

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CRL.A.NO. 1634 of 2010

Date of Order: 7.6.2017

Between:

The State of A.P. represented by Public Prosecutor
...Appellant

And

Konga Someshar
..Respondent

Counsel for appellant : Public Prosecutor for the State
of TS

Counsel for respondent : Mr. P. Prabhakar Reddy

The Court made the following:-



JUDGMENT: (Per Hon'ble Ms. Justice J. Uma Devi)

This Criminal Appeal is filed by the State against the judgment, dated 18.11.2003 passed by the III-Additional Sessions Judge, Warangal in Sessions Case No. 665 of 2000 acquitting the sole accused of the offences under Section 302 IPC and Sections 3 and 4 of the Dowry Prohibition Act.

The case of the prosecution, as narrated in the charge sheet, is briefly stated as under,

The deceased Smt. Konga Uma was the daughter of P.W.1- Pedduri Mallaiah who was a resident of Palakurthy village, whereas the accused belonged to Ramavaram village of Kondla Mandal. The marriage of the deceased with the accused was solemnized about two years prior to 25.6.1999 and they led happy marital life for a period of one year at Thirumalagiri village of Nalgonda district. At the time of marriage, P.W.1 gave net cash of Rs.35,000/- and one shop-cum-residence at Palakurthy village to the accused towards dowry as per the agreement they entered. About 8 months prior to the death of the deceased (alleged incident), the accused came to Palakurthy village along with the deceased who was pregnant by that time. The accused opened a watch repair shop in the name and style of Uma Maheshwara watch repair shop at Palakurthy village. One month after their coming to Palakurthy village, the deceased gave birth to a female child. After she gave birth to a female child, there was a demand from

the accused on P.W.1 to deposit money in the name of his daughter and to fulfill such demand, P.W.1 deposited a sum of Rs.7,060-80 ps. in the name of his grand daughter. The accused, having not been satisfied with such deposit, started harassing the deceased to bring Rs.10,000/- as additional dowry from her parents. P.W.1 expressed his inability to meet the said demand made by the accused. Keeping the same in his mind, the accused started harassing the deceased and developed dislike towards her and thought that he could marry another lady and get more dowry amount, if the deceased was killed. In pursuance of such decision taken by him, he poured kerosene on the deceased on the night of 25th June, 1999 at 7.30 P.M. and set fire to the pallu of her saree with the aid of burning gas stove in order to create the scene that she caught fire accidentally. The deceased was shifted to M.G.M. Hospital, Warangal where she succumbed to burn injuries three days after the alleged incident. While the deceased was undergoing treatment in the MGM Hospital, Warangal, her dying declaration was recorded by IV-Addl. Judicial Magistrate of First Class, Warangal in which she stated that the accused was responsible for causing burn injuries to her.

Based upon the complaint given by P.W.1-Peldduri Mallaiah, the father of the deceased, the Sub Inspector of Police, Palakurthy police station, (P.W.14) registered a case in Cr.No. 43 of 1999 under Sections 498-A and 307 IPC and Sections 3 and 4 of the Dowry

Prohibition Act at the initial point of time and took up investigation. On receiving information about the death of the deceased, P.W.14 rushed to MGM Hospital and held inquest over the dead body of the deceased and altered the provisions of law from Section 498-A and 307 IPC to Section 304-B IPC and took steps for conducting of post mortem examination over the dead body of the deceased. The accused was arrested by the then Asst. Superintendent of Police, Jangaon (P.W.17) on 22.7.1999 and was sent to judicial remand. After the completion of investigation, charge sheet was laid against the accused by P.W.17 under Section 302 IPC, alternatively under Section 304-B IPC and Sections 3 and 4 of the Dowry Prohibition Act.

The accused was tried for the offences under Sections 302 IPC and Section 3 and 4 of the Dowry Prohibition Act. The learned III-Addl. Sessions Judge, Warangal, on appreciation of the oral and documentary evidence available in the case record, found the accused not guilty of the offences under Section 302 IPC and Sections 3 and 4 of the Dowry Prohibition Act and accordingly acquitted him of the above mentioned charges.

Feeling aggrieved by the judgment of acquittal recorded by the learned III-Addl. Sessions Judge, the State has come up with this appeal.

It is contended by the learned Public Prosecutor appearing for the State of Telangana that the judgment of acquittal passed by the

learned trial Judge is contrary to the evidence on record and the probabilities of the case. His main contention is that though the evidence of P.W.1 is cogent, consistent and trustworthy in so far as the motive and other aspects and the direct involvement of the accused in the commission of offence which is also corroborated by the statement made by the deceased before the Magistrate, the trial Judge has come to a wrong conclusion, and that the findings recorded by the trial Judge that the medical evidence is against the prosecution case is wholly incorrect and that the reasonings given by the trial Judge for acquitting the accused of the offences under Section 302 IPC and Sections 3 and 4 of the Dowry Prohibition Act are devoid of any merits and are contrary to the evidence available in the case record.

The learned counsel appearing for the respondent/accused, while supporting the judgment of acquittal passed by the trial Judge, has contended that the delay in lodging of the complaint by P.W.1, non-recovery of gunny bag, and the absence of sooty blackening marks on the body of the deceased, are enough to hold that the accused is innocent, and he is falsely implicated in the present case. He contends that since the evidence available in the case record is supporting the version of the defence, the trial Judge has rightly acquitted the accused. He further contends that the trial Court has disbelieved the contention of the prosecution that the accused

harassed the deceased to bring additional dowry from her parents; that the prosecution version that the accused was given a shop-cum-residential house towards dowry at the time of his marriage was rightly disbelieved by the trial Court by recording sound reasonings taking into consideration the admission made by P.W.1 himself that the shop-cum-residential house, said to have been given to the accused at the time of his marriage as dowry, is still in the name of his wife, that simply because of deposit of some amount in the name of the deceased's daughter by P.W.1, it cannot be said that additional dowry was paid to the accused and that the deposit of amounts if any made by P.W.1 in the name of his grand-daughter out of love and affection does not come within the purview of Section 3 of the Dowry Prohibition Act and that therefore it is hazardous to hold that the case against the accused is established by the prosecution relying on the oral testimony of P.W.1 whose evidence as to the harassment of the deceased by the accused about the demand for dowry is hearsay. The learned Counsel contended that the reasons recorded by the trial Court to acquit the accused of the offences under Section 302 IPC and Sections 3 and 4 of the Dowry Prohibition Act cannot be held as invalid and contrary to the evidence on record.

Having heard the elaborate submissions made by the learned Public Prosecutor appearing for the State, and the learned counsel

appearing for the respondent/accused, the only question that emerges for our consideration is,-

Whether the judgment of acquittal passed by the trial Court is erroneous or contrary to law and is likely to result in injustice, as contended by the State?

The facts which are not in dispute are that the marriage of the deceased Uma was performed with the accused two years prior to the alleged date of incident. The accused, though belonged to Ramavaram village of Kondla Mandal, he came over to Palakurthy village along with his wife about 8 months prior to the alleged date of incident and started living with her. He had set up a watch repair shop at Palakurthy village in the premises said to be given to him by his father-in-law (P.W.1) to eke out his livelihood. As per the prosecution version, the deceased sustained burn injuries on 25.6.1999 at about 7.30 P.M. and soon after receipt of such information, P.W.1 along with his wife and others rushed to the house of the accused and shifted her to MGM Hospital, Warangal where she succumbed to the burn injuries on 30.6.1999.

The case was initially registered as against the accused under Sections 498-A and 307 IPC based upon complaint given by the father of the deceased and the provision of law was later altered to Section 304-B IPC by the Sub-Inspector of Police (P.W.14) after he got information about her death.

The accused was tried for the offences under Sections 302 IPC and Sections 3 and 4 of the Dowry Prohibition Act. The prosecution had examined as many as 17 witnesses and marked Exs.P1 to P8 and M.Os. 1 to 4. No evidence was let in on behalf of the defence. On appreciation of the oral and documentary evidence available in the case record, the learned Sessions Judge found the accused not guilty of the aforesaid offences. The judgment of acquittal passed by the learned trial Judge is questioned in this appeal by the State by raising several other grounds which we referred above.

The prime contention of the prosecution is that though the statement made by the deceased before the Judicial Magistrate of First Class and the Sub-Inspector of Police, Palakurthy police station is a valid piece of evidence, the learned trial Judge is simply carried away by the version of the accused and has ultimately come to an erroneous conclusion that the guilt of the accused for the offences under Section 302 of IPC and Sections 3 and 4 of the Dowry Prohibition Act has not been proved by the prosecution.

So far as the criminal cases are concerned, the onerous responsibility lies on the prosecution to establish the guilt of the accused beyond all reasonable doubt. The accused is presumed to be innocent till he is found guilty by a competent court. The power of reviewing of evidence or reappreciating the evidence on record can only be exercised by the appellate Court only in exceptional cases

where it is established by the prosecution that serious miscarriage of justice is occasioned and that an incorrect view is taken by the trial Judge due to improper appreciation of evidence on record. It is always to be remembered by the appellate Court that a trial Judge will have the distinct advantage of watching the demeanor of the witnesses and he will be in a better position of evaluating the credibility of the witnesses etc.

In the given case the prosecution has mainly relied on the statements made by the deceased before the Judicial Magistrate of First Class and the Sub-Inspector of Police, Palakurthy police station and also the oral testimony of P.W.1 who has set the law in motion by lodging a complaint before the Sub-Inspector of Police, Palakurthy police station. The statement given by the deceased before her death, though undoubtedly can be relied upon to base conviction, it is always to be kept in mind by the Court that as the declarant cannot be called as a witness for cross-examining her, the accused cannot have the opportunity of testing the veracity or otherwise of such statement.

The complaint in the present case was given by the father of the deceased on 27.6.1999 at about 4.00 P.M. though the alleged incident took place on 25.6.1999 at about 7.30 P.M. The undisputed fact is that the father of the deceased was there in the hospital with the deceased having shifted her to the hospital on the same day. The statement made by the deceased before the Magistrate was the crucial

piece of evidence for the prosecution to assert that it could establish that the accused was responsible for the death of the deceased. As per the defence version, the deceased herself committed suicide, and that the absence of soot marks over the dead body of the deceased themselves were enough to hold that the prosecution came with a false story that kerosene was poured or sprinkled on her and later she was set afire etc. It is pertinent to note that the Magistrate or the Doctor who were with the deceased when she gave a statement as to receiving of burn injuries, did not notice kerosene smell, and that the Doctor who held autopsy also did not state in the post mortem report that he noticed kerosene smell and soot marks on the dead body of the deceased. Though the statement made by the deceased could be relied upon to base conviction, the same was not relied upon by the trial Judge, as he entertained a doubt about its veracity. The learned trial Judge, on a careful scrutiny of the statement made by the deceased and the circumstantial evidence, such as, the absence of soot marks and kerosene smell, disbelieved the version of the prosecution that kerosene was poured over the deceased before she was set afire. The learned trial Judge, upon careful scrutiny of the evidence given by P.W.1 who did not give complaint to the police soon after the occurrence of the offence, though he was very much available in the hospital and was with the deceased, and the other circumstances such as absence of any substantial material to ensure that the statement was

made by the deceased without there being any influence on her by others who were with her, particularly her father and close relatives who took her to the hospital to provide treatment and were with her till she was alive, disbelieved the case of the prosecution. The undisputed fact is that P.W.1 along with his close relatives rushed to the scene of offence immediately after getting information about the alleged incident and they were with the deceased before arrival of the Magistrate at the Hospital to record her statement. Since the prosecution failed to satisfy the Court that the statement made by the deceased regarding the cause or reason for her receiving of burn injuries was free from embellishments and it was not the outcome of the promptings or tutorings made to her by her close relatives, the trial Judge, taking note of such crucial aspect, has rightly disbelieved the version of the prosecution and accordingly held that the case set up by the prosecution and the evidence let in support of the same is not inspiring the confidence of the Court. In *Rahana Begum and others V. State of A.P., rep. by its Public Prosecutor High Court, Hyderabad*¹, the Supreme Court held :

“The dying declaration is an exception to the rule of inadmissibility of hearsay evidence. Unless its contents are free from reasonable doubts, apart from being coherent and consistent, it is not safe to rely upon the dying declaration in the absence of corroborate evidence

¹ 2017 (2) ALT (Cri.) 104 (DB) (AP)

(See *Rasheed Beg V. State of Madhya Pradesh* (1974) 4 SCC 264 and *Nallapati Sivaiah V. Sub-Divisional Officer, Guntur* (2007 (3) ALT (Crl.) 253 = (2007) 15 SCC 465) “

Another significant circumstance noticed by us is that the gunny bag which is said to have been used to put out fire is not recovered or produced before the trial Court by the prosecution. It is the specific case of the prosecution that kerosene was poured over the deceased before she was set afire.

In Modi's Medical Jurisprudence and Toxicology, Twenty-third Edition, page 635 it is stated that,

“Burns caused by kerosene oil are usually very severe, and are known from its characteristic odour and the sooty blackening of the parts”

In Medical Jurisprudence and Toxicology by Dr. K. S. Narayan Reddy, Fourth Edition also, page No. 715, it is stated,

“Burns caused by kerosene oil, petrol, etc. are usually severe and produce sooty blackening of the parts and have a characteristic odour.”

A bare reading of the above texts makes it clear that presence of sooty blackening marks will commonly take place in cases of deaths due to burns caused by use of inflammatory substances such as

kerosene and petrol. The Medical Officer (P.W.15) who held autopsy over the dead body of the deceased did not notice any sooty blackening marks on the body of the deceased and no such marks were mentioned in Ex.P4-post mortem report issued by him. If really sooty blackening marks were found or noticed, the doctor who held autopsy would have certainly mentioned about the same in his report-Ex.P4. The non-mentioning of the presence of sooty blackening marks in the post mortem report is a significant aspect through which an adverse inference can be drawn against the prosecution case that the accused was falsely implicated in this case on the allegation that kerosene was poured on the deceased before she was set on fire on the alleged date of incident.

For the above reasons, we are of the view that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt for the offence under Section 302 IPC.

Coming to the validity or otherwise of the findings recorded by the trial Judge relating to the allegation of the demand for dowry, it is relevant to note Sections 2, 3 and 4 of the Dowry Prohibition Act, which read as under :

“2. Definition of ‘dowry’. —In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.....”

Section 3 of the said Act which provides for penalty for giving or taking dowry reads as under,

“3. Penalty for giving or taking dowry.—(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable [with imprisonment for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than [five years].

(2) Nothing in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.”

Section 4 of the said Act which provides penalty for demanding of dowry reads as under,

“4. Penalty for demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.”

The oral testimony of P.W.1 is crucial for the prosecution to assert that it has established the factum of presentation of dowry to the accused at the time of marriage and that there was harassment to bring additional dowry etc. The specific case of the prosecution is that at the time of marriage of the deceased with the deceased with the accused, P.W.1 agreed to give a shop-cum-residential house at Palakurthy village as dowry, but no registered document is produced by the prosecution to prove its contention that P.W.1 gifted a shop-cum-residential house situated at Palakurthy village to the accused as dowry, but on the other hand a clear admission was made by P.W.1 himself that he has not executed any registered document gifting a shop-cum-residential house to the accused. A further admission was made by P.W.1 in specific terms that a shop-cum-residential house which is said to have been given to the accused as dowry is still

standing in the name of his wife. The above admissions made by P.W.1 themselves are enough to hold that the allegation made by the prosecution that a shop-cum-residential house was presented to the accused towards dowry is not proved. Except the oral testimony of P.W.1, no supporting evidence is forthcoming from the side of the prosecution to hold that the deceased was harassed by the accused to bring some amounts towards additional dowry. Deposit if any made by P.W.1 in the name of the daughter of deceased is not enough to hold that the deceased was harassed by the accused to bring amounts towards additional dowry and that pursuant to such harassment, amount was deposited in the name of her daughter. The deposit of amount, if any made by P.W.1 in the name of his grand-daughter out of love and affection towards her, cannot be a substantial material piece of evidence to hold that the prosecution has proved the allegations that the deceased was harassed by the accused to bring additional dowry etc. This Court has not noticed any substantial material placed on record by the prosecution to prove the offences under Sections 3 and 4 of the Dowry Prohibition Act. There is no patent illegality or irregularity in the judgment of acquittal passed by the trial Court. On an over all appreciation of the oral and documentary evidence available in the case record, we are of the view that the learned trial Judge has rightly acquitted the accused of the said offences.

In the result, the appeal is dismissed and the impugned judgment of the trial Court is hereby confirmed.

Dt. 7.6.2017
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C.V.NAGARJUNA REDDY, J

J. UMA DEVI, J

