

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF APRIL, 2016 PRESENT:

THE HON'BLE Mr. JUSTICE S.ABDUL NAZEER

AND

THE HON'BLE Mr. JUSTICE A.V.CHANDRASHEKARA

CRIMINAL APPEAL NO.345 OF 2010 (A)

Deepak Kumar v/s. Rathanlal

JUDGMENT

Present appeal is filed under Section 454 (1) of Cr.P.C. challenging that portion of the judgment, which relates to the final disposal of M.Os.1 to 11 and 22 to 41 passed by the learned Presiding Officer, Fast Track Court- V, Bengaluru, in Sessions Case No.7/2003.

2. Appellant no.1 was the first accused in the Session Case No.7/2003.Appellants nos.2 and 3 are the children born to the deceased wife Radha and the 1st appellant. Charge sheet had been filed against the first petitioner herein and his parents and brother for the offences punishable under Sections 498A, 304B, 302, 306, 201 r/w. 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act. All the accused have been acquitted by a considered judgment passed in S.C.No.7/2003 on 21.01.2010.

3. Being aggrieved by the said judgment of acquittal, the State of Karnataka, represented by Sanjayanagar Police Station, had filed an appeal before this Court in terms of Section 378 (1) & (3) of Cr.P.C. and the said appeal in Criminal Appeal No.623/2010 is dismissed after confirming the Judgment of acquittal passed against the accused.

4. While acquitting the accused, the trial Court has passed an order insofar as it relates to material objects 1 to 11 and 22 to 41. They are all gold ornaments and valuables. The seized valuable articles, which have been marked as MOs.1 to 11, are ordered to be returned to PW.3-Rathanlal, father of deceased Radha.MOS.22 to 41 are also ordered to be returned to PW.3-Rathanlal, after the expiry of the appeal period. Custody of MOS.22 to 41 are in the custody of PW6 Sampathraj, a close relative of deceased Radha handed over under Ex.D26. Ex.D.26 is a document executed in connection with the custody of MOs.22 to 41 being handed over to Mr.Sampathraj by accused No.3-Lehar Singh in the presence of Nemich and, son of the deceased Rathanlal.Ex D26 was a part of the documents filed by the police while filing charge sheet Under Section 173 (2) of Cr.P.C.

5. The present appeal is filed in terms of Section 454 (1) of the Cr.P.C. essentially on the ground that in view of the judgment of acquittal passed in S.C.No.7/2003, the appellants are entitled for MOs.1 to 11 and 22 to 41 being the Class I heirs of deceased Radha. It is mentioned in this appeal that the deceased Radha had become the absolute owner of these materials marked as MOs.1 to 11 and 22 to 41 and in the light of the death of Radha, petitioner No.1 being the husband and petitioner Nos.2 and 3 being the children of the deceased Radha, are entitled for the custody of those materials.

6. It is to be seen that PW.3 is none other than the father of the deceased Radha. He had presented MOS. 1 to 11 to his daughter at the time of her marriage. It is submitted by Sri. S.G.Bhagwan, learned counsel appearing for the appellants that Rathanlal is no more.Sri.M.S.Rajendra Prasad, learned Senior Counsel appearing for Rathanlal has also submitted that Rathanlal is no more and his legal representatives have not been brought on

record and as such, the appeal has stood abated in its entirety insofar as MOs.1 to 11 and 22 to 41 are concerned.

7. Insofar as MOS.22 to 41 are concerned, they are in the custody of PW.6-Sampathraj, a close relative of the deceased Radha. He is not legally entitled to have the custody of the same forever. He is the custodian of MOS.22 to 41 and nothing comes in the way of this Court to pass appropriate order in regard to the disposal of the objects is concerned.

8. In the judgment, the learned judge has not assigned any reasons as to why all the M.Os. are to be returned to Rathanlal. In this regard, what exactly is the power of the first appellate court insofar as it relates to the final disposal of the material objects will have to be looked into. Section 386, Cr.P.C. deals with the power of the appellate court. It is useful to refer to Section 386, Cr.P.C. and hence the said provision is extracted below:

386. Powers of the Appellate Court.-After perusing such record and hearing the appellate or his pleader, if he appears, and the Public Prosecutor, if he appears and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law; (b) in an appeal from a conviction

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed to trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) With or without altering the find, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order; (e) make any amendment or any consequential or incidental order that may be just or proper;

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement;

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

Sub-section (e) of Section 386, Cr.P.C. enables the first appellate court to pass such orders deemed just and proper. Sub-sections (a) to (d) of Section 386 deal only with the confirmation or alteration or modification of conviction and sentence. Sub-section (e) of Section 386, Cr.P.C. takes care of a situation like this and to pass

appropriate orders in respect of issues other than conviction and sentence. Court need not drive the parties to have a decision from an appropriate civil court in all cases, regarding the title and custody of the material objects involved in a Criminal Case.

9. Section 352, Cr.P.C. mandates that the criminal court dealing with the trial has to pass appropriate orders in regard to the final disposal of the properties and documents produced in an inquiry or trial. The first appellate court has all the powers of a trial court and hence, it has to exercise its power, subject of course, to certain limitations as enumerated by the Hon'ble apex court in the case of N.MADHAVAN .v. STATE OF KERALA (AIR 1979 SC 1829).It is useful to refer to paragraph 10 of the said judgment wherein the words ' may make such order as it thinks fit ' would indicate the discretion vested with the Government insofar as final disposal of the property is concerned. The exercise of such discretion is inherently a judicial function and therefore choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with the sound principles founded reason and justice. Keeping in view the class and nature of the property and the material before it, paragraph No. 10 is relevant in the said decision which is extracted below:

10. The words ' may make such order as it thinks fit ' in the section, vest the Court within a discretion to disposal of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily but judicially in accordance with sound principles founded on reason and justice. Keeping in view the class and nature of the property and the material before it. One of such of well recognized principles is that when after an enquiry or trial the accused is discharged or acquitted, the court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be likely made, when there is no dispute or doubt-as in the instant case the property in question-seized from the custody of such accused and belonged to him " .

10. In the present case, PW- 3, deceased Rathanlal had given some jewels as gifts to his daughter-Radha and some presentation to the 1st accused in connection with their marriage. The accused have not been acquitted honorably but because of the prosecution's inability to prove its case beyond reasonable doubt. They had received some jewels and valuables as presentation from various persons in connection with the marriage. All these items are indicated in Ex.D-26, a document written by accused no.3-Lehar Singh (father of the accused) while handing over the same to PW- 6, Sampathraj, a close relative of deceased Radha.

11. In the present case one cannot forget the reality that the second appellant Namrutha herein is the daughter of the deceased Radha and she is aged about 20 years.Even if Radha were to be alive, she would have contributed substantial gold jewels towards the marriage of her daughter and this fact is to be taken into consideration. She would have definitely given some gold ornaments as presentation to her. Therefore if M.Os.22 to 41 are handed over to the 2nd appellant Ms.Namrutha, the departed soul of the deceased-Radha, we believe, feels satisfied. Thus, we are of the considered opinion that MOs.22 to 41, which are in the custody of PW.6 Sampathraj should be given to Ms.Namrutha, who is likely to get married within few years. Thus, sentiment of the mother would also be respected.

12. Insofar as MOs.1 to 11 are concerned, they were handed over to Rathanlal and he is no more. Admittedly, they had been given by Rathanlal during his lifetime to his daughter Radha at the time of her marriage. We feel that it would be proper that the legal representatives would make use of the same. This is also fortified by the fact that the LRs ' of the deceased Rathanlal have not been brought on record and therefore, appeal against Rathanlal has abated.

13. In the instant case, we are of the considered opinion that Ms. Namrutha second appellant herein, who is the daughter of the deceased Radha, is entitled to the custody of MOs.22 to 41. PW.6 -Sampathraj, a close relative of the deceased Radha shall continue to keep MOs.22 to 41 in his custody and shall hand over the

same to Ms.Namrutha at the time of her marriage or soon after the expiry of three years from today, whichever is earlier. Hence following order is passed:

ORDER

Appeal is allowed in part, confirming the handing over of MOs.1 to 11 to Rathanlal, who is now dead and MOS.22 to 41, which are in the custody of PW.6 Sampathraj, be handed over to second appellant Namrutha, daughter of Deepak Kumar and deceased Radha at the time of her marriage, or soon after the expiry of within three years from today, whichever is earlier. Accordingly the order of the Trial Court insofar as it relates to the final disposal of Mos1 to 11 and 22 to 41 stand modified.

The trial court to intimate PW- 6, Sampathraj in this regard after ascertaining his present correct address.