

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.331 of 2007

JUDGMENT:

This Criminal Appeal is filed by the sole accused challenging the judgment of VIII Additional Sessions Judge, East Godavari District, Rajahmundry in S.C.No.65 of 2006, whereby the learned Sessions Judge found the appellant guilty for the offence under Section 304-B IPC and sentenced him to undergo R.I. for seven years.

The brief facts of the case of the prosecution are as follows:

The marriage of deceased-Adilakshmi was performed with the accused on 17.3.2000 and she joined the accused to lead conjugal life. They lived happily for two years and were blessed with a daughter. Thereafter the accused started harassing the deceased on the ground that the land of Ac.2.00 cents given at the time of marriage is not sufficient and demanded to bring more dowry and that he used to harass her to sell away the said land. When the deceased informed the said harassment to her parents, the accused was given Rs.50,000/- in January, 2004; Rs.40,000/- and Rs.30,000/- on different occasions. The accused developed illicit intimacy with one Kommana Venkata Satya @ Sathulu and when the deceased questioned, he replied that she brought less dowry and that he wanted to go to Dubai with his concubine and threatened to kill her. Unable to bear the cruelty and harassment in the hands of the accused, on 19.10.2004 the deceased committed suicide in the house of the accused by hanging. On the same day, basing on the report given by Panchayat Secretary-P.W.17, marked as Ex.P.14, police registered a case in Crime No.194 of 2004 under Section 174 Cr.P.C., took up investigation, recorded the statements of witnesses, altered the section of law to Section 304-B IPC

and after completion of investigation, charge sheet was laid against the accused for the offence under Section 304-B IPC.

In order to bring home the guilt of the accused, prosecution examined P.Ws.1 to 21 and marked Exs.P.1 to P.23 and exhibited M.O.1-Saree. On behalf of defence, Exs.D.1 to D.4 were marked.

After evaluating the entire evidence brought on record, the trial Court convicted and sentenced the appellant as aforementioned.

Heard the learned counsel for the appellant and learned Additional Public Prosecutor and perused the material on record.

In this case, P.Ws.1 to 3 are important witnesses. P.W.1 is the father of the deceased, who deposed that two years after the marriage, accused started beating the deceased and ill-treating her demanding more dowry. The deceased used to inform the same to him. The deceased also informed him about the illicit intimacy of accused with Venkata Sathulu. He paid Rs.50,000/-; Rs.40,000/- and Rs.30,000/- on different occasions to the accused fulfilling his demand of more dowry. Further the accused used to beat the deceased to sell away the land that was given to the deceased by P.W.1. P.W.2, mother of the deceased deposed in similar lines as that of P.W.1. P.W.3 is no other than the cousin of the deceased. He deposed that the deceased used to inform him that the accused started ill-treating her demanding more money and that the parents of deceased paid certain amounts on three different occasions, but the accused continued to harass the deceased demanding dowry and to sell away the land covered by Ex.P.1. She also informed him about the illicit intimacy of the accused with Sathulu. P.W.4 & P.W.6, neighbours of the deceased did not support

the case of the prosecution and they were treated hostile by the prosecution. P.W.5 is the Village Servant who deposed that the Village Secretary prepared a report and presented it to the police. P.Ws.7 & 8, 10, 11, 13 & 15 were declared hostile as they have not supported the case of the prosecution. The evidence of other witnesses is of not much use to the case of the prosecution.

The entire evidence of P.Ws.1 to 3 is to the effect that the appellant-accused had illegal intimacy with another lady who is examined as P.W.10 and in view of the said illegal intimacy, he assaulted the deceased and vexed with the attitude of accused, she committed suicide. It is also their case that the P.Ws.1 and 2 paid a sum of Rs.50,000/-; Rs.40,000/- and Rs.30,000/- to the accused on various occasions as additional dowry. But however, the said fact of demand of dowry by the accused and payment of said amounts was not deposed by these witnesses before the investigating officer during the course of investigation under Section 161 Cr.P.C. The said improvement amounts to contradictions since most important points are not informed to the police at the time of examination. Mere fact that the appellant-accused is having some illicit intimacy with another lady, for which, the deceased committed suicide will not attract an offence under Section 304-B IPC.

Mere death of a person within seven years of marriage would not attract an offence under Section 304-B IPC and the Court cannot invoke the presumption under Section 113-B IPC unless and otherwise the following ingredients are proved.

- (a) That death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) Such death should have occurred within 7 years of her marriage;

- (c) The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) Such cruelty or harassment should be for or in connection with the demand of dowry ; and
- (e) To such cruelty or harassment the deceased should have been subjected soon before her death.

In the present case, the said ingredients are not proved by the prosecution. Hence, the conviction and sentence imposed on the appellant-accused for the offence under Section 304-B IPC is liable to be set aside. But the fact remains that the evidence of P.Ws.1 to 3 clinchingly establishes regarding the cruelty meted out to the deceased by the appellant, which necessitated her to commit suicide. Hence, this Court is of the view that the offence would fall under Section 498-A IPC under the second limb. Therefore, the prosecution is able to establish the guilt of the accused for the offence under Section 498-A IPC.

In the result, the Criminal Appeal is allowed in part. The conviction and sentence imposed by the trial Court on the appellant for the offence under Section 304-B IPC is hereby set aside and modified to the one under Section 498-A IPC and the sentence of imprisonment is modified to the period already undergone by the appellant and he is directed to pay a sum of Rs.5,000/- towards fine, in default, to undergo S.I. for two months.

Miscellaneous Petitions, if any, pending shall stand closed.

RAJA ELANGO,J

06.09.2016
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