.20 is the Police Sub-Inspector who has sent the First Information Report to the Court. P.W.21 Dr. Prakash More has stated that on 15.09.2003, he has conducted the post-mortem examination on the dead body of the deceased. P.W.22 is the retired Deputy Superintendent of Police who has arrested the accused and sent the materials for Forensic Science Laboratory examination.

16. On a careful consideration of the entire materials on record, it is seen that, except P.Ws.1 and 2, there are no other witnesses who has supported the case of the prosecution regarding the ill-treatment or



harassment said to have been meted out to the deceased. So far as the said evidence of P.Ws.1 and 2 is concerned, they have stated that the deceased was suffering from mental illness and that at night times, the deceased was going alone outside the house and she was being secured inside by them. It is their specific case that the deceased was admitted in the Ghatage Mental Hospital, Miraj for 15 days at one stage and also she was under treatment for mental illness suffered by her. So far as the alleged demand of Rs.2,000/- is concerned, except the version of P.Ws.1 and 2, there is no other independent material to support the case of the prosecution. It is seen that the deceased had sustained 99% of burn injuries and so far as the statement said to have been recorded by the Constable from the deceased is concerned, it is in a narrative form and not in question and answer form.

17. Having regard to the fact that the deceased was already suffering from mental illness, the statement recorded as per Ex.P-7 creates doubt regarding the very



originality of it, since it took about more than two hours for the parents of the deceased to take the injured from their house to the Miraj Hospital and that deceased had suffered 99% of burn injuries. Under the circumstances, it is not safe to believe on the dying declaration said to have been recorded from the mouth of the Assistant Sub-Inspector of Vishrambhag Police Station without any other independent corroboration. However, it is in the evidence of the said Police that he has not requested the parents of the deceased to go out of the room while recording the dying declaration of the deceased.

18. Under the circumstances, there is doubt regarding the very facts mentioned in the dying declaration and in the absence of any corroborative evidence the dying declaration is not safe to be believed for the purpose of conviction. Further, the Supreme Court in the decision reported in **AIR 2007 SCW 456** in the case of (*Appasaheb & Another v. State of Maharashtra*) has observed that, if there is any demand



for money on account of financial stringency or for meeting urgent domestic expenses, it would not amount to demand for dowry. Basing on the said decision, I am of the opinion that the prosecution has not proved the case against the appellant beyond reasonable doubt and therefore, the appellant is entitled for an order of acquittal.

19. Accordingly, this appeal is allowed. The order of conviction and sentence recorded against the appellant is hereby set aside and the appellant is acquitted of the offences leveled against her. The bail bond executed by the appellant are discharged. The find amount, if deposited shall be refunded to her.

**Sd/-
JUDGE**

Rsh/Gab