

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.466 of 2012

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) Assailing the order of acquittal dated 16.06.2011, passed in S.C.No.498 of 2010, on the file of the Sessions Judge, Mahaboobnagar, the aggrieved person, who is the mother of Smt. Dendi Swapna (deceased), filed the present appeal under Section 372 Cr.P.C. Originally, the sole accused (husband) was tried for the offences punishable under Section 304-B IPC and Sections 3 and 4 of the Dowry prohibition Act. In the absence of any evidence produced by the prosecution to prove the charges, the learned Sessions Judge, acquitted the accused.

2) The substance of the charge against the accused is that on 24.01.2010 at about 12.00 noon in his house situated at Maddigatla Village, Bhoothpur Mandal, made his wife Smt. Dendi Swapna (hereinafter referred to as "the deceased"), to consume poisonous substance as a result of which she died within 7 years of her marriage. It is said that the accused also harassed her for money.

3) The facts as culled out from the evidence of the prosecution witnesses is as under:

i) PW.1 is the mother of the deceased, while PW.2 is the co-sister of PW.1, PW.3 is the son of PW.1 and PW.4 is the neighbour of the accused. The accused is none other than the husband of the deceased. The marriage between the accused and the deceased took place about 9 months prior to the date of incident. At the time of marriage, PW.1 is said to have presented cash of Rs.2.00 lakhs and 10 tolas of gold as dowry. The couple lived happily for some time and thereafter disputes arose between them. It is said that the accused started harassing the deceased on the ground that the dowry given was not sufficient. The accused sent the deceased to the house of PW.1 demanding her to get money. It is said that when the deceased was staying in the house of PW.1, the accused was talking to her and demanding her to get money. After Sankranti festival, PW.1 sent the deceased to the house of the accused with Rs.22,000/- . After reaching the house of her husband, the deceased telephoned and informed to PW.1 that the accused is demanding a sum of Rs.1.00 lakh as the amount of Rs.22,000/- is not sufficient. On that PW.1 informed the deceased, that she will come to the house of the accused

after few days with money. Four days later on a Sunday after noon, PW.1 got information through the accused that the deceased consumed pesticide poison. After informing the same to her son-in-law and brother-in-law, PW.1 went to the house of the accused and found the deceased dead. Suspecting some foul play, she is said to have lodged a report before PW.11-the Sub-Inspector of Police, Bhoothpur, on 25.01.2010, basing on which, a case in Crime No.10 of 2010 came to be registered for the offence punishable under Section 304-B IPC. Ex.P11 is the first information report.

ii) Subsequent investigation was handed over to PW.12-the Sub-Divisional Police Officer, along with a requisition to Tahsildar for holding inquest. PW.12 visited the scene of offence which was situated in a house bearing No.5-31 at Maddigatla village. In the presence of PW.7 and others, PW.12 prepared a crime details form containing the scene observation and also a rough sketch of the scene. Ex.P6 is the Crime Details Form.

iii) Pursuant to the requisition made by PW.11-the Sub-Inspector of Police, PW.9-the Mandal Revenue Officer, conducted inquest over the dead body of the deceased in the presence of PW.8 and another. Ex.P7 is the inquest report. After conducting inquest, the dead body was sent to

the Government Headquarters Hospital, Mahaboobnagar, for postmortem examination.

iv) PW.10-the Civil Assistant Surgeon, Government Headquarters Hospital, Mahabubnagar, conducted autopsy over the dead body of the deceased and issued Ex.P8-the postmortem report. Basing on Ex.P9-F.S.L. report, the doctor gave final opinion stating that the cause of death was “due to consumption of organo phosphate”.

v) On 28.01.2010, PW.12 arrested the accused near Bhoothpur cross roads and send him for remand. After collecting all the necessary documents, PW.12 filed a charge sheet before the Court of Judicial First Class Magistrate, Mahabubnagar, which was taken on file as P.R.C.No.36 of 2010. After complying with Section 207 Cr.P.C., the learned Magistrate committed the case to Sessions Division under Section 209 of Cr.P.C., which came to be numbered as S.C.No. 498 of 2010.

4) On appearance, charges under Section 304-B IPC and Sections 3 and 4 of the Dowry Prohibition Act, came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P11. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on his behalf, in support of his defence.

6) Since the evidence on record does not establish the ingredients constituting the offences punishable under Section 304-B IPC or under Sections 3 and 4 of the Dowry Prohibition Act, the learned Sessions Judge, acquitted the accused. Challenging the same, the mother of the deceased preferred the present appeal under Section 372 of Cr.P.C.

7) The main ground urged by the learned counsel for the appellant is that the acquittal of the accused is illegal and bad in law. According to him, the doctor colluded with the accused, gave false evidence and he did not even depose about the injuries, referred to in the postmortem certificate. In view of the above, the learned counsel for the appellant would submit that it is a fit case for remand.

8) On the other hand, the learned counsel appearing for the accused would contend that there is absolutely no evidence on record to convict the accused for an offence punishable even under Section 306 IPC. According to him, the version of the witnesses is a complete improvement from what they have stated in their earlier statements, which made the learned Sessions Judge acquitting the accused.

9) The point that rises for consideration is whether the trial Court was justified in acquitting the accused.

10) In order to appreciate the same, it would be useful to refer to the evidence available on record.

11) PW.1, who set the law into motion, in her evidence deposed about the marriage of the accused with the deceased, payment of cash of Rs.2.00 lakhs dowry and 10 tolas of gold at the time of marriage. According to her, the deceased lived happily for some time and thereafter the accused started harassing the deceased for additional dowry. It is said that the deceased was sent to her house demanding her to bring additional dowry. The deceased is said to have stayed in the house of PW.1 for one month and during that period, the accused talked her on phone and

demanding her to get money. After the Pongal festival, the deceased was sent to the house of the accused with a sum of Rs.22,000/-. Not being satisfied with the amount sent, he harassed the deceased to get an amount of Rs.1.00 lakh. The same was informed to PW.1, who claims to have stated that she would come over there and convince the accused. Four days thereafter, she was informed by the accused that the deceased consumed pesticide poison and died.

12) PW.1 was subjected to lengthy cross-examination. In her cross-examination she admits that after receiving the information, about 20 people accompanied her to the house of the accused and they reached the house at 9.00 p.m., and on that night she stayed in the house of the accused and the persons who accompanied her also remained in the house of the accused on that night. On the next day morning, the police came to the house of the accused and an advocate by name Sanjeeva Reddy also came there. She admits that her brother-in-law might have drafted the report, but later on states that the report was written by her after consulting her relations. She further admits that she knows some of the contents of the report. She admits that she affixed the signature on Ex.P1. To a suggestion that advocate Sanjeeva Reddy was with her and purposefully she is stating that the said Advocate is not

known to her, was denied. She further admits that one Prabhakar Reddy, Advocate, who is sitting in the Court hall on that day, was in the village along with her at the time of lodging of the report to the police. Insofar as the earlier version is concerned, it was elicited in the cross-examination that she did not mention in Ex.P1 that Rs.2.00 lakhs cash and 10 tolas of gold was presented to the accused at the time of marriage. It was also not mentioned in the report that the accused demanded Rs.1.00 lakh as additional dowry. Further, PW.1 did not state before the police that while the deceased was staying in her house, the accused telephoned to her and asked her to get money from her mother. PW.1 also did not state before the police that after the deceased was sent to the house of accused, she telephoned to her and informed that the accused asking her to get Rs.1.00 lakh.

13) From the evidence of this witness, it is clear that what she has stated in the Court was a complete improvement from what she has stated in the earlier statement. It appears that the entire version with regard to alleged demand made by the accused and also payment of Rs.2.00 lakhs at the time of marriage along with 10 tolas of gold was not referred to by her in the first information report and also in her earlier statement recorded by police

under Section 161 Cr.P.C. The answers elicited in the cross-examination show that two advocates by name Sanjeeva Reddy and Prabhakar Reddy were there and Prabhakar Reddy accompanied her to police station while lodging the report. The discrepancy with regard to drafting of the report was also elicited in the cross-examination. On one hand she states that her brother-in-law drafted the report and on the other hand she also states that she herself prepared the report after consulting her relatives. Therefore, a doubt arises as to the alleged harassment of dowry and also as to the person, who drafted the report, more so when she admits in the cross-examination that she knows some of the contents of the report.

14) Coming to the evidence of PW.2. She is the co-sister of PW.1. Her evidence is to the effect that after the marriage, the accused and the deceased lived happily for four months and thereafter the accused harassed the deceased and beat her, on that, she came to the house of PW.1. The deceased informed about the harassment caused to her by the accused. During her stay in the house of PW.1, the accused used to come to the house and after Sankranti festival, the accused took the deceased with him. On the day, the deceased was taken by the accused, an amount of Rs.22,000/- was given by PW.1. After the deceased was

sent, she telephoned to PW.1 and informed about the demand made by the accused and four days thereafter the incident in question is said to have been taken place. Her evidence in chief appears to be different from what PW.1 has deposed. As seen by us earlier, PW.2 in her evidence deposed that while the deceased was in the house of PW.1, the accused used to visit and after Sankranti festival he took the deceased along with him to his village, which is not the version of PW.1. It was further stated that an amount of Rs.22,000/- was given by PW.1 to accused, which was not the version of PW.1.

15) Coming to the cross-examination, PW.2 admits that on coming to know about the incident they went to the house of the accused and they stayed in his house on that night. On the next day morning, Village Sarpanch, two advocates Sanjeeva Reddy and Prabhakar Reddy were there with him and the body was shifted to hospital for postmortem examination. Till the body was shifted to the hospital, the accused was also with them and was present in the house. In the earlier statement recorded by the police, she did not state about the complaints made by the deceased regarding the harassment caused by the accused and also the accused coming to the house of PW.1 and four days after the deceased was sent to the house of the

accused, the accused telephoned to PW.1 and informed about the death of the deceased.

16) This evidence of PW.2 is not only different from what PW.1 stated. Her earlier statement recorded by the police is also silent on many aspects, which we have referred to earlier. Apart from that her evidence would show that two advocates were with them. She also admits that the accused was with them in the house till 12.30 p.m., on the next day. If really the accused was responsible for the death of the deceased and if it was a case of homicide, we feel that the conduct of the accused would have been totally different.

17) The evidence of PW.3 also toes in line with what PWs.1 and 2. In the earlier statement, PW.3 failed to mention about the deceased telephoning to them and informing the demand made by the accused, as to amount of Rs.22,000/- being not sufficient.

18) Having regard to the evidence of these three witnesses, the finding of the Sessions Judge that the possibility of preparing and lodging of report at a belated stage, at the instance of Village Sarpanch and two lawyers, who are with them, cannot be found fault with. Since the evidence of all these three witnesses clearly established the

involvement of two advocates and they being present along with them right from the morning, creates some suspicion with regard to lodging of the report, more so when the version of PW.1 with regard to drafting of the report also inconsistent.

19) Coming to the postmortem report, which is commented upon by the learned counsel for the appellant as to the cause of death, it is to be noted that no objection was raised with regard to non-framing of the charge under Section 302 IPC and also the evidence of the witnesses recorded by the Court on those lines. In fact as observed by us earlier, though many things are said by PW.1, now her version itself is a complete improvement from what she has stated in her earlier statement.

20) Having regard to the version set up in the Court, it is now tried to urge that there was a collusion between the investigating agency and the doctor. In fact the record itself shows that PW.1 took the help of two advocates even for lodging the report. Be that as it may PW.10 is the doctor, who is said to have conducted postmortem examination on the body of the deceased and issued Ex.P8- the postmortem examination report. Learned counsel for the appellant contend that though PW.10 referred to about

10 injuries in the postmortem report, no reference was made to them in the evidence. In the cross-examination, the doctor admits that in Ex.P8 he did not mention that the injuries mentioned therein were anti-mortem or postmortem. Further in Ex.P8, he did not state anywhere that he preserved the hyoid bone for sending the same to F.S.L. for examination. Even in F.S.L. Report (Ex.P9), there is no reference to hyoid bone. The doctor categorically admits that he was not sure about the fracture of hyoid bone. He further admits that he has noticed lacerations on pharynx. It is to be noted here that the said doctor was not treated hostile by the prosecution and PW.1 did not take any steps to recall of PW.10 to elicit with regard to injuries. When the evidence of the doctor is very clear that he has not noted as to whether the injuries are anti- mortem or post mortem, it cannot be said that there is certainty that the injuries are anti mortem, more so when the doctor was not sure about the fracture of hyoid bone. Hence, it would be very difficult to hold that these injuries were caused by the accused in his house prior to the death of the deceased.

21) At this stage, learned counsel for the appellant relied upon the judgment of the Apex Court in *Narwinder*

*Singh v. State of Punjab*¹. It was a case where the accused was tried for an offence punishable under Section 304-B IPC. In the absence of any material to convict him under Section 304-B IPC, the Apex Court convicted the accused for the offence under Section 306 IPC, holding that no prejudice would be caused to the accused if the conversion is made as the material on record is sufficient to base a conviction under Section 306 IPC. The said judgment will not apply to the case on hand. A reading of the charge framed under Section 304-B IPC would show that as per the prosecution the deceased consumed poison and died. The learned counsel for the appellant now tried to contend that the deceased was done to death by beating and then strangled her to death. According to him, the fracture of hyoid bone itself speaks volumes about the manner in which the incident took place.

22) It is not the case of the appellant herein that the deceased died due to consumption of organic phosphate, but his plea appears to be that the deceased was beaten and then strangled to death, which is not the case of the prosecution and which is not part of the charge. Apart from that the doctor categorically states that he has not preserved the hyoid bone and has not sent the same to the

¹ (2011) 2 SCC 47

F.S.L. Therefore, there is no material to convict the accused even under Section 306 IPC, not only in the absence of charge but also evidence in support of the same. Hence, we see no reason to interfere with the finding given by the trial Court.

23) Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

08.08.2018
gkv



C.PRAVEEN KUMAR, J

T. RAJANI, J