

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1559 OF 2008

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973, is filed by the appellant/accused No.1 aggrieved by the judgment, dated 03.12.2008, rendered in S.C.No.616 of 2007 on the file of II Additional Sessions Judge, Nalgonda at Suryapet, whereby and whereunder, the appellant/accused No.1 was convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 304B I.P.C. and further, sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.15,000/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 3 of the Dowry Prohibition Act, 1961, and further, sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 4 of the Dowry Prohibition Act. The trial Court also directed that all the sentences shall run concurrently. By the impugned judgment, accused Nos.2 to 4 were found not guilty of the charges levelled against them and accordingly, they were acquitted.

2. Heard 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 PW.1, mother of the deceased Venkatamma, is an unreliable witness; that she did not support the case of the prosecution in the cross-examination; that there are no other witnesses, directly or indirectly, supporting the case of the prosecution; that the appellant/accused No.1 did not made any demand of dowry, as contended by the prosecution; that the deceased Venkatamma died due to stomach pain and other reasons; that the prosecution failed to prove the guilt of the appellant/accused No.1 beyond all reasonable doubt for the offences punishable under Section 304B I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act; that the trial Court had erroneously convicted and sentenced the appellant/accused No.1 for the said offences and ultimately, prayed to set aside the conviction and sentence recorded against the appellant/accused No.1 by the trial Court.

4. The learned Additional Public Prosecutor would contend that there is specific evidence of PW.1 with regard to the demand of dowry by the appellant/accused No.1 and harassment meted out by the deceased Venkatamma; that there is consistency in the evidence of PW.1; that the evidence of PW.1 corroborates with the contents of Ex.P1- Report lodged by her with the police; that the witnesses, including PW.1, were won-over by the appellant/accused No.1, having taken time to cross-examine PW.1; that the deceased Venkatamma was subjected to cruelty in connection of dowry; that the trial Court rightly convicted and sentenced the appellant/accused No.1 for the offences punishable under Section

304B I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act; that there is no infirmity in the impugned judgment and ultimately, prayed to sustain the conviction and sentence recorded against the appellant/accused No.1 by the trial Court.

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

“1. Whether the death of Venkatamma, caused within seven years of marriage, is otherwise than under normal circumstances?

2. Whether the deceased Venkatamma was subjected to cruelty or harassment by the appellant/accused No.1 in connection of any demand for dowry?

3. Whether the prosecution proved the guilt of the appellant/accused No.1 for the offences punishable under Section 304B I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act beyond all reasonable doubt?”

Points 1 to 3:

6. To substantiate the case of the prosecution, PWs.1 to 13 were examined and Exs.P1 to P16 and M.O.1 were marked. No evidence, either oral or documentary, was adduced on behalf of the appellant/accused No.1.

7. The specific case of the prosecution is that a report was lodged by PW.1 on 08.06.2007 at about 01:30 PM stating that her second daughter – Venkatamma and the appellant/accused No.1 fell in love and got married. At the time of marriage, the appellant/accused No.1 demanded an amount of Rs.30,000/- and half tula of gold towards dowry in the presence of elders. She

agreed to give the said amount after the marriage. After two months of marriage, she gave Rs.5,000/- to the appellant/accused No.1 along with clothes. Her daughter – Venkatamma was treated well by the appellant/accused No.1 for some time. Thereafter, her daughter was harassed for the balance dowry amount of Rs.25,000/- and was beaten and necked out of the house. On 08.06.2007 at about 07:00 AM, herself and her husband took their daughter Venkatamma to the house of her in-laws and left her there by giving cash of Rs.15,000/-. Thereafter, the appellant/accused No.1, his parents, sister and brother-in-law quarreled with her daughter demanding to bring the balance dowry amount and left her daughter in her house. Due to the harassment meted out to her daughter Venkatamma in the hands of the appellant/accused No.1 and his family members, her daughter Venkatamma consumed insecticide poison on the same day at about 11:00 AM at her house and committed suicide.

8. PW.1, mother of the deceased Venkatamma, in her evidence, deposed that she is an illiterate and the deceased Venkatamma is her second daughter. The deceased married appellant/accused No.1 two years prior to her deposition. It was a love marriage. The appellant/accused No.1 demanded Rs.30,000/- and half tula of gold towards dowry. She agreed to give the same. On the advise of the elders, the marriage was performed with an agreement to pay the dowry amount within one year of the marriage. Two months after the marriage, she gave Rs.2,000/- to the appellant/accused No.1. The appellant/accused No.1 treated her daughter with love and affection for about two months. Thereafter, all the accused

necked out her daughter from the matrimonial house demanding balance dowry amount. After eight months, she approached the accused through mediators viz., Vempati Ramulu, Bathula Veeraiah, Kollu Vishweshwara Rao, Shaik Saida and Vempati Venkulu with cash of Rs.15,000/-. At the instance of the aforesaid mediators, the appellant/accused No.1 has taken the cash of Rs.15,000/- and agreed to lead marital life with her daughter Venkatamma. The said mediation took place on 08.06.2007 at about 07:00 AM. Thereafter, at around 10:00 AM, all the accused beat her daughter and necked out her from the matrimonial house to bring the balance dowry amount along with half tula of gold. She also deposed that the deceased Venkatamma consumed poison in her house and committed suicide.

9. It is pertinent to state that PW.1 was examined in chief on 28.07.2008. No cross-examination was conducted by the accused on that day. On 15.09.2008, PW.1 was cross-examined. In her cross-examination, she stated that the marriage between the deceased Venkatamma and the appellant/accused No.1 was a love marriage. She did not give any dowry. The deceased was suffering from stomach pain prior to her marriage. Due to stomach pain, the deceased committed suicide in her house. The accused have nothing to do with the death of her daughter. She did not give any report to the police. However, in her chief examination, she specifically stated that all the accused harassed her daughter for dowry, and got marked Ex.P1 – Report lodged with the police.

10. PWs.2 and 3, who are the father and younger sister of the deceased, respectively, did not support the case of the prosecution and were declared hostile. PW.4, elder brother of PW.2, also did not support the case of the prosecution and was declared hostile. PWs.5, 6 and 7 simply stated that the deceased committed suicide one and half years back in the house of PW.1 due to stomach pain. They were also declared hostile. PW.8 did not state anything about the case. PW.9 also did not support the case of the prosecution. PW.10, who is a witness to the scene of observation and seizure of MO.1 – tin, deposed about the conduct of observation panchanama at the house of PW.2.

11. PW.11 is the Civil Assistant Surgeon, who conducted Autopsy over the dead body of the deceased on 08.06.2007 between 05:30 PM and 06:30 PM. His evidence is that he collected viscera from the dead body of the deceased and preserved it. He opined that the cause of death of the deceased was due to consumption of Endosulphon, an insecticide poison and the time of death was around 24 to 36 hours prior to his examination. Ex.P14 is the Forensic Science Laboratory Report. Ex.P15 is the Post-Mortem Examination Report.

12. PW.12 is the Tahsildar, who deposed about the conduct of inquest panchanama on 08.06.2007 over the dead body of the deceased. Ex.P13 is the Inquest Report.

13. PW.13 is the Sub-Inspector of Police, who received Ex.P1 – Report from PW.1 on 08.06.2007 at about 13:30 hours.

14. As per the evidence of PW.11 – Doctor, the death of the deceased is unnatural and is due to the consumption of Endosulphon, an insecticide poison. As seen from the cross-examination of PW.1, the cross-examination was not undertaken by the accused on the date of her chief examination. In the chief examination, PW.1 clearly and categorically deposed about the demand of dowry as well as mental and physical torture caused to the deceased by the appellant/accused No.1 for not getting the balance dowry amount. Even on payment of Rs.15,000/- towards part of dowry amount, the deceased was sent away from the matrimonial house on 08.06.2007. On the same day, the deceased consumed insecticide poison and died. PW.1. specifically deposed about the presence of mediators on 08.06.2007 and also going with them along with the deceased to the house of the accused and handing over Rs.15,000/-.

15. Under these circumstances, it is appropriate to extract the provisions of Section 304B 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.”

16. As per the evidence on record, the deceased and the appellant/accused No.1 got married two years prior to the death of the deceased and the subject death was caused within two years of marriage and is an unnatural death. There is specific evidence of PW.1 with regard to the dowry demand on different occasions. Even after taking Rs.15,000/- on 08.06.2007 and in spite of agreeing in the presence of PW.1 and elders to lead happy marital life with the deceased, the appellant/accused No.1 did not stop the harassment. There is also specific evidence of PW.1 that there was mediation on 08.06.2007 at 07:00 AM. PW.1 took the mediators and the deceased to the house of the accused along with cash of Rs.15,000/-. It indicates the mental status of the appellant/accused No.1 that he was inclined to get total dowry amount. When total dowry amount was not paid and only part of it was paid, not satisfied with the same, the appellant/accused No.1 sent back the deceased to her parents' house. The deceased having vexed with the mental torture caused to her in connection of dowry demanded by the appellant/accused No.1, consumed insecticide poison on 08.06.2007 and committed suicide. So, all the requirements that the deceased is a married woman and she was subjected to cruelty as well as harassment by her husband (accused No.1) in connection with dowry and she died an unnatural death are proved beyond reasonable doubt. It is contended by the learned counsel for appellant/accused No.1 that

PW.1 did not support the case of the prosecution in her cross-examination, but from a perusal of the record, it appears that the accused have win-over PW.1, having taken sufficient time to cross-examine her and so also, other witnesses. There is ample medical as well as oral evidence to establish that the subject death is unnatural and the requirements under Section 304B I.P.C. are proved beyond reasonable doubt against the appellant/accused No.1. Whatever PW.1 deposed in her cross-examination has no consequence at all. The appellant/accused No.1 cannot take advantage of this. The appellant/accused No.1 also cannot take advantage of the depositions of other witnesses, who stated that the deceased died due to stomach pain. It is only a story invented to overcome the prosecution case. The trial Court has elaborately dealt with all these aspects and rightly convicted and sentenced the appellant/accused No.1 for the offence punishable under Section 304B I.P.C.

17. So far as the offences punishable under Sections 3 and 4 of the Dowry Prohibition Act are concerned, there is ample evidence to substantiate the same. Therefore, the trial Court is right in convicting and sentencing the appellant/accused No.1 for the offences punishable under Sections 3 and 4 of the Dowry Prohibition Act. There is no infirmity in the impugned order and there are no grounds/reasons to take a different view. All the allegations levelled against the appellant/accused No.1 are proved beyond reasonable doubt. The appeal is devoid of merit and is liable to be dismissed.

18. In the result, the Criminal Appeal is dismissed confirming the judgment, dated 03.12.2008, rendered in S.C.No.616 of 2007 on the file of II Additional Sessions Judge, Nalgonda at Suryapet.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

February 11, 2019.
MD

