

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.227 OF 2007

-

ORDER:

-

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 27.06.2006, passed by the IV Additional District & Sessions Judge, (Fast Track Court), at Siddipet, in Criminal Appeal No.60 of 2006, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 304-B of the Indian Penal Code, 1860 (for short 'I.P.C'), vide the judgment dated 27.03.2006 in Sessions Case No.306 of 2004 by the Assistant Sessions Judge, Siddipet, was confirmed.

2. The revision petitioner herein is A.1, whereas respondent herein is the complainant in Sessions Case No.306 of 2004 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Sessions Case before the trial Court.

3. The case of the prosecution in brief is that one Chandana (hereinafter referred to as 'the deceased') is the elder daughter of PW.1. She was married to A.1 in the year 1998 by paying dowry of Rs.80,000/- cash, five tolas gold and thirty tolas of silver on demand by A.1, his parents A.2 & A.3 and his sister A.4 who was deserted by her husband. A.1 and the deceased lead their wedded life happily for about six months after their marriage and thereafter, all the accused started harassing the deceased physically and mentally to bring more dowry from her parents and thereafter, they necked her out from their home. A.1 went to the house of PW.1 and demanded PW.1 to give more dowry otherwise he will not take his wife with him and also threatened that he will kill her if he fail to fulfil his demand. On such threat, PW.1 gave Rs.5,000/- to his daughter and sent her to the house of A.1. Two years thereafter, one day in the afternoon, A.1 came to the house of PW.1 and in the presence of male members, damaged the television and other house hold articles and also beat his mother-in-law and younger daughter of PW.1. Observing such high handed behaviour

of A.1, the neighbours came there and on seeing them A.1 fled away. In that connection, PW.1 and few of the villagers of Raorukala village approached the Advocate by name Raja Reddy of Siddipet, who is no more, who in turn called A.1, A.2 & A.4 to his house and got them paid cash of Rs.8,000/- by PW.1 and sent the deceased along with them advising to look after well. Sometime thereafter, again A.1 to A.4 started harassing the deceased to bring Rs.20,000/- from her parents on pretext of buying tractor for A.1. On coming to know about the same, PW.1 by incurring debts here and there fulfilled the demand of the accused. The Accused persons being not satisfied with the amount, continued their harassment on the deceased to bring Rs.35,000/- from her parents. When PW.1 expressed his inability to meet the demand of accused, they intensified their harassment towards the deceased and unable to bear the said harassment, the deceased got vexed with her life and committed suicide by hanging herself on the intervening night of 14/15.01.2004 in the house of the accused. After receiving the complaint from PW.1, the police registered the case against A.1 to A.4 in Cr.No.04 of 2004 of Rajgopalpet Police Station for the offence punishable under Section 304-B I.P.C. The Investigating Officer recorded the statements of the witnesses. In the presence of mediators, PW.12-Mandal Revenue Officer conducted the inquest panchanama and thereafter, the Investigating Officer sent the body for post-mortem examination. The doctor-PW.11 conducted post-mortem examination and gave opinion that the death of the deceased was due to respiratory arrest due to asphyxia resulted in pressure over the neck. After receiving the post-mortem report, inquest report and after completion of investigation, the Investigating Officer filed the charge sheet into the Court.

4. The learned Judicial Magistrate of First Class, Siddipet, took cognizance of the case for the offence punishable under Section 304-B I.P.C and thereafter, committed the case to the Court of Sessions Division, Medak, at Sangareddy, who made over the same to the Court of Assistant Sessions Judge, Siddipet, for disposal according to law. On appearance of A.1 to A.4, the Assistant Sessions Judge, Siddipet, framed charge for the offence punishable under Section 304-B I.P.C against them. During trial, on behalf of the prosecution, PWs.1 to 14 were examined and Exs.P1 to P10 & MO.1 were got marked. Ex.D1 got marked during the cross examination of PW.4.

5. After closure of the prosecution evidence, A.1 to A.4 were examined under Section 313 Cr.P.C putting the incriminatory material deposited against them. They denied the incriminatory material and reported no oral or documentary evidence on their behalf.

6. The trial Court, after considering the evidence, hearing the arguments and after perusing the record, convicted A.1 for the offence punishable under Section 304-B I.P.C and sentenced him to undergo Rigorous Imprisonment for a period of seven years. Further, the trial Court found A.2 to A.4 not guilty for the offence punishable under Section 304-B I.P.C and acquitted them.

7. Aggrieved by the conviction and sentence passed by the trial Court, A.1 preferred Criminal Appeal No.60 of 2006 before the IV Additional District & Sessions Judge, Siddipet, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the finding of the trial Court, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

8. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.60 of 2006 and Sessions Case No.306 of 2004, A.1 preferred the present revision case.

9. The learned counsel for the revision petitioner/A.1 argued that the evidence of PWs.1 to 4 is not supported by the independent witnesses PWs.6 & 7 and their evidence is interested one; that the prosecution has not produced any evidence to prove that there is a demand of dowry and there is no evidence that the accused harassed the deceased physically and mentally; that the trial Court after considering the evidence on the prosecution side rightly acquitted A.2 to A.4; that A.2 to A.4 are also residing in the same house; that the findings of both the Courts below are not in accordance with the evidence on record; that the findings are perverse in nature and not based on evidence and relied upon the case laws reported in

(1) ***Tarseem Singh v. State of Punjab***, wherein it is held at para 16 as follows:

“16. What the High Court failed to notice in arriving at the said findings is that no evidence was brought on record to show that the cruelty or harassment was meted out to her for bringing insufficient dowry, in absence whereof the ingredients of Section [304B](#) of the Indian Penal Code cannot be said to have been proved. The legal fiction sought to be created must be raised only on fulfillment of the conditions precedent therefor. All the requisite ingredients of the

offence must be brought home before the presumptive evidence is put to use by the court for holding the accused guilty of an offence under Section [304B](#) of the Indian Penal Code.”

(2) **Dunnapothula Kistaiah v. State of Andhra Pradesh**, wherein it is held at para 9 as follows:

“9. From the above, it can be inferred that there was no quarrel between the appellant and the deceased particularly with regard to the dowry. Of course, as rightly contended by the learned Additional public Prosecutor, as and when an unnatural death of a woman had taken place within a span of seven years from the date of marriage, a presumption under Section 113-B of the Indian Evidence Act, 1872 shall automatically be drawn. But such a presumption is not conclusive and it is a rebuttable presumption. Further it shall not be forgotten that according to Section 304-B of IPC another aspect has also to be established i.e., “soon before the death of the deceased there should be harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry”. A scan of the evidence of PWs.1 to 4 does not reveal that there was harassment for dowry soon before the death of the deceased and on account of the said harassment only she had taken the extreme step of consuming poison and thus committed suicide. In order to attract the provisions of Section 304-B of IPC, the prosecution shall establish all the three requirements viz., 1) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; 2) such death must have been occurred within seven years from the date of her marriage 3) soon before her death she was subjected to cruelty or harassment, by her husband or relative of her husband for, or in connection with demand for dowry. It is unfortunate a woman aged about 20 years committed suicide within three years from the date of her marriage, but that cannot be a ground to hold that the said death was solely on account of the dowry harassment and the appellant alone is responsible for such unnatural death of the deceased.”

(3) **Yallamanda Chand Basha and others v. State of Andhra Pradesh**, wherein it is held at paras 8, 13 & 14 as follows:

“8. The ingredients that are required to be proved in a case under Section 304-B IPC were identified by the Hon'ble Supreme Court in *M.Srinivasulu v. State of A.P* [AIR 2007 SC 3146] and the following were enlisted:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

13. Section 133-B of the Evidence Act enables the Court to draw inference, as to harassment or cruelty, on the basis of such acts on earlier occasion. In this case, there is nothing on record to prove any earlier acts of harassment or cruelty. PWs.8 and 10 were examined to prove that on a previous occasion, the 1st appellant pushed the deceased into a well on the ground that she did not bring amount of Rs.2000/- from her parents. Both the witnesses turned hostile and nothing important was elicited from them, in the cross-examination.

14. The 1st appellant had spoken to the circumstances under which the deceased died, during the course of examination under Section 313 Cr.P.C. Apart from pleading not guilty, he alleged that he was falsely implicated by two constables, who are relatives of the deceased, since their demands were not complied with. We find it difficult to sustain the conviction of the appellants on the unsupported testimony of PWs.1 and 2. Hence, we allow the appeal and set aside the conviction and sentence against the appellants. They shall be set at liberty forthwith unless required in any other case.”

(4) **Vampu Abburamulu and another v. State of Andhra Pradesh**, wherein it is held at paras 16 & 17 as follows:

“16. Section [304B](#) of IPC is one of the provisions which is being quite often misused and the Court while trying an offence punishable under the said provision has to be extremely careful in evaluating the evidence. There may be so many reasons for a woman to commit suicide. The Endeavour of the Court should be to ascertain as to whether such suicide was committed in consequence of cruelty or harassment concerning demand of additional dowry. There may be instances where the parents or close relatives of a woman died otherwise than under normal circumstances making reports falsely introducing the element of dowry harassment may be perhaps due to shock arising out of grief on account of sudden and untimely demise of the woman. The Court has to properly assess the real cause of the unnatural death of the woman on a thorough scrutiny of the evidence on record without being swayed away by the mere fact of the unnatural death of the woman.

17. In the instant case, the evidence of P Ws.1 to 3 and 5 is lacking in details about the cruel treatment meted out to the deceased by the accused in connection with the demand of additional dowry and it does not inspire confidence of this Court. It does not appear that there is any iota of truth in the version of PW.1 and the other witnesses, who supported his story. While evaluating the entire evidence available on record, the defense version appears to be more probable and the prosecution story and the evidence of the main witnesses for the prosecution do not inspire any confidence. The learned trial court, in my view while

assessing the evidence acted in a mechanical way without examining the circumstances under which the evidence was brought on record by the prosecution. The learned trial Court considering all the aforementioned crucial facts ought to have acquitted the accused, but had fallen into error in recording the conviction for the offence punishable under Section [304B](#) IPC. The conviction and sentence recorded by the learned trial Court are not sustainable and liable to be set aside."

and finally prayed the Court to set aside the concurrent finding given by both the Courts below by allowing the revision case.

10. On the other hand, the learned Public Prosecutor appearing for the State of Telangana argued that the evidence of PWs.1 to 4 is consistent regarding the harassment made by the revision petitioner/A.1 and demand made by him to get more amount as dowry; that the evidence of PWs.1 to 4 is further corroborated by the evidence of PW.5, who clearly stated his presence at the time of panchayat when it was conducted by one Raja Reddy Advocate of Medak and who is no more; that even if PWs.6 & 7 turned hostile, no prejudice would be caused to the prosecution case; that from the evidence of PWs.1 to 5, the trial Court as well as the appellate Court rightly held that A.1 committed the offence punishable under Section 304-B I.P.C and the concurrent finding given by both the Courts below needs no interference and prayed the Court to dismiss the revision case.

11. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the concurrent finding given by both the Courts below for the offence punishable under Section 304-B I.P.C, as prayed for or not?

12. **P O I N T:** A perusal of the evidence produced by the prosecution shows that PWs.1 & 2 are the parents of the deceased. PW.3 is the brother of the deceased and PW.4 is the maternal aunt of the deceased. They all categorically stated in their evidence about harassment made by the accused to the deceased during her life time. All the witnesses clearly stated that at the time of marriage of the deceased with A.1, they presented cash and other valuables as dowry. PW.1 specifically stated that an amount of Rs.60,000/- was given as dowry at the time of marriage. Thereafter on demand by A.1, he gave Rs.5,000/- at one time and Rs.8,000/- on another occasion. Even after receiving the additional dowry, the accused has not stopped the harassment as such the panchayat was conducted in the presence of late Raja Reddy,

Advocate of Medak. Even after the panchayat also, they gave Rs.20,000/- for purchasing the tractor on demand by A.1. Subsequently, they were unable to fulfil the additional demand of Rs.35,000/- and due to continuous harassment meted out in the hands of the accused, his daughter died. The evidence of PWs.2 to 4 also supported the evidence of PW.1 regarding the demand of dowry and also harassment meted out by the deceased in the hands of the accused. The evidence of PW.5 is supported with the evidence of PWs.1 to 4. According to him, he is the resident of Raorukula village and he was present when late Raja Reddy, Advocate conducted the panchayat and settled the issue between the parties. PW.5 is an independent witness and his evidence is corroborated with the evidence of PWs.1 to 4. Though PWs.6 & 7 has not supported the prosecution case, their evidence shows that the deceased is suffering with stomach pain since long time and she died by hanging due to unbearable stomach pain. The evidence of other witnesses is formal in nature. PWs.8 & 10 are panchayat witnesses to Ex.P4 and PW.11-Medical Officer conducted post-mortem and gave opinion regarding the death of the deceased. PW.12 is the Mandal Revenue Officer, who conducted inquest on the dead body of the deceased and drafted inquest panchanama-Ex.P5 in the presence of PWs.8 to 10. The evidence of PWs.13 & 14-Investigating Officers is in respect of investigation done by them. A perusal of the evidence of PW.4 clearly shows that there were persistent demands made by the accused for payment of dowry. The evidence of PWs.1 to 3 further strengthen the prosecution case, who categorically stated that on one occasion A.1 beat the deceased in the presence of her parents in their house and damaged the television. The evidence also shows that deceased was sent to her parents' house three or four times for the sake of demand of money. As per the evidence on record, there was a continuous demand followed by the harassment established by the prosecution and in such circumstances, the death was within 15 days after the final demand made by the accused and due to the said harassment only, the daughter of PW.1 committed suicide by hanging. The evidence produced by the prosecution also established that the deceased was subjected to cruelty soon before her death and she committed suicide.

13. The contention of the revision petitioner/A.1 is that the deceased died as she is suffering with stomach pain and the evidence of PWs.6 & 7 supported

this fact. This contention cannot be taken into consideration as PWs.6 & 7 were declared hostile and their earlier statements made to the police were marked as Exs.P2 & P3. Admittedly, the death of deceased is unnatural and within seven years of her marriage, she died due to harassment of the accused on the demand of additional dowry amount and that harassment continued till her death.

14. Now coming to the case laws relied upon by the learned counsel for revision petitioner/A.1 are concerned, the facts in ***Tarseem Singh's case*** (first cited supra) has no application to the facts of the present case because in the present case, PWs.1 to 4 categorically stated about the harassment meted out by the deceased in the hands of accused and their evidence is consistent and corroborated with each other to prove the ingredients of Sec.304-B I.P.C. In so far as ***Dunnapothula Kistaiah's case*** (second cited supra) is concerned, in the said case it was inferred that there was no quarrel between the appellant and accused, particularly with regard to the dowry. But, in the present case, the evidence of PWs.1 to 4 clearly shows the demand of dowry and harassment made by the accused time to time for the sake of additional amount and whenever she used to come to house, her parents used to pay the amount. Regarding the dispute also, a panchayat was held and evidence of PW.5 corroborates the panchayat taken place regarding the demand of dowry or additional amount by the accused to the parents of the deceased. Therefore, the death of the deceased is solely on account of dowry harassment and A.1 alone is responsible for such unnatural death of the deceased. As such, the facts of the said case are not applicable to the facts of the present case. Now coming to ***Yallamanda Chand Basha's case*** (third cited supra) is concerned, the facts in this case are also not applicable to the present facts of the case. In the present case the trial Court after considering the evidence on record acquitted the parents and brother of A.1 on the ground that there is no role played by them, whereas the evidence of prosecution established about the harassment made by A.1 to the deceased during her life time and in the cross-examination of PWs.1 to 4, nothing has been elicited to disprove their evidence regarding the harassment meted out by the deceased in the hands of A.1. In so far as ***Vampu Abburamulu's case*** (fourth cited supra) is concerned, there is no dispute about the proposition of law laid down by the Hon'ble Supreme Court

as to the fact that there may be so many reasons for a woman to commit suicide. The endeavour of the Court should be to ascertain as to whether such suicide was committed in consequence of cruelty or harassment consisting demand of additional dowry. In the present case, after the marriage, A.1 was demanding huge amounts time to time and PWs.1 & 2-parents of the deceased were paying the said amount as per the wish of A.1, but one time they failed to pay Rs.35,000/- as demanded by A.1 and the evidence of PWs.1 to 4 in this regard is consistent and they clearly stated that three or four times the deceased was driven out from the house for the sake of money. Thus, the facts in the above case law are not applicable to the facts of the present case.

15. Therefore, after considering the evidence on record, I am of the view that the appellate Court as well as the trial Court rightly convicted A.1 for the charge punishable under Section 304-B I.P.C and the concurrent finding given by both the Courts below needs no interference and the revision is liable to be dismissed.

16. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 27.06.2006, passed by the IV Additional District & Sessions Judge, (Fast Track Court), at Siddipet, in Criminal Appeal No.60 of 2006.

17. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 29.04.2015

sr

-