

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**FRIDAY, THE TWENTY FOURTH DAY OF APRIL
TWO THOUSAND AND TWENTY**

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

CRIMINAL APPEAL NO: 1284 OF 2008

Criminal Appeal filed under Section 374 (2) of Cr.P.C against the Judgment made in S.C.No. 253 of 2008 on the file of the Court of the V Additional Metropolitan Sessions Judge, Hyderabad.

Between:

1. M. Sudarshan Goud, S/o late M.Buchaiah, Occ.Private Service, R/o H.No. 3-6-355/3, Chandra Nagar, Basheerbagh, Hyderabad
2. Smt. Somakka, W/o late M.Buchaiah, Occ.Attender R/o H.No. 3-6-355/3, Chandra Nagar, Basheerbagh, Hyderabad.
3. G.Hymavathi, W/o G.Venkanna Goud, Housewife, R/o H.No. 5-12-147, Mangapuram Colony, A.P.H.B. Moulali, Hyderabad.

...Appellants/ Accused No.1,2 and 4

AND

The State of Andhra Pradesh, represented by its Public Prosecutor, High Court of A.P., at Hyderabad.

...Respondent/Complainant

Counsel for the Appellants: SRI. K SURENDER

Counsel for the Respondent: PUBLIC PROSECUTOR (TG)

The Court made the following: JUDGMENT

THE HON'BLE SRI JUSTICE K. LAKSHMAN**CRIMINAL APPEAL No.1284 OF 2008****JUDGMENT:**

Assailing the judgment, dated 14.10.2008, passed by the V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad in Sessions Case No.253 of 2008, the appellants - Accused Nos.1, 2 and 4 preferred the present appeal.

2. Vide the aforesaid judgment, the trial Court convicted the appellants - accused Nos.1, 2 and 4 for the offence under Section 4 of the Dowry Prohibition Act, 1961 and imposed sentence of simple imprisonment for a period of six (06) months each and to pay fine of Rs.10,000/- each and in default of payment of fine to undergo simple imprisonment for a period of three (03) months each.

3. It is relevant to note that originally Narayanaguda Police Station, Hyderabad charged accused Nos.1 to 5 for the offences under Sections 498-A and 306 IPC. The trial Court framed charges under Sections 498-A and 306 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (for short 'Act, 1961'). Vide the aforesaid judgment, the trial Court acquitted accused Nos.1 to 5 for the offences under Sections 498A and 306 IPC and Section 3 of the Act, 1961. The trial Court also acquitted accused Nos.3 and 5 for the charge under Section 4 of the Act, 1961.

4. According to the prosecution, on 26.07.2007 at about 12.00 noon, a Telugu written report was filed by the complainant (Accused No.1) stating that on 25.07.2007 at about 16:30 hours, his wife (deceased) locked the house and handed over the keys to one Latha by informing her that she was

going to purchase vegetables. Thereafter she did not return. The complainant searched for his wife in the house of his relatives, but could not trace her out.

5. Basing on the said complaint, Narayanaguda Police Station registered a case in Crime No.276 of 2007 under the head 'Woman Missing'.

6. According to the prosecution, on 27.07.2007 at about 9.00 a.m., PW.6, Supervisor of St. Anthony's High School, Himayathnagar, came to the Police Station, Narayanaguda and informed that he found female dead-body in Ashoknagar Drainage *Nala* situated behind their school. The police rushed to the spot and got the dead body removed from the Canal. Thereafter, PW.11, Sub-Inspector of Police, secured the presence of Accused No.1 and got the dead body identified as that of his wife.

7. According to the prosecution, on 27.07.2007 at about 8.00 p.m., a Telugu written report was lodged by the father of the deceased alleging that the marriage of the deceased was performed with accused No.1 on 20.03.1992 with dowry of Rs.10,000/-, one and half tolas of gold and 10 tolas of silver. The couple lived happily till they were blessed with one son. Thereafter, all the accused started harassing the deceased for additional dowry. During the marriage of sister of the deceased, her in-laws demanded additional dowry and did not attend the marriage. In that regard, the complainant (father of deceased) made several attempts to pacify the matter. He has also promised to arrange the amount from his retirement benefits. But, there is no change in the attitude of the accused and they have

continued the said the harassment demanding additional dowry. As such, the deceased attempted to suicide by pouring kerosene on her body.

8. It is also alleged in the complaint that the complainant gave an amount of Rs.50,000/- to accused No.1 from his retirement benefits. But, after few months, the accused viz., husband, mother-in-law, sister-in-law, her husband and brother of accused No.1 again started harassing the deceased for additional dowry. On 25.07.2007 at about 19.00 hours, the complainant was informed by accused No.1 that his daughter (deceased) was not available at the house and her whereabouts were not known. On that, he searched for her but could not trace her out. On 27.07.2007, he received message from accused No.1 that the dead body of the deceased was found lying in a *nala* of Ashok Nagar. On that, the complainant and his family rushed to the spot and identified the dead body.

9. Basing on the said complaint and statement of the father of the deceased, the police altered the provision of law from Section 174 Cr.P.C. to Sections 498-A and 306 IPC.

10. After completion of investigation, the police laid charge sheet against accused Nos.1 to 5 i.e., husband, mother-in-law, husband of sister-in-law, sister-in-law and brother-in-law of the deceased under Sections 498-A and 306 IPC.

11. The trial Court after completion of required formalities and basing on *prima facie* material available, framed the charges for the offences under Sections 498-A and 306 IPC and Sections 3 and 4 of the Act, 1961.

12. The accused pleaded not guilty for the said charges and prayed the trial Court to proceed with trial.

13. During trial, the prosecution has examined as many as 11 witnesses, viz., PWs.1 to 11 and marked documents as Exs.P1 to P9. No oral evidence was adduced by the accused, however, marked the documents Exs.D1 to D4.

14. On completion of trial, the trial Court vide the impugned judgment, acquitted accused Nos.1 to 5 for the charges under Sections 498-A and 306 IPC and Section 3 of the Act and accused Nos.3 and 5 for the charge under Section 4 of the Act, 1961, while convicted accused Nos.1, 2 and 4 for the charge under Section 4 of the Act, 1961.

15. Aggrieved by the said conviction and imposition of sentence of imprisonment, the appellants - accused Nos.1, 2 and 4 preferred the present appeal.

16. It is relevant to note that neither the State nor the *de facto* complainant preferred any appeal challenging the impugned judgment acquitting accused Nos.1 to 5 for the charges under Sections 498-A and 306 IPC and accused Nos.3 and 5 for the charge under Section 4 of the Act, 1961.

17. Heard Mr. K. Surender, learned counsel for the appellants - accused Nos.1, 2 and 4, and the learned Public Prosecutor for the respondent.

18. In view of the aforesaid fact-situation, the only question that falls for consideration before this Court is:

- (i) Whether the conviction recorded by the trial Court under the impugned judgment against the appellants - accused Nos.1, 2 and 4 for the charge under Section 4 of the Act, 1961 is sustainable, both on facts and in law.
- (ii) If not, to what relief they are entitled?

19. Impugning the judgment, the learned counsel for the appellants has raised an important legal issue. It is the contention of the learned counsel for the appellants that Section 4 of the Act, 1961 deals with *penalty for demanding dowry*, and as per which, 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 rupee: 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.

20. It is also contended by the learned counsel for the appellants that Section 2 of the Act, 1961 deals with definition of "*dowry*", and as per which, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly (a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of

the said parties, but does not include dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies. Explanation - I to the said section was omitted. However, explanation - I refers the expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).

21. By referring the said provision, the learned counsel for the appellants would contend that by way of amendment vide Act No.63 of 1984 w.e.f. 02.10.1985 the words "in connection with the marriage of the said parties, but does not include" are added and, therefore, the alleged demand of dowry should be in connection with the marriage of parties to attract punishment under Section 4 of the Act. It is his further contention that by virtue of the above said amendment, the Parliament in its wisdom has incorporated the words "in connection with the marriage of the said parties" in the definition of 'dowry' defined under Section 2 of the Act, 1961.

22. By referring the above said two provisions of the Act i.e., 'dowry' and 'penalty for demanding dowry', the learned counsel for the appellants would submit that none of the witnesses deposed before the trial Court that the appellants - accused Nos.1,2 and 4 demanded the dowry in connection with the marriage of said parties. According to him, the marriage of accused No.1 with the deceased was held on 20.03.1992 and he is none other than nephew of father of the deceased. According to him, even as per Ex.P1 - complaint dated 27.07.2007 lodged by PW.1 (father of the deceased) that the said marriage was an arranged one and at the time of marriage, he has fulfilled all the formalities including providing an amount of Rs.10,000/-, 1½ toals gold and 10 toals of silver towards dowry.

23. It is further stated by PW.1 in the complaint that after marriage till they blessed with a son, accused have taken care of the deceased. Thereafter, accused have started harassing the deceased demanding additional dowry. He would further contend that it is also mentioned in Ex.P1 - report that the marriage of second daughter of PW.1 was settled and he went to the house of accused to invite them to his second daughter's marriage. Then the accused demanded him to give dowry for attending the marriage of his second daughter and the accused have also informed PW.1 that they would attend the marriage only in the event of paying additional dowry as was agreed to give to the second daughter of PW.1 or else they would not attend. Upon which, PW.1 requested the accused that he was not in a position to meet the said demand and requested them that he would pay some amount from his retirement benefits and requested them to attend the marriage. But, the accused did not attend the marriage. On the other hand, they have aggravated the deceased to further harassment and the deceased attempted to commit suicide once. It is also stated in Ex.P1 that PW.1 has retired and he has paid an amount of Rs.50,000/- to accused No.1 with a request to take care of the welfare of his daughter. According to PW.1, both accused No.1 and the deceased were lived happily for some time, but the accused again started harassing the deceased.

24. As per Ex.P1, on 25.07.2007, accused No.1 called the son of PW.1 i.e., PW.2 at about 7.00 p.m. and informed about missing of the deceased and enquired about whereabouts of the deceased. Thereafter, PW.2 informed PW.1 about the same and they have searched for whereabouts of the deceased, but they could not trace her out. Again on 27.07.2007 at about 9.00 a.m. accused No.1 informed over phone about dead

body of the deceased found in *nala* at Ashok Nagar. Thereafter they have reached there and identified the dead body.

25. The learned counsel for the appellants has also referred the deposition of PW.1 which is almost in the same lines of Ex.P1 complaint. The learned counsel for the appellants would also contend that PW.1 in his chief-examination deposed as “A.1 demanded that as much dowry as was agreed to be given to my 2nd daughter should be given to him also.” The learned counsel for the Appellants has also referred the certain admissions of PW.1 during cross-examination which is as under:

“The retirement benefits were also paid through bank. I withdrew the P.F. amount after 3 months of my retirement. I orally informed about the particulars to the police. I did not give any document relating to the payment of Rs.50,000/- to the accused.....”

“It is true that I borrowed Rs.1,00,000/- from one Narasimha Reddy and executed an agreement. But A.3 did not stand as surety for the said loan. The signature shown to me pertains to me. The agreement shown to me, was executed by me. Ex.D.1 is the agreement. It is true that Venkanna who was referred in Ex.D1 is no other than A.3.....”

“It is true that I did not state to the police that A.2 was not willing for the marriage from the beginning, but my brother-in-law was very particular and he also took a promise from me regarding the same. The witness adds that due to the agony for the death of the deceased, we did not state the said fact to the police.....”

“It is true that I stated before the police that before the marriage I managed to provide a plot to A.1 from the Govt. and after the marriage, A.1 gifted the said plot to his sister Hymavathi. The witness adds that even before

the court his version is the same. It is true that I did not file any document to show that the plot was registered in the name of A.1.”

26. The learned counsel for the appellants would further contend that PW.2, brother of the deceased, also did not depose anything that the accused have demanded dowry in connection with the marriage. He also relied upon the deposition of PW.2 in chief-examination which is as under:

“A.1 expressed that we were giving Rs. one lakh as dowry to our another sister whereas we gave only Rs.10,000/- to him and said that if we give one lakh to him they would attend the marriage. In spite of promise of P.W.1 to give some money after the retirement, they failed to attend the marriage. They have continued the harassment. On one occasion the deceased attempted suicide. P.W.1 retired in January, 2006 and we gave Rs.50,000/- in the month of March or April. They lived happily for one month, but again they started harassment. The only son of the deceased was also kept at Moulali in the house of A.4, only in order to harass the deceased. The deceased got mental depression and due to that harassment only the deceased committed suicide.”

27. PW.2 during cross-examination categorically admitted that he has been visiting the house of the accused from the date of marriage till her death and they used to mutually visit their houses on special occasions. They used to attend all the functions mutually. They have also attended a function held for L.W.5 Aravind Goud at the house of accused. PW.1 and A.1 together wore Ayappa mala and went to Kerala. Even prior to the marriage they were related to the accused. The marriage of accused No.5 was performed in 2006 and all of them attended the same. His second sister's marriage was performed in the year 1998. He has further admitted

that accused No.1 performed the funeral of deceased. PW.2 further admitted during cross-examination which is as under:

“I do not remember, whether I stated before the police, that A.1, A.2 and A.4 harassed the deceased for money and that whenever I went to their house, I have taken permission from A.4 and that A.1 expressed that we were giving Rs.1 lakh as dowry to our another sister where as he was given Rs.10,000/- only and that if we give 1 lakh to him they would attend the marriage. The deceased was not taken to any hospital, when she attempted suicide earlier. The witness adds that the matter was settled before the elders.”

28. PW.3, son of the deceased and accused No.1 turned hostile.

29. PW.4, maternal uncle of the deceased also deposed in the same lines as deposed by PW.1 and PW.2. During cross-examination, PW.4 has admitted that they have not given any complaint with regard to the alleged harassment of deceased by the accused. However, he has further admitted that he has advised PW.1 to give a complaint, but PW.1 expressed that as the accused are their relatives, compromise can be affected in the presence of the Corporator. PW.4 did not give any complaint against the accused.

30. PW.5, *panch* witness, deposed about conducting inquest on the dead body of the deceased in his presence.

31. PW.6, Supervisor in St. Anthony High School, deposed about his finding the dead body in the *nala* and informing the same to the police.

32. PW.7, neighbour of the deceased, deposed about deceased handing over of keys to her on 25.7.2007 at about 4.00 p.m. and asking her

to hand over the same to her family members whoever comes first. At about 5.00 p.m. accused No.2 came to the house and that she handed over the keys to her. PW.7, during cross-examination, has admitted in the following manner:

“The neighbour of the accused on their left is one Mallesh, and one Dubba Raj is the neighbour on their right. I have been residing in Basheerbagh in the said locality since 5 yrs. Myself and the deceased are acquainted with each other and all on visiting terms. So far as I know, the deceased was living happily with the accused. A.1, A.5, and their other Brother Ramesh reside separately though in the same premises. A.2 resides along with A.5. The family members of the deceased and her relatives used to visit the house of the deceased, and the accused also used to attend the functions in the house of the parents of the deceased. P.W.3 used to reside along with A.1 while the deceased was alive. The deceased used to take him to the school every day.”

33. PW.11, S.I. of Police, Narayanaguda Police Station admitted in his cross-examination that he did not collect any document of plot which was stated by PW.1 and to show that accused No.1 gifted plot to his sister and so also he did not collect any document for gold and other articles given at the time of marriage. PW.11 further admitted that PW.1 did not state before him that accused No.2 was not willing for marriage but his brother-in-law was very particular and also took a promise from him regarding the same. He has further admitted that PW.2 did not state before him that accused No.1 and 2 and 4 harassed the deceased for money and whenever he went to their house, he had to take permission from accused No.4 and accused No.1 expressed that they were giving Rs.1 lakh as dowry to their

another sister, whereas he was given Rs.10,000/- only. PW.11 further deposed PW.4 did not state before him that PW.1 gave Rs.40,000/- after retirement and accused No.1 refused the amount on the ground that it is insufficient and that then PW.1 gave Rs.50,000/- to accused No.1 and deceased tried to commit suicide and that PW.1 told him that he would seek the intervention of the councillor and the matter was conciliated.

34. By referring the above said depositions and admissions of prosecution witnesses, the learned counsel for the appellants would contend that there was no demand of dowry by the appellants - accused Nos.1, 2 and 4 in connection with the marriage of the deceased with accused No.1. The only allegation made by PW.1, 2 and 4 is that the accused demanded additional dowry at the time of marriage of second daughter of PW.1 i.e. sister of the deceased on the ground that PW.1 is giving dowry which is more than the dowry given to accused No.1 at the time of marriage.

35. Admittedly, the marriage of second daughter of PW.1 was performed in the year 1998, whereas the marriage of the deceased with accused No.1 was performed on 20.03.1992. The deceased and accused No.1 were blessed with a son and he was aged about 14 years as on the date of death of the deceased.

36. It is relevant to note that though police cited mother of the deceased as LW.2, they did not examine her before the trial Court. The learned counsel for the appellants by referring the same would contend that normally mother of the deceased will be in a position to tell the facts and she will be in a position to know the condition of her daughter and day-to-day activities and her whereabouts rather than father. The learned counsel for

the appellants would further contend that none of the witnesses including PW.1, father of the deceased, PW.2, brother of the deceased, PW.4 maternal uncle of the deceased, deposed about the alleged demand of dowry in connection with the marriage of the parties. Even, according to Ex.P1 and deposition of PWs.1, 2 and 4, the deceased and accused No.1 were lived happily till they were blessed with a son. As stated above, they blessed with a son and as on the date of death of deceased, son of the deceased and accused No.1 was aged about 14 years.

37. It is also relevant to note that though it is stated in Ex.P1 - report and as deposed by PW.1, PW.2 and PW.4 that the accused has taken care of the welfare of the deceased till she was blessed with a son and thereafter started harassing the deceased for additional dowry both, mentally and physically. Even as per Ex.P1 and deposition of PWs.1, 2 and 4, the accused have demanded additional dowry at the time of marriage of second daughter of PW.1 i.e. in the year 1998. Admittedly, the marriage of the deceased with accused No.1 was held on 20.03.1992. None of the witnesses deposed about any complaint given either to police or to any *panchayat*/conciliation proceedings were held either before the elders or before well-wishers of both parties. It is relevant to note that both the families of accused and PW.1 are closely related to each other. Accused No.1 is none other than nephew of PW.1 i.e., sister's son. The entire investigation and depositions of all the witnesses are silent with regard to any complaint given by PW.1 and his family members and also conciliation or *panchayat* held before the well-wishers and community elders. IN the absence of the same, it is highly difficult to believe that the accused demanded dowry from PW.1 and harassed the deceased.

38. As rightly contended by the learned counsel for the appellants that by virtue of amendment vide Act No.63 of 1984 w.e.f. 02.10.1985, the words "in connection with the marriage of the said parties" are added and, therefore, the alleged demand of dowry should be in connection with the marriage of the said parties. Section 4 of the Act, 1961 also deals with "penalty for demanding dowry". Admittedly, in the present case, there is no demand of dowry in connection with the marriage of the parties viz., deceased and accused No.1.

39. As discussed supra, the entire complaint lodged by PW.1 against the accused is that the accused have demanded additional dowry, more particularly, the dowry, which was given to the second daughter of PW.1 at the time of her marriage in the year 1998 i.e., six years after the marriage of the deceased. Even the said alleged demand of additional dowry at the time of marriage of second daughter of PW.1 is also not proved with cogent evidence.

40. It is relevant to note that the definition of 'dowry' under Section 2 of the Act, 1961 mere demand thereof would not be an offence under Section 4 of the Act, 1961. It should either be given or agreed to be given at or before or after the marriage in connection with the marriage. Although in common parlance one very often uses the term "dowry demand" in the cases where the husband or his relations demand valuable security from the parents and other relations of the wife after the marriage, yet this will not amount to demand for dowry under the Act, 1961 in view of the definition of dowry contained in Section 2 of the Act, 1961.

41. Demand for dowry under the Act and in the legal sense will mean the demand for dowry only when it refers to property of valuable security given or agreed to be given at or before or after the marriage. The alleged offence as made out in the complaint petition may attract the penal provision as contained in Section 498-A IPC. The Parliament in its wisdom appended the explanation as to what "cruelty" means and has constructed sub-clause (b) of Section 498-A in the following words, "harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." If the cases of this nature are to be brought within the ambit of Section 4 of the Act, 1961, then the word "dowry" under Section 2 of the Act shall have to be redefined in the light of sub-clause (b) under Section 498-A IPC. The term "extortion demand" popularized by the Media may also find a place in the definition of dowry as observed by the Calcutta High Court in **Sankar Prasad Shaw v. State**¹.

42. No doubt, the demand made subsequent to the marriage is also covered under the definition 'dowry', but the said demand should be in connection with the marriage. The Hon'ble Supreme Court in **Kamesh Panjiyar v. State of Bihar**² held that there are three occasions related to dowry i.e., one is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period, but the crucial words are "in connection with the marriage of the said parties" but payments which are customary payments

¹. 1991 Cr.L.J. 639 (Cal)

². (2005) 2 SCC 388

for e.g. given at the time of birth of a child or other ceremonies as are prevalent in different societies, are not covered by the expression "dowry".

43. The Hon'ble Supreme Court in **Ashok Kumar v. State of Haryana**³ had an occasion to deal with the definition of 'dowry' under Section 2 of the Act, 1961. In the said case, the Apex Court held that all the expressions used under Section 2 of the Act, 1961 are of a very wide magnitude. The expression "in connection with the marriage" cannot be given a restricted or a narrower meaning. Even in common parlance and on its plain language, it has to be understood generally. The object being that everything which is offending at any time i.e. at, before or after the marriage would be covered under this definition, but the demand of dowry has to be "in connection with the marriage". "In connection with the marriage" is an expression which has to be given a wider connotation. However, the demand of dowry should not be so customary that it would not attract, on the face of it, the provisions of this section. The customary payments given at the time of birth of a child or other ceremonies as are prevalent in the society or families to the marriage would not be covered under the expression "dowry". But where the husband had demanded a specific sum from his father-in-law and upon not being given harassed and tortured the wife and after some days she died, such cases would clearly fall within the definition of "dowry" under the Act.

44. The Hon'ble Supreme Court had also an occasion to deal with the definition of 'dowry' in **Reema Aggarwal v. Anupam**⁴ and held that the definition of the term "dowry" under Section 2 of the Act, 1961 shows that

³. (2010) 12 SCC 350

⁴. (2004) 3 SCC 199

any property or valuable security given or “agreed to be given” either directly or indirectly by one party to the marriage to the other party to the marriage “at or before or after the marriage” as a “consideration for the marriage of the said parties” would become “dowry” punishable under the Act. Property or valuable security so as to constitute “dowry” within the meaning of the Act must be given or demanded “as consideration for the marriage”.

45. The Hon’ble Supreme Court in **S. Gopal Reddy v. State of A.P.**⁵ held that Court’s approach should be realistic in dealing with a case under the Act. Provisions of the Act should interpreted in the light of the object of the Act so as to further that object but it being a penal statute Court should be cautious and careful so that suspicion, conjectures and surmise may not influence its judgment. At the same time, it cannot acquit an accused merely on the basis of technicalities and minor discrepancies.

46. The Apex Court in **Surinder Singh v. State of Haryana**⁶ held that emphasis under Section 2 is on property or valuable security given “at or before” or “ at any time after” marriage, in connection with marriage. Amount or things demanded must, therefore, have a nexus with marriage. Words “insufficient and inferior quality of dowry” are important. They indicate that transaction of giving dowry was not complete.

47. The Apex Court also in **Rajinder Singh v. State of Punjab**⁷ held that the expression “ in connection with” would in the context of the social evil sought to be tackled by the Act mean “in relation with” or “relating to”. Thus, any money or property or valuable security demanded by any of the

⁵. (1996) 4 SCC 596

⁶. (2014) 4 SCC 129

⁷. (2015) 6 SCC 477

persons mentioned in Section 2 of the Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. Such giving or agreeing to give of any property or valuable security can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnized. The Honble Supreme Court in **M. Narayan v. State of Karnataka**⁸ while dealing with the definition of 'dowry' and following the principle held in **Rajinder Singh**⁷ held that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless the facts of a given case clearly and unequivocally point otherwise.

48. It is also relevant to note that the accused was initially charged under Section 498-A and 306 IPC and also Sections 3 and 4 of the Act, 1961. Section 498-A IPC, deals with husband or relative of husband of a woman subjecting her to cruelty. Section 306 IPC deals with abetment of suicide. Section 3 of the D.P. Act, 1961, deals with penalty for giving or taking dowry. The trial Court acquitted all the accused including the appellants herein - accused Nos.1,2 and 4 for the offences under Section 498-A and 306 IPC and Section 3 of the Act, 1961. There is a finding given by the trial Court that the deceased was not subjected to cruelty by the accused and the prosecution failed to prove beyond reasonable doubt that the

⁸. (2015) 6 SCC 465

accused are responsible for abetment of committing suicide by the deceased. The trial Court also acquitted all the accused under Section 3 of the Act, 1961 on the ground that there was no demand of dowry and there is no taking of dowry by them.

49. The trial Court convicted the appellants - accused Nos.1, 2 and 4 for the offence under Section 4 of the Act, 1961 on the ground that demand of additional dowry made by the accident Nos.1, 2 and 4 is cogently proved by the prosecution. The trial Court despite giving a finding "in this case, though, it is doubtful as to whether any such demand was made with the deceased, no doubt, remains that dowry was demanded from Pw.1 by accused Nos.1, 2 and 4, held that Nos.1, 2 and 4 have demanded additional dowry. The trial Court recorded conviction relying upon the judgment of the Hon'ble Supreme Court in **State of Andhra Pradesh v. V. Raj Gopal Asawa**⁹, but the facts in the said decision are altogether different from the facts of the present case. In the said case, it is held by the Hon'ble Supreme Court held that demand neither conceives nor would conceive any agreement. The word 'agreement' referred to in Section 2 of the Act has to be inferred on the facts and circumstances of each case. The interpretation that conviction can only be if there is agreement for dowry is misconceived and is contrary to the mandate and the object of the Act. It was further held by the Hon'ble Apex Court that it is not necessary that there should always be an agreement for dowry. As discussed supra, in the present case, there is no agreement for dowry and there is no demand of dowry at all. Therefore, the facts of the present case are altogether different to the facts and the principle held by the Hon'ble Apex Court in the aforesaid decision. The

⁹. 2004 (1) ALD (Crl) 642 (SC)

trial Court gave a finding that “However the evidence gives an understanding that some of the accused developed greed for additional dowry as more dowry was given to the sister of the deceased. But the prosecution could not prove that the accused subjected the deceased to cruelty and harassment with a demand of money, hence no offence under section 498-A IPC can be held as proved.”

50. As stated supra, despite the above said finding, the trial Court convicted the appellants - accused Nos.1, 2 and 4 for the offence under Section 4 of the Act, 1961. There is no specific finding given by the trial Court with regard to the alleged demand of dowry by the appellants in connection with the marriage of the parties. At the cost of repetition, as discussed supra, the alleged demand of dowry by the accused is at the time of marriage of second daughter of PW.1. The said alleged demand is also not in connection with the marriage of the parties herein viz., the deceased and accused No.1. the trial Court having acquitted all the accused for the offences under Sections 498-A, 306 IPC and Section 3 of the Act, 1961, should not have convicted the appellants under Section 4 of the Act, 1961 despite there is a specific finding that the prosecution failed to prove the demand of additional dowry or harassment or cruelty.

51. In view of the above said discussion, the conviction recorded by the trial Court under Section 4 of the Act, 1961 against the appellants - accused Nos.1, 2 and 4 is unsustainable, both on the facts and in law. It is also relevant to note that the prosecution failed to prove that the appellants have demanded dowry in connection with the marriage of the deceased with accused No.1 beyond reasonable doubt. It is further relevant to note that the marriage of accused No.1 with the deceased was held on 20.03.1992 and

they were blessed with a son, who was aged about 15 years as on the date of giving evidence as PW.3 before the trial Court and he is now 27 years old. According to him (PW.3), he is staying with his father from childhood. It is also settled principle of the Apex Court in a catena of decisions time and again that right to live is a fundamental right guaranteed to a citizen under Article 21 of the Constitution of the India. Therefore, the Court should cautious while recording conviction against accused which would defeat the said right guaranteed to the citizens under Article 21 of the Constitution of India. The Courts should record conviction in the event of prosecution proving the offence beyond reasonable doubt. Coming to the case on hand, as discussed supra, the prosecution miserable failed to prove the demand of dowry as defined under Section 2 of the Act, 1961, more particularly, in connection with the marriage between the deceased and accused No.1 and, therefore, the appellants - accused Nos.1, 2 and 4 are entitled for acquittal.

52. In view of the above discussion, the impugned judgment dated 14.10.2008, passed by the V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad in Sessions Case No.253 of 2008, convicting the appellants - accused Nos.1, 2 and 4 for the offence under Section 4 of the Dowry Prohibition Act, 1961 is hereby set aside and accordingly, they are acquitted. They are on bail. Their bail bonds shall stand cancelled.

The present Criminal Appeal is accordingly allowed. As a sequel, miscellaneous applications, if any, pending in the appeal shall stand closed.

//TRUE COPY//

SD/- K.SRINIVASA RAO
DEPUTY REGISTRAR
K.S. RAO
SECTION OFFICER

One Fair Copy to the Honourable Sri Justice K.Lakshman
(For his Lordships kind perusal)

To,

1. The V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad.



2. The IX Additional Chief Metropolitan Magistrate, Hyderabad.
3. The Station House Officer, Narayanaguda Police Station.
4. 10 L.R.Copies.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary, Telangana Advocates Association Library, High Court Buildings, Hyderabad.
7. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
8. One CC to Sri K. Surender, Advocate [OPUC]
9. Two CD Copies.

HIGH COURT

DATED:24/04/2020



JUDGMENT

CRLA.No.1284 of 2008

ALLOWING THE CRIMINAL APPEAL

~~2/1~~
~~MM A~~
A 03/6/2020