

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.605 of 2008

JUDGMENT:

This criminal appeal is preferred by the appellant/accused by invoking the provision under Section 374(2) of the Code of Criminal Procedure being aggrieved by the judgment, dated 05.05.2008, rendered in S.C.No.459 of 2007, by the Assistant Sessions Judge at Wanaparthy, whereby and whereunder the learned Sessions Judge found the appellant guilty of the offence punishable under Section 304-B IPC, convicted for the same and sentenced him to suffer Rigorous Imprisonment for a period of eight (8) years.

2. The case of the prosecution is as follows:

The complainant is the father of deceased Smt. Bairoji Yadamma, who is goldsmith by profession. The accused is son-in-law of the complainant and husband of the deceased. Yadamma was given in marriage to the accused on 18.05.2003 and paid an amount of Rs.30,000/- net cash and half tula gold as dowry to the accused and that after their marriage, the deceased joined the accused at her in-laws house in Kethepally and both of them lived happily for three months and thereafter two months prior to the incident, the accused started harassing the deceased by beating and demanding her to get Rs.5,000/- net cash and two tulas of gold from her parents. It is also further stated that when the deceased asked her father the amount and gold, the complainant expressed his inability to meet the demands. On 06.10.2003, the deceased was tired and sleeping in the night and the accused, who was in sexy mood woke up her and asked her to

participate in the sex, but the deceased did not agree, as a result of which the accused got angry and beat her and scolded her. The deceased could not tolerate the harassment by her husband and she suffered mental and physical torture on the next day morning i.e., on 07.10.2003 at 8.30 a.m., the deceased poured kerosene on her body and set her ablaze. As a result, she sustained extensive burn injuries. The M.R.O. of Pangal recorded the dying declaration of the deceased. The complaint was registered as a crime under Section 498-A IPC and the Assistant Sub-Inspector of Pangal Police Station examined the deceased and also P.Ws.1 to 4 and recorded their statements. He also visited the scene of offence in the presence of mediators and recovered empty plastic tin and a match box used in the commission of offence. Since the condition of deceased was critical, she was referred to Osmania General Hospital, Hyderabad, for better treatment on 08.10.2003 and she succumbed to death due to her burn injuries on 11.10.2003 at 5.45 a.m. Basing upon the death intimation, the Sub-Inspector of Police, Afzal Gunj Police Station, registered a case in Crime No.993 of 2003. The M.R.O. of Hyderabad conducted inquest over the dead body of the deceased and the doctor of Osmania Hospital, Hyderabad, conducted postmortem and opined that the cause of death is due to shock and injuries. On the basis of the death intimation, The Assistant Sub-Inspector of Police, Pangal Police Station altered the section of law to Section 304-B IPC from Section 498-A IPC and issued express memos. The Deputy Superintendent of Police, Wanaparthy, took up further investigation and visited the scene of offence at Kethepally Village and again examined P.Ws.1 to 4 and recorded their statements.

On 28.10.2003 the accused was arrested and was sent to judicial custody. The investigation revealed about the accused harassing the deceased for dowry and also the deceased, disgusted with her life, committed suicide by pouring kerosene on her body.

3. The charge sheet was taken on file against the accused for the offence punishable under Section 304-B IPC and numbered it as P.R.C.No.7 of 2004, on the file of the Judicial Magistrate of First Class, kollapur. After complying with mandatory provisions, the learned Magistrate committed the case to the Court of Sessions, Mahabubnagar Division, by pronouncing a committal order, dated 25.06.2007, and made over the case to the trial Court for disposal according to law.

4. On appearance of the accused before the Court, the charge under Section 304-B IPC was framed, read over and explained to him in Telugu, for which, he pleaded not guilty and claimed for trial.

5. During the course of trial, P.Ws.1 to 12 were examined and Exs.P-1 to P-22 and M.Os.1 & 2 were marked on behalf of the prosecution. No oral evidence or documentary evidence was adduced on behalf of the accused.

6. On appreciation of the oral and documentary evidence, the trial Court found the accused guilty of the offence under Section 304-B IPC and accordingly convicted and sentenced him as stated above. Aggrieved by the same, the present appeal is preferred by the appellant/accused.

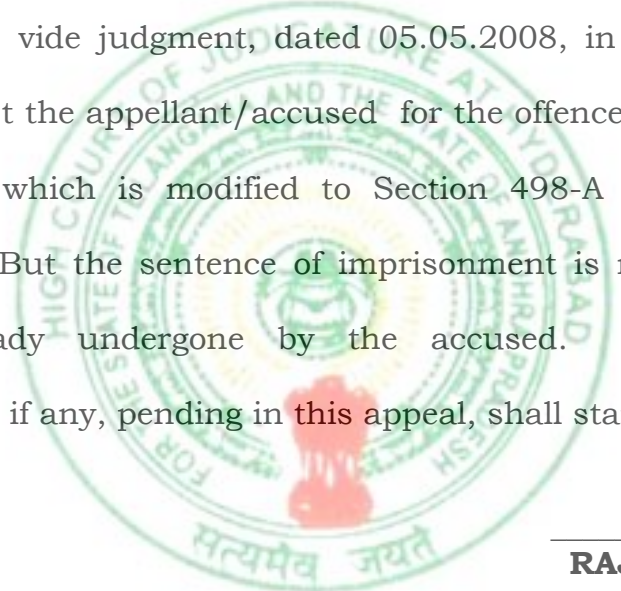
7. Heard and perused the entire material available on record.

8. The entire case of the prosecution is mainly based on the dying declaration of the deceased before the M.R.O. of Pangal, while she was undergoing treatment in Area Hospital, Wanaparthy, which is recorded as a complaint. It is an unfortunate case where P.Ws.1 to 3, the father and brothers of the deceased not supported the case of the prosecution and turned hostile. P.Ws.4 and 5, Panch witnesses also turned hostile. P.W.8, the M.R.O, Pangal, who claims to have recorded the dying declaration of the deceased deposed that the original dying declaration copy recorded by him was not marked before the Court. In the complaint, which is to be treated as dying declaration also, it is the specific case of the deceased that the accused demanded additional dowry of two tulas of gold. The deceased further stated in the same complaint that on the date of occurrence, when she refused to have sexual relation with the appellant herein, he was aggrieved over the same and quarrelled and also abused and assaulted her. Aggrieved over the same, the deceased committed suicide by pouring kerosene and setting fire to herself. The said dying declaration given by the deceased clearly indicates that in a sudden quarrel between the deceased and the accused, aggrieved over the attitude of the appellant, she has committed suicide. She has not stated in the Dying Declaration that she was subjected to harassment by the accused in connection with the demand of additional dowry and further, she has not stated before the M.R.O. in what manner she was subjected to harassment by the appellant herein. Unless there is a specific evidence that the harassment was in connection with demand of additional dowry, a person cannot be convicted for an offence under Section 304-B IPC. At the same time, the act of

the appellant/accused which drive the woman to commit suicide would attract an offence under Section 498-A IPC.

9. Considering the facts and circumstances of the case and the time elapsed, this Court is of the view that the conviction imposed by the trial Court for an offence under Section 304-B IPC is modified to Section 498-A IPC and the sentence of imprisonment for the offence under Section 498-A IPC is modified to that of the period, which the appellant has already undergone.

10. In the result, the Criminal Appeal is partly allowed. The conviction recorded by the learned Assistant Sessions Judge at Wanaparthy, vide judgment, dated 05.05.2008, in S.C.No.459 of 2007, against the appellant/accused for the offence under Section 304-B IPC, which is modified to Section 498-A IPC is hereby confirmed. But the sentence of imprisonment is reduced to the period already undergone by the accused. Miscellaneous applications, if any, pending in this appeal, shall stand closed.



RAJA ELANGO, J

Date: 1st September, 2016

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