'REPORTABLE'

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 326 OF 2012

State of Karnataka … Appellant

versus

Dattaraj & others … Respondents

J U D G M E N T

Jagdish Singh Khehar, J.

1. Dattaraj – the respondent-accused no. 1, married Savita (since deceased), on 7.6.2002. About three months before the marriage, at the asking of Dattaraj, it was agreed to give Rs.21,000/- in cash and 3 tolas of gold. Accordingly, the family of Savita complied with the aforesaid commitment, at the time of marriage. After their marriage, Savita started to live in her matrimonial house along with Dattaraj (respondent-accused no. 1). Soon after his marriage, Dattaraj went to Dubai, leaving Savita at the matrimonial house. During his absence, she went to her parents' house. Dattaraj contacted Savita, and had a telephonic conversation with her, while she was at her parents' house. He enquired from her, with whose permission she had gone to her maternal house. He also rebuked her for having left the matrimonial house, without his permission.

2. While Savita was in her maternal house, Dattaraj required her to get Rs.20,000/- in cash from her parents, as his brother needed the money to purchase some agricultural land. On the asking of Dattaraj, Savita got the

money from her parents. After Dattaraj returned from Dubai, he was invited by Savita's parents for a "pooja" (prayer) ceremony. The "pooja" had been arranged to celebrate the installation of a bore-well, on the agricultural lands owned by Savita's father. It was alleged, that Dattaraj (respondent-accused no. 1) had agreed to attend the "pooja", only if he was given three tolas of gold, as also, wearing apparel. As against the above, the assertion of Dattaraj was, that such gifts were customary, and were given by the parents of Savita, on their own free will. In any case, it is not a matter of dispute, that gold and clothing were indeed given to Dattaraj, during the "pooja" arranged by the parents of Savita, to celebrate the installation of a bore-well.

3. After Dattaraj returned from Dubai, Savita became pregnant. She left for her maternal house, prior to her delivery. She delivered a girl child, at her parents' house. Thereafter, she returned to her matrimonial house.

4. On yet another occasion, while Savita along with Dattaraj (respondent-accused no. 1) had gone to stay with her parents, it was alleged, that Dattaraj had made similar monetary demands. On this occasion, Savita's parents had expressed their helplessness, and had informed Dattaraj, that they did not have adequate resources to meet his demands. It was also alleged, that on this occasion, Dattaraj had picked up a quarrel with the parents of Savita. It was alleged, that when Savita returned to her matrimonial house with Dattaraj, she was taunted by the brother of Dattaraj, namely, by Siddappa @ Siddaraj (respondent-accused no. 3), as also by Ningesh (respondent-accused no. 2) and Revamma (respondent-accused no. 4), the father and mother of respondent-accused no. 1 respectively, for bringing inadequate gifts from her parents' house.

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5. Savita went to her parents' house for "Rakhi Poornima" (festival to celebrate sanctity of the brother-sister, relationship), to tie a "rakhi" (sacred thread) on her brother's arm. It was alleged, that Dattaraj demanded a sewing machine. This demand made by Dattaraj was allegedly met by the parents of Savita. This is yet another incident of the alleged demand of dowry, made by Dattaraj and his family members.

6. The case of the prosecution is, that despite the fact that the parents of Savita met all the demands made by Dattaraj, as well as, his family members, they remained unsatisfied and continued to pressurise Savita's family for more dowry. It is also the case of the prosecution, that Dattaraj used to harass and ill-treat Savita, and would even assault her.

7. On 1.9.2006, Savita died of burn injuries. The mother of Savita, Tukkubai – PW-1, was informed about the burn injuries suffered by Savita, on 1.9.2006 itself. She was also informed, that Savita, had been admitted to hospital. When Tukkubai – PW-1 reached the hospital along with her son Dattatry – PW-4, the dead body of Savita was lying in the mortuary of the Government hospital, Gulbarga. None of the respondents-accused was present at the hospital. Immediately, Tukkubai – PW-1, filed a complaint. In the complaint it was alleged, that the respondents-accused had committed the murder of Savita, on account of their dowry demands having not been met, by the maternal family of Savita. The above report was lodged on 2.9.2006 i.e., the day following the death of Savita. The fact, that Savita was left all by herself at the hospital, and that no one out of the respondents-accused attended upon her even during her pitiable condition, was alleged as sufficient to establish, that the relationship between Savita and the family of her in-laws,

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was not cordial. The defence repudiated the version of the prosecution by asserting, that Savita had committed suicide on account of her over-sensitive nature.

8. Consequent upon the culmination of the investigation, a chargesheet was filed by the prosecution, leading to the framing of charges against Dattaraj (respondent-accused no. 1), his brother Siddappa @ Siddaraj (respondent-accused no. 3), his father Ningesh (respondent-accused no. 2), and his mother Revamma (respondent-accused no. 4). The respondents-accused were charged with the offences punishable under Sections 498A and 304B read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as, the IPC), as well as, under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 (hereinafter referred to as, the Dowry Act). The factual position recorded above, constituted the basis of the alleged actions of cruelty, by the respondents-accused towards Savita, and therefore, the offence under Section 498A. The fact that Savita had died of burn injuries, within seven years of her marriage, and that, she was being subjected to dowry demands, cruelty and harassment by the accused, was the basis for substantiating the offence under Section 304B of the IPC.

9. The Sessions Judge (Fast Track Court-III), Bidar, who tried the respondents-accused arrived at the conclusion, that the cash, the gold and other gifts given by the parents of Savita to the accused, were in the nature of dowry articles presented by Savita's family, to Dattaraj and other members of his family. This conclusion was arrived at because the term "dowry" means and includes, property or valuable security given either directly or indirectly, not only at the time of marriage, but also at any time after marriage.

10. Despite the fact that Tukkubai – PW-1, admitted that the family of Dattaraj had gifted the maternal family of Savita, 4 tonnes of sugarcane seeds and a bag of jowar, when a girl child was delivered by Savita, the trial Court concluded, that the taunts and physical torture at the hands of the accused, stood established from eye-witnesses account. The same were considered sufficient to establish, mental and physical cruelty towards Savita. The evidence indicating that Savita had been asking Dattaraj not to go to Dubai, which according to the defence, was sufficient to establish, that there was love and harmony between them, was rejected. The threat of Savita to Dattaraj, that if he went abroad, he may not find her alive, was also found to be of no substance. The trial Court also rejected the contention of the accused, that Savita had a meal at the residence of the sister of Dattaraj -Sulebai, just two hours before the occurrence, again to indicate that Savita was not being harassed by the family of Dattaraj. The ground for such rejection by the trial Court was, that even though it was established that Savita had eaten her meal two hours before the occurrence, yet there was no evidence to establish that she had eaten her meal, at the house of Sulebai – the sister of Dattaraj. The trial Court also rejected the contention advanced on behalf of the respondents-accused, that the doctor who conducted the post-mortem examination had deposed, that the deceased had no physical injuries on her person. This was used by the defence to establish, that the burn injuries were an act of suicide, at the free will of Savita herself. And that, the respondents-accused had not committed any act linked to the incident of burning.

11. Accordingly, the trial Court convicted all the four accused persons for the offences punishable under Sections 498A and 304B read with Section 34 of the IPC, and under Sections 3, 4 and 6 of the Dowry Act. The following sentences were awarded by the trial Court to the accused:-

> "All the accused persons are sentenced to undergo imprisonment for life for the offence punishable under Section 304B of IPC.
>
> Further, they are sentenced to undergo simple imprisonment for 3 years, and to pay a fine of Rs.5,000/- (Rupees five thousand) each, for the offence punishable under Section 498A of IPC. In default, to undergo further simple imprisonment for 3 months.
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> Further, they are sentenced to undergo simple imprisonment for 3 years and to pay a fine of Rs.10,000/- each for the offence punishable under Section 4 of the Dowry Prohibition Act. In default, to undergo simple imprisonment for six months.
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> Further, they are ordered to undergo simple imprisonment for 3 years, and to pay a fine of Rs.15,000/- each, for the offence punishable under Section 3 of the Dowry Prohibition Act. In default to undergo further simple imprisonment for one year; and lastly
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> They are ordered to undergo simple imprisonment for 2 years, and to pay a fine of Rs.10,000/- (Rupees ten thousand) each, for the offence punishable under Section 6 of the Dowry Prohibition Act. In default, to undergo further simple imprisonment for six months.
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> All the said substantive sentences shall run concurrently. They are entitled for set off.
>
> Out of the fine amount, it is ordered to pay Rs.1,50,000/- (Rupees one lakh fifty thousand) to the mother of the deceased."

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12. All the four respondents-accused preferred Criminal Appeal no. 3514 of 2008 before the High Court of Karnataka, Circuit Bench at Gulbarga (hereinafter referred to as, the High Court). A Division Bench of the High Court convicted Dattaraj and acquitted the other three accused, namely, the brother, the father and the mother of Dattaraj. While arriving at the conclusion, that the other three accused besides the husband of Savita, namely, Dattaraj (respondent-accused no. 1) had played no role in the death of Savita, the High Court was of the view, that the evidence of Tukkubai –

PW-1 and Dattatry – PW-4, the mother and the brother of the deceased respectively, did not attribute any kind of overt acts of cruelty or harassment to respondent-accused nos. 2 to 4, and as such, their conviction under Sections 498A and 304B read with Section 34 of the IPC, was bad in law. For the same reason, respondent-accused nos. 2 to 4 were found innocent, insofar as, the allegations under Sections 3, 4 and 6 of the Dowry Act are concerned, and were accordingly acquitted for the offences punishable thereunder.

13. Dissatisfied with the impugned order dated 30.6.2009 passed by the High Court, the State of Karnataka has approached this Court through the present appeal.

14. During the course of hearing, learned counsel representing the State of Karnataka vehemently contended, that the acquittal of the accused by the High Court, was in clear violation of the declaration of law, with reference to the provisions under which the accused were charged. Insofar as the instant aspect of the matter is concerned, reliance in the first instance was placed on the decision rendered by this Court in Kans Raj v. State of Punjab & Ors., (2000) 5 SCC 207. Learned counsel invited our pointed attention to the following observations recorded therein:-

> "15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (*a*) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry

> deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."
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> (emphasis supplied)

Learned counsel submitted, that the view expressed in the Kans Raj case (supra) had been reiterated in another decision rendered by this Court in Tummala Venkateswar Rao v. State of Andhra Pradesh, (2014) 2 SCC 240.

15. Reliance was also placed by the learned counsel for the appellant, on a recent judgment rendered by a three-judge Bench of this Court in Rajinder Singh v. State of Punjab, (2015) 6 SCC 477, wherein Section 304B has been explained to the effect, that the term "dowry" expressed therein, would not be limited to the traditional meaning attached to the aforesaid expression, but would include a demand for money for other purposes as well. In this behalf it would be relevant to mention, that the three-judge Bench did not accept the position expressed in Appasaheb v. State of Maharashtra, (2007) 9 SCC 721, in connection whereof, this Court had first explained the position in the Appasaheb case (supra), as under:-

> "11. This Court has spoken sometimes with divergent voices both on what would fall within "dowry" as defined and what is meant by the expression "soon before her death". In Appasaheb v. State of Maharashtra, (2007) 9 SCC 721, this Court construed the definition of dowry strictly, as it forms part of Section 304-B which is part of a penal statute. The Court held that a demand for money for defraying the expenses of manure made to a young wife who in turn made the same

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demand to her father would be outside the definition of dowry. This Court said: (SCC p. 727, para 11)

"11. …A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for 'dowry' as defined in Section 2 of the Dowry Prohibition Act was made by the Appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure."

And thereupon, having examined the object and intent of the legislation, this Court held in the Rajinder Singh case (supra), as under:-

"26. The facts of this appeal are glaring. Demands for money were made shortly after one year of the marriage. A she-buffalo was given by the father to the daughter as a peace offering. The peace offering had no effect. The daughter was ill-treated. She went back to her father and demanded money again. The father, then, went along with his brother and the Sarpanch of the village to the matrimonial home with a request that the daughter be not ill-treated on account of the demand for money. The father also assured the said persons that their money demand would be fulfilled and that they would have to wait till the crops of his field are harvested. Fifteen days before her death, Salwinder Kaur again visited her parents' house on being maltreated by her new family. Then came death by poisoning. The cross-examination of the father of Salwinder Kaur has, in no manner, shaken his evidence. On the facts, therefore, the concurrent findings recorded by both the courts below are upheld. The appeal is dismissed."

Based on the above decision it was the vehement contention of the learned counsel for the appellant, that the demands made by the accused for purchase of agricultural land, as also, with reference to a sewing machine, were liable to be treated as demands constituting "dowry".

16. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties. It is not necessary for us to deal with the statements of various witnesses, relied upon by the trial Court, as well as, the High Court. In our considered view, it would be sufficient for the disposal of the controversy in hand, to refer to a few

relevant portions of the cross-examination of Tukkubai – PW-1, the mother of Savita. Tukkubai – PW-1, during the course of her cross-examination, acknowledged the following factual position:-

> "It is true two years A-1 remained in India after coming from Dubai and after one year my daughter delivered female child my daughter was in our house at the time of delivery for about 4 to 5 months. By giving all the necessary ornaments to my grand daughter, my daughter was sent to her house. It is true there is custom to present gold and clothes to the person if they come from foreign country. At the time of putting my grand daughter in cradle, we went to their house by engaging "Tam Tam". They gave four tonnes sugarcane seeds and a bag of jowar to us and we carried them to our village in the said "Tum Tum".
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> xxx xxx xxx
>
> It is true there is custom to give gold and clothes at the time of performing Pooja to the bore-well. At the time of Rakhi pourna when they came to our house, there was Chikungunya to my husband. As my son was not there in village, A-1 took my husband to hospital. It is not true to suggest to avoid coolie work for my daughter, we ourselves voluntarily gave tailoring machine to my daughter. My daughter was knowing tailoring. Tailoring machine was given to our daughter for tailoring clothes by her. A-1 once again went to Dubai for about two months to bring Visa service.
>
> xxx xxx xxx
>
> It is not true to suggest my daughter was not having a liking of A-1's going to foreign country second time.
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> xxx xxx xxx
>
> I have studied up to IVth Standard. My son drafted the complaint by sitting in the Govt. hospital."

17. On a perusal of the statement of Tukkubai – PW-1, the mother of Savita, it is apparent that the monetary gifts given to Dattaraj and his family members, were in the nature of customary gifts exchanged during different ceremonies. But what is of extreme significance is the fact, that even the family of Dattaraj, the husband of Savita, had given four tonnes of sugarcane seeds and a bag of jowar to her family, when the family of Savita visited her matrimonial house, on the occasion of the birth of a female child. It is acknowledged by Tukkubai – PW-1, that the aforesaid gifts were taken by the family members of Savita to their own village, by hiring a "tum-tum" (a horse-drawn cart). This return gift by the family of Dattaraj was also in

conformity with the customary tradition for such occasions. It seems that the two families celebrated all festivities in the spirit of their customary obligations. Both families engaged in offering gifts to each other, in accord with the prevailing practice and tradition. For this reason, the judgment rendered by this Court in the Rajinder Singh case (supra), which was strongly relied upon by the learned counsel for the appellant, in our considered view, would be of no avail in the determination of the projection canvassed.

18. Insofar as the demand of Rs.20,000/- for the purchase of agricultural land is concerned, it is apparent that the same was allegedly made when Dattaraj was in Dubai. The said demand was allegedly made by Ningesh (respondent – accused no.2), the father of Dattaraj, when he had gone to leave Savita at her maternal home. Dattaraj is stated to have returned to India from Dubai eight to ten months, after the above demand. A female child was born to Savita about a year after the return of Dattaraj to India. After the birth of the female child, Savita had remained in her maternal house, for about four to five months. Therefore, even if the above oral allegation is accepted as correct, it was a demand made about two years before the occurrence. The same was too remote to the occurrence, and therefore, would not satisfy the requirement of "soon before her death" contemplated under Section 304B(1) of the Indian Penal Code.

19. The only remaining alleged dowry demand, besides those referred to above was, that of a sewing-machine. Yet again the position was clarified by Tukkubai – PW-1. During her cross-examination she stated, that Savita knew tailoring. And that, the sewing-machine was given to her for tailoring clothes. This was really a gift to Savita, and therefore, cannot be considered as a part

of the demand made by Dattaraj, for himself or for his family members. This allegation, in our considered view, is inconsequential, with respect to the provisions under which the accused were charged.

20. There was no further attribution, as against the respondent – accused nos. 2 to 4. It is therefore not possible for us to accept, that the prosecution was successful in establishing either harassment or violence towards Savita, as against the aforestated accused, nor of any dowry demand. In such view of the matter, it is difficult for us to conclude the culpability of respondent-accused nos. 2 to 4, in the entire occurrence. We are satisfied, that the High Court was fully justified in recording that even the statements of Tukkubai – PW-1 and Dattatry – PW-4, did not attribute any kind of overt act to respondent-accused nos. 2 to 4. The High Court was, therefore, fully justified in acquitting respondent-accused nos. 2 to 4, for the offences punishable under Sections 498A and 304B read with Section 34 of the IPC, as also, for the charges under Sections 3, 4 and 6 of the Dowry Act.

21. For the reasons recorded hereinabove we are satisfied, that the impugned order passed by the High Court, does not justify any interference at our hands. The instant appeal being devoid of any merit, is accordingly dismissed.

…………………………….J.
(Jagdish Singh Khehar)

…………………………….J.
(S.A. Bobde)

New Delhi;
February 15, 2016.

ITEM NO.1A COURT NO.3 SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 326/2012

STATE OF KARNATAKA Appellant(s)

VERSUS

DATTARAJ & ORS. Respondent(s)

[HEARD BY HON'BLE JAGDISH SINGH KHEHAR AND HON'BLE S.A.BOBDE, JJ.]

Date:15/02/2016 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Ms. Anitha Shenoy,AOR

For Respondent(s) Mr.Anirudh Sanganeria, Adv.
Mr. Chinmay Deshpande, Adv.

Hon'ble Mr. Justice Jagdish Singh Khehar pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice S.A. Bobde.

For the reasons recorded in the Reportable judgment, which is placed on the file, the instant appeal is dismissed, being devoid of any merit.

(Renuka Sadana)
Court Master

(Parveen Kr. Chawla)
AR-cum-PS

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