

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1690 of 2005

JUDGMENT:

This appeal is preferred by appellants, against the judgment of the I Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad in SC.No.629 of 2004 dated 07.11.2005, convicting and sentencing them to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.7,000/- each in default to undergo simple imprisonment for a period of six months for the offence punishable under Section 304-B of the Indian Penal Code and also sentencing them to undergo rigorous imprisonment for a period three years each and to pay a fine of Rs.3,000/- each in default to suffer simple imprisonment for a period of three months for the offence punishable under Section 498-A IPC.

2. The facts of the case, briefly, as per the charge sheet are as follows:

The deceased is the wife of A1 and the daughter-in-law of A2. On 24.02.1997, when the deceased came on the road from her house, she was on flames, neighbours saw her and took her to Gandhi Hospital. She sustained 100% mixed burns and as she was kept under sedation, her statement could not be recorded. The deceased succumbed to the injuries on the next day, while undergoing treatment. On the same day, her uncle lodged a complaint, stating that the deceased committed suicide due the ill-treatment meted out to her by the accused and for payment of additional dowry. A case was registered in Cr.No.88 of 1997 under Sections 498-A and 306 IPC.

During the course of investigation, the scene of offence panchanama was conducted; inquest and post mortem examination were conducted on the dead body of the deceased and the statements of the witnesses were recorded. The accused were arrested and sent to judicial custody. As per the investigation, Section 304-B was added by altering Section 306 IPC. After concluding the investigation, charge sheet was laid for the offences under Sections 498-A and 304-B IPC.

On appearance of the accused, the V Metropolitan Magistrate, Hyderabad, after complying with the required legal formalities, committed the case to the Sessions Division, by virtue of orders in PRC.No.58 of 2004. The Sessions Judge, in turn, made over the case to the V Additional Metropolitan Sessions Judge, Hyderabad for trial and disposal in accordance with law. The Court below, on appearance of the accused, framed charges against them for the same offences and after recording the plea of not guilty by the accused, conducted the trial of the case and examined P.Ws.1 to 9, Exs.P1 to P13 and M.Os.1 to 3 on behalf of the prosecution. After concluding the prosecution evidence, the accused were questioned about the incriminating circumstances appearing in the prosecution evidence, which they denied and examined D.Ws.1 to 3 and marked Exs.D1 and D2 on their behalf.

3. The Court below, after appreciating the evidence and considering the material on record, passed the impugned judgment, against which the present appeal is preferred on the following grounds:

The Court below erred in placing reliance on the highly interested evidence of P.Ws.1 to 3; it ought to have seen that the evidence of P.Ws.1 to 3 is not corroborating with each other; it ought to have seen that in 161 statements of P.Ws.1 to 3, they did not state about receiving any letters from the deceased and that the said letters are fabricated; it ought to have seen that the prosecution failed to examine L.Ws.4 to 7, who are neighbours of A1 and who are crucial witnesses and it ought to have seen that, in the first instance, P.W.2 did not state about Exs.P5 to P10 and that they are produced by fabricating them. Based on the above grounds, the appellants seek this Court to set aside the judgment of the Court below.

4. The counsel for the appellants did not appear in spite of the matter being adjourned on 14.08.2018 making it clear that the Court shall proceed in the appeal in the absence of the appellants. Heard the Public Prosecutor.

5. Now the points that arise for consideration are as under:

1. Whether the prosecution succeeded in proving the guilt of the accused for the offence under Sections 498-A and 304-B IPC and whether the judgment of the Court below can be sustained.

2. To what result.

POINT No.1:

6. P.W.1, who is the senior paternal uncle of the deceased, is a witness, who, except attending the marriage of the deceased, does not know as to how much dowry was presented to the accused and he was not present at the time of marriage talks. According to his evidence,

after marriage, the deceased was sent to her in-laws house at Balanagar and she was blessed with a son. Three days prior to the death of the deceased, he went to her in-laws house and after seeing him, the deceased wept and requested him to take her to his house. He questioned her as to the cause of her weeping and as to why she asked him to take her to his house. The deceased kept quiet for some time and then, she told him that she will talk to him afterwards. After three days, he received phone call from his house when he was present at Banjara Hills, in connection with his work and he was informed that the deceased received burn injuries and was taken to Gandhi Hospital. Immediately he went to Gandhi Hospital and was informed by the doctor that she received 100% burns and was not in a condition to talk. Then he went to the police station and gave a report.

In the cross-examination, he admitted that since the date of marriage till three days prior to his visit, the deceased did not complain anything against her husband and mother-in-law, as regards her family life.

The evidence of P.W.1 does not bring out anything against any of the accused. The reason for the deceased asking him to take her along with him and her weeping were not stated to him by the deceased. Hence, it cannot be assumed that the reason for such weeping was the harassment caused by the accused.

7. P.W.2 is the father of the deceased. According to his evidence, the marriage was performed on 11.05.1995 with presentation of cash of Rs.50,000/-, five tulas of gold in the shape of ornaments, ten tulas of silver and they were presented on the demand of A2, who is the

mother of A1. A2 demanded some more amount towards Adapaduchu katnam, but they did not give. Immediately, after marriage, A1 and A2 took the deceased to the village of A1's grand mother. After staying for 15 days in the said village, they brought the deceased to Sanathnagar, where they started residing in a rented house. Prior to the marriage, he was informed by A2 that A1 was working as jeep driver and after three months of marriage, his daughter conceived. The accused did not send her till eighth month. Thereafter, he went to his son-in-law's house and brought the deceased to his house. The deceased underwent operation and delivered a child. The same was informed to the accused, but they did not even attend the Barasala function, which was performed at their house. He sent a word to the accused to take his daughter, in the third month of the child's birth. They did not come even in the fifth month or the seventh month. In the eleventh month, A1 came to his house and stated that he would take his wife on 1st January, but they sent the deceased along with him on 13th December. He explained that as it was already late, he sent his daughter, by giving sweets and new clothes. His grandson completed his first birthday. Their son-in-law did not invite them to attend the birthday function. In the next month, he received a phone call from his brother's son, about the burn injuries sustained by the deceased and immediately, they went to Gandhi Hospital. He stated that his daughter died due to harassment and ill-treatment caused by her husband and mother-in-law. He also stated that before going to her in-laws house, in the month of December, the deceased informed that she was harassed by her mother-in-law and husband, for additional dowry of Rs.50,000/- and he told her that he does have

the capacity to give that amount and consoled her to adjust in the matrimonial house.

In the cross-examination, it was elicited that he did not purchase any gold ornaments, which were given to the deceased at the time of marriage, but the jewellery of his wife was given to the deceased. He admitted that he did not state to the police, in his statement, that they had sent the deceased along with her child with A1, on 02.01.1997, as stated in Ex.D2. In the eighth month pregnancy, they performed srimantham at the house of A1 and A2. Though he denied the suggestion that A2 bore the entire expenditure, he stated that they took sweets and other customary items for the said function. He admitted that till eighth month his daughter was taken for check up by A2. He also admitted that both the accused were willing to take his daughter to their house, but, however, he stated that A1 and A2 never came to his house, but wrote a letter to send his daughter in the third month. He did not send his daughter in the third month, since she had to take post natal rest and since she underwent major surgery. He admitted that the deceased did not complain against her husband and mother-in-law nor about the demand of dowry. He admitted that A1 and A2 never demanded him to give additional dowry.

8. As against the evidence of P.W.2, who is the mother of the deceased, the evidence of P.W.3 is that they had sent the deceased to house of the accused on 02.01.1997. She, however, corroborated the evidence of P.W.2 with regard to the dowry presented at the time of marriage. She further states that after two or three months of the

marriage, the deceased wrote a letter, stating that A2 was harassing for additional dowry of Rs.50,000/-. Narrating the events, she states that as they did not have the capacity to fulfil the demand of A2, they used to write letters to the deceased, consoling her not to pick up any disputes with A1 and A2 and to adjust herself in her family. The deceased conceived and in the seventh month, they went to the house of the accused for srimantham function and they took all the necessary items required for the function. After that, they brought the deceased to their house. She delivered a child. They informed the same to the accused but they did not come to their house till 11th month. After stating all this, she states that she does not know the reason for the death of her daughter, but they were under the impression that she was set on fire because of non-fulfilment of dowry demand.

In the cross-examination, she admitted that the deceased did not complain anything against A1 and A2 before srimantham function.

9. P.Ws.4 and 5 are the witnesses for inquest conducted over the dead body of the deceased. P.W.6 is the doctor, who conducted post mortem examination on the dead body of the deceased. P.W.7 is the witness for the scene of offence panchanama, who was declared hostile. P.W.8 is the SI of Police, S.R. Nagar Police Station, during the relevant time. He received information about the deceased sustaining burn injuries and went to the scene of offence and shifted the deceased to the hospital. P.W.9 is the Inspector of Police, S.R. Nagar Police Station at that point of time, who conducted investigation and filed charge sheet.

10. The evidence of P.Ws.1 to 3 is material but their chief examination does not make out any case against A1 and A2. Except making some stray allegation that the accused did not come to see the child, they did not make any material allegations. From their evidence given in the chief examination itself, it can be understood that no harassment was reported to them by the deceased. The evidence of P.W.2 seems to be a bit exaggerating, that in order to make some allegations, he states that he had sent the deceased to the house of the accused in the month of December, though the accused wanted to take her in the month of January. The same can be understood to be an exaggeration as P.W.3 does not support his evidence that they had sent the deceased to the house of the accused in the month of December. The evidence, in the cross-examination, would clearly show that the deceased was taken care of by A2 and she was taken to the hospital by A2. The accused also performed the srimantham function in their house. It is natural that the parents, who attend the function, would take some sweets and customary items, which would not stand as a fact to hold that the whole expenditure was borne by the parents of the deceased.

11. Hence, in the background of the conduct, which is reflected in the evidence of P.Ws.2 and 3, we now need to examine the letters, which were marked in the further chief examination of P.W.2. He was recalled on 21.04.2005, while he was initially examined on 28.03.2005. After he was recalled, the letters, which were, allegedly, written by the deceased, were marked through him. He states that the deceased wrote a letter to him stating that she was not happy in her

matrimonial house and that they were not allowing her to write letters. The said letter is marked as Ex.P5. A2 also wrote a letter on 19.12.1996, demanding them to send the deceased with her son.

12. At this juncture, a perusal of the letters would be beneficial. The first letter, which is, allegedly, written by the deceased, would show that she did not have freedom to write letters and that A2 used to make an issue of her writing letters. But there is absolutely no allegation in the said letter that the accused demanded any dowry. She also states in the said letter that A2 was taking her to the hospital. She also mentioned in the said letter that she has informed the matter to P.W.1 and that he assured that she need not be afraid and that he can take care of her and that he would question if there is any grievance. Except stating so, no grievance is expressed with regard to any dowry demand made by the accused or any harassment made out by them. That apart, PW.1 does not corroborate the said contents.

13. The second letter is dated 19.12.1996, which is written by A2 to P.W.2. In the said letter, A2 nevertheless asked them to send Rs.50,000/- along with the deceased. But the other contents of the letter would show that P.Ws.2 and 3 were not sending the deceased to her house, which can be understood from the words used in the letter, that they should not consider their goodness as their inability and that they cannot behave as they please. It appears that the main issue communicated to P.Ws.2 and 3 through that letter is with regard to their sending the deceased to the house of the accused. Though there is a stray sentence asking them to send Rs.50,000/-, unless there is

any harassment meted out in pursuance of the said demand, the offences under Sections 498-A and 304-B IPC do not get attracted. In the said letter, it can also be seen that A2 asked P.W.2 to send the deceased on 31.12.1996. The letter, in fact, belies the evidence of P.W.2 that the accused dodged in taking the deceased to their house.

14. Some more letters were marked as Exs.P7 to P10. Those letters were handed over by the deceased to one of her friends and her friend handed over the same to P.W.3. P.W.2 could not secure the said letters and some more letters were misplaced. From the said letters, he came to understand that the deceased wrote the letters two or three days prior to her death, in which she stated that she was subjected to harassment and ill-treatment by the husband and mother-in-law, for additional dowry of Rs.50,000/- and that they would kill her by pouring kerosene, if she did not bring the amount. She expressed fear and sorrow in those letters.

In the cross-examination, it was suggested to P.W.2 that the last lines of Ex.P6, are fabricated in order to suit their case. It was also elicited that Exs.P7 to P10 were handed over to her by a friend of the deceased, but he does not know her name and he does not know why his daughter has not given Exs.P7 to P10 to P.W.1 when he visited her house. It was suggested that they were fabricated subsequent to the death of the deceased.

15. The evidence of P.W.1, as already observed, shows that he visited the house of the deceased three days prior to the death of the deceased. The letters are subsequent to his visit. Hence the deceased not handing over the said letters to him, cannot be pointed out as a

circumstance, belying the letters. The letters were spoken to by P.W.3 also. P.W.3. was examined on 29.03.2005 i.e. one day after P.W.2 was examined. She spoke about the letters being handed over to her. To explain their failure in giving those letters to the police, P.W.3 states that because of their illiteracy, they did not know whether to give those letters to the police or not. In the cross-examination, she admitted that the deceased did not complain anything against A1 and A2, before her srimantham.

16. To the extent of the appreciation done so far, no offence can be made out against the accused under Sections 498-A and 304-B IPC. The letters, Exs.P7 to P10, which were handed over to P.W.3 by a friend of the deceased, have to inspire confidence in order to place reliance on the same. There is a lapse of not handing over the said letters to the police. Even if such lapse can be attributed to the illiteracy and ignorance of P.Ws.2 and 3, the prosecution ought to have taken steps to examine the friend of the deceased, who handed over the letters to P.W.3, as an additional witness. Moreover, the name of the friend could not be stated by P.Ws.2 and 3. In order to hand over the said letters to her friend, the deceased must have utmost confidence in the said friend and she must have been a very close friend to the deceased. In such case, the parents of the deceased, being ignorant of the name of such a close friend, is somehow not comprehensible. Apart from the above lapses, the handwriting used in Exs.P7 to P10 also does not seem to be the handwriting of the deceased. Exs.P7 to P10 seem to be written in a more rustic language while Ex.P5 seem to contain polished language, when compared to

Exs.P7 to P10. The letter 'SAA' (telugu) used for letter 'CHA' (telugu) would imply that the language used in Exs.P7 to P10 is that of a rustic person.

17. The accused would not be in a position to deny the truth of those letters, as they were, allegedly, handed over by the deceased to her friend. Whether the said friend handed over or not will not be within the knowledge of the accused and hence, they cannot be expected to take a stand on those letters. It is for the prosecution to prove those letters beyond all reasonable doubt. The accused examined D.Ws.1 to 3.

18. D.W.1 is a retired employee and neighbour to A1 and A2. He states that there were no disputes between the deceased and the accused. His house is located at a distance of 100 yards from the house of A1 and A2. D.W.2 is a carpenter, who knows P.Ws.1 and 2 and their family members. He used to do carpentry work. P.W.2 is also a carpenter and they belong to the same caste. A2 is the sister of his wife. According to him, P.W.2 informed him that he cannot give any dowry as his financial status was not sound. He informed the same to A2 and she accepted the proposal of P.W.2 and agreed for the marriage. According to him, the accused looked after the deceased well. Nothing important was elicited in his cross-examination. A suggestion was given to him that he requested P.W.2 to withdraw the case and that he would see that some amounts are given to them. D.W.3 is a witness, who is closely acquainted with A2's daughter. She also supported the case of the accused that there was no harassment. Though no value can be attached to the evidence of

D.Ws.1 to 3, as they seem to be close to the family of the accused, the evidence of the prosecution witnesses, coupled with the discrepancies in the letters, allegedly, written by the deceased would render the case of the prosecution doubtful. Hence, in view of the above, this Court opines that the judgment of the Court below needs to be set aside.

The point is answered accordingly.

POINT No.2:

In the result, the criminal appeal is allowed. The conviction and sentence recorded against the appellants – accused in S.C.No.629 of 2004 on the file of the V Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad, are set aside. The appellants-accused are acquitted of the offences punishable under Sections 498-A and 304-B of the Indian Penal Code and they shall be set at liberty forthwith, if they are not required in any other case. M.Os.1 to 3 shall be destroyed as per the direction of the trial Court.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

August 23, 2018

Note: Office to dispatch the copy of the judgment to the Trial Court forthwith.

(B/o) DSK