

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.838 of 2011

16.07.2018

Between:

T.Bixapathi

..Appellant/P.W.1

and

Merugu Uppalaiah and others

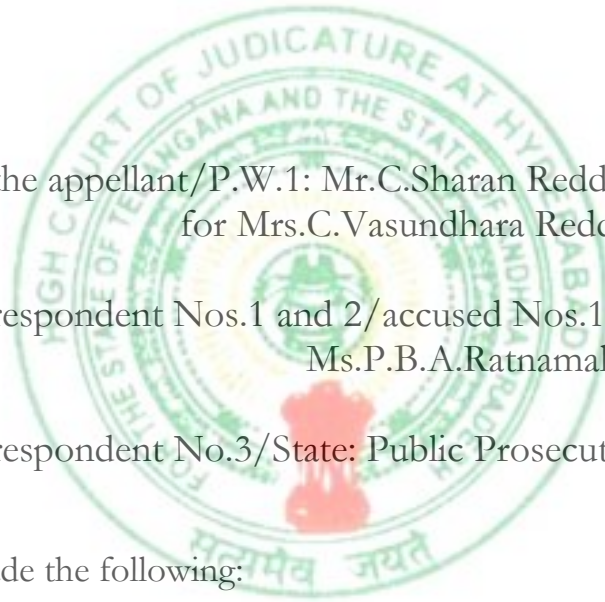
..Respondents

Counsel for the appellant/P.W.1: Mr.C.Sharan Reddy
for Mrs.C.Vasundhara Reddy

Counsel for respondent Nos.1 and 2/accused Nos.1 and 2:
Ms.P.B.A.Ratnamala

Counsel for respondent No.3/State: Public Prosecutor (T.S.)

The Court made the following:



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

This appeal by P.W.1 – the *de facto* complainant, is filed against judgment, dated 28.03.2011, in Sessions Case No.469 of 2009 on the file of learned II Additional Sessions Judge, Warangal, whereby respondent Nos.1 and 2 were acquitted of the charges for the offences punishable under Sections 302 and 304-B I.P.C.

2. The parties are hereinafter referred to as they were arrayed in the Sessions Case.

3. The case of the prosecution that could be culled out from the charge sheet is, briefly, stated hereunder.

(a) P.W.1 - the *de facto* complainant, was the father, P.W.2 was the mother, P.W.4 was the uncle and L.W.5 – Thokala Padma was the aunt of Merugu Mallika (hereinafter referred to as 'the deceased'). Accused No.1 was the husband of the deceased and son-in-law of P.W.1 and accused No.2 was the mother of accused No.1 and mother-in-law of the deceased.

(b) P.W.1 and the accused belonged to the same locality and were residing in the side by side houses. On 28.02.2008, P.Ws.1 and 2 performed the marriage of the deceased with accused No.1. At the time of marriage, on the demand of the accused, P.W.1 gave Rs.2,00,000/- cash and other articles towards dowry. That after the marriage, the accused started harassing the deceased,

both mentally and physically, by demanding additional dowry of Rs.1,00,000/-. That on coming to know about the same, P.W.1 approached the accused and requested them to stop the harassment and promised that he will give Rs.50,000/- after six months and that despite the said assurance, since five days prior to the date of the incident, the accused continued harassment and ill-treated the deceased, both mentally and physically, without providing food, by demanding additional dowry. That the accused beat the deceased with an intention to kill her and in the event of her death, to get accused No.1 marry another girl and to get dowry of Rs.4 to 5 lakhs and that the accused harassed the deceased, both mentally and physically, and killed her by giving poison.

(c) That on receipt of the above complaint, P.W.9 registered a case in crime No.14 of 2008 under Section 304-B I.P.C., issued F.I.R., sent express F.I.Rs. to all the concerned and sent a requisition to the Tahsildar, Bachannapet to conduct inquest over the dead body of the deceased since she died within seven years of her marriage. That on receipt of the information about registration of the aforesaid crime, P.W.11 rushed to the Police Station, Devaruppula, collected CD file from P.W.9 and took up the investigation of the case. That during the course of his investigation, P.W.11 examined P.W.1 and recorded his detailed statement in Part-II case diary, visited the scene of offence,

photographed the dead body through a private photographer – P.W.5, examined P.Ws.2 to 4 and L.W.5, recorded their detailed statements in Part-II case diary and drafted the crime detail form in the presence of the mediators – P.W.7 and D.W.1. That in the mean time, on receipt of the requisition, the Tahsildar, Devaruppula visited the scene of offence, examined the witnesses, secured the presence of the mediators, held inquest over the dead body of the deceased in their presence and sent the dead body for post mortem examination.

(d) That on 13.03.2009, at 9.30 hours, P.Ws.9 and 11 apprehended the accused; that on interrogation, they voluntarily confessed to have committed the offences alleged and that their arrest was effected by issuing arrest memos. That the grounds of arrest were informed to the accused and also their relatives; that the accused were produced before the Court concerned, where they were remanded to judicial custody; and that P.W.8, who conducted autopsy over the dead body of the deceased, preserved viscera of the deceased and sent the same to the Regional Forensic Science Laboratory (R.F.S.L.), Warangal for examination and report. That based on the R.F.S.L. report, P.W.8 opined that the cause of death of the deceased was due to organophosphate and insecticide poison and that by the evidence collected, it was established that the

accused committed offences punishable under Sections 302 and 304-B I.P.C. P.W.11, accordingly, laid the charge sheet.

4. Based on the charge sheet, the Court below framed the following charges.

“CHARGE: That you A.1 and A.2 on 5.3.2009 at 6.30 a.m. at Ramachandrapuram Village H/o. Kolkonda committed murder of Mallika (Mallamma) by giving her poison and thereby you committed an offence punishable u/s.302 IPC and within my cognizance.

OR

CHARGE: That you A.1 and A.2 on the same date, time and place as mentioned above, you A.1 being the husband, you A.2 being the mother-in-law of deceased Mallika (Mallamma) caused her death (by giving her poison) within seven years of marriage by harassing her mentally and physically demanding to bring additional dowry of Rs.50,000/- and thereby driving her to death and thereby committed an offence of dowry death punishable under Section 304-B IPC and within my cognizance.”

5. As the plea of the accused was one of denial, he was subjected to trial, during which, the prosecution examined P.Ws. 1 to 11 and got Exs.P-1 to P-7 marked. On behalf of the defence, D.Ws.1 and 2 were examined, but, no documentary evidence was let in. On appreciation of the oral and documentary evidence, the Court below has acquitted both the accused holding them not guilty of both the charges.

6. Mr.C.Sharan Reddy, learned counsel representing Mrs.C.Vasundhara Reddy, learned counsel for the appellant/P.W.1, has submitted that the evidence on record clearly establishes the offence punishable under Section 302 I.P.C. Alternatively, he submitted that as the fact of harassment of the deceased by demanding additional dowry was proved through the evidence of P.Ws.1, 2 and 6, the Court below ought to have convicted the accused at least for the offence punishable under Section 304-B I.P.C.

7. The learned counsel for respondent Nos.1 and 2/accused sought to support the judgment of the Court below.

8. As regards the charge for murder under Section 302 I.P.C., admittedly, there were neither eyewitnesses nor circumstantial witnesses to support the said charge. P.W.1 did not disclose the source from which he concluded that the death occurred due to accused No.1 pouring pesticide into the mouth of the deceased. On the contrary, his evidence to the effect that accused No.1 poured pesticide into the mouth of the deceased after beating and killing her, goes contrary to the case of the prosecution that the death was caused by pouring pesticides into the mouth of the deceased. In the absence of any acceptable evidence proving the guilt of the accused beyond reasonable doubt and the testimony of the prosecution witnesses on the charge for the offence punishable

under Section 302 I.P.C., the Court below has rightly disbelieved the case of the prosecution.

9. As regards the charge for dowry death under Section 304-B I.P.C., the prosecution requires to prove three ingredients *viz.*, (1) that the death has taken place within seven years of the marriage; (2) that such death occurred otherwise than under natural circumstances; and (3) that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry.

10. It is not in dispute that the first mentioned two ingredients are satisfied in this case. However, as regards the third ingredient, P.Ws.1, 2 and 6 were examined to prove the dowry harassment. In his chief-examination, P.W.1 deposed that at the time of performance of the marriage of the deceased with accused No.1, he gave two lakhs and also some vessels to the accused towards dowry; that after the marriage, accused No.1 and the deceased lived happily for six months; that thereafter, the accused used to harass and beat the deceased by demanding additional dowry of one lakh; that on being informed by the deceased about the harassment by the accused, for the first time, they came to his house and accused No.1 requested P.W.1 to give one lakh towards additional dowry and later, the deceased came and requested him to give one lakh as demanded by the accused and that thereafter, the latter beat the

deceased and killed her by pouring pesticides into her mouth. Though in his cross-examination, P.W.1 deposed that he stated before the Police that the deceased came to his house and informed him about accused No.1 demanding one lakh towards additional dowry, it was elicited from P.W.11 – the Investigating Officer, that P.W.1 did not state so in his statement recorded under Section 161 Cr.P.C. This material omission casts a serious doubt on the version of P.W.1 that the accused demanded additional dowry.

11. Except making a bald statement that the accused were demanding additional dowry, specific circumstances of such demand have not been spoken to by P.Ws.1 and 2. Only in his cross-examination, P.W.2 deposed that there was panchayat and the elders - P.W.6, Kanna Ram Murthy, MPTC Uppalaiah etc., were present during the panchayat. In his chief-examination, P.W.6 made a cryptic statement that the day after a quarrel took place between the accused on the one side and the deceased on the other side, with regard to missing of Rs.10/- and also regarding the additional dowry, the deceased consumed poison and died. In his cross-examination, P.W.6 deposed that about two panchayats were conducted and he was also an elder to those panchayats concerning the demand of additional dowry. He, however, feigned ignorance as to the other elders who participated in the panchayats. He admitted that he cannot say on what date, he participated in the

panchayats. Immediately, in the next statement he stated that he personally did not participate in the panchayats, but he only came to know that panchayats were conducted. By his admission that he personally did not participate in the panchayats, he completely nullified his previous statement that he was one of the panchayatdars in the panchayats. The evidence of P.W.6, thus, suffers from serious self-contradictions. In the absence of any evidence, the aforementioned third ingredient *viz.*, that soon before the death, the accused harassed the deceased by demanding additional dowry could not be established. Therefore, the Court below has rightly held the accused not guilty and acquitted them of both the charges for the offences punishable under Sections 302 and 304-B I.P.C.

12. In the result, the Criminal Appeal is dismissed.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

16th July, 2018

GHN