

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

CRL.R.C.No.609 of 2007

JUDGMENT:

This Criminal Revision Case is preferred by the defacto complainant-P.W.1 against the judgment dated 28.02.2007 passed in Sessions Case No.574 of 2005 on the file of the learned XI Additional District and Sessions Judge, (Fast Track Court), Guntur at Tenali, acquitting the 1st respondent-accused of the offences under Sections 498-A, 302 and 201 I.P.C. and Sections 3 and 4 of Dowry Prohibition Act.

Brief facts of the case are as under:

The revision petitioner-P.W.1 is the father of one Kodali Vijaya Nirmala (hereinafter referred to as 'the deceased'). The 1st respondent herein is the accused. The parties will be referred to as arrayed before the Court below.

The deceased was given in marriage to the accused in the year 1991 by giving cash of Rs.50,000/-, household articles and gold ornaments and during their wedlock, they begot two sons, who were examined as P.Ws.3 and 4. The accused is working as a secondary grade teacher at Ponnappalli, but residing at Cherukupalli in the house purchased by him. The deceased did her graduation, B.Ed and also passed in Craft, but she could not get Government job. At the time of retirement in the year 1997, P.W.1 paid an amount of Rs.25,000/- to the accused. Not being satisfied with the same, the accused used to harass the deceased to get an amount of Rs.1,50,000/- from P.W.1. When P.W.1 expressed his inability to meet his demand, the accused grew wild and hatched a plan to do away with the life of the deceased. On the night of 01.08.2005 when the deceased, P.W.3 and P.W.4 were in deep sleep, the accused went to the deceased and forcibly twisted her neck resulting in her death. In order to screen the evidence, the accused created that the deceased committed suicide by hanging to the ceiling fan with her saree. Thereafter, P.W.1 went to Cherukupalli Police Station and lodged a complaint with the police on 02.08.2005 at 11.00 A.M., upon which a case in Crime No.48 of 2005 was registered under Section 498-A and 306 I.P.C., investigated into and after completion of investigation, the Inspector of Police filed charge sheet against the accused for the offences under Sections 498-A, 302 and 201 I.P.C.

The accused was tried for the offences under Sections 498-A, 302 and 201 I.P.C. and Sections 3 and 4 of Dowry Prohibition Act. During the course of trial, the prosecution has examined P.Ws.1 to 12 and got marked Exs.P1 to P19 and M.O.1 to prove the guilt of the accused.

After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. to explain the incriminating circumstances appearing against him in the evidence of prosecution witnesses. The accused denied the same and stated that he had no defence evidence. The accused filed some copies of sale deeds showing that the wife of P.W.1 and her sister sold the properties of their mother and that they secured huge amount towards sale proceeds and that P.W.1 paid Rs.50,000/- each to his sons from the sale proceeds of his mother-in-law, but nothing was given to his deceased daughter i.e., wife of the accused. The accused further stated that he is an innocent person and nothing to do with the death of his wife.

On a perusal of the entire evidence, both oral and documentary, the trial Court, held that the prosecution miserably failed to prove the charges framed against the accused and accordingly acquitted him. Aggrieved by the same, the revision petitioner-P.W.1 preferred this criminal revision.

Learned Counsel for the revision petitioner-P.W.1 submits that the learned Sessions Judge has not appreciated the evidence on record in proper perspective and has erroneously found the 1st respondent-accused not guilty of the charges levelled against him and, therefore, he prays to set aside the impugned judgment and convict the 1st respondent-accused.

On the other hand, the learned Counsel appearing for the 1st respondent/accused contended that there is absolutely no evidence to connect the accused with the commission of the offence; that the trial Court rightly found that the accused not guilty of the charges leveled against him and accordingly acquitted him and that the impugned judgment needs no interference by this Court.

Now the points for determination are whether the prosecution is able to bring home the guilt of the 1st respondent-accused for the charges levelled against him beyond all reasonable doubt and whether the judgment recording the acquittal of the accused passed by the trial Court needs interference or not?

From the facts it is clear that the revision petitioner-P.W.1 is the father of

the deceased, who presented Ex.P1-complaint to the police. P.W.2 is the brother of the deceased. P.Ws.3 and 4 are the sons of the accused and the deceased. P.W.5 is the younger brother of P.W.1. The evidence of P.W.1, P.W.2 and P.W.5 is to the effect that the marriage of the deceased was performed with the accused in the year 1991 and at the time of marriage, P.W.1 gave an amount of Rs.50,000/- towards dowry besides household articles and gold ornaments to the accused. The prosecution has examined P.W.9, who is a neighbour of P.W.1, to speak about the dowry paid by P.W.1 to the accused and also harassment made by the accused towards the deceased. According to the prosecution, P.W.9 also acted as one of the elders in the settlement of marriage between the accused and the deceased. P.W.9 categorically admitted in his evidence that the deceased never informed him about the alleged harassment made by the accused towards her. He further deposed that after the death of the deceased, the accused never confessed before him that he killed the deceased and created the same as suicide. P.W.9 did not support the case of the prosecution and he was declared hostile.

P.W.1. stated in his evidence that the accused used to harass the deceased to bring more money from him since the deceased could not secure the job. P.W.1 in his cross-examination stated that a site belonging to his mother-in-law had been disposed of and the sale proceeds thereof were distributed among the family members including his sons. However, nothing was given to his daughter i.e., the deceased. Further, P.Ws.3 and 4, who are the sons of the accused and the deceased, in one voice stated that their father (accused) never harassed their mother (deceased) at any time to bring money from her parents. Neither the deceased nor P.W.1 lodged any complaint to the police about the harassment made by the accused against the deceased. Except the oral testimony of P.W.1, there is no other proof to show that the accused harassed the deceased for money during her life time.

So far as the presence of the accused at the time of incident is concerned, it is the contention of the accused that he had been to his father, who is a paralytic patient, to supply medicines on that night the deceased died and after receipt of information about the death of the deceased only, he returned home. P.Ws.3 and 4, who are the sons of the accused and the deceased, categorically deposed that their father (accused) was not present

in the house on the date of incident. P.W.7, who is the neighbour of the accused, did not depose about the presence of the accused at the time of incident. P.W.7, in his cross-examination, admitted that on the 1st of every month the accused used to visit his parents at Illavaram village to supply medicines. P.W.3, P.W.4 and P.W.7 did not support the case of the prosecution and they were declared hostile. Therefore, it is evident that the accused was not present at his house at the time of incident and after receipt of information about the death of the deceased only, he returned home.

P.W.10 is one of the inquest panchayatdars, who attested Ex.P14-Inquest report. As per Ex.P14, there is only one external injury i.e., scar on the neck of the deceased and that the death of the deceased was suicidal death. However, P.W.11-doctor, who issued Ex.P15-Post Mortem certificate, found two external injuries apart from the scar on the neck of the dead body of the deceased. The medical evidence is quite contrary with the injuries found on the dead body of the deceased.

After giving cogent and convincing reasons, the trial Court rightly held that the prosecution failed to establish that the accused is responsible for the death of the deceased and accordingly acquitted the accused of the charges levelled against him. Therefore, the order of acquittal needs no interference, as there are no compelling or substantial reasons to interfere with the same. The appeal fails and is liable to be dismissed.

Apart from the above discussion, this Court is cautious of the fact that this is a revision against acquittal and the scope in revision against acquittal is very much limited. Even if this Court comes to the conclusion that it is a fit case for interference the maximum that can be done is to remand the matter to the trial Court for fresh disposal. Such interference is not automatic and shall be in rarest of rare cases. Therefore, this Court is of the view that this revision is not one of such rarest of rare cases where such interference is required. I find no merit in this revision.

In the result, the Criminal Revision Case is dismissed confirming the judgment of the trial Court.

Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.JAISWAL, J

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