

THE HON' BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL Nos.1154 of 2010, 3 and 4 of 2011

COMMON JUDGMENT:

Criminal Appeal No.1154 of 2010 is filed by the appellants-accused Nos.1 to 3 against judgment, dated 30.09.2010, passed in S.C. No.604 of 2009 by the IV Additional Sessions Judge, (FTC), Ananthapur, whereunder and whereby the learned Sessions Judge found the appellants guilty of the offences punishable under Sections 498-A and 304-B IPC and 3 and 4 of the Dowry Prohibition Act, and convicted and sentenced them as under:

- i) to undergo simple imprisonment for seven years each for the offence under Section 304-B IPC;
- ii) to suffer simple imprisonment for three years and to pay a fine of Rs.2,000/- each, in default to undergo simple imprisonment for two months for the offence under Section 498-A IPC;
- iii) to undergo simple imprisonment for five years and to pay a fine of Rs.15,000/- each, in default to suffer simple imprisonment for one year for the offence under Section 3 of Dowry Prohibition Act and;
- iv) to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/- each, in default to undergo simple imprisonment for two months for the offence under Section 4 of the Dowry Prohibition Act.

The case of the prosecution in brief is as follows:

Appellants – A1 to A3 are residents of Nalludi Village of Kampli Taluk, Bellary District of Karnataka State. A4 and A5 are residents of Bellary Town. A2 and A3 are the parents of A1. A4 is the husband of A5

and they are close relatives of A1 to A3. The daughter of PWs.1 and 2 – deceased, was given in marriage to A1 and at the time of marriage a dowry of Rs.3,20,000/- and gold jewellery of 25 tolas was given to A1's family. A1 and the deceased lived happily for 1 ½ years and thereafter, the accused began to demand the deceased to bring additional dowry. A1 and the deceased blessed with a female child and after the birth of the child, A1 started pressurizing the deceased for a share in the properties of her father. The deceased again conceived and was carrying third month pregnancy. About one month prior to the date of incident, she contacted PWs.1 and 2 and informed about the harassment made by the accused and also the demand of the accused. Then, PWs.1 and 2 went to the place of the accused and requested them not to harass the deceased and promised to meet their demands after some time. But, the accused asked them to take back the deceased along with the child. Then, PWs.1 and 2 took their daughter along with them. On the date of incident i.e. 18.01.2009 at about 4.00 p.m., when PWs.1 and 2 went to their fields, the deceased committed suicide by hanging. Basing on the report given by PW.1, a case in Crime No.3 of 2009 was registered against the accused in the Snganamala Police Station. After completion of investigation, the police filed charge sheet against the accused for the offences punishable under Sections 498-A and 304-B r/w.34 IPC and 3, 4 and 5 of the Dowry Prohibition Act.

The Additional Judicial Magistrate of First Class, Anantapur committed the case to the Court of Sessions, Ananthapur. From there, the case was made over to the trial Court for trial and disposal in accordance with law.

On appearance of the accused, they were examined under Section 228 Cr.P.C., and charges under Sections 304-B and 498-A IPC were

framed against accused Nos.1 to 5 and charges under Sections 3 and 4 of the Dowry Prohibition Act were framed against the appellants –A1 to A3. When the charges were read and over explained to them, the accused denied the same and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 to 8 and got marked Exs.P1 to P5, besides MOs.1, 1-A and 2. On behalf of the accused, no oral evidence was adduced, but Exs.D1 to D6 were marked.

The trial Court, after considering the evidence on record, has not found A3 and A4 guilty of the offence and accordingly acquitted them, and found the petitioners – accused Nos.1 to 3 guilty of the offences punishable under Sections 498-A and 304-B IPC and 3 and 4 of the Dowry Prohibition Act, and accordingly, convicted and sentenced them as stated above. Challenging the same, the petitioners preferred CrI.A. No.1154 of 2010. Challenging the lesser punishment against A1 to A3, and also acquittal of the other accused i.e. A4 and A5, the de facto complainant filed CrI.A.Nos.3 and 4 of 2011.

When this matter has come up for hearing, the de facto complainant filed CrI.A.M.P. Nos.1508 and 1509 of 2016 to permit him to come on record, and also to compound the offences against the petitioners and to record the compromise. Learned counsel appearing on behalf of the de facto complainant submitted that the 1<sup>st</sup> appellant agreed to bequeath an extent of 6.49 cents of land in favour of the minor daughter of the 1<sup>st</sup> appellant and the deceased and also to deposit Rs.4,00,000/- in her name and to give 7 tulas of gold ornaments and also agreed to look after her studies and to take the custody. To that effect, they also filed a Memorandum of

Understanding. The appellants and the de facto complainant also present before this Court.

After hearing the learned counsel for both the parties and also on perusal of the record, this Court is of the view that the present case is not a case to invoke the provisions under Section 320(2) Cr.P.C., to compound the offences since the offence alleged against the appellants are grievous in nature, and the person, who intends to compromise the matter is also not an aggrieved person. Hence, this Court intends to dispose of the case on appraisal of the available evidence on record. In view of the same, both the CrI.M.Ps. are dismissed.

The entire case of the prosecution rests on the evidence of the father and mother of the deceased and they stated in their chief examination regarding demand of Rs.50,000/- as additional dowry by the accused and also the harassment informed by the deceased over telephone to them. Further, it is the case of the prosecution that the deceased was brought to the house of PW.1, 45 days prior to the occurrence. Whatever stated by PWs.1 and 2 in their chief examination was properly contradicted by the petitioners by way of eliciting answers regarding the information received about the harassment. The cross-examination of PWs.1 reads as under:

“It is true I did not state in Ex.P1 complaint or to the M.R.O. during inquest saying that “A1 has telephoned to me and my wife lifted the phone on his instructions she gave it to my daughter Nalini and he asked my daughter to bring a share in my properties and asking her for aborting the child otherwise he will not allow her to come to his house and later my daughter informed me about hat and I advised her to adjust with it.” (Omission). It is not true to suggest that I did not state before the police in 161 Cr.P.C. statement saying that “My wife lifted the phone and on the directions of the A1 my wife gave it to my daughter Nalini. I was present when we received the telephone

on 18.01.2009.” It is not true to suggest that I did not state before the police that “on 18.01.2009 A1 telephone and told my daughter to bring a share from my property or to go for abortion otherwise she will not be permitted to come to his house.” It is true I stated before the police that “I do not know what the conversation was between my daughter and accused No.1 on 18.1.2009.” It is true I did not state before the police that ‘my daughter had informed me about her telephonic conversation with A1.’ The accused are related to me even to prior to the marriage of my daughter with A1. The village Venkatagari palli is at a distance from 25 kms. from my village.”

The cross-examination of PW.1 clearly indicates the fact that what are all the allegations made by the witnesses in the chief examination were not stated before the investigating officer. The said evidence adduced by the said witnesses is improvement in nature. Apart from that, it is the case of PW.1 as well as the investigation agency that a diary was seized from the room where the deceased committed suicide. To substantiate the case, the investigating agency has not taken any steps to substantiate the suicide note by sending the same to the hand writing expert and further in such a case, if the suicide note is not placed before the Court there is any amount of doubt regarding the contents of the suicide note. In some cases, the suicide note discloses the fact that suicide is due to some other reason. Hence, the prosecution has deliberately not placed the suicide note before the Court. Even if it is assumed that the entire evidence adduced by the witnesses is true, there is no evidence to the effect that the deceased was subjected to harassment prior to commission of suicide, attracting the offence under Section 304-B PC. Admittedly, the deceased was in her parents' house for more than 45 days prior to commission of suicide. Hence this Court is of the view that it is highly unsafe to convict the accused for the above offences.

In view of the Memorandum of Understanding filed along with the compound petition, the learned counsel for the de facto complainant submitted that the he would not press Crl.A. Nos.3 & 4 of 2011.

In the result, Crl.A. No.1154 of 2010 is allowed setting aside the conviction and the sentence imposed against the appellants – A1 to A3 for the offences under Sections 498-A, 304(B) r/w. 34 IPC and 3 & 4 of the Dowry Prohibition Act, by the IV Additional Sessions Judge, (FTC), Ananthapur, in S.C. No.604 of 2009, vide judgment, dated 30.09.2010. Consequently, the appellants - accused Nos.1 to 3 are acquitted for the above offences.

The fine amount, paid if any, by the appellants shall be refunded to them. Bail bonds shall stand cancelled and the sureties are discharged.

Crl.A. Nos. 3 & 4 of 2011 are dismissed as not pressed. Miscellaneous petitions, pending if any, shall stand closed.

September 28, 2016.

KTL

RAJA ELANGO, J