

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.840 of 2011

DATED: 05.06.2018

Between:

Adapa Lovaraju Kumar
and others ... Appellants

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad ... Respondent

Counsel for the appellants: Mrs. A. Gayatri Reddy

Counsel for the respondent: Public Prosecutor (A.P.)

THE COURT MADE THE FOLLOWING:

JUDGMENT: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This case is one of its kind where the learned Sessions Judge, Mahila Court, Visakhapatnam, convicted the appellants arraigned as accused Nos.1 to 5 for the offence under Section 304-B of the Indian Penal Code (I.P.C.) despite existence of two dying declarations, both giving a clean chit to the appellants.

2. The case of the prosecution as reflected from the charge sheet, in brief, is stated as under:

Accused Nos.2 and 3 are the parents of accused No.1, who is the husband of one Adapa Annapurna (hereinafter referred to as "the deceased"), accused No.4 is the sister of accused No.1 and accused No.5 is the husband of accused No.4. The deceased is the elder daughter to her parents. The marriage of the deceased was performed with accused No.1 on 02.05.2002 and that at the time of marriage an amount of Rs.2,00,000/- as dowry, in addition to household articles etc., worth Rs.1,00,000/-, was given by the parents of the deceased. For sometime, the deceased and accused No.1 lived happily without any disputes, but later, accused Nos.2 to 5 started instigating accused No.1 to demand additional dowry from the parents of the deceased. The accused also used to

behave sarcastically with the deceased as she did not beget children. P.W.3 and L.W.7 (Yenumula Govindarajulu), elders to the marriage, tried to conciliate the disputes between the deceased and the accused, in vain. Due to continuous harassment of all the accused for additional dowry, the deceased got frustration and on 09.03.2006 at 10.30 hours she poured kerosene over her body at the house of accused No.1 and lit fire in order to commit suicide. Accused No.1 intervened, put off the flames, brought the deceased to K.G. Hospital, Visakhapatnam and admitted her for treatment. On receipt of the medico legal case intimation, P.W.10 – Assistant Sub-Inspector of Police, Gajuwaka, visited K.G. Hospital, recorded the statement of the deceased on 09.03.2006 at 14.00 hours, registered Crime No.121 of 2006 as ‘woman burns case’ and investigated the same. The statement of the deceased disclosed that the occurrence is due to accidental death caused while boiling milk. During the course of investigation, P.W.10 visited the scene of offence, examined and got photographed the same by a private photographer. While undergoing treatment, the deceased succumbed to burn injuries on 09.03.2006 at 11.50 p.m. P.W.1 - the father of the deceased, gave Ex.P.1 report to P.W.11 – the Inspector of

Police, Gajuwaka, on 10.03.2006 at 10.00 hours, who altered the Section of law to Section 304-B I.P.C. On the requisition given by P.W.8 – the Assistant Commissioner of Police, South Sub-division, Visakhapatnam, P.W.9 – the Mandal Executive Magistrate, Gajuwaka, conducted inquest over the dead body of the deceased at K.G. Hospital on 10.03.2006 and sent the dead body for post-mortem examination. P.W.7 and L.W.15 (Dr. V. Narayana Rao) – the Assistant Professors, Forensic Medicine Department, Andhra Medical College, Visakhapatnam, who conducted the post-mortem examination over the dead body of the deceased opined that the deceased appeared to have died of “shock due to burns”. P.W.8 arrested accused Nos.1 to 4 on 13.3.2006, and accused No.5 on 18.4.2006 and sent them to judicial custody. Though in the report given by P.W.1 two more names i.e., Adapa Rajamma and Akula Chakramma, who are the relatives of accused No.1, were mentioned as they also statedly harassed the deceased for additional dowry, during the course of investigation, it was revealed that they are too old and unable to move and even to speak, that they are not responsible for the harassment and hence their names were deleted from the charge sheet by P.W.8. P.W.8 concluded that accused No.1 on the instigation and support of accused Nos.2 to 5 harassed

the deceased both mentally and physically demanding the deceased for additional dowry and unable to bear the torture and harassment, she committed suicide by setting herself ablaze, and he accordingly filed the charge sheet.

3. Based on the charge sheet and the material filed by the Police, the Court below has framed the following charge.

“That prior to 09-03-2006 at D.No.27-6-110, Srinagar, Gajuwaka, Visakhapatnam city, you A1 being the husband, A2 being father-in-law, A3 being mother-in-law, A4 being sister-in-law of Adapa Annapurna and you A5 being husband of A4, subjected Adapa Annapurna to harassment for bringing additional dowry and due to your harassment, on 09.03.2006 at 14.00 hrs., she died by committing suicide by pouring kerosene on herself and lit fire and thereby A1 to A5 of you committed an offence punishable under Section 304-B of Indian Penal Code and within my cognizance.”

4. As the plea of the appellants was one of denial, they stood trial, during which, the prosecution examined P.Ws. 1 to 11, got Exs.P-1 to P-12 marked and produced M.Os.1 to 3. On behalf of the appellants, D.Ws.1 and 2 were examined and Exs.D-1 to D-4 were got marked. On purported appreciation of the oral and documentary evidence, the lower Court has held the appellants guilty of the offence under Section 304-B I.P.C. and sentenced them to imprisonment for life and also to pay a

fine of Rs.5,000/- each and in default of payment of the fine, to suffer simple imprisonment for one year. Feeling aggrieved thereby, the accused filed this appeal.

5. We have heard Mrs.A. Gayatri Reddy, learned counsel for the appellants, and the learned Public Prosecutor for the State of Andhra Pradesh.

6. Before referring to the evidence on record, we would like to refer to Section 304-B I.P.C., which reads as under:

“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.

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

In order to hold a person guilty of offence under Section 304-B I.P.C., three ingredients need to be satisfied, namely, (i) the death must occur either due to burns or bodily injury otherwise than under normal circumstances; (ii) such death

must occur within seven years of marriage; and (iii) it must be shown that soon before death the victim was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with the demand for dowry.

7. The point that arises for consideration is whether the prosecution was able to satisfy all the three ingredients referred to above in the instant case.

8. In the report given by P.W.1, father of the deceased, he has alleged that the accused used to harass the deceased to bring additional dowry and gold, that though they used to explain to the accused about their pathetic position there was no change in attitude of the accused, that at 11.00 a.m. on 09.03.2006 P.W.1 received a phone message to the effect that the deceased was burning, that thereupon they have gone to the house of their daughter and that the Police have informed them that she was sent to K.G. hospital for treatment as she sustained burn injuries. It is further stated in Ex.P-1 that the deceased informed P.W.1 that she set herself ablaze by pouring kerosene on her as her husband, parents-in-law, sister and brother-in-law of her husband and two old women harassed

her for downy and also for not having issues. To substantiate the contents of Ex.P-1, the prosecution has let in oral evidence.

9. In his chief examination, P.W.1 stated that the family of the accused looked after the deceased well some times, but they used to beat her other times, that they used to harass the deceased on the pretext that she was not begetting children and also not getting additional dowry and that she used to inform the same to them. In his cross-examination, P.W.1 stated that he was working as lorry cleaner earning Rs.5,000/- per month, that he was the lone earning member of the family, that for a period of one year after marriage the accused looked after the deceased well, that during Sankranti festival of 2004 for the first time the deceased informed P.W.1 about the harassment being caused to her by the accused and that she informed that the accused were harassing for six months prior to the Sankranti festival of 2004. P.W.1 admitted that in Ex.P-1 report he did not state that his daughter informed him that in view of the harassment caused to her by the accused she attempted to commit suicide by pouring kerosene and setting fire. He, however, added that he gave such statement to the Mandal Revenue Officer after his giving Ex.P-1 report. To a question whether the deceased was in the habit of telling

any lies in case of any harassment meted out by her or in case of sustaining any injuries or any harm to her body, the witness replied in the negative. On behalf of the defence it was suggested to P.W.1 that he has not met his daughter in burns ward of K.G. Hospital on 09.03.2006, that she has never informed the witness that the accused were harassing her by beating and scolding, for additional dowry and for not begetting children and that she has not informed him that she attempted to commit suicide by pouring kerosene and setting fire. It was also suggested to the witness that with an intention to extract money from the accused the witness has come out with a false story and given a false report. The witness, however, denied these suggestions.

10. P.W.2, daughter of P.W.1 and sister of the deceased, sought to corroborate the evidence of P.W.1. P.W.3, who claimed to have mediated and arranged the marriage between accused No.1 and the deceased, stated that the parents of the deceased gave Rs.1,00,000/- dowry and Rs.10,000/- *Aadapaanchu katnam* and other gold ornaments to the accused during the time of marriage and that whenever she met, the deceased used inform the witness that two old ladies and her in-laws were harassing as she did not beget children and that they will kill her

to perform second marriage to accused No.1. In the cross-examination the witness admitted that the deceased never complained against her husband, i.e., accused No.1 and that ten days prior to her death the deceased and accused No.1 came to the witness's house and even at that time also she complained that both old ladies and her in-laws were harassing as she was not begetting children, and threatening her that they will perform second marriage to accused No.1 to save the heritage of the family. The witness again volunteered that the deceased never complained against accused Nos.4 and 5 except on the previous occasion.

11. A careful analysis of the above discussed evidence would show that except a vague and generic allegation that the accused were harassing the deceased by demanding additional dowry, neither any instances of such demand were given nor any independent witness except P.W.3 was examined to substantiate these allegations. Even P.W.3 did not raise a whisper about the alleged harassment of the deceased by the accused demanding additional dowry. All that she has deposed was that the accused used to harass the deceased for not begetting children and they were always threatening that they would perform second marriage to accused No.1 after killing

the deceased. Thus, the evidence available on record is woefully inadequate to bring the case under the fold of Section 304-B I.P.C. as the prosecution miserably failed to satisfy the third ingredient, namely, that soon before the death of the deceased there was a demand for additional dowry.

12. One other crucial aspect on which we feel the Court below has committed a serious error is in ignoring the two dying declarations i.e., Exs.P-9 and D-2. Ex.P-9 was the statement of the deceased recorded by P.W.10 – the Assistant Sub-Inspector, Gajuwaka, Visakhapatnam. It is not in dispute that this statement was earlier in point of time than Ex.D-2. Though time of recording of the statement was not mentioned in Ex.P-9, P.W.10 in his evidence stated that he recorded the said statement after 11.30 a.m. In her statement, the deceased stated that on 09.03.2006 at 10.30 a.m., appellant No.1 asked the deceased to heat water for taking bath while preparing to go for lorry duty; that she lit the gas stove and started heating water in a vessel; that she wore a silk saree and in the process of heating water, the flames of the gas stove came into contact with her saree; that on her raising cries, appellant No.1 immediately rushed and put out the flames with water; that her mother-in-law also arrived and put out the flames; that after

putting out the flames, her husband changed her dress into night gown and brought her to the hospital; that she suffered burns from the face till the legs; that her father-in-law was not in town, while her husband was at home; that her mother-in-law was talking to someone outside the house and that her in-laws were looking after her well. That she caught fire accidentally as she was wearing silk saree. On the requisition received at 12.55 p.m., D.W.1 – learned III Metropolitan Magistrate, Visakhapatnam, recorded Ex.D-2 - another statement of the deceased at the hospital. This statement was in 'question and answer' *form*. In this statement, the deceased repeated the version as revealed in Ex.P-9. To the question as to who were present at the time of occurrence, the deceased stated that her mother-in-law and her husband were present. She further added that her husband poured water to extinguish the flames. When asked about the character of the parents of her husband, the deceased replied that they were good. She further added that her husband was also good.

13. Interestingly, the prosecution has failed to produce Ex.D-2 dying declaration. At the instance of the defence, the same was got marked and the learned Magistrate, who recorded the said dying declaration, was examined by the defence as

D.W.1. Nowhere, either in the charge sheet or in the evidence of its witnesses, the prosecution made any effort to impeach the correctness of the contents of the two dying declarations.

14. It is trite that a dying declaration is an exception to hearsay evidence as the same is based on the latin maxim "nemo moriturus praesumitur mentire", which means "a man will not meet his Maker with a lie in his mouth". Ordinarily, a dying declaration is attached with high probative value unless its contents appear unnatural or sound improbable or it is a product of tutoring, force or coercion.

15. In **Lakhan v. State of Madhya Pradesh**¹ the Supreme Court dealing with the aspect of probative value of the dying declarations held as under:

"10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the

¹ (2010) 8 SCC 514

declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide **Khushal Rao v. State of Bombay**², **Rasheed Beg v. State of M.P.**³, **K. Ramachandra Reddy v. Public Prosecutor**⁴, **State of Maharashtra v. Krishnamurti Laxmipati Naidu**⁵, **Uka Ram v. State of Rajasthan**⁶, **Babulal v. State of M.P.**⁷, **Muthu Kutty v. State**⁸, **State of Rajasthan v. Wakteng**⁹ and **Sharda v. State of Rajasthan**¹⁰).

16. The prosecution has not suggested through its witnesses or to D.W.1 – the learned Magistrate, who recorded Ex.D-2, that the contents of Exs.P-9 and D-2 do not reflect truth or that both the statements of the deceased were procured either by force or by any other unfair means. In order for the Court to overlook the two dying declarations, the initial burden lies on the prosecution to plead that the contents thereof are unreliable and that no credibility could be attached to the said two statements. It is only after the Court is satisfied on this aspect that it can further examine the case of the prosecution as to

² AIR 1958 SC 22

³ (1974) 4 SCC 264

⁴ (1976) 3 SCC 618

⁵ 1980 Supp SCC 455

⁶ (2001) 5 SCC 254

⁷ (2003) 12 SCC 490

⁸ (2005) 9 SCC 113

⁹ (2007) 14 SCC 550

¹⁰ (2010) 2 SCC 85

whether the death was accidental or suicidal in order to examine whether the ingredients of Section 304-B I.P.C. are satisfied or not. The prosecution has not made any effort, whatsoever, in this regard and unfortunately, the Court below has embarked upon an expedition process through appreciation of oral evidence adduced on behalf of the prosecution without giving any weight, whatsoever, to the two dying declarations placed on record by the prosecution and the defence respectively in order to find out the true cause of death. In our considered opinion, when the prosecution was not able to cast any cloud on both the dying declarations, the Court below ought not to have travelled beyond these two documents and found the appellants guilty of the offence based on the purported appreciation of the evidence on record. At any rate, even assuming that the death was not accidental but suicidal, as held hereinbefore, the third ingredient of Section 304-B I.P.C. could not be satisfied. Therefore, the presumption under Section 113-B of the Indian Evidence Act, 1872, cannot be invoked on the facts of the present case.

17. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused Nos.1 to 5 in judgment, dated

08.06.2011, in Sessions Case No.113 of 2007 on the file of the learned Sessions Judge, Mahila Court, Visakhapatnam, for the offence punishable under Section 304-B I.P.C. are set aside and the appellants/accused Nos.1 to 5 are held not guilty of the offence with which they are charged and they are, accordingly, acquitted. The fine amount, if any, paid by them shall be refunded to them.

We have been informed that the appellants/accused Nos. 1 to 5 are presently on bail, *vide* this Court's order, dated 28.07.2011, in Crl.A.M.P.No.1207 of 2011. Therefore, they shall forthwith surrender before the Jail Superintendent concerned for completing the formalities of their release from the jail, if they are not required in any other case(s) or crime(s).

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

05th June, 2018

BNR/GHN

Note: LR copies to be marked.

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