

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1186 OF 2010

JUDGMENT:

Appellant – State filed this Criminal Appeal by invoking the provisions under Section 378 (1) & (3) of the Criminal Procedure Code (in short 'Cr.P.C.') being aggrieved by the judgment, dated 22.12.2008, rendered in CrI.A. No.25 of 2008 by the III Additional Sessions Judge, Kurnool at Nandyal, whereby the learned Additional Sessions Judge allowed the appeal, filed by the accused, by setting aside the judgment, dated 27.02.2008, rendered in Sessions Case No.154 of 2007 by the Principal Assistant Sessions Judge, Nandyal, whereby and whereunder the learned Principal Assistant Sessions Judge found the accused Nos.1 and 2 guilty of the offence punishable under Section 304-B IPC.

2. The brief facts of the case are that the marriage of accused No.1 was performed with the deceased – Manasa (daughter of PWs.1 and 2) on 03.02.2006 at Nandyal. At the time of marriage, PW1, father of the deceased, gave Rs.2,00,000/- by way of DDs, 10 tulas of gold and 60 tulas of silver and other household articles to A1's family towards dowry. After marriage, the deceased joined her husband at Nandyal. At that time, A1 was working in Sanghi Spinning Mill at Hyderabad and thereafter he worked at Mahaboobnagar. After staying for five days in her in-laws' house at Nandyal, the deceased went to her parents' house at Yemmiganur. When A1 came to the house of PWs.1 and 2 at Yemmiganur and said that he lost his job and asked the deceased to get Rs.5,00,000/- as additional dowry so that he can do business. When PW.1 expressed his inability to give the said amount, A1 started harassing the deceased stating that she is not good looking and stout in personality. Thereafter, PW.1 took the deceased to Nandyal and there A1 and A2, who is the mother of A1, asked them about the money. Thereafter, A1 and A2 started harassing her and A2 stated that if her son married another women, he will get more dowry. The deceased having got vexed with the behaviour of the accused, committed suicide on

13.10.2006 by hanging herself in her house at Nandyal. On a report given by PW.1, a case in crime No.116 of 2006 of Nandyal I-Town Police Station, under Section 304-B IPC, was registered against both the accused and autopsy was conducted on the dead body of the deceased by the Medical Officer, who opined that the deceased appear to have died of asphyxia due to hanging. On the next day, the investigating officer visited the scene of offence seized the chunni under cover of panchanama. On 15.10.2006, the accused were arrested by the police and were remanded to the judicial custody. After completion of investigation, the police filed charge sheet against the accused for the offence under Section 304-B IPC.

3. The case was taken on file by the Judicial Magistrate of First Class, Nandyal and thereafter, it was committed to the Court of Sessions, since the offence under Section 304-B is exclusively triable by the Court of Sessions, and thereafter the same was made over the trial Court for disposal in accordance with law. On appearance of the accused before the trial Court, a charge for the offence under Section 304-B IPC was framed, read over and explained to the accused, for which they pleaded not guilty and claimed for trial.

4. To substantiate its case, the prosecution got examined P.Ws.1 to 11, besides marking Exs.P-1 to P-14 and M.Os.1 to 9. On behalf of defence, no oral evidence was adduced.

5. After evaluating oral and documentary evidence available on record, the learned trial Judge, convicted the accused for the offence under Section 304-B IPC and accordingly, sentenced them to undergo rigorous imprisonment for seven years. Aggrieved by the same, the accused preferred Crl.A. No.25 of 2008. The first appellate Court, after hearing both side counsel and after perusing the material available on record and after discussing elaborately about the evidence on record, allowed the appeal by setting aside the judgment of the trial Court and

acquitted the accused for the said offence. Aggrieved over the acquittal of the accused, the State preferred the present appeal.

6. Heard learned Public Prosecutor and the learned counsel for the respondents– accused and perused the material available on record.

7. The first appellate Court, after evaluating the evidence adduced by the prosecution, acquitted the accused on the following grounds:

“Except the evidence of PWs.1 and 2, who are parents of the deceased, PW.4, who is the younger sister and PW.5, who is junior paternal uncle of the deceased, there is no evidence to show that PW.1 presented 10 tulas of gold and 60 tulas of silver to A1 as dowry, but on the other hand as per the admission of PW.2, who is the wife of PW.1, A1 presented 4 gold bangles, tali bottu and clothes to the bride at the time of marriage. The prosecution failed to examine any independent witness and failed to file any documentary evidence. PW.4 deposed that A1 demanded additional dowry of Rs.5.00 lakhs during sravana masam. As per her own evidence, she was studying at Kurnool and she was residing in a hostel and she used to come to Yemmiganur only during vacation, therefore, her presence during Sravana Masam at her house seems to be doubtful. PW.5 also deposed that A1 demanded for additional dowry and the same by the deceased. His evidence also seems to be doubtful as he was working as a teacher at Kaandanati village, which is at a distance of 7 KMs., from Yemmiganur. The trial Court though held that the evidence of PWs.1, 2, 4 and 5 is hearsay evidence, believed their evidence and convicted the accused, which is not correct and hence, the conviction and sentenced imposed by the trial Court is liable to be set aside. .

8. While observing so, the first appellate Court allowed the appeal by setting aside the conviction and sentence imposed by the trial Court against the accused.

9. The evidence adduced by the witnesses directly pointing

towards the guilt of the accused, then only there is a need for this Court to interfere with the order of acquittal. When two views are possible, and one of the view is in favour of the accused person, there is no need to interfere with the judgment or order under challenge. This is a case where the first appellate Court has acquitted the accused on the basis of the evidence, which is not enough to convict the accused. This Court is also of the view that it is highly unsafe to convict the accused basing on the evidence adduced by the prosecution. Therefore, this Court is not inclined to interfere with the impugned judgment.

10. Accordingly, the Criminal Appeal is dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed.

-

RAJA ELANGO, J

January 05, 2016.

CTL

-