

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.164 of 2012

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

1) The sole accused in Sessions Case No.419 of 2009 on the file of the IX Additional District and Sessions Judge (FTC), Rangareddy District, at L.B.Nagar, is the appellant herein. He was tried for an offence punishable under section 304-B IPC, for causing the death of his wife by name Majjiga Kavitha (hereinafter referred to as "the deceased") on 09.04.2009. Vide judgment dated 23.01.2012, the learned Sessions Judge, convicted the accused for the offence punishable under Section 304-B IPC and sentenced him to suffer "imprisonment for life".

2) As per the averments in the charge sheet, the marriage between the accused and the deceased took place on 18.04.2008. At the time of marriage, the parents of the deceased agreed to give cash of Rs.2,10,000/- towards dowry. Out of which a sum of Rs.1,30,000/- was paid and the balance was agreed to be paid subsequently. Both of them lived happily for few days and thereafter the accused started harassing the deceased for the remaining dowry amount. It is said that though the informant and others pacified the accused, but there was no change in his attitude and he was assaulting the deceased physically. As such she returned to her parents house. It is said that a couple of days

prior to the date of incident, the accused went to the house of PW.1 and threatened to eliminate the deceased. Unable to bear the same the deceased is said to have committed suicide on 08.04.2009 at her parents house and died on 09.04.2009. It is to be noted here that on 08.04.2009, PW.5, the IV Additional Chief Metropolitan Magistrate, Hyderabad, on receipt of requisition from Gandhi Hospital, proceeded to the female burns ward, Gandhi Hospital and recorded the dying declaration of the deceased, which is placed on record as Ex.P7. The material further shows that PW.1, who is the father of the deceased, lodged a report, basing on which a case in Crime No.120 of 2009 came to be registered. Ex.P8 is the first information report. PW.6, the Assistant Commissioner of Police, Malkajgiri, who took up investigation in this case, visited the scene of offence, observed the scene and also prepared a rough sketch, which are placed on record as Exs.P9 and P10. During the said proceedings he seized MOs.1 and 2 and examined Pws.1 and 2. After conducting inquest over the dead body of the deceased in the presence of PW.4, he sent the body for postmortem examination. PW.3-the Professor, Forensic Medicine, Gandhi Medical College, Secunderabad, conducted autopsy over the dead body and issued Ex.P4-the postmortem certificate. According to him, the cause of death was "shock due to burns". On 17.04.2009, PW.6 arrested the accused and produced before the Court. After collecting all the material, a charge sheet came to be filed before the X Additional Metropolitan Magistrate, Malkajgiri, who inturn committed the case to the

Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.419 of 2009.

3) On appearance, charge under Section 304-B IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 6 and got marked Exs.P1 to P10 and MOs.1 and 2. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. Neither oral nor documentary evidence was adduced on behalf of the accused.

5) Out of six witnesses examined by the prosecution, PWs.1 and 2 did not support the case of the prosecution and they were treated hostile by the prosecution. Relying upon the dying declaration given by the deceased, the learned Sessions Judge convicted the accused for an offence punishable under Section 304-B IPC and sentenced him to suffer life imprisonment. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that since the deceased sustained 100% burns and in the absence of any evidence on record more particularly the evidence of the doctor to the affect that she was in fit state of mind to give a statement, a doubt arises as to whether the dying declaration can be accepted. Even otherwise he would contend that since the dying declaration

only refers to a single incident said to have been caused on that day, it cannot be said that the ingredients constituting an offence punishable under Section 304-B IPC are made out.

7) The same is opposed by the learned Public Prosecutor, contending that the dying declaration itself is sufficient to base a conviction.

8) As seen from the record, PWs.1 and 2, who are the parents of the deceased did not support the prosecution case and they were treated hostile by the prosecution. According to them the deceased committed suicide due to stomach pain. PW.1 goes to the extent of denying lodging of the report and also the contents of the report.

9) As stated earlier, one of the arguments advanced by the learned counsel for the appellant that as the deceased sustained 100% burns, it is highly improbable for her to make a dying declaration.

10) The suggestions given to the doctor as to the incapacity of the deceased to make the dying declaration was denied by her. Though in the first information report, PW.1, who is the father of the deceased mentioned about the harassment to bring the balance dowry amount from her parents house, but during trial, PW.1 denies lodging of the first information report itself and also the contents therein. Therefore, the only other material which is there on record is the dying declaration recorded by the Magistrate, who was examined as PW.5.

11) According to PW.5, on receipt of intimation from the hospital, he proceeded to the hospital, identified the patient with the help of duty doctor, put some initial questions, obtained the certificate of the doctor and thereafter recorded the dying declaration. In the dying declaration, the deceased stated that on 08.04.2009 at about 5.00 p.m. while she was in the house of her parents at Safilguda, her husband left her in the house of her parents, demanding her to bring 5 tolas of gold and dowry amount of Rs.80,000/- and also threatened to kill her if she fails to bring the same. Due to fear she said to have poured kerosene and set herself to fire. This all the evidence on record to connect the accused with the crime.

12) As seen from the contents of the dying declaration, the deceased never stated about any prior acts of harassment or that there was a demand for payment of balance of dowry earlier to the said date. In order to hold an accused guilty of an offence under Section 304-B IPC, it has to be seen that apart from the fact that the woman died on account of burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be seen 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. Only then would such death be called as "dowry death" and such husband or relative shall be deemed to have caused the death of the woman concerned.

13) In the instant case, PWs.1 and 2, who are the parents of the deceased and who are the best persons to speak about the harassment and payment of dowry, did not support the prosecution case. Even the deceased in her dying declaration never stated about any prior acts of harassment or demand for dowry. It only states that on the date of incident at about 5.00 p.m. her husband dropped her at the house of her parents and while leaving, demanded her to bring 5 tolas of gold and dowry amount of Rs.80,000/- . He also claims to have threatened to kill her if she fails to bring the same. A reading of the contents of the dying declaration does not anywhere refer to any prior incidents of demand for dowry or harassment for dowry. Due to fear the deceased is said to have committed suicide as her husband claims to have threatened to kill her if she fails to bring 5 tolas of gold and balance dowry amount. Though the deceased died within seven years of the marriage and the death was otherwise than the normal circumstances, but the contents of the dying declaration in our view do not in any way indicate that prior to her death she was subjected to cruelty or harassment. A stray incident of demand was made while dropping the deceased at her parents house.

14) In *Balwant Singh Versus State Of Punjab And Haryana*¹ the Apex Court held as under:

“It has been reiterated in several decisions of this Court that "soon before" is an expression which permits of elasticity, and therefore the proximity test has to

¹ 2004 (0) AIJEL-SC 2786

be applied keeping in view the facts and circumstances of each case. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim.

Since one of the ingredients of the offence under Section 304-B is that such cruelty should have been meted out to the deceased soon before her death, it is for the prosecution to establish affirmatively that the victim was subjected to cruelty and harassment based on dowry demand soon before her death. In the instant case, we find that at least for a year and three months before her death there is no evidence to even remotely suggest that the victim was subjected to cruelty or harassment of the nature specified in Section 304-B IPC. The proximity test is, therefore, not satisfied. We, therefore, hold that there is not sufficient evidence on the basis of which conviction under Section 304-B IPC can be founded.”

15) From the contents of the dying declaration, it cannot be said that there was harassment soon before her death, demanding her to get any dowry amount or balance of dowry amount. In view of the judgment referred to above and having regard to the facts and circumstances of the case, we are inclined to extend the benefit of doubt by acquitting the accused for the offence punishable under Section 304-B IPC.

16) In the result the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No. 419 of 2009 on the file of the IX Additional District and Sessions Judge (FTC), Rangareddy District, at L.B.Nagar, for the

offence punishable under Section 304-B IPC are set aside. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

17) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

13.04.2018

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