

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.661 of 2007

ORDER:-

This Criminal Revision Case is filed under sections 397 & 401 Cr.P.C against the Judgment of the learned II Additional Sessions Judge, Warangal, dated 03.05.2007 in CrI.A.No.47/2006, by and under which, the conviction and sentence imposed by the trial Court was confirmed.

2. Heard the learned counsel appearing for the revision petitioners/A1 & A2 and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution is that A1 married one Swapna (PW 1) on 24.03.2002 and at the time of marriage, the parents of PW 1 gave dowry of Rs.1,30,000/- as demanded by the accused and also gave household articles and jewelry, total worth of Rs.3 lakh. A2 is the elder brother of A1, and A3 is the wife of A2 and both of them are living along with A1 under the same roof. After the marriage, all the accused started harassing PW 1 for additional dowry of Rs.1,00,000/- and on information, the parents and mediators requested the accused not to harass PW 1. It is further stated that the accused not yielded to the advise of the elders and one day they poured kerosene on PW 1 and tried to set fire and PW 1 escaped from the clutches of the accused. Basing on the complaint of PW 1, the Inthezargunj police registered a case against all the accused in Cr.No.98/2002 under sections 498-A and 506 IPC and under sections 3 & 4 of Dowry Prohibition Act, and after investigation, filed the charge sheet.

4. The trial Court had taken the case on file for the offence alleged against all the accused, and on appearance of the accused, they were examined under Sec.239 Cr.P.C, and the accused pleaded not guilty and claimed to be tried.

5. To bring home the guilt of the accused, the prosecution examined PWs 1 to 6 and got marked Exs.P1 to P55 on its behalf. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C putting all incriminating material available against them, but the accused denied the material evidence, but produced Exs.D1 to D3. No oral evidence is adduced on

behalf of accused.

6. On appreciation of oral and documentary evidence, the trial Court found A1 to A3 not guilty of the offences under section 498-A IPC, found A1 & A3 not guilty for the offence under Section 4 of Dowry Prohibition Act, found A3 not guilty for the offence under Section 3 of Dowry Prohibition Act, found A2 guilty of the offence under Section 4 of Dowry Prohibition Act, found A1 & A2 guilty of the offence under Section 3 of Dowry Prohibition Act, and accordingly, passed judgment as under;

- i. Acquitted A1 to A3 of the offence under Section 498-A IPC;
- ii. Acquitted A1 & A3 of the offence under Section 4 of the Dowry Prohibition Act;
- iii. Acquitted A3 of the offence under Section 3 of the Dowry Prohibition Act;
- iv. Convicted A2 of the offence under Section 4 of the Dowry Prohibition Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for two months;
- v. Convicted A1 & A2 of the offence under Section 3 of the Dowry Prohibition Act and sentenced them to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.65,000/- each, in default to suffer simple imprisonment for two months each.
- vi. It is ordered that all the sentences shall run concurrently;

7. The petitioners/A1 & A2 challenged the conviction and sentence passed by the trial Court in CrI.A.47/2006. The criminal appeal was dismissed confirming the judgment of the trial Court, however, the fine amount of Rs.65,000/- each payable by A1 & A2 is converted into compensation to PW 1.

8. Aggrieved by the same, the petitioners/A1 & A2 filed the present criminal revision case, contending that the Courts below failed to see that there are no ingredients to constitute the offence alleged, that the Courts below failed to see that PWs 1 to 3 are interested witnesses and there is no independent evidence, and that having found that there is no harassment on the part of the accused for

additional dowry, the Courts below ought to have acquitted the accused for the offence under sections 3 & 4 of Dowry Prohibition Act.

9. The point for consideration is as to whether the prosecution has proved its case against the accused insofar as the offences punishable under Sections 3 and 4 of the D.P.Act is concerned, so as to sustain the conviction or whether it needs to be modified, set aside or varied?

10. As already noticed, the original complaint was filed by the wife of A.1 (PW.1) on 01-05-2004, alleging offences punishable under Sections 498-A and 506 I.P.C., and Sections 3 and 4 of the D.P.Act. The learned trial Magistrate has acquitted all the accused of the offence punishable under Section 498-A I.P.C., but however convicted A.1 and A.2 for the offences punishable under Sections 3 and 4 of the D.P.Act. The appellate Court confirmed the same with minor modification as stated supra. Therefore, the evidence, both oral and documentary, insofar as it is with reference to the offence punishable under Section 498-A I.P.C., need not be looked into.

11. Sections 3 and 4 of the D.P.Act read as under:-

“3. Penalty for giving or taking dowry:-

1. If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.

Provided that the Court may, for adequate and special reasons to be recorded in the Judgment, impose a sentence of imprisonment for a term of less than five years.

2. Nothing in sub-section (1) shall apply to, or in relation to –
 - a. presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf:

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

- b. presents which are given at the time of a marriage to the bridegroom with the rules made under this Act;

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

4. Penalty for demanding dowry:-

If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the Judgment, impose a sentence of imprisonment for a term of less than six months.”

12. It is, however, well settled that voluntary presents given at or before or after the marriage to bride or the bridegroom out of love and affection would not fall within the mischief of dowry.

13. As per the provisions of Section 8-A of the D.P.Act, the burden of proof that he had not committed an offence under these Sections shall be on the person prosecuted. However, the initial burden will always be on the person who complains about the violations of the provisions of the D.P.Act.

14. In the instant case, admittedly, PW.1 and A.1 were married on 24-03-2002. The marriage was settled by Rajan Babu, his wife Swarnalatha and one Venkat Swamy. PWs.2 and 3 are the parents of PW.1. PWs.4 and 5 are the persons who acted as elders after the disputes between A.1 and PW.1 started. Except for PWs.1 to 3 being the complainant and her parents, no other witness is examined to speak about the alleged demand and acceptance of the dowry. Even though voluminous documentary evidence is produced, the relevant document insofar as the present offence is concerned is Ex.P.3 which is dated 10-12-2000 said to have been signed by A.2 being the elder brother of the husband/A.1 and the father of PW.1. The witnesses to the said document are the elders who were present at the time of settling the marriage.

15. If the evidence of PWs.1 to 3 though interested is cogent and inspiring the confidence of the Court, the conviction of the accused can be sustained. If the primary evidence is not convincing, merely because there is some allegation, the accused cannot be called upon to disprove the allegation.

16. Upon perusing the evidence on record, I find the same to be suffering with material inconsistencies and not inspiring the confidence of the Court.

17. PW.1 is the wife. She deposed that before the marriage, talks took place between her parents and A.1 to A.3 through A.Rajan Babu, Swarnalatha and Venkat Swamy. She further deposed that the accused demanded Rs.1,35,000/-, ten tolas of gold, 20 tolas of silver, furniture and other household articles, in all worth about Rs.3,00,000/-. It is further in her evidence that the said talks were reduced into writing and the document was signed by Rajan Babu, A.2, her father, Jayaprakash, Lingaswamy. She further deposed that the cash, gold and silver were given on the date of engagement. In the cross-examination, she admits that after the engagement the marriage was performed one year thereafter in view of the death of the father of A.1. Therefore, the alleged cash, gold and silver articles are said to have been given by PW.2 to A.1 and A.2 more than one year prior to 24-03-2002 i.e., the date when the marriage was performed. She further admits that on behalf of the accused, one Balakrishna, the brother of A.1, gifted her gold ornaments.

18. In case of this nature, the evidence of the parents will be more relevant than that of the bride or the bridegroom. PWs.2 and 3 are the father and mother of PW.1 and it is in the evidence of PW.2 that Rajan Babu, Venkataiah and Damodar are the elders for the marriage and the panchayat. He further deposed that the marriage was performed on 24-03-2002 at Padmashali Bhavan, Warangal and prior thereto, marriage talks took place in the presence of Rajan Babu, A.2, Janardhan and Venkata Swamy. He further deposed that at the time of marriage talks, A.2 asked for dowry of Rs.1,30,000/-, 10 tolas of gold, 20 tolas of silver and household furniture worth Rs.50,000/-. He further deposed that he gave dowry, jewellery and articles 15 days prior to the marriage and at the time of the marriage, he gave the household articles. In the cross-examination, PW.2 admits that he is acquainted with the family of the accused since their childhood, that A.1 to A.3 demanded Rs.2,00,000/- and out of his

willingness, he agreed to give a cash of Rs.1,30,000/-, and out of that Rs.1,30,000/-, he purchased gold worth Rs.44,500/- and gave it to the accused. He further admits that on behalf of the accused, gold worth Rs.44,500/- was presented to his daughter-PW.1. He also admits that cash of Rs.88,500/- was given.

19. PW.3, who is the mother of PW.1, deposed that the accused, in the presence of the elders, demanded dowry of Rs.2,30,000/- and agreed for Rs.1,30,000/-, and out of the said amount, gold will be given. She further deposed that at the time of engagement, they gave 10 tolas of gold, 20 tolas of silver and Rs.85,000/- cash to the accused and the marriage was performed 15 days thereafter at Warangal.

20. From the above oral evidence, what is noticed is that there is inconsistency with regard to the amount demanded and paid by PWs.2 and 3 to the accused. As per PW.1, the demand was for Rs.1,35,000/- and it was agreed at Rs.1,30,000/-. According to PW.2, the accused demanded dowry of Rs.2,00,000/- and according to PW.3, the demand was Rs.2,30,000/-. Out of the said amount of Rs.1,30,000/-, according to PW.2, gold and silver was purchased and presented. With regard to the cash, only Rs.85,000/- was given to the accused. It is also admitted that the same quantity of gold which was given by PWs.2 and 3 to the accused was also given by the family members of the accused to PW.1 at the time of the marriage. Therefore, it is only a customary exchange of gifts out of love and affection and both the parties have gifted gold and silver articles to one another. With regard to giving of the cash, it is not clear as to when the amount was given. According to PWs.2 and 3, the cash was given 15 days prior to the marriage viz., 24-03-2002. However, the evidence on record is that more than a year prior thereto, there was an engagement, but however, the marriage was postponed in view of the unfortunate death of the father of A.1 subsequent to the engagement. According to PW.1, the cash was given to the accused at the time of engagement. It is not clear as to whether the alleged demanded amount of dowry was given about a year prior to the marriage at the time of engagement or 15 days prior to the marriage as claimed by PWs.2 and 3.

21. As already stated, excepting for these 3 witnesses, no other independent witness was examined even though it is specifically spoken to by all the witnesses that the marriage talks and negotiations took place in the presence of several persons more particularly Rajan Babu, Swarnalatha and Venkata Swamy. None of them are examined.

22. The material document that is relied upon by the prosecution to bring its charge against the accused is Ex.P.3, the execution of which is not seriously disputed. It is said to contain the signature of A.2 and PW.2 and the 3 other independent witnesses who however have not been examined. Ex.P.3 is dated 10-12-2000 i.e., nearly 15 months prior to the marriage. It is written on a plain paper and a perusal of the said document shows that both the parties have voluntarily agreed to give and take the cash and jewellery as under:-

1. A sum of Rs.1,30,000/- will be given to the bridegroom towards dowry;
2. Gold ring weighing half a tola will be given at the time of kanyadanam;
3. Out of the amount to be given to the bridegroom, 5% thereof should be utilized for the purpose of purchasing clothes to the bridegroom and for his mother;
4. One almirah, one fan, one double cot, Rs.500/- towards watch will be given; and
5. Steel and brass vessels will be given.

On behalf of the bridegroom, it was agreed that the bridegroom will give 8 tolas of gold jewellery to P.W.1 and they will also give ear studs, leg chains and one ring.

23. A perusal of Ex.P.3 shows that both the parties have agreed to give and accept the above items and it is not mentioned therein that as to when the articles will be given. However, the oral evidence is that some of the items were given at the time of engagement and the other at the time of the marriage. It may also be recalled that it is the specific admission of PW.2, the father of PW.1, that he willingly agreed for the above terms.

24. In view of the above, it cannot be said that the accused have committed offences punishable under Sections 3 and 4 of the D.P.Act. Both the Courts below have not appreciated the above aspects in proper perspective and erroneously convicted the petitioners/accused for the offences punishable under Sections 3 and 4 of the D.P.Act while acquitting them of the offence punishable under Section 498-A of I.P.C. The Judgments of both the Courts below therefore cannot be sustained and the same are liable to be set aside.

25. In the result, the Criminal Revision Case is allowed. Petitioners/A.1 and A.2 stand acquitted of the offences alleged. The bail bonds executed by the petitioners, if any, shall stand cancelled. The fine amount, if any, paid by the petitioners shall be refunded.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

November, 2015

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