

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.120 of 2011

JUDGMENT:

This Criminal Appeal, under Section 374(2) of Cr.P.C., is filed by the appellant/A.1, challenging the judgment, dated 31.01.2011, passed in S.C.No.560 of 2009 by the V Additional District and Sessions Judge (FTC), Khammam at Kothagudem, whereby, the Court below acquitted the appellant/A.1 of the offences under Section 304B of IPC and Section 3 of the Dowry Prohibition Act, 1961, and convicted him for the offence under Section 498A of IPC and sentenced him to undergo Rigorous imprisonment for three years and to pay fine of Rs.2,000/- and in default, to undergo simple imprisonment for three months; and for the offence under Section 4 of the Dowry Prohibition Act, 1961, he was sentenced to undergo Rigorous imprisonment for six months and to pay fine of Rs.1,000/- and in default, to undergo simple imprisonment for two months; and ordered that both the substantive sentences shall run concurrently.

2. Heard the learned counsel for the appellant/A.1, the learned Additional Public Prosecutor representing the 1st respondent-State and perused the record.

3. The learned counsel for the appellant/A.1 would submit that there is inconsistency in the evidence of P.W.1 to P.W.3, who are material witnesses in this case. There is also improvement in the evidence of P.W.2 and P.W.3. The prosecution did not even prove the guilt of the appellant/A.1 of the offence under Section 498A of

IPC. The entire case of the prosecution is false. The appellant/A.1 did not harass the deceased K.Suhasini, who is his wife, at any point of time. There is no cogent and convincing evidence to substantiate the prosecution case. There are many discrepancies, improvements and omissions in the evidence of the investigating officer and ultimately prayed to allow the appeal by setting aside the conviction and sentence imposed against the appellant/A.1 by the Court below.

4. On the other hand, the learned Additional Public Prosecutor representing the 1st respondent-State would submit that there is evidence of P.W.1 to P.W.3 to prove that the deceased K.Suhasini, wife of the appellant/A.1, was subjected to mental and physical cruelty by the accused in this case. The prosecution has been able to bring home the guilt of the accused beyond reasonable doubt for the offence punishable under Section 498A of IPC and Section 4 of the Dowry Prohibition Act, 1981. The trial Court, after analyzing the entire evidence on record, rightly convicted and sentenced the appellant/A.1 of the offences punishable under Section 498A of IPC and Section 4 of the Dowry Prohibition Act, 1961. There is nothing to interfere with the impugned judgment and ultimately prayed to dismiss the appeal by confirming the judgment under challenge.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

- 1. Whether the prosecution was able to prove beyond reasonable doubt that the appellant/A.1 subjected the deceased K.Suhasini, who is his wife, to physical and mental cruelty as defined under Section 498A of IPC?**

2. Whether the conviction and sentence recorded by the trial Court against the appellant/A.1 under Section 498A of IPC and Section 4 of the Dowry Prohibition Act, 1981, is liable to be set aside?

6. The facts of the case, in a nutshell, are as follows:

The deceased K.Suhasini is the wife of the appellant/A.1. A.2 is the mother-in-law, A.3 is the sister-in-law, A.4 is the co-sister and the de-facto complainant Munigela Damodar is the brother of the deceased K.Suhasini. The deceased K.Suhasini was given in marriage to the appellant/A.1 in June, 2005. At the time of marriage, an amount of Rs.20,000/- and some gold ornaments were given towards dowry to the appellant/A.1. A few days after marriage, A.1 to A.4 started harassing the deceased K.Suhasini, both mentally and physically, for additional dowry. An attempt was also made on an earlier occasion by A.1 to A.4 to do away with the life of the deceased K.Suhasini by making her to consume poison. On knowing the said fact, the family members of the deceased K.Suhasini went to the house of the appellant/A.1 and warned. About twenty days later, the appellant/A.1 alleged to have beat the deceased K.Suhasini and sent her to her matrimonial house. After that, the appellant/A.1 came to the maternal house of the deceased K.Suhasini on 23.01.2009 and stayed there till 26.01.2009. During his stay at the matrimonial house of the deceased K.Suhasini, he harassed the deceased K.Suhasini mentally and physically demanding additional dowry and threatened her to stay at her matrimonial house only if she fails to bring additional dowry and also threatened that he would marry another woman. Unable to bear the continuous torture meted out to her, the deceased K.Suhasini consumed pesticide poison on

26.01.2009 at about 06:30 AM. She was immediately taken to Chirala Hospital and on the advice of the doctors there, she was shifted to Government Hospital, Bhadrachalam in an ambulance. While undergoing treatment at Government Hospital, Bhadrachalam, K.Suhasini died on 27.01.2009 at 06:00 AM. On knowing the same, the appellant/A.1 absconded from that place. On a complaint lodged by P.W.1-brother of the deceased K.Suhasini under Ex.P.1, the present case is registered. After due trial and on merits, the trial Court convicted and sentenced the appellant/A.1 as aforementioned. Challenging the same, the appellant/A.1 preferred this appeal.

7. To prove the guilt of the appellant/A.1, the prosecution examined P.W.1 to P.W.16 and got marked Ex.P.1 to P.19. No oral and documentary evidence has been adduced on behalf of the appellant/A.1.

8. P.W.1 to P.W.3 are the material witnesses in this case. P.W.1-Munigela Damodar is the brother of the deceased K.Suhasini. His evidence reveals that the deceased K.Suhasini was given in marriage to the appellant/A.1 in June, 2005; on 20.01.2009, his sister K.Suhasini came to their house; three days thereafter, the appellant/A.1 came to their house and picked up quarrel with them demanding additional dowry; the appellant/A.1 stayed in their house from 23.01.2009 to 26.01.2009; unable to bear the torture meted out to her, his sister K.Suhasini consumed pesticide poison; noticing the same, he took K.Suhasini to Chirala Hospital and after initial treatment, he shifted K.Suhasini to Government Hospital, Bhadrachalam; while undergoing treatment,

K.Suhasini died on 27.01.2009. P.W.1 specifically stated in his evidence that the appellant/A.1 left their house immediately after his sister consumed pesticide poison on 26.01.2009 and that though they waited anticipating the arrival of the appellant/A.1 and his family members to see the dead body of the deceased K.Suhasini, they did not turn up.

9. P.W.2-Deva Atchamma is the mother of the deceased K.Suhasini. She stated in her evidence that the appellant/accused stayed in their house from 23.01.2009 to 26.01.2009. She specifically deposed about the appellant/A.1 harassing the deceased K.Suhasini mentally and physically demanding additional dowry and the deceased K.Suhasini consuming pesticide poison at their house. She also deposed about the appellant/A.1 escaping from their house after the deceased K.Suhasini consuming pesticide poison. She categorically deposed that due to the conduct of the appellant/A.1 and the other accused, the deceased K.Suhasini consumed pesticide poison.

10. P.W.3-Nalluri Krishnarjuna Rao is an independent witness, who is residing opposite to the house of P.W.1 and P.W.2. He deposed about the appellant/A.1 staying at the residence of P.W.1 and P.W.2, the deceased K.Suhasini consuming pesticide poison, shifting of the deceased K.Suhasini to the hospital and her subsequent death. P.W.3 categorically deposed that the appellant/A.1 escaped from the hospital on knowing that his wife (K.Suhasini) died.

11. It is apt to refer Section 498A of IPC, which reads as follows:

“Whoever being the husband or the relative of the husband of a woman subjects such women, to cruelty, shall be punished with imprisonment for term which may extend to three years and shall also be liable to fine.

Explanation—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

12. As seen from the entire record placed before this Court, there is no inconsistency in the evidence of P.W.1 to P.W.3. P.W.1 and P.W.2 have categorically deposed about the appellant/A.1 residing at their house from 23.01.2009 to 26.01.2009, picking up a quarrel demanding additional dowry and the deceased K.Suhasini consuming pesticide poison on 26.01.2009.

13. While discussing the evidence, the trial Court held that no harassment was meted out to the deceased K.Suhasini soon before her death, which drove her to commit suicide. There was record to substantiate that the deceased K.Suhasini was subjected to mental and physical torture by the appellant/A.1 which ultimately made her to consume pesticide poison. It can be safely culled out from the evidence of P.W.1 to P.W.3 and the other witnesses that there was wilful conduct of the appellant/A.1 which is of such nature that drove the deceased K.Suhasini to consume pesticide poison. The continuous torture meted out to the deceased K.Suhasini by the appellant/A.1 lead to the death of the deceased K.Suhasini. There is also evidence of making unlawful demand of additional dowry by the appellant/A.1. In view of the above, it can be safely

concluded that the prosecution was able to prove beyond reasonable doubt that the appellant/A.1 subjected the deceased-K.Suhasini, who is his wife, to physical and mental cruelty as defined under Section 498A of IPC. The Court below, having appreciated the entire evidence on record, found the accused guilty of the offences punishable under Sections 498A of IPC and Section 4 of the Dowry Prohibition Act, 1961. There is nothing to take a different view. There is no infirmity in the judgment under challenge. All contentions raised on behalf of the appellant/A.1 do not merit consideration. In view of the gravity of offence, the trial Court imposed just and adequate sentence of imprisonment and fine against the appellant/A.1. There is nothing to vary the same. The Criminal Appeal is devoid of merit and is liable to be dismissed.

14. In the result, the Criminal Appeal is dismissed, confirming the judgment, dated 31.01.2011, passed in S.C.No.560 of 209 by the V Additional District and Sessions Judge (FTC), Khammam at Kothagudem.

Pending Miscellaneous petitions, if any, shall stand closed.

29th January, 2019
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Dr. SHAMEEM AKTHER, J