

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.181 of 2008

JUDGMENT:

This criminal appeal is preferred by the appellants/A-1 & A-2 by invoking the provision under Section 374 (2) of the Code of Criminal Procedure being aggrieved by the judgment, dated 31.01.2008, rendered in S.C.No.400 of 2006, by the IV Additional District & Sessions Judge (F.T.C.), Ranga Reddy District, whereby and whereunder the learned Sessions Judge found A-1 & A-2 guilty for the offence under Section 304-B IPC and sentenced them to undergo Rigorous Imprisonment for a period of seven (7) years each.

2. The brief facts, that are necessary for the disposal of the present criminal appeal, may be stated as follows:

A-1 is the son of A-2. The marriage of A-1 had taken place with the deceased on 06.06.2001 according to the wish of the elders; at the time of marriage, the parents of deceased Sangeetha gave gold, silver and some net cash and they agreed to pay a sum of Rs.20,000/- some time later, in view of their financial inability; both the accused demanded the deceased to bring dowry amount of Rs.20,000/- from her parents and used to send her to her parents home; the parents of the deceased placed the matter before the elders and they all advised the accused not to harass the deceased and the parents of the deceased would pay the amount shortly. Both the accused harassed the deceased for Rs.20,000/- and in view of the unbearable harassment in the hands of the accused, the deceased on 03.05.2004 at about 10.00 a.m., went to their agricultural fields and consumed some unknown insecticide poison and while taking treatment, she died on 06.05.2004. Hence, the complaint.

3. The Assistant Commissioner of Police, Rajendranagar Division, Cyberabad, filed charge sheet against the accused in Crime No.165 of 2004 for the offence under Section 304-B IPC before the VIII Metropolitan Magistrate, Cyberabad, at Rajendranagar. After

considering the material on record, the learned Magistrate came to a conclusion that the case is exclusively triable by the Court of Sessions and committed the matter to Sessions Division. After registering the case as S.C.No.400 of 2006 made over the matter to the Court below for disposal.

4. After appearance of the accused and after ascertaining the fact that all the material papers on which the prosecution would rely were served to the accused, the Court below framed charge under Section 304-B IPC and read over and explained to the accused in Telugu, for which, they pleaded not guilty and claimed for trial.

5. To substantiate its case, the prosecution got examined PWs.1 to 13 and marked Exs.P-1 to P-14. On behalf of defence, no oral or documentary evidence was adduced.

6. After closure of the prosecution evidence, the appellants/A-1 & A-2 were examined under Section 313 Cr.P.C., for the incriminating evidence appearing against them, for which they denied the same.

7. After appreciating the oral and documentary evidence available on record, the learned trial Judge found the appellants/A-1 & A-2 guilty of the offence under Section 304-B IPC, and sentenced them as stated above. Aggrieved over the same, the present appeal is preferred by the appellants/A-1 & A-2.

8. Heard the learned counsel for the appellants as well as the learned Public Prosecutor and perused the material available on record.

9. P.W.1 is the father of the deceased. He deposed that he performed the marriage of his daughter with A-1 in accordance with Hindu Rites and ceremonies and at the time of marriage, he gave 1 ½ tolas of gold, ½ tola of ear tops to his daughter and except that, he did not give anything to the accused and not promised to give anything and that his daughter died by consuming poison due to stomach pain and that the deceased is blessed with one son and he is now with them and that A-1 married again and during the life time of the

deceased, A-1 looked after her in a proper way. He gave the report to police under Ex.P-1 and the police examined him and recorded his statement.

10. P.W.2 is the mother of the deceased. She deposed that the accused looked after the deceased properly during her life time and they have entered into compromise with A-1 before elders. The police have not examined her and not recorded her statement. During the cross-examination, she deposed that at the time of marriage of the deceased, they have agreed to pay Rs.20,000/- apart from other articles and gold etc., and that they have not given the amount as agreed due to paucity of funds and that A-1 sent the deceased to their house and again they sent the deceased to matrimonial home by promising to pay the amount later and the accused demanded for payment of dowry amount of Rs.20,000/-. P.W.2 was declared as hostile.

11. P.W.3 deposed that their family is having landed property near to the lands of the accused, at about three years back, while the deceased was vomiting, she enquired and on that the deceased told her that she is suffering from stomach pain and she called A-1 and on that A-1 enquired the deceased and she told that she consumed poison and therefore, A-1 shifted the deceased to hospital. P.W.3 was also declared as hostile. Ex.P-2, which is the portion of the statement said to have been recorded by police under Section 161 Cr.P.C. was marked.

12. P.W.4, circumstantial witness, deposed that he came to know that the deceased died due to ill-health. He was declared as hostile. P.W.5, circumstantial witness, deposed that he heard that the deceased died by consuming poison. He was also declared as hostile. Exs.P-3 & P-4, which are the portions of statements said to have been recorded by the police under Section 161 Cr.P.C. were marked.

13. P.W.6 is the doctor who treated the deceased from

03.05.2004 to 06.05.2004. She deposed that on 03.05.2004, she gave first aid to the deceased as out patient and advised her to go to other hospitals for better treatment. But, again, on 06.05.2004, at about 3.30 p.m., the deceased was brought to her hospital, as she expressed burning sensation in the stomach and she found that the deceased was suffering with breathlessness and referred her to Osmania Hospital. She deposed that she treated the deceased from 03.05.2004 to 06.05.2004 and in the cross-examination, she deposed that the deceased or her parents not informed her about the consumption of poison by the deceased and not detected the same and therefore, she did not inform the said fact to the police. P.W.6 was declared as hostile.

14. P.W.7 is one of the mediators of scene of observation report and preparation of rough sketch. He deposed about the observation of scene of offence by the investigating agency and preparation of Ex.P-7 report and Ex.P-8 rough sketch. P.W.8 is one of the mediators of inquest. Ex.P-9, which is the opinion of inquest mediators was marked. P.W.9 is the then MRO, who conducted inquest on the dead body of the deceased in the presence of mediators. Ex.P-10 inquest report was marked.

15. P.W.10 is the doctor who conducted the postmortem on the body of the deceased and he deposed that he conducted postmortem on the body of the deceased and sent the viscera for chemical examination and after receiving final opinion from FSL, he came to an opinion that the deceased died due to consumption of organic phosphate insecticide poison. Ex.P-11 Preliminary report and Ex.P-12 Final Opinion were marked.

16. P.W.11 is the relative of the deceased and one of the inquest mediators. P.W.12 is the then SI of Police, Shamshabad. He deposed about the registering of FIR under Ex.P-13 basing on Ex.P-1 report, sending of requisition to MRO to conduct inquest on the body of the deceased, preparation of scene of offence observation report,

rough sketch in the presence of mediators, recording of statements of P.Ws.1 to 3, alteration of the provisions from Sections 498-A & 306 IPC to Section 304-B IPC. P.W.13 is the then ACP of Rajendranagar Police Station. He deposed about the recording of the statements of P.Ws.6, 4, 5, L.W.7 etc., and arrest of the accused on 27.04.2005 and filing of charge sheet.

17. The learned trial Judge after evaluating the evidence, convicted the accused on the ground that the deceased died within seven years from the date of her marriage and the reasons for the death of the deceased was also not properly explained by the accused.

18. It is unfortunate to note that none of the witnesses supported the case of the prosecution. The father, mother as well as the close relatives also turned hostile and they have also stated that they have entered into a compromise with A-1 before the elders and A-1 has also married another person, but the fact remains that the said witnesses have not stated anything regarding the harassment or demand of dowry before the trial Court and the Statements under Section 161 Cr.P.C. contradicted through the witnesses, who turned hostile, also not specifically stated anything about the harassment which necessitated the deceased to commit suicide. Hence, this Court is of the view that the conviction and sentence imposed by the trial Court against the appellants/A-1 & A-2 can be modified.

19. In the result, the conviction and sentence recorded against the appellants/A-1 & A-2 by the IV Additional District & Sessions Judge, Fast Track Court, Ranga Reddy District, in S.C.No.400 of 2008 for the offence under Section 304-B IPC are set aside.

20. Accordingly, the Criminal Appeal is allowed. Consequently, miscellaneous applications, if any, pending in this criminal appeal shall stand closed.

RAJA ELANGO, J

Date: 2nd August, 2016

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HONOURABLE SRI JUSTICE RAJA ELANGO

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