

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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Crl.A.No.1129 of 2014
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JUDGMENT

This Criminal Appeal is filed by the State challenging the Judgment of acquittal dt.03-03-2008 in Sessions Case.No.314 of 2007 of the V Additional Metropolitan Session Judge (Mahila Court), Hyderabad.

2. The case of the prosecution is that on 06-04-2005 at 12 noon, the father of the deceased lodged a report with the police of Bhavaninagar police station stating that the marriage of his daughter was performed with A-1 on 19-10-2001 and at the time of marriage, two tulas of gold, 160 grams of silver, house articles etc. worth Rs.2.00 lakhs were given as dowry; after marriage, they went to Saudi Arabia and came to India three times; since the marriage, mother-in-law, father-in-law, brother-in-law and sister-in-law of the deceased started harassing her and demanded additional dowry; and in the month of December 2004, A-1 came to India and started harassing the deceased demanding additional dowry of Rs.2.00 lakhs in order to go back to Saudi Arabia. It is further alleged that on 30-03-2005, the deceased came to the house of the complainant along with A-1 and asked him to give Rs.2.00 lakhs to her husband who wanted to go for Saudi Arabia, but the complainant refused to give that amount to the deceased and that because of this, A-1 and his parents were beating the deceased and harassing her. It is further alleged that A-1 and the deceased were blessed with one daughter, aged 3 years and that on 06-04-2005 at about 8 a.m., the uncle of the complainant came and informed that the deceased died on 06-04-2005 at 6 a.m. by hanging herself. According to the complainant, he went to the house of A-1 and found the deceased hanging from the iron

beam.

3. On the basis of the complaint, the case was registered in Crime No.45 of 2005 for an offence under Section 304-B IPC.

4. Latter, the case was committed to the Court of Metropolitan Sessions Division, Hyderabad and charges were framed against the accused for offences punishable under Section 304-B, 498-A IPC and under Sections 3 and 4 of the Dowry Prohibition Act.

5. The accused pleaded not guilty for the charges when they were read over and explained to him.

6. Before the Court below, P.Ws.1 to 18 were examined and EXs.P-1 to P-6 were marked on behalf of the prosecution.

7. By judgment dt.03-03-2008, the Court below acquitted the accused. The Court below, on appreciation of evidence, held that the death of the deceased was not homicidal and it was only suicidal; there was no necessity to frame additional charge under Section 302 IPC and the ingredients of Section 304-B IPC were not proved by prosecution. It held that the offence under Section 498-A IPC was also not proved by the prosecution and Sections 3 and 4 of the Dowry prohibition Act are also not attracted and the accused cannot be held guilty for having taken dowry.

8. The Court below held that the photographs of the scene of offence marked as Ex.P-4, show the room where the deceased was found hanging and it was not devoid of any other material with the help of which the deceased could reach the roof; that one of the photographs shows that there was a cemented platform by the side of the almairah and some boxes were placed on the platform; and that a person can reach the roof by standing on the said boxes. It therefore concluded that the death of the deceased was

not homicidal.

9. Although the evidence of P.W.16, the daughter of A-1 and deceased, was sought to be relied upon by the prosecution, the Court below held that P.W.16 was not cited as a witness in the charge sheet and her presence was not spoken to by P.Ws.2, 3 and 4, who according to the prosecution, went into the scene of offence room along with P.W.1 and they would not have omitted to mention this crucial fact in their evidence. It also held that the evidence of P.W.16 is contrary to the evidence of P.W.1; while P.W.16 stated that the deceased was doing 'namaz' when A-4 came and beat her on the head from behind, P.W.1 has stated that P.W.16 had informed him and others that A-1, A-3 and A-4 banged the head of the deceased to the ground while the deceased doing 'namaz'. It also held that postmortem examination marked as Ex.P-5 did not contain any mention about injuries on the forehead or on the back of the deceased and this belies the version of P.Ws.1 and 16. It therefore held that the evidence of P.W.16 appears to be doubtful in any event, P.W.16 was only aged about 5 years at the time of giving evidence and at the time of the incident, she was only 3 or 3 ½ years.

10. It held that the evidence of P.W.5, an independent witness, would clearly show that he helped A-2 in breaking the door of room of the scene of offence and that the prosecution had not contended that the accused were present inside the room by the time the door was broken. It was further held that the case of the prosecution that the death was 6 to 12 hours prior to examination and this would support their contention about murder of the deceased is not tenable, since postmortem examination was done on 06-04-2005 commencing at 3 p.m. and concluded at 4 p.m. and it fell within the time stated as the time of death of the

deceased since information was given about the death of the deceased at 6 a.m. on 06-04-2005. It held that according to the postmortem report, the maximum time mentioned therein would make the time of death as 3 a.m. or 4 a.m. and that opinion in the postmortem examination is not conclusive. It further held that the immediate reason for the suicide attempted by the deceased was witnessing by A-1 and A-5 together in a compromising posture and the demand of cooler by A-4 is not proximate to the incident. It held that the evidence on record did not disclose any nexus between harassment for dowry and the death of the deceased and therefore, Section 304-A IPC is not attracted. It held that since illicit intimacy was the immediate reason for the incident, Section 304-B IPC is not attracted.

11. Coming to the applicability of Section 498-A IPC, the Court below observed that there must be deliberate behaviour on the part of the accused to harass the deceased; P.W.1's evidence indicated that the demand of money by A-1 for the purpose of going abroad was made on 30-03-2005; that too the demand came only through the deceased and was not a direct demand made by A-1; there was no tussle at that time; and this indicates that it was the deceased who demanded money from P.W.1 but not A-1. It also pointed out the discrepancy between the evidence of P.W.1 (who stated that he was unable to pay the amount) and P.W.2 (who stated that they promised to give the amount in two or three days). It therefore held that the probable cause for the suicide was only illicit intimacy of A-1 with A-5 since independent witnesses did not speak about any harassment and this cannot be termed as cruelty attracting Section 498-A IPC. It also held that the offence under Sections 3 and 4 of the Dowry Prohibition Act was not made out, since it was not specifically proved that the each of the accused demanded and received amounts from P.W.1. It held

that the amount and the articles given at the time of marriage were proved to be termed as a 'custom' but cannot be termed as 'dowry' and that concrete proof was required to establish that the accused demanded dowry from the deceased.

12. Challenging the same, the State has preferred this Criminal Appeal.

13. Heard the learned Public Prosecutor appearing for the State of Telangana and Sri Rajagopallavan Tayi, learned counsel for the respondent-accused.

14. Learned Public Prosecutor contended that the Court below erred in not taking into account the evidence of P.W.16 and that she being the daughter of the accused and the deceased, is a very important witness and her evidence proves beyond doubt the guilt of the accused.

15. The learned counsel for the respondents-accused contended that the Court below had properly appreciated the evidence on record and has come to the conclusion that the death of the deceased was only a suicide and not murder and the offences of demand of dowry by the accused or harassment in connection with the said demand were not made out and therefore the Criminal Appeal be dismissed.

16. The scope of interference in appeal under Section 378 Cr.P.C. is laid down succinctly in **Chandrappa and others**

Vs. State of Karnataka^[1], as under :

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

17. The above passage was reiterated in **State of Rajasthan v. Mohan Lal**^[2] and recently in **Satvir Singh v. State of Delhi**^[3].

18. It is not disputed that P.W.16 was not a witness mentioned in the charge sheet but she was examined after seeking permission of the Court. Although the prosecution contended that she was present in the room where the incident occurred at the time of occurrence of the incident, her presence was not spoken to by P.Ws.2, 3 and 4. Since P.Ws.3, 4 and 10 have stated in their evidence that they went into the scene of offence along with P.W.1, they are bound to have noted the presence of P.W.16 in the room if she was really there and they would not have forgotten to mention the said fact. Also according to the prosecution, P.W.16 had informed P.W.1 that A-3 and A-4 banged the head of the deceased on the ground while she was doing namaz, but P.W.16 stated that A-4 came and beat her head from behind and then A-1 and A-2 came there, closed her mouth

and hanged from edge from the fan. This evidence of P.Ws.1 and 16 was belied by Ex.P-5 postmortem examination report which does not mention about any injuries either on the forehead or on the back of the head of deceased.

19. P.W.18, Investigation Officer has stated that they could not record the statement of P.W.16 as she was aged 3 or 3 ½ years at the time of incident and she was not able to give proper replies to his questions. At the time of giving her evidence P.W.16 was only 5 years of age.

20. In view of the above circumstances, the possibility of P.W.16 being tutored to give evidence in support of the prosecution cannot be ruled out and since her evidence is not supported by the postmortem examination report Ex.P-5, it cannot be basis to convict the accused.

21. In my opinion, the Sessions Court had rightly concluded, on appreciation of evidence that the evidence on record did not establish the guilt of the accused beyond reasonable doubt and that they are not entitled to be convicted for the offences alleged against them.

22. Therefore, I do not find any merit in the Criminal Appeal and the same is accordingly dismissed.

23. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 19-01-2015
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[\[1\]](#) (2007) 4 SCC 415

[\[2\]](#) (2009) 12 SCC 515

[\[3\]](#) (2014) 13 SCC 143