

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.201 OF 2008

JUDGMENT:

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 27.11.2007, in Sessions Case No.185 of 2004 on the file of the Sessions Judge, Mahila Court, Vijayawada whereunder and whereby, appellant herein/A-1 was found guilty of the offences punishable under Sections 498-A and 304-B of the Indian Penal Code, 1860 (for short, "I.P.C.") and was convicted and sentenced to undergo rigorous imprisonment for a period of ten years for the offence under Section 304-B I.P.C., and further sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.2,000/- and in default, to suffer simple imprisonment for a period of three months for the offence under Section 498-A I.P.C.

2. The brief facts of the case, as recorded by the learned Sessions Judge, are as follows:

Devarakonda Sujatha (hereinafter, referred to as "the deceased") is the wife of A-1. A-2 is the father and A-3 is the mother of A-1. The marriage of the deceased and A-1 was held on 21.5.2003 at Chityala Village of Nalgonda District. The parents of the deceased namely L.W.1 – Bedharakota Sankaraiah and L.W.2 – Bedharakota Narasamma belong to Chityala Village. At the time of marriage, the parents of the deceased gave Rs.70,000/- towards dowry to the accused besides giving Rs.20,000/- towards household articles. Soon after the marriage, the deceased joined A-1 at Shantinagar, Vijayawada to lead marital life. A-2 and A-3 were also residing in the same locality, but in a separate house. One month after the marriage, the deceased came to her parents' house during Ashada Masam and

after Ashada Masam, A-1 to A-3 came to the house of the parents of the deceased and demanded for further dowry of Rs.50,000/-. When the parents of the deceased expressed their inability to pay the said amount, the accused reluctantly took the deceased to their house. Thereafter, all the accused were harassing and ill-treating the deceased insisting her to bring more dowry and the deceased was informing the same to her parents. Later, when A-1 and the deceased came to the house of her parents, A-1 demanded her father to give additional dowry for which they replied that they would arrange some amount after bidding the auction in the chit fund company. But, when A-1 insisted her to bring the amount, L.W.1 gave Rs.3,000/- to A-1 and thereafter also, all the accused used to harass her by insisting her to bring more money from her parents and A-1 along with his brother-in-law came to his house and demanded L.W.1 to give Rs.10,000/- and when L.W.1 could not give that amount, they went away and on 20.9.2003, the deceased again telephoned L.W.1 and informed that she was being harassed by A-1 to A-3 to bring money and that he replied that he would make it convenient to come over Vijayawada to discuss the details. On 23.9.2003, unable to bear the harassment and ill-treatment by the accused to bring additional dowry from her parents, the deceased committed suicide by hanging in her house at about 10:30 A.M. On receipt of information about the death of the deceased, her parents went to Vijayawada on 24.9.2003 early hours and found the dead body of the deceased. L.W.1 and L.W.2 got a report drafted and presented it in Satyanarayanapuram Police Station where L.W.21 – K.Gangadhar, A.S.I. of Police, registered the same as a case in Crime No.587 of 2003 for the offence under Section 304-B read with 34 I.P.C. After completion of investigation, charge sheet was laid against A-1 to A-3 for the offence under Section 304-B read with 34 I.P.C.

3. The learned II Additional Chief Metropolitan Magistrate,

Vijayawada had taken cognizance of the case against all the accused for the offence under Section 304-B read with 34 I.P.C. and she committed the case to the Court of Metropolitan Sessions Division, Vijayawada under Section 209(a) Cr.P.C. after following the procedure contemplated under law. The learned Sessions Judge registered this case and made over the same to the Court of the Sessions Judge, Mahila Court, Vijayawada for disposal according to law.

4. The trial Court framed charges under Sections 498-A and 304-B I.P.C. against A-1 to A-3.
5. When the above charges were read over and explained to the accused in Telugu, they pleaded not guilty and claimed to be tried.
6. To substantiate the charges, the prosecution examined P.Ws.1 to 12 and got marked Exs.P-1 to P-8 besides case property – M.O.1.
7. After closure of the prosecution evidence, it was reported that A-2 died and hence, the case against A-2 was abated. A-1 and A-3 were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. On behalf of the accused, none was examined and Exs.D-1 and D-2 were got marked.
8. The trial Court, after appreciating both oral and documentary evidence on record, found A-3 not guilty for the offences under Sections 498-A and 304-B I.P.C. and accordingly, acquitted him under Section 235(1) Cr.P.C., but found A-1 guilty for the said offences and accordingly, convicted and sentenced him as stated supra. Challenging the same, the present appeal is filed by A-1.
9. Heard and perused the material available on record.

10. To prove an offence under Section 304-B I.P.C., appreciation of the witnesses who are closely related to the deceased is necessary prior to proceeding with the evidence of other persons. P.Ws.1 and 2, who are the father and mother of the deceased respectively, deposed before the trial Court that the accused demanded Rs.70,000/- and they gave Rs.30,000/- at the time of negotiations of marriage and Rs.40,000/- before the marriage. During Ashada Masam, the deceased came to their house and stayed in their house for one month and during that stay, the deceased informed them that A-1 was harassing her demanding to bring money from them. But, learned defence counsel elicited that none of the allegations made in the chief examination were informed either in Ex.P-1 or stated before the Investigating Officer while recording their statements under Section 161 Cr.P.C. This is, admittedly, material omission, which amounts to contradiction. The cross examination of P.W.1 runs as follows:

"At the time of marriage negotiations Rs.30,000/- was given. On 15th the remaining Rs.40,000/- was given. It is not true to suggest that I did not get it mentioned in Ex.P1 report nor stated before police that Rs.30,000/- was given at the time of marriage negotiations and later on 15th the remaining Rs.40,000/- was given. It is not true to suggest that I did not mention in Ex.P1 report nor stated before police and MRO that during Ashadamasam our daughter came to our house and A1 also came to our house and demanded for money and he was also harassing our daughter. It is not true to suggest that we did not mention in Ex.P1 report nor stated before police and MRO that A1 telephoned us and demanded for money and that later 15 days thereafter A1 and our daughter again came to our house and A1 demanded us to give money. It is not true to suggest that I did not state to police and MRO that 15 days later again A1 and our daughter came to our house and A1 demanded for money, we gave Rs.3,000/- to him. It is not true to suggest that I did not get it mentioned in Ex.P1 report nor stated before police and MRO that again A1 and our daughter came to our house and A1 demanded money to put up separate family and on that we gave him Rs.4,000/- and that again A1 came to our shop and demanded for amount and that 4 days later our daughter telephoned us and told us that her husband was demanding for money and that 2 days later A1 again came to our house and demanded us to give money and that 2 days later we received phone call that our daughter was murdered and that when we reached the house of the accused we were told by the neighbours that our daughter was murdered by the accused. It is

true that I mentioned in Ex.P1 report and stated to police that at the time of marriage we gave Rs.70,000/- towards dowry. It is not true to suggest that I did not get it mentioned in Ex.P1 report that our daughter stayed in our house during Ashadamasam....”

In the same way, the cross examination of P.W.2 runs as follows:

“It is not true to suggest that I stated to police and MRO that we gave Rs.70,000/- at a time at the time of marriage but not on two occasions as deposed by me in my chief...”

The evidence of P.W.2 is also contradicted by the appellant. It is clear that there are several contradictions in the evidence of P.Ws.1 and 2. Hence, the said evidence is to be eschewed and the same cannot be relied upon being it is a material omission and also an improvement before the trial Court. Hence, this Court is of the view that by basing upon such evidence, it would not be proper to convict a person for the offence under Section 304-B I.P.C. There is no specific allegation which necessitates to conclude that the appellant harassed the deceased. Hence, this Court is of the view that the conviction and sentence imposed by the trial Court against the appellant/A-1 in the judgment, dated 27.11.2007, in Sessions Case No.185 of 2004 on the file of the Sessions Judge, Mahila Court, Vijayawada for the offence punishable under Section 304-B I.P.C. is liable to be set aside and the same is, accordingly, set aside. But the fact remains that because of the misunderstandings and ill-treatment by the appellant herein, the deceased committed suicide. Hence, it can be safely concluded that the appellant can be convicted for the offence under Section 498-A I.P.C.

11. At this stage, learned counsel for the appellant sought to reduce the punishment imposed by the trial Court.

12. From the material available on record and in view of the submission made by the learned counsel for the appellant, this Court is inclined to modify the sentence of imprisonment.

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Date: 12.8.2016

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