

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1228 of 2011

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

Originally, A1 to A5 in Sessions Case No. 802 of 2010 on the file of the Court of the IV Additional Sessions Judge (FTC), Karimnagar were tried for the offences punishable under Section 304-B IPC and Section 4 of the Dowry Prohibition Act, 1961 for causing the death of A.Rajitha. Vide judgment dated 12.09.2011, the learned Additional Sessions Judge, while acquitting A1 to A5 for the offence punishable under Section 4 of the Dowry Prohibition Act, and A4 & A5 for the offence punishable under Section 304-B IPC, convicted A1 to A3 for the offence punishable under Section 304-B IPC and sentenced them to suffer 'imprisonment for life' and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for a period of six months. Assailing the same, this appeal came to be filed by A1 to A3.

2. The facts, as culled out from the evidence of the prosecution witnesses are as under:

PW1 is the mother of the deceased while PW2 is the father of the deceased. Their evidence discloses that the marriage between the accused and the deceased was performed in the year 2009, and out

of wedlock, they were blessed with a girl child. At the time of marriage, cash of Rupees One lakh, three tulas of gold and ten tulas of silver were said to have been given as dowry. The accused and deceased lived happily for a period of three months. Thereafter, disputes arose between them and that the accused started harassing the deceased for additional dowry of Rs.50,000/- . PW1 and PW2 convinced their daughter, stating that their financial condition is not well and accordingly, sent her to her parents-in-law house. It is stated that on the sixteenth day after the birth of the female child, the deceased is said to have attempted to commit suicide, unable to bear the harassment from the accused with regard to the birth of a girl child. Immediately thereafter, she was taken to Government Hospital, where she recovered and was brought back to the house of PW1. She resided in the house of PW1 for a period of five months, after which, A1 to A5 came to the house of PW1 for taking the deceased to their house. It is stated that sometime prior to the incident in question, PW1 and PW2 received a phone call, stating that the deceased was not consuming food. Pursuant thereto, PW1 and PW2 went to the house of the accused and convinced the deceased to live amicably with the accused. Twenty days thereafter, i.e., on 26.05.2010, the incident in question took place, wherein the deceased is said to have committed suicide, unable to bear the harassment in the hands of the accused.

3. On the next day afternoon, i.e., on 27.05.2010 at about 2 p.m., PW1 lodged a report before PW13-the Sub Inspector of

Police, which led to registration of a case in Crime No. 66 of 2010 for the offence punishable under Section 304-B IPC. Ex.P10 is the First Information Report. Thereafter, he sent intimation about the registration of the crime to the Magistrate and also to his superior officers. He also sent a requisition to the Tahsildar for conducting inquest over the dead body of the deceased.

4. In the hospital, PW12-the Deputy Tahsildar, Karimnagar conducted inquest over the dead body as the death occurred within seven years of her marriage. Ex.P2 is the inquest report. Thereafter, he shifted the body of the deceased to Government Civil Hospital, Karimnagar for postmortem examination.

5. PW10-the Deputy Civil Surgeon, Government Hospital, Karimnagar conducted autopsy over the body of the deceased and issued Exhibit P6-the Post Mortem Report. According to him, the cause of death was due to endosulphon and insecticide poison.

6. Thereafter, PW14-the Sub Divisional Police Officer visited the scene of offence, which is the house of the parents-in-law of the deceased, observed the scene and conducted a panchanama of the scene in the presence of PW11. Ex.9 is the Crime Details Form containing the rough sketch of the scene. He also collected the wedding card of the deceased at the time of preparing the panchanama. On 16.06.2010, at about 9.30 a.m., A1 to A5 surrendered before PW14, pursuant to which, he effected their arrest and sent them to judicial custody.

7. After obtaining all documents and necessary reports, PW14 laid the charge sheet against A1 to A5 for the offences punishable under Section 498-A, 304-B IPC and Section 4 of the Dowry Prohibition Act, which was taken on file as PRC No. 25 of 2010 on the file of Court of the Judicial Magistrate of First Class, Sulthanabad. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions under Section 209 Cr.P.C. and the same came to be numbered as S.C.No. 802 of 2010 on the file of Court of the IV Additional Sessions Judge (FTC), Karimnagar. Basing on the material on record, charges for the offences punishable under Section 304-B of IPC and Section 4 of the Dowry Prohibition Act were framed, read over and explained to the accused, to which they denied and claimed to be tried.

8. In support of its case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P12 and M.Os.1 to 4. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced by the accused in support of their defence.

9. Relying upon the evidence of PWs 1, 2, 5 and 6, the Court below, while disbelieving the case of the prosecution with regard to the charges against all the accused under Section 4 of the Dowry Prohibition Act, convicted A1 to A3 for the offence punishable

under Section 304-B IPC. Challenging the same, the present appeal came to be filed.

10. The learned counsel for the appellant mainly submits that the deceased had suicidal tendencies, because of which she committed suicide on the date of the incident. He took us through the evidence of all the witnesses to show that the parents of the deceased-PW1 and PW2 had no financial capacity to pay any amount to the accused towards dowry. He pleads that in view of the findings given by the trial court acquitting all the accused under Section 4 of the Dowry Prohibition Act, the evidence which is now sought to be adduced that the deceased committed suicide because of the demand for additional dowry of Rs.50,000/- made by the accused, appears to be incorrect, more so, when the hospital bills at the time of delivery of the deceased, were paid by the accused.

11. On the other hand, the learned Public Prosecutor opposed the same, contending that not only the evidence of PWs 1 and 2, but the evidence of PW5, who is an independent witness, amply establish that there was demand for additional dowry of Rs.50,000/-, and since PWs 1 and 2 did not pay the said amount, the accused harassed the deceased, which led to deceased committing suicide. Hence, pleads that the judgment of the trial court warrants no interference.

12. A reading of the findings of the trial court clearly show that PW1 and PW2 have no capacity to pay any amount to the accused,

as contended by the learned counsel for the appellant. Keeping the above finding in mind, we shall now proceed to deal with the issue as to whether the prosecution proved their case against the accused under Section 304-B IPC beyond reasonable doubt.

13. In order to appreciate the rival contentions, we intend to refer to the evidence of PWs 1, 2, 3 and 5. PW1, in her evidence, deposed that at the time of marriage, they gave cash of Rs. One lakh, three tolas of gold and ten tolas of silver as dowry to the accused. Subsequent to the marriage, all the accused started harassing the deceased for additional dowry of Rs.50,000/-. Her evidence is to the effect that she was convincing her daughter-the deceased to go and stay in her in-laws' house, as their financial condition was not well. In her evidence, in chief, PW1 deposed that on the sixteenth day of the birth of the female child, the deceased attempted to commit suicide by consuming pesticide. Immediately thereafter, she was taken to the hospital, where she recovered. After the said incident, the deceased stayed in the house of PW1 for a period of five months, and later, went to her in-laws' house along with A1 to A5. Twenty days thereafter, PW1 is said to have received a phone call from PW7, stating that A1 to A5 were harassing the deceased for additional dowry. Thereafter, she proceeded to the Government Hospital along with her husband-PW2, where they found their daughter dead. According to her, the deceased committed suicide in the house of her in-laws, unable to bear the harassment meted out to her by the accused. The law was set into motion basing on the report given by PW1.

14. In the cross-examination, it has been elicited that PW1 does not have any landed property and they are residing in a hut. Their source of livelihood was by attending coolie work @ Rs.150/- per day for men and Rs.100/- per day for women. It was further elicited that they get work for four months in a year and their family is dependent on the said income. It was further elicited in the cross-examination that they purchased gold and silver at the time of marriage, but cannot say the name of the shop and also the name of the person who lent money for purchase. PW1 also admits that she does not have any bills evidencing the purchase. PW1 further admits that she cannot say the name of the blacksmith who prepared the articles and his village. Though PW1 admitted that she knows that they borrowed loan for purchase of gold and silver, she was not able to say from whom her husband borrowed the said amount. She further admits that she cannot also say from whom the alleged dowry amount was borrowed. She also admits that when the child of the deceased was not well, the accused took the child to the hospital at Hyderabad for treatment. Though she says that the receipts issued by the hospital are in her name and she has paid the amount, no documents are produced to prove the same. On the other hand, it has been elicited from this witness and also from the evidence of PW2 that the accused paid the hospital bills.

15. PW2, who is the father of the deceased, toes in line with PW1 with regard to the harassment in the hands of the accused and also with regard to the attempt made by the deceased to commit

suicide after the birth of her child. He also speaks about A1 to A5 harassing his daughter for additional dowry of Rs.50,000/- and that the deceased committed suicide, unable to bear the said harassment. PW2 was also subjected to lengthy cross-examination. In the cross-examination, he admits that the accused took their granddaughter, i.e., daughter of the deceased for treatment to Hyderabad and he paid the bills at the hospital. He also admits that their granddaughter is residing with the accused since the death of the deceased. Both the witnesses admit in the cross-examination that they have neither informed the police, the panchayatdars or the local elders, when the deceased earlier attempted to commit suicide, i.e., on the sixteenth day of the birth of her child.

16. PW3, who is the elder brother of the deceased, while speaking about the dowry, gold and silver given at the time of marriage of the accused and deceased, states that after the birth of the female child, his sister attempted to commit suicide, pursuant to which, the accused took her to Government Hospital, Karimnagar. On receiving the information about the incident, they proceeded to the hospital, and after recovery, the deceased was brought to their house. Five months later, A1 to A3, along with the elders, came to their house and took the deceased with them. Twenty days thereafter, the deceased is said to have committed suicide.

17. In the cross-examination, PW3 admits that when the police came for enquiry to Government Hospital, he gave a statement that the deceased consumed pesticide due to stomach ache as per the advice of the accused. It would be useful to extract the same, which is as under:

“Police came for enquiry at Government Hospital and we gave statement that she consumed pesticide due to stomach pain as per the advice of accused.”

18. The evidence of these witnesses show that an amount of Rupees One lakh, three tulas of gold and ten tulas of silver were said to have been paid to the accused at the time of marriage with the deceased. But, the said fact was found to be false by the trial court, as neither PW1 nor PW2 has any capacity to give dowry. The said fact is evident in view of the admissions made by PW1, wherein she admits that they were doing coolie work, at the rate of Rs.150/- per day for men and Rs.100/- per day for women, and their family was dependent on the said source of income. It was further admitted that they get work only for four months in a year. That being the position, the finding of the trial court that PW1 and PW2 could not have paid so much of dowry and also gold and silver to the accused, cannot be found fault with, apart from the admissions made by PW1, pleading ignorance as to the person from whom they borrowed the amount towards dowry, purchase of gold etc. Such being the family background of PW1 and PW2, the question now is whether the accused could have demanded

additional dowry of Rs.50,000/- and whether the deceased committed suicide because of the demand made by the accused towards additional dowry.

19. Before dealing with this aspect, it would be appropriate to note that, on an earlier occasion, the deceased attempted to commit suicide. The said fact was consistently spoken to by PWs 1 to 3. It is urged by the learned counsel for the appellants that the incident in question also took place earlier when the deceased attempted to commit suicide by consuming poison. The fact that the deceased attempted to commit suicide on earlier occasion cannot be disputed. In fact, she tried to commit suicide on the sixteenth day after the birth of her girl child, while she was in her parents' house. Therefore, the argument of the learned counsel for the appellants that the deceased had a tendency to commit suicide, cannot be brushed aside.

20. Coming to the demand of dowry of Rs.50,000/-, it would be useful to refer to the evidence of PW5, who is an independent witness and who conducted panchayat over the alleged demand for additional dowry. Though, in his evidence in chief, PW5 states that the panchayat was convened on the allegation of the accused demanding additional dowry of Rs.50,000/-, in the cross-examination, he admits that he has not stated to the police about the accused demanding additional dowry of Rs.50,000/-. He further admits that the accused came to him with a request for sending the deceased to his house, for living with him. PW5, in his

evidence, further deposed that he advised the deceased to go and live with the accused, as the financial status of her parents was not well.

21. PW1, in her evidence in chief, deposed that about twenty days after she went to the house of the accused, she received a phone call from PW7, stating that A1 to A5 were harassing the deceased for additional dowry. But the evidence of PW7 is silent on this aspect. He never spoke about any such harassment by the accused. On the other hand, he admits that he does not know the disputes in the house of the deceased. He only speaks about A2 informing him about the deceased consuming poison and he calling 108 ambulance on phone. Therefore, the version of PW1 that there was harassment by the accused for additional dowry of Rs.50,000/- does not get corroboration from the evidence of PW2, PW3 or from PW7, who is said to have informed about the death of the deceased.

22. Having regard to the above circumstances, we feel that it is a fit case where the prosecution failed to prove the ingredients of the offence punishable under Section 304-B IPC. Accordingly, extending the benefit of doubt, A1 to A3 are liable to be acquitted.

23. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused in the judgment dated 12.09.2011 in Sessions Case No.802 of 2010 on the file of the IV Additional Sessions Judge (FTC), Karimnagar, for the offence punishable under Section 304-B I.P.C., is set aside and they

are acquitted for the said offence. Consequently, the appellants/ accused shall be set at liberty forthwith, if not required in any other case. Miscellaneous petitions pending, if any, stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T.RAJANI

19.06.2018
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