

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). 1667 OF 2005

VIJAYKUMAR & ORS.

Appellant (s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(With appln(s) for stay and office report )

Date: 21/10/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI  
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s)

Mr. Gireesh Kumar,Adv.  
Mr. Vijay Kumar,Adv.

For Respondent(s)

Mr. Sanjay R. Hegde,Adv.  
Mr. Ramesh K.Mishra,Adv.  
Mr. K.Joshi,Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is partly allowed.

[SUMAN WADHWA]  
COURT MASTER

[ARUNA SETH]  
COURT MASTER

Signed order is placed on the file.  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1667

OF 2005

VIJAY KUMAR & ORS.

.. APPELLANT(S)

vs.

STATE OF KARNATAKA

.. RESPONDENT(S)

O R D E R

Appellants, aggrieved by their conviction for  
offence under Sections 307 and 498-A of the Indian Penal  
Code and Section 3 and 4 of the Dowry Prohibition Act,  
1961, have preferred this appeal.

The appellants were put on trial for the aforesaid

offences and the Trial Court by its judgment dated 30th January, 1999, acquitted them of all the charges. Aggrieved by the same, the State preferred appeal and by the impugned judgment the High Court had set aside the order of acquittal and convicted the appellants under Sections 307 and 498-A of the Indian Penal Code as also Sections 3 and 4 of the Dowry Prohibition Act and sentenced them to suffer rigorous imprisonment for three years, one year, three years and 6 months respectively. Sentences were directed to run concurrently.

According to the prosecution, informant Pratibha (PW.10) was married to appellant No.1 Vijay Kumar,

-2-

son of appellant Nos. 2 and 3, in the year 1993. At the time of marriage demand was made and accordingly gold ornaments, scooter, house-hold articles and a wristwatch, apart from cash of Rs.25,000/- were given. It has been further alleged that the accused persons were harassing Pratibha both physically and mentally and when sufferings became unbearable, while she was leaving the house to lodge the report to the police, all the three accused persons forcibly took her inside the house, closed the windows and doors and after assaulting her forcibly poured poison into her mouth due to which she became unconscious and when gained consciousness, She found herself in hospital. Then a report was made to the police and after usual investigation charge-sheet was submitted against the appellants.

Ultimately, they were brought to the Court of Sessions to face the trial where they were charged for offence under Sections 498-A/34 and 307/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. Appellants denied to have committed the offence and claimed to be tried. In order to establish the guilt the prosecution altogether examined 14 witnesses and 17

documents were exhibited. As stated earlier, the Trial Court acquitted the accused persons and on appeal by the State, the High Court reversed their acquittal and convicted them as above.

-3-

Mr. Gireesh Kumar, the learned counsel appearing on behalf of the appellants submits that conviction of the appellants under Section 307 of the Indian Penal Code is not fit to be sustained. He points out that there is no evidence which could conclusively prove that what was administered to the victim was poison. He points out that the victim was admitted to HAL Hospital and examined by PW.11 Dr. M.Venuka Murthy and though she observed smell of organo phosphorous poison, there is no material on record to show that in fact, the victim was administered the poison. He also points out that the Doctor had taken out the stomach contents and sent to the concerned Police Station but there is no evidence of the Forensic Science Laboratory that it contained poison.

Mr. Sanjay R. Hegde, the learned Counsel, however, appearing on behalf of the State submits that the victim Pratibha (PW.10) having stated that she was administered poison and such a smell was found by Doctor, it has to be assumed that victim was administered poison and therefore rightly held guilty under Section 307 of the Indian Penal Code.

Having considered the rival submissions, we find substance in the submissions of the Counsel for the appellants. Excepting the statement of PW.10 that she was administered poison and a smell of poison found by the Doctor, there is no evidence to show as to what was

-4-

administered to the victim was poison.

In that view of the matter we do not feel it safe to sustain the conviction of the appellants under Section 307

of the Indian Penal Code. It is accordingly set aside.

So far as the conviction of the appellants under Section 498-A of the India Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act, we find over-whelming evidence to show that the victim was subjected to cruelty for demand of dowry and further dowry was given and as such they have been rightly held guilty under Sections 498-A and 3 and 4 of the Dowry Prohibition Act. Appellant No.1, happen to be the husband of the victim, we maintain his conviction under Section 498-A of the Indian Penal Code as also the sentence. However, appellant Nos.2 and 3 are father-in-law and mother-in-law and sufficiently old hence we are of the opinion that sentence of rigorous imprisonment for six months to both of them shall meet the ends of justice. We further maintain the conviction of the appellants under Sections 3 and 4 of the Dowry Prohibition Act. It is an admitted position that the marriage has been dissolved. In that view of the matter we find that sentence of imprisonment for six months to all the appellants and fine of Rs.10,000/- each for offence under

-5-

Sections 3 and 4 of the Dowry Prohibition Act shall meet the ends of justice. In default of payment of fine, they shall suffer imprisonment for two months.

Accordingly, this appeal is partly allowed, conviction of the appellants under Section 307 of the Indian Penal Code is set aside and while maintaining their conviction under Section 498A and under Sections 3 and 4 of the Dowry Prohibition Act, we reduce the sentence as above.

.....J.  
(HARJIT SINGH BEDI)

.....J.  
(CHANDRAMAULI KR. PRASAD)

New Delhi,  
October 21, 2010.