

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1319 OF 2007

JUDGMENT:

This Criminal Appeal is preferred by the appellants/A.1 to A.3 against the Judgment dated 26.09.2007 passed in S.C.No.154 of 2002 by the VII Additional Assistant Sessions Judge (Fast Track Court), Nizamabad, at Bodhan, whereby the learned Sessions Judge convicted and sentenced A.1 to A.3 for the offence under Section 304-B IPC and accordingly sentenced A.1 to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.2,000/- (Rupees two thousand only), in default to suffer simple imprisonment for six months; and sentenced A.2 and A.3 each to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.2,000/- (Rupees two thousand only) each, in default to suffer simple imprisonment for six months each. Originally, the appellants/A.1 to A.3 were charged for the offence under Sections 302 and 304-B IPC and the Court below, after due trial, acquitted them for the offence under Section 302 IPC and convicted them for the offence under Section 304-B IPC and sentenced them as stated above.

The case of the prosecution is as follows:

That the marriage of the deceased was solemnized with A.1 and at the time of marriage, a sum of Rs.1.3 lakhs, two tulas of gold chain were given to A.1 and two tulas of gold chain to the deceased and other utensils and household articles were also given in the marriage. A.2 and A.3 are the parents of A.1. Since the marriage, all the three accused have been demanding additional amount of Rs.50,000/- and harassed the deceased to pressurise her parents for getting the same and on such demand, L.W.1, the father of the deceased, requested the accused that he would arrange the amount in six months and in spite of the same, A.1 to A.3 did

not change their attitude and consistently demanding for additional dowry. That on 28.08.2001, when the deceased was alone in the house, A.1 to A.3 strangled the deceased with a saree and then hanged to a beam to create as of suicide by hanging. Thereafter, A.1 to A.3 informed the relatives about the suicide of the deceased. L.W.1 came to the house of A.1 to A.3 and on seeing the condition of the deceased, he came to know that A.1 to A.3 have harassed the deceased for not getting the additional dowry of Rs.50,000/- and killed her by hanging to the beam. Basing on the complaint of L.W.1, the Sub Inspector of Police registered a case in crime No.60 of 2001 under Section 304-B IPC and after investigation, charge sheet was filed.

To prove the guilt of the accused, the prosecution examined P.Ws.1 to 11 and marked Exs.P.1 to P.2. On behalf of defence, D.Ws.1 to 3 were examined and Exs.D.1 and D.2 were marked.

On appreciation of oral and documentary evidence, the Court below convicted A.1 to A.3 for the offence under Section 304-B IPC and accordingly sentenced them as stated above.

Heard and perused the material available on record.

P.Ws.1 and 2 are the parents of the deceased. P.Ws.3 and 4 are the relatives of the deceased. They deposed before the Court below as follows. That A.1 married the deceased four months prior to the death of the deceased. At the time of marriage, a sum of Rs.1,30,000/- was given as dowry. Thereafter, they lived together happily for a period of fifteen days. Subsequently, the accused demanded Rs.50,000/- as additional dowry and harassed the deceased, and the same was informed by the deceased over telephone one day prior to the date of occurrence. The said witnesses admitted in the cross-examination that in the complaint or in the Statement under Section 161 of the Code of Criminal Procedure, it

was mentioned regarding the demand of additional dowry Rs.50,000/- by the accused. Insofar as the question of harassment by the appellants is concerned, none of the witnesses stated the nature of ill-treatment and cruelty which constituted harassment. They have not specifically stated any verbal abuse or physical assault over the deceased concerned. Even though a suggestion is given that the deceased had love affair and that the said person was seen by some of the defence witnesses and as such, the deceased committed suicide, was not believed by the Court below. This Court is also of the view that the said evidence is totally irrelevant and it is highly unbelievable.

The Court below acquitted the accused for the offence under Section 302 IPC, since to prove the offence under Section 302 IPC, specific evidence is to be adduced by the prosecution and the involvement of the accused in the commission of the crime also to be proved, whereas there is no such evidence that the accused committed the offence under Section 302 IPC. Considering the evidence regarding the demand of additional dowry and harassment, the Court below convicted A.1 to A.3 for the offence under Section 304-B IPC by invoking the provision under Section 113-B of the Indian Evidence Act. This Court is also of the view that prior to invoking the provision under Section 113-B of the Evidence Act, necessarily other circumstances should be proved by the prosecution. But in the present facts and circumstances of the case, except proving that the deceased died in unnatural circumstances, there is no evidence to invoke provision under Section 113-B of the Evidence Act. Hence, this Court is of the view that the offence under Section 304-B IPC is not made out, but at the same time, from the evidence of the prosecution witnesses, it is made out that A.1 to A.3 subjected the deceased to cruelty and as

such, it can be inferred that A.1 to A.3 committed the offence under Section 498-A IPC, instead of Section 304-B IPC.

The conviction imposed by the Court below on A.1 to A.3 for the offence under Section 304-B IPC is modified to that of the offence under Section 498-A IPC. The sentence of imprisonment imposed on A.1 is modified to that of one year rigorous imprisonment, instead of ten years as imposed by the Court below and the fine amount and default clause is not interfered with by this Court. The period already undergone by A.1 shall be given set off under Section 428 CrPC. The sentence of imprisonment imposed on A.2 and A.3 is modified to that of the period, which A.2 and A.3 have already undergone. The fine amount and default clause imposed on them is not interfered with by this Court.

The Criminal Appeal is accordingly partly allowed. Consequently, the miscellaneous petitions, if any pending in this appeal, shall stand closed.

22.09.2016
pln

JUSTICE RAJA ELANGO

