

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.790 of 2007

ORDER:-

The *de facto* complainant-PW.1 in S.C.No.382 of 2006 on the file of the II-Additional Assistant Sessions Judge (FTC), Mahabubnagar, filed the revision questioning the acquittal of respondents No.2 to 4/A.1 to A.3 of the charge under Section 304-B IPC., on two grounds viz., (1) that the learned Assistant Sessions Judge has no inherent jurisdiction to try the case punishable under Section 304-B IPC., and (2) the evidence on record has not been properly appreciated by the learned Assistant Sessions Judge.

2. The facts in brief are as under:-

Ramulamma (hereinafter referred to as 'the deceased') was the daughter of PWs.1 and 2 and wife of A.1. A.2 and A.3 are the father and mother of A.1. The deceased was married to A.1 about five years back, that about ten months prior to May, 2006, the deceased was blessed with a son, that the respondents/accused were subjecting the deceased to harassment for want of additional dowry, and on 23-05-2006 the accused beat the deceased mercilessly, due to which on 24-05-2006 at about 04.00 p.m., the deceased left her child with aunt Chennamma (PW.4) and left the home informing that she is going to collect firewood. The deceased did not return home and next day A.2 enquired from PW.1 as to whether deceased came to his house since she did not return home the previous evening. Thereafter, PWs.1 and 2 went to the village and they searched for the deceased and in the morning on 26-05-2006 the dead body of the deceased was found in the hillock of Ryakamaiah Koneru water called as Ryakamkonda. PW.1 filed a complaint with the police alleging that the deceased committed suicide by drowning due to harassment for dowry by the respondents/accused.

A case in Cr.No.51/2006 was registered, inquest was conducted by the Executive Magistrate, the dead body was subject to post-mortem examination which establishes that the deceased died due to drowning and after completion of investigation charge sheet is filed.

The jurisdictional Magistrate took the case as P.R.C.No.47 of 2006 and after completing with the mandatory requirements, committed the case to the Court of Session and the same was made over to the Assistant Sessions Judge for disposal.

The accused denied the accusations and trial was taken up, during the course of which, the parents of the deceased were examined as PWs.1 and 2, the paternal uncle as PW.3, the aunt as PW.4 and PWs.5 to 9 are the Medical Officers, panch witnesses, Investigating Officers and the Executive Magistrate. Prosecution also produced Exs.P.1 to P.3. The accused denied the evidence on record. No defence was produced.

After perusing the evidence on record and having heard the submissions of the prosecution and the accused, by Judgment dated 12-02-2007 the learned II-Additional Assistant Sessions Judge (FTC), Mahabubnagar, found the respondents/accused not guilty of the charge and accordingly acquitted them. Hence, the revision.

3. The State has not challenged the acquittal of the respondents/accused. The *de facto* complainant/PW.1 filed the revision. It is his contention that the Court which tried the Sessions Cases lacks the jurisdiction which makes the entire proceedings leading to acquittal as *void ab initio* and liable to be quashed. The contention of the petitioner/*de facto* complainant is that the offence punishable under Section 304-B IPC., contemplates the punishment of seven years and above, which may extend up to imprisonment for life. The Assistant Sessions Judge is not competent to impose punishment beyond the period of ten years as per Section 28(3) Cr.P.C.

4. On merits, it is contended that even though there was evidence of PWs.1 to 3 which proved the allegation against the accused that due to their harassment and torture for additional dowry, the deceased committed suicide was not properly appreciated and the trial Court has erroneously acquitted the accused.

5. Learned Counsel appearing for the respondents/accused, on the other hand, submits that there is no substance in the first submission of the petitioner/*de facto* complainant for the reason that that even as per the

provisions of Indian Penal Code and Code of Criminal Procedure, the offence is triable by Court of Session and as per Section 9 of Code of Criminal Procedure, the Assistant Sessions Judge is competent to try a case which is triable by the Court of Session. Merely because the punishment contemplated for Section 304-B IPC., is seven years and above, which may extend to life imprisonment, it cannot be said that the Assistant Sessions Judge who is competent to impose a punishment of imprisonment of ten years cannot try the case. On merits, learned Counsel submits that the evidence of PWs.1 to 3 who are all father, mother and uncle of the deceased is not consistent and convincing. That apart, the prosecution could not even give the specific date of the marriage of the deceased and in the absence of there being a categorical evidence about the deceased having committed suicide within seven years of marriage, the ingredients of Section 304-B IPC., are not attracted. It is further submitted that the evidence of PWs.1 to 3 is vague and nothing specific is alleged as to what was the demand by the accused and what was the nature of harassment and ill-treatment which compelled the deceased to resort to the extreme step of committing suicide. Learned Counsel submits that the death of the deceased is admittedly unnatural and she died due to drowning in a water tank which had no fencing around and the said death may be due to accident or even suicide for which the respondents/accused, in the absence of any evidence to the contra, cannot be held to be responsible for the unfortunate death.

6. The first contention of the petitioner/*de facto* complainant that the learned Assistant Sessions Judge is not competent to try an offence punishable under Section 304-B IPC., shall be taken up. It may be stated that this contention of the learned Counsel appearing for the petitioner has no substance for the reason that the offence punishable under Section 304-B IPC., no doubt, stipulates that the punishment which shall not be less than seven years and which may extend to life imprisonment. The schedule in the Code of Criminal Procedure stipulates that the offence under Section 304-B IPC., is triable by the Court of Session. As

per Section 9(3) Cr.P.C., the Assistant Sessions Judge is a Court of Session. As per Section 28 of the Code of Criminal Procedure, the Assistant Sessions Judge is competent to inflict punishment up to ten years. In that view of the matter, it cannot be said that the trial Court lacks inherent jurisdiction and is not competent to try the case, which resulted in vitiating the entire procedure and makes the trial *void ab initio*. Even though, it is a fact that the Court which tried the respondents/accused is not competent to impose punishment beyond the period of ten years but that by itself cannot be said to vitiate the trial since the trial Court had jurisdiction to try the cases as per the provisions of Code of Criminal Procedure and the Indian Penal Code and can even impose punishment in between seven years to ten years. The first schedule in the Code of Criminal Procedure describe that the offence punishable under Section 304-B IPC., can be tried by Court of Session. As per Section 9 of the Code of Criminal Procedure, the State Government shall establish a Court of Session for every sessions division and as per sub-section (3) thereof, the High Court may also appoint Additional Sessions Judge and Assistant Sessions Judge to exercise jurisdiction in a Court of Session. Sub-section (5) of Section 9 further provides that where the Office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent applications pending before the Court of Session by an Additional or Assistant Sessions Judge. It is manifest that an Assistant Sessions Judge has all the powers of a Sessions Judge except in the matter of awarding the sentence beyond the period of ten years. In that view of the matter, it cannot be said that the trial conducted by the Assistant Sessions Court is vitiated for the reason that it cannot impose punishment beyond ten years whereas the punishment for Section 304-B IPC., is not less than seven years which may extend to life. There is no force in the contention of the petitioner/*de facto* complainant and hence the same is rejected.

7. Insofar as the evidence aspect is concerned, having perused the same in detail, it is noticed that the essential ingredients constituting the offence under Section 304-B IPC., are not forthcoming in the case. Firstly,

in order to attract the provisions of Section 304-B IPC., and the consequential presumptions, what is required is that the death of a woman under unnatural circumstances should be within a period of seven years. While it is not in dispute that the deceased met an unnatural death, but the duration for which she was in marriage with respondent/A.1 is not clearly established. In the complaint-Ex.P.1 in the year 2006, PW.1 stated that the deceased was married to A.1 about five years back. When it came to evidence, PW.1 – the father of the deceased stated that he performed the marriage of the deceased with A.1 about five years prior to his giving evidence in the year 2007. PW.2 is the mother of the deceased and in her evidence she stated that her deceased daughter was married to A.1 about 12 years back. The paternal uncle of the deceased, who is examined as PW.3, stated that the marriage of the deceased with A.1 was held about seven or eight years back. The accused in his Section 313 Cr.P.C., examination, stated that their marriage was performed about six years back. In that view of the matter, the evidence with regard to the period when the deceased and A.1 were married becomes doubtful. The witnesses and the accused gave the period ranging from 5 years to 12 years. Therefore, it cannot be said that the evidence on record conclusively establish the fact that the deceased and A.1 were married within seven years prior to the unnatural death.

8. That apart, what is noticed is that the other requirement of Section 304-B IPC., is that the deceased should have been subjected to cruelty by her husband on the ground of any demand for dowry soon before her death. The dead body of the deceased was found in the tank on 26-05-2006. She disappeared from the house on 24-05-2006. At that time, she was having a ten months old son which she left in the company of PW.4. None of the neighbouring residents of the deceased and A.1 are examined to show that there was any incident soon before the deceased committing suicide for holding that the deceased committed suicide due to cruelty or harassment in connection with the demand for dowry. PW.1 in his evidence stated that the deceased came to his house about two or three months prior to her death. At that time, he claims that the deceased

told him that the accused are subjecting the deceased to harassment for demand of additional dowry. Similar is the evidence of the mother PW.2 and uncle PW.3. None of the three material witnesses gave any specific incident as to when the deceased was subject to harassment, what was the actual demand and what was the nature of cruel treatment being meted out to the deceased. A vague and bald statement is made by the father, mother and uncle of the deceased to the effect that the deceased was being subjected to cruelty and harassment by the accused demanding additional dowry. The evidence of PW.2, the mother, as a matter of fact shows the existence of cordiality in between the deceased and her husband and in-laws. It is specifically admitted by PW.2 that when the child was about two months old, A.3 being the mother-in-law of the deceased came to PWs.1 and 2 where the deceased was staying after delivery just to see the child. At that time, the deceased insisted that she wants to go away along with her mother-in-law to the house of her husband. It is also in the evidence of PW.2 that inspite of the request made by her parents, the deceased insisted that she wants to go to her matrimonial home. Learned Counsel submits this aspect clearly shows that there was no question of there being any harassment or cruel treatment to the deceased demanding additional dowry, more particularly, after the couple were in marriage for more than six to seven years and just then she was also blessed with a male child. Absolutely, there is no evidence to show that prior to the birth of the male child, which even according to PW.1 took place after five years of the marriage, there is any allegation that the deceased was being subjected to any harassment or cruel treatment for want of additional dowry by the accused.

9. The evidence on record, no doubt, establishes the fact that the deceased died an unnatural death. It is not clear as to whether it was an accident or a suicide. According to PW.4, on 24-05-2006 at about 04.00 p.m., the deceased left her two month old son with her and went away saying that she wants to fetch firewood. What happened thereafter is not known. Two days thereafter, her dead body was found floating in the water tank which had admittedly no fencing around. The cause of death

is drowning. The Medical Officer who conducted post-mortem examination did not find any injuries to suggest that the deceased was beaten just a day prior to her death mercilessly by the accused as alleged by PW.1 in his complaint-Ex.P.1. It may be recalled that in Ex.P.1, PW.1 stated that on 23-05-2006 in the evening, the accused beat the deceased mercilessly demanding additional dowry and next day she committed suicide. If that be so, there are bound to be external injuries on the body of the deceased, which the Medical Officer did not find.

10. The trial Court having considered all the aspects meticulously and having observed the demeanour of the witnesses and appreciating the legal and factual aspects in proper perspective and held that the case is proved beyond reasonable doubt. As is well settled, there is suspicion about the cause of death of the deceased but the suspicion howsoever strong cannot take place the proof.

11. In **SHEETAL PRASAD v. SRI KANT (2010 (1) SCJ 998)** it is laid down that when the revisional jurisdiction is invoked by a private complainant against an order of acquittal, the same cannot be exercise lightly and it can be exercise only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice.

12. In the instant case, upon perusing the entire evidence on record, the revision filed by the *de facto* complainant/PW.1 questioning the acquittal cannot be interfered with. More particularly, in view of the fact that the learned trial Judge has appreciated the evidence on record properly and came to the conclusion that the prosecution has not proved the case against the accused beyond reasonable doubt. There are no merits in the revision and the same is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

August, 2015

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