

HONOURABLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.382 OF 2009

JUDGMENT:

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the appellant/accused No.1 aggrieved by the judgment dated 25.03.2009 in S.C. No.316 of 2006 on the file of the VI Additional District and Sessions Judge, Medak at Siddipet, whereby and whereunder, the Court below convicted and sentenced the appellant/accused No.1 as follows:

- i) for the offence punishable under Section 3 of Dowry Prohibition Act, 1961 (for short "D.P.Act") to undergo rigorous imprisonment for five years and to pay fine of Rs.15,000/-, in default to suffer simple imprisonment for one year;
- ii) for the offence punishable under Section 4 of D.P Act to undergo rigorous imprisonment for six months and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for two months;
- iii) for the offence punishable under Section 498-A IPC to undergo rigorous imprisonment for one year and to pay fine of Rs.500/-, in default to suffer simple imprisonment for one month; and
- iv) for the offence under Section 304-B IPC to undergo rigorous imprisonment for seven years.

All the substantive sentences were directed to run concurrently.

2. Heard arguments of Sri S.Madan Mohan Rao, learned counsel for the appellant/accused No.1 and the learned Additional Public Prosecutor representing the respondent/State and perused the record.

3. Learned counsel for the appellant/accused No.1 would contend that the findings of the Court below are contrary to law and weight of evidence and probabilities. There is no instigation or abetment or harassment to drive the deceased-wife of the appellant/accused No.1 to commit suicide. The requirements under Section 304-B IPC are not proved by the prosecution. The evidence of PWs.1 and 2 is inconsistent with regard to the demand of additional dowry i.e, Rs.1,00,000/- and Rs.5,00,000/- respectively. The other witnesses i.e, PWs. 2 and 3 also did not specifically state the amount demanded as additional dowry. PW.1 with a *malafide* intention, only on suspicion in order to take vengeance as his daughter died, fabricated a false criminal case against the accused and deposed against the accused along with PWs.2 to 5. The marriage elder-Kadiyala Laxminarayana was not cited as witness to substantiate the payment and demand of dowry. To buttress his argument, learned counsel relied upon the following decisions:

- i) *Vinod Kumar Sethi and others v. State of Punjab and another*¹
- ii) *Biswajit Halder @ Babu Halder and others v. State of West Bengal*²
- iii) *Chowdam Bhikshapathi and others v. State of Andhra Pradesh*³

¹ AIR 1982 Punjab & Haryana 372

² 2007 CriLJ 2300 (SC)

³ 2005(1) ALD (Crl.) 238 (AP)

4. On the other hand, the learned Additional Public Prosecutor would submit that there are no material omissions and contradictions in the prosecution witnesses. The trial Court had rightly believed the evidence of PWs.1 to 5 and convicted and sentenced the appellant/accused No.1 for the offences under Sections 498-A & 304-B IPC and Sections 3 and 4 of D.P. Act. The requirements under Section 304-B IPC were proved beyond all reasonable doubt. The discrepancy with regard to the demand of additional dowry is not fatal to the prosecution case as there is consistency and corroboration in the evidence of PWs.1 to 5 with regard to the physical and mental torture caused to the deceased and in connection of demanding additional dowry soon before her death and ultimately prayed to sustain the impugned judgment and dismiss the appeal.

5. In view of the submissions made by both sides, the following points have come up for determination:

- “1. Whether the appellant/accused No.1 demanded additional dowry from the parents of the deceased-Veena @ Sabitha?*
- 2. Whether the prosecution proved the guilt of the appellant/accused No.1 beyond all reasonable doubt for the offences under Sections 498-A & 304-B IPC and Sections 3 and 4 of D.P.Act?*
- 3. Whether the conviction and sentence recorded against the appellant/accused No.1 for the offences under Sections 498-A & 304-B IPC and Sections 3 and 4 of D.P.Act by the impugned judgment is liable to be set aside?”*

POINT Nos.1 to 3:

6. The specific case of the prosecution is that the appellant/accused No.1 married Veena @ Sabitha about one year

prior to her death. At the time of marriage, the appellant/accused No.1 received net cash of Rs.2,50,000/- and other articles as dowry. Thereafter, the accused No.1 along with other accused demanded additional dowry of Rs.1,00,000/-. When the additional dowry of Rs.1,00,000/- was not paid, the deceased was mentally and physically tortured and consequently caused dowry death of the deceased, which occurred on 17.11.2004 in the house of accused situated at Gajwel. To prove the guilt of the accused, prosecution examined PWs.1 to 13 and got marked Exs.P.1 to P.13. The appellant/accused No.1 did not choose to examine any witness. When he was examined under Section 313 Cr.P.C with regard to the incriminating material appearing against him, he simply denied the same and stated that a false criminal case was foisted against him. He further stated that the deceased has got love affair with one Kiran of Yellareddyguda, Hyderabad. The deceased disliked the appellant/accused No.1. PW.1 forcibly performed the marriage of the deceased with appellant/accused No.1 against her wish. Further, the deceased used to tell that she was given in marriage to a man belonging to a small town and further, stated that she was not harassed mentally and physically for any dowry. Though the appellant/accused No.1 denied the prosecution evidence and contended that the marriage between him and the deceased was performed against the wish of the deceased, he did not choose to get into the witness box and substantiate the same. Further, he did not choose to examine any witness to rebut the evidence of prosecution witnesses.

7. The evidence of PW.1-father of the deceased reveals that the deceased is his fourth daughter and her marriage with the appellant/A.1 was performed on 30.11.2003 in Savera Function Hall, Yousufguda, Hyderabad, in accordance with Hindu rites and customs. At the time of marriage, he gave dowry of Rs.2,50,000/- and household articles worth Rs.10,000/- to A.1. After the marriage, the deceased and A.1 lived happily for a period of one month. Thereafter, A.1 and his parents etc., started harassing the deceased stating that her father is a Corporator and having huge amount and demanded the deceased to get additional dowry of Rs.5,00,000/-. PW.1 further deposed that in the year 2004, his daughter came to his house for Dasara festival in the morning and informed that A.1 and A.4 tried to kill her. On the same day evening, A.1 along with his friends and A.4 came to his house in a drunken state and beat the deceased in the presence of PWs.2, 3 and 4 stating that the deceased reached her parents house without informing them. PW.2 telephoned PW.1 with regard to the arrival of A.1 along with his friends and A.4 on that day and making galata. When PW.1 returned home at 8:00PM and spoke to A.1, he demanded to send the deceased to his house on that night itself. A.1 was in a drunken state at that time. On the promise by PW.1 that he would bring the deceased to the house of A.1 on the next day morning, A.1 along with his friends and A.4 left the house of PW.1. On the next day morning PW.1 along with deceased-Sabitha, his wife (PW.2) and his friend by name Jakab (PW.5) went to the house of A.1 at Gajwel and stated to the father of A.1 (A.3, who died pending trial) that he would adjust some amount in the

month of January, without committing any figure and requested A.3 to send A.1 and deceased to their house for Deepavali festival. Then A.3 did not agree to send A.1 and deceased to the house of PW.1 for Deepavali festival. However, A.3 informed PW.1 to take the deceased and A.1 to their house for Guru pournima and provide gold and clothes. Thereafter, PWs.1, 2 and 5 left the deceased in her matrimonial house and returned to their home. After two or three days, the deceased telephoned PW.1 and informed that the accused were again harassing and ill-treating her. The accused got disconnected the landline telephone connection in order to prevent the deceased from making calls to PW.1 and others. On 17.11.2004 at about 1:30PM, PW.1 received a phone call from A.4 that his daughter (deceased) committed suicide by hanging and asked to come to their home. When PW.1 asked about A.1, A.4 stated that A.1 went to Hyderabad. Then PW.1 immediately rang A.1 and informed about the incident, but A.1 pleaded ignorance. Thereafter, PW.1 informed his daughter-PW.4 to examine the authenticity of the telephonic information received by him. PW.4 on verification found that her sister-Veena committed suicide by hanging in her in-laws house. Thereafter all the family members went to the house of A.1 at about 4:30PM on that day and found the dead body of the deceased hanging from a ceiling fan and legs were touching the ground. PW.1 suspected that it was a case of murder and depicted as suicide. None of the accused were present in the house. Thereafter he lodged Ex.P.1-report with the police. Through the evidence of PW.1, M.O.1-Saree, with which the deceased committed suicide by hanging, is marked.

PW.1 was subjected to lengthy cross-examination and he reiterated what all he stated in his chief-examination.

8. The evidence of PW.2-mother of the deceased corroborated with the evidence of PW.1 in all the material aspects. She also deposed about giving cash of Rs.2,00,000/- and a motorcycle worth Rs.50,000/- as dowry to A.1 besides giving utensils and household articles to the accused. She further deposed that when her daughter-Sabitha informed that the accused were harassing her demanding additional dowry of Rs.5,00,000/-, she consoled her daughter and asked her to adjust. The evidence of PW.2 corroborated with regard to disconnection of landline telephone connection, when her daughter was speaking with her from her matrimonial home. There is also corroboration with regard to the deceased coming to their house on Bathukamma festival, when she was beaten by the accused. Thereafter, A.1 along with his friends and A.4 came to their house in a drunken state and A.1 insisted to send his wife to his house on that night itself. Her evidence reveals that on the next day she along with PW.1 and two elders took her daughter to the house of accused situated at Gajwel. Her evidence further reveals that her husband (PW.1) told A.1 and his family members that he would pay Rs.5,00,000/- in the month of January and requested them not to harass her daughter. There is corroboration with regard to the invitation to A.1 to join along with his wife (deceased) on the eve of Deepavali festival. There is also corroboration with regard to receipt of information that her daughter committed suicide by hanging in her in-laws house. In

the lengthy cross-examination of PW.2, she denied that she was deposing falsely. She also reiterated with regard to the payment of dowry and giving of household articles to A.1 in the marriage.

9. PW.3-third daughter of PWs.1 and 2 deposed about the marriage that was solemnised in between the deceased and A.1 on 30.11.2003 and also corroborated with regard to the payment of dowry of Rs.2,50,000/- to the accused and the harassment meted out to the deceased for additional dowry of Rs.5,00,000/-. PW.1-father, PW.2-mother and PW.3-sister of the deceased have specifically stated in their evidence that demand of additional dowry of Rs.5,00,000/- was made by the accused. There is no inconsistency in their evidence with regard to the demand of additional dowry and also the harassment meted out to the deceased on different occasions for want of dowry. The evidence of PW.3 corroborated with regard to the disconnection of telephone connection, disabling the deceased to speak to her parents and other relatives. Her evidence also corroborated with PWs.1 and 2 in all other circumstances, which led to the commission of suicide by the deceased.

10. There is also evidence of PW.4-another daughter of PWs.1 and 2 with regard to the payment of Rs.2,50,000/- as dowry during the performance of marriage of deceased with A.1 etc. Her evidence also corroborated with the evidence of PWs.1, 2 and 3 in other aspects. Though PWs.1 to 4 were cross-examined at length, nothing was brought on record to disbelieve the prosecution case particularly with regard to payment of dowry in the marriage and

dowry harassment meted out to the deceased after the marriage and the circumstances that led to the commission of suicide by the deceased.

11. It may be noted that the evidence of PW.1 is corroborated with Ex.P.1-report and Ex.P13-FIR issued in this case with regard to payment of Rs.2,50,000/- as dowry and also offering household articles in the marriage between A.1 and deceased. Both the daughters of PWs.1 and 2 corroborated in their evidence with regard to the payment of the said amount and household articles. PW.2 stated that amount of Rs.2,00,000/- was given as dowry besides motorcycle and other articles. PWs.1, 3 and 4 did not state about giving of motorcycle to A.1 but they have stated that amount of Rs.2,50,000/- was paid. The evidence of PWs.1 to 4 clearly establishes and proves beyond all reasonable doubt with regard to the payment of Rs.2,50,000/- and giving of household articles in the marriage between A.1 and deceased, there is no inconsistency on this aspect.

12. PW.5-one of the elder to the marriage of deceased, deposed about the fixation of marriage between the deceased and A.1 and payment of Rs.2,50,000/- as dowry and presenting household articles to the accused, as deposed by PWs.1 to 4. PW.5 further deposed that the accused harassed the deceased for additional dowry stating that PW.1 was a Corporator and he is capable of parting money. The evidence of PW.5 also corroborated with regard to the incident of A.1, A.4 and the friends of A.1, going to the house of PW.1 in a drunken state and A.1 insisting to send his

wife along with him and thereafter, PWs.1 and 2 requesting A.1 to leave the house and that they would bring their daughter on the next day morning. There is also evidence of PW.5 that on the next day he along with PWs.1, 2, Ravi (LW.8) and deceased went to the house of accused situated at Gajwel and PW.1 requested the family members of A.1 not to harass the deceased and also requested them to send the deceased-Sabitha to the house of PW.1 on the eve of Deepavali Festival and to treat the deceased properly. The evidence of PW.5 also corroborated with regard to the receiving of telephone call from PW.1 on 17.11.2004 at about 1:00pm informing that the deceased-Sabitha committed suicide by hanging and the other circumstances of the case. There is no dispute that the deceased committed suicide by hanging on 17.11.2004 between 10:30 am and 12:00 noon in the house of A.1 situated at Gajwel. There is also no dispute with regard to the performance of marriage of the deceased with A.1 on 30.11.2003. It goes to show that the deceased committed suicide within one year of her marriage. There is medical evidence, oral evidence and also inquest panchanama to establish that the deceased died due to hanging in her in-laws house on 17.11.2004. PW.5 is an independent witness and he has no reason to support the prosecution case and depose falsely against the accused. His evidence is consistent, cogent and relevant. Furthermore, he is a direct witness to the marriage, payment of dowry, dowry harassment and the circumstances that led to commission of suicide by the deceased in her in-laws house. PWs.1 to 4 are the parents and sisters of the deceased. They are the natural

witnesses. They are the right persons to state the circumstances, which led to commission of the suicide by the deceased. There is no reason for them to invent the story and falsely implicate the accused No.1 in this case. A.2 and A.3 died during pendency of trial. The Trial Court had given the benefit of doubt to A.4 in this case. As far as the evidence of prosecution witnesses is concerned, there is consistency and corroboration in their evidence. PWs.1 and 2 are the direct witnesses to the incident, which occurred in their house few days before the death of deceased when A.1 along with his friends reached the house of PW.1 on the occasion of Bathukamma festival, beat the deceased and caused mental and physical torture.

13. In *Vinod Kumar Sethi's* case (1 supra), the Hon'ble High Court of Punjab and Haryana, held that the First Information Report did not indicate any reasonable suspicion about commission of cognizable offences of criminal breach of trust punishable under Section 406 IPC as well ingredients under Section 405 IPC etc, so it was quashed. In the instant case, the conclusions reached are based on convincing and cogent evidence of prosecution witnesses. The circumstances of the cases on hand are quite different from the decision rendered above.

14. In *Biswajit Halder @ Babu Halder's* case (2 supra), the Hon'ble Supreme Court held that the basic ingredients to attract the provisions of Section 304B IPC are:

- (1) The death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances;

- (2) Such death should have occurred within seven years of marriage;
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- (4) Such cruelty or harassment should be for or in connection with demand for dowry.

In the instant case, the subject death occurred within one year from the date of marriage of deceased with A.1. There is ample evidence to establish that an amount of Rs.2,50,000/- was given as dowry besides other household articles. Further, there is also overwhelming evidence of PWs.1 to 5 that the deceased was continuously harassed and subjected to cruelty to meet the demand of additional dowry by accused No.1, which ultimately led her to commit suicide. Therefore, it cannot be said that there are no ingredients of Section 304B IPC to punish the accused No.1 for the said offence.

15. In *Chowdam Bhikshapathi's* case (3 supra), the Hon'ble High Court of Andhra Pradesh held that demand of dowry was not established and grave suspicion cannot be substituted for proof in criminal cases. The accused was acquitted for the offences under Sections 302 and 304B IPC. In the instant case, there is ample evidence of prosecution witnesses to prove the guilt of A.1 beyond all reasonable doubt.

16. There is overwhelming evidence of prosecution witnesses to prove the guilt of the A.1 for the offences under Sections 498A & 304-B IPC and Sections 3 and 4 of D.P.Act. There are no malafides

on the part of PWs.1 to 5 and other material witnesses. It is not a suspicious case. There is no animosity or grudge for PWs.1 to 5 and other prosecution witnesses to falsely implicate the accused No.1. So all the defences set up by the accused No.1 do fail. The Trial Court had analysed the entire evidence on record in proper perspective and rightly convicted and sentenced the A.1 for the offences under Sections 498-A & 304-B IPC and Sections 3 and 4 of D.P.Act. As far as the quantum of sentence awarded against the appellant/accused No.1 is concerned, the manner in which the subject dowry death was caused, warrants such a rigorous imprisonment and fine and it is not harsh or excessive. The Trial Court is justified in imposing such sentences of imprisonment and fine. The Criminal Appeal is devoid of merit and is liable to be dismissed.

17. In the result, the Criminal Appeal is dismissed, confirming the judgment, dated 25.03.2009 passed in S.C. No.316 of 2006 by the VI Additional District and Sessions Judge, Medak at Siddipet. During the pendency of the appeal, this Court vide order dated 04.02.2019, revoked the suspension of sentence of imprisonment granted in favour of appellant/A.1 in Crl.A.M.P.No.922/2009. If the said order is not yet implemented, the Trial Court is directed to take all consequential measures against the appellant/A.1 to serve the remaining period of sentence of imprisonment.

Pending Miscellaneous petitions if any, shall stand closed.

Dr. JUSTICE SHAMEEM AKTHER

Date: 04.06.2019
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