

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.1125 of 2011

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

1) The sole accused in S.C.No.524 of 2010 on the file of the III Additional Sessions Judge (FTC-II), Khammam is the appellant herein. He was tried for the offences punishable under Sections 498-A and 302 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Vide judgment dated 29.07.2011, the learned Sessions Judge, while acquitting the accused for the offence punishable under Section 3 of the Dowry Prohibition Act, convicted and sentenced him as under:

U/ s. 302 IPC	To suffer imprisonment for life and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for two months.
U/ s. 498-A IPC	To suffer rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for two months
U/ s. 4 of the Dowry Prohibition Act	To suffer rigorous imprisonment for a period of two years and to pay fine of Rs.10,000/- in default to suffer simple imprisonment for three months

All the substantive sentences were directed to run concurrently.

2) The substance of the charge against the accused is that on 12.05.2008 at about 9.00 p.m., at Nelakondapally Village, he said to have caused the death of his wife by name Saidamma

(hereinafter referred to as “the deceased”), when she failed to fulfil his demands for additional dowry.

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

i) PW.1 is the father of the deceased while PW.2 is the daughter of the deceased and the accused. PWs.3, 4 and 5 are the neighbours. PW.6 is the photographer, while PW.7 is the panch for the scene observation and also inquest. PW.8 is the brother of the deceased and PW.9 is the owner of the house. The rest are all official witnesses. The marriage of the deceased with the accused was performed in the year 1998 i.e., 19 years back. At the time of marriage, PW.1 gave an amount of Rs.2.00 lakhs, 5 tolas of gold and Ac.1.00 of land as dowry. After the marriage, the deceased joined her husband at Nelakondapally and she was looked after well for short period. Thereafter the accused started harassing the deceased for want of additional dowry. To meet the demands of the accused, PW.1 purchased a Hero Honda Motor Cycle. Later, the accused is said to have developed illicit intimacy with another woman and started harassing and ill-treating the deceased. A panchayat was conducted by PW.5 and other elders of the village, in which the elders admonished the accused and advised him to look after the deceased properly. After the panchayat, PW.1 gave Rs.1.00 lakh to the accused with a hope that he would look after his daughter affectionately. Thereafter, PW.1 purchased a house to the accused at Nelakondapally, with a hope that they would

lead happy marital life. In spite of all, the accused did not change his behaviour and continued ill treating the deceased. As the harassment become unbearable, the deceased lodged a report against the accused, basing on which a case in Crime No.56 of 2006 was registered against the accused for an offence punishable under Section 498-A IPC. Thereafter, the accused approached PW.1 and elders, promising to look after the deceased affectionately and also stated that he will not harass her. Believing on the assurance given by the accused, the said case was compromised before the Lok Adalat on 13.05.2006. Out of the wedlock the deceased was blessed with two children. In spite of advice of the elders, the accused did not change his behaviour and demanded the deceased to bring a sum of Rs.1.00 lakh from PW.1.

ii) On 13.05.2008, PW.4, who is the sister of PW.1, gave a phone call to PW.8, who is the son of PW.1 stating on 12.05.2008 the accused beat the deceased with belt and also throttled her to death. On receiving the phone call from PW.4, PW.1, his wife and others went to Nelakondapally and noticed dead body of the deceased in the kitchen with injuries. They also found nail marks and scratches around her neck. They also noticed broken bangles of the deceased in the kitchen and a saree hanging from the roof. On enquiry, PW.2, the daughter of the deceased stated that the accused picked up a quarrel with the deceased, beat her indiscriminately, tied her neck with the belt and killed the deceased. On the same day at about 9.00 a.m., PW.1 lodged a report (Ex.P1) before PW.12-the S.I. of Police, Nelakondapally,

basing on which he registered a case in Crime No.49 of 2008 and issued Ex.P14-the first information report. Thereafter, he handed over the CD file to PW.13-the Inspector of Police.

iii) PW13-the Inspector of Police, on receipt of information from PW.12, proceeded to the scene of offence, observed the scene in the presence of PW.7 and others. During the course of observation, he seized broken bangles and saree (Mos.1 and 2) under Ex.P7-Crime Details Form. He got examined PWs.1 to 5 and recorded his statement. He also photographed the dead body of the deceased and the scene of offence through PW.6. Later, he held inquest over the dead body of the deceased in the presence of PW.7 and another. Ex.P8 is the inquest report. He then sent the dead body to Government Hospital, Khammam, for postmortem examination.

iv) PW.11-the Civil Assistant Surgeon, District Headquarters Hospital, Khammam, conducted autopsy over the dead body of the deceased and issued Ex.P13-the postmortem examination certificate. According to him, the cause of death was “due to asphyxia due to throttling”.

v) PW.13 continued with his investigation, during the course of which he examined PWs.7 and 8. On 18.05.2008 at 4.00 p.m., he arrested the accused at old bus stand, Nelakondapally. On interrogation, he is said to have confessed about the commission of offence, which was recorded in the presence of PW.10 and another. Pursuant to the said confession, PW.13 recovered M.O.4-

belt. After collecting all the material, PW.13 filed a charge sheet which was taken on file as P.R.C.No.8 of 2009 on the file of the Judicial Magistrate of I Class Magistrate, Special Mobile Court, Khammam under Section 207 Cr.P.C., who inturn committed the case to the Sessions Division under Section 209 Cr.P.C., the same came to be numbered as S.C.No.524 of 2010.

4) On appearance, charges under Sections 302, 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

5) In support of its case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P14 and MOs.1 to 4. 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 evidence was adduced on behalf of the accused, but a portion of 161 Cr.P.C. statement of PW.3 and C.C. of claim petition in O.P.No.1140 of 2006 were marked as Ex.D1 and Ex.B1 respectively.

6) Placing reliance on the evidence adduced by the prosecution, the learned Sessions Judge convicted the accused for the offences, referred to above. Challenging the same, the present appeal came to be filed.

7) The main ground urged by the learned counsel for the appellant is that the evidence of PW.2, who is a child witness,

cannot be relied upon since her version in chief runs contra to the answers given in the cross-examination. He would further contend that if the evidence of PW.2 goes, there is no other material connecting the accused with the crime. He pleads that the material relied upon by the prosecution is not sufficient to show that the accused was present in the house at the time of the incident. In the absence of any legal evidence he would plead that the accused is entitled for the benefit of doubt. He further submits that there is no material to convict the accused for the offence under Section 498-A IPC and having acquitted the accused for the offence punishable under Section 3 of the Dowry prohibition Act, the trial Court erred in convicting the accused for the offence punishable under Section 4 of the Dowry Prohibition Act.

8) The learned Public Prosecutor opposed the same. According to him there is no explanation from the accused as to how the deceased died and how the dead body is in the house.

9) In order to appreciate the same, it would be appropriate to refer to the evidence on record.

10) PW.1 is the father of the deceased. According to him, the marriage of the deceased with the accused took place in the year 1998 and at the time of marriage, he gave dowry of Rs.2.00 lakhs, one acre of land and five tolas of gold. Both of them lived together happily for some time and thereafter the accused started harassing the deceased for additional dowry. His evidence also shows that initially he purchased a motor cycle for the accused,

but however there was no change in his attitude. His evidence discloses that the accused developed intimacy with another woman and started neglecting the deceased. The above ill treatment and harassment of the accused was informed to them by the deceased. Hence, panchayats came to be conducted and as there was no change in his behaviour in spite of the advice of the elders, a criminal case came to be lodged. After registering the crime, the accused compromised the matter with a promise to look after the deceased well, hence the said criminal case was closed. PW.1 in his evidence further deposed that after the compromise, the accused scolded and threatened the deceased saying as to how dare the deceased gives a report against him and that no body can do any harm to him since he is an advocate. Again panchayats were held, but the accused did not heed to the advice of the elders. He started demanding the deceased to get an additional dowry of Rs.1.00 lakh from PW.1. On one day when PW.1 went to the house of the accused at Nelakondapally, to see the deceased, she informed the demands made by the accused more particularly the demand of Rs.1.00 lakh. On 13.05.2008, his sister Radhamma made a telephone to his son Anil Kumar at 6.00 a.m., stating that the accused killed the deceased on previous night at 11.00 p.m. Pursuant thereto, PW.1, his wife and others went there, noticed the body of the deceased in the kitchen, with injuries on her neck and also noticed broken bangles on the ground. They also noticed a saree tied to the roof. The two children of the deceased were crying. He did not find the accused in the house. He enquired

PW.2 as to what happened, to which, she is said to have told him the manner in which the accused killed the deceased. Thereafter, he set the law into motion.

11) PW.1 was cross-examined at length, but nothing useful came to be elicited in the cross-examination. The suggestions given by the accused to prove his innocence were all denied. In fact in the cross-examination, it has been elicited that PW.1 noticed MOs.1 and 2 in the kitchen room and he talking with PWs.3 and 5, after noticing the dead body of the deceased. It was also elicited that even prior to lodging of the police report by the deceased, the accused filed a divorce petition in the Court against the deceased, in which they received notices. The said divorce O.P. was numbered as O.P.No.22 of 2006. To a suggestion that the present case came to be filed because of the divorce petition filed by the accused, was denied. He admits that he gave a report to the C.I. of Police, Kusumanchi, with regard to the death of the deceased, marking a copy of the same to the Superintendent of Police. He admits that he does not remember the contents of the report given to Circle Inspector. To a suggestion that the death occurred in the hands of more than one person was denied by him. He admits that five tolas of gold were on the body of the deceased. To a suggestion that his son Anil Kumar (PW.8) did not receive a phone call from Radhamma (PW.4) and his grand daughter (PW2) did not inform them about the accused killing her mother with the help of belt was denied by him. To a suggestion that usage of belt to kill the deceased was introduced by them, only at the time of

inquest over the dead body was denied by him. He also denied the suggestion that the house at Nelakondapally and the motor cycle was purchased by the accused himself. His evidence shows that the marriage took place while the accused was a lawyer and as such the motor cycle and the house came to be purchased to meet the demands of the accused. His evidence further shows that he purchased a motor cycle in the initial days of marriage and thereafter purchased a house at Nelakondapally. Panchayats were also held when the deceased complained to him about the harassment meted out to her by the accused. At one stage a criminal complaint was also lodged, which was subsequently withdrawn due to compromise.

12) Though PW.1 was subjected to lengthy cross-examination, but the accused was not able to demolish the version of PW.1 with regard to payment of dowry, purchase of motor cycle and house and also act of he beating the deceased. In fact no suggestions were given to PW.1 to show as to how the deceased died. It was not even the case of the accused that it was a murder for gain or that he was not present in the house at the time of incident or that a third person entered the house and killed the deceased.

13) PW.2 is the daughter of the deceased. She was aged about 8 years at the time of giving evidence. After putting some preliminary questions and on being satisfied that she was able to give evidence, the trial Court recorded her evidence. In her

evidence in chief, she says that on the night of the incident, her father beat her mother with belt and later he squeezed the neck with the belt and later hanged her mother with her saree in the kitchen room. She says that she went to bed early but she on hearing the cries of her mother, woke up and saw the accused beating the deceased with belt, tying her neck with a belt and then hanging her. Thereafter she claims to have cried continuously and later slept. In the morning she woke up and came to know through her father that her mother died. Thereafter, PW.3 and his wife came to her house and on seeing them, the accused left the house. In the cross-examination, PW.2, who is a young girl was grilled like anything.

14) Learned counsel for the appellant tried to take advantage of the answer given to one of the question wherein it was asked her, that she went to bed at 9.00 p.m., and woke up in the early hours of the day at about 5.30 a.m. or 6.00 a.m. to which she gives the answer as 'yes'. In view of the answer given it is urged that PW.2 could not have seen as to what happened. He was also relied upon the answer given to one question wherein it was suggested to PW.2 that she was asked to depose as directed by her grand mother to which she replied as 'yes'. In view of the above, it is pleaded that the version given by PW.2 is an outcome to tutoring. PW.2 is a young girl aged about eight years and must have been informed about the nature of answers to be given. The fact that she slept at 9.00 p.m., is not denied by her. In her chief examination she stated that on hearing the cries of her mother,

she woke up and saw the accused beating her mother with belt, tied her neck with belt and hanged her with a saree, in the kitchen room. Thereafter she cried continuously and slept. We do not want to comment on her evidence since the other evidence on record would be sufficient to decide the case on hand.

15) PWs.3 and 5 are the neighbours. PW.3 in his evidence deposed that his house is situated by the side of the house of the accused. His version is that the deceased and the accused used to quarrel frequently, live amicably for few days and again pick up quarrels. PW.3 owns a kirana shop in front of his house. His house and the house of the accused are having pials. On the night of the incident, while himself, his wife and the deceased along with the children were sitting on the pials and chit chatting, the accused came to the house from the Court at 9.00 p.m., as such the deceased along with the children went inside the house. After some time he heard shouting from the house of the deceased. Thinking that these shouts are quite common, they had their meal and went to bed. At about 5.30 a.m., they got up to fetch drinking water. At about 5.30 a.m., or 6.00 a.m., they heard the cries of two children. PW.3 went inside the house and noticed the two children crying. The accused was in the house at that time. They enquired PW.2 as to what happened, to which she informed that her father killed her mother by tying a belt around her neck. Meanwhile, local people gathered there and PW.1 also arrived shortly thereafter. He also speaks about the scratch marks on the neck and face of the deceased. PW.3 was cross-examined at

length but nothing useful was elicited to discredit his presence, seeing the dead body and also the accused in the house at that time. His evidence is also to the effect that the accused, who was inside the house, went out, stood outside the house for some time and thereafter left. To a suggestion that PW.2 never informed him about the incident was denied by him. He further admits that he does not know the exact reason for the quarrel, but quarrels used to take place regularly in between the accused and the deceased.

16) From the evidence of this witness, it is clear that on the previous day, at about 9.00 or 9.30 p.m., the accused came to the house and thereafter he heard the quarrel between the accused and deceased and on the next day morning 5.30 or 6.00 a.m., he heard the cries of the children and when he went inside, noticed the accused in the house. It is also to be noted that though PW.3 was cross-examined at length, no suggestion was given to him with regard to presence of the accused in the house. It was not even suggested to him about the involvement of any third person in the commission of offence.

17) PW.4, who is the sister of PW.1, in her evidence deposed as under:

“Their marriage took place at about 12 years back. They got two children also. After the marriage accused and Saidamma were living happily for about three years. The accused harassed the deceased Saidamma for additional dowry. My brother PW.1 held panchayaths through elders in the presence of accused and Saidamma. In the said panchayats before elders and all accused used to give

assurance that he would look after his wife Saidamma properly. My brother-PW.1 on the demand of the accused purchased motor cycle to the accused and gave it to him. After that for some time the accused treated the deceased Saidamma nicely. Thereafter again the accused started quarrelling with deceased Saidamma for demanding one house in his name. Since the accused did not have a own house so on his demand, PW.1 purchased the house in the name of the accused and gave it to him. The house where the Saidamma death took place is the one purchased by my brother-PW.1 in the name of the accused. Even at the time of registration of the said house also accused kept the said house in his name at the time of registration instead of keeping the said house in the name of Saidamma which was purchased by her father. After the registration of the said in the name of the accused he looked after Saidamma nicely for few days. Again the accused started ill treating Saidamma then Saidamma lodged a complaint against the accused before P.S. Nelakondapally when the harassment of the accused become unbearable to her. After written complaint before the police the accused treated Saidamma nicely in order to get rid of police complaint. Accordingly the accused convinced Saidamma and made her to withdraw the said case from the police station. Then finally at about 3 years ago since I do not remember the exact date PW.3 Pullaiah informed to me that Saidamma was died in her house, around 6 a.m., itself. Immediately I went to the house of the accused. When I entered into the house of the accused I noticed the broken pieces of bangle pieces of Saidamma from first room to last room scattered here and there indicating the struggle between them. Then I enquired their daughter Kusuma PW.2 what happened. PW.2 informed me with weeping that on that night around 11 PM accused and deceased Saidamma had a quarrel and in the said quarrel accused beat Saidamma and strangulated her with the help of belt tying around her neck due to that her mother

lost conscious. Then I noticed the dead body of Saidamma and found the scratches on her face and neck also hanging marks around the neck with tenderness.”

18) PW.4 was subjected to cross-examination. In the cross-examination it was elicited that signs of belt were found on the body of the deceased. She also noticed marks around the neck. By the time PW.4 went to the house of the deceased, about 10 persons were present in the house. She admits that the police examined her on the same day in the morning and again after the 3rd day of death of the deceased. The Inspector of Police also enquired her about the case at the house of the deceased itself. It has been elicited that the house was registered about two years prior to the death of the deceased in the name of the accused. The witness adds that the house was purchased for the accused by PW.1 himself. It was further elicited that PW.1 questioned the accused and also chastised him as to why he kept the house in his name when PW.1 gave money to purchase the said house. She admits that a panchayat took place on that issue. To a suggestion that she is speaking false, was denied by her.

19) The evidence of this witness corroborates the evidence of PW.1 with regard to the material aspects namely harassment, demand of dowry, purchase of motor cycle and also the house by PW.1. The answers elicited in the cross-examination, which referred to above, clearly show that PW.1 gave money to the accused to purchase the house, but he got registered the same in his own name and not in the name of the deceased, who is the

daughter of PW.1. A panchayat was also held in this regard. This is very crucial for the reason that the counsel for the appellant tried to rely upon the evidence of PW.9 to show that since the money was given by the accused and he purchased the same from his own resources.

20) PW.9, who was the vendor of the house, admits in his cross-examination that he received a sum of Rs.1,50,000/- from the accused, when he came along with his father-in-law. But the answer elicited through PW.4 would show that it was paid by PW.1, but questioned the accused got the house registered in his name, much against the wishes of PW.1, who actually wanted the property to be registered in the name of the deceased. Therefore, the argument of the learned counsel for the appellant that the money was paid by the accused from his own resources cannot be accepted.

21) PW.5 also speaks about the money, land and gold given at the time of marriage, demand of Rs.1.00 lakh by the accused and also the harassment in the hands of accused for additional dowry, holding of panchayats etc. He states that he drafted Ex.P1 to the dictation of PW.1. In the cross-examination, it was elicited that they held panchayats at Venugopala Swamy temple. He admits in his cross-examination that he came to know about the disputes through accused only and not through PW.1. By the time he reached the house of the deceased, he found 10 to 15 persons in the said house. It was further elicited in the cross-examination

that 5 tolas of gold, two acres of land was given to the accused at the time of her marriage. He denied the suggestion that he is speaking falsehood. Similar is the evidence of PW.7, who acted as a mediator and who deposed about the quarrels between both the accused and the deceased.

22) In view of the above evidence, the learned counsel for the appellant tried to contend that there is no evidence to show that it was the accused alone who was responsible for the death of the deceased. Definitely the argument of the learned counsel for the appellant would have carried much weight if there was no evidence to show that he was not present in the house during that night. But that is not the case of the accused.

23) As stated earlier, PW.3 in his evidence categorically speaks about himself, his wife, the deceased and her children were sitting on the pials in front of their house and at about 9.00 or 9.30 p.m., the accused came home from the Court. Thereafter, the deceased along with the children went inside the house and little later they could hear the quarrel between them. His evidence further discloses that immediately on the next day morning they got up to fetch drinking water and at that time he heard the cries of PW.2, pursuant to which he went inside the house, saw PW.2 crying and noticed the accused standing inside the house. He also saw the dead body lying in the kitchen room with injuries, nail marks and scratch marks. The said version of PW.3 with regard to seeing the dead body with injuries on the neck and lying in the

kitchen room and a saree hanging to the roof was also spoken to by PWs.4 and 5, which gets corroboration from the sketch of the scene and the photographs taken by PW.6. From the above, it is clear that the accused came home at 9.00 or 9.30 p.m., and was there till 6.00 or 6.30 a.m., on the next day morning. The dead body with injuries was lying in the house. If really the accused was innocent and that he was not aware as to how the deceased died, there should have been some sort of cross-examination, at least suggestions to the witnesses with regard to his presence in the house on that night or that he returned home on the next day morning or that he left the house after having dinner. Not even slightest doubt is created in the mind of the Court with regard to the said aspect. Even in 313 Cr.P.C., examination the accused did not give any explanation except bare denial of the evidence adduced by the prosecution. In the absence of any explanation given, his presence in the house established and his non-explanation as to how the deceased sustained establishes his guilt.

24) In *State of Rajasthan v. Thakur Singh*¹ the Apex Court dealt with some what identical situation. It was a case where the dead body was found in the room occupied by her and the accused and there was no evidence that anybody entered their room and caused her death. The cause of death of his wife known only to accused, yet he failed to explain the same. After referring to Section 106 of the Evidence Act and relying on the judgments of

¹ (2014) CrI.L.J. 4047

the Apex Court in *Shambhu Nath Mehra v. State of Ajmer*², *Ganeshlal v. State of Maharashtra*³, *Dhyaneshwar v. State of Maharashtra*⁴, *Gian Chand v. State of Haryana*⁵ the Apex Court in Para Nos.22, 23 and 24 held as under:

“22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh.

24. It is not that Thakur Singh was obliged to prove his innocence or prove that he had not committed any offence. All that was required of Thakur Singh was to explain the

² 1956 SCR 199

³ (1992) 3 CC 106

⁴ (2007) 10 SCC 445

⁵ (2013) 14 SCC 420

unusual situation, namely, of the unnatural death of his wife in their room, but he made no attempt to do this.”

25) It is well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then as held by the Apex Court it is a strong circumstance pointing to his guilt.

26) In fact, the injuries on the body of the deceased as spoken to by witnesses get corroboration from the evidence of PW.11-the doctor, who issued the postmortem certificate. The doctor noticed the following injuries.

- (i) Scratches on the throat 4 x ¼ inch
- (ii) Abrasion on the right lower throat of the neck measuring ½ x ¼ and ½ x 1/10 inch
- (iii) Impressions from middle of the lower throat to left lateral size is 6 x 1 inch
- (iv) Deformity of right wrist of the deceased
- (v) Abrasion right knee on patella ½ x ¼ inch
- (vi) Blood stains present on left sole and blood from 2nd left toe of the deceased.

27) According to the doctor, the death was “due to asphyxia due to throttling”. In fact, the doctor was cross-examined to show that the nail marks which were found on the body were self-inflicted by the deceased. We are afraid that the said argument cannot be accepted, in the absence of any material

to that effect and such a suggestion was not made to any of the witnesses examined prior to the doctor.

28) One other argument which is sought to be advanced is with regard to delay in lodging the report. A perusal of the material on record does not indicate any delay in giving the report. PW.1, who received information about the death of his daughter came to the house of the accused at 8.00 or 8.30 a.m., and thereafter at about 9.00 a.m., he lodged a report before PW.12. Therefore it cannot be said that there was any delay in lodging the report. In fact neither PW.1 nor PW.3 had any motive to implicate the accused in the crime. Further, false explanation is sought to be projected in the cross-examination of the doctor. The first being that the deceased committed suicide by hanging with a saree and second being that the injuries on the neck are self inflicted. If it is a case of suicide as suggested by the accused, during the cross-examination of the doctor, the bangles of the deceased would not been broken as observed by all the witnesses at the scene. These suggestions show that the accused tried to create a false defence, while cross-examining the doctor only would add salt to the wound and nothing more. Hence, we feel that the prosecution was successful in proving the guilt of the accused insofar as the offence punishable under Sections 302 and 498-A IPC.

29) Learned counsel for the appellant tried to contend that once the accused is acquitted for the offence punishable under

Section 3 of the Dowry Prohibition Act, the trial Court erred in convicting the accused for the offence punishable under Section 4 of the Dowry Prohibition Act. I am afraid the said argument cannot be accepted. Merely because the prosecution could not prove the ingredients of Section 3 of the Dowry Prohibition Act, does not by itself *ipso facto* mean that even an offence under Section 4 of the Dowry Prohibition Act is not established.

30) Section 4 of the Dowry Prohibition Act 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:

31) The evidence of PWs.1 and 4 which we have referred to earlier amply prove that at the time of marriage cash of Rs.2.00 lakhs, one acre of land and five tolas of gold was given by PW.1. The said version of PWs.1 and 4 with regard to payment of dowry at the time of marriage, was never demolished in the cross-examination. A reading of the cross-examination of PW.1 does not even show that a suggestion was given, disputing receipt of dowry at the time of marriage.

32) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/accused beyond reasonable doubt and the trial Court was right in convicting the appellant as stated supra.

33) In the result the appeal fails and it is accordingly dismissed, confirming the conviction and sentence passed in S.C.No.524 of 2010 on the file of the III Additional Sessions Judge (FTC-II), Khammam.

34) This Court, vide its order dated 27.12.2016 in CrI.A.M.P. No.2226 of 2016 directed release of the appellant/ accused on bail on the terms and conditions mentioned therein. In view of dismissal of the Criminal Appeal, the bail bonds of the appellant/accused shall stand cancelled and the Magistrate concerned shall take immediate steps to secure the presence of the accused to serve the sentence of imprisonment. Registry is directed to forthwith communicate a copy of this Judgment to the concerned Court.

35) Consequently, miscellaneous petitions, if any, pending shall stand closed.



C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

28.06.2018
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