

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No.1260 of 2009

JUDGMENT:

The appellant-State filed the present appeal by invoking the provision under Section 378(1) and (3) of the Code of Criminal Procedure, challenging the judgment dated 24.11.2006 in C.C.No.49 of 2002 on the file of the XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad, wherein and whereby the learned Magistrate acquitted the respondents/A1 and A3 for the offence punishable under Section 498-A IPC and under Sections 4 and 6 of Dowry Prohibition Act.

2. The case of the prosecution, in brief, is that on 24.08.2001 at 1245 hours, the de-facto complainant lodged a report stating that her marriage was performed with A1-Mohd. Younus on 08.05.1996 as per Muslim rites and customs, and at the time of marriage, her parents gave an amount of Rs.50,000/-, one alimrah, household articles and 10 tulas of gold. Thereafter, she joined with her husband and in-laws and later, her husband demanded her to bring dowry of Rs.50,000/- from her parents and when she expressed her parents inability, her husband and in-laws used to insult and abuse her in several times, due to the said harassment, her father gave an amount of Rs.3500/- to her husband. Even thereafter, her husband used to harass her physically and mentally by demanding additional dowry for establishment of a new shop and that even after the birth of a female child in the year 1999 and after a panchayat held by the elders, her husband failed to look after them, but the accused

demanding her to bring additional dowry of Rs.1.00 lakh or else her husband will marry another lady. Based on the said complaint, a case in Cr.No.80 of 2001 was registered for the offences under Sections 498-A IPC and under Sections 4 and 6 of Dowry Prohibition Act, against the accused.

3. Heard learned Assistant Public Prosecutor for the appellant-State, Sri A. Jeevan Kumar, learned counsel for the respondents/A1 and A3 and perused the record.

4. A perusal of the impugned judgment shows that the trial Court, while discussing with the evidence of the prosecution witnesses has rightly come to the conclusion that the evidence of P.Ws.1 to 4 is contradictory to each other with regard to the amount given as dowry, Jode-ki-rakham, gold ornaments and other household articles. P.Ws.1 and 2 have stated that as per the demand of the accused, they paid an amount of Rs.50,000/-towards Jode-ki-Rakham, one almirah, 10 tulas of gold ornaments and other household articles. P.W.3 stated that the parents of P.W.1 paid an amount of Rs.50,000/-towards Jode-ki-Rakham, 10 tulas of gold, jahez articles and furniture worth Rs.1.00 lakh. However, P.W.4 stated that the parents of P.W.1 have paid an amount of Rs.50,000/- towards Jode-ki-rakham, 10 tulas of gold and furniture to the accused. Thus, there are material contradictions in the evidence of all these prosecution witnesses regarding payment of cash towards Jode-ki-rakham, gold ornaments and other household articles and that there was no corroboration between the complaint and the

depositions of P.Ws.1 to 4, and that when these contradictions were pointed out to the Investigating Officer-P.W.5, he had categorically stated that the prosecution witnesses have not stated anything before him about the dowry, gold and household articles and he did not collect any documents from P.W.1 regarding payment of either dowry or gold or household articles. He further stated that Ex.P4-Marriage Booklet in Urdu did not contain the signatures of the accused, but there are two signatures, for which the accused stated that A2's signature was forged. However, the prosecution has not taken any steps regarding proof of those signatures on Ex.P4. Though panchayat was conducted between the de-facto complainant and the accused with the intervention of the elders of Masjid, the prosecution did not examine those elders. Thus, the trial Court, after evaluating the entire evidence available on record, has rightly acquitted the accused for the offences under Sections 498-A IPC and under Sections 4 and 6 of Dowry Prohibition Act. Therefore, I do not find any illegality or perversity in the findings of the trial Court.

5. In ***Mrinal Das v. State of Tripura***¹ the Apex Court held as under:

“It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any

¹ (2011) 9 SCC 479

limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

6. In ***Maloth Somaraju v. State of Andhra Pradesh***² the Apex Court held that there can be no two opinions that merely because the acquittal is found to be wrong and another view can be taken, the judgment of acquittal cannot be upset. The appellate Court has more and serious responsibility while dealing with the judgment of acquittal and unless the acquittal is found to be perverse or not at all supportable and where the appellate Court comes to the conclusion that conviction is a must, the judgment of acquittal cannot be upset.

² (2011) 8 SCC 635

The appellate Court has to examine as to whether the trial Court, while upsetting the acquittal, has taken such care.

7. In view of the judgments referred to above and having regard to the facts and circumstances of the case, I am of the view that there are no merits in the appeal and the same is liable to be dismissed.

8. Hence, the Criminal Appeal is dismissed confirming the judgment dated 24.11.2006 in C.C.No.49 of 2002 on the file of the XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad.

9. Miscellaneous applications, if any pending in this appeal, shall stand dismissed.

G. SRI DEVI, J

8th March, 2021

sj