

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Appeal No.1650 of 2010

JUDGMENT : (ORAL)

(per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal the appellant-accused has challenged the order and judgment, dated 29-07-2010 passed in Sessions Case No.94 of 2010 by the II Additional Sessions Judge, Nalgonda at Suryapet, whereby the appellant-accused was held guilty and convicted under Sections 304-B and 302 I.P.C. and Sections 3 and 4 of Dowry Prohibition Act.

2. The case of the prosecution in brief is that marriage of the deceased No.1, who is elder daughter of P.W.1 (informant of the F.I.R.) with the appellant has taken place on 30.8.2002. At the time of marriage, P.W.1 promised to give a sum of Rs.40,000/- towards dowry to the appellant, however, she had given only Rs.17,000/- to the appellant. The deceased No.1 - Banala Nagamani blessed with two daughters, who are Sirisha, aged six years and Bhavani, aged 5 months, at the time of the incident. Since two years prior to the death of the deceased, the appellant was harassing his wife – deceased No.1 both physically and mentally for payment of balance dowry amount. About one year back, P.W.1 had given an amount of Rs.5,000/- to the appellant. For the last seven months prior to the date of the incident, the deceased No.1, along with her daughter Sirisha and the appellant, was living in a rented room in the house of one, Parvatham Pullaiah Chary in House No.1-9-61/27 by taking it on a rent. The appellant

used to do cooli work in a jewellery shop of P.W.5 – Amaravadi Damodara Chary and used to earn Rs.30/- per day. The deceased No.1, about five months prior to the incident, blessed with second child i.e., daughter. Since then, the appellant started suspecting the fidelity of his wife, used to beat her and also used to harass her both physically and mentally to bring balance dowry amount of Rs.23,000/-. The further case of the prosecution is that mother of the deceased No.1, by knowing the same, placed the matter before the elders and the elders' panchayat was held accordingly. In the said panchayat, the appellant promised and executed a letter that he would live happily along with his wife and after delivery of her second child, one day prior to the incident i.e., on 30-5-2009 at about 8.00 PM, P.W.1 and her family members called the appellant to their house and presented new clothes to him in the night at 9.00 PM. Thereafter, the appellant took his wife and his daughter Bhavani to his house. In early hours of 31.5.2009 at 3.30 AM, the son of P.W.1 i.e., P.W.3 had received a telephone call from his friend Intiyaz – P.W.7, who was residing opposite to the house of the appellant and deceased in Vijaya Colony, Suryapet. P.W.7 informed to P.W.3 that at the house of his brother-in-law Srinivasachary (appellant) many persons were gathered. He suspected something might have happened in the house. So, on that information, P.W.1 and P.W.3 rushed to the house of the appellant and found the dead bodies of wife of the appellant and her younger daughter Bhavani, aged five months, in a pool of blood with cut throat injuries.

3. Accordingly, P.W.1 filed a complaint before the Police on 31-5-2009 and suspected the appellant i.e., her son-in-law murdering her daughter and

granddaughter by throat cut injuries. Accordingly, the Police registered a case vide F.I.R. No.169 of 2009 under Sections 304-B and 302 I.P.C. and issued F.I.R. under Ex.P13 and P.W.14 – Sub-Divisional Police Officer, Suryapet came to the scene of offence and took up the investigation.

4. The prosecution, after completion of the investigation, filed the charge-sheet against the appellant for the offences punishable under Sections 304-B and 302 I.P.C. and Sections 3 and 4 of Dowry Prohibition Act. On appearance of the accused and after hearing both sides and also considering the material on record, the charges under Sections 304-B and 302 I.P.C. and Sections 3 and 4 of Dowry Prohibition Act were framed against the appellant who pleaded not guilty and claimed to be tried.

5. The prosecution in order to bring home the guilt of the appellant, in all, examined 14 witnesses as P.Ws.1 to 14 and got marked Exs.P1 to P14, besides marking the material objects as M.Os.1 to 12.

6. Learned counsel appearing on behalf of the appellant submits that P.W.7, stated to be last seen witness, however declared hostile and not supported the case of the prosecution. In Statement under Section 313 Cr.P.C. the defence taken by the appellant is that there was no complaint before the date of incident against the appellant for harassing of the deceased-wife. Not even a single witness from the elders were examined to establish that there was panchayat held on the harassment of the appellant caused to the deceased. There is no eyewitness and the appellant was not at the spot at that time, as he was working in a goldsmith shop of P.W.5 as cooli. The learned counsel further submits that the incident had taken place on the intervening night of 30/31.5.2009 in the house of the appellant and on

that day, appellant was not in his house and was working in a jewellery shop of P.W.5 as he had to prepare jewellery to be given to some party urgently. So, on the entire night, he did not go to his house. Thus, the appellant does not know how the deceased Nos.1 and 2 died, but on a police complaint filed by P.W.1 under Ex.P1, Police registered false case against the appellant and implicated him in a case, though he is no way concerned with the death of the deceased persons.

7. On the other hand, the learned Public Prosecutor submitted that except the appellant and his wife Nagamani and her deceased daughter (deceased No.2) there was no other person residing in the house of the appellant at the time of the incident. That apart, when P.W.1 and P.W.2 came to the house of the appellant on receiving a phone call by P.W.3 from P.W.7 in the early hours of 31.5.2009, they found that deceased Nos.1 and 2 were died and their dead bodies were in a pool of blood with cut throat injuries and they found that the appellant was absconding from his house.

8. He further submits that to prove the guilt of the appellant the prosecution has proved the recovery of M.Os.1 to 4 i.e., knife (kathipeeta), wooden piece of kathipeeta, bloodstained shirt and pant of appellant in furtherance of his confession which led to recovery of M.Os.1 to 4, which were hidden by the appellant in a room in the roof, in the presence of panchayats under Exs.P8 and P9. One panch witness i.e., P.W.10 supported the prosecution case and further corroborated by the Investigating Officer - P.W.14 with regard to the seizure of M.Os.1 to 4 in furtherance of confession of appellant under Ex.P8 and seizure under Ex.P9. Learned Public Prosecutor further submits that the prosecution has proved the

recovery of M.Os.1 to 4 in furtherance of the confession of appellant under Ex.P8 and seizure under Ex.P9. FSL report also connected the appellant with M.O.1 which was used in commission of offence for cutting throat of both deceased persons by the appellant intentionally having bore grudge that deceased-wife failed to bring balance dowry amount from her parents and as he was also suspecting that deceased No.2 was not born to his wife through him. Thus, there is no merit in the present appeal and it deserves to be dismissed.

9. We have heard the learned counsel for the appellant and the learned Public Prosecutor for the State and also perused the material placed on record.

10. The case of the prosecution is that the deceased No.1 is admittedly the wife of the appellant whose marriage has taken place on 30.8.2002. At the time of marriage, parents of the deceased No.1 i.e., P.W.1 and P.W.2 agreed on the demand of the appellant to give a dowry of Rs.40,000/-, however they could pay only Rs.17,000/- as dowry at the time of marriage. When the deceased No.1 was meted out cruelty and harassment by the appellant by demanding balance dowry amount and also by suspecting her character, the matter was referred to the elders. Before the elders, the appellant had promised that he would look after his wife properly, but in spite of that when he again started the harassment, the mother of deceased No.1 i.e., P.W.1 paid a sum of Rs.5,000/- out of remaining balance dowry amount. After that, appellant-accused along with his wife lived happily for sometime and again after six months, the appellant started harassing and ill-treating the deceased No.1 and used to beat her to bring balance dowry amount, but the

parents of deceased No.1 were unable to pay the balance amount, since P.W.1 was suffering from ill-health at that time. Meanwhile, the appellant and deceased No.1 along with their elder daughter Sirisha shifted family to Suryapet village from Korlapahad village and started living at Vijaya Colony in the house of Parvatham Pullaiahchary by taking a room on a rent. Meanwhile, the deceased No.1 conceived the second pregnancy and accordingly gave birth to a female child at her parents' house about five months prior to the incident. After the marriage of brother of deceased No.1 has taken place, one day prior to the incident i.e., on 30-5-2009, P.W.1 and P.W.2 called the appellant to their house and presented clothes to the appellant and to their daughter. On the night of 30-5-2009 at 8.00 PM P.W.1 and P.W.2 took their daughter to the house of the appellant. At that time, the appellant was present in the house at 9.00 PM. In the early hours of 31-5-2009, P.W.3 received a phone call from P.W.7 and he was informed that many persons were gathered at the house of the appellant and something was happened. So, on that information, P.W.1 and P.W.3 rushed to the house of the appellant and found the dead bodies of wife of the appellant and her younger daughter Bhavani, aged five months, in a pool of blood with cut throat injuries. Accordingly, they made a complaint, which culminated into F.I.R. in Crime No.169 of 2009 and issued F.I.R. under Ex.P13.

11. It is also case of the prosecution that soon before death of the deceased No.1, there was ill-treatment and harassment by the appellant for demand of dowry and the deceased died with cut throat injuries within seven years of her marriage in the house of the appellant. Therefore, the appellant has committed dowry death of his wife.

12. The prosecution examined the mother and father of the deceased No.1 as P.Ws.1 and 2 respectively and the brother of the deceased No.1 was examined as P.W.3. P.W.1, who is the mother of the deceased No.1 and wife of P.W.2 and mother of P.W.3, deposed that on 31-8-2002 she had performed the marriage of her daughter (deceased No.1) with the appellant and promised the appellant to pay an amount of Rs.40,000/-, however due to her financial crunch, she could pay only Rs.17,000/- as dowry at the time of marriage. About one year back, she had given an amount of Rs.5,000/- to the appellant out of the balance dowry amount. She deposed that after the marriage of her daughter, she lived happily for some time and six months after the marriage, the appellant started harassment and ill-treatment. He used to beat her daughter demanding the balance dowry amount. As P.W.1 was suffering from ill-health, she was unable to pay balance dowry amount. P.W.1 also deposed that the appellant also suspecting her daughter's character and also harassing her on that ground also. Due to the aforesaid issue, the matter was referred to the caste elders where the appellant promised not to harass her daughter and will look after his wife happily. She further deposed that seven months prior to the death of her daughter, her daughter along with appellant shifted to the Suryapet village from Korlapahad village and they used to reside in a rented house in Vijaya Colony, Suryapet in the house of Parvatham Pullaiahchary. After the appellant shifted his family to Suryapet, she felt that the appellant would change his attitude towards his wife. Thereafter, deceased No.1 gave birth to female child on 23.1.2009 and after delivery, she took her daughter to her house for one month. Ten days after the marriage of his son, she presented clothes to her daughter and also son-in-law (appellant) but on that day, the

appellant thrown those clothes and went away. On that very evening, her daughter along with grand daughter went to the house of the appellant. She further stated that her husband returned to their house after dropping their daughter in their house on 30.5.2009 and in the early hours of 31.5.2009, their son P.W.3 received a phone call from P.W.7 who is residing opposite to the house of the appellant and informed that many persons were gathered at the house of the appellant and something was happened. Accordingly, they went over there and found her daughter and her grand daughter in a pool of blood and they were found dead and also observed stab injuries on the forehead of her daughter and also observed throat cut injury on her and they also found throat cut injury on her grand daughter.

13. P.W.1, during the cross-examination, has stated that prior to the death of their daughter, she had not filed any complaint against the appellant for ill-treatment and harassment of her daughter, but it is in her examination-in-chief that six months after the marriage of her daughter, the appellant started harassing her daughter. He used to beat her daughter demanding to bring balance dowry amount and he used to suspect her daughter's character. The two facts noted above cannot be thrown out. Though the parents of the deceased No.1 did not make any complaint to the Police prior to the death of their daughter, however the matter was referred to caste elders and there the appellant promised not to harass further and will keep his wife happily. This fact of panchayat of the elders has been proved by deposition of P.W.5 – goldsmith in whose shop the appellant was working as a cooli. The counsel for the appellant argued that the appellant was not present on the date of incident at his house as he was working through out the night at

jewellery shop of P.W.5, because they had to prepare urgent jewellery for some party.

14. P.W.5 in his evidence did not state that on the date of incident through out the night the appellant worked at his shop. There is no such question even put to P.W.5 that on the date of incident the appellant had worked through out the night at his shop. Though under Section 313 Cr.P.C. statement the appellant had taken the ground of alibi stating that he was working in the shop on that day and was not present at his house and at the scene of crime, to this effect the appellant has not produced any evidence. The deposition of P.W.1 is supported by P.W.2 – father of the deceased No.1 and P.W.3 – brother of the deceased No.1.

15. The prosecution has proved the death of the deceased as an unnatural by examining P.W.11 - Dr.P.Somi Reddy, who conducted the postmortem examination over the dead body of the deceased No.1 on requisition of Police. As per the oral evidence of P.W.11, during the time of postmortem examination, he found external injuries i.e., cut injury 6 x 3 x 3 inches x 2 inches on right side of neck to left side of the neck. Larings trachia, desophagus, all the organs up to spinal card were cut, lacerated injury 1 ½” x 1” x 1” on supra orbital area (left), fracture of left frontal bone, lacerated injury on left arbitral area and there were no internal injuries. In view of the above injuries, P.W.11 opined that cause of death was due to shock of cutting of caroted artests and shock due to cutting both side of neck and respiratory arrest due to cutting of trackia. The approximate time of death was 12 to 18 hours prior to postmortem examination and all the injuries are

anti mortem. After receipt of FSL report, he has given report and issued certificate under Ex.P10.

16. The prosecution examined P.W.12 - Sri B.Krishna Rao, who worked as Tahsildar at Suryapet from 25.2.2009 to 9.6.2009 and conducted inquest over the requisition of Police in the present case on the head of deceased No.1 on 31.5.2009. He clearly deposed before the Court below that on requisition of Police, he went to Area Hospital, Suryapet on 31.5.2009 and conducted inquest over the dead body of the deceased and also commenced inquest at 10.10 AM and concluded at 12.15 noon and Ex.P6 is the inquest conducted by him over the dead body of the deceased. He also recorded statements of P.Ws.1 to 3 and L.W.4 and enclosed the said statements along with his inquest. Ex.P12 is the statements of said witnesses recorded by him on 31.5.2009.

17. From the oral evidence of P.W.11, coupled with Ex.P10 and corroborated by the evidence of P.W.12 - Tahsildar, P.Ws.1 to 3 and also P.W.13, the prosecution made out that death of the deceased No.1 is unnatural death and homicidal death and not suicidal death.

18. As per the settled law, evidence of cruelty and harassment is not sufficient to apply Section 304-B I.P.C., but it needs to be established that soon before death, the deceased was subjected to cruelty or harassment by her husband for or in connection with demand for dowry as decided in case of *Narayana Murthy Vs. State of Karnataka*¹.

¹ 2008 (16) SCC 512

19. The essential components of Section 304-B I.P.C. are :

- (i) Death of a woman occurring otherwise than under normal circumstances within 7 years of marriage; and
- (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry.

20. In the case in hand the death of the deceased is an unnatural death and she died with cut throat injuries as her dead-body was found in the house of her husband in early hours of 31.5.2009 in pool of blood along with her daughter (deceased No.2). The prosecution proved that the death of deceased No.1 is an unnatural death by examining the Medical Officer - P.W.11, who conducted postmortem examination and issued Ex.P10 Postmortem Examination Report. The prosecution by examining the parents of deceased – P.Ws.1 and 2 and her brother P.W.3 also made out the involvement of demand of dowry and the victim Nagamani was meted out cruelty by the appellant and ultimately she was murdered and her dead-body was found in the house of the appellant within 7 years of the marriage. The issue raised by the counsel for the appellant is that the appellant was not present on the date of incident at his residence where the crime was taken place. The appellant was working as cooli at the shop of P.W.5 who came in the witness box and admitted that 7 months prior to the death of the deceased, the appellant had shifted his family to Suryapet from Korlapahad and used to reside in Vijaya Colony as tenant in the house of Parvatham Pullaiahchary by taking the room on rent. He further deposed that he used to work as goldsmith at Suryapet near pool center. The appellant is the son of his maternal aunt but he never stated that the appellant worked in his shop as

cooli and on 30.5.2009, he has entrusted any jewellery work to the accused to get prepared since the customer want urgent delivery.

21. It is settled law that the appellant who pleads alibi must prove it by cogent and satisfactory evidence completely excluding the possibility of his presence at the scene of offence at the relevant time. The aforesaid issue was decided by the Supreme Court in case of *Dhana Vs. State of West Bengal*².

22. It is also well settled that a successful plea of alibi is sufficient to overturn the prosecution case. If, however, the plea is not successful, the Court will draw an inference that the appellant was at the scene of offence at the time of offence, but there cannot be any inference straightaway that prosecution case is true.

23. Therefore, considering the above principle of law in the present case when the appellant has failed to prove the plea of alibi, the Court below has drawn an inference that the appellant was in his house at the time of occurrence. It is not the case of the appellant that somebody might have killed his wife and daughter while he was along with his wife in his house. He totally pleads ignorance about the death of his wife as well as his daughter. It is also not the case of the appellant that he is having any enmity with anybody who has committed the murder of his wife as well as the daughter.

² 1994 (2) SCC 220

24. In the present case, the prosecution has proved that except the deceased Nos.1 and 2 and the appellant, no other person was on the night of 30.5.2009 or in the early hours of 31.5.2009 in the house of the appellant.

25. Keeping in view the above discussion and the prosecution witnesses, we find no perversity or illegality in the order and judgment whereby the appellant was held guilty and convicted for the offences punishable under Sections 304-B and 302 I.P.C. and Sections 3 and 4 of Dowry Prohibition Act, 1961.

26. We find no merit in the appeal and the appeal is accordingly dismissed.

27. Consequently, miscellaneous petitions pending, if any, shall stand closed.



JUSTICE SURESH KUMAR KAIT

JUSTICE U.DURGA PRASAD RAO

18th April, 2017

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