

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.1794 of 2007

JUDGMENT:

1 This appeal, under Section 378 (3) & (1) Cr.P.C., is filed by the State, challenging the judgment dated 14.03.2007 passed in Criminal Appeal No.345 of 2006 on the file of the Court of the III Additional Metropolitan Sessions Judge, Hyderabad, where under the conviction and sentence imposed against the respondent herein by the XIII Additional Chief Metropolitan Magistrate, Hyderabad in C.C.No.181 of 2000, under Sections 498-A of IPC and Sections 4 and 6 of Dowry Prohibition Act, vide judgment dated 28.9.2006, was set aside.

2 The factual matrix that lead to the filing of the present Criminal Appeal is as follows:

a) Basing on the complaint lodged by P.W.1, the Inspector of Police, WPS, South Zone, Hyderabad registered a case in Cr.No.320 of 1999 against the respondent and others for the offence punishable under Sections 498-A r/w 34 of IPC and investigated into. During the course of investigation, it was revealed that P.W.1 is the wife of A.1, accused Nos.2 to 8 are blood relatives of A.1. The accused harassed and subjected P.W.1 to cruelty for additional dowry and other household articles and ultimately necked out P.W.1 from the matrimonial home in September 1999. After completion of investigation the investigating officer laid charge sheet against all the accused for the offence punishable under Sections 498-A of IPC and Sections 4 and 6 of Dowry Prohibition Act.

b) During the course of trial, on behalf of the prosecution P.Ws.1 to 5 were examined and Exs.P.1 to P.4 were marked. On behalf of the defence no oral evidence was let in but Exs.D.1 and D.3 were marked.

c) Basing on the oral and documentary evidence available on record the trial Court arrived at a conclusion that the prosecution failed to prove the guilt of the accused Nos.2 to 8 for the offence punishable under Section 498-A r/w 34 of IPC and Sections 4 and 6 of Dowry Prohibition Act and acquitted them of the said charges. However, the trial court found the respondent (accused No.1) guilty of the offence under Section 498-A of IPC and convicted and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.3,000/-, in default to suffer simple imprisonment for six months. The trial court also found the respondent guilty of the offence punishable under section 4 of Dowry Prohibition Act, convicted and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs.3,000/-, in default to suffer simple imprisonment for six months. The trial court also found the respondent guilty of the offence punishable under section 6 of Dowry Prohibition Act, convicted and sentenced him to pay a fine of Rs.4,000/-, in default to suffer simple imprisonment for six months.

d) Feeling aggrieved by the judgment of the trial Court dated 28.09.2006, the respondent (A.1) preferred Criminal Appeal No.345 of 2006 on the file of the Court of the III Additional

Metropolitan Sessions Judge, Hyderabad. The learned III Additional Metropolitan Sessions Judge, on re-appreciating the oral and documentary evidence afresh, arrived at a conclusion that the respondent (A.1) is not guilty of the offences punishable under Sections 498-A of IPC and Sections 4 and 6 of Dowry Prohibition Act and accordingly acquitted him of all the offences. Hence the present appeal by the State.

3 The learned Public Prosecutor submitted that the appellate court has not properly considered Ex.P.1 to P.3. He further submitted that the findings recorded by the appellate court are not based on evidence, much less legally admissible evidence; hence it is a fit case to allow the appeal.

4 *Per contra*, Sri Hari Prasad Reddy, learned counsel representing Ms.Sangitha Reddy, learned counsel for the respondent, submitted that the trial court convicted the respondent without there being any material on record. He further submitted that the trial court failed to consider that the prosecution has to establish the guilt of the accused beyond all reasonable doubt. He further submitted that the trial court, having come to a conclusion that no evidence is produced with regard to jahez, ought to have acquitted the respondent.

5 Now the points that would emerge for consideration in this appeal are:

- (i) Whether the prosecution proved the guilt of the Accused for the offence under Section 498-A of IPC and sections 4 and 6 of Dowry Prohibition Act beyond all reasonable doubt? and
- (ii) Whether the judgment of the appellate Court is sustainable?

6 Both the points are intertwined; hence, this Court is inclined to answer both the points simultaneously in order to avoid recapitulation of the facts and evidence.

7 P.W.1 is the victim, P.W.2 is mother and P.W.3 is brother of P.W.1, P.Ws.4 and 5 are women constables. The marriage of P.W.1 was performed with A.1 long back. Out of their lawful wedlock, they were blessed with two children. It is the case of the prosecution that A.1 subjected P.W.1 to cruelty in the month of September 1998 for additional dowry of Rs.85,000/- It is the further case of the prosecution that A.1 necked out P.w.1 from the matrimonial home in the year 1999.

8 P.Ws.1 to 3 are interested witnesses; therefore, the court has to scrutinise their evidence meticulously in order to eliminate the exaggerations. The testimony of P.Ws.4 and 5 is no way helpful to the case of the prosecution. For one reason or the other, the prosecution did not choose to examine the investigating officer. The trial court convicted A.1 for the offence punishable under sections 4 and 6 of Dowry Prohibition Act basing on the oral testimony of P.Ws.1 and 2 and Exs.P.1 to P.3. Ex.P.1 is two photos with negatives. P.Ws.1 to 3 were not present at the time of taking of Ex.P.1 photos. In such circumstances, how the trial court arrived at the conclusion that an amount of Rs.75,000/- was given to A.1 towards Jode-ki-rakham basing on their testimony. Both the counsel submitted that Jode-ki-rakham means presentation of marriage dress at the time of marriage. It is not uncommon to present new dress to the bride and bridegroom by their respective in laws on the eve

of marriage. There is no whisper in the testimony of P.Ws.1 to 3 that A.1 harassed them by demanding an amount of Rs.75,000/- towards Jode-ki-rakham. Even as per the testimony of P.Ws.1 to 3, this amount was given to the accused 15 days prior to the date of marriage towards Jode-ki-rakham. Viewed from any angle, presentation of new dress to bridegroom at the time of marriage cannot be construed as demand of dowry.

9 As per the testimony of P.Ws.1 to 3, they presented Jahez articles to A.1. There is no whisper in the testimony of P.Ws.1 to 3 that the accused signed on Ex.P.2 jahez list. Ex.P.3 is the true translation of Ex.P.2. As per the testimony of P.Ws.1 to 3, one of the relatives of the accused subscribed his signature on Ex.P.2. For the reasons best known to the prosecution, they did not choose to examine the said person. P.Ws.1 to 3 did not disclose the name of the relative of A.1 who subscribed his signature on Ex.P.2. It is needless to say that the prosecution has to submit necessary documents to the court along with the charge sheet. It is the duty of the prosecution to supply all the relevant documents to the accused person as contemplated under Section 207 Cr.P.C. prior to the commencement of trial. The very purpose of supplying the copies of documents to the accused is to know the specific acquisition made against him. This would also facilitate the accused to put forth his defence. As seen from the record, Exs.P.2 and P.3 were produced before the Court during the course of examination of P.W.1. The prosecution has not assigned reasons much less cogent and valid reasons for non-production of this document at the time of filing of the

charge sheet. The possibility of creating this document after filing of the charge sheet cannot be ruled out completely. As per the testimony of P.W.2, jahez was handed over to the police during investigation. In order to appreciate the rival contentions, it is not out of place to extract Para No.18 of the judgment the trial court which reads as follows:

“18. Further the contention of the prosecution is that the jahez is with the accused person.; But the contention of the accused is that the jahez is with P.W.1. But there is no proof before the court that the jahez is with P.W.1 or with police. As there is no evidence before the court that the jahez is handed over to the P.W.1, it is presumed that A.1 in the possession of the jahez.”

10 It is a settled principle of law that the prosecution has to establish the guilt of the accused beyond all reasonable doubt. Simply because the Jahez is not produced before the court that itself is not a valid ground to presume that A.1 is in possession of it. The above observation of the trial court is not sustainable either on facts or in law. Absolutely there is no material on record to establish that P.W.1 handed over jahez to A.1. On the other hand, the appellate court considered the oral and documentary evidence in right perspective and arrived at a conclusion that the prosecution failed to prove the guilt of A.1 for the offence punishable under Sections 4 and 6 of Dowry Prohibition Act. I am fully concurring with the findings recorded by the appellate court on this aspect.

11 The trial court convicted A.1 for the offence punishable under Section 498-A of IPC basing on the testimony of P.Ws.1 to 3. As per the prosecution version, A.1 to A.8 subjected P.W.1 to cruelty for additional dowry. The trial court disbelieved the testimony of P.Ws.1 to 3 so far as accused Nos.2 to 8 are

concerned. The trial court acquitted A.2 to A.8 on the sole ground that the testimony of P.Ws.1 to 3 does not inspire the confidence of the court so as to come to a conclusion that they also committed the alleged offences. The appellate court made an observation that the trial court having disbelieved the testimony of P.Ws.1 to 3 so far as A.2 to A.8 are concerned, ought to have acquitted A.1 also.

12 In matrimonial cases, the possibility of exaggerating the facts in order to gain sympathy of the court cannot be ruled out completely. The court has to scrutinise the testimony of interested witnesses meticulously in order to arrive at a just and reasonable conclusion. There is no whisper in the testimony of P.Ws.2 and 3 that they were present at the time of alleged demanding of an amount of Rs.85,000/- by A.1 from P.W.1 as additional dowry. P.Ws.2 and 3 being mother and brother of P.W.1, the possibility of distortion of facts cannot be ruled out completely. Except the self serving testimony of P.W.1, there is no other convincing evidence to hold that A.1 demanded an amount of Rs.85,000/- from P.W.1. The testimony of P.W.1 is not supported on all material aspects by P.Ws.2 and 3.

13 A perusal of the record reveals that the defence counsel elicited certain omissions and improvements in the testimony of P.W.1. Due to non-examination of the investigating officer, the accused lost an opportunity to elicit the truth from the investigating officer with reference to the omissions and contradictions in the testimony of P.W.1. The prosecution has not assigned reasons much less cogent and valid reasons for the

non-examination of the investigating officer. Non-examination of the investigating officer is also one way fatal to the case of the prosecution.

14 The material placed before the court falls short to establish that A.1 committed the offence punishable under Section 498-A of IPC. The appellate court, basing on the material available on record, arrived at a conclusion that the prosecution failed to prove the guilt of the A.1 beyond all reasonable doubt and accordingly set aside the conviction and sentence imposed by the trial court on A.1 for the offences under Sections 498-A of IPC and Sections 4 and 6 of Dowry Prohibition Act. The findings arrived at by the appellate Court are based on evidence more so legally admissible evidence. There is no flaw much less legal flaw in the findings of the appellate Court, which warrant interference of this court. I am in complete agreement with the findings recorded by the appellate Court in all aspects. I see no merits in this Criminal Appeal and hence the same is liable to be dismissed.

15 In the result, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 15th February, 2018
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