

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.372 of 2008

JUDGMENT:

This Criminal Appeal is filed by A.1,A.3 & A.4 challenging the judgment dated 23.01.2008 passed by I Additional Sessions Judge, Karimnagar in S.C.No.591 of 2007, whereby the learned Sessions Judge found A.1 guilty for the offences under Sections 304-B IPC and Section 4 of Dowry Prohibition Act and sentenced him to undergo R.I for ten years for the offence under Section 304-B IPC and further sentenced to undergo R.I. for one year and to pay a fine of Rs.1,000/-, in default, to undergo SI for 15 days for the offence under Section 4 of the Dowry Prohibition Act. A.3 & A.4 were convicted for the offence under Section 498-A IPC and Section 4 of Dowry Prohibition Act and were sentenced to undergo R.I. for three years each for the offence under Section 498-A IPC and further sentenced them to undergo R.I. for one year each and to pay a fine of Rs.1,000/- each, in default, to undergo S.I. for 15 days for the offence under Section 4 of Dowry Prohibition Act.

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

A.1 is the husband, A.2 is the father-in-law, A.3 is the mother-in-law and A.4 is the sister-in-law of the deceased. P.W.1 is the father of the deceased. Marriage of A.1 with the deceased took place three years prior to the date of occurrence. Six months after the marriage, all the accused started harassing the deceased mentally and physically for bringing additional dowry. The deceased was blessed with a male child. Even after the advice by the elders in the panchayat, the accused used to harass the deceased. In view of the physical and mental harassment, disgusted with life, on 7.5.2007, the deceased bolted the doors inside,

poured kerosene on her body and on her son and set ablaze. Due to the burn injuries, the son of the deceased died on the spot and she died in the Government Hospital at Siricilla. Upon the complaint-Ex.P.1 given by P.W.1, police registered a case in Crime No.188 of 2007 for the offence under Section 304-B IPC, took up investigation and after completion of investigation, laid the charge sheet against the appellants herein. The case against A.2 was spilt up as he was absconding.

In order to bring home the guilt of the accused, prosecution examined P.Ws.1 to 14 and marked Exs.P.1 to P.8. On behalf of defence, D.W.1 was examined.

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

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

P.W.1, father of deceased while reiterating the allegations in the complaint-Ex.P.1 deposed that six months after the marriage, all the accused started harassing the deceased physically and mentally and in the panchayat held in the presence of elders of the village, the accused were advised to look after the deceased properly. Subsequently, A.1 and deceased resided in a separate rented house, but at the instance of other accused, he continued to harass the deceased by beating and abusing her. Unable to bear the said torture, on the date of occurrence, the deceased poured kerosene on her son and on her body and set on fire and died due to burn injuries. The evidence of P.W.2 is also

corroborated with the evidence of P.W.1 regarding the harassment meted out by the accused. P.W.3 and P.W.7 did not support the case of the prosecution and they were declared hostile. P.Ws.4 to 6, independent witnesses deposed that they attended the marriage of the deceased and P.W.1 paid Rs.80,000/- towards dowry at the time of marriage and that they are the elders attended in the panchayats and advised the accused not to demand for additional dowry and not to harass the deceased on that account. Though they were cross-examined at length, nothing contra is elicited by the defence. The evidence of P.W.12-doctor, who conducted autopsy over the dead of the deceased is to the effect that the deceased died due to hypotonic shock and with septicaemia due to 90% burn injuries. The other part of the evidence is regarding the procedure in conducting the investigation and filing the charge sheet.

Taking into consideration the entire evidence brought on record, this Court is of the view that the evidence brought on record does not disclose anything against A.1 to attract an offence under Section 304-B IPC. Section 304-B IPC runs as follows:

“304B (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation: xxxxx

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

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 undisputed facts are that the death of the deceased is in unnatural circumstance and that the death is occurred within three years of the marriage and that these ingredients have been proved by the prosecution. But nowhere, it is specifically stated by any of the witnesses that soon before the death, the deceased was subjected to cruelty/harassment which is of such a nature that necessitated the deceased to commit suicide. In view of the same, this Court is of the view that the prosecution miserably failed to prove the ingredients of Section 304-B IPC and the trial Court erred in convicting A.1 without there being any evidence available on record. However, the witnesses concerned categorically deposed regarding the harassment meted out by the deceased in the hands of A.1 and also A.3 & A.4. Hence, this Court is of the view that while maintaining the convictions imposed on A.3 & A.4, the conviction imposed on A.1 for the offence under Section 304-B IPC is liable to be modified 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 A.1 for the offence under Section 304-B IPC is hereby modified to the one under Section 498-A IPC and the sentence of imprisonment is modified to the period already undergone by him. The conviction imposed on A.3 & A.4 for the offence under Section 498-A IPC is confirmed and the sentence of imprisonment is modified to the period already undergone by them. Further while maintaining the conviction imposed by the trial Court on the appellants for the offence under Section 4 of Dowry Prohibition Act, the sentence of imprisonment is modified to the period already undergone by them. The sentence of fine amount is not interfered with.

Miscellaneous Petitions, if any, pending shall stand closed.

23.08.2016
Tsr



RAJA ELANGO,J