

* THE HON'BLE SMT JUSTICE T.RAJANI

+ Criminal Appeal No.6 of 2011

% Dated : 22.02.2018

Nelaturi Chandra Sekhar

..... Appellant

AND

\$ State, S.D.P., Guntur Town, Guntur

..... Respondent

! Counsel for Appellant : Mr. Venkateswarlu Nimmagadda Reddy

^ Counsel for Respondents : Public Prosecutor (AP)

< GIST :

> HEAD NOTE :

? Cases referred :

1. AIR 1984 SC 1622



SMT. JUSTICE T.RAJANI**Criminal Appeal No.6 of 2011****JUDGMENT:**

Impugning the judgment dated 05.01.2011 passed in Sessions Case No.391 of 2009 by the III Additional Sessions Judge, Guntur, the appellant, who is accused No.1, comes before this court, by way of this appeal.

For the benefit of better understanding, the facts, briefly, need to be stated.

The complaint was filed against the appellant and six others, by the father of the deceased, who is the wife of the present appellant, stating that the deceased worked as Assistant Professor in the department of Botany, Nagarjuna University. She was married to appellant on 22.05.2008 with the presentation of Rs.4,00,000/- of cash, 30 tulas of Gold and Rs.40,000/- as Adapaduchu lanchanam. A week before the marriage, Rs.2,20,000/- was given to A-4 and A-7 and the balance was given on the date of marriage. Appellant, A-1, left the deceased at the house of the *de facto* complainant and returned to Guntur. He has been postponing the taking of the deceased to Guntur. P.W.6, who is brother of the deceased, on 14.06.2008, took the deceased to Guntur and left her at the house of the appellant. From the date of marriage, all the accused suspected the fidelity of the deceased and proclaimed that they incurred Rs.5,00,000/- for the marriage and if the appellant would have married with another woman, he would have got higher dowry and that they were demanding the deceased to resign from the job and bring additional dowry of Rs.5,00,000/- from her parents. Deceased was informing to her father, her brother and brother-in-law and others about harassment, over the phone and they were consoling the deceased to remain with patience. She also informed the harassment to her colleagues working in the University, who also gave similar advice.

20 days prior to 19.07.2008 deceased and the appellant shifted their residence to Flat No.205, Satya Sai Towers, Nagarampalem, Guntur. Even there also the appellant has been demanding to bring additional dowry of Rs.5,00,000/-. On 18.07.2008, deceased phoned to the *de facto* complainant, that she was not able to live with the appellant due to the torture and that the *de facto* complainant informed her that they would be coming to Guntur on the next day to talk to the appellant. On 19.07.2008, again, the appellant quarreled with the deceased, who, being not able to bear the torture, consumed pesticide poison and became unconscious. The appellant took her to Sri Sai Hospital and admitted her and the appellant informed the same to *de facto* complainant. The deceased is alleged to have committed suicide due to harassment by the appellant.

The trial Court, in the process of appreciating the evidence, sieved the evidence and took the view that there exists a benefit of doubt for accused Nos.2 to 7 and acquitted them, but, considering that the evidence was sufficient to prove the guilt of the appellant, convicted him for the offence punishable under Section 304-B IPC and sentenced him to undergo rigorous imprisonment for a period of seven years and further to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month.

Assailing the said judgment, present appeal is preferred on the grounds that the prosecution has failed to establish the charge; the Court below erred in placing reliance on the evidence of prosecution witnesses P.Ws.1, 6 and 7, which is self contradictory and is at variance with Ex.P.1 and the statements recorded by the Tahsildar; the Court below did not appreciate that the witnesses are hearsay; the Court below ought to have seen that the accused No.1 never received any dowry; that there was no payment of dowry; there was no demand for additional dowry and that there was no harassment in pursuance of the alleged

demand, leading the deceased to commit suicide; there was enormous delay in lodging the FIR, which itself demonstrates that it was brought into existence subsequently, after due deliberations.

Heard the learned counsel for the appellant and the learned Public Prosecutor and perused the material placed on record.

The learned counsel for the appellant brings out the inconsistency between the complaint and the evidence of P.Ws.1, 6 and 7 and he contends that their evidence stands to be out-and-out improvement, from their statements and also the complaint. He also contends that the witnesses, who are neighbours and are supposed to be aware of the harassment, if any, by the appellant, did not speak about such harassment. He contends that it was the appellant, who admitted the deceased in the hospital. He further contends that the deceased was suffering from Thyroid problem and that the same is evidenced by the tablets, which were seized from the scene of offence and that the Court below ought to have assumed that the suicide of the deceased is due to Thyroid problem. From the above submissions and the material placed on record, the following points can be framed for consideration of this Court.

- i) *Whether the evidence of the prosecution witnesses would suffice to prove the guilt of the accused for the offence punishable under Section 304-B IPC.*
- ii) *Whether the judgment of the trial Court is sustainable.*
- iii) *To what result.*

It would be beneficial to extract Section 304-B IPC at the out set, for the sake of ready reference.

“[304B. Dowry death.—

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

The Court below has rightly observed that giving of the dowry at the time of marriage would not be relevant for assessing the guilt of the accused for the offence under Section 304-B IPC, as the said fact is not one of the ingredients of Section 304-B and the ingredient of Section 304-B is harassment with a demand of dowry soon before the death of the deceased. The proximity between death of the deceased and the harassment by the appellant is the clinching aspect, which would prove the guilt of the accused. The complaint, which was given by P.W.1, who is the father of the deceased, can be looked into, to *prima facie* understand whether there was any such proximity between the above two aspects. The complaint shows that the marriage took place on 22.05.2008 and the death of the deceased occurred on 19.07.2008. After marriage, the deceased joined the appellant at Guntur. Every day she used to tell the *de facto* complainant, that since next day of marriage the appellant has been behaving peculiarly, with terrible suspicion and torturing her mentally. After first night, the appellant left the deceased in their house and went away. After the marriage he stayed separately for about 15 days. At least, when the deceased phoned to him, he used to keep quiet, without talking to her and would simply disconnect the phone call. The deceased used to say that he used to put her to such type of mental torture even from the next day of their marriage, whenever the *de facto* complainant phoned to her. Later, when the deceased asked the appellant over phone, to see a house at Guntur for their residence,

he asked her to reside at her maternal aunt's house in Vijayawada. Later, when the *de facto* complainant telephoned to the appellant he said that he could not find the house and said that for some time she will reside with him, in his room itself. On 14th June, she was taken to the house of the appellant, along with some articles and left her in the room. Every day the deceased used to tell the *de facto* complainant, over phone, that since the next minute of her joining, the appellant used to say that he incurred a loss of forty seven lakhs by marrying her; she is looking at other male persons and he will get another marriage by deserting her. Her colleagues and classmates used to call him as "HERO" but he became "ZERO" after marrying her and he will desert her within one or two months and said that you have to make their own arrangements or otherwise bring some more amount, so also resign to her job. Saying as such, he used to torture her daily and sometimes he makes her to feel afraid, without coming to the house till mid-night and some times he wakes up in the mid-nights and sits alone and put her in fear. When the *de facto* complainant told that they would come and talk to him, she did not accept and asked them not to come and to wait for some more days. She further informed over phone that whenever the appellant takes her outside, he says that she is looking at others and giving cuttings to male persons and thus talks with her terribly, after their return to the house. He also used to threaten her, by saying that he knows the S.P. and Sub-Collector and he can do anything to her and if she tells the same to her people, he will see her end and since two days he increased his torture and saying that he will desert her. On 18.07.2008, in the evening, he says that, the said information was given to him over phone and on that he told her that they will start on the next day morning. But on the next day morning, the fateful incident occurred.

After appreciating the contents of Ex.P.1, complaint, the observations of the Apex Court are apt to be remembered in the ruling reported in between **SHARAD BIRDHICHAND SARDA VS. STATE OF MAHARASHTRA**¹, the Apex Court observed and held that:

“All the persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the Court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.”

The acquittal of accused Nos.2 to 7 on the ground that the evidence, which brought forthwith allegations against A-2 to A-7, is not supported by the contents of the complaint and hence, they are entitled to benefit of doubt would support the correctness of the observations of the Apex Court. With the alertness of the said observations, the complaint given by the *de facto* complainant needs to be understood.

The report, first of all, shows that the harassment of the appellant was there from the next day of the marriage and she has been constantly informing about the same to the *de facto* complainant and also to others. But the deceased did not feel the necessity of the intervention of the *de facto* complainant and she stopped and asked him to wait for some more days. She kept on complaining against the appellant, before and

¹ AIR 1984 SC 1622

after she expressed that they can wait for some more time. One improvement that is made by the P.Ws.1, 6 and 7, is with regard to the demanding of the additional dowry of Rs.5,00,000/-. All the three of them admitted that they did not state about the said fact when their statements were recorded by the Police, the same does not find place in the complaint also. The cross examination of the P.W.6 brings out that the expenses of the marriage were also borne by the accused. He says that the entire marriage expenses were born by the appellant, A-1.

The suggestion given by to P.W.7 is also that he met the marriage expenses. The above admitted fact would definitely throw some doubt, with regard to the demand of additional dowry by the appellant. The evidence also shows that A-1 complied with the customary requirements like giving blackbeads and mangalasuthram to the deceased. The same can be evidenced in the cross examination of P.W.6, wherein he admitted the same.

P.W.7, who is the co-brother of the appellant strangely, denies the suggestion that A-1 himself met the marriage expenses, though the P.W.6 admits the same. There lies the tendency of P.W.7 to be more loyal to the cause, than P.Ws.1 and 6 and that would also lead to a belief that he would possibly exaggerate things. He is the person who received the phone call from the appellant, informing about consumption of poison by the deceased. The harassment that is reported by the deceased allegedly on 18.07.2008 is not in any manner graver than the harassment that she allegedly reported earlier. With all the said harassment, as the evidence of P.Ws.1, 6 and 7 reflects, she had the stamina to refuse the proposal made by them, to come and visit her. With the above background, her sudden request to P.Ws.1, 6 and 7, on 18.07.2008, to come to Guntur, is not believable. The cross examination of P.W.1 shows that he was not personally present when A-1 demanded additional dowry of Rs.5,00,000/- from the deceased and he

never went to Guntur to see the deceased and did not personally witness any demand made by A-1 for dowry or for any other harassment. It is only through the deceased, that he came to know about the same. The payment of Rs.40,000/- towards lanchanam and Adapaduchu lanchanam is pointed out as an omission in the statement of the P.W.1. So also the demand of additional dowry. He also did not choose to state to any elders or mediators, about the dispute. All that the above would imply is that the magnitude of harassment, if any, was not to the extent of driving P.W.1 and others to intervene in the matter. Evidence of P.Ws.1, 6 and 7 with regard to the harassment is only that they were informed about the same by the deceased and they never witnessed any harassment personally. In the light of the above facts, the evidence of the neighbours, who were examined as P.Ws.3 and 5 becomes material. P.Ws.2 and 4 were declared hostile. P.Ws.3 and 5, who were not declared as hostile, did not support the case of the prosecution. P.W.3 states that he does not know the family life of the deceased but they were going together from the flat in the morning. His cross examination shows that the deceased and the appellant joined in the flat just one week prior to the incident. It also came in the cross examination that he did not see A-1 and the deceased quarrelling. He further stated that the deceased was leading reserved life and not meeting others. P.W.5 further goes a step ahead and says that A-1 and the deceased were living happily. The evidence of the neighbours would show that the appellant took the deceased to the hospital, by carrying her to the ground floor. The evidence of P.W.5 shows that after joining the deceased in the hospital, A-1 came to the apartment and searched if there was any empty poison bottle in the premises. That part of his evidence would show that A-1 was not present when the deceased consumed the poison and that he was not even certain whether she consumed poison or not.

The evidence of P.W.8, who was the person working in the department of Botany, speaks about the calls made by the *de facto* complainant to him, to enquire about the welfare of the deceased in her married life. In the beginning, the deceased was happy about her married life, but according to his version, he gradually found her dull. The fact that the *de facto* complainant used to enquire with P.W.8 about the welfare would imply that he took P.W.8 into confidence and that he was confident that the welfare of the deceased would be known to P.W.8. But P.W.8 does not speak about any information that is passed on to him by the deceased. The reason for the dullness cannot be inferred to be the harassment of the deceased, as was done by the Court below, unless the harassment is independently proved. P.W.8 instructed the women colleagues of the deceased to enquire about her dullness and as to what had happened, but later they did not state anything. However, in the cross examination, he stated that he did not personally enquire about family life of the deceased, by going to her house. He used to enquire about her welfare, from the time she joined in the department. His evidence with regard to the deceased being dull, is an omission in his statement and he admits the same. So also his asking women colleague to enquire about the dullness of the deceased. Hence, his evidence becomes unreliable.

P.W.9 is another colleague of the deceased. But nothing comes out from his evidence. He stated that the deceased did not inform him about her family life and he does not have personal knowledge about the payment of dowry though he heard that dowry was paid.

The evidence of P.W.10 is that of the Doctor who speaks about the condition of the deceased. After consumption of poison she went into coma and that explains the reason for not recording the statement of the deceased.

The evidence of P.W.11, who is the Paster who performed the marriage of the deceased, would also strengthen the already existing doubts with regard to the monitory greed of the appellant, as he says that the fee given to him was both by the bride and the bridegroom. It shows that the appellant did not make any effort to throw any financial burden on the family of the deceased with regard to the performance of the marriage.

P.W.12 is a mediator for marriage. The facts elicited in the cross examination would support the suggestion given to P.Ws.1, 6 and 7, that two alliances, which were fixed for the deceased were cancelled. It was elicited in his cross examination that after he left from the hotel to where A-1 is requested to come, for the purpose of fixing alliance and where P.W.6 was present, P.W.6 told him that he knew the proposal of A-1 already but it was rejected by him. When he enquired with A-1, he told that his marriage was settled with the sister of P.W.6 but he told him that P.W.6 phoned to him three or four days ago and enquired about any other proposals, as his sister's marriage is not settled. When he phoned to A-1 to bring to his notice, he informed that the alliance was fixed with the sister of P.W.6. The above facts do not however clarify anything, concerning the issues involved in this case.

P.Ws.13 and 14, who are witnesses for the inquest panchnama were also declared as hostile. P.W.15 who is witness for the scene of offence panchanam, also turned hostile. But, however, nothing material comes out from the evidence of other witnesses.

But the material evidence, which is of P.Ws.1, 6 and 7, suffers from several inconsistencies and is not sufficient to invoke the presumption adumbrated under Section 113-B of Indian Evidence Act, in order to throw the burden on the appellant. Hence, in view of the

above, this Court is of the view that the impugned judgment is not sustainable and the same is liable to be set aside.

In the result, this appeal is allowed by setting aside the impugned judgment dated 05.01.2011 passed in S.C. No.391 of 2009 by the III Additional Sessions Judge, Guntur.

JUSTICE T. RAJANI

Date: 22.02.2018

LSK

